DECISION _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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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APPENDIX F 1

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

1. Summary

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 swift technological advances; the convergence of voice, data, and video; and increasing competition in the telecommunications marketplace.

The Telecommunications Act of 1996 ("1996 Act") set the nation on a deregulatory path that encouraged competition at every level of the communications market. A central premise of that framework is the recognition that competitive markets provide the most effective consumer protection: the power of choice.

In the six years since this proceeding opened, the communications industry has undergone a profound transformation. The wireless telephone industry grew at such a rapid pace that by December of 2004, the year D.04-05-057 was adopted, the number of wireless subscriber lines in the United States surpassed the number of wireline subscriber lines.[1] In that same period, the first Internet-based Voice over

[1] Total Universal Service Fund (USF) loops (subscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange services) for California as of December 2003 was 21,519,678 for the Bell Companies. FCC Statistics of Communications Common Carriers, 2004/2005 Edition, Table 5.7 – Total USF Loops for All Local Exchange Companies (as of December 31, 2003). Wireless subscribers as of December 2003 in California numbered 20,360,454. FCC's 9th Annual Commercial Mobile Radio Services (CMRS) Competition Report, FCC 04-216, Table 2: FCC's Semi Annual Local Telephone Competition Survey. Wireless subscribers in California as of December 2004 numbered 23,457,761. FCC 10th Annual CMRS Competition Report, FCC 05-173, Table 2, FCC's Semi-Annual Local Telephone Competition Survey (September 30, 2005). In December 1999, wireless subscribers in California numbered 8,544,941. *Id.*

Internet Protocol (VoIP) telephone companies made their appearance;[2] peer-to-peer software allowed free voice communications between any two computer users with broadband Internet access; major cable companies began offering cable-based voice telephony; and high speed advanced Internet service became accessible to ninety-five percent of U.S. households.[3] Wireless telephones with service may be purchased at not only at carriers' retail outlets, but also at neighborhood electronics stores, kiosks, and on the World Wide Web via dealers, agents, resellers, and electronic retailers.

Our traditional regulatory approach – which limited carriers in a monopoly or duopoly position to specific services and marketing practices – is ill-suited for this modern telecommunications marketplace. One-size-fits-all rules often cannot effectively address the significant degree of variation among technologies and business models currently employed by modern telecommunications companies, and may stifle innovation. Our traditional regulatory approach may inadvertently cause delay for the introduction of innovative services, beneficial rate plans, and deployment of new technology. It, therefore, is imperative that the Commission, whose regulatory tools were initially designed to regulate monopolies, periodically calibrate its rules to adjust to this newly competitive environment.

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[2] Voice over Internet Protocol began in 1995 as a hobby of Israeli computer enthusiasts who could only communicate by computer. That year marked the first year Internet phone software was sold. In 1998, entrepreneurs began offering VOIP service for free if users listened to an ad at the beginning of the call. Only 1% of phone calls were made by VOIP in 1998. By the year 2000, 3% of calls were made via VOIP. By late 2006, it is expected that 24-40% of international traffic may be completed by VOIP. The History of Voice Over the Internet, by Van Theodorou, http://ezinearticles.com/?The-History-of-Voice-over-Internet-Protocol&id=143336.

[3] At the end of 2004, the FCC reported that there was one high speed service subscriber in 95% of the nation's zip codes. The FCC's analysis indicates that 99% of the country's population lives in these zip codes. A "high-speed line" is defined as connections that deliver services at speeds exceeding 200 kilobits per second (kbps) in at least one direction. *See* FCC News Release, "FCC Releases Data on High-Speed Services for Internet Access," p. 2 (July 7, 2005).

Additionally overly rigorous state regulations may inadvertently hinder advances in communications by imposing "a patchwork quilt" of fifty different state regulatory regimes on carriers who provide service in more than one state. For example, if various states require different billing formats, different font requirements on consumer bills, and different variations on promotional offers, this increases costs on the carriers, and these costs may be passed on to consumers.

Consequently we believe that we must proceed cautiously when considering the imposition of new regulations in this modern milieu. The Commission must be sure that any new rules that we adopt, or any existing rules that we extend to new market participants, address clear problems and are narrowly crafted. The rules that we adopt today are consistent with this regulatory philosophy.

Today's action, moreover, places an important emphasis on new consumer education programs. Our education initiative will help consumers meet their needs by allowing them to choose wisely among providers and services. We will reach out to all consumers, and in particular will focus on exploring important issues relating to consumers for whom English is not their primary language.

We further enhance our ability to enforce existing laws and regulations to protect consumers from fraud and abuse. We will devote more internal resources to this effort, while also seeking to develop better relationships with external government officials who are similarly devoted to protecting our state's consumers.

Specifically this 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 the reach of rules addressing investigatory efforts of Commission staff, worker identification, and Emergency 911 access;
- Combines the newly-expanded rules with a set of updated slamming rules;
- Repeals the Commission's prescriptive interim rules that governed the placement of non-communications charges on telephone bills;
- Adopts cramming rules that protect consumers by defining a carrier's responsibility for unauthorized charges placed on its customers' phone bills and establishing related complaint resolution procedures;
- Initiates a proceeding designed to address in-language issues, on an as needed basis.

These regulations, rules, and new proceedings effectively align California's regulatory regime with the interests of California consumers.

This decision also formally directs staff to undertake a series of initiatives that will transform the organizational culture in ways that will heighten our ability to respond to consumers. These twenty-three internal initiatives are described in Table A below. Through these efforts we plan to make California a leader in empowering and protecting consumers in the modern telecommunications marketplace.

TABLE A: TWENTY-THREE COMISSION LED

CONSUMER INITIATIVES

1. Directs Commission staff to hold a workshop and draft a proposal regarding appropriate cramming-related reporting requirements.
2. Directs the CPSD Director to investigate the feasibility and effectiveness of a citation forfeiture program for violations of statutes that address slamming.
3. Directs the Commission staff to collaborate on consumer law enforcement with and refer cases to a DA, AG, or other governmental authority as appropriate.
4. Directs Commission staff to participate in cooperative meetings and periodic teleconferences with outside law enforcement officials to work on incidences of fraud and abuse of consumers relating to communications.
5. Directs Commission Staff to coordinate with federal government officials from the FCC and FTC via vehicles, such as a Memorandum of Understanding on resolving certain customer complaints.
6. Directs CSID staff to hold a workshop to investigate the "best practices" of other states, community-based organizations, the carriers, other state agencies, the FCC, and FTC.
7. Directs Commission staff to work with the telecommunications carriers to develop specific protocols and processes to ensure prompt attention to and timely conclusions of informal complaints filed with the Commission.
8. Directs CSID staff to continue to reduce the backlog of informal complaints pending at the Commission and analyze specific suggestions for more effective complaint processing.
9. Directs the CSID Director to reinstitute the Regulatory Complaint Resolution Forum.
10. Directs the Executive Director to make efforts to augment the Commission budget to improve our CAB call center's ability to respond to consumer complaints, by requesting funds for updating our antiquated complaints database system and hiring new CAB call center personnel.
11. Directs the Executive Director to work with the Department of Personnel Administration to obtain bilingual CAB and CPSD personnel.
12. Directs the CSID Director and Telecommunications Division Director to develop a CBO Action Plan within 180 days of this decision to facilitate partnership with CBOs address consumer complaints.
13. Directs the ALJ Division and CSID to review the formal complaint process and identify any areas for streamlining and to make it more "consumer friendly.staff
14. Directs Commission staff to expand the scope of our existing toll free hotline and to give high priority to addressing matters relating to fraud in the telecommunications industry.
15. Directs the CPSD Director to create a special Telecommunications Consumer Fraud Unit to

investigate and resolve allegations of telecommunications consumer fraud.

16. Directs the CPSD Director to investigate whether it is feasible to have a deputy AG or DA join the Telecommunications Consumer Fraud Unit.
17. Directs the Executive Director to recommend to the Commission how to streamline and increase the effectiveness of fraud enforcement processes.
18. Directs the CSID Director to develop and implement an interim consumer education campaign using existing personnel and resources in 120 days, including a website and media campaign in the seven most common languages spoken in California: English, Spanish, Chinese, Vietnamese, Korean, Tagalog and Hmong.
19. Directs Commission staff, after holding workshops and securing Legislative funding to launch a second wave Commission-led consumer education program that (1) broadly provides information in "plain English" to residential and business customers, particularly small businesses; (2) informs consumers of their rights and how to file complaints, and (3) orients customers who are non-English or low English proficiency speaking, senior citizens, disabled, or low income individuals to telecommunications markets.
20. Directs Commission staff to disseminate consumer education material through our website, public service announcements, and via brochures distributed by CBOs and consumer groups, including in the seven primary languages spoken in California, and to low income, senior, and the disabled communities.
21. Directs Commission staff to develop a program to monitor and evaluate our consumer education programs for effectiveness.
22. Directs the CSID Director to recommend whether creating a Small Business Ombudsman at the Commission would effectively encourage communication between the Commission and the small business community.
23. Directs Commission staff to report on special problems faced by consumers with limited English proficiency.

2. Procedural History

In March 1998, the Commission initiated an evaluation of its role and responsibilities regarding consumer protection in the utility and transportation industries. Commissioner Josiah Neeper, the coordinating Commissioner for consumer protection issues at that time, created a staff interdivisional task force to offer recommendations for improvement of our consumer protection efforts.

The Commissioner hosted a consumer protection roundtable in April 1998 as a part of the information gathering. At this roundtable, participants were invited to discuss the agency's consumer protection role and responsibilities.

In July 1998, the Commission task force released its staff Report on the California Public Utilities Commission's Consumer Protection Role and Responsibilities ("1998 staff Report"). The 1998 staff Report – the product of several months of discussion by the task force and extensive roundtable, interview, and written input from stakeholder groups – discussed the Commission's consumer protection mission and objectives, and our organizational structure and resources employed to meet them.

As a foundation for the next step, the staff issued a follow-up report in February 2000,[4] in which it recommended the Commission establish a list of telecommunications rights and related rules that would apply in a technology-neutral manner to all regulated carriers ("2000 staff Report"). The Commission cited that 2000 staff Report in opening this rulemaking, and in seeking stakeholder input on the staff recommendations and the Commission's proper telecommunications consumer protection role.

One of the 2000 staff Report's recommendations was that we apply whatever consumer protection rules that might come from this proceeding to wireless providers. In support of this suggestion, the report noted an increase in recorded complaints by customers against Commercial Mobile Radio Service (CMRS) carriers. 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. staff reviewed 81 of the 5,760 complaints received in 1998 and 1999 before recommending that we adopt a set of rules for the entire telecommunications industry.

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

In hindsight, we see that those 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. Carriers during that same period also were in the process of deploying new technologies and services, such as digital wireless, and there may have been coverage problems during the transition.

In opening the rulemaking based on the 2000 staff Report's findings, the Commission invited respondent utilities and interested parties to submit comments on the 2000 Staff Report's proposed rules,[5] and a full spectrum of stakeholders did so. Regulated utilities were well represented, individually and in groups and associations expressing shared views. Local, state, and federal governments commented. Individuals and organized groups made presentations on behalf of residential and small business consumers. In all the Commission received seventy-one submittals from thirty-nine groups consisting of sixty-seven named entities, some of which were in turn associations of many members.

Commenters representing the telecommunications utilities were generally opposed to the 2000 staff Report's proposed rights and rules and other measures, while consumer representatives were generally supportive. There were exceptions in each camp, both as to individual commenters and specific proposed measures.

After the earliest rounds of comments, the Commission invited input directly from the public through twenty public participation-hearing sessions held in thirteen locations throughout the state between mid-June and September 2000. Those unable to attend were urged to express their views in writing.

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[5] The report also recommended modifying the limitation on liability of carriers and changing tariff, marketing and billing practices.

By fall 2000, some 1,200 people had attended one of the public sessions, and more than 300 made public statements. Those individuals who spoke represented a cross section of the affected public: residential customers, large and small business customers, senior citizens, union members and representatives, public officials, minority business associations, low income groups, community-based organizations of every kind, and many others. Another 2,000 responded and made their views known by letter or e-mail.

In January 2001, then-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. The Commission considered thirty-one sets of related comments and replies, and on July 30, 2001, it issued D.01-07-030. This decision adopted a set of interim rules governing the inclusion of non-communications-related charges on telephone bills (the "Interim Non-Com Rules"). Commissioner Wood's second set of proposed rules dealt with "slamming," the unauthorized switching of carriers. 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 the Interim Non-Com Rules and new FCC-inspired slamming rules in the proposed General Order. 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. Commissioner

Wood sought two additional rounds of comments and replies 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, newly-elected 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. The purpose of this suspension was 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. [6] In response to the Governor's request, Assigned Commissioner Wood postponed Commission action on his draft decision.

On March 2, 2004, Assigned Commissioner Wood issued a revised draft decision for public comment and invited parties to submit comments on both the proposed new General Order and, as separate submissions, its economic effects.[7] Many parties, including carriers and California businesses, protested that the four weeks initially provided for the comment cycle (14 days for comments and 14 days for replies to comments) did not provide sufficient time to permit meaningful consideration of the economic impacts of the proposed rules.[8] Wireless Carriers [9]

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

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

[8] *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.

[9] 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

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and the Wireline Group [10] moved for extensions in the proposed schedule and all parties were granted a one-week extension for each set of comments (on economic effects and on non-economic issues) and on each set of replies to comments.

Carriers also objected to the level of consideration that the comments on economic impacts would receive, as outlined in the initial Notice of Availability. The Notice provided that "[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."[11] Carriers argued that the Commission would not be making a reasoned decision if it relied on unverified data to reach policy determinations.

The Commission held neither formal nor evidentiary hearings in this proceeding up through its issuance of D.04-05-057.[12] Consequently the record on which original G.O. 168 was based consisted of the 2000 staff Report and the

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Wireless Association, collectively referred to herein as "Wireless Carriers."

[10] 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 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."

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

[12] In a quasi-legislative proceeding, "formal hearing" includes a hearing at which testimony is offered on legislative facts, but does not include a hearing at which testimony is offered on adjudicative facts. (Rules of Practice and Procedure, Rule 7.1(f)(2)).

customer complaint data from 1998-1999 within it; statements made at public participation hearings; three economic papers and studies filed by carriers; one study submitted by a consumer group; and various sets of comments and replies to comments filed by the parties during the course of the proceeding.[13]

Assigned Commissioner Wood made additional changes to his draft decision in response to the parties' comments. He posted a finalized agenda version on the Commission's website on March 24, 2004.

On May 27, 2004, the Commission adopted D.04-05-057, Interim Decision Issuing General Order 168, Rules Governing Telecommunications Consumer Protection, an alternate decision proposed by Commissioner Geoffrey Brown.[14] The decision created the original G.O. 168, which included a somewhat-reduced but still expansive set of regulations.

AT&T Wireless, et al., Nextel of California, Incorporated, and the Wireline Group thereupon each filed timely applications for rehearing of D.04-05-057. The carriers asserted numerous claims of error.[15] The Wireline Group filed an additional application for rehearing that addressed solely issues concerning the timeline for implementation. In D.04-10-013, we concluded that the carriers' applications for rehearing had not demonstrated legal error in D.04-05-057, made minor modifications to the decision and G.O. 168 to clarify the decision and address certain oversights, and denied the carriers' appeals.

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[13] *See* D.04-05-057, pages 129-134, and Ordering Paragraph 10.

[14] D.04-05-057 became effective on the date it was mailed, June 7, 2004.

[15] In addition, all three filed separate motions to stay the decision that were denied in D.04-08-056 (August 19, 2004).

In September 2004, two separate complaints seeking to overturn D.04-05-057 were filed in federal court.[16] TURN, Utility Consumers Action Network, and National Consumer Law Center, three consumer groups that had made substantial contributions to D.04-05-057, joined together to intervene in the federal litigation, and on December 9, 2004, they filed their motions to intervene in both cases. On January 7, 2005, the plaintiff carriers filed first amended complaints in response to the defendants' motions to dismiss the court cases.

In January 2005, following the expiration of Commissioner Wood's term, this proceeding was reassigned to Commissioner Susan P. Kennedy. On January 27, 2005, the Commission issued D.05-01-058 staying D.04-05-057 pending further examination of whether – given the effects of changes in the telecommunications industry since the inception of the proceeding – G.O. 168 provided a consumer protection structure that could be reasonably implemented, adequately enforced, and viable in the longer term. The following day, the plaintiffs in each of the federal court cases filed Notices of Voluntary Dismissal, which brought the cases to a close.

On May 2, 2005, Assigned Commissioner Kennedy issued a ruling taking four actions. First, it proposed issuing a revised bill of rights for telecommunications consumers that restated and amended the original bill of rights[17] and adding principles of consumer choice related to the use of the Internet as a telecommunications medium. [18] Second, the ruling proposed to continue the stay of Rules 1 through 12 of Part 2. [19] Third, it proposed re-adopting, with alterations,

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[16] *Cellco Partnership v. Peevey*, No. SACV 04-1139; and *Nextel of California, Inc. v. Brown*, No. SACV 04-1229.

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

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

[19] Primary topics covered in the suspended rules were point of sale disclosures, marketing practices,

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Parts 4 and 5 of G.O. 168, together with somewhat revised Rules 13, 14, and 15 of Part 2. [20] Fourth, the ruling directed 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 then issued a series of rulings establishing the proceeding schedule going forward, along with dates for opening and reply testimony, formal hearings, briefs, and a proposed decision. [21]

A further Assigned Commissioner Ruling on September 19, 2005 set the ground rules for the formal hearings and defined six topics to be the subject of panels over two days of hearings: marketing and advertising of telecommunications services; billing issues; meeting the needs of non-English speaking consumers; cramming, with specific reference to placement of non-communications charges on

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billing and billing disputes.

[20] 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.

[21] Assigned Commissioner's Rulings of June 30, July 7, and July 13, 2005.

phone bills; consumer freedom of choice among Internet service and content providers; and so-called "naked DSL." Parties were directed to address the following questions with respect to each topic:

1. What are the problems confronted by consumers in the topic area?

2. Are existing laws, regulations and enforcement mechanisms sufficient to address those problems?

3. If not, what solutions are proposed?

4. What are the costs and benefits of the proposed solutions to consumers and carriers?

Two days of formal hearings were held on September 29 and 30, 2005. Twenty-five representatives of industry and consumer groups, organized into five panels, addressed these topics and questions. After these presentations the prepared opening and reply testimony served earlier were admitted into the record. Opening briefs were filed on October 24, 2005; reply briefs were filed on November 7, 2005.

3. Review of Record Evidence

The AG, Division of Ratepayer Advocates ("DRA") (previously known as the Office of Ratepayer Advocates), and The Utility Reform Network ("TURN"), along with other members of Consumer Groups, advocate adoption of new rules and argue that the data they present justify these rules.[22] In rebuttal, Wireless Carriers

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[22]California Attorney General's Opening Comments In Opposition To The [Draft] Decision Issuing Revised General Order 168, pp. 16-27 ("AG Opening Comments"); Opening Comments of The Utility Reform Network, Consumer Federation of California, National Consumer Law Center, Consumers Union and CALPIRG, on the Proposed Decision of Commissioners Peevey and Kennedy, pp. 10-16 (Feb. 3, 2006) ("Consumer Groups Opening Comments"); Comments of the Division of Ratepayer Advocates on Commissioners Peevey and Kennedy's Proposed Decision on

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and the Wireline Group contend that the evidence presented by TURN and DRA is flawed and fails to justify new rules.[23] The carriers also offer evidence that they say demonstrates that additional rules are unnecessary and may result in net harm to consumers.

This Part describes parties' arguments and supporting evidence in greater detail below. In response to issues raised by consumer representatives, we make significant modifications to this Part in order to clarify our analysis and conclusions.

3.1 Evidence Presented in Support of New Rules

TURN, DRA, and other consumer organizations primarily rely upon the following pieces of evidence: consumer complaint records, survey data, enforcement actions, and anecdotal evidence. We review each piece of this evidence in turn.

3.1.1 Consumer Complaint Records

The primary complaint data at issue in the proceeding are telecommunications consumer informal complaints received by the Commission's CAB between 2000 and 2004.[24] DRA witness Lynn Maack offers an analysis of these data and finds that CAB received 165,415 complaints during that period, three-fourths of which

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Telecommunications Consumer Bill Of Rights, pp. 7-18 (Jan. 17, 2006) ("DRA Opening Comments").

[23] Opening Comments of Cingular Wireless, Cricket Communications, Inc., 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 On Proposed Decision Of Commissioners Kennedy And Peevey, pp. 3-6 (Jan. 17, 2006) ("Wireless Carriers Opening Comments"); Consolidated Opening Comments of the Wireline Group Opening Comments on Proposed Decision of Commissioners Peevey and Kennedy, pp. 3-5 (Jan. 17, 2006) ("Wireline Group Opening Comments").

[24] Consumer representatives 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 only modest value in a state-specific regulatory proceeding, given that we have no way of knowing whether the complaints address issues governed by state and federal law. Reply Brief of Wireless Carriers (Nov. 7, 2005) ("Wireless Carriers Reply Brief"), p. 11.

(124,579) were complaints about wireline carriers and one-fourth of which (40,836) were complaints about wireless carriers.[25]

Maack finds that the number of individuals complaining about wireless service is small compared to the number of wireless customers in California. Even assuming that all these complaints report actual grievances,[26] 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.[27]

Maack also reviews these complaints by subject matter. He finds that complaints about billing are the single largest complaint category for both wireline (56%) and wireless (74%) carriers. Service complaints are the second largest complaint category for wireline (17%) and wireless (12%) carriers, respectively.[28]

DRA's analysis pays special attention to complaints regarding wireless carriers' disclosures of prices, terms, and conditions of service plans and products. "Disclosure," however, is not a specific category under which CAB records complaints, so DRA had to review descriptions of individual complaints to identify disclosure-related complaints.[29] DRA sorted a CAB-generated list of all complaints filed in 2004 into major categories and sub-categories, from which sixteen combinations of categories and sub-categories were selected for review. All

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

[26] We explain below that this assumption is a significant one.

[27] DRA Opening Comments, p. 13.

[28] Maack Testimony, p. 3.

[29] DRA classified a complaint as "disclosure-related" if it the complainant specifically indicated that the carrier provided insufficient, misleading, or no information about their service or equipment. Not included were the many complaints in which the complainants indicated only that the bill did not match the service they ordered.

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.

From this review, DRA concludes that approximately eleven percent of all wireless complaints to CAB could be characterized as involving disclosure issues.[30] Given that wireless consumers complaining to the Commission in 2004 constituted just 0.04% of all wireless users in California,[31] this statistic means that less than 0.004% of California wireless consumers reported disclosure issues to the Commission.

This data is the core evidence in this proceeding, and resolving the issues requires that we determine what this complaint data means and whether it is capable of supporting proposals for more prescriptive rules. We do not dismiss the complaint data, nor do we impose a new evidentiary standard for this data (as alleged by TURN and DRA). Instead the complaint data is evaluated in light of our standard procedures.

We first find that lack of statistical validity does not warrant dismissing complaint data altogether. We recognize it is impossible for complaints to constitute a statistically valid study: There is no sample drawn from the universe of California consumers; the analysis is done from the universe of complaints to the CPUC.[32] Yet

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[30] Maack Testimony, p. 6.

[31] DRA Opening Comments, p. 13.

[32] DRA responded to our previous question of "whether DRA's review of complaint data was statistically valid" by stating that there is "nothing in the record to show that complaints were selected in a biased way" and similarly argues that our criticism of "sample size" is mistaken. *Id*. at 12. DRA's response indicates to us that we may not have accurately communicated our concerns. We did not intend to accuse DRA of taking a biased sample. Although "bias" or "inadequate sample size" would be a reason that would prevent one from drawing a valid statistical conclusion, the problems confronted here – the fact that the data reviewed is limited to a pool of complainants –

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the Commission sometimes is able to place incidence of specific complaints into a larger context that justifies regulatory action.

A common analytic step taken to overcome the limitations of specific data is to compare the incidence of complaints in one company or service with complaint rates in another company or in other service areas. For example, we currently examine the rates of reported carrier switching disputes to identify companies involved in disputes who's ratios exceed industry norms. We then investigate whether companies with abnormal dispute rates are following the procedures required to document the validity of service switches.

In this proceeding, however, we are unable to draw similar conclusions or take such actions. We lack critical information on both 1) the specific issues identified by the complainants, and 2) an appropriate context that provides general information on a normal levels of complaints (against which we could compare our complaint data). Each of these problems is discussed below.

First, many complaints were not described with enough specificity to determine whether they raised issues that could or should be addressed by the proposed consumer rules. Billing "complaints" provide a good example of this problem. It is unclear whether we should be concerned by DRA's finding that billing issues are the most frequently cited cause of consumer complaints to CAB for both wireless and wireline carriers,[33] because the billing complaints are insufficiently analyzed to permit us to draw any valid inferences as to the substance of those complaints. Consequently we do not know if the proposed rules would address the

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is more basic. Reaching conclusions for wireless customers based on the complaint data is not a statistically valid exercise.

[33] Maack Testimony, p. 4.

subject matter of customer concerns. Moreover, to the extent billing complaints addressed wireless carriers' rate structures or rate levels, those matters are preempted by federal law.[34]

There also is no indication that DRA validated that "complaining" consumers were reporting actual grievances.[35] Currently our database cannot distinguish whether an inquiry registered in our database is regarding a new complaint, or simply following up on a matter that is one among many in our significant backlog of consumer complaints.[36] Our database also does not provide any means of assessing whether there was any validity to a consumer's complaint.[37] We could find some indication of the validity of the consumer's complaint in how a complaint is resolved, but currently our database is incapable of effectively recording what, if any, related resolution occurs.[38] This information that we lack about complaints is critical, and, therefore, we do not find it unreasonable that we expectDRA to validate the complaints.[39]

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[34] *See* 47 U.S.C. § 332(c)(3)(A) ("[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.").

