Decision 10-10-034 October 28, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

FINAL DECISION ADOPTING CALIFORNIA TELEPHONE CORPORATION BILLING RULES

1. Summary

This decision revises Part 4 of General Order No. 168, Market Rules to Empower Consumers and to Prevent Fraud – Rules Governing Cramming Complaints. In furtherance of the enforcement of these Rules, the revised rules establish cramming reporting requirements applicable to all Billing Telephone Corporations and Billing Agents and combine and clarify two previously issued sets of rules into a comprehensive standard set of rules applicable to all Billing Telephone Corporations, including resellers and wireless service providers.

2. Background

In Decision (D.) 06-03-013, the Commission adopted revised General Order (GO) 168. Among other things, GO 168 included a cramming rule, which established that: (1) telephone companies may only bill subscribers for authorized charges; (2) the burden is on telephone companies to establish authorization of a disputed charge; and (3) 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 Commission also emphasized that carriers are the responsible party for all charges placed on their bills and for policing their bills. The decision also directed staff to hold a workshop to determine appropriate reporting requirements pursuant to Pub. Util. Code § 2889.9[1] and propose cramming-related reporting requirements. (D.06-03-013, OP 7.)

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

Based on these comments and the existing rules from D.00-03-020, D.00-11-015, and D.06-03-013 (GO 168, Part 4), Commission staff prepared a standard set of rules for billing which would apply to all California telephone companies, including wireless carriers. The proposed rules covered subscriber authorization, requirements for offering billing services, dispute resolution responsibility, and reporting requirements.

On February 12, 2010, the assigned Commissioner issued a ruling seeking comment on the proposed rules. In response to the ruling, 25 comments were received and 18 reply comments were submitted. These comments and replies are summarized below.

In July 2010, CTIA – The Wireless Association, CTIA initiated a series of meetings with the Commission's Consumer Protection and Safety Division

[1] All citations are to the Public Utilities Code unless otherwise indicated.

(CPSD), Commissioner offices and consumer groups to present their alternative proposal to the proposed rules. On August 7, 2010, at the request of the assigned Commissioner, CTIA filed its proposal in the form of supplemental comments. Comments on CTIA's alternative proposal were filed on August 16, 2010.

3. Positions of the Parties

The Division of Ratepayer Advocates (DRA)

DRA encouraged the Commission to protect consumers by fulfilling its promise to step up its enforcement efforts and adopt the proposed rules, with several recommended enhancements. DRA challenged the carriers' claims that they can "self-police" with "best management practices" because each entity in the "third-party billing food chain gets a slice of the revenues."[2]

DRA presented evidence that instances of unauthorized charges on local exchange and wireless bills are increasing, and reflect sophisticated international schemes to defraud customers.[3] DRA included summaries of victims' complaints showing the financial and clerical burden imposed on victims who must hunt down unauthorized charges in increasingly complicated billing statements and obtain refunds only after repeated telephone calls.[4] DRA also included in its Opening Comments an injunction issued by the Honorable William Alsup of the U.S. District Court for the Northern District of California against crammer Inc21.com Corporation. Among other things, Judge Alsup's injunction chastised the local exchange carriers for failing to protect their

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[2] Opening Comments of the Division of Ratepayer Advocates on Cramming Complaint Reporting Rules Pursuant to February 12, 2010, Assigned Commissioner Ruling at 6.

[3] *Id*. at 3 – 7.

[4] *Id*. at 7 – 8.

customers from these fraudulent charges.[5] DRA recommended that all Billing Telephone Corporations be required to provide subscribers with a cost-free option to block all third-party billing, and actively inform their customers of the option.[6] DRA explained that the Commission has received complaints of carriers telling subscribers who request such a block that state and federal law mandates that the carrier provide billing to third parties.[7]

DRA supported aggressive billing termination processes and suggested clarifications to the standards. DRA also recommended that the Commission publish each carrier's termination and complaint data on the Commission's web site for prospective subscribers.[8]

The Utility Consumers Action Network (UCAN)

UCAN described the proposed rules as an "overdue step forward" to address a key failure in protecting communications consumers – the systemic practice of Billing Telephone Corporations to refuse to investigate and resolve customer complaints of unauthorized charges.[9] UCAN explained that the practices of Billing Telephone Corporations enables unauthorized billing to continue because these Corporations have no incentive or requirement to

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[5] Memorandum Opinion and Findings In Support of Preliminary Injunction, Feb. 19, 2010, F.T.C. v. Inc21.com Corp., No. C 10-00022 (N.D. Cal. March 16, 2010).

[6] *Id*. at 10.

[7] *Id*.

[8] *Id*. at 13 – 14.

[9] Comments of the Utility Consumers' Action Network on Assigned Commissioner's Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules at 2.

aggressively prevent and, failing that, to identify and remedy unauthorized billing.

UCAN recommended that the key to adopting rules that will prevent unauthorized billings is that the revised rules clearly state that Billing Telephone Corporations are responsible for all items in bills presented to subscribers.[10] UCAN found the proposed rule "unsettlingly vague" in light of the importance of this provision. UCAN proposed significant revisions to the rule to articulate standards for ensuring that only authorized charges for legitimate service providers are included on subscribers' bills. UCAN's revisions focused on the need for mandating investigations by Billing Telephone Corporations of all disputed charges, and requiring that the Billing Telephone Corporation "take responsibility for its billings" and not force subscribers to pursue unresponsive third parties.[11]

UCAN supported the disclosure requirements for service providers but suggested that Billing Telephone Corporations and Billing Agents be required to retain records of their pre-contract inquiry into a prospective billing service customer.[12]

UCAN recommended that the requirements for the billing termination process be clarified to specify exactly when a Billing Telephone Corporation or Billing Agent must investigate and report bad actors to the Consumer Protection and Safety Division (CPSD).[13] UCAN pointed out that alleged service provider

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[10] *Id*. at 11.

[11] *Id*. at 12 - 14.

[12] *Id*. at 14.

[13] *Id*. at 14 – 17.

errors could be used to explain unacceptable levels of unauthorized billings which would allow bad actors to continue to avoid detection.

UCAN supported the proposed complaint reporting requirements but recommended that the obtained information, redacted to remove customer-specific data, be published on the Commission's web site.[14] UCAN stated that having this information available for consumers and other Billing Telephone Corporations will assist in preventing future unauthorized billings.

The Utility Reform Network (TURN)

TURN commended the assigned Commissioner for proposing "real protections for consumers" and intensifying the Commission's focus on prevention of unauthorized charges by providing strong disincentives to "all players in the billing value chain."