[35] 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.

[36] Since an inquiry regarding the status of a complaint may be logged as a complaint, it is likely that DRA's estimates regarding "substantive" complaints is inflated. *See* DRA Opening Comments, p. 14 (failing to recognize this current limitation in our complaint database).

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

[38] We intend to correct these short comings in our new complaint database and future procedures, assuming we are granted the budget to fund it by the Legislature. DRA apparently also was unaware of this limitation to our database. *See* DRA Opening Comments, p. 14 (claiming that it could identify the number of complaints resolved in favor of the complainants).

[39] *See Id*. at 13 (contending that our request that it should "validate" complaints imposes "a test for

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The significant lack of specificity regarding consumer complaints prevents us from using the "tip of the iceberg theory." We should only use this theory, which is based on the presumption that only a small percentage of aggrieved customers actually will report a complaint,[40] when there is a nexus between the customer complaint and a specified carrier practice that a new rule is directed to remedy. Prudent practice dictates that the Commission establish the nexus before considering whether complaints warrant new regulation or enforcement actions based upon existing statutes or rules.

We, however, do not dismiss the "tip of the iceberg" theory out of hand. Despite comments to the contrary,[41] we recognize that the theory may have value in other cases where there is a more clearly defined nexus between the customer complaint and carrier practice. Our intent here is only to determine what effect a proposed regulation will have on a particular carrier practice, and we cannot use this "tip of the iceberg" theory to justify adoption of regulations that respond to problems that have not been fully identified.

Second, there is no reliable baseline context against which to compare the observed level of consumer complaints. During the hearings, Assigned Commissioner Kennedy repeatedly asked TURN and DRA experts to define a

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consumer complaints that is unreasonable").

[40] *See* TURN Opening Brief, p. 6 (arguing 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"). Barbara Alexander, testifying on behalf of TURN, maintained that "the tip of the iceberg theory . . . has motivated all state regulators with respect to how they handle complaint data." Tr. 1311 (Barbara Alexander, TURN). *See also* Direct Testimony of Barbara R. Alexander, pp. 36-37 (Aug. 5, 2005) (discussing this theory at length) ("Alexander Direct Testimony").

[41] AG Opening Comments, p. 22 (arguing that we have improperly dismissed the "tip-of-the-iceberg" theory). *See also* Consumer Groups Opening Comments, pp. 15-16 (contending that we have incorrectly interpreted the tip of the iceberg theory).

normal level of consumer 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.[42]

TURN, along with other members of Consumer Groups, misconstrues Commissioner Kennedy's interest in the context of complaints, when they argue that it is unfair to require them to provide a "single number as a threshold of complaints."[43] Indeed, we agree with TURN's assertion that "it is improper regulatory policy to expect that there is a significant numerical threshold above which intervention is automatically warranted and below which is not."[44] We do not hold that there is any "magic number" that constitutes a threshold for action.

Like TURN, we acknowledge that the analysis is "more subtle": A "small number of complaints about all the same issue and carrier at once may indicate that Commission action is warranted, but the same action may be warranted by a large number of complaints that take a year or more to 'pile up.'"[45] The important analysis is not one that focuses on a threshold, but one that looks at how complaints fit into a broader context, which may require a subtle analysis. Here, however, we have no such external context in which we can evaluate the level of complaint data.

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[42] Tr. at 1305-1311.

[43] Consumer Groups Opening Comments, p. 14. *See also* AG Opening Comments, p. 21 (arguing that there is no "magic number of complaints needed to prove an improper act is being committed").

[44] TURN Opening Comments, p. 15.

[45] *Id.*

The only context we have comes from the complaint data itself. Specifically we can compare wireline to wireless complaints, and consider what specific topics generate the greatest percentage of complaints.

What we find when we make this internal comparison is that wireline complaints run at approximately three times the frequency of wireless complaints, while the number of wireless customers in California is approximately equal to the number of wireline customers in the state.[46] This result is counter to standard expectations. Since wireless technology is only about ten years old and wireline technology is over a hundred years old, one would expect that wireless technology would trigger more complaints than wireline. In addition, assuming regulations provide effective consumer protection, one would expect that wireless service, which is less regulated than wireline service, would trigger more complaints.

So we must ask: What does this lower complaint frequency mean? The complaint data suggest that wireless consumers are less likely to have telecommunications problems than wireline consumers, and that the wireline regulations do not have much effect on customer complaints. Thus, under our standard procedures for analyzing complaint data, we would conclude that we should focus our regulatory energies on wireline service, not wireless. Parties that want to extend more rules to wireless carriers did not provide an alternate explanation for these data.

Other key elements of the consumer complaint data also cut against certain proposed new rules. For example, 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

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[46] Maack Testimony, p. 5.

"other matters."[47] The complaint data effectively cut against the suspended rules' concern with carriers' marketing practices.

In conclusion, as TURN's own witness admits, the complaint numbers by themselves do not justify new rules.[48] It is unclear that the complaints are capable of justifying any policy recommendations, given their lack of specificity and our inability to place the complaint data in a larger context that supports new rules. Moreover, even assuming we can take some meaning away from the complaint data, what meaning we find suggests that we should avoid imposing more prescriptive rules on telephone companies.

3.1.2 Survey Data

Consumer representatives also make use of various types of survey data to bolster their case for the necessity of new 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.[49] The following discussion reviews some of the surveys in this proceeding, and identifies factors that make us reluctant to place significant weight upon them.

2003 nationwide AARP survey

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[47] Maack Testimony, p. 4.

[48] Tr. at 1323.

[49] In its Opening Comments, DRA describes a recent Consumers Union survey that finds customer dissatisfaction with wireless service in California. *See* DRA Opening Comments, p. 1 (citing Consumers Union, Three Steps to Better Cellular, Consumer Reports, Vol. 68, No. 2 (Feb., 2003) pp. 15-18). This survey, however, is not part of the record in this proceeding, and even if were, it would not support the need for specific regulations by itself.

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 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.[50] This omission likely inflates the degree of apparent dissatisfaction and makes it difficult to draw a conclusion.[51]

2004 New York State AARP survey

Other 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 responses highly unreliable.[52] Also drawing conclusions concerning California consumers based on a survey of New York consumers requires the use of care and judgment. Taken together, the small sample size and focus on New York limit the advisability of relying on this data for setting California policies.

TURN is critical of our review of survey data collected outside of California. It argues that a requirement that evidence of dissatisfaction be specific to California

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[50] *Id.* at 10.

[51] Although TURN defends the AARP survey, TURN itself admits that the survey alone does not provide a basis for setting policy: "While TURN would not suggest that the Commission base any action solely on these surveys, when combined with the other evidence of consumer dissatisfaction, those surveys add another piece to the puzzle." TURN Opening Comments, p. 16 (citing TURN's Opening Brief, p. 11).

[52] McLaughlin Reply Testimony, p. 9.

consumers is legal error. TURN states that the Commission "cannot ignore concrete evidence of consumer dissatisfaction, either surveys or national complaint data."[53]

These statements indicate that TURN misunderstands how the Commission considers and assesses survey data. The Commission does not ignore national survey and complaint data. Instead the Commission weighs this evidence in light of the information in the entire record. In particular, the low rates of wireless complaints received by the Commission caution against relying heavily on surveys that document dissatisfaction in other states.

2001 California Telephone Survey

The 2001 California telephone survey data are 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.

Unfortunately the survey also suffers from significant methodological shortcomings. These shortcomings include survey 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.[54]

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 home during the previous year and only two consumers who reported having

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[53] TURN Opening Comments, p. 14.

[54] *Id*. at 5-9.

authorized service or equipment changes as a result of a sales call from a cell phone company.[55]

3.1.3 Enforcement Actions

Consumer representatives further rely 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 new rules, rather than more.

The existence of out-of-state lawsuits against telecommunications carriers is one such example that may cut against organizations advocating more California rules. An argument may be made that these lawsuits merely demonstrate that "when perceived issues arise, there are means available for addressing them."[56]

Also some of the 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 rules are necessary in California.[57] 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.[58] For practical reasons described by industry experts, wireless carriers have committed to adhere to the principles of the AVC in

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

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

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

[58] *Id*.

California.[59] Thus California consumers will benefit from the settlement even though the California Attorney General ("AG") was not a party to the action.

The AG replies that the AVC does not form any basis to suggest that consumer rules are not needed in California. It maintains that the AVC is not a set of "comprehensive consumer protection rules, is not applicable to California, and is not relevant to this proceeding."[60]

The AG misinterprets our actions and reasoning. We do not claim that the AVC forms a basis to suggest that no consumer protection rules are needed in California. In contrast, we find that there are sufficient existing rules that provide protection for California consumers, and that the national approach embodied in the AVC obviates the need for *additional* state-specific rules that address issues that are being addressed nationally in an effective manner.

3.1.4. Anecdotal Evidence

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

Disability Rights Advocates asks us to adopt a group of new rules specifically designed to make it easier for people with disabilities to receive information from

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[59] *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).

[60] AG Opening Comments, p. 26. The AG specifically notes that the "settlements . . . are enforceable only in those states as to practices occurring in those locations by those three carriers." *Id*. The AG, however, fails to consider that AVC could be enforceable in California if the AG entered into a settlement with the carriers.

carriers and present complaints to carriers.[61] No evidence was quantified as to the extent of the alleged problem, and the scope of the proposed solution is undefined.[62]

Luis Arteaga testified that Spanish speaking customers face a variety of problems. He noted that although Verizon Wireless communicates well in Spanish, "they are certainly not the rule when it comes to many other carriers."[63] Additionally he stated that having materials in Spanish is "often incomplete."[64] He described situations in which at a cell phone kiosk, a Spanish speaking customer is "handed a contract which they cannot read."[65] 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."[66]

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[61] Opening Brief of Disability Rights Advocates, pp. 13-15 (Oct. 24, 2005) ("Disability Rights Advocates Opening Brief").

[62] In Opening Comments, Disability Rights Advocates states that a reason it failed to cite quantifiable data is because "such data does not exist." Comments of Disability Rights Advocates, p. 11 (Jan. 17, 2006) ("Disability Rights Advocates Opening Comments"). Consequently Disability Rights Advocates requests that we "direct production of a disability report comparable to the requirement of the in-language report" commissioned later in this decision. *Id*. We, however, decline to commission production of a disability report for two reasons. First, we expect that we already will be learning a great deal more about the special issues faced by individuals with disabilities, since we designate them to be a group that we will be focusing on in our educational campaign (described in Part 13.3). Second, as noted by T-Mobile, the Telecommunications Act "provides a national framework *specifically designed* to provide access to individuals with disabilities," and to "the extent that DRA believes that there is a problem in the enforcement structure or the structure of the national framework set out in the Act and its accompanying regulations, those matters would be more appropriately addressed at the FCC." Reply Comments of Omnipoint Communications, dba T-Mobile, on the Proposed Decision of Commissioners Peevey and Kennedy, p. 4, n.19 (Jan. 23, 2006) ("T-Mobile Reply Comments").

[63] Tr. at 1401. *But see* Reply Comments of Cricket Communications, Inc. on the Proposed Decision of President Peevey and Commissioner Kennedy, p. 1 (Jan. 23, 2006) (stating that "Cricket has provided its Spanish-speaking customers with in-language versions of its informational rate plan brochure as well as the terms and conditions of its service").

[64] Tr. at 1401.

[65] *Id*.

[66] *Id*.

DRA's witness Lynn Maack gave testimony 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.[67] Barbara Alexander, testifying on behalf of TURN, stated that customers are irritated by bills that conflate mandatory taxes and fees with discretionary charges.[68]

Carriers address this testimony in different ways. The Wireless Carriers respond 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 Communications Act.[69] The Wireline Group replies 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.[70]

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."[71]

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

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

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

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

[71] Tr. at 1421.

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."[72] He further contended that the "state level rules would impose costs and unintended consequences on all providers and their customers."[73] He concluded that "Ms. Alexander provides no evidence or argument that the existing laws are insufficient to deal with any exceptionally bad service providers that might exist, not that broad policies are preferable to targeted policies."[74]

We find ourselves in agreement with the arguments of 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 consumer education programs can offer a positive response to issues identified by witnesses. Targeted enforcement actions can stop bad actors, and targeted consumer education programs

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[72] Katz Reply Testimony, p. 38.

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

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

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 13 and 14.

3.2 Evidence Regarding Unintended Consequences of New Rules

Even if we accept the contention that there are significant problems that can be remedied by the Commission, it still would not be clear that we should create new rules in response to these problems. Rules can cause their own problems, which may overshadow any benefits bestowed upon consumers. Katz testified that 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.[75]

TURN contests this reliance on the testimony of Katz. It claims that we have failed to adequately consider the testimony provided by TURN's witness and that this testimony "debunks" Katz's testimony.[76] Testifying on behalf of TURN, Barbara Alexander argues that support for Katz's analysis "relies on economic theory more relevant to price regulation, which is not an issue pending before the PUC."[77] Addressing many of the points raised by Katz, Alexander develops an elaborate argument that relies in large part on the observation that "[a]ny attempt to rely on the 'market' to satisfy consumer satisfaction with disclosures will of necessity mean

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

[76] TURN Opening Comments, p. 13.

[77] Reply Testimony of Barbara Alexander on Behalf of TURN, p. 8

that some consumers will 'lose' in choosing the competitor that fails to provide the necessary disclosures."[78]

We find Alexander's arguments unpersuasive. Her arguments appear to largely rely on an unconventional view that the markets mainly affect price, and do not have a major affect on quality, customer satisfaction, and information needs. We do not agree with this view of how telecommunications markets function. In contrast we find Katz's testimony more convincing, and more consistent with our view of how California telecommunications markets function.

For example, we agree with Katz's admonition that rules can have unintended consequences. Consider, for example, proposed requirements intended to improve readability of documents provided by phone companies. Multiple parties to this proceeding encouraged adoption of rules that would require a contract (or an accompanying summary document) to highlight "key rates, terms, and conditions,"[79] and various documents (excluding bills) to use at least a ten-point font.[80] While no doubt well-intentioned, there are several ways that rules such as these, however, may inadvertently harm consumers.

First, rules may impose additional compliance costs on transactions. Undisputed testimony in the record establishes that compliance is expensive when it requires national carriers to create "California only" practices, documents and

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[78] *Id.*, p. 10.

[79] *See* Interim Decision Issuing General Order 168, Rules Governing Telecommunications Consumer Protection, Decision 04-05-057, App. A, Rule 3(e) (May 27, 2004) ("Key rates, terms and conditions shall be highlighted (e.g., printed in larger or contrasting type, underlined, bolded, enclosed within text boxes, or some combination of those or other comparable methods), either in the contract or in an accompanying summary document.").

[80] Stayed rules would require ten-point type in any written confirmation, authorization, order, agreement, or contract used in marketing; any contract for service; and any notice given to customers. *Id.* at App. A, Rules 1(h), 2(c), 3(e) and 8(e).

systems. A rule that requires changes in billing formats could "trigger millions of dollars of systems development and modification costs."[81] Such costs would likely be passed on to carriers' customers.[82]

Second, rules may restrict the number of service options available to consumers. 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 attempt to comply.[83] Thus, in particular, imposing additional regulations may have the unintended consequence of reducing the number of competitors, and thus decreasing service offerings in the markets where these services are especially needed.

Third, rules may induce confusion. With respect to the proposed rule requiring "key rates, terms and conditions" to be highlighted, the phrase "key rates, terms and conditions" was not defined in a clear way, so the proposed rule likely would produce confusion among carriers. Carriers point out that they would consider ensuring compliance by just highlighting a consumer's entire bill.[84] Although this action would comply with the poorly written regulation, it would

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[81] Katz Opening Testimony, p. 29.

[82] *Id*. at 28 (observing that costs stemming from state-specific regulation "costs would be passed on to consumers, in whole or in part, in the form of higher quality-adjusted prices").

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

[84] *See, e.g.,* Comments of Omnipoint Communications, Inc., Dba T-Mobile (U-3056-C) on the May 13, 2004 Draft Alternate Decision of Commissioner Brown Regarding Rules Governing Telecommunications Consumer Protection, p. 10 ("Given that almost every provision of a contract could satisfy that test, the rule could arguably lead a prudent carrier to consider most everything to be 'key.' On a more basic level, the definition would now require that the rates for every service that the consumer might use, regardless of how remote or incidental, be highlighted. Thus, all of the carriers' efforts to make contracts and collateral more accessible to consumers would be rendered useless as carriers struggle not to run afoul of these "command and control" dictates.").

provide no benefits: Consumers would simply receive a contract entirely printed in a "bold" font.

In conclusion, while there are contradictory statements in the record regarding the costs of complying with additional proposed rules,[85] the balance of testimony favors the carriers' position that new rules may impose significant costs on carriers. In the absence of a convincing showing that most prescriptive rules would effectively respond to real problems, we decline to impose most of the rules included in the original G.O. 168. Specific areas where we deem new rules appropriate and necessary are discussed in further detail below.

4. State of Existing Consumer Protection Laws and Rules

We first must consider the legal backdrop to this proceeding before evaluating whether any specific new rule should be added to our consumer protection regime. Key considerations in this review are the following: 1) whether we have jurisdiction to adopt a new rule, and 2) whether existing laws and regulations preclude the need for new regulation action. This Part discusses both of these considerations in turn.

4.1 Jurisdiction

P.U. Code § 216(a) states that the Commission has jurisdiction to regulate all public utilities, which include "every . . . telephone corporation . . . where the service

[85] A number of carrier witnesses testified in support of the carriers' assertion that the original G.O. 168 rules would impose significant costs on them. *See, e.g.*, Katz Opening Testimony; Katz Reply Testimony; Herman Declaration; Testimony of Marni Walden (on behalf of Verizon Wireless) (Aug. 5, ,2005). Consumer representatives, however, reply that these testimonies merely provide "threats of what 'might' happen if these rules go into effect." TURN Opening Brief, pp. 22-23. *See also* AG Opening Comments, pp. 28-32 (criticizing cost data with respect to specific rules in the original General Order); DRA Opening Comments, p. 1 ("No carrier submitted any reliable cost data in this proceeding.").

is performed for, or the commodity is delivered to, the public or any portion thereof."[86] California Constitution § 6 and P.U. Code § 701 also give the Commission broad authority to regulate carriers with respect to consumer protection matters.

A large number of additional statutes and rules provide the Commission with specific regulatory authority on a variety of individual issues pertaining to carriers. For example, under P.U. Code § 332, the Commission has the ability to acquire the information that it needs to protect consumers and regulate carriers.

This regulation of telecommunications services takes place in a complex jurisdictional environment. Authority is split between the state and federal government, and within the state between the Public Utility and Business and Professions Codes. The edges of these various jurisdictions are ill-defined and remain the subject of ongoing litigation.

Perhaps the most useful delineation between federal and state authority is the distinction between intrastate telecommunications services and interstate telecommunications services. Generally the California Public Utilities Commission has authority to regulate the *intrastate* telecommunications services of wireline common carriers, while the Federal Communications Commission has authority to regulate *interstate* and *international* communications services.

There are, however, significant exceptions to this general policy. Jurisdictional boundaries, in multiple instances, cut across any interstate or intrastate distinction. The FCC preempts states from regulating entry and rates of wireless carriers, but it

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[86] CAL. PUB. UTIL CODE § 216(a). A telephone corporation is any "corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state." *Id*. at § 234(a).

permits states to regulate "terms and conditions" of wireless providers.[87] Also the federal government has found that all enhanced or information services (in layman's terms, services relating to the Internet) are not subject to Title II common carrier regulations and, as a result, are broadly exempt from state communications regulations.[88] Blanket preemption further applies to state regulation of payphone providers.[89] Thus, independent of the intrastate or interstate nature of the service, this Commission cannot set the rates for payphone, for wireless services, or for Internet services offered by an Information Service Provider.

This brief discussion, which does not definitively delineate the boundaries of this Commission's authority, shows that the jurisdictional landscape that the Commission operates within is extremely complex. Consequently the development of a new General Order requires that we explicitly link the rules that we adopt to our statutory authority.

4.2 Existing Laws and Regulations

Another important legal consideration is the breadth of existing consumer protection laws and regulation. Duplication of existing laws and rules may be inefficient and may create confusion. In many situations the existence of law and regulations precludes the need for further Commission action.

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[87] 47 USC §332.

[88] In 1996, Congress declared that "[i]t is the policy of the United States—(1) to promote the continued development of the Internet and other interactive computer services and other interactive media; (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by

Federal or State regulation." 47 U.S.C. § 230(b)(1)-(2) (2000).

[89] 47 USC § 276.

In reviewing consumer protection laws and rules, we find that in most cases there already are significant consumer protection laws and rules that protect our State's consumers from abusive telecommunications carriers. This Part examines some of the existing laws and rules that that concern issues raised by consumer representatives in this proceeding.

Disclosure received significant attention in this proceeding, but upon review, we find that there is already significant statutory guidance on this topic. P.U. Code § 2896(a) requires carriers to offer customer service that provides sufficient information about services for subscribers to be able to make informed choices about services and providers.[90] Carriers also must provide subscribers information concerning the regulatory process and how subscribers can participate in that process, including resolving complaints.[91] Additionally P.U. Code § 2890.2 will require, as of Jan. 1, 2007, that wireless carriers to provide customers with a way that they can obtain reasonably current and available information on their calling plan and service usage.[92]

Further disclosure provisions are included in the California Civil Code. This Code imposes the duty on sellers, including carriers, to "deliver a copy of a consumer contract to the consumer at the time it is signed by the consumer if the consumer contract is signed at a place of business of the seller."[93] Thus a subscriber who signs a carrier contract at the carrier's place of business must receive a copy of that contract at that time. The Civil Code also accounts for the fact that carriers may

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[90] CAL. PUB.UTIL. CODE § 2896(a).

[91] *Id*. at § 2896(d).

[92] *Id*. at § 2890.2 (using the words "providers of mobile telephony services" instead of "wireless carriers").

[93] CAL. CIVIL CODE § 1799.202.

reach contracts with subscribers over the phone or the Internet too. The Code provides that "[i]f the consumer contract is not signed by the consumer at a place of business of the seller, and the seller has not provided a copy of the consumer contract for the consumer which the consumer is instructed to keep, the seller shall mail or deliver a copy of it to the consumer within 10 calendar days after the seller receives the signed consumer contract."[94]

Privacy was another topic of rules proposed by consumer groups. Yet we find that California has more stringent privacy protections than afforded federally and in other states. P.U. Code § 2891 already provides much, if not all, of the protection that those groups seek. Section 2891 states that carriers shall not "make available to any other person or corporation any of the following information of residential subscriber's without the residential subscriber's written consent . . ." and then provides a detailed list of what qualifies as protected information.[95]

The California Civil Code includes further privacy protections. Under the Civil Code, "[a]ny person or business that conducts business in California, and that owns or licenses computerized data that includes personal information" must disclose "any breach of the security of the system following discover or notification of the breach in the security of the data."[96] Personal information in this context refers to an individual's name[97] along with a social security number; driver's license

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[94] *Id.*

[95] CAL. PUB. UTIL. CODE § 2891. Protected information includes a subscriber's personal calling patterns, the subscriber's credit or other personal financial information, services which the residential subscriber purchases from the corporation or from independent suppliers of information services, and demographic information about an individual subscriber. *Id.*

[96] CAL. CIVIL CODE § 1798.82.

[97] Name is defined as a first name or first initial and last name. Cal. Civil Code § 1798.82.

number or California Identification card number; or a credit card or debit number along with a security code, access code, or password.[98]

Moreover both state and federal law have privacy protections designed to protect consumers from unwanted solicitation. P.U. Code § 2894.10 recognizes this fact, and also requires local exchange carriers to provide a residential customers directory and annual notice of privacy rights with respect to telemarketing.[99] Federal law requires carriers to protect confidentiality of customer proprietary information and sets forth the prerequisites for disclosure of individually identifiable customer proprietary network information.[100]

Consumer representatives voiced further concerns regarding fraud, but we find that there are substantial protections in place with respect to this topic too. The California Bus. & Prof. Code contains provisions to prevent unfair competition, fraudulent business practices, and deceptive, untrue, or misleading advertising.[101] While the Commission's Enforcement Division plays an important role in investigating these types of fraudulent business practices, "actions for relief shall be brought in a court of competent jurisdiction only by the California Attorney General or District Attorney."[102]

Both federal and state law prohibit false advertising. Under federal law, "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive

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[98] *Id.* This does not include publicly available information from federal, state or local government records. *Id*. at § 1798.82.

[99] CAL. PUB. UTIL. CODE § 2894.10.

[100] 47 U.S.C. § 222.

[101] CAL. BUS. & PROF. CODE § 17200.

[102] Or any County Counsel authorized by agreement with the DA, or City Attorneys, in some instances. *Id*. at § 17204.)

acts or practices in or affecting commerce . . . are unlawful."[103] Bus. & Prof. Code § 17500 provides, in part, that it is unlawful for a carrier to perform services or to disseminate or cause to be disseminated any statement which is "untrue or misleading."[104]

As with Business and Professions Code Section 17200 et seq., the enforcement of violations of the Business and Professions Code Section 17500 lies primarily with the AG and District Attorney ("DA").[105] We will continue to work closely with the AG and DA to inform them of potential violations of Section 17500, and our investigators will work in tandem with them where appropriate.

An additional subject of debate in this proceeding was prepaid calling cards. Pursuant to P.U. Code § 885, some prepaid calling card providers are under Commission jurisdiction for their prepaid calling card services. The Commission's enforcement authority, however, is limited to those providers that are certificated or have registered with the Commission, and that violate existing P.U. Code sections. Individual vendors are explicitly exempt from the Commission's registration requirements.

Broader provisions regarding prepaid calling cards are included in Bus. & Prof. Code § 17538.9(b). This statute contains highly detailed rules applying to prepaid calling cards and services and discusses the required disclosure in advertising on cards at the point of sale and also the point of use. We work with the

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[103] 15 U.S.C. § 45(a)(1). This statute does not apply to unfair methods of competition involving foreign commerce. 47 U.S.C. § 45(a)(1).

[104] CAL. BUS. & PROF. CODE § 17500.

[105] *See Greenlining Institute v. PUC*, 103 Cal.App.4th 1324 (1st Dist. 2003) (holding that the Commission lacks jurisdiction to adjudicate claims under Business and Professions Code Sections 17200 et seq, and 17500).

AG, DA, or other appropriate authority to investigate claims of failure to disclose appropriate information for prepaid callings cards.

Further laws and rules relevant to this proceeding are cited in Appendix D. This Appendix, which includes a compendium of laws and rules compiled by the Wireline Group, demonstrates the depth and breadth of existing consumer protection laws and regulations available to telecommunications consumers.[106]

In conclusion, we find that in most cases the protections consumer representatives were seeking already exist. We, therefore, conclude that many of the problems in consumer protection lay not with a lack of rules, but rather, in the public's knowledge of these protections, and the Commission's enforcement of existing rules and laws.

5. Bill of Rights and Freedom of Choice Principles

This Part 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, we concur with some of the parties' comments and adopt a modified version of the rights and principles proposed in the May 2 ACR.

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[106] TURN argues that the list is "extremely overly inclusive." Reply Comments of The Utility Reform Network, Consumer Federation Of California, National Consumer Law Center, Consumers Union, Disability Rights Advocates and Calpirg, On The Proposed Decision of Commissioners Peevey and Kennedy, p. 5 (Jan. 23, 2006) ("Consumer Groups Reply Comments"). We, however, find that this list is a useful resource, as it provides a thorough list of the range of rules and laws that may be brought to bear on a consumer protection issue.

5.1 Language Introducing and Defining the Applicability of the Rights and Principles

The May 2 ACR provided language introducing and defining the applicability of the rights and principles included within Part 1 of the General Order. Carriers, government officials, and consumer organizations alike, however, agree that further clarification is 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 TURN support removal of 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 are not appropriate for a General Order.[107] Also both dispute various portions of the proposed Order's introductory language.[108] 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 argue that we needed to clarify our intentions related to enforcement of the rights and principles.[109] They caution that we should avoid creating any implied private right of action, because they maintain that market forces and existing laws provide ample protection for wireless

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[107] 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.

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

[109] 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.

customers.[110] We agree with the carriers' contention that this statement of rights and principles should not by itself impose any new legal obligations. 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.[111] These revisions make it clear that this statement of rights and principles should not be construed as a 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.

We reiterate that 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 rights and principles serve as a foundation for the design and implementation of our education campaign, and the enhancement of our enforcement efforts. These principles, however, 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 that would not exist absent the foregoing principles.

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

[111] 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.

5.2 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 advocate wholesale abandonment of the rights and principles proposed in the May 2 ACR, as they continue to urge the Commission to adopt the rights included in the original G.O. 168.[112] 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

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[112] Disability Rights Advocates 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.

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.

These rights were some of the most controversial rights proposed.

The first disclosure right is the subject of criticism by many of the commenting parties. Disability Rights Advocates, TURN, DRA, and the AG argue that the right should be expanded to encompass all services, not just the services that customers "select."[113] They explain that additional information is necessary for consumers to comparison shop effectively,[114] and for consumers with disabilities to learn about accessibility features that exist in various devices.[115]

The Wireline Group recommends that we add a clause to the end of the first right too. This clause would clarify that the "terms and conditions" that customers

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[113] Disability Rights Advocates 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.

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

[115] Disability Rights Advocates Opening Brief, pp. 3-4.

"have agreed" to are those "set forth in service agreements" or "in carrier tariffs governing services ordered."[116]

Both the Wireline Group and the Wireless Carriers contend that the second disclosure right should be eliminated altogether.[117] The Wireline Group argues it was improper to reference "bandwidth applications and devices," given constraints on the Commission's jurisdiction.[118] The Wireline Group and the Wireless Carriers also maintain that the right to receive "complete" information about "any limitations" affecting services was confusing and overly broad.[119] Without further clarification, the Wireline Group contends 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."[120]

The Order adopted today reflects several changes made in response to comments regarding the disclosure rights. 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

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[116] 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).

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

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

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

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

charges into a new, stand-alone second disclosure right. Second, in response to the concern that "any limitations" is not a precise enough statement, we clarify that the 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." Fourth, we believe that it is useful to clarify that tariffs and agreements continue to control, so this decision modifies the second disclosure right accordingly.

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." Consumer representatives ask that we delete the word "financial." They argue the revision is necessary to ensure consistency with P.U. Code § 2891, which states that a telephone company may not make numerous types of records available to other persons or corporations if the company has not first attained its residential subscriber's written consent .[121]

Upon further review, we agree that we should not limit the scope of the privacy right to "financial records." Consequently we revise the right so that it encompasses all "personal information and records."

Public Participation and Enforcement

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[121] 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 representatives express 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."[122] 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.[123] 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.[124] 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." Multiple parties dispute the scope of the right. On the one hand, some parties advocate broadening the right: TURN argues the right should be

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

[123] *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).

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

expanded to address all problems consumers encounter,[125] and Disability Rights Advocates states that, "at minimum, the word 'accessible' should be added, clarifying that consumers have a right to a process that they can access as well as one that is 'fair, efficient and reasonable.'"[126] On the other hand, the Wireline Group contends that the right should be narrowed to convey only a right to "dispute resolution," not "redress."[127]

We opt to make two modifications to this right based on parties' comments. First, we restrict the scope of this right to "dispute resolution." While consumers certainly have a right to have improper carrier conduct redressed, our intent is not to imply that consumers should 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." Second, in response to Disability Rights Advocates' request, we add that consumers should have a right to dispute resolution mechanisms that are "accessible, if readily achievable." This statement is consistent with the language of the 1996 Act, which provides a national framework that specifically addresses telecommunications access to individuals with disabilities.[128]

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[125] TURN ACR Comments, p. 8;

[126] Comments of Disability Rights Advocates, p. 5 (Jan. 17, 2006) ("Disability Rights Advocates Opening Comments").

[127] Wireline Group Opening Brief, pp. 15-16. *But see* AG Opening Comments, p. 9 (worrying that this revision suggests that consumers have no right to redress for legitimate complaints).

[128] *See* 47 U.S.C. § 255 ("A provider of telecommunications service shall ensure that the service is

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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 disagree as to what the appropriate scope of this right should be. TURN would like to broaden this right, so that it addresses not only "discrimination," but also any other type of "disadvantage."[129] In contrast the Wireless Carriers and the Wireline Group would like to narrow the scope of this right.[130] They request that we insert a qualification that the non-discrimination right only provides a protection against "unreasonable" prejudice and discrimination.[131]

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.[132] Also this modification brings the non-discrimination right more in line with P.U. Code § 453, which recognizes a modicum of discrimination may be an appropriate way to

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accessible to and usable by individuals with disabilities, if readily achievable.").

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

[130] Wireless Carriers Opening Brief, p. 39; Wireline Group Opening Brief, p. 16. *But see* AG Opening Comments, pp. 7-8 (opposing this revision); Disability Rights Advocates Opening Comments, p. 5 (same);Consumer Groups Opening Comments, pp. 3-4 (same).

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

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

account for differences in consumers' circumstances.[133] Here, like P.U. Code § 453, 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 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 ask that we modify the first right; the Wireline Group recommends revisions to the second right; and Wireless Carriers request that we eliminate both rights, or in the alternative at least revise the second right.

The Wireless Carriers state that we should eliminate both public safety rights, because they hold that any 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.'"[134] We

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[133] *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)).

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

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 representatives urge us to delete the word "financial," which qualifies the type of personal data giving rise to a public safety right.[135] They maintain 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."

With respect to the second public safety right, the Wireless Carriers and Wireline Group recommend several modifications. First, the Wireline Group and the Wireless Carriers recommend that 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.[136] These limitations are recognized in federal E911 rules.[137] Second, the Wireless Carriers argue that disclosure of "any limitation" is both "overbroad and impractical;" and their argument here parallels their criticism of the disclosure right proposed in the May 2 ACR.[138] Third, the Wireline Group asks that we state that the second public safety right only applies to "carriers" and only "to the extent that this is technically-feasible and to the extent required by law."

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

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

[137] *See* 47 C.F.R. § 20.18.

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

It reasons that these revisions will "make the right more general to account for future developments regarding E911 obligations for various providers."[139]

TURN objects to two of the carriers' proposed revisions. First, it argues that limiting the right to disclosure of "material" limitations gives "companies too much discretion over disclosures relating to a vital public service."[140] Second, TURN states that applying the right only to "carriers" may leave out a number of other entities who are important providers of E911 access.[141]

Upon consideration of these arguments, we revise the second public safety right in response to the issues raised by the Wireless Carriers, Wireline Group, and TURN. First, we modify the public safety right so that it parallels federal law in recognizing limits of technical feasibility. Second, we revise the right to state that consumer should only be entitled to disclosure of "material" limitations. This statement provides that sufficient information will be supplied to consumers, while not placing an undue burden on carriers. Finally, we agree with the Wireline Carriers that we should modify the second right so that it will account for future federal developments regarding E911 requirements. We do not, however, believe we need to take all of the Wireline Group's edits to accomplish this objective. Accordingly we apply this right to "voice providers . . . to the extent this is technically feasible and required by law." 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.

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[139] Wireline Group Opening Brief, p. 17.

[140] TURN Opening Comments, p. 5.

[141] *Id*. at 4-5.

5.3 Freedom of Choice Principles

The May 2 ACR 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.

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.

First, the stand-alone DSL principle recognizes 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.

We endorsed this principle, because we believe that 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 fair access to customers. The result is reduced consumer choice and higher prices.

Second, the content neutrality principle states that consumers should 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 data packets, they can effectively hamper or eliminate competitors through their manipulation of access and transport.

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

California is a leader in advocating for stand-alone DSL and content neutrality policies. We have worked with our state colleagues, both individually and through the National Association of Regulatory Utility Commissioners ("NARUC"), to endorse freedom of choice policy measures at the federal level. Also we have applied these principles in our state regulatory activities. For example, we made stand-alone DSL a key condition of our recent approval of the Verizon-MCI and

SBC-AT&T mergers.[142] Together these efforts have promoted consumer protection by encouraging competition among telecommunications providers.

Additionally we observe that these principles now are receiving substantial recognition at the federal level. We recognize, in particular, that the stand-alone DSL principle also was adopted by the FCC in its recent decisions approving the Verizon-MCI and SBC-AT&T mergers. 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."[143] The FCC's merger order consequently will make 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.

Comments to this proceeding, however, have convinced us that it is inappropriate for us to include the stand-alone DSL and content neutrality principles within the General Order we adopt today. While we acknowledge that a number of parties support these principles,[144] we also observe that the principles generated

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[142] D. 05-11-028, corrected by D. 05-12-011; D. 05-11-029, corrected by D. 05-12.052.

[143] 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.

[144] These parties include California Association of Competitive Telecommunications Companies, the California ISP Association, DRA, Time-Warner Telecom, and the U.S. Department of Defense and other Federal Executive Agencies. Reply Comments of the California Association of Competitive Telecommunications Companies and the California ISP Association on the [Draft] Decision Issuing Revised General Order 168, p. 5 (Jan. 23, 2006) ("CALTEL/CISPA Reply Comments"); Comments of the Division of Ratepayer Advocates on Commissioners Peevey and Kennedy's Proposed Decision on Telecommunications Consumer Bill of Rights, pp. 4-5 (Jan. 17, 2006) ("DRA Opening Comments"); 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; Opening Comments of the United States Department of Defense and All Other Federal Executive Agencies, pp. 4-6 (Jan. 17, 2006)

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confusion among the commenters. Some parties, contrary to our intent, assumed that these principles imposed enforceable mandates,[145] or opened the door to new state requirements for DSL.[146]

In sum, our objective in adopting the principles was to empower consumers by clarifying their rights, which set appropriate consumer and industry expectations; the stand-alone DSL and content neutrality principles, however, seem to have accomplished just the opposite. Consequently we decline to adopt the second and third freedom of choice principles, but continue to include the first and fourth principles in the General Order below.

6. Applicability of G.O. 168 Rules

This Part discusses applicability of the rules included in G.O. 168. Specifically we focus on the extent to which these rules may be the basis for court action by private individuals or public law enforcement officials.

Our intent in drafting the decision's applicability language was to ensure that individuals with grievances based on the G.O. 168 rules come to the Commission for resolution. The Commission offers a stable and predictable regulatory environment. We have expertise in the telecommunications industry, and we know how resolution of an individual matter may affect our continuing policies and programs. The Commission is especially well-equipped to interpret its rules, given that we adopt and regularly apply them.

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("DOD/FEA Opening Comments").

[145] *See* DOD/FEA Opening Comments, p. 6 (stating that under the decision "a regulated telephone company that offers DSL Internet access *cannot* tie the lease of DSL service to the lease of traditional voice service" (emphasis added)).

[146] *See* DRA Opening Comments, pp. 4-5 (recommending that the Commission further "require that stand-alone DSL service be offered at a price that is comparable to, if not the same as, the DSL piece of the bundled local service and broadband product").

The Commission's ability to provide consumers appropriate redress obviates any need for private litigation. We have staff dedicated to assisting consumers who have complaints about telecommunications carriers, and a consumer or group of consumers that files a formal complaint may seek penalties and restitution.[147] Indeed, many parties that are participating in this proceeding – including TURN, Utility Consumers' Action Network ("UCAN"), Latino Issues Forum ("LIF"), and Greenlining Institute ("Greenlining") – have come to the Commission in an effort to seek enforcement of various consumer protection rules.

We are concerned that private litigation may undermine the effectiveness of the Commission. In People ex rel Orloff v. Pacific Bell, the Supreme Court of California rightly observed that a court action brought by a private party may present "a risk of a lack of coordination with PUC officials," and a "danger that the civil action might undermine an ongoing regulatory program or policy of the PUC."[148]

These considerations convince us to include limiting language regarding applicability of the rules in Part 2 (Consumer Protection and Public Safety Rules). The applicability section of Part 2 stated that "[t]hese 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."[149] We have the ability to preclude private action when it would have the "effect of undermining a

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[147] Additionally our intervenor compensation program provides compensation for the reasonable costs incurred by intervenors as a result of their participation in CPUC proceedings. Awards of compensation are paid by the public utility (or utilities) that were the subject of the proceeding in which the intervenor participated. If the proceeding applies to an entire industry, then the awards of compensation are paid by the CPUC out of fees it collects from utilities.

[148] 31 Cal 4th 1132, 1155 (Cal. 2003).

[149] We included no equivalent provision in Part 3 (Rules Governing Slamming Complaints).

general supervisory or regulatory policy of the commission, i.e., when it would 'hinder' or 'frustrate' or 'interfere with' or 'obstruct' that policy."[150]

Parties to this proceeding criticize the applicability language in two different ways. On the one hand, the AG voices concerns that the private right of action language goes too far and may limit the AG's ability to bring cases under the Unfair Competition Law, Bus. & Prof. Code § 17200 et seq.[151] A violation of another statute or regulation may qualify as an unlawful act that is actionable under the Unfair Competition Law, and the AG fears that our applicability language may limit its authority to protect consumers from violations of the proposed rules.[152] On the other hand, the Wireline Group calls for tightening language regarding the private right of action and reasonable consumer standard even further, as it requests that we "expressly state that the rules should only be construed by the Commission."[153] It also requests that we extend the modified language to the slamming rules.[154] We assess and make modifications in response to both sets of comments below.

We first clarify that we believe that we should not restrict the AG's ability to use the Unfair Competition Law to bring suit against a carrier. Collaboration with other law enforcement officials is to our mutual benefit. For example, penalties under the Unfair Competition Law and P.U. Code are cumulative, so coordination

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[150] San Diego Gas & Electric Co. v. Superior Court, 13 Cal. 4th 893, 918 (Cal. 1996).

[151] AG Opening Comments, p. 11. DRA echoes these concerns. Reply Comments of the Division of Ratepayer Advocates on Commissioners Peevey and Kennedy's Proposed Decision on Telecommunications Consumer Bill of Rights, pp. 2-3 (Jan. 23, 2006) ("DRA Reply Comments").

[152] AG Opening Comments, p. 11.

[153] Wireline Group Opening Comments, p. 6. CTIA provides more general support for the private right of action language included in the decision. Reply Comments of CTIA – The Wireless Association on Proposed Decision of Commissioners Kennedy and Peevey, p. 3 (Jan. 23, 2005) ("CTIA Reply Comments").

with local law enforcement officials may afford greater relief to California consumers. Moreover we concur with the California Supreme Court's assessment that, as compared with a private right of action, "there is a diminished likelihood that an action . . . initiated by the district attorney would undermine the ongoing regulatory authority of the PUC. . . ."[155] The Court reasons that multiple statutes "clearly indicate that . . . the PUC and public prosecutors are expected to coordinate their efforts to accomplish the most efficient and effective means of remedying any misconduct of the public utility."[156]

We modify our applicability language to make our position clear. G.O. 168, as revised, states that "[t]hese rules shall not be interpreted to create any new private right of action, to abridge or alter a right of action under any other state or federal law, or to create liability that would not exist absent the foregoing rules." Also we modify our applicability language that specifically addresses our relationship with the AG. The new language provides that the "Commission intends to continue its policy of cooperating with law enforcement authorities to enforce consumer protection laws."

Our response to the Wireline Group's comments is mixed. We cannot support its first proposal, which would have us add that "construction and application of these rules by any other body would be inconsistent with and interfere with the Commission's regulatory purpose and authority."[157] This recommendation goes too

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[154] *Id*.

[155] Orloff, 31 Cal. 4th at 1151.

[156] *Id*. (citing CAL. GOVT. CODE § 26509(d)(32), which permits the Commission to defer disclosure of investigative materials to public prosecutors in the event such disclosure would jeopardize the Commission's own investigation or other duties, as an example of one such statute).

[157] Wireline Opening Comments, p. 7.

far. With respect to the reasonable consumer standard in particular, we agree with the AG that we have no "specialized expertise that would suggest [we are] more capable than the courts to define a term used generally in consumer protection law."[158] We recognize that California courts already have defined the term "reasonable consumer,"[159] and we do not seek to create a scenario where "carriers and the public would have to operate under two different standards for the same concept."[160]

We do, however, agree that we should extend our language regarding private right of actions and the reasonable consumer standard to all the rules adopted in the General Order. This extension provides consistency among the rules, as we have the same response to these issues in all rules that we adopt. Also our modifications to the applicability language sufficiently addresses the AG's concern that this extension would "weaken[] any enforcement possibilities."[161] Thus we modify language regarding private right of actions and the reasonable consumer standard, and extend this text to all rules included in G.O. 168.

7. Public Safety Rules

The May 2 ACR proposed that we extend two rules explicitly designed to address public safety concerns to wireless carriers. First, the May 2 ACR proposed that we order all carriers to require their employees to identify themselves by name or identifier. Second, it proposed that we direct all carriers, including wireless

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[158] AG Reply Comments, p. 2.

[159] *See, e.g.,* Lavie v. Proctor & Gamble Co., 105 Cal. App. 4th 496, 504-513 (Cal. 2003) (applying .the reasonable consumer standard to a case brought under the Unfair Competition Law).

[160] *Id*. at 2-3.

[161] *Id*. at 2.

companies connecting to the public switched telephone network, to provide their customers with access to 911 emergency services to the extent permitted by technology, even when a bill is delinquent.

DRA states that these rules are justified and should be retained. It contends that the "benefits of these rules, such as public safety, outweigh any potential cost that may be imposed on carriers."[162]

Similarly TURN, the Consumer Federation of California, National Consumer Law Center, Consumers Union, and the California Public Interest Research Group (collectively "Consumer Groups") support inclusion of these public safety rules.[163] They declare that the rules "cover issues that are important to consumers."[164] With respect to the 911 rule in particular, Consumer Groups argue that "the Commission should make a strong statement to the FCC and to carriers that it takes 911 availability seriously. . . ."[165] The Consumer Groups, however, state that the public safety rules are some of the "least helpful" rules from the original General Order.[166]

The AG's response to the public safety rules also is mixed. The AG characterizes the employee identification rule as "a helpful thing," but demurs that this rule does not provide "real consumer protection."[167] Similarly, concerning the 911 rule, the AG states that "we support providing broad access to 911 and E911

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[162] DRA Reply Comments, p. 2,

[163] Consumer Groups Opening Comments, p. 9.

[164] *Id*.

[165] *Id*. at 10.

[166] *Id*. at 9.

[167] AG Opening Comments, p. 13.

services even when a bill is delinquent," but declines to endorse the rule.[168] The AG reasons that similar protections are provided by P.U. Code §§ 2883 and 2892, and it is a "possible loophole" for the 911 service requirement to be limited to those situations where it is "technically feasible."[169]

The Wireless Carriers directly criticize these two rules. They argue that the identification rule is unneeded and "largely duplicates" P.U. Code §§ 708 and 2889.9.[170] The Wireless Carriers level similar criticisms against the 911 rule. They contend that 911 is the subject of "detailed federal regulation" and "exceeds the Commission's authority."[171] More generally the Wireless Carriers argue that "duplicating existing laws is superfluous at best" and that at "worst, it creates uncertainty and confusion."[172]

The Wireless Carriers also maintain that the rules "address subject areas which are being adequately addressed by the competitive workings of the market place."[173] They reason that competition in the telecommunications industry is robust,[174] so

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[168] *Id.*

[169] *Id.*

[170] Wireless Carriers Opening Comments, p. 7.

[171] *Id.* at 8

[172] *Id.* The Wireline Group, however, concedes that the Commission made a "helpful revision[]" when it "ensure[d] that the rule will be interpreted in concert with P.U. Code Section 2883." Consolidated Reply Comments of the Wireline Group on Proposed Decision of Commissioners Peevey and Kennedy, p. 2 (Jan. 23, 2006) ("Wireline Group Reply Comments").

[173] Wireless Carriers Opening Comments, p. 8.

[174] The Wireless Carriers provide extensive evidence of the level and effects of 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. Wireless Carriers Opening Brief, p. 13 (citing FCC data). Implementation of number portability has further enhanced competition among these carriers. *Id.* The Wireless Carriers have indicated that there is good reason to believe that these competitive pressures have benefited California consumers. In the

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carriers have a strong incentive to perform many of the duties that the rules would impose upon them.

Upon review of various parties' comments and replies, we leave the two public safety rules mostly unchanged. We agree with DRA and TURN that we should extend these two public safety rules so that they are applicable to both wireline carriers and wireless carriers.

We disagree with the AG's protest that our identification requirement does not provide "real" consumer protection. We have had identification requirements in place for wireline carriers for some time, and our experience is that they do provide a measure of protection.

Also we continue to support our limiting the 911 requirement to situations where it is "permitted by existing technology or facilities." This feasibility language is consistent with the legislative directive provided in P.U. Code § 2883. While the AG noted that P.U. Code § 2883 already requires "carriers to provide residential telephone connections with access to 911 service,"[175] the AG overlooked the fact that § 2883 only imposes this requirement "to the extent permitted by existing technology

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last six years, wireless prices have dropped at a faster rate in California than on average in the rest of the nation. Katz Opening Testimony, p. 23. The size of the rate drops has been very significant, with prices decreasing by 42% in the four largest California cities. *Id*. And even as rates have dropped, the number of wireless 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. Testimony of Mark Lowenstein, p. 12. 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. Wireless Carriers Opening Brief, pp. 14-15.

[175] AG Opening Comments, p. 14 (also observing that § 2892 "provides similar requirements for wireless carriers).

or facilities."[176] Our inclusion of an identical qualification in our rule maintains consistency with governing state law.[177]

Our further review of P.U. Code § 2883, in fact, convinces us that we need to add another qualification to our 911 rule. Section 2883(e) specifically states that nothing in the statute "shall require a local telephone corporation to provide '911' access pursuant to this section if doing so would preclude providing service to subscribers of residential telephone service." We overlooked this important qualification when drafting the 911 rule, and we accordingly modify the rule to take this provision into account.

With respect to the Wireless Carriers arguments, we disagree with their contention that they should be exempt from the public safety rules because the rules are duplicative of existing laws, and possibly unneeded and confusing. First, to the extent these rules track statutory language, we do not see how any new source of confusion arises. Second, incorporating these rules into the General Order makes it easier for consumers to find these public safety rules. Third, to the extent that carriers are already complying with these rules, these public safety rules impose no additional costs on carriers. Thus the benefits of codifying the public safety rules clearly outweigh their incremental costs.

Finally, and of particular significance, we observe that the role of the government at issue here – the promotion of public safety – is independent of the marketplace. Significant public safety 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

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[176] CAL. PUB. UTIL. CODE § 2883(a).

[177] This provision also makes our rule more consistent with federal E911 law, which also recognizes

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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 these 911 requirements, rather than create 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. We recognize the significance of FCC regulations in the rule itself, as we state that access to 911 service should be provided "in accordance with all applicable Federal Communications Commission orders." 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.

The worker identification requirements convey additional public safety protections. By extending the identification requirements to wireless carriers, the Commission helps set consumer expectations that company employees will have official identification materials. Inclusion of this requirement in G.O. 168 alerts citizens that they should be suspicious of any alleged carrier personnel who cannot provide official identification.