TURN took issue with the proposed rule requiring subscriber authorization and contended that "specific, written authorization" should be required as was recently adopted in Illinois. TURN recommended deleting the rule that proposed for direct-dialed telephone service, that evidence that the call was dialed be prima facie evidence of authorization.

TURN opposed the "watered-down" standard of "commercially reasonable" actions to ensure that only authorized charges are presented on a bill. TURN explained that this loophole was confusing for all the parties, and that at least one Billing Telephone Corporation interpreted it as a reduction in the level of consumer protection required. TURN provided quotations from Verizon Communications, Inc., in a federal court pleading describing the

[14] *Id*. at 17.

proposed rules as reflecting "a more modest obligation" to prevent unauthorized billings. TURN pointed out that telecommunications providers have no financial incentive to monitor the actions of their billing partners because these providers achieve "significant profitability" from the sale of billing services. TURN identified another, similar loophole in the proposed rule for disclosure requirements, and sought clarification on the "10%" standard of billing service termination.

TURN opposed the flexible compliance option for unauthorized billing record retention and stated that this option gives the Billing Agents and Billing Telephone Corporations "way too much discretion."

TURN supported the monthly report preparation and proposed that the report be submitted monthly, rather than quarterly. Finally, terming the proposed amount "literally a pittance," TURN recommended that the fine for not filing a report be increased to correlate with revenues earned by the billing entity.

AT&T California (AT&T)[15]

AT&T explained that it requires all service providers, including those billing through a Billing Agent, to complete an application process before billing begins. AT&T reviews the applications and checks the applicants against an internal data base to "identify possible problems."[16] AT&T collects cramming complaint data monthly for both Billing Agents and individual service

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[15] AT&T California submitted joint comments with AT&T Communications, Inc. and New Cingular Wireless, PCS, LLC.

[16] Opening Comments of AT&T California, AT&T Communications of California, Inc, and New Cingular Wireless PCS, LLC. at 5.

providers. If the monthly reports exceed unspecified "threshold" levels, then AT&T may impose remedial action including terminating billing services. For every customer complaint of unauthorized charges, the responsible service provider must pay AT&T $150 and additional fees apply for "excessive adjustments to end-user bills above a threshold."[17]

AT&T stated that in response to continuing customer complaints, it has recently adopted "even more stringent anti-cramming measures" for its billing services customers and that it has had to completely discontinue billing for voice mail, e-mail, web hosting, and internet-based directory assistance because "cramming complaint rates were notably high."[18] AT&T also recently provided all its customers service representatives with enhanced training to identify and respond to cramming complaints. As a result of this training, AT&T has been able to obtain better cramming complaint reports and has used this data to terminate billing services to service providers.

AT&T concluded that it is "in the process of considering several possible, new anti-cramming measures, and it is open to considering all reasonable options." AT&T cautioned, however, that any such measures "must be carefully considered in light of its effectiveness, cost, complexity, and burdens imposed both on industry and on customers seeking to pay for purchases through their telephone bills."[19]

AT&T's primary objection to the proposed rules were several areas of "vague and overbroad language" that "fail to set clear and specific standards."

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[17] *Id*.

[18] *Id*. at 5 – 6.

[19] *Id*. at 6.

AT&T focused this criticism on Rules 4 and 5, which require Billing Telephone Corporations to "monitor" billings and take "all commercially reasonable steps" to ensure that only authorized charges are billed.[20]

For wireless carriers, AT&T recommended limiting their reporting requirements to service providers that have been terminated from billing services.[21]

AT&T also contended that the Commission has sufficient authority over wireline Billing Telephone Corporations that requiring these corporations to tally and report complaints of their own unauthorized charges is unnecessary and inefficient.[22] AT&T opposed including false, misleading, or deceptive charges within the meaning of cramming.

In reply to the comments filed by other parties, AT&T emphasized that: "there is no evidence that stricter monitoring requirements or reporting obligations will offer any additional protections to consumers."[23] AT&T supported workshops to discover whether "any modifications should be made to current rules to encourage more robust consumer-driven measures against incidences of cramming."[24] AT&T supported focusing on the "customer acquisition end" of third-party sales transactions rather than on the "billing end." AT&T conceptually supported DRA's call for "the cost-free option to block

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[20] *Id*. at 8 – 11.

[21] *Id*. at 6 – 7.

[22] *Id*. at 17.

[23] Reply Comments of AT&T California, AT&T Communications of California, Inc., and New Cingular Wireless PCS, LLC. at 2.

[24] *Id*.

third-party billing at any time," and recommended workshops to sort out the details.[25]

Verizon California Inc. (Verizon)

Verizon stated that the proposed rule revisions upset the balance created in earlier decisions in this docket between allowing third-party billing for the benefit of consumers and imposing safeguards that protect consumers.[26] In light of the significant changes proposed, Verizon recommended that the Commission hold further hearings or workshops to allow for further comments on concerns expressed by the parties.

Verizon opposed expanding existing reporting requirements to include charges imposed by Billing Telephone Corporations.[27] Verizon explained that the volume of customer billing issues regarding its own services would overwhelm Commission's staff with useless information and obscure the relevant information about Verizon's customer complaints that the Commission's staff already receives in the Consumer Affairs Branch. Moreover, the ultimate sanction of prohibiting further billing services would be unavailable with carriers of last resort, such as Verizon.

Verizon spelled out the additional protections its customers have from unauthorized charges:[28]

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[25] *Id*. at 10.

[26] Opening Comments of Verizon California, Inc. on the Assigned Commissioner Ruling Requesting Comments on New Cramming Rules at 3.

[27] *Id*. at 7 – 12.

[28] *Id*. at 8.

1. Verizon only allows "authorized users" to add or change services, and offers an optional security code to further limit account access.
2. Verizon mails a written confirmation letter setting out the terms and conditions of any change to an account.
3. Customers are offered a free block of all pay-per-use service charges as required by California and federal law, and have a one time bill adjustment for such services that were inadvertently ordered.
4. California law also requires Verizon to offer its customers a free block of all charges for 900 and 976 services.

Ultimately, Verizon concludes, the proper remedy for unauthorized billings by a Billing Telephone Corporation such as itself is an Order Instituting Investigation triggered by complaints directly to the Consumer Affairs Branch.[29] As such, there is no need for Verizon to compile the voluminous details of its customer disputes and separately report them to the Commission a second time.

SureWest Telephone (SureWest)

SureWest argued that the proposed rules exceeded the scope of this phase of the consumer protection proceeding and were procedurally improper and substantially unjustified. SureWest stated that the proposed rules go far beyond the directive in D.06-03-013 to craft rules for reporting requirements and the record includes no evidentiary basis for the proposed rules.[30]

SureWest claimed that the proposed rules "improperly shift the burden of third-party oversight and enforcement onto carriers rather than the CPUC."

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[29] *Id*. at 12.

[30] Opening Comments of SureWest Telephone on the Assigned Commissioner Ruling Requesting Comments on Proposed California Telephone Corporation Billing Rules at 1 -5.

Decrying the onerous, unnecessary burden to "police their own bills," SureWest argued that this was an improper abdication of the Commission's responsibility for consumer protection.[31]

SureWest argued that the proposed definition of "customer complaint" was overly broad: "Disputes regarding the terms and conditions of service, including associated allegations from consumers that they have been mislead, should not fall under the term 'cramming.'[32] Including these matters in a cramming reporting regime will only distort 'cramming' issues and thwart efforts to pinpoint the real problems that the Commission should be identifying."[33]

SureWest concluded its comments with a list of rules that required additional clarification.

Small Local Exchange Carriers

The small local exchange carriers echoed SureWest's comments, and added that they do not generally bill for unaffiliated third parties, will often have no unauthorized billing complaints and, consequently, should not be required to submit quarterly reports.[34]

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[31] *Id*. at 5 – 8.

[32] *Id*. at 7.

[33] *Id*.

[34] Opening Comments of Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Company, The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company on the Assigned Commissioner's Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules.

California Association of Competitive Telecommunications Companies (CALTEL)

CALTEL opposed extending the rules beyond third-party billing by Billing Telephone Corporations. CALTEL explained that its members provide service, often by individual case basis contracts, to small and medium sized businesses and do not provide billing and collection services for third parties. As such, CALTEL's members have few if any complaints of unauthorized charges, and customers with billing disputes have the business sophistication to address the dispute directly with their provider. CALTEL argued that including wholesale and business customers, as well as a carrier's own billings, in the cramming reporting rules was "overkill" that will impose unnecessary expense on the providers with no public benefit.[35]

Cox California Telcom LLC, dba Cox Communications, Cox TMI Wireless, LLC and Astound Broadband (Cox)

These carriers opposed the proposed rule that Billing Telephone Corporations report their own customer complaints about direct billings.[36] These carriers also recommended that customers served pursuant to a contract should be excluded from any complaint tally because these contractual disputes are not necessarily unauthorized billing, and the wholesale and business customers that

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[35] Comments of the California Association of Competitive Telecommunications Companies on on Assigned Commissioner's Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules at 3 – 5.

[36] Comments of Cox California Telcom LLC, dba Cox Communications, Cox TMI Wireless, LLC and Astound Broadband on Assigned Commissioner's Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules at pages 3 – 5.

obtain service via contract do not require Commission protection from unauthorized charges.[37]

Cox contended that the proposed prohibition of Billing Telephone Corporations directing customers to contact service providers directly would increase the Billing Telephone Corporation's cost of doing business and would conflict with existing law. Cox also opposed as vague and unnecessary the proposed rules requiring Billing Telephone Corporations to monitor third-party billings and suspend billing services where unauthorized charges occur.[38] Cox supported the Commission adopting reporting rules for third-party billing complaints that are limited to service providers for which the Billing Telephone Corporation has terminated providing services.

BSG Clearing Solutions (BSG)

BSG stated that it is the largest third-party billing aggregator in the United States and that it has been operating for over two decades.[39] Before BSG will accept billings from a service provider, BSG conducts a comprehensive due diligence process that includes, but is not limited to, background checks of all officers, directors, and individuals with decision-making authority, site visits, inquiries to local exchange carriers for past termination history, internet search for regulatory issues, and purchasing the product as if a customer.[40] The due diligence process takes three to six months and costs up to $1,000.[41] Once BSG

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[37] *Id*. at 5 – 7.

[38] *Id*. at 10.

[39] Comments of BSG Clearing Solutions at 1.

[40] *Id*. at 2.

[41] *Id.*

accepts the service provider, BSG conducts monthly reviews of its customer service inquiries and has a pre-set threshold for terminating billing services.[42] BSG also explained that it has developed a validation and authentication tool --named "URU" - for service providers that solicit over the internet. The URU tool uses thirteen different vendors to scrutinize each transaction, including Lexis/Nexis to confirm name, address, and last four of the social security number all match.[43]

Cbeyond Communications, LLC. (Cbeyond)

Cbeyond stated that it provides telecommunications services to business customers only and that it does not allow charges for third-party services or products to be placed on its customers' bills. Cbeyond contended that the proposed rules were overly broad in including business customers because these customers are sophisticated and possess sufficient bargaining power to resolve any billing issues with a carrier.[44] Cbeyond recommended that the Commission focus its resources on carriers with a history of applying or allowing unauthorized charges on residential and small business customer bills, rather than on carriers that serve larger businesses.[45]

Miller Isar, Inc.

This regulatory consulting firm represents four non-facilities-based interexchange carriers that bill through incumbent local exchange carriers in

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[42] *Id*. at 3.

[43] *Id*. at 4.

[44] Opening Comments of Cbeyond Communications, LLC, on on the Assigned Commissioner Ruling Requesting Comments on Proposed California Telephone Corporation Billing Rules at 1 – 2.

California. These carriers read the proposed rules as applying to customer transfer requests, which are already subject to stringent customer authorization requirements. Based on this reading, these carriers concluded that the proposed rules would allow incumbent local exchange carriers to attempt to "win back" customers that have validly requested transfer to another carrier because the Billing Telephone Corporation is the final arbiter of billing disputes.[46]

ILD Teleservices, Inc. (ILD)

ILD recommended that the Commission focus on adopting the most effective and efficient ways to identify cramming and deal with subscribers and removing offending service providers from the marketplace. ILD suggested that the definition of customer complaint should exclude those instances where a proper authorization was on file.[47] ILD strongly supported allowing Billing Telephone Corporations to deflect a subscriber inquiry to the Billing Agent as the most efficient means to resolve the inquiry.[48] ILD opposed the proposed percentage standard for discontinuing billing services and supported using a longer term average, perhaps a three-month rolling average. Finally, the record keeping requirements for Billing Agents should not include the subscriber name because Billing Agents do not typically have that information.[49]

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[45] *Id*. at 3 – 5.

[46] Comments at 7 – 9.

[47] Opening Comments of ILD Teleservices, Inc., on the Assigned Commissioner Ruling Requesting Comments on Proposed California Telephone Corporation Billing Rules at 1.

[48] *Id*.