Further consideration of such public safety factors highlighted in the record, however, convinces us that we should modify the proposed identification rule in two respects. First, we hold that we should extend the identification requirement to apply to carriers' contractors, so that we ensure that we are encouraging consumers

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technical limitations. 47 C.F.R. § 20.18.

to set appropriate public safety expectations. Second, we limit the application of this rule to individuals and small businesses that purchase, subscribe to, or apply for a telecommunications service subject to Commission jurisdiction.[178] Multiple parties argue that it is appropriate to differentiate enterprise consumers from other consumers.[179] This distinction is particularly important in this context, as this rule otherwise could unduly burden large businesses' ready access to specialized contract workers.

In conclusion, we adopt two modified public safety rules addressing access to 911 service and worker identification. We add a qualification to the 911 rule in order to ensure consistency with P.U. Code § 2883. We further revise the worker identification rule so that it extends to carriers' contractors, but does not impose an undue burden upon carriers' relationships with their enterprise customers.

8. Commission Information Requests

This Part reviews the Commission's ability to request information from telecommunications carriers. We first describe our statutory authority to request such information. We then evaluate two proposals for regulatory action. First, we

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[178] Given that seventy-nine percent of small businesses in the state of California have less than ten employees, we define a small business for the purposes of this rule as "a business or individual that subscribes or applies for not more than ten telephone access lines from any single carrier." *See* Responses of Pacific Bell Telephone Company, dba SBC California to the Questions Set Forth in the Assigned Commissioner's Ruling of March 10, 2005, p. 3 (Mar. 25, 2005) (citing a 2003 California Chamber of Commerce study). Extending the definition of "small business" to one T-1, which can serve 24 lines, is unwarranted. *See id*. (making multiple arguments in support of this conclusion).

[179] *Id*. ("The Decision [04-05-057] correctly recognizes that it would be counterproductive to apply the consumer protection rules to large business entities, which have relatively greater knowledge of telecommunications options and do not need or rely on standardized consumer disclosures."); Alexander Direct Testimony, p. 4 ("My comments are directed primarily to the interaction between telecommunications providers and residential applicants and customers, although many of my recommendations apply to small business customers as well. Generally, a different set of concerns and policies apply to a utility's interactions with larger business customers."). *See also* Consolidated Opening Comments of the Wireline Group on Alternate Proposed Decision of Commissioner Dian M. Grueneich, pp. 12-13 (Feb. 14, 2006) (providing guidelines on how best to define what a "small

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discuss modification of a rule regarding carriers' obligations to provide requested information. Second, we consider establishment of a process for resolving related disputes when these disputes arise outside of a formal proceeding.

8.1 Assessment of Statutory Authority

Commission staff may require entities subject to Commission jurisdiction to comply with reasonable requests for information. P.U. Code § 314 states that a Commission employee may "at any time, inspect the accounts, books, papers, and documents of any public utility" so long as the employee, if not a Commissioner or Commission officer, "produce[s], under the hand and seal of the commission, authorization to make the inspection."[180]

The P.U. Code is clear about the obligations of utilities to supply such information, even if supplying the information requires preparation of reports or materials that do not already exist. P.U. Code §§ 581, 582 and 584 enunciate the following utility responsibilities:

> 581. Every public utility shall furnish to the commission in such form and detail as the commission prescribes all tabulations, computations, and all other information required by it to carry into effect any of the provisions of this part, and shall make specific answers to all questions submitted by the commission.
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> Every public utility receiving from the commission any blanks with directions to fill them shall answer fully and correctly each

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business" is).

[180] The obligation to produce information requested by the Commission also extends to the following entities: "any business which is a subsidiary or affiliate of, or a corporation which holds a controlling interest in, an electrical, gas, or telephone corporation with respect to any transaction between the electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the electrical, gas, or telephone corporation." CAL. PUB. UTIL. CODE § 314(b).

> question propounded therein, and if it is unable to answer any question, it shall give a good and sufficient reason for such failure.
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> 582. Whenever required by the commission, every public utility shall deliver to the commission copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers, and records in its possession or in any way relating to its property or affecting its business, and also a complete inventory of all its property in such form as the commission may direct.
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> 584. Every public utility shall furnish such reports to the commission at such time and in such form as the commission may require in which the utility shall specifically answer all questions propounded by the commission. The commission may require any public utility to file monthly reports of earnings and expenses, and to file periodical or special reports, or both, concerning any matter about which the commission is authorized by any law to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the commission.

Information requests made pursuant to these statutes can work to the convenience of both the Commission and the utility by allowing compliance with requests to take place within the course of normal activities.

Furthermore, while Commission staff has access to requested information, the P.U. Code provides that utilities are protected from the inappropriate release of information disclosed to the Commission. P.U. Code § 583 states the following:

> No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

Thus information provided to Commission staff can be protected from public disclosure. Non-disclosure agreements provide similar protections regarding information disclosed to Commission consultants.

8.2 New Subsection 8.2: Expansion of Information Request Regulation

The May 2 ACR proposed that we adopt a rule regarding Commission information requests. The proposed rule required every carrier and service provider to 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. Another portion of the proposed rule stipulated that, unless alternate timing is approved by CAB, carriers and service providers have ten days to respond by providing requested documents and information.

Both Consumer Groups and DRA support inclusion of the information request rule in G.O. 168. DRA, whose work involves its repeatedly propounding data requests, contends that the benefits of the information request rule, like the public safety rules, "outweigh any potential cost that may be imposed on the carrier."[181] And while they would not support the rule to the exclusion of all others, Consumer Groups recognize that regulatory pressure is critical to ensuring compliance with Commission information requests.[182]

The Wireless Carriers, in contrast, oppose the rule. They state that "they agree with the principle that they should respond promptly to reasonable requests for

[181] DRA Reply Comments, pp. 1-2..

[182] Consumer Groups Opening Comments, p. 9.

information" from CAB, but they argue that the "record does not indicate any problem in this area necessitating a new rule."[183]

The AG response to the information request rule, like its review of the public safety rules, is mixed. It admits that parts of the rule are "useful."[184] At the same time, however, it criticizes the rule in two ways. First, the AG objects to language in the rule that limits its applicability to all carriers "under the Commission's jurisdiction."[185] The AG views this provision as a concession to wireless carriers. The AG argues that wireless carriers "have long attempted to include in the rules [text like this language] to suggest that the rules do not apply to them."[186] Second, the AG would like the rule to be stricter. It notes that "the rule has no additional requirement regarding how carriers are to handle such inquiries."

After reviewing these comments and the record more generally, we decide to adopt a modified version of the rule regarding information requests. We modify the rule proposed in the May 2 ACR so that it applies to information requests from all Commission staff, not just CAB personnel.

Our review of our statutory authority regarding information requests makes it clear that all Commission employees are entitled to information requested from utilities. Although this rule regarding telecommunications carriers' compliance with Commission information requests is largely a restatement of statutory provisions, we find nothing is lost and much is gained by clearly stating the obligations of all carriers in this General Order.

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[183] Wireless Carriers Opening Comments, p. 7.

[184] AG Opening Comments, p. 13 (specifically praising the portion of the rule that requires carriers to respond by providing requested documents and information within 10 days).

[185] *Id.*

We find little merit to the Wireless Carriers' argument that this rule is unnecessary. The Legislature has vested the Commission with authority to monitor the functioning of the marketplace, and requirements that clarify and facilitate our work are justified. Furthermore the Commission's ability to request information is distinct from issues that are directly influenced by the level of marketplace competition.[187] Thus while there may be evidence of competition in the telecommunications market, competition cannot be relied upon to ensure that a carrier complies with Commission information requests.

We are not persuaded by any of the AG's comments either. The information request rule's recognition of our jurisdictional limits is appropriate. We agree with the AG in its contention that "we do not believe that it is a close question that this rule also applies to the wireless carriers."[188] At the same time, however, the rule rightfully acknowledges that telecommunications regulation takes place in a complex and dynamic environment where jurisdiction is sometimes shared with and sometimes preempted by the FCC. Thus it is important to recognize limitations on the applicability of this particular rule.

8.3 Creation of a Process to Resolve Disputes in the Informal Complaint Context

Despite the fact that carriers have a clear obligation to respond to Commission requests for information, our experience in the regulatory process demonstrates that

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[186] *Id.*

[187] Matters that are directly influenced by the level of competition in the market include service quality, prices, and the terms and conditions of service.

[188] AG Opening Comments, p. 13. It is difficult to reconcile the AG's allegation that this qualifying language is a concession to the wireless industry when, as we note here, the AG itself admits that the rule clearly applies to the Wireless Carriers.

there can be genuine, good faith differences regarding the reasonableness of Commission information requests. Just as it is important for the Commission to receive information, we recognize that it is important for carriers' due process rights to be protected.

Our treatment of disputes involving information requests varies depending on the context. In formal proceedings, an Administrative Law Judge (ALJ) or presiding officer reviews and decides upon such disputes. Currently, however, we do not have a process to adjudicate the issue of whether an information request is reasonable when it arises in the context of an informal complaint.

We believe it will be useful to establish a more systematic process to address concerns regarding information requests made outside of a formal proceeding.[189] Thus we direct our General Counsel and Chief ALJ to prepare for Commission consideration a resolution recommending an appropriate process for resolving timing, format, scope, and burden concerns regarding Commission staff's requests for information.

9. Cramming Rules

Cramming is the placement of an unauthorized charge on a consumer's phone bill. This Part describes laws that address cramming, identifies deficiencies of related Interim Non-Com Rules, and supports adoption of general cramming rules that will apply to both communications and non-communications charges.

9.1 Review of Laws that Address Cramming

P.U. Code §§ 2889.9 and 2890 were enacted in order to deter cramming and

[189] Resolution ALJ-164 currently provides procedures to be used by all parties in formal Commission proceedings.

clarify related rights and remedies available to California consumers. The Legislature directed that these laws be read together.[190]

In enacting the laws, the Legislature stipulated that P.U. Code §§ 2889.9 and 2890 apply not only to utilities, but also to non-utility billing agents and other persons or corporations responsible for generating a charge on a subscriber's phone bill. Thus the Commission may impose penalties on persons or corporations that violate the cramming statutes, even if the violators typically are not subject to our jurisdiction.[191]

The fundamental prohibition against cramming is found in P.U. Code § 2890. This statute states that "[a] telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized."[192] This provision applies to communications and non-communications charges alike.

According to P.U. Code § 2890, there is a rebuttable presumption that "an unverified charge . . . was not authorized by the subscriber and that the subscriber is not responsible for that charge."[193] With regard to direct dialed telephone services, however, the statute provides that "evidence that a call was dialed is prima facie evidence of authorization."[194]

P.U. Code § 2890 also states that a telephone company may not bill on behalf of any person or entity that generates a charge, unless that person or entity complies

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[190] Stats 1998 ch. 1036 (stating that the two Senate bills that added §§ 2889.9 and 2890 to the P.U. Code should be "read together and serve as a deterrence to cramming").

[191] CAL. PUB. UTIL. CODE § 2889.9(b).

[192] CAL. PUB. UTIL. CODE § 2890(a).

[193] CAL. PUB. UTIL. CODE § 2890(d)(2)(D).

[194] *Id*.

with a number of requirements.[195] Among other provisions, third party vendors and billing agents are directed to provide a clear and concise description of products or services for which a charge was imposed, establish a process for expeditiously resolving subscriber disputes, and maintain a toll-free telephone number at which the provider maintains sufficient staff to respond to disputes.[196]

If a subscriber disputes whether a charge was authorized, P.U. Code § 2890 places parameters around a billing entity's response to the subscriber's complaint. The statute declares that "an entity responsible for generating a charge on a telephone bill" must, within thirty days of receiving the complaint, either verify the subscriber's authorization of the charge or undertake to resolve the billing dispute to the subscriber's satisfaction.[197]

Moreover a subscribers' local telephone service may not be disconnected for failure to pay non-communications-related charges or certain communications-related charges. P.U. Code § 2890(c) declares that a subscriber's local telephone service may be disconnected for nonpayment only if the charges at issue relate to the subscriber's basic local telephone service; intra local access and transport area (LATA) and interLATA telephone service; or international telephone service.[198]

The Legislature further instructed the Commission to establish reporting

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[195] CAL. PUB. UTIL. CODE § 2890(d).

[196] *Id*.

[197] CAL. PUB. UTIL. CODE § 2890(e). *See also* D. 00-01-015 (further limiting "disconnection of basic residential and single line business service (i.e., Flat Rate and/or Measured Rate services) to nonpayment of non-recurring and recurring charges for basic residential and single line business services, including all mandated surcharges and taxes").

[198] CAL. PUB. UTIL. CODE § 2890(c) ("The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the subscriber's basic local exchange telephone service, long-distance telephone service within a local access and transport area (intraLATA), long-distance telephone service between local access and transport areas (interLATA),

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requirements regarding cramming-related complaints.[199] P.U. Code § 2889.9 states that these requirements should apply to all complaints that involve a telephone company providing billing services to a third party vendor or billing agent.[200]

Finally the Legislature recognized that there might be a need for related Commission action as well. P.U. Code § 2889.9 declares that the "commission may adopt rules, regulations and issue decisions and orders, as necessary, to safeguard the rights of consumers and to enforce the provisions of this article."[201] More narrowly, after deciding it should allow non-communications-related charges to be placed on consumers' phone bills, the Legislature directed the Commission to adopt any rules it deemed necessary for ensuring § 2890 protections effectively applied to non-communications-related charges.[202]

9.2 Repeal of the Interim Non-Communications Rules

The Commission adopted Interim Non-Com Rules in 2001.[203] When it adopted these rules, the Commission stated that the Interim Rules should be re-evaluated after eighteen months, in order to assess their effectiveness and whether changes were necessary.[204] Outside of this proceeding, no such review has taken place in the past five years.

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and international telephone service.").

[199] CAL. PUB. UTIL. CODE § 2889.9(d).

[200] *Id*.

[201] CAL. PUB. UTIL. CODE § 2889.9(i).

[202] CAL. PUB. UTIL. CODE § 2890.1. Prior to 2001 telephone companies were not allowed to bill for non-communications charges.

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

[204] *Id*. at 4.

The Interim Non-Com Rules impose a number of requirements related to the placement of non-communications-related charges on subscribers' telephone bills. Among other provisions, the Rules direct a carrier to obtain their subscribers' prior written authorization before placing non-communications-related charges on their subscribers' bills.[205] Also the Rules mandate the use of a personal identification number ("PIN") or equivalent security device before subscribers can initiate a transaction that results in a non-communications-related charge being placed on their phone bill.[206]

Parties' comments on the Interim Non-Com rules sharply divide consumer organizations from telecommunications carriers, and the AG from DOD/FEA. The consumer organizations and AG and argue that the Interim Non-Com rules should be upheld; the telecommunications carriers and DOD/FEA maintain that they should be repealed. We review and discuss these positions below.

Consumer organizations supporting the Interim Non-Com Rules include California Small Business Roundtable/California Small Business Association ("CSBRT/CSBA"), DRA, Greenlining, LIF, and TURN. Advocating on behalf of these rules, CSBRT/CSBA states that it endorses the Interim Non-Com Rules, because many small business owners report that they are charged with products and services they did not order, are frustrated by the lack of responsiveness by carriers,

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[205] D. 01-07-036, App. A, Part C(1), p. 7.

[206] *Id*. at App. A, Part C(2), p. 9. 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.

and are "outraged" by the time and energy it took to reverse unauthorized charges on their phones.[207]

DRA argues that the Interim Non-Com Rules, and especially the requirement of a PIN, give significant security to the phone as a charge-authorizing device.[208] DRA adds that entering a PIN is a very minor burden for consumers, as it observes that consumers regularly enter a PIN when they use a debit card.[209]

Greenlining and LIF similarly support the Interim Non-Com Rules. They both fear that, absent the Interim Rules, consumers will face "an increased risk of unauthorized charges," a risk that they say some consumers cannot afford to take.[210] They worry that consumers' phone service could be placed at risk due to nonpayment of non-communications charges,[211] and based on this concern, Greenlining requests that the Commission clarify that local telephone service "will not be terminated because of non-payment of non-com services."[212]

TURN reasons that the Interim Non-Com Rules, in and of themselves, are not unduly burdensome. The advocacy organization accuses the phone companies of making "overly-restrictive interpretations of the rules to make their point" that the

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[207] CSBRT/CSBA Opening Comments, p. 3.

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

[209] *Id*.

[210] Opening Comments of Latino Issues Forum on Proposed Decision Revising General Order 168, p. 6 ("LIF Opening Comments"). *See generally* Comments of the Greenlining Institute on the Proposed Decision of Commissioners Peevey and Kennedy Issuing Revised General Order 168, pp. 5-7 (Jan. 17, 2006) (worrying about increased abuse of consumers) ("Greenlining Opening Comments"); LIF Opening Comments, pp. 6-7 (same).

[211] Greenlining Opening Comments, p. 6; LIF Reply Comments, p. 3. The organizations apparently are unaware of P.U. Code § 2890(c), which states that a subscriber's local phone service may not be disconnected for nonpayment of non-communications-related charges or certain communications-related charges.

rules are unworkable.[213] TURN maintains that, in reality, the Interim Non-Com Rules give carriers "flexibility to design their own protection practices."[214] It observes that the Interim Rules allow carriers to choose any procedure that offers security equivalent to that of a PIN.[215] While recognizing that the category of "communications-related charges" includes "broadband, video, pay-per-use, information services and messaging services," TURN adds that the Interim Non-Com Rules have a "narrow application."[216] TURN points out that prepaid smart card technology currently is employed in Europe and Asia, and wireless carriers would not have to comply with the Interim Non-Com Rules if they used this technology to facilitate non-communications billing.[217]

The AG concludes that "there is no real burden placed on carriers by the California rules."[218] The AG observes that the Interim Rules offer flexibility by allowing carriers to use alternate verification devices that are equivalent to a PIN.[219] Moreover, in the absence of the Interim Non-Com Rules, the AG speculates that carriers still would not offer non-communications billing services: The AG cites examples of non-communications billing activity in foreign countries as evidence for the its belief that "the current technology in other countries does not even allow for

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[212] Greenlining Opening Comments, p.7.

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

[214] Consumer Groups Opening Comments, p. 20.

[215] TURN Reply Brief, p. 16 (citing Tr. 1450).

[216] *Id*. at 18.

[217] *Id*. at 18-19.

[218] AG Opening Comments, p. 40.

[219] *Id*. at 40.

billing to a telephone bill," and it cites lack of non-communications billing activity in the United States as evidence that "carriers have been unable or unwilling" to engage in offering domestic services subject to the Interim Non-Com Rules.[220]

The AG argues that the repeal of Interim Non-Com Rules will create "the risk of massive fraud."[221] The AG speculates that, without the Interim Non-Com Rules, all it would take to place an unauthorized charge on another person's phone bill is knowledge of the individual's name and phone number.[222] According to the AG, an "identity theft would merely need to look in a telephone book and begin billing purchases to that phone number," and victims of identity thieves will have to "wade through the long process of proving they did not authorize such charges."[223] The AG further reasons that repeal of the Interim Non-Com Rules would be ill-advised, because "customers must be provided with adequate information regarding the types of services for which they are billed and the company responsible for assessing the charge."[224]

In contrast to the AG and consumer organizations, the Wireless Carriers, Wireline Carriers, Verizon Wireless, and DOD/FEA urge us to repeal the Interim

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[220] *Id*. at pp. 38-40.

[221] *Id*. at 34.

[222] *Id*. at 34.

[223] *Id*. at 33-34. *See also* Reply Comments of California Small Business Roundtableand California Small Business Association, p. 2 (echoing the AG's concerns) ("CSBRT/CSBA Reply Comments").

[224] *Id*. at 37. The basis of this comment is unclear. In large part the AG's concern is addressed by existing protections found in P.U. Code § 2890(d)(2). The statute requires all persons and entities that initiate a charge on a phone bill to include, or cause to be included, 1) "a clear and concise description of the service, product, or other offering for which a charge has been imposed," and 2) the name of the person or entity generating the charge.

Non-Com Rules in their entirety.[225] The telecommunications carriers and DOD/FEA base their arguments on both legal and policy grounds.

The Wireline Group argues that the current rules are "unworkable" and hinder the development of many potential service offerings, such as paying for the download of a song on a DSL line with a charge on a monthly phone bill.[226] It notes that even 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 characterizes the AG's proposal, which shaped the Interim Non-Com Rules, as a "repeal" of the legislation that allowed carriers to place non-communications-related charges on phone bills.[227] Assessing the situation now, Sean Beatty, testifying on behalf of the Wireline Group, declares that the Interim-Non Com Rules indeed have made it uneconomic for some carriers to bill for non-communications services.[228] The Group observes that no carrier in California offers non-communications services to its customers.[229]

The wireless companies base their recommendation for repeal of the Interim Non-Com rules on a technical evolution in the wireless industry: the use of a wireless phone as a point-of-purchase authorization device. Evidence placed in the record by Wireless Carriers reveals that in other countries wireless phones now may be used to purchase movie tickets, mass transit tickets, and other low-cost items.[230]

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

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

[227] *Id*.

[228] Tr. at 1479:27-1480:8 (Beatty, Wireless Group).

[229] *Id*. at 11.

[230] Wireless Carriers Opening Brief, p. 46. *But see* TURN Reply Brief, p. 18 (arguing that these are

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Foreign carriers facilitating these purchases employ a variety of billing models, including one that places non-communications charges on a consumer's phone bill. Rebutting AG assertions to the contrary, Verizon Wireless establishes that existing technology allows for charges to be placed on a subscriber's telephone bill, and this form of billing is currently employed outside the United States.[231] Verizon Wireless adds that, "[m]ore fundamentally, the proponents misunderstand the import of this evidence when they attempt to distinguish these examples of how these services are paid for."[232]

The Wireless Carriers argue that financial incentives of carriers alleviate the need for any prescriptive regulation of non-communications billing activities. The carriers explain that multiple factors drive them to avoid complaints. First, customer service calls to live representatives are expensive: One such call costs a carrier approximately seven dollars.[233] Second, wireless companies may lose customer goodwill and loyalty.[234] Third, if a charge was indeed unauthorized, the carrier must credit the charge to the bill.[235]

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examples of "prepaid smart cards embedded in the wireless phone," and maintaining that the examples, therefore, are "not analogous").

[231] Verizon Wireless Reply Brief, p. 2.

[232] *Id*.

[233] Wireless Carriers Reply Brief, p. 47.

[234] *Id*.

[235] *Id*.

DOD/FEA concurs that the Interim Non-Com Rules should be repealed. It reiterates that the rules are cumbersome, and consumers will continue to enjoy statutory protections that exist independent of the Interim Rules.[236]

After reviewing the parties' comments, we hold that the record developed in this proceeding indicates that there is good reason to repeal the Interim Non-Com Rules. We find it significant that in the four years that the Interim Rules have been in place, we have no evidence that a single carrier in California has elected to offer this billing service pursuant to requirements imposed by the Non-Com Rules. This lack of activity suggests that the Interim Rules do not work as intended and lends credence to the criticism that these are "extremely prescriptive rules that attempt to micromanage transactions concerning non-communications products and services."[237]

Evidence related to jurisdictions outside of California does not contradict this conclusion. Foreign activity shows that carriers, in the absence of the Interim Non-Com Rules, are ready, willing, and able to place non-communications charges on their customers' phone bills. Within the United States, it is more difficult to draw any significant conclusions from the absence of non-communications billing practices in states that do not place any special restrictions on non-communications billing. While the AG interprets a lack of non-communications billing activity as an indication that carriers are not inclined to offer this type of billing service, the carriers' inactivity, just as reasonably, could be interpreted as evidence that California's rules are impeding billing developments here as well as in other states. California rules would require a national carrier to adopt a state-specific billing

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[236] DOD/FEA Opening Comments, p. 9.

[237] Wireless Carriers ACR Comments, p.25.

regime, which may be technically difficult or prohibitively expensive, given that most carriers have multi-state footprints.[238]

Furthermore we recognize that key elements of the Interim Non-Com Rules, namely the "opt-in" and "PIN" requirements, may be inconvenient for consumers and unduly burdensome for carriers. We find that the opt-in requirement has discouraged non-communications services billing. Specifically record evidence 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.[239] Other 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 use of a PIN (or equivalent security measure) makes it more inconvenient for consumers who want to charge non-communications items to their cell phone bills. Imposing a PIN requirement in California may foreclose many potential uses of wireless handsets. For example, as Verizon Wireless points out, in Japan consumers can wave their wireless handsets over turnstiles to board mass transit trains.[240] Yet requiring customers to stop and enter a

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[238] *See* Herman Declaration (describing difficulties in creating state-specific billing regimes).

[239] Tr. at 1479:27-1480:8 (Beatty, Wireless Group).

[240] Verizon Wireless Opening Brief, p. 46. Other similar applications are being developed for vending machine items, movie tickets, and other low-cost items. Wireless Carriers Opening Brief, p. 46.

PIN is largely incompatible with such a use. It is difficult to think that a customer rushing for a train would find it convenient to stop and enter a PIN.[241]

While a number of parties point out that devices other than a PIN may be used,[242] we are not convinced that an "equally reliable security procedure" affords a carrier much more flexibility than a PIN. The Interim Non-Com rules do not define what qualifies as a PIN-equivalent procedure, and the risk that an alternate security procedure would be challenged may deter carriers from developing other such procedures.[243] Also it is unclear if any alternate procedure would be less burdensome than a PIN. For example, the AG states that biometric devices, such as fingerprint and facial recognition software, may qualify as equally secure protections.[244] These biometric devices depend upon technologies that may be too expensive for use in everyday wireless handsets. Thus while a carrier may be able to choose among PIN-equivalent devices in theory, a lack of "equivalent" options may mean that a carrier is effectively required to offer PIN protection.