[49] *Id*. at 2.

tw telecom of California, lp (tw telecom)

This facilities-based carrier provides business telecommunications services only and does not bill for third parties. This carrier argues that applying the proposed record keeping and reporting rules to carriers that provide only business and wholesale telecommunications services is unwarranted, and that the Commission should exempt these carriers from the proposed rules as the Commission did with in-language rules in D.07-07-043.[50]

Unitedtel, LLC

Unitedtel stated that the proposed rules overly focus on individual complaints and unfairly penalize service providers that have refund rates greater than 10%. Unitedtel recommended adopting industry-wide standards for order validation as a better means to identify "bad actors" without discouraging refunds.[51]

Preferred Long Distance Inc. (Preferred Long Distance)

Preferred Long Distance opposed requiring the Billing Telephone Corporation to address complaints of unauthorized charges because these Corporations are often incumbent local exchange carriers that are in direct competition with resellers and the Billing Telephone Corporation will be overly eager to issue a refund to the customer and a charge back to the service provider, and also try to win the customer back.[52] Preferred Long Distance recommended

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[50] Opening Comments of tw telecom of California, lp at 2.

[51] Opening Comments of Unitedtel LLC on Assigned Commissioner's Ruling Requesting Comment and Briefing on Cramming Reporting Requirements at 3.

[52] Comments of Preferred Long Distance, Inc. at 1 – 4.

that the service provider be part of the dispute resolution process and have a right to appeal the outcome.

CTIA – The Wireless Association (CTIA)

CTIA stated that the proposed rules were not necessary because existing rules prohibit unauthorized charges on bills and carriers have adopted measures to prevent such practices. The "major participants in the mobile media value chain including wireless operators, aggregators, median networks, third-party content providers, agencies, brands, advertisers, hand-held device manufacturers, service providers, and market research firms" have formed the Mobile Marketing Association (MMA) to develop the acceptable method by which charges for mobile content can be placed on a customer's bill.[53] CTIA stated that: "rather than interfacing directly with each of the numerous [mobile content] providers, wireless carriers contract with a smaller group of companies known as aggregators, who in turn contract with the providers."[54] The MMA's methodology provides a standard for valid customer authorization to purchase third-party content, such a ringtones or wallpaper.

CTIA opposed obtaining the identity and regulatory compliance history of each Service Provider and instead proposed a "targeted exchange of information between carriers and CPSD" to share information on "bad actors" to preclude them from presenting further billings in California.[55] CTIA also explained that

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[53] Opening Comments of CTIA - The Wireless Association on the Assigned Commissioner Ruling Requesting Comments on Proposed California Telephone Corporation Billing Rules at 6 – 9.

[54] *Id*. at 7.

[55] *Id*. at 9 – 13.

collecting and retaining all the information listed in the proposed rules would require "significant and costly operational and system changes" in each wireless carrier's customer service center, and the data obtained will "not be reliable" due to the complex and subjective assessments each customer service representative would be required to make.[56]

Verizon Wireless

Verizon Wireless opposed the proposed rules as "unjustified" and creating an impediment to offering innovative services demanded by wireless customers.[57] Verizon explained that it allows "hundreds" of third-party content providers access to its customers' bills, and that learning the identity and regulatory compliance history of these providers would "slow down the approval process."[58] Verizon Wireless argued that the cost of the approval process could discourage carriers from offering content that did not have wide-spread appeal, resulting in fewer offerings. Verizon Wireless contended that because a carrier is a "purveyor" of information, the First Amendment to the United States Constitution prevented this Commission from imposing "pre-approval investigation requirements" on the carrier prior to accepting a billing services customer.[59]

Verizon Wireless stated that its nationwide call centers receive over 10 million calls a month and that due to the sheer volume of calls the cost of any

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[56] *Id*. at 15 – 19.

[57] Comments of Verizon Wireless on Assigned Commissioner's Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules, at 1.

[58] *Id*. at 5.

[59] *Id*. at 12 -14.

additional information tracking requirement will be "very large."[60] Verizon Wireless focused on the expense of tracking customer complaints of unauthorized charges and explained that a California-specific rule would be expensive to implement because the customer service representative would need to determine where the customer resided and then whether the call related to an unauthorized charge. The resulting data, Verizon Wireless concluded, would also be unreliable because each of its thousands of representatives would necessarily be making subjective assessments of the purpose of the call.

Verizon Wireless opposed suspending billing service for any Service Provider with a specified customer complaint or refund rate, and instead advocated that suspension decision be made as Verizon Wireless does now "based on the totality of the circumstances specific to the situation at hand."[61] Verizon Wireless also opposed revealing the identity of Service Providers with high levels of unauthorized billings to the Commission's CPSD because such Service Providers might not cooperate further with Verizon Wireless. Finally, Verizon Wireless opposed rules for lost or stolen handsets, contending that absent a "good reason" it was the subscriber's responsibility to notify the carrier of the loss or theft.[62]

Verizon Wireless recommended that the Commission retain its existing rules and add three additional rules. First, Verizon Wireless supported allowing CPSD to request and obtain a copy of a carrier's policies for approving and monitoring third-party billing customers. Second, Verizon Wireless reiterated its

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[60] *Id*. at 15.

[61] *Id*. at 23.

[62] *Id.* at 27.

earlier proposal that the Commission adopt a rule requiring each carrier to notify CPSD upon terminating billing services for a Service Provider. Finally, Verizon Wireless agreed that carriers could make information or data on circumstances surrounding the billing services contract termination available to Commission enforcement staff.[63]

Cricket Communications and MetroPCS (Cricket and MetroPCS)

Cricket and MetroPCS stated that they each offer wireless telecommunications services on a pay-in-advance basis. Customers do not receive a post-delivery bill for services but rather pay in full for a billing period prior to the period commencing. Service is offered on an unlimited basis at a constant amount for each billing period; customers who wish to purchase extra services must first establish a separate, completely optional, account to pay for the extra services.[64]

Cricket and MetroPCS described their processes for authorizing service providers of the extra services:

> Cricket and MetroPCS allow a very limited number of reputable third-party content and service providers to access their billing systems, e.g., to bill customers directly for additional content and services. Cricket and MetroPCS individually screen these third-party content and services providers and require such providers to abide by the [MMA] Guidelines, including the "double opt-in" requirement [of two affirmative acts by the customer].
>
> Cricket and MetroPCS individually evaluate and verify the legitimacy of any third-party provider through established

[63] *Id*. at 31 – 32.

[64] Comments of Cricket Communications, Inc., and MetroPCS California, LLC. at 3 – 6.