It makes little sense to micromanage the form of security, given that there are a number of security measures a carrier could adopt in order to minimize the risk of cramming. These measures may include, but are not limited to, allowing customers to place spending caps on individual non-communications charges, block non-

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[241] The fact that this specific example of non-communications billing is facilitated by a prepaid card is irrelevant. This scenario evidences just one of many ways in which the Interim Non-Com Rules may impede market development.

[242] CSBRT/CSBA Opening Comments, p. 4; TURN Reply Brief, p. 16.

[243] Katz Opening Testimony, p. 32.

[244] AG Opening Comments, p. 40. Additionally DRA rules out one feature that could conceivably qualify as an equally reliable security measure: DRA maintains that the unique electronic identifier in a wireless handset is not as secure or effective as a PIN, and therefore is not an adequate substitute for a PIN. DRA Opening Comments, pp. 18-19.

communications, or preset the amount of money charged to their monthly bill.[245] While arguably not equivalent to a PIN, these security measures may afford consumers as much, or more, protection than a PIN.

Additionally the Interim Non-Com Rules base the regulatory regime on an uncertain and arbitrary distinction among different types of charges. The line between communications-related and non-communications-related charges is subject to dispute. For example, as evidenced by a complaint case currently before the Commission, parties may disagree about whether a ring tone qualifies as a non-communications charge or a communications charge.[246] Also it is altogether unclear that this distinction is more important than any other charge-based distinction. As pointed out by DRA, a thief can quickly amass thousands of dollars worth of unauthorized communications charges, just as he may be able to amass thousands of dollars of non-communications charges.[247] Perhaps more significant is a distinction between charges greater than $50 or less than $50.

Finally, and most importantly, we conclude that repeal of the Interim Non-Com Rules likely will not result in any significant detriment to consumers. We agree with the Wireline Group's assertion that carriers have strong financial incentives to adopt significant security measures. We recognize that it is costly for carriers to resolve complaints, and reducing their complaint levels is to their advantage.[248]

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[245] Verizon Wireless notes that it already is offering choices like these to its customers. Verizon Wireless's Comments on the Alternate Proposed Decision of Commissioner Grueneich, p.14 (Feb. 14, 2006).

[246] C. 05-07-022.

[247] DRA Opening Comments, p. 20 (describing a "recent, well-publicized case of a customer whose wireless handset was stolen and who incurred subsequent billing of more than $26,000 for fraudulent calls").

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

Consequently we doubt that a phone company would adopt a business model that easily allows a thief, armed only with a name and phone number, to place unauthorized charges on its customers' phone bills.[249] This model would work against the carrier's own best interest.

Consumers continue to benefit from significant statutory protections too. The protections in P.U. Code §§ 2889.9 and 2890 forbid placement of unauthorized charges on a telephone bill, prohibit disconnection of local service for nonpayment of any non-communications charge, require disclosure of how to resolve a cramming complaint, and provide a means for expeditiously resolving a dispute regarding an allegedly unauthorized charge.[250] These cramming provisions have been the basis for significant enforcement actions,[251] and our repeal of the Interim Non-Com rules does not alter or reduce telephone companies' obligations under the statutes.

9.3 Adoption of Cramming Rules

The course of this proceeding, however, has convinced us that rules are needed to provide clarification of the statutes that address cramming. Multiple parties call for the full readoption of the Interim Non-Com Rules in this decision. They argue that "[t]hese provisions are important . . . because they set clear standards for providers and provide self-help remedies that are simple, efficient and effective for consumers."[252] To the extent that the Non-Com Rules address billing

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[249] The AG voiced concerns about this scenario in its opening comments. AG Opening Comments, p. 34.

[250] Laws of general applicability, such as contract law and Bus. & Prof. Code § 1700, also shield consumers from liability for unauthorized charges.

[251] The Commission has imposed significant fines pursuant to its authority under cramming statutes. *See, e.g.*, Investigation of USP&C, D. 01-04-036 (ordering reparations and imposing a $1,750,000 fine on USP&C in response to USP&C's placement of unauthorized charges on local telephone bills).

[252] CSBRT/CSBA, p. 1. *See also* AG Opening Comments, p. 37 ("A repeal of the previously adopted

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and complaint resolution related to cramming, we respond to these comments below.

We recognize that clarification of the cramming statutes is needed. Parties' comments indicate that many do not understand the key components of the existing cramming statutes. Multiple consumer organizations incorrectly assert that the repeal of the Interim Non-Com Rules would leave consumers with little or no protection against the placement of unauthorized non-communications-related charges on their phone bills.[253] Consumer representatives also voice unfounded fears that, absent the Interim Non-Com Rules, consumers would have difficulty disputing unauthorized charges placed on their phone bills,[254] and assessment of unauthorized charges could place consumers' phone service at risk.[255]

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rules is certainly ill-advised."); Greenlining Opening Comments, p. 6 (supporting the Interim Non-Com Rules "in full"); LIF Reply Comments, pp. 6-7 (stating "the Commission should absolutely forego any attempt to rewrite . . . the Non-Communications Billing Rules"). The Interim Non-Com Rules, like the cramming rules we adopt today, address party responsibility and complaint procedures regarding cramming. D. 01-07-030, App. A, Part G.

[253] *See* CSBRT/CSBA Opening Comments, p. 1 (stating that this decision will leave "small business and residential consumers exposed to unfair and abusive . . . billing . . . and will invite[e] operators to again victimize California consumers"); DRA Opening Comments, p. 18 (holding that "the Commission jeopardizes consumers by removing all Non-Com security requirements from the consumer protection rules"); LIF Opening Comments, p. 6 (contending that repeal of the Interim Non-Com Rules "opens up a pandora's box . . . by streamlining the process by which unscrupulous companies may place all manner of charges on an unsuspecting customer's phone bill").

[254] *See* AG Opening Comments, p. 34 (characterizing resolution of a cramming complaints as a "long process" where subscribers have to "prov[e] they did not authorize such charges"); CSBRT/CSBA Opening Comments, p. 3 (stating that without the Interim Non-Com Rules, "[t]here would be . . . no requirement ensuring that consumers reach a customer service representative and easily correct unauthorized charges"). *See also* AG Opening Comments, p. 34 (supporting its conclusion that repeal of non-communications rules will harm consumers by arguing that "customers must be provided with adequate information regarding the types of services for which they are billed and the company responsible for assessing the charge").

[255] Greenlining Opening Comments, pp. 6-7 (expressing concern "that customers will be disconnected from their phone services for nonpayment of non-communications charges"); LIF Opening Comments, p. 6 ("Requiring that consumers be exposed to unauthorized charges without adequate protections is simply not fair to those consumers who only need a phone to be able to

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Responding to this confusion, we adopt cramming rules that clarify carriers' significant responsibilities under existing statutes. Our adoption of these rules is consistent with the Legislature's directive that we adopt any rules we deem necessary for enforcement of the cramming provisions.[256]

We focus on carriers' responsibilities in particular, because as we have recognized in prior decisions, "[r]esponsible practices by the billing telephone companies . . . can prevent most cramming."[257] Telephone companies, regardless of whether they originate a charge, have the ultimate responsibility for handling customer complaints.[258] So while we consistently have acknowledged that "the various participants in the billing chain must be held accountable for their part in the billing process . . . ,"[259] our adoption of the cramming rules today appropriately recognizes that telephone companies act as a particularly important link in the billing chain.[260]

Also the cramming statutes' account of obligations imposed on third party vendors and billing agents is more detailed than their account of obligations imposed on telephone companies that bill on behalf of these entities. Thus adopting cramming rules that address and clarify carriers' responsibilities is particularly valuable for consumers.

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work, keep track of their family, and address emergencies.").

[256] CAL. PUB. UTIL. CODE §§ 2889.9(i), 2890.1.

[257] Interim Opinion Adopting Interim Rules Governing the Inclusion of Noncommunications-Related Charges in Telephone Bills, D. 01-07-030, p. 12.

[258] *Id*. at 17.

[259] *Id*. 12.

[260] *See also* Final Opinion on Rules Designed to Deter Slamming, Cramming, and Sliding, D. 00-03-020 (stating that the "Legislature also has recognized the key role of Billing Telephone Companies").

The cramming rules we adopt today establish, first and foremost, that "[t]elephone companies may bill subscribers only for authorized charges." P.U. Code § 2890(a) does not put any qualifications on its statement that a telephone bill may only contain subscriber-authorized charges.[261] Thus a carrier's responsibility to avoid placing unauthorized charges on its customers' phone bills extends to situations where a charge may originate with a billing agent or third party vendor. This responsibility is the same regardless of whether the charge at issue is communications-related or non-communications-related.

The cramming rules also reiterate and establish guidelines regarding the "rebuttable presumption that an unverified charge for a product or service was not authorized by the user."[262] The rules identify evidence that a carrier may use to prove that a user provided authorization. In particular, the rules state that user authorization may be established with "(i) a record of affirmative user authorization, (ii) a demonstrated pattern of knowledgeable past use, or (iii) other persuasive evidence of authorization." The rules also echo § 2890 and declare that "evidence that a call was dialed is prima facie evidence of authorization" with respect to direct dialed telecommunications services."[263]

Moreover the cramming rules make it clear that significant remedies are afforded to consumers who have been crammed. The rules dictate that while a complaint investigation is pending, a "subscriber shall not be required to pay the disputed charge or any associated late charges or penalties; the charge may not be

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

[262] *See id*. at § 2890(d)(2)(D) (establishing the rebuttable presumption).

[263] *See id*. at § 2890(d)(2)(D) ("With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization.").

sent to collection; and no adverse credit report may be made based on non-payment of that charge." This directive is consistent with the presumption that a user did not authorize a charge. As we stated above, the burden is on the carrier to establish authorization of a disputed charge; prior to establishing this authorization, the carrier must treat a charge as if it was unauthorized and may not require the subscriber to make any payment of the disputed charge.

The cramming rules further provide that a carrier must resolve a cramming complaint within thirty days of the date the carrier received the complaint. Specifically the rules state that "the telephone company, not later than 30 days from the date on which the complaint is received, shall either (i) verify and advise the subscriber of the user's authorization of the disputed charge or (ii) undertake to credit the disputed charge and any associated late charges or penalties to the subscriber's bill." While an argument may be made that this response time is already required by the plain language of § 2890(e), we want to remove any doubt as to what type of response is required of a carrier when its subscriber informs it that an unauthorized charge was placed on his phone bill.[264] A carrier must provide the same complaint resolution response, regardless of whether the carrier itself initiated the charge in question.

P.U. Code § 2889.9 states that carriers will be subjected to reporting requirements regarding their resolution of the cramming-related complaints. We are

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[264] P.U. Code § 2890(e) states the following: "If an *entity responsible for generating* a charge on a telephone bill receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction" (emphasis added). The statute does not define what an "entity responsible for generating a charge" is, and it could be argued that a carrier who did not originate the charge nonetheless could qualify as an entity responsible fore generating the charge. *See* D. 01-07-030, p. 5 (noting that some "carriers . . . have argued . . . that the phrase is ambiguous because billing agents also play a role in 'generating a

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tasked with establishing specific procedures for these reports, and in an effort to fulfill that obligation, we direct staff to hold a workshop that discusses how all carriers shall meet this statutory requirement. This workshop shall occur no more than 180 days after the issuance of this decision. Afterwards staff shall propose cramming-related reporting requirements that direct carriers to provide, among other items, the number and percentage of cramming complaints that take more than thirty days to resolve.[265] staffThe Commission subsequently will establish a venue for adopting appropriate reporting requirements that apply to all Commission-regulated carriers.

Finally we observe that these carrier-focused rules in no way alter the statutorily-dictated responsibilities of persons or entities that originate charges placed on phone bills. P.U. Code § 2890 establishes that a consumer may contact a third party vendor or billing agent directly; these charge originators must reverse a disputed charge if it was unauthorized.[266] Third party vendors and billing agents are part of the billing chain and therefore share responsibility for ensuring that only authorized charges are placed on consumers' phone bills. This responsibility extends to both communications-related and non-communications-related charges.

In sum, our repeal of the Interim Non-Com Rules ensures that our regulatory regime does not unduly stifle innovation in the telecommunications marketplace. We hold that a framework that treats communications and non-communications charges differently does not make sense; instead, in its place, we adopt cramming

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charge' on a subscriber's bill).

[265] We expect that many complaints may be resolved easily within thirty days.

[266] *See* CAL. PUB. UTIL. CODE § 2890(d-e) (placing a series of requirements on "[a]ny person, corporation, or billing agent that charges subscribers for products or services on a telephone bill").

rules that apply to both communications and non-communications charges. These rules benefit consumers by clarifying that phone companies are ultimately responsible for any unauthorized charges placed on their customers' phone bills. Placing this responsibility on carriers ensures that they will actively monitor the entities for whom they provide billing and collection services, and will adopt appropriate safeguards to prevent their bills from being used to facilitate illegal cramming.

10. Slamming Rules

P.U. Code § 2889.5 contains detailed provisions to prevent slamming, a practice where carriers change a subscriber's service provider without the subscriber's authorization. This statute requires telephone corporations to provide written confirmation of a change in the service provider to the subscriber and allows a subscriber who switched without a signed authorization to request to be switched back within the first ninety days at no charge.

Federal law also contains provisions to protect consumers from the practice of slamming. The federal law requires states that opt to act as adjudicators of slamming complaints to notify the FCC of procedures they will use to adjudicate slamming complaints. The Commission previously informed the FCC that it will adjudicate slamming complaints in California, and we approved state slamming rules in D. 00-03-020.

This decision adopts, with modifications, and supersedes, the slamming rules in D.00-03-020. These rules provide details of the regulatory regime for handling slamming complaints in California, and we update them to account for new Commission developments. Specifically we revise language in the informal

complaints section of Part 3 (Rules Governing Slamming Complaints) to indicate that the complaints may be submitted by mail, but are not required to arrive by mail.[267]

While "not opposed to these limited rules in principle," the AG opposes the "inclusion of problematic language in the applicability section regarding the District Attorneys' and [the AG's] ability to enforce these regulations."[268] We effectively respond to these issues in Part 6 above.

11. Resolution of Consumer Complaints

Responsibility for resolving a consumer dispute with a telecommunications provider first rests with the provider at issue. We agree with the Wireless Carriers that consumers who have a complaint regarding their telecommunications provider should first contact their provider directly before seeking Commission assistance.[269] Often carriers are able to resolve consumers' issues without any Commission intervention, and we expect carriers to make good faith efforts to promptly respond to and resolve consumer complaints

There are instances, however, when a consumer is not satisfied with the carrier's response to a complaint. In those cases, a consumer may request assistance or relief from this Commission. These consumer requests may come in the form of informal or formal complaints.

CAB, which is part of the Consumer Service and Information Division ("CSID"), receives informal requests for assistance in person or by telephone calls,

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[267] Slamming complaints may be submitted online at http://www.cpuc.ca.gov/static/forms/complaints/utilcomplaints.htm.

[268] AG Opening Comments, p. 15.

[269] Wireless Carriers Opening Comments, p. 11.

letters, or e-mails. CAB investigates informal complaints and take appropriate actions to resolve the complaints. Many consumer complaints are resolved at this level, through informal cooperation between the carriers and CAB staff.

Consumers who are unsatisfied with the results of CAB's informal resolution also may bring a formal complaint to the Commission. A formal complaint is an allegation by a person, business, or government entity that a utility has violated the P.U. Code; a Commission decision or regulation; or has failed to meet a requirement imposed by the Commission.

Consumer contact through the Commission's complaint resolution efforts is very important to the Commission's operations. Knowledge gained from consumers serves to keep us informed about telecommunications providers' activities, and helps us target and resolve problems quickly and effectively. In this Part we review how we respond to and address consumer complaints and consider ways in which we can further improve our complaint resolution practices.

11.1 Coordination with Carriers on Individual Dispute Resolution

Our individual dispute resolution efforts are supported by cooperation and communication between the Commission and carriers. Working with carriers allows us to provide expeditious relief to consumers and reduces the potential for protracted and costly litigation.[270] We agree with TURN that these important informal resolution efforts "should be happening today as a matter of course."[271]

We recognize that, as an early intervention process, CPSD currently alerts telecommunications entities whose slamming numbers exceed the industry average

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[270] *Id*. at 11.

[271] Consumer Groups Reply Comments, p. 5.

of potential violations. We encourage CPSD to provide similar notices to telecommunications entities that have high volumes of cramming complaints. We expect any carrier receiving such notices to immediately examine its practices and promptly communicate back to the Commission's staff the specific measures it is taking to prevent any further potential violations.

To further improve our coordination with carriers, we direct the CSID director to work with telecommunications carriers to develop specific protocols and processes that ensure prompt attention to and timely conclusions of informal complaints. Our expectation is that these efforts will occur through a collaborative process, culminating in a voluntary agreement between CSID and the telecommunications carriers of how informal complaints will be handled expeditiously.

Additionally we direct CSID to work with our state's larger telecommunications carriers to establish company-specific senior management personnel contacts for each company, so that particularly troublesome complaints can receive prompt action from a senior-level carrier official with greater authority than the lower-level staff. While we do not expect that we will work with senior management personnel on most cases, having this contact in place likely will prove useful if CAB staff has difficulty in attaining an appropriate resolution with carriers' lower-level staff.

Finally we direct CSID to explore the practicality and feasibility of developing the ability for real time, three-way conversations with CAB staff, the affected utility, and the consumer. Our goal should be the immediate resolution of the complaint in most cases. CSID shall report back to the Commission within 180 days regarding steps it is taking to assess the feasibility of such a process. Such a system may allow

the Commission to resolve complaints in a more timely fashion and conserve the resources of the Commission, the carrier, and, most importantly, the consumer.

11.2 Renewal of the Regulatory Complaint Resolution Forum

In addition to collaborating when seeking to resolve individual disputes, it is important that Commission staff and carriers work together when identifying trends in complaints. The Wireless Carriers rightly point out that trend identification is essential to ensuring that "appropriate corrective measures can be taken quickly and effectively."[272]

As noted by the Wireless Carriers, the Commission already has a template for this interaction: The Regulatory Complaint Resolution Forum ("RCR Forum").[273] In the late 1990s, the Commission's Consumer Services Division ("CSD"), the predecessor division to CSID, created the RCR Forum to improve the processing and resolution of consumer inquiries and complaints by providing a forum for the exchange of information between the utilities, the Commission, and consumers. Meeting on an almost monthly basis, the RCR Forum was chaired by the CSD Director and consisted of various members of the Commission staff and consumer affairs managers of major utilities.

RCR Forum participants were charged with improving overall customer service. Specifically the Forum had the following goals:

- Improve and evaluate communications and responsiveness to consumer service concerns and issues.
- Review and share best practices.

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[272] *Id*. at 11..

[273] *See generally id*. at 11-12 (providing a lengthy description of the RCR Forum).

- Reduce formal complaints by promoting and facilitating effective processing and resolution of consumer inquiries.
- Explore expansion and utilization of alternative dispute resolution options.
- Promote education regarding current events or emerging issues that would impact service to consumers.
- Improve utilization of resources and overall responsiveness to consumers.[274]

These objectives have increased significance for practices in the modern telecommunications marketplace.

Although it since lapsed under different Commission leadership, we recognize that the RCR Forum had great value when it was in place. Frank exchange between Commission staff and carriers fostered a number of benefits, including improved processing of complaints at the Commission. Based on this past experience, we believe this informal group can enhance our complaint resolution processes greatly.

We, therefore, direct the CSID Director to reinstitute the RCR Forum. The CSID Director shall report back to the Commission within 120 days regarding the progress it has made in reestablishing the Forum. The CSID Director also should update the goals of the RCR Forum in order to take in consideration changes in the marketplace and concerns of the Commission as expressed in this decision. We will designate a commissioner to lead the RCR Forum activities.

11.3 Investigation of State Best Practices

We direct CSID to host a workshop to learn about other jurisdictions' best practices with respect to handling consumer complaints involving

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[274] *Id*. at 12.

telecommunications carriers. A number of parties should be consulted. CSID should seek information regarding other states' best practices from the National Association of Regulated Utility Commissioners ("NARUC") and the National Regulatory Research Institute ("NRRI"), both of whom the Commission supports financially. Also we should consult with our government colleagues that have notable complaint resolution practices. The Wireless Carriers have already stated that they support our efforts to consult the best practices of other states and use those states as models for improving our own complaint resolution efforts.[275] Since many of the telecommunications carriers in California do business in other states, we ask that they share with us best practices from other jurisdictions too. Finally CSID should solicit input from carriers and any other interested parties that have knowledge and expertise with complaint resolution in other states.

11.4 Enhancement of Call Center staffing and Resources

We sometimes lack adequate information on which to base our enforcement activity. This lack of information is largely due to an antiquated complaint database and insufficient personnel devoted to consumer contact and problem solving. We recognize that we need to make additional resources available to CAB to permit accurate gathering of complaint data, more timely intervention in disputes, and prompt action against companies that abuse or deceive their customers.

We currently are seeking to augment our budget for fiscal year 2006-2007 in order to improve our CAB call center's ability to respond to consumer complaints. Specifically we are requesting funds for updating our antiquated complaints database system and hiring a significant number of new CAB call center

[275] *Id*. at 13-14.

personnel.[276] If we receive this funding, we will double the operating hours of our CAB call center from our current hours of 10 A.M. to 3 P.M. to extended hours of 8 A.M. to 6 P.M,., Monday through Friday. Additionally we will greatly enhance database functionality, so that we can more specifically identify the nature of a call, resolution time frame, and add data fields as new products and services are offered. We agree with Greenlining that CAB also should begin documenting when complaints are made in a language other than English; these complaints then may be compared against those made by individuals whose first language is English.[277]

Furthermore we especially want to ensure that our call center is responsive to consumers for whom English is not their primary language. We agree with LIF that Commission staff "who will be the first line of communication for consumers . . . must have facility in the languages of California's most vulnerable consumers."[278] So of the new call center staffing positions called for in our budget request, we have designated the majority of these positions to be filled by bilingual personnel.[279] We also will continue to use a third-party translation service to communicate with additional non-English speaking populations.

To support these bilingual recruitment efforts, we direct the Executive Director to work with the Department of Personnel Administration ("DPA") on obtaining bilingual CAB personnel. Presently the Commission is not allowed to test

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[276] Specifically, in our currently budget change proposal ("BCP"), we currently are requesting twenty new call center personnel, thirteen of whom we have designated as bilingual speakers. This BCP is currently under review by the Administration and Legislature.

[277] Comments of the Greenlining Institute on the Alternate Proposed Decision of Commission Grueneich, p. 6 (Feb. 14, 2006) ("Greenlining Grueneich Alternate Comments").

[278] LIF Opening Comments, p. 6.

[279] The Commission hopes to recruit at least seven Spanish speakers, three Chinese (Cantonese or Mandarin) speakers, two Korean speakers, and one Vietnamese speaker.

for foreign language proficiency in civil service and hiring exams. Given our specialized needs, we hope that we will be able to work with DPA to create new civil service classifications that recognize bilingual language. We also will explore the creation of similar bilingual positions in our Consumer Protection and Safety Division ("CPSD"), since CPSD is responsible for interviewing consumers in preparation for enforcement cases.

11.5 Greater Utilization of Community-Based Organizations

We recognize that a number of consumers contact local CBOs for assistance in resolving their complaints with telecommunications providers. We have found that CBOs provide a unique form of innovative, practical, and effective consumer protection that is targeted at individual communities. These organizations often are contacted, in particular, by consumers with limited English proficiency. CBOs help resolve complaints that the consumers might have difficulty addressing on their own. Difficulties in individual complaint resolution may stem from a language barrier, or a reluctance to contact a governmental agency due to immigration status.

We believe that we can improve our complaint resolution efforts by working more with CBOs, which possess unique insights into problems faced by specific communities. CBOs have knowledge about the telecommunications markets and communities they serve, have earned the trust of their constituencies, and show a passion for helping consumers. Some CBOs also track complaints that they help resolve, and Greenlining recommends that we join these CBOs in developing "a solid infrastructure for tracking and analyzing complaints."[280]

To build upon mutual interests, we direct the CSID Director and Telecommunications Division Director to develop an action plan designed to

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[280] Greenlining Grueneich Alternate Comments, p. 7.

facilitate our partnering with CBOs ("CBO Action Plan"). The CBO Action Plan shall be prepared within 180 days of this decision. The Plan will identify ways in which we can improve CBOs' access to Commission personnel and carriers' complaint representatives. It should consider creating procedures for and dedicating special CAB contacts to interacting with CBOs. We also direct CSID's director to keep statistics on complaints resolved in partnership with CBOs, and to report any successes or shortcomings with respect to our interactions with CBOs

11.6 Examination of Formal Complaint Procedures

Consumers filing a formal complaint must meet a number of procedural requirements. When filing a formal complaint, consumers must state their case and provide proof of their allegations. Consumers then present evidence before an ALJ, who listens to both parties and issues a decision on the complaint.

If a consumer does not want to go through the regular formal complaint process, the consumer may request an expedited review of his complaint if the amount in controversy is less than $5,000. Under the expedited procedure, a hearing is held within thirty days after the utility files its answer to the complaint, and neither the utility nor the consumer is represented by an attorney.

The Commission's Public Advisor plays a key role in all forms of formal complaint resolution. The Public Advisor assists consumers in navigating through various Commission practices and procedures.