> protocols specifically designed to complement the pay-in-advance service model. Specifically, any third-party provider wishing to provide content or service via Cricket's or MetroPCS' billing system is required to submit a program summary for approval before access is granted. Cricket and MetroPCS can also audit third-party campaigns to ensure that they are functioning according to accepted standards and billing procedures.[65]

Ad Hoc Coalition for Enhanced Billing Services

This Coalition is a group of companies that provide "information and related services to consumers" and collects fees from those customers "by means of their local telephone company invoice."[66] The Coalition contends that the Commission has exceeded its jurisdiction over "non-regulated entities that rely on LEC billing" and that some of the proposed rules are pre-empted by federal rules which allow customers to be directed to billing clearinghouses to resolve complaints.[67]

AGI Publishing, Inc., d/b/a Valley Yellow Pages (Valley Yellow Pages)

Valley Yellow Pages supported preventing unauthorized charges and providing subscribers refunds for unauthorized charges.[68] Valley Yellow Pages encouraged the Commission to adopt stronger protections for valid billings from service providers. For example, it recommends that the rules be revised to state that a service provider's account shall not be subject to chargeback or debit for any refunds issued if the service provider has timely submitted proof of

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[65] Cricket and MetroPCS Opening Comments at 6 - 7.

[66] Comments of the Ad Hoc Coalition for Enhanced Billing Services at 1.

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

[68] Opening Comments of AGI Publishing, Inc. d/b/a Valley Yellow at 1.

authorization. Further, it proposes that a service provider be given the opportunity to contact a subscriber to resolve a complaint, in lieu of the Billing Telephone Corporation.[69]

PaymentOne Corporation

In reply comments, PaymentOne stated that is a billing aggregator providing access to local exchange carriers for "companies selling digital products or services" and that its billing platforms include credit card, cell phone, direct and account debit billing.[70] PaymentOne explained that it has "recently initiated an authentication protocol pursuant to which PaymentOne validates and authenticates the transaction and identity of the customer on the front" and that this new procedure has "resulted in a substantial decrease in instances of unauthorized billings."[71]

Small Resellers[72]

These firms compete with incumbent local exchange carriers, primarily for long distance services, and address the special needs of particular long distance consumers in California. Small Resellers note that they are unaware of any evidence in the record of this case that there is any increase, since GO 168 was promulgated in March of 2006, in the incidence of cramming, or unauthorized

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[69] *Id.* at 3-4.

[70] Reply Comments of PaymentOne Corporation at 1.

[71] *Id.* at 6.

[72] Legent Communications Corp., d/b/a Long Distance America (U6624C); Online Savings, LLC (U6981C); LD Access, LLC (U7048C); Inmark Inc., d/b/a Preferred Billing; Twin City Capital, LLC, d/b/a Small Business America and American Select; Affordable Long Distance, LLC; and ProTel Advantage, Inc., d/b/a Long Distance Savings.

charges appearing on telephone bills. Consequently, they oppose new rules making substantially more stringent the conditions under which they can obtain billing services in this state. The Small Resellers argue that the proposed rules would allow Billing Telephone Corporations to apply looser standards for waiving third-party charges than to waiving their own charges, leading to anticompetitive strategic behavior to eliminate competition from small carriers that are dependent on Billing Telephone Corporations for billing services.

4. Supplemental Comments From CTIA

On August 6, 2010, CTIA filed and served its supplement comments which included a proposed set of reporting rules for wireless carriers.[73] CTIA explained that the wireless parties to this proceeding[74] had developed an alternative to General Order 168 that would be applicable only to wireless carriers. The proposal called for the wireless carries to submit after-the-fact reports on termination or suspension of "campaigns or short codes" and any campaign or codes that have customer refund rates that exceed 15% for two consecutive months and $5,000/month. Such reports may be for aggregated national or California-specific data, at the election of the wireless billing telephone corporation. The proposal also called for annual reports to CPSD on the blocking options offered and any charges imposed. Finally, the proposal included workshops to enhance customer education.

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[73] The Assigned Commissioner informally authorized this filing, with the understanding that other parties would have an opportunity to file reply comments.

[74] AT&T, Spring/Nextel, T-Mobile, Verizon Wireless, and Cricket.

On August 16, 2010, TURN and DRA replied in opposition to CTIA's proposal.[75] TURN stated that the CTIA "reporting proposals personify the worst aspects of poor regulation – reports that serve no purpose to demonstrate an appearance of protecting consumers."[76] Specifically, TURN argued that the CTIA proposal was deficient in that it only applied to Premium short messaging service (SMS) campaigns and/or short codes and was "toothless" in that the proposal had no requirement for mandatory termination of such providers that place unauthorized charges on subscribers' bills.[77] TURN concluded that the CTIA proposal also failed to fulfill the requirements of Pub. Util. Code § 2889.9(d) which mandates that billing telephone companies and billing agents must report "complaints made by subscribers."[78]

DRA submitted detailed comments that thoroughly analyzed the CTIA proposal and concluded that the Commission should summarily dismiss the proposal as procedurally improper and substantively fatally flawed.[79] DRA explained that the CTIA proposal consisted largely of subjective reports that would be useless for the Commission's enforcement efforts without any mandatory requirements prohibiting the placement of unauthorized charges on subscribers' bills. These proposed reports, DRA concluded, failed to meet the

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[75] AT&T, Verizon Wireless, and Cricket also filed reply comments in support of their joint proposal with CTIA.

[76] TURN Reply Comments to CTIA Proposal at 4.

[77] *Id*. at 5.

[78] *Id*.

[79] DRA Reply Comments to CTIA Proposal at 6.

statutory requirement that carriers report subscriber complaints of third-party billing for unauthorized charges.[80]

5. Discussion

5.1. Need to Clarify Existing Rules

Despite the existence of GO 168, and extensive efforts by this Commission and our staff, along with the carriers, the record shows that unauthorized charges continue to vex California telecommunications customers. DRA presented Commission records from deeply frustrated customers showing unauthorized charges that reappear on monthly bills despite extensive time and effort to dispute the charges. The U.S. District Court opinion describes this "vulnerable underbelly" and finds the market "under-regulated." AT&T has entirely discontinued billing for certain services due to the high rate of customer complaints, and is considering additional stringent limitations.

A key objective in establishing cramming reporting requirements is to provide information to assist the CPSD in identifying unauthorized billing, bringing it to a halt, and obtaining refunds for subscribers. However, this objective can only be achieved if the information requirements are clearly articulated such that the resulting reports are useful.

Since unambiguous substantive requirements are necessary to achieve our compliance objectives, we find that it is important to ensure that Part 4 of GO 168 clearly specifies the rules required to ensure that only authorized charges are placed on a subscriber's bill. Accordingly, we clarify the current rules in Part 4 of GO 168 so that there is no ambiguity concerning the carriers' obligations

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[80] *Id*. at 6 – 10.

under the Public Utilities Code to ensure that only authorized charges are placed on a subscriber's bill.

The revised Part 4 of GO 168, we adopt today will also provide a consistent set of rules that would apply to all carriers.