Although at this time we do not see any reason to change our formal complaint procedures, we recognize that a consumer faces a number of burdens when drafting and presenting evidence regarding a formal complaint. We, therefore, direct the ALJ Division and CSID to review the formal complaint process and our public information and report back to us in 180 days to identify any areas for improvement to make it more "consumer friendly." We want the Commission to

be as accessible as possible, given constraints imposed by due process and administrative practicality.

12. Enhanced Enforcement

Enforcement of laws and rules is a critical component of the Commission's consumer protection efforts. Enforcement can be effective in two ways: (1) informally, when we call attention to potential violations by carriers and seek to achieve compliance without any official sanctions; and (2) formally, when we take actions against carriers for violations of our laws and regulations. Enforcement actions encourage compliance with our regulatory regime by punishing unlawful behavior and serving as a deterrent to potential wrongdoers.

A number of commenters express support for enhancing enforcement.[281] At the same time, however, some parties provide general comments that a call for enhanced enforcement is hollow without more rules,[282] while others voiced due process concerns.[283] Specific comments that directed our enforcement efforts are addressed below.

12.1 Expansion of Our Toll-Free Hotline

To facilitate rapid identification of telecommunications carriers engaged in fraudulent conduct, we will expand the scope of our existing toll-free hotline to address fraud. We direct Commission staff to publicize how consumers can use our hotline specifically to report allegations of fraud. Allegations that a

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[281] DOD/FEA Opening Comments, p. 15; Greenlining Opening Comments, p. 4; LIF Opening Comments, p. 5.

[282] AG Opening Comments, p. 41; Consumer Groups Opening Comments, pp. 23-24; DRA Opening Comments, p. 23; Greenlining Opening Comments, p. 5.

[283] Wireless Carriers Opening Comments, p. 12.

telecommunications carrier or its dealer or agent is engaged in fraudulent practices will receive priority attention by our staff.

12.2 Increased Cooperation with Local Law Enforcement Personnel

While consumer protection is a primary goal of the Commission, we are not the only state body tasked with protecting consumers. Notably the AG and local DAs are the principal enforcers of California's general anti-fraud laws, Civil Code Sections 17200 and 17500, as well as the state's Criminal Code. Many acts that violate the P.U. Code or our rules also violate one or both of the cited Civil Code sections or some portion of the Criminal Code.

There are significant advantages to collaborating with the AG and DAs. Often the AG and DAs are able to use their broader enforcement authority to seek greater penalties than we could attain at Commission. The Commission is limited to pursuing enforcement actions under the P.U. Code and our rules. The AG and DAs, however, may bring actions not only under the P.U. Code,[284] but also under general anti-fraud laws and the criminal code. Remedies under the Unfair Competition Law are cumulative and in addition to remedies that may be imposed under other laws like the P.U. Code.[285]

These law enforcement officials' enforcement of general consumer protection laws is especially important with respect to telecommunications matters outside our jurisdiction or over which our jurisdiction may not be clear. Matters outside our jurisdiction include those involving certain prepaid phone services and the sale or

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[284] CAL. PUB. UTIL. CODE § 2101 ("Upon the request of the commission, the Attorney General or the district attorney of the proper county or city and county shall aid in any investigation, hearing, or trial had under the provisions of this part, and shall institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and statutes of this State affecting public utilities and for the punishment of all violations thereof.").

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

resale of telecommunications equipment. The AG and DAs, unlike Commission staff, can reach actors engaging in such activities through their application of general state consumer protection laws. Also where Commission jurisdiction is not clear or is otherwise disputable, prosecution of the case by the AG or DAs may avoid lengthy litigation over jurisdictional issues and provide the most effective, timely relief to consumers.

Given the broader enforcement authority of local law enforcement officials, we direct Commission staff to engage in the practice of collaborative law enforcement. No enforcement action at the Commission should be launched without staff first considering whether a matter would be best addressed by the AG, a DA, or other government agency. If a matter can be best addressed outside the Commission, the staff should promptly refer the matter to outside law enforcement officials.

Furthermore we pledge to use our expertise, experience, and investigative and information gathering abilities to assist outside law enforcement officials that are developing and prosecuting cases. There are a variety of ways in which we can work closely with law enforcement officials to provide relief to consumers injured by unscrupulous or fraudulent conduct. Collaboration may include, but is not limited to, detailed complaint analysis to help law enforcement officials build their case or determine if there are concurrent violations of our statutes and regulations and other state statutes; preparation of witnesses for cases brought by state or federal prosecutors; regular meetings between our staff and DAs from around the state; and similar actions designed to bring enforcement officials, with their greater array of civil and criminal penalties, to bear on people and companies who defraud or otherwise take advantage of vulnerable consumers.

Finally we direct Commission staff to begin participating in a preexisting conference call that regularly occurs among various state AG and public utilities

commission personnel. This call will help our staff become aware of developing trends and state best practices in responding to illegal carrier activities.

We intend to support this 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 to hire CPSD employees who will be tasked with working cooperatively with local law enforcement officials. We expect that at least one Commission employee will be solely devoted to developing and furthering relationships with outside law enforcement officials, and acting as a liaison on cases developed by Commission staff and prosecuted by outside law enforcement officials.

12.3 Further Collaboration with Federal Government Officials

DOD/FEA recommends that we better coordinate with federal government officials as well.[286] It identifies two important objectives for this federal-state cooperation. First, the DOD/FEA states that we should work to better collaborate on related enforcement activities.[287] Second, the DOD/FEA recommends that we seek "to identify and create opportunities for each of these groups to benefit from the experiences of the other."[288]

We agree with the DOD/FEA that there are significant advantages to working in conjunction with federal government officials. Federal officials, such as those employed by the FCC or Federal Trade Commission ("FTC"), sometimes can pursue enforcement actions or remedies that are unavailable to Commission staff. For example, matters involving interstate communications or information services may

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[286] DOD/FEA Opening Comments, p. 16.

[287] *Id*.

[288] *Id*.

be outside of our jurisdiction and better handled by the FCC. Also there is much that we can learn from federal government officials. They may be able to help us identify and proactively address problems before they become visible at the state level, or help us develop internal procedures that help us respond to issues that reach us.

We direct Commission staff to further explore and build upon these areas of mutual interest with appropriate FCC and FTC personnel. Specifically we ask Commission staff to explore the possibility of drafting a Memorandum of Understanding ("MOU") with the FCC on how we may jointly address matters, like VoIP, that are regulated primarily at the federal level, but nonetheless generate complaints at our state Commission. We also direct Commission staff to rejoin the State and National Action Plan ("SNAP") call, where state and FCC officials discuss general consumer issues.[289]

12.4 Creation of a Special Telecommunications Consumer Fraud Unit

An area of great concern for this Commission is consumer fraud relating to telecommunications. We hereby direct the creation of a special Telecommunications Consumer Fraud Unit within CPSD. This Unit will be dedicated to investigating, documenting, and resolving allegations of telecommunications consumer fraud. Activities of Unit members will include monitoring fraud and complaint hotline trends; investigating alleged violations of the P.U. Code and specific Commission rules; meeting regularly with outside law enforcement officials in order to compare information and coordinate enforcement activities; and reporting periodically to the Commission on the activities of Fraud Unit members, including the degree to which they are partnering with outside law enforcement officials.

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[289] The Commission participated in the SNAP call in the past, but no longer is an active participant.

To enhance the capabilities of the Telecommunications Consumer Fraud Unit, we are requesting funds for new CPSD employees.[290] These additional Telecommunications Consumer Fraud Unit members will be used in our analyzing and preparing cases for enforcement actions led by the Commission or referred to outside law enforcement personnel.

Part of the Fraud Unit's preparation of cases will include efforts to validate allegations of misconduct. We agree with the Wireless Carriers that we need to remedy deficiencies in our current complaint verification efforts.[291] Activities of Fraud Unit personnel, therefore, may include distinguishing between inquiries and complaints, interviewing complainants, and providing an assessment of the validity and seriousness of complaints.[292]

Additionally we direct CPSD to investigate Greenlining's recommendation that we invite a deputy AG or DA (who is still employed with his home agency) to join the Commission's Telecommunications Consumer Fraud Unit.[293] While we find no basis for CTIA's concern that inclusion of an outside law enforcement official will "reduce the possibility of informal resolution of consumer issues,"[294] we recognize that staff will need to evaluate whether this proposal is feasible, especially given existing demands on AG and DA personnel.

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[290] Specifically our BCP, which is currently under review by the Administration and Legislature, requests nine new CPSD employees.

[291] Wireless Carriers Opening Comments, p. 13. *But see* Consumer Groups Reply Comments, p. 5 (characterizing these suggestions as further "stonewalling" on behalf of the carriers)..

[292] *Id*.

[293] Greenlining Opening Comments, pp. 4-5.

[294] CTIA Reply Comments, p. 4.

12.5 Initiative to Streamline Enforcement Proceedings

Enforcement proceedings involve a number of steps. DRA correctly observes that enforcement actions can be very costly and take years to resolve,[295] and during this time consumers may continue to be harmed while a matter is investigated and litigated.

If it wants to initiate a formal enforcement action, CPSD first must acquire an Order Instituting and Investigation ("OII") from the Commission. CPSD, to acquire the Commission's approval, prepares a draft OII that states the findings of staff's informal investigations and staff's conclusion that a law or regulation had been violated. The Commission, in closed Executive Session, reviews this draft OII, and votes whether to issue the OII and initiate a formal investigation. If the Commission issues the OII, the case is assigned an ALJ, and CPSD begins the "formal" part of the investigation. Hearings are held, and evidence is presented. At the conclusion of the formal investigation, the ALJ prepares a presiding officer decision that may be appealed to the full Commission.

We do not believe that this lengthy OII process is sufficient to respond to carriers that fail to comply with laws governing verification of consumers' intent to switch to a new telecommunications carrier.[296] Alternate procedures are necessary to ensure that we eliminate slamming as a marketing practice and provide consumers in California with a competitive telecommunications marketplace where consumer choice is respected.

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[295] DRA Opening Comments, p. 20.

[296] P.U. Code § 2889.5 and 47 CFR 64.1120(c)(3)(iii) set forth rules that carriers must follow when acquiring a new customer.

One possible alternative to the OII process is a citation forfeiture program, which we have used in transportation and utility safety regulation.[297] Under this procedure, a carrier is cited for violations of applicable law, such as the Household Goods Carriers Act. The carrier then is given the option of contesting the charges and requesting a formal hearing, or paying a fine. The program has been expanded and the fines increased by the Commission as circumstances have warranted.

We direct the CPSD Director, in consultation with the Chief ALJ and the General Counsel, to investigate the feasibility and potential effectiveness of instituting a similar citation forfeiture program for violations of slamming statutes. This examination should include opportunities for industry and consumer input. If such a program is deemed effective for enforcement of the Commission's slamming rules, Commission staff shall bring forward a detailed proposal for a citation forfeiture program for the Commission's consideration. The proposed citation program must include adequate protections of carriers' due process rights, and specifically must provide carriers' the opportunity to appeal a citation.

Additionally, and more generally, we direct the Executive Director to examine our current investigative and enforcement process and provide the Commission with any other recommendations on how to streamline and/or increase the effectiveness of the process. One proposal the Executive Director should examine is whether, and in what circumstances, CPSD should be able file a complaint directly with the Commission in order to initiate an investigation of a telecommunications carrier.

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[297] The Commission created the citation forfeiture program for the transportation arena in 1968. Originally designed as an inexpensive and efficient means to address transportation rate violations by motor vehicle carriers, the resolution was extended in 1970 to all highway carriers.

13. Consumer Education Program

Consumer education is the cornerstone to empowering and protecting consumers in a competitive telecommunications market. 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. The Commission's focused consumer education campaign will make consumers more likely to choose telecommunications products and services that best meet their needs.

13.1 Widespread Support for Consumer Education

There is widespread agreement among parties that consumer education, spearheaded by this Commission, would benefit consumers and companies alike. Although parties differ as to whether new prescriptive rules are also necessary to protect consumers, both consumer groups and industry representatives endorse a consumer education program. This section reviews individual parties' responses to our educational efforts.

CSBRT/CSBA makes a number of suggestions regarding development of our consumer education program. On a general level, CSBRT/CSBA urges that the Commission to consider adopting objective criteria to measure the effectiveness of the program, and it suggests that we examine our past efforts for guidance on setting realistic expectations and developing cost-effective strategies.[298] CSBRT/CSBA also asks the Commission to work with small business organizations to gain a better understanding of how to reach small business organizations.[299] It states that these

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[298] CSBRT/CSBA Opening Comments, p. 11.

[299] *Id*. at 10.

efforts would be aided by the establishment of a Small Business Ombudsman, who could promote the two-way flow of information between the Commission and the small business community.[300]

DOD/FEA states that general comments in this proceeding effectively make the case for consumer education: "[I]t is clear from many comments that consumer protection regulations, while extensive, are not understood by many users. Since many consumers have difficulty understanding the protections, they are unlikely to make use of them. Consumer education is the best response."[301] DOD/FEA urges the Commission to target this education to a broad base of consumers, including commercial and governmental users of telecommunications services.[302]

Disability Rights Advocates stresses that the new consumer education initiative must provide for consumers with disabilities. Specifically it encourages us to ensure that all our consumer education materials are accessible to individual with disabilities, and it urges us to target individuals with disabilities in our education campaign.[303] Disability Rights Advocates states that disability-related CBOs will be valuable partners in these efforts.[304]

Division of Ratepayer Advocates endorses consumer education, so much so that it states that we "should be more aggressive" in our educational efforts.[305] It specifically calls for the Commission to provide information in print and on its

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[300] *Id*. at 11.

[301] DOD/FEA Opening Comments, p. 13.

[302] *Id*. at 14.

[303] Disability Rights Advocates Opening Comments, p. 14.

[304] *See id*. at pp. 14-17 (describing various disability-focused organizations that may be able to help us in designing and implementing our education campaign).

website that will both aid consumers who are choosing among carriers and inform others who are considering legal or administrative action.[306]

Greenlining supports consumer education, and its Executive Director John C. Gamboa testified that "this phase in the proceeding offers the Commission the perfect opportunity to address the consumer education . . . issues that have been notably absent from the discussions surrounding the creation of the Telecommunications Bill of Rights."[307] Greenlining's Executive Director maintained 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.[308]

LIF has "continually advocated for consumer education directed to those vulnerable language-minority, immigrant communities that are often the target of consumer abuse."[309] Specifically LIF supports funding CBOs so that they can work with these populations "that only they can properly reach."[310] It also recommends that the Commission contract with a third party administrator when conducting the consumer outreach.[311]

TURN, joined with other members of Consumer Groups, supports education generally – but not the specific campaign proposed in this decision. They claim that

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[305] DRA Opening Comments, p. 2.

[306] *Id*. at 2.

[307] Gamboa Testimony, p. 6 (on behalf of Greenlining).

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

[309] LIF Opening Comments, p. 3.

[310] *Id*. at.5.

[311] *Id*.

Commission staff do not have sufficient resources to accomplish our stated goals.[312] The Consumer Groups, referencing earlier comments filed by TURN and Consumer Advocates, claim that an effective consumer education program must have seven elements to be effective.[313]

The Wireline Group is very supportive of our consumer education program. It states 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 laws; and, new rules only multiply consumer's challenges in understanding their rights."[314] It calls for further solicitation and consideration of many different parties' suggestions, for which it encourages a schedule and expectation of concrete products.[315] Within this proceeding, AT&T individually provides a number of constructive comments on various components of our education campaign.[316] We will describe and respond to these specific suggestions below.

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[312] Consumer Groups Opening Comments, p. 23.

[313] *Id*. (citing Comments of TURN and Consumer Action on the Assigned Commissioner's Ruling Regarding a Telecommunications Consumer Education Plan (Oct. 9, 2001)). The seven elements are as follows: "Ensure educational materials are designed to educate and not sell a particular philosophy or public relations messages; Have clearly defined project goals; Ensure that the funding matches the goals and expectations of the project; Coordinate local outreach efforts with state-wide message; Emphasis on multi-lingual outreach with culturally appropriate adjustments when needed; Use all types of mass-media for outreach efforts; Ensure consumers also have access to legal remedies, effective complaint handling and strong enforcement efforts." *Id*.

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

[315] Wireline Group Reply Comments, p. 5.

[316] *See generally* Opening Comments of Pacific Bell Telephone Company D/B/A AT&T California (U 1001 C) on Proposed Decision of Commissioners Peevey and Kennedy (Jan. 17, 2006) ("AT&T Opening Comments") (focusing almost entirely on our education campaign). These comments receive support from Verizon. Reply Comments of Verizon California Inc. to Opening Comments of Pacific Bell Telephone Company (DBA AT&T California) on Proposed Decision of Commission, p. 1 (Jan. 23, 2006).

The Wireless Carriers also view consumer education as an effective means of empowering their consumers. They recognize that a consumer education campaign could be effective in educating consumers on choosing a service provider,[317] or informing consumers about laws and regulations applicable to the wireless industry.-[318] In order to ensure our education campaign is successful, the Wireless Carriers make two primary recommendations: 1) that consumer organizations, industry, representatives, and Commission staff work together in deciding "critical" issues of identification of the target audience, development of the message, and how the message is delivered; and 2) that a monitoring process be put into place and the results be made available to carriers and all stakeholder groups.[319]

Individual Wireless Carriers endorse, and make recommendations for, the education campaign too. Cingular Wireless provides many constructive comments on our education campaign, and we will describe and respond to its individual comments below.[320] Verizon Wireless suggests that the Commission compile existing laws in one place so that customers can more easily know of their rights. Specifically it recommends that we post a summary of those laws in "plain English" on the Commission's website and provide appropriate hyperlinks to other references.[321]

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

[318] Katz Reply Testimony, p. 40.

[319] Wireless Carriers Opening Comments, p. 10.

[320] *See generally* Reply Comments of Cingular Wireless on the Proposed Decision of President Peevey and Commissioner Kennedy (Feb. 3, 2000) (devoting its comments to discussion of the education campaign).

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

13.2 Ability to Improve Consumer Welfare

Consumer education is central to providing California residents with the tools they need to make informed decisions on communications services. This Part discusses the multiple ways in which a consumer education campaign can benefit consumers, and explains how an education campaign may improve consumer welfare better than imposing new regulatory schemes.

Consumer education can inform consumers of the significant features of a service, technology, or a market that should affect their decision to purchase. While we do not believe that we should attempt to serve as a substitute for provision of specific terms by carriers, Cingular correctly notes that we can play a valuable role through providing materials that use a broad-based explanatory approach in describing telecommunications offerings.[322] A valuable example of this type of educational effort is found at the FCC. The FCC currently offers a brochure on wireless phones that guides consumers with a set of questions concerning coverage, pricing issues, and handset features.[323] This brochure may be found on the FCC's website.

Consumer education also can help consumers by informing them of the rights that they have under existing laws and regulations. Greenlining provided testimony in this proceeding that indicates 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

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[322] Cingular Reply Comments, p. 3.

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

minorities.[324] An effective education campaign, however, can assist these vulnerable consumers by informing them of their rights, so these consumers can assert their rights when dealing with carriers.

The benefits of education are particularly apparent in a dynamic marketplace – and thereby may produce more positive results than the adoption of more 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 and fast-moving 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 may be far more effective in aiding those consumers than dozens of pages of printed contract terms.[325] The problem of "information overload" could be particularly acute for such consumers.

Also the Commission has more freedom to experiment in a consumer education program and to learn from this 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.

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

[325] Katz Testimony, p. 14.

13.3 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 the best response to this situation.

In this decision, therefore, this Commission 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 additional information necessary to make informed choices as it can build on its existing programs and divisions that already interact with consumers.[326] Also, as recognized by AT&T, consumers are more likely to view the Commission as a credible source of information.[327]

To be effective we will need to devote a significant amount of time and resources to this important education 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

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[326] Cingular Reply Comments, p. 2. The Commission already has significant experience in conducting similar education campaigns (such as one for ULTS), and our education efforts are a useful complement to our efforts to assist consumers in protecting their rights. AT&T Opening Comments, p. 2.

[327] AT&T Opening Comments, p. 2.

about how to protect themselves.[328] We also acknowledge that our role as a consumer protection agency is not widely recognized by California consumers.[329]

We envision three prongs to our Commission-led consumer education program. The first prong is a broad-based information campaign that helps all consumers in the face of the complex and ever-changing array of telecommunications choices. The second prong consists of an education program designed to inform consumers of their rights. We will facilitate public access to our rules (including those compiled in the General Order). We also plan to advertise assistance provided by the CAB call center, and ensure that call center employees (and other Commission staff members) are aware of various laws and rules that telecommunications carriers must follow. The third prong combines the first two prongs and focuses more on orienting those customers who are non-English or low-English proficiency speaking, seniors, disabled, or low-income. We anticipate that we will work closely with CBOs through our efforts to educate these targeted communities.

These educational efforts will reach out to both business and residential consumers. We agree with DOD/FEA that all telecommunications users may benefit from the education,[330] and in particular, we recognize that it is important for us to target California's small businesses. Our state's small business community has a

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

[329] 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*.

[330] DOD/FEA Opening Comments, p. 14.

significant economic impact on the state's economy both in terms of jobs and revenue base. Also many members of the small business community, like residential consumers, may be victims of marketing abuse and fraud. Both small business and residential consumers need to be aware of their rights when they sign service agreements, and also need to know how to file complaints with the Commission if their rights are not respected. We expect that many of the outreach and education materials developed for residential consumers can also be used for small businesses.

13.3.1 Educational Content

It is important that our consumer education materials provide understandable "plain English" answers to frequently asked questions. Consumer education material must be 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 of all walks of life.

In designing such materials, we will look to both carriers and consumer organizations for input about 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, and we will seek guidance from other state and federal regulators as well. We agree with multiple commenters that all interested parties should have the chance to have

input into content development.[331] In collecting this feedback, we support the recommendation of the Wireline Group, AT&T, and Cingular and direct CSID to hold workshops addressing the design, content, and dissemination of such consumer education materials.

Additionally we request that CSID explore how smaller working groups, as proposed by AT&T, may be able to complement our workshop efforts. AT&T recommends that details of the campaign "be developed in a collaborative way by a 'working group' composed of carriers, consumer groups, [CBOs], and representatives from the Commission."[332] These working groups would be an ongoing component to our education campaign efforts. As envisioned by AT&T, the working groups would conduct periodic conference calls to update materials and discuss any developing complaint trends, and the meetings of the groups could include presentations from key consumer advocates, such officials at the California Department of Consumer Affairs.[333] AT&T further proposes that at least once a year all working group members come together in order "to evaluate the program, update the content, and suggest new strategies."[334] Further suggestions for how working groups could be coordinated with workshops are provided by Cingular.[335]

Many entities have significant educational experience that may assist us in our design and subsequent implementation efforts. One such example is Communities

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[331] AT&T Opening Comments, p. 2; Cingular Reply Comments, p. 2; Wireless Carriers Opening Brief, p. 10.

[332] AT&T Opening Comments, p. 2.

[333] *Id*. at 3.

[334] *Id*.

[335] Cingular Reply Comments, p. 4.

for Telecom Rights ("CTR").[336] CTR is a California non-profit network comprised of thirty-five nonprofit CBOs, and it provides education and guidance on telecommunications issues focusing on limited-English-proficient communities. CTR provides consumer education materials in seven languages.[337] These consumer education materials include fact sheets on topics such as avoiding phone fraud, how to choose the best local and long telephone service, and warnings about 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 Verizon Grant Program. CTR also is building a statewide network capable of tracking abusive business practices.

Finally we concur with CSBRT/CSBA's recommendation that we hire an individual who will serve as an intermediary between the Commission and the small business community.[338] We suspect our sharing information with the community may inform the content, as well as other aspects, of our educational program. Given these benefits, we are requesting funds specifically designated for the hiring of a small business liaison.[339]

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[336] CTR is coordinated and supported by three lead agencies: Asian Pacific American Legal Center ("APALC"), and LIFUCAN. The project is funded by grants primarily from the Telecommunications Consumer Protection Fund ("TCPF"), which is administered by the California Consumer Protection Foundation ("CCPF").

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

[338] CSBRT/CSBA Opening Comments, p. 11.

[339] This proposed position is included in our BCP, which is currently under review by the Administration and the Legislature.

13.3.2 Dissemination of Educational Materials

We expect that the educational materials will be disseminated through multiple avenues. The distribution effort will be led by the Commission staff, 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. As a part of the website, as suggested by carriers, we will include a section that describes consumer protection laws and rules in layman's terms,[340] and another section that allows consumers with problems or questions to directly communicate with Commission staff.[341] Ultimately we plan for the website to be fully translated in all languages included in the project.[342] The website, consistent with the third prong of our education campaign, will place particular emphasis on non-English and low-English proficiency speakers, people with disabilities, children, seniors, and small businesses.

Our website can be a powerful tool. Given the dominance and availability of the Internet as an information source in California, our website is a very cost-effective way to reach many citizens. The Internet makes it possible to cheaply disseminate and readily update 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

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[340] *See* Verizon Wireless Opening Comments, p. 36 (recommending this component).

[341] *See* AT&T Opening Comments, p. 3 (supporting this function).

[342] *See* AT&T Opening Comments, p. 3 (recommending that website material "be available in language").

telecommunications services. Websites maintained by carriers,[343] consumer organizations,[344] and other public utility commissions in other states[345] are good examples of how we can provide significant amounts of educational material regarding telephone service to consumers with Internet access.[346] These websites also can help us ensure consumers' have easy access to Commission-provided information. We will encourage carriers and CBOs, as recommended by AT&T, to add a link to their web sites that connect to the Commission's page.[347] We also will advertise the website in our outreach materials.[348]

We realize, however, that information on our website is not readily available to consumers who do not have Internet access, whose English proficiency is too limited to make effective use of the Internet, or have disabilities that make Internet access difficult or impossible. These limitations may affect both residential and small business consumers.[349] For these reasons an effective consumer education program cannot rely entirely on the Internet as a means of distributing important information.

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

[344] 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.

[345] 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.

[346] 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/.

[347] AT&T Opening Comments, p. 3.

[348] AT&T offers a number of useful suggestions for how we may want to conduct outreach based upon the website. *Id*. at 3.

[349] *See* CSBRT/CSBA Opening Comments, pp. 10-11 ("A survey of businesses by the California Small Business Education Foundation of small businesses in the Inland Empire found that only 50 percent

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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. If we decide to launch a mass media campaign, we anticipate that we will initiate a Request for Proposal ("RFP") process, where we will contract with communications consultants who will help us design and launch a media campaign. An important aspect of creating a media campaign, as noted by the Wireless Carriers, will be finding a message that resonates with our target audience.[350] This message then could be conveyed through, among other avenues, radio advertisements or newspaper ads.

For example, AT&T proposes we develop a series of newspaper ads that focus on different telecommunications rights.[351] These ads may explain "what consumers should expect when doing business with telecommunications companies and whom to contact if there is a problem."[352] We could publish these ads in a wide variety of newspapers, including ethnic press.[353]

We may want to consider placing information in local phone books too. Our Universal Lifeline Telephone Service ("ULTS") outreach has shown us that the Asian Yellow Pages, in particular, are an effective means of reaching Asian populations.

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of small business owners used a computer in their business and, of those businesses with computers, only 25 percent routinely used them to access the Internet.").

[350] Wireless Carriers Opening Comments, p. 10.

[351] AT&T Opening Comments, p. 4.

[352] *Id*.

[353] *Id*.

Also carriers, community based organizations, and organized consumer groups, among others, may assist in distribution of educational materials. As recommended by AT&T, we may create a comprehensive brochure in multiple languages that explains key telecommunications issues, and this brochure could be supplies in bulk to community organizations.[354]

More broadly we intend to develop community-based programs with CBOs in order to get the information into the hands of consumers who cannot easily get it from the website. We will identify specific geographic areas where there are large, concentrated populations of our targeted audiences, and we will create appropriate outreach and education programs for identified communities. Part of these efforts may include staff initiation of a RFP process, where we solicit organizations to carry out components of the education program.

Finally we direct CSID reach out to CBOs that provide services to disabled consumers when addressing accessibility of our website and other educational materials. We agree with Disability Rights Advocates that the experience and knowledge of these CBOs will allow them to play a valuable role in helping us determine how to design online information so that it is accessible to the widest possible audience.[355]

Through these distribution efforts 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 our outreach efforts should

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[354] AT&T Opening Comments, p. 4. AT&T states that topics for this brochure may include the following: how to shop for services; what the various services (call waiting, caller ID) do; ordering service; payment methods; how to read a bill; and how to resolve billing questions. *Id*.

[355] Disability Rights Advocates Opening Comments, pp. 14-17 (listing a number of organizations that it says can assist us in our education efforts). *See also* Cingular Reply Comments, p. 3 (agreeing that our consumer education efforts should be accessible to individuals with disabilities).

include local government, the Chamber of Commerce, the Department of Social Services, and other governmental agencies involved with consumer affairs, senior centers, schools, and libraries. Currently we offer a Local Government E-netter; we also may offer a similar small business e-newsletter, which could provide useful tips regarding telecommunications services and protections, as well as update small businesses on policy issues before the CPUC. Increased outreach will assist in preventing and identifying consumer problems before they occur.

13.3.3 Monitoring and Evaluation

The education program will be regularly monitored and evaluated in order to develop reliable data on which we can base changes to the educational program, as well as any necessary future rulemaking or enforcement action. Parties agree that effective monitoring is essential for ensuring the education program is cost effective, achieving our intended results, and responsive to changes in the telecommunications marketplace.[356]

This decision outlines some basic parameters of a monitoring and evaluation program, but it does not define specific program components. We direct Commission staff to develop a collaborative forum to contemplate various options and create a program based on its review of different monitoring and evaluation features.

Monitoring and evaluation efforts typically consist of five fundamental components: design, data collection, analysis, reporting, and evaluation critique. The scope of these efforts should include evaluation of all entities and activities

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[356] Reply Comments Of Cingular Wireless (U-3060-C) on the Proposed Decision of President Peevey and Commissioner Kennedy, pp. 4-5 (Jan. 23, 2006) ("Cingular Reply Comments"); CSBRT/CSBA Opening Comments, pp. 11-12; Wireless Carriers Opening Comments, p. 10.

contributing to the consumer education program. Thus the scope should include not only include consultants, contractors, and Commission staff, but also CBOs and participating carriers as well.

Design

The fundamental conceptual task in designing a monitoring and evaluation program is to define its purpose. Here the underlying purpose of the education program is based in economic theory: Competitive markets function optimally when consumers' choices are guided by perfect information; or stated more realistically, the more informed consumers' choices are, the better competitive markets function. Not only must consumers understand the differences between the products and services offered, they must understand the options they have in choosing, and switching to, different products and services.

Closely based on these concepts, a consumer education program theory, including a logical model, should be created and described. The underlying program theory is similar to the purpose described above: Consumer education will facilitate competitive market functioning and reduce the need for market regulation. A logical model specifies the sequential steps or causal links implied in the theory. For example, information will be presented to consumers, they will understand this information, they will then exercise choices and options better suited to their needs, these informed consumer choices will in turn influence the market to adapt efficiently to consumer needs, and this adaptation will satisfy both consumers and the market better than direct regulation could. Given that the world of telephone service has gone from a monopoly service to a competitive landscape, it is the Commission's duty to explain to consumers their new choices and rights, and to help them when there are problems.

Data Collection

Perhaps the most critical monitoring and evaluation task is to identify the observable, measurable outcomes that should follow from the education purpose and implementation. Several categories of observations are possible.

First, we may consider both outputs and outcomes. Outputs are the immediate results of the education process or activities; outcome observations document how well the overall education program affected consumer behavior and satisfaction and market functioning. Since outcome observations are to difficult make and assess, observations that examine the education process or outputs are likely to be complementary and uniquely informative. For example, process observations could include output measures such as exposure to the educational materials and comprehension of the materials. Process observations are also critical to the program in that they can indicate areas for improvements. Program theory and logical modeling should be helpful in linking the outputs to the outcomes.

Second, both objective and subjective measures are likely to be helpful. Objective observations are those where an observer gains evaluative information without asking consumers. For example, the change in number of complaints would be a relatively objective observation. In contrast, subjective observations seek individuals' opinions. For example, a survey could solicit consumers' opinions about education program components, or if/how it has improved their consumer experience.

Third, the evaluation should consider employing both cross-sectional and longitudinal analyses. A cross-sectional evaluation examines a program's effects for one time period and focuses on differences between categories of individuals, services, or products. A longitudinal evaluation tracks program effects over time to

identify changes in effectiveness or need for adaptations. Since a database is a significant precondition to implementation of these forms of measurement, we direct the Commission staff, when directing the design of our new database, to assess the feasibility of adding evaluation metrics.

Since our education program will likely comprise multiple methods and materials, the evaluation effort should be multifaceted to adequately assess the different approaches. Multiple measures will enhance reliability and validity.

Additionally data characteristics should be assessed and statistical properties considered ahead of time so that helpful and appropriate analyses can be performed. Whenever reasonably feasible, the data to be gathered and the methodology to be used should be considered and constructed so that statistical analyses will produce estimates of the levels of confidence we can have in the evaluations' results. Consistent with our own statistical analyses precedents, statistical power and meaningfulness should be considered in addition to statistical significance.

The data collection methodology and the data itself should be designed and constructed to be as unambiguously interpretable as possible. For example, simple increases in the number of complaints could reflect multiple indistinguishable causes, such as increases in customer problems, increases in service sales, new types of service, increased awareness of rights, and/or increased awareness of the means to file complaints. While additional information, such as normalizing data or detailed cross-sectional data, can help identify causes in these cases, the conclusions may only be as good as this additional information.

Analysis

The analysis should be focused both on program outputs and outcomes, with the primary purpose of finding areas for improvement. To the degree possible,

analyses should strive to assess the overall success of the program. Descriptive statistics should show differences between different groups, services, products, companies, geography, and other distinguishing characteristics, as well as trends. Statistical analyses can help decision-makers determine differences that are not better explained by sample randomness or temporal fluctuations. More sophisticated modeling statistics may help in elucidating causal models. Extra care must be taken to construct the analyses so that quality inferences can be made, and at the same time, limitations or alternative explanations should be sought and examined.

Report

The essential product in any monitoring and evaluation effort is the feedback. This feedback should be focused primarily on how to improve the consumer education program, but also on assessing the program's effectiveness.[357]

We direct staff to provide the Commissioners an annual report covering each calendar year. The feedback should be presented to the individuals implementing and updating the education program, and otherwise to any Commission decision makers who may take action based on the results. The report should be finalized no later than June 1st the following year.

Additionally Commission staff should create a more frequent periodic report for its own monitoring uses. For example, monthly reports could uncover acute

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[357] A useful academic checklist for an evaluation report is available in M. Scriven, The Key Evaluation Checklist. (2005), http://www.wmich.edu/evalctr/checklists/kec_october05.pdf. Further direction is available in E.J. DAVIDSON, EVALUATION METHODOLOGY BASICS: THE NUTS AND BOLTS OF SOUND EVALUATION (2005). A checklist should assist not only in drafting a report, but also in guiding the creation, implementation, and periodic review of our monitoring and evaluation efforts, as well as the education program itself. While the checklist may present the ideal evaluation that is not always attainable in actual application, it presents a helpful guide and presents a

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problems that could be addressed in a timelier manner than possible with only an annual report.

Critique

A metaevaluation,[358] or an evaluation of the evaluation, should reflect on what can be improved in the monitoring and evaluation effort. This critique may be separate from the report, included in the report, or summarized in the report. The purpose of the critique is not to critique the education program, but to critique the monitoring and evaluation effort and improve it through periodic redesign.

In conclusion, a monitoring and evaluation program that incorporates the five factors listed above will help us improve how we run our education program and, more generally, how we make decisions. 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. An effective monitoring and evaluation program will help us identify if certain materials and approaches are more useful to consumers than others, so that we can emphasize and extend those materials and approaches. Similarly feedback through this program will help ensure that our future decisions are based on more reliable data.

13.3.4 Program Funding

We will take steps both internally and as part of the Commission's budget proposal to the Legislature to ensure that CSID has the resources and personnel required to create and monitor the education program. The Commission budget for our ongoing education program detailed above is $7.05 million for the first year, $1.0

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standard against which we can assess our efforts.

[358] SCRIVEN at 8.

million of which has been earmarked to fund CBOs.[359] The first year expenses are high, because they include both design and implementation of the program. After the first year the annual program budget is $4.9 million, $1.9 million of which is specifically designated for funding CBOs. This budget proposal, which has been sent to the Legislature for approval, is modest given the broad scope of the campaign, and it is consistent with the size of other statewide consumer education programs.[360]

While we are requesting these funds, we direct CSID develop and implement an interim consumer education campaign using existing Commission staff and resources. The initial education program shall be implemented within 120 days of issuance of this decision. Relying upon existing personnel and materials, staff will use its website to host an interim consumer education center that will include consumer education materials, summaries of and references to consumer protection rules and laws, and links to other useful resources. Initially Commission staff plans to focus outreach and education on the seven most common languages spoken in California: English, Spanish, Chinese, Vietnamese, Korean, Tagalog, and Hmong.[361] Also staff will launch a preliminary media campaign that that may include public services announcements and feature stories in print media.

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[359] This funding request included in our BCP, which currently is under review by the Administration and Legislature.

[360] California has sponsored a number of educational efforts directed toward the state's consumers. In 1999 the Legislature ordered that $13 million be used for a five-year education and outreach program on electric service competition. In 1996, approximately $5.million per year was set aside for outreach and education on ULTS, a telecommunications program focused on low-income individuals. Energy efficiency education programs recently received $36 million in funding. All of these programs included funding for CBOs that participated in the outreach and education.

[361] In the future we may identify additional languages spoken by other hard-to-reach communities and whether we also should use those languages in outreach and education materials.

In order to support current and future efforts, Commission staff will schedule workshops with carriers and CBOs to discuss resources available to support the Commission's education efforts. These early workshops will serve as brainstorming sessions for interested parties to discuss how best to direct our educational efforts. Collaboration among various entities will help us determine how to design a needs assessment, which will evaluate which population groups we need to target and the specific information that would be most useful to individual groups.[362]

It is our intent that the outreach and education activities that are implemented during the initial stage of the education program will stay in place until funded programs are developed and become operational. There will be no break in the education campaign during the transition from the initial, unfunded program and the ongoing, funded program.

14. Further Review of In-Language Issues

Greenlining and LIF present anecdotal evidence that individuals with limited English proficiency face two disadvantages in the telecommunications market.[363] On the one hand, while carriers may provide accurate and useful information about their services in English, minority language customers typically cannot understand it due to the language barrier.[364] On the other hand, minority customers are also

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[362] *See* Cingular Reply Comments, p. 4 (recommending the needs assessment).

[363] Greenlining Opening Comments, p. 9; LIF Opening Comments, pp. 1-2.

[364] Greenlining Opening Comments, p. 9; Opening Brief of Latino Issues Forum, p. 2 (Oct. 24, 2005) ("LIF Opening Brief").

targeted for fraudulent and deceptive communications in their own languages by unscrupulous businesses that prey on minority language communities.[365]

Greenlining and LIF call for prompt Commission action on these in-language issues. While supporting enactment of limited in-language rules in this proceeding,[366] both consumer groups strongly endorse timely further investigation and analysis of in-language issues.[367] Greenlining asserts that "[p]roper research and documentation of the problems faced disproportionately by limited English speakers is the most important step in protecting the most vulnerable consumers."[368]

In response we direct Commission staff to analyze and create a report on in-language practices and any special disadvantages faced by telecommunications customers with limited English proficiency. Building upon the anecdotal evidence, this Staff Report will help us assess whether in-language needs are sufficiently met by our education and enforcement efforts, and whether any related rules should be adopted by the Commission. At this point we do not have sufficient evidence in the record on which to decide whether we need any in-language rules, and if so, what they would be.[369]

T-Mobile supports this approach. It states that "to first attempt to understand current carrier practices and customers experiences, then identify whether there are any issues that need to be addressed and finally to determine how best to address

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[365] Greenlining Opening Comments, p. 9; LIF Opening Brief, p.2, 4-6.

[366] Greenlining Opening Comments, p. 9; LIF Reply Comments, p. 8.

[367] Greenlining Opening Comments, p. 9 (supporting an in-language report that will seek to determine and analyze problems faced by non-English or limited-English speakers); LIF Opening Comments, p. 6. (calling for development of a full evidentiary record on in-language issues).

[368] Greenlining Grueneich Alternate Comments, p. 4

[369] See Part 3.1 for further discussion of evidence presented.

those issues, if any, seems consistent with a sound regulatory approach." In particular T-Mobile notes that it is particularly important that in-language issues are addressed in "an appropriate and thoughtful manner,"[370] because of the "incredible cultural and language diversity in California."[371]

The state's diversity and large number of individuals with limited English proficiency are structural features that are unlikely to change in the near future.[372] Thus the Staff Report should serve both as a short-term action document with respect to potential new rules and education and enforcement programs, but also as a longer-term reference document.

We intend for Commission staff to develop a report that verifies the languages identified for education elsewhere in this decision, reviews the challenges faced by those with limited English proficiency relating to communications services, and enumerates recommendations for effective programs and strategies for communicating relevant information in multiple languages. The probable cost of each recommendation should also be included. We commit to provide the personnel resources necessary to prepare such a report. On an organizational basis, we note that preparation of the report will require inter-divisional cooperation, as our education and enforcement functions are carried out by multiple divisions.

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[370] Reply Comments of Omnipoint Communications, Inc., dba T-Mobile, on the Proposed Decision of Commissioners Peevey and Kennedy, p. 3 (Jan. 23, 2006).

[371] *Id*.

[372] A significant number of California residents speak a language other than English. Approximately two out of every five California residents speaks a language other than English at home. Californians' Use of English and Other Languages: Census 2000 Summary (June 2003), http://www.stanford.edu/dept/csre/reports/report_14.pdf, p. 1. Thirty-one percent of the households that speak Asian/Pacific Island language are linguistically isolated, as compared to twenty-six percent of Spanish-speaking and seventeen percent of Indo-European speaking. *Id*. at 3. A household is linguistically isolated if all members fourteen years old and over have at least some difficulty with English. *Id*. at 1.

Greenlining provides a number of useful suggestions regarding issues we should try to address in our in-language report. In particular it recommends that we seek out data on the following topics:

> (a) the number of consumers who speak English as a second language, read/write in English, and read/write in their first language; (b) the percentage of limited English speakers that were advised they could negotiate a payment plan with the service provider and tried to do so (limited English speaker vs. English speaker); (c) consumer satisfaction of any complaint resolution obtained by CAB or a CBO (limited English speaker vs. English speaker); (d) the percentage of limited English speakers that initially tried to complain to the service provider but could not due to language difficulties; (e) percentage of limited English speakers that re-contracted for lifeline service (i.e., that understood that each year a new contract must be signed to continue lifeline service) as opposed to English speakers; and (f) data already obtained by CAB or CBOs.[373]

Other relevant issues Greenlining identifies include the translation quality of carriers' documents and consumer literacy of technological terms.[374] Greenlining adds that identifying what telecommunications "providers are doing well would serve to clarify which procedures or services are successful in limited English speaking communities."[375] We direct Commission staff to consider Greenlining's suggestions when seeking out data for the in-language report.

In creating this report we may draw upon our experience with other Commission outreach efforts, such as the Electric Education Trust, that have featured an in-language component. staff should compile a list of these past Commission

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[373] Greenlining Grueneich Alternate Comments, pp. 7-8.

[374] *Id*. at 8.

[375] *Id*.

activities and summarize the lessons and findings from them. Also this review of education efforts may extend outside our state. Other state utility commissioners or federal agency officials, such as those at the FCC or FTC, may be able to provide relevant information regarding how they provide information and other services in foreign languages to multicultural populations.

Further information regarding programs made and problems encountered relating to multilingual service may be filed in reports submitted to the Commission. The CPUC requires incumbent and midsized LECs to provide various reports, including some that review in-language matters.[376]

Moreover we intend to draw upon the knowledge and experience of CBOs, carriers, and others who serve and advocate on behalf of communities with significant language needs. We, therefore, direct staff to hold at least two workshops at two different phases of the study. This first workshop will occur after staff circulates a study plan that identifies past Commission efforts, state and federal agencies to be surveyed, and other information sources encompassed within the study. This workshop's agenda will include discussion of those data sources, particularly the strengths and limitations of each. Workshop participants will be afforded an opportunity to identify other sources, offer any research, experience, and/or in-house data applicable to the tasks identified in the study plan. The second workshop will occur after staff releases a draft report. This workshop will allow participants an opportunity to discuss and comment upon the report before a final version is issued.

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[376] The CPUC established a monitoring program for Pacific Bell and GTE (now AT&T California and Verizon California, Inc.) and refined it in D.91-07-056. Subsequently this program was extended to Citizens Telecommunications Company of California (dba Frontier Telecommunications Company of California) in D.95-11-024 and to Roseville Telephone Company (now SureWest Telephone) in D.96-12-074.

The sooner the staff Report is available, the sooner we will have a sufficient record to decide whether to make any necessary modifications to our rules or our education and enforcement programs. Thus we direct staff to submit its final in-language report no later than 180 days of issuance of this decision.

Finally, in preparation for any regulatory action that may be directed by the study, we will open a proceeding specifically designed to address in-language issues. If called for by the Staff Report, this proceeding may be used to require telecommunications carriers to abide by new in-language rules. Greenlining supports opening of this additional proceeding to address the potential adoption of in-language requirements.[377]

15. DUE PROCESS

Several consumer representatives complain that their right to due process has been violated during the course of the Commission's review of G.O. 168.[378] TURN, joined with other Consumer Group members, criticizes the Proposed Decision in a number of ways: It faults the Proposed Decision for not responding to the claims in its Reply Brief; argues that the Proposed Decision improperly puts the burden of proof on TURN to justify the rules adopted in D.04-05-057 and later stayed in D.05-01-058; contends that the Commission failed to clarify the scope of proceedings after D.05-01-058 was issued; maintains that there was insufficient time and direction provided for preparing for hearings; criticizes the hearings for failing to permit

[377] Greenlining Grueneich Alternate Comments, p. 4.

[378] Consumer Groups Opening Comments, pp. 16-18;AG Opening Comments, p. 8; LIF Reply Comments, p 2; Consumer Groups Reply Comments, pp. 2-4.

cross-examination of the parties; and complains that its Motion to Recuse Commissioner Kennedy was improperly rejected as moot.[379]

The AG generally endorses TURN's due process claims and adds one more: "The Assigned Commissioner . . . prohibited consumer groups or law enforcement from obtaining from carriers any information regarding their consumer complaint numbers unless it could be proven that a carrier 'had put its own consumer complaint data in issue by relying on it in pleadings or other formal submissions.'"[380]

LIF faults the Commission and the Proposed Decision for failing to more fully develop the record on problems faced by limited-English speakers. It calls for a "promised second phase of [the] proceeding to address language minority issues."[381] LIF also maintains that the proposed repeal of the Interim Non-Com rules was without an adequate record and due process.[382]

There is no dispute among the parties that this rulemaking qualifies as a quasi-legislative proceeding within the meaning of P.U. Code § 1701.1(c)(1). The statute provides that quasi-legislative proceedings are "cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry."[383]

The Commission has little or no statutory obligation to offer hearings in a quasi-legislative proceeding, such as this one. The Legislature provides that in quasi-legislative proceedings "the commission may conduct any proceeding to

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[379] TURN Opening Comments, pp. 16-18.

[380] AG Opening Comments, p. 8.

[381] LIF Opening Comments, p. 2.

[382] LIF Opening Comments, p. 2.

[383] CAL. PUB. UTIL. CODE § 1701.1(c)(1).

adopt, amend, or repeal a regulation, using notice and comment rulemaking procedures, without an evidentiary hearing, except with respect to a regulation being amended or repealed that was adopted after an evidentiary hearing . . . "[384] In this proceeding, the G.O. 168 rules were not adopted without any preceding evidentiary hearing, so we are under no obligation to hold any hearing at all. Any parties' claims regarding hearings, therefore, should only be judged on whether we provided parties with sufficient notice and an opportunity to be heard.

It is clear that the Commission provided all parties ample opportunity to be heard within this proceeding. As Sprint Nextel points out in response to TURN's comments,[385] TURN had the opportunity to participate in the following ways: file comments on February 7, 2005 in response to Petitions for Modification of D.04-05-057; file comments on March 25, 2005 on the Assigned Commissioner's March 10 Ruling; present arguments at the April 6, 2005 Prehearing Conference; move (on May 31, 2005) to recuse the Assigned Commissioner; file opening and reply comments (on May 31 and June 15, 2005) on the Assigned Commissioner's May 2, 2005 Ruling; present opening and reply testimony (August 5 and September 16, 2005); testify and otherwise argue at the two-day formal hearing attended by two commissioners and the assigned ALJ; file opening and reply briefs (October 24 and November 7, 2005); and most recently file opening comments (January 17, 2006) and reply comments on the Proposed Decision.

Similarly the AG expressed itself in multiple portions of this proceeding. The AG's activities included the following: filing comments on February 7, March 25, and

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[384] CAL. PUB. UTIL. CODE § 1708.5(f). See also the Rules of Practice and Procedure, Rule 14.1, which defines 'Rulemaking' as "a formal Commission proceeding in which written proposals, comments, or exceptions are used instead of evidentiary hearings."

[385] Sprint Nextel Reply Comments, p. 3.

May 31, 2005; and appearing and arguing at the April 6 Prehearing Conference. The AG also could have filed testimony and participated in the formal hearing, had it wished to do so; regardless it had its views read into the formal hearing record by others. TURN and the AG, therefore, have no credible basis for contending they have not been provided with a full opportunity to be heard in this case.

TURN's charges that inadequate notice was provided in advance of the formal hearings are similarly baseless. The Assigned Commissioner's Ruling issued on June 30, 2005, nearly three full months before the hearing, advised parties that formal hearings would be held in this quasi-legislative proceeding. The format of the hearing was set forth in an extensive Assigned Commissioner's Ruling that was issued to all parties on September 19, 2005, a full 10 days before the hearing commenced. Ten days' notice of a hearing is fully consistent with the Commission's Rules of Practice and Procedure for hearings.[386] The fact that hearing panels were finalized the day before the hearing also did not disadvantage parties, since this notice merely concerned the order in which the witnesses would appear and testify.

We find no merit in TURN's arguments regarding the allegedly unclear scope of the proceeding either. A review of TURN's opening and reply testimony, as well as the hearing transcript, demonstrates that neither TURN nor its witness had any difficulty in recognizing the scope of the proceeding and addressing an extremely wide range of subjects during the hearing.

TURN's complaints about the lack of cross-examination in the formal hearings likewise are not persuasive. As TURN is well aware from its participation in hearings before the Legislature, legislative-style hearings typically do not permit

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[386] Rule 52(a) states that "[i]n complaint or investigation proceedings, the Commission shall give notice of hearing not less than ten days before the date of hearing, unless it be found that public necessity requires hearing at an earlier date. Comparable notice ordinarily will be given when hearings are held in application proceedings."

opposing parties to cross-examine other parties' witnesses. To the extent cross-examination occurs, it is conducted by the legislators. Analogously, cross-examination in the formal, quasi-legislative hearing here was conducted by Commissioners Kennedy and Brown, who acted in their quasi-legislative capacity.