5.2. Subscriber Authorization

In response to repeated and statewide unauthorized telephone billing scandals, the Legislature adopted stringent consumer protection standards for California telephone corporations providing billing and collection services to third parties. The Legislature also required the Commission to oversee third-party billing on California telephone bills. The Legislature adopted specific statutory protections for subscribers, and allowed the Commission to "adopt rules, regulations, and issue decisions and orders, as necessary, to safeguard the rights of consumers and enforce the provisions of this article." (§ 2889.9(i).)

Section 2890(a) places all authority for all charges on a telephone bill with the subscriber: "A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized." Where a dispute arises about authorization, the same statute goes on to further protect the subscriber: "[i]n the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. (§ 2890(b)(2)(D).)

For purposes of enforcement, the Public Utilities Code extends the Commission's jurisdiction over nonpublic utilities that generate a charge on a subscriber's telephone bill. Where the Commission finds that "a person or corporation" has violated §§ 2890 and/or 2889.9, the Commission is authorized to treat that person or corporation as if it were public utility for purposes of fines, contempt citations, and other penalties. (§ 2889.9(b).) The Commission also has

explicit authority to order any billing telephone company to "terminate the billing and collection services" for any person or corporation failing to comply with these statutory sections. To assist the Commission in making this determination, the statute also directs the Commission to require each billing telephone corporation, billing agent, and service provider to report subscriber complaints to the Commission, and the Commission to initiate formal investigations as necessary. (§ 2889.9(d) and (e).)

The record of this proceeding shows that many California telephone corporations do not require the firms that place charges on subscribers' bills to obtain purchase authorization from the subscriber.[81]

We have adopted modifications to GO 168 as reflected in the rules attached to today's decision to clarify that, as unambiguously required by the Public Utilities Code, the subscriber must authorize all charges that appear on a California telephone bill. We have also clarified the definition of subscriber.

5.3. Wireless Carriers and Subscriber Authorization

Currently, wireless carriers place charges for third-party content on a subscriber's bill if a text message is sent to request the third-party content and then affirmed after being informed of the price. The carriers maintain that this "double opt-in" process ensures that only third-party charges authorized by the subscriber are placed on the subscriber's bill. Finally, CTIA states that the "best practices guidelines" developed by the MMA directly addresses how charges can be placed on a subscriber's bill. It has been suggested that these proposed rules are not needed due to the adoption of the MMA's best practices guidelines

[81] See, e.g., Verizon Wireless Comments discussed above.

by most of the wireless carriers. We do not agree, as we do not believe the MMA guidelines sufficiently meet the requirements of §§ 2889.9 and 2890. For example, the MMA guidelines would allow any person in possession of the wireless handset to authorize charges to be placed on the subscriber's bill,[82] not just the subscriber as mandated by § 2890.[83]

As clarified in the revised rules, only the subscriber may authorize that a charge be placed on his/her bill. Since the current MMA guidelines do not currently limit authorization to the subscriber, use of the double opt-in process to purchase third-party content and services does not, by itself, demonstrate affirmative authorization by the subscriber.

We have considered whether the rules should be revised to require that subscribers "opt-in" to third-party billing - all bills would be closed to third-party charges absent affirmative subscriber authorization – or "opt-out" by requesting a block be placed on their lines. In their comments, some parties have proposed an "opt-in" approach as an alternative means to enhance consumer protection while simultaneously offering abundant options, and without imposing undue costs on Billing Telephone Corporations. While it is clear that an opt-in option would offer subscribers more protection from unauthorized charges, this would represent a significant operational change from current third-party billing practices and may result in customer confusion and dissatisfaction. At the same time, we are concerned that allowing all subscribers

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[82] See Verizon Wireless Comments at 6 – 8.

[83] We note as well that BSG's "URU" tool described above, which uses thirteen vendors to confirm that the identity of the person ordering the service, similarly does not confirm that the person placing the order is the subscriber.

of Billing Telephone Corporations to be open to all third-party billings, regardless of the subscriber's preference, leaves subscribers too vulnerable and fails to comply with Pub. Util. Code § 2890(a).

DRA recommended that all Billing Telephone Corporations be required to provide subscribers with a cost-free option to block all third-party billing, and actively inform their customers of the option.[84] Further, DRA, UCAN, and TURN supported offering subscribers the option to block all third-party charges when they initiate service.[85] DRA explained that the Commission had received complaints of carriers telling subscribers who request such a block that state and federal law mandates that the carrier provide billing to third parties. In response, both AT&T and Verizon stated that most Billing Telephone Corporations offer subscribers the ability to block third-party charges, free-of charge.[86]

MMA and CTIA contend that the statutory requirement would be "impossible" for carriers to implement, with only a single subscriber to a plan being permitted to make purchases.[87] The MMA, however, agreed that other regulators when considering this same question have concluded that "carriers and content providers must require that only users authorized by the subscriber be permitted to make mobile billed content purchases" and offered a plan from the Florida Attorney General to address these concerns.

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[84] DRA Opening Comments at 10.

[85] *Id.*; UCAN Opening Comments at 18; TURN Opening Comments on the PD at 3.

[86] Reply Comments of AT&T California, AT&T Communications of California, Inc., and New Cingular Wireless PCS, LLC at 10; Reply Comments of Verizon California Inc. at 13.

The Florida plan put forward here by the MMA is reflected in a settlement agreement with a wireless carrier providing for enhanced third-party billing disclosures to customers and offering customers means to limit or prohibit such charges from appearing on their bills. Specifically, the Florida Attorney General reached an Assurance of Voluntary Compliance Agreement with T-Mobile which required the carrier to affirmatively inform new customers of the potential for third-party charges on the bill and to offer the customer the option of blocking or limiting such charges. Written notices to existing customers were also required as well as generally available information on the carrier's web site and in customer brochures.[88] As noted above, this type of authorization to receive third-party charges is also supported by DRA, UCAN, and TURN.

Given the record showing that wireless carriers are not and will encounter great operational difficulty in meeting the statutory definition of subscriber authorization, we have considered the Florida plan offered by the MMA and the general support for such proposals from three of our leading consumer organizations. Based on this record, we are prepared to interpret the statutory definition of subscriber to include more than just the person listed on the bill under certain circumstances. We do so as a means of balancing our responsibilities to protect consumers from unscrupulous Service Providers while at the same time fostering an abundant mobile media marketplace in California.

We, therefore, find that the statutory requirement for subscriber authorization can be met by Service Providers for telephone lines where the

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[87] MMA Opening Comments on the PD at 10; CTIA Opening Comments on the PD at 4.

[88] See Attachment A to MMA Opening Comments on the PD.

subscriber has been informed by the Billing Telephone Corporation that the subscriber's line is open to third-party charges and has been provided the option to block this access. A subscriber giving a Billing Telephone Corporation permission to place third-party charges on the subscriber's bill after having been informed and not opting to block access satisfies the requirement found in § 2890 that the subscriber authorize the purchase because the subscriber is affirmatively indicating a willingness to be responsible for charges originating from Service Providers other than the Billing Telephone Corporation.

This interpretation places responsibility on the subscriber to be aware of the potential for third-party charges and to carefully review the bill to ensure only authorized charges are presented. The subscriber will also have notice of the potential for third-party charges on any handset the subscriber allows another person to possess. This interpretation is consistent with and furthers the statutory objective of allowing the subscriber to determine the contents of a California telephone bill.

To effectuate this interpretation, we will modify the definition of subscriber to include:

> any person lawfully in possession of a wireless handset where the subscriber of record after being fully informed of the optional nature of this feature and the associated responsibilities has authorized the Billing Telephone Corporation to place third-party charges on the subscriber's bill for the line serving the handset.

We will further require that wireless carriers relying on this definition of subscriber explain at service initiation in clear and concise written terms that the subscriber's line is open to charges from third-party service providers and that the subscriber has the option to block these charges. The Billing Telephone Corporation shall not charge for blocking and must allow subscribers to add or

remove this feature quickly and easily at any time.[89] Subscribers must be reminded in writing no less than once each calendar year that third-party charges may be placed on the bill and of the option to block such charges at anytime and at no additional cost. Full explanations of this option shall be presented in the wireless carrier's web site, tariffs, and customer brochures. The carriers relying on this definition shall also cooperate with the Commission's staff in presenting these options in any consumer information prepared by staff including the Cal Phone Info web site.

To avoid customer confusion, wireline carriers will also be required to offer cost-free measures to limit or block the placement of third-party charges on a subscriber's bill.

5.4. Billing Telephone Corporation Responsibility to Investigate

The record shows that customers do not carefully check bills and often pay small charges, even if unauthorized, due to the time and inconvenience of disputing the charge. Ensuring comprehensive refunds for all unauthorized charges are available is essential to removing the reward for unauthorized billing. Billing Telephone Corporations must remain responsible for refunding up to one year after the bill, even if mistakenly paid by the subscriber. Billing Telephone Corporations must prevent or detect what the federal court called "fraudsters" from surreptitiously placing unauthorized charges on many bills, cheerfully refunding to those that complain, and pocketing the payments from

[89] For wireline Billing Telephone Corporations, this option to block third-party services shall not extend to any services they are required by law to provide, such as the option to purchase long distance services from a competitor, or services or products offered by their affiliates.

the unsuspecting. To comprehensively address this situation for all wrongfully billed subscribers, all such subscribers must have access to refunds.

The revised rules clarify that the Billing Telephone Corporation has an affirmative duty to investigate, not only when there are allegations of unauthorized billings, but also when there are reasonable grounds for concern. The revised rules also make clear that a Billing Telephone Corporation is responsible for refunding all unauthorized charges presented in its bill, regardless of whether the unsuspecting subscriber may have paid the charge.

5.5. Reporting Requirements

This Commission is required to adopt rules that provide for reports on the number of subscriber complaints of unauthorized charges being placed on their bills:

> The Commission shall establish rules that require each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers' telephone bills, to provide the Commission with reports of complaints made by subscribers regarding the billing for products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company.[90]

Over the years the Commission has adopted a series of rules culminating in the current version found in GO 168, Part 4, that provide for reports to the Commission staff. As noted earlier, these rules require clarification, particularly regarding wireless carriers.[91]

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[90] Pub. Util. Code § 2889.9(d).

[91] Some of the current rules were initiated in the late 1990's, when the wireless industry was in a nascent stage and did not offer third-party billing. See, e.g., D.00-03-020.

As set out in Rule 10 of the revised GO 168, Part 4, included with today's decision, we clarify that all Billing Telephone Corporations must retain sufficient subscriber records to enable refunds to be issued if necessary. This information need not reside in a single database. However, the Billing Telephone Corporation must be able to compile the information, upon request by the Commission and its staff, to enable refunds to customers. We have also added substantial flexibility to this requirement.

We find that the reports proposed by CTIA in its Supplemental Comments do not meet the requirements of § 2889.9(d). Among other things, CTIA's proposed reports are limited by "campaigns," not service providers. This would not provide sufficient information for CPSD staff to pursue an enforcement action against firms or natural persons. Moreover, CTIA's proposed termination and suspension reports include no objective standards.[92] Finally, these proposed reports would be based on national, rather than California-specific, data. Nonetheless, we find that with some modifications, the report formats proposed by CTIA would provide the necessary information to assist CPSD in identifying service providers who warrant further investigation. Once these service providers are identified, CPSD may seek further information from the Billing Telephone Corporation or the Billing Agent through data requests.

We adopt the reports listed below. We recognize that further refinements to the reporting requirements may be needed once we gain experience with the data provided. Any future refinements to the rules would only be considered to the extent that the revisions are necessary to safeguard the rights of consumers.

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[92] We are mindful of Verizon Wireless' statement that it terminates third-party billing customers based on "the totality of the circumstances" as described above.

Report of Refunds

On a quarterly basis, all wireless Billing Telephone Corporations and their Billing Agents shall submit a calendar month summary of all refunds made to subscribers with California area codes. This report shall provide the following information by service provider:

1. Name of service provider
2. Name of aggregator
3. Description of service provided
4. Total number of purchases by subscribers
5. Total dollar amount billed
6. Total number of refunds issued
7. Total dollar amount of refunds

We believe that the information required in this report reasonably balances our mandate under § 2889.9(d) with the desire to not overly burden the Billing Telephone Corporations. Although § 2889.9(d) refers to subscriber "complaints," we have expanded the rule to include "refunds" as a proxy for complaints as a more complete and expedient means to gather appropriate information on a timely basis. This expansion of the rule addresses the concerns raised by the wireless carriers that tallying subscriber complaints of unauthorized charges would be excessively burdensome. We understand that a tally of refunds will necessarily include items beyond unauthorized charges, but over time the resulting data will be useful to indicate unusual increases in customer contacts, which could for the basis for further investigation. In a similar manner, we recognize that a report by California area code may include wireless subscribers who do not reside in California and exclude subscribers who reside in California, but have a wireless handset with a non-California area code.

Complaint Reports

For the wireline Billing Telephone Corporations and their Billing Agents, we retain the current complaint reporting requirements adopted in D.00-03-020. As noted by AT&T, these requirements have been in place since 2000, and there is insufficient basis to conclude that they are deficient.