Finally we hold that no due process violation occurred when Commissioner Kennedy ruled to preclude discovery of carrier complaint records. We concur with the Assigned Commissioner that such a ruling was necessary to move the proceeding forward in the face of what almost certainly would have been unacceptable delays over the significance and discoverability of carriers' interactions with their customers. At the time of the ruling, no carrier had voluntarily put its own consumer complaint data in issue by relying on such data, so it was not procedurally inequitable to the opposing parties to circumscribe the limits of discovery in this fashion.

It is notable that, despite the shortcomings TURN, the AG and others allege, neither they nor any other party raises any claim that the Proposed Decision fails to comply with any *specific* due process requirement in the P.U. Code or the Commission's own Rules of Practice and Procedure. TURN and the AG fail to adequately consider the quasi-legislative nature of this rulemaking, which, for due process purposes, is central to determining whether the Commission provided parties with notice and an opportunity to be heard. Moreover, upon review of the procedural history, it is clear that the Commission provided parties' ample notice and opportunity to be heard. Thus we conclude that the Commission fully complied with all requirements for due process of law in this Commission proceeding.

16. Other Procedural Matters

16.1 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.[387] 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.[388]

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

16.2 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.

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

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

16.3 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.

16.4 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 DRA 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 DRA 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.

17. Comments

The proposed decision of Commissioners Peevey and Kennedy (now the proposed decision of Commissioner Peevey due to Commissioner Kennedy's departure from the Commission) 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 January 17, 2006, the Commission received Opening Comments from the AG, DOD/FEA, Disability Rights Advocates, LIF, the Wireless Carriers, the

Wireline Group, DRA (formerly ORA), Greenlining, TURN, Pacific Bell (now AT&T), and CSBRT/CSBA. On January 23, 2006, the Commission received Reply Comments from Cricket, DOD/FEA, CSBRT/CSBA, CALTEL-CISPA, Sprint-Nextel, the AG, Cingular, Verizon, LIF, T-Mobile, Verizon Wireless, DRA, CTIA, the Wireline Group, TURN, U.S. Cellular and AARP.

In addition to the comments that we have addressed explicitly, we have reviewed all the comments and replies and revised the decision as warranted.

18. Assignment of Proceeding

President Michael Peevey is the Assigned Commissioner 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 arm consumers with the tools necessary to empower themselves when making decisions about telecommunications products and services.
3. The number of complaints and inquiries to this Commission by wireless customers in 2004 constituted just .04% of the entire universe of 23 million wireless customers in California.
4. Complaints and inquiries to this Commission by wireless customers between 2000 and 2004 amount to only one-quarter of the total complaints and inquiries concerning telecommunications services.
5. With respect to complaints concerning billing, the record evidence in this proceeding does not include an analysis to enable us to draw valid inferences concerning the substance of the complaints nor does it permit us to determine whether a proposed rule would prevent customer complaints.
6. The record evidence concerning disclosure complaints against wireless carriers is insufficient to determine whether the matters fall within the Commission's jurisdiction or that of the Federal Communications Commission.
7. Carriers already make substantial disclosures to telecommunications customers.
8. There is no reliable baseline evidence in the record of this proceeding that enables us to determine how the number of consumers complaining about telecommunications service compares with consumer experiences in other areas.
9. The record of this proceeding provides no explanation of why complaints concerning wireless service are made at levels and rates far below those for wireline service.

10. 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.
11. Survey data in the record of this proceeding does not permit us to draw conclusions concerning customer service and satisfaction in California.
12. Anecdotal evidence can prove valuable to the Commission in developing enforcement and education programs.
13. Anecdotal evidence does not provide a basis for imposing wholesale regulations on an industry.
14. Carriers introduced credible evidence that detailed prescriptive regulations would impose significant new costs on them.
15. When customers have a choice of service providers, investments serve as "hostages" that create economic incentives to maintain good reputations with customers.
16. There are substantial consumer protection laws and rules already in place concerning wireline and wireless telecommunications services.
17. Public safety is critical to consumer protection, and as such, public safety rights are properly included in the Consumer Bill of Rights.
18. Increasing competition in the provision of telecommunications services reduces the need for Commission regulation of telephone service providers.
19. Freedom of choice better enables consumers to benefit from competitive markets.
20. Some laws and regulations are applicable only to providers of basic service.
21. Regulations applicable to providers of basic service are not necessarily applicable to providers of wireless service.
22. Carriers introduced credible evidence that consumers are protected by existing rules, laws, and guidelines.

23. The substantial majority of small businesses in the state of California have less than ten employees.
24. A single T-1 can serve 24 lines.
25. 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.
26. The record developed in this proceeding does not support the imposition of new detailed prescriptive regulations on telephone service providers.
27. 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, worker identification, and emergency 911 service to wireless carriers.
28. The rules requiring compliance with CAB requests for information support the Commission's mission to oversee the telecommunications industry.
29. The rules requiring worker identification and the provision of 911 service promote public safety.
30. 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.
31. Aside from our efforts in this proceeding, the rules pertaining to non-communications-related charges on telephone bills have never been formally re-evaluated
32. The record developed in this proceeding shows that the Interim Non-Com Rules place a considerable burden on consumers and carriers alike.

33. 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 or an "equally reliable security procedure" when incurring even modest non-communications charges.
34. There are other ways of verifying charges other than requiring the entering of a PIN.
35. In the four years that the Interim Non-Com Rules have been in place, not one single carrier in California has elected to offer this billing service pursuant to the Rules.
36. The evidence in this record shows that in jurisdictions outside California, customers are ready, willing, and able to place non-communications charges on their phone bills.
37. The "opt-in" requirement in the Interim Non-Com Rules has discouraged non-communications services billing.
38. For small carriers, the requirement of "written prior authorization" has been burdensome because of the costs of tracking which customers have opted-in.
39. Because of the diversity of security measures available, it is not reasonable for this Commission to micro-manage the form of security, as the Interim Non-Com Rules do.
40. The repeal of the Interim Non-Com Rules will not likely result in any significant detriment to consumers, and likely will provide the benefit of new services.
41. The adoption of cramming rules is needed to provide clarification of statutes that address cramming.
42. It is reasonable to require a carrier to resolve a cramming complaint within thirty days of the date the carrier received the complaint.
43. The Commission has a significant backlog of consumer complaints.

44. The Regulatory Complaint Resolution Forum offers a mechanism for improving the processing of consumer inquiries and complaints.
45. It is reasonable to rely on the best practices of other states that handle consumer complaints concerning telecommunications carriers.
46. The evidence in this proceeding concerning the difficulty of using the complaint data and the significant backlog in the processing of complaints demonstrate that it is reasonable to increase call center staff, call center resources, and the call center database.
47. Call center hours are currently only from 10 A.M. to 3 P.M.
48. Because of the linguistic diversity of California customers, it is reasonable to staff some call center positions with bilingual staff.
49. CBOs possess unique insights into the consumer problems faced by specific communities.
50. A special telecommunications fraud unit would enhance the Commission's ability to respond to this form of consumer fraud.
51. Current enforcement proceedings are cumbersome, expensive, and lengthy.
52. 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.
53. 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.
54. It is reasonable to hold a workshop on the best way to implement reporting requirements pursuant to P.U. Code § 2889.9.

Conclusions of Law

1. Since complaints by wireless customers run at one quarter the rate of complaints by wireline customers, it is not reasonable to make a wholesale extension of wireline regulations to wireless carriers.

2. It is not reasonable to reinstitute the version of that General Order previously adopted by D.04-05-057 and later suspended by D.05-01-058.

3. 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.

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 private assertion of liability against a telecommunications carrier including, without limitation, monetary damages, restitution, or injunctive relief.

5. The consumer rights regarding disclosure, privacy, public participation and enforcement, accurate bills and dispute resolution, non-discrimination and public safety contained in G.O. 168 are reasonable and consistent with the provisions of the P.U. Code.

6. It is reasonable to expand the scope of the public safety rules requiring worker identification and access to 911 emergency services, even when a bill is delinquent.

7. For the worker identification rule, it is reasonable to define a small business as a business or individual that subscribes or applies for not more than ten telephone access lines from any single carrier.

8. Rules requiring carriers to comply with information requests from this Commission are reasonable in light of the statutory obligations contained in the P.U. Code.

9. The Commission should increase call center staff and call center resources, as well as redesign the call center database.

10. The Commission should work with the Department of Personnel Administration to increase the number of bilingual CAB personnel.

11. The Commission should develop an action plan to facilitate partnering with CBOs.

12. The Commission should review its formal complaint process and identify areas for improvement.

13.. Additional enforcement personnel can prepare cases to address telecommunications fraud.

14. The rules and regulations contained in Parts 2, 3, and 4 of G.O. 168 may be utilized by law enforcement authorities to form the predicate for civil or criminal action in their enforcement of generally applicable consumer protection laws.

15.. Cooperation and coordination between law enforcement agencies taking concurrent actions and the Commission will help to ensure that no remedy sought by the public attorneys undermine or interfere with administrative remedies imposed by the Commission or hinder the ability of the Commission to effectively and efficiently carry out its statutory and constitutional mandates.

16. Through its orders in CC Docket No. 94-129, the FCC has given each state the option to act as the adjudicator of slamming complaints, both interstate and intrastate. California has opted to do so.

17. The FCC has given states which elect to handle slamming complaints great latitude in fashioning their own procedures, so long as those procedures are not inconsistent with Section 258 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996.

18. Current law prohibits carriers from placing unauthorized charges on their customers' phone bills.

19. The cramming rules adopted herein are reasonable and consistent with the provisions of the P.U. Code prohibiting the placing of unauthorized charges on customers' phone bills.

20. 19. The Commission should reinstitute the RCR Forum to improve the processing and resolution of consumer inquiries and complaints.

21. The Commission should host a workshop to learn about other jurisdictions' best practices with respect to handling consumer complaints involving telecommunications carriers. It is reasonable to consult with NARUC and NRRI on this matter, as well as leading states.

22. It is reasonable for the Commission to seek to increase the call center hours from 8 a.m. to 6 p.m.

23. The Commission should participate in conference calls and meetings involving state attorneys general and state commission personnel.

24. The Commission should explore ways to cooperate with the FCC and FTC concerning consumer issues.

25. The Commission should create a telecommunications consumer fraud unit.

26. The Commission should determine whether it is feasible to implement a streamlined enforcement procedure, such as a citation program.
27. The Commission should develop a new initiative to educate consumers.
28. Monitoring and evaluation is key to effectiveness of consumer education programs.
29. The Commission should adopt revised G.O. 168, Market Rules to Empower Telecommunications Customers and to Prevent Fraud (Appendix A to this order).
30. 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.
31 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.
32. The incremental benefits of revised G.O. 168 outweigh its incremental costs.
33. The Commission has complied with P.U. Code § 321.1.
34. The Commission should produce a report annually evaluating how to improve the consumer education program and assessing its effectiveness.
35 The parties to this proceeding have been provided with notice, and an opportunity to be heard through their multiple rounds of comments and replies to comments, their prepared testimony, and a formal hearing.
36. 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.
37. Pursuant to P.U. Code § 2889.9, carriers should be subject to Commission-imposed reporting requirements related to cramming.
38. This order should be effective today.

ORDER

IT IS ORDERED that:

1. The Interim Rules Governing the Inclusion of Non-Communications-Related Charges in Telephone Bills, adopted in Decision (D.) 01-07-030, are repealed.

2. G.O. 168, "Market Rules to Empower Telecommunications Customers and to Prevent Fraud," is hereby adopted and shall replace the version of that General Order previously adopted by D.04-05-057 and later suspended by D.05-01-058. Revised G.O. 168 shall become effective upon the issuance of this Order. A copy of the new General Order is attached to this decision as Appendix A.

3. Commission-regulated telecommunications carriers of all classes shall bring their operations into full compliance with General Order 168 and this order not later than 180 days after this ordered was mailed.

4. The 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.

5. The principles contained in this Consumer Bill of Rights and Freedom of Choice 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 that would not exist absent the foregoing principles.

6. The Commission's General Counsel and Chief ALJ are directed to prepare for Commission consideration a resolution recommending an appropriate process for resolving timing, format, scope, and burden concerns regarding Commission staff's access to information.

7. Within 180 days of the issuance of this decision, staff shall hold a workshop to determine appropriate reporting requirements pursuant to P.U. Code § 2889.9. Afterwards staff shall propose cramming-related reporting requirements that direct carriers to provide, among other items, the number and percentage of cramming complaints that take more than thirty days to resolve.

8. The Director of Customer Service and Information Division (CSID) shall work with telecommunications carriers to develop specific protocols and processes that ensure prompt attention to and timely conclusions of informal complaints. Our expectation is that these efforts will occur through a collaborative process, culminating in a voluntary agreement between CSID and the telecommunications carriers of how informal complaints will be handled expeditiously.

9. CSID shall work with our state's larger telecommunications carriers to establish company-specific senior management personnel contacts for each company, so that particularly troublesome complaints can receive prompt action from a senior-level carrier official with greater authority than the lower-level staff.

10. CSID shall explore the practicality and feasibility of developing the ability for real time, three-way conversations with Consumer Affairs Branch staff, the affected utility, and the consumer, with a goal of immediate resolution of the complaint in most cases. CSID shall report back to the Commission within 180 days of the effective date of this decision regarding steps it is taking to assess the feasibility of such a process.

11. The Director of CSID shall re-institute the Regulatory Complaint Resolution Forum, as described in the Renewal of the Regulatory Complaint Resolution Forum section of this decision. The Director shall report back to the Commission within 120 days of the effective date of this decision regarding the progress made in reestablishing the Forum.

12. The Director of CSID shall host a workshop to learn about other jurisdictions' best practices with respect to handling consumer complaints involving telecommunications carriers, as described in the Investigation of State Best Practices Part of this decision.

13. The Commission's Executive Director shall work with the Department of Personnel Administration to obtain bilingual CAB and CPSD personnel, as described in the Enhancement of Call Center Staffing and Resources Part of this decision.

14. The Directors of CSID and Telecommunications Division shall develop an action plan designed to facilitate our partnering with CBOs as described in the Greater Utilization of Community Based Organizations Part of this decision, and shall present their plan to the Commission within 180 days of the effective date of this decision. The Director of CSID shall also keep statistics on complaints resolved in partnership with CBOs, and shall report on any successes or shortcomings with respect to our interactions with CBOs.

15. The Chief Administrative Law Judge and Director of CSID shall review the formal complaint process and our public information efforts and report back to the Commission within 180 days, identifying any areas for improvement to make it more consumer friendly, as described in the Examination of Formal Complaint Procedures section of this decision.

16. Commission staff shall publicize how consumers can use our telephone hotline to report allegations that a telecommunications carrier or its dealer or agent is engaged in fraudulent practices, as described in the Expansion of our Toll-Free Hotline section of this decision. Such allegations shall receive priority attention by our staff.

17. CPSD shall work with the Legal Division to explore alternative enforcement mechanisms that permit us to intervene earlier in cases where we observe violations of the P.U. Code and/or Commission rules.

18. Commission staff shall engage in the practice of collaborative law enforcement as described in the Increased Cooperation with Local Law Enforcement Part of this decision. No enforcement action at the Commission shall be launched without staff first considering whether a matter would be best addressed by the AG, a DA, or other government agency. If a matter can be best addressed outside the Commission, the staff shall promptly refer the matter to outside law enforcement officials. We further direct Commission staff to begin participating in the regular conference call among state AG and public utilities commission personnel.

19. Commission staff shall explore and build upon areas of mutual interest with appropriate Federal Communications and Federal Trade Commission personnel, as described in the Further Collaboration with Federal Government Officials section of this decision. Commission staff shall explore the possibility of drafting a Memorandum of Understanding with the Federal Communications Commission on how we may jointly address matters that are regulated primarily at the federal level, but nonetheless generate complaints at our state Commission. We also direct staff to rejoin the SNAP" call, where state and FCC officials discuss general consumer issues.

20. The CPSD Director shall create a special Telecommunications Consumer Fraud Unit within CPSD, to be dedicated to investigating, documenting, and resolving allegations of telecommunications consumer fraud, as described in the Creation of a Special Telecommunications Fraud Unit Part of this decision.

21. The Director of CPSD, in consultation with the Chief ALJ and the General Counsel, shall investigate the feasibility and potential effectiveness of instituting a citation forfeiture program for violations of P. U. Code Section 2889.5 similar to the

one the Commission has utilized in our regulation of transportation, as described in the Initiative to Streamline Enforcement Proceedings Part of this decision. The Commission's Executive Director shall direct the examination of our current investigative and enforcement process and provide the Commission with any other recommendations on how it may be streamlined and/or its effectiveness be increased.

22. If it is determined by the Director of CPSD, in consultation with the Chief ALJ and the General Counsel, that a citation forfeiture program would be feasible and would be an effective tool for enforcement of the Commission's slamming rules, it shall, after an opportunity for input and comment by stakeholders, bring such a proposal before the Commission for consideration.

23. 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.

24. 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.

25. Commission staff is directed to prepare a report on the special problems faced by consumers with limited English proficiency following the guidelines described in the Further Review of In-Language Issues Part of this decision. Staff's report shall be presented to the Commission not later than 180 days from the effective date of this decision.

26. The Director of CSID shall investigate the possibility of creating a Small Business Ombudsman at the Commission, as described in the Educational Content Part of this decision.

27. The Director of CSID shall ensure that the Division reaches out to CBOs that provide services to disabled consumers when it addresses accessibility of our website and other educational materials, as described in the Dissemination of Educational Materials Part of this decision.

28. Commission staff shall develop a collaborative forum to contemplate various monitoring and evaluation options and shall create an education monitoring and evaluation program based on its review of different features described in the Monitoring and Evaluation Part of this decision.

29. Commission staff shall provide the Commissioners with an annual education monitoring and evaluation report covering each calendar year no later than June 1st the following year, as described in the Monitoring and Evaluation Part of this decision.

30. Pending an augmentation of the Commission's budget, the Director of CSID shall develop and implement an interim consumer education campaign using existing Commission staff and resources within 120 days of effective date of this decision, as described in the Monitoring and Evaluation Part of this decision.

31. In order to support current and future efforts, Commission staff shall schedule workshops with carriers and CBOs to discuss resources available to support the Commission's education efforts.

32. We direct Commission staff to analyze and create a report on in-language practices and any special disadvantages faced by telecommunications customers with limited English proficiency. Staff shall hold at least two workshops at two different phases of the study. This first workshop, with an agenda as discussed herein, will occur after staff circulates a study plan that identifies past Commission efforts, state and federal agencies to be surveyed, and other information sources encompassed within the study. The second workshop shall occur after staff releases

a draft report to allow participants an opportunity to discuss and comment upon the report before a final version is issued.

33. The various motions, applications for rehearing, and petitions for modification described in the Other Procedural Matters Part of this order are granted and denied as set forth herein.

34. Rulemaking 00-02-004 is closed.

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 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.[389]

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.

Privacy:

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

Public Participation and Enforcement:

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[389] *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).

- 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 mechanisms for resolving disputes and correcting errors that are accessible, if readily achievable; fair; efficient; and reasonable.

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 voice providers 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 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.

These rules shall not be interpreted to create any new private right of action, to abridge or alter a right of action under any other state or federal law, or to create liability that would not exist absent the foregoing rules.

The standard to be applied in the construction and application of these rules is that of a reasonable consumer.

B. Rules

Rule 1: Commission staff Requests for Information

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

(a) This rule only applies to individuals and small businesses that purchase, subscribe to, or apply for a telecommunications service subject to Commission jurisdiction. For the purposes of this rule, a small business is a business or individual that subscribes or applies for not more than ten telephone access lines from any single carrier, and a business or individual subscribing to or applying for a T-1 line may not be considered a small business customer. For purposes of this rule, all entities other than individuals (e.g., government and quasi-governmental agencies, associations, etc.) meeting the ten-access limit are treated identically with small businesses.

(b) Every carrier shall prepare and issue to its employees and contractors who, in the course of their employment, have 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 or contractor. The carrier shall require its employees and contractors to present the card upon requesting entry into any building or structure on the premises of an applicant or subscriber.

(c) Every carrier shall require its employees and contractors 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.

(d) No carrier shall misrepresent, or allow its employees or contractors 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

(a) 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.

(b) No carrier shall terminate such access to 911 emergency service for non-payment of any delinquent account or indebtedness owed to the carrier.

(c) Nothing in this rule shall require a local telephone corporation to provide 911 emergency service pursuant to this section if doing so would preclude providing service to subscribers of residential telephone service.

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.

These rules shall not be interpreted to create any new private right of action, to abridge or alter a right of action under any other state or federal law, or to create liability that would not exist absent the foregoing rules.

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.

The standard to be applied in the construction and application of these rules is that of a reasonable consumer.

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.

(f) Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

[Comment:Nothing in these Part 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 P.U. Code § 2889.5 or the FCC's slamming rules.

(a) *Address:* Complaints may 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.

Part 4 – Rules Governing Cramming Complaints

A. Applicability

The purpose of these rules is to clarify telephone companies' responsibilities, and the procedures they must follow, for addressing cramming complaints. Cramming occurs when an unauthorized charge is placed on a subscriber's phone bill.

Compliance with these rules does not relieve phone companies 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 enhance its cooperation with law enforcement authorities and other appropriate government agencies to enforce consumer protection laws.

These rules shall not be interpreted to create any new private right of action, to abridge or alter a right of action under any other state or federal law, or to create liability that would not exist absent the foregoing rules.

The standard to be applied in the construction and application of these rules is that of a reasonable consumer.

B. Definitions

Complaint: Any written or oral communication from a person or entity that has been billed for a charge that the person or entity alleges was unauthorized and that was billed, either directly or indirectly, through a telephone company.

Investigation: An inquiry conducted by (i) the person or entity from which the disputed charge originated, (ii) a telephone company that provides billing services to any third party (including its own affiliate), (iii) the Commission, or (iv) any other relevant government agency, such as the District Attorney's office in the subscriber's county or the AG's office.

Telephone company: A telephone company is any telephone corporation (as defined in P.U. Code § 234) operating within California. This term includes resellers and wireless telephone service providers.

Subscriber: A person or entity that subscribes to a telecommunications network or service subject to Commission jurisdiction.

User: A person or entity using a telecommunications network or service subject to Commission jurisdiction.

C. Rules

(a) **Billing for Authorized Charges Only**: Telephone companies may bill subscribers only for authorized charges.

(b) **Authorization Required**: In the case of a complaint, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the user. A telephone company may establish that a user authorized a charge with (i) a record of affirmative user authorization, (ii) a demonstrated pattern of knowledgeable past use, or (iii) other persuasive evidence of authorization. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization.

(c) **Nonpayment of Charges During an Investigation**: While a complaint investigation is pending, the subscriber shall not be required to pay the disputed charge or any associated late charges or penalties; the charge may not be sent to collection; and no adverse credit report may be made based on non-payment of that charge.

(d) **Complaint Resolution**: If a telephone company receives a complaint that the user did not authorize the purchase of the product or service associated with a charge, the telephone company, not later than 30 days from the date on which the complaint is received, shall either (i) verify and advise the subscriber of the user's authorization of the disputed charge or (ii) undertake to credit the disputed charge and any associated late charges or penalties to the subscriber's bill.

(e) **Other Available Rights**: Nothing herein shall prevent a subscriber from exercising his or her other rights.

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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 P.U. 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[390]

[390] 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	BUS. & PROF. Code § 17500	Prohibits untrue, misleading, and fraudulent statements in advertising.
	BUS. & PROF. 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, 3rd Interim Opinion, D. 05-01-032, 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 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, App. B, § 3, Rule 1	requires CLECs to provide on request: • carrier identification number; • carrier phone number and address for billing and service inquiries; • CPUC telephone number; • copy of consumer protection regulations.
	Same, Rule 2	requires CLECs to inform prospective customers: • about ULTS. • prior to agreement, of all charges for services and other charges on first bill. requires CLECs to provide new customers: • confirmation of services ordered and charges, within 10 days, in language of sale. • 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, App. B, § 3, Rule 6(A)(1)	requires CLEC to provide: • rates, terms and conditions on request to current or potential customer. • 30 day prior notice of major rate increases. • notice of changes to terms and conditions.
	Same, Rule 6(B)(2)	requires CLEC to provide: • 7 days prior notice of termination for nonpayment • 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, 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*
	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
Regulations	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	BUS. & PROF. 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 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 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, 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	BUS. & PROF. 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 the CPUC to establish rules for reporting subscriber complaints
	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	BUS. & PROF. 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; 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 D. 86-04-046	requirements for LECs for late payment charges
	D. 86-12-025	backbilling rules
	D. 95-07-054, 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, App. A, Part 4 § F (1) – (2)	requires CLEC to serve customers requesting service within its service territory on nondiscriminatory basis
	D. 95-07-054, 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, App. B, Rule 4.B	elements of basic service
	D. 01-07-026, 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	BUS. & PROF. 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.
- Commission staff will develop the Commission's education program with input from consumer groups and industry representatives.
- 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.
- Periodically and at least once a year, Commission staff and parties will 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
    - Non-disconnect of local service for unpaid long-distance or other non-local service charges

2. Making an Informed Choice
    - Overview of various types of providers
    - Finding a provider in your area
    - Comparing plans, services, and prices
    - 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
    - Unauthorized charges may not be included

6. Solving Problems: Whom to contact for help
    - Your carrier
    - Community-based organizations
    - Consumer groups
    - CPUC
    - Other governmental agencies

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
    - When a provider may disconnect your 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