Report of Suspensions and Terminations

On a quarterly basis, all Billing Telephone Corporations and Billing Agents shall submit a report listing all third-party services that have been suspended or terminated, grouped by service provider. The report of suspensions and terminations shall not include services that are complete or otherwise expired. The report may be based on either national or California-specific data and shall include the following information:

1. Name and contact information of service provider
2. Description of service
3. Whether service was suspended or terminated
4. Reason for suspension or termination. If the service is suspended, the date or conditions for reinstatement should be included.

This report shall include not only Premium SMS campaigns, but also any other offerings by third-party providers.

In addition to the Report on Suspensions and Terminations, Billing Telephone Corporations and Billing Agents shall be required to notify the Director of CPSD of any terminations of service providers within 10 business days. This notification will include contact information for the service provider and an explanation of why the provider was terminated.

Blocking Report

On an annual basis, all Billing Telephone Corporations shall submit a report describing the means offered to subscribers to restrict or otherwise block the purchase of Premium SMS or third-party services.

5.6. Consumer Education

All carriers who offer third-party services to their customers shall cooperate with the Communications Division and CPSD by participating in workshops for the purpose of: (1) creating new and updated consumer information to be placed on the CalPhoneInfo web site maintained by the Commission and (2) reviewing customer education materials to be provided by the carriers. The on-going objective is to provide consumers with the latest and most useful information regarding the use of third-party services, including how to subscribe and unsubscribe to such services, the tools made available by carriers to filter and/or block third-party services or their related charges, information to assist consumers in avoiding cramming, and a description of how consumers can obtain relief if cramming occurs. CPSD shall schedule such workshops as necessary to discuss and update customer education materials provided by the carriers. All carriers offering third-party billing must attend these workshops in furtherance of these goals.

5.7. Easing of Administrative Burdens

Today's decision clarifies the rules previously adopted in GO 168, Part 4 and adopts reporting requirements for all Billing Telephone Corporations. In light of these directives as well as the voluminously articulated comments on the cost of reporting requirements, we have eased the requirement that Billing Telephone Corporations and Billing Agents have in place and comply with a protocol for identifying unauthorized charges and terminating billing service to

any Service Provider or Billing Agent that submits such billings. The revised rules require that the protocol be submitted to the Director of CPSD upon request.

Finally, in response to many comments seeking blanket exemptions from the reporting rules, a process for requesting such an exemption is created for pre-paid wireless carriers and carriers that provide service only to business and wholesale customers.

5.8. Implementation Period

Carriers have requested time to conform their operations to the revised rules adopted in today's decision. We will direct that all California Billing Telephone Corporations comply with the revised GO 168, Part 4 at the earliest practicable date and in no event later than 90 days after the effective date of this order.

6. Comments on Proposed Decision

The proposed decision of Commissioner Bohn in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Parties filed and served comments on the PD on October 4, 2010. DRA generally supported the PD but argued that providing subscribers with the ability to block third-party charges is a practical and cost-effective solution to cramming. UCAN supported the PD's efforts to clarify and remind Billing Telephone Corporations, Billing Agents, and Service Providers of their duties to prohibit, prevent, and investigate unauthorized charges, but UCAN also identified potential legal and factual errors with the PD that required correction. TURN stated that the PD struck a reasonable balance between competing interests by providing significant protections for consumers but not being overly

burdensome on service providers, and TURN offered suggestions for enhancing some of the protections.

AT&T, Verizon, and most wireless carriers opposed the PD on procedural and substantive grounds. AT&T argued that carriers have implemented significant anti-cramming measures and that the PD fails to discuss these measures. The PD also adopts onerous investigation and monitoring requirements that may threaten currently liberal refund policies. AT&T recommended that the Commission instead adopt improved customer education measures rather than burdensome operational regulations. Verizon stated that PD proposes dramatic changes to existing rules that could, counterproductively, harm the very customers that all parties seek to protect while imposing enormous and unnecessary costs upon those actively engaged in preventing cramming. Verizon suggested workshops to develop concrete, targeted approaches that balance mutual objectives in combating cramming.

SureWest and the small local exchange carriers opposed the PD and argued that the billing rules would burdensome and unfair to regulated telephone companies, difficult to implement, and intrusive to customers.

CALTEL supported important modifications to the rules initially proposed, and advocated for additional improvements. Specifically, the exemption for carriers that provide service only to business or wholesale customers should be extended to the record-keeping requirements and apply to business services, even if provided by a company that also provides residential services. Modify the definition of "unauthorized charge" to exclude "slamming" complaints, revise Proposed Rule 3 to acknowledge that customers bear some responsibility for ensuring that their computers and other customer premise

equipment and related circuits are adequately protected from unauthorized access.

Cox argued that the PD reversed prior Commission decision and policies in a closed docket without evidentiary support.

Verizon Wireless argued that the proposed changes to the cramming rules would harm carriers and customers, and deter innovation. Specifically, the definition of subscriber is unworkable with current practices, approving and monitoring Service Providers is burdensome to Billing Telephone Corporations, and the record keeping requirements amount to complaint tracking.

CTIA opposed the PD and identified several "unwarranted and impractical" expansions of definitions. First, CTIA objected to defining "subscriber" as an adult person responsible for the bill because that would prevent a child from incurring valid third-party charges. Second, by deeming all unauthorized charges unlawful, the proposed rules would "unravel" carriers' current policies on lost or stolen phones. Third, the PD proposes to expand the definition of unauthorized charges to include any charge that resulted from false, misleading or deceptive representations, and would require an in depth investigation to make the subjective determination. CTIA also substantively opposed rules that dictated carrier business practices as "difficult to operationalize" and leading to severe unintended consequences. Finally, CTIA argued that GO 168 was adopted after hearings, and Pul. Util. Code § 1708.5(f) requires that the Commission hold hearings to change GO 168.[93]

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[93] The Commission held legislative hearings prior to adopting GO 168, see Assigned Commissioner's Ruling Establishing Hearing Procedures, September 19, 2005. Pub. Util. Code § 1708.5(f) requires evidentiary hearings to change regulations adopted after

Footnote continued on next page

The MMA[94] stated that the subscriber authorization requirement found in proposed Rule 3 and the definition of subscriber would prohibit purchases by anyone other than the subscriber. Denying customers the ability to purchase mobile content on their wireless phone in the same manner as content can be purchased on home media devices, will dramatically curtail customers' choices and undermine California's median, information technology, and equipment industries. The MMA pointed out that when the Florida Attorney General and regulators recently considered the same question, they concluded that: "carriers and content providers must require that only users authorized by the subscriber be permitted to make mobile-billed content purchases."[95] The Florida agreement was attached to the comments and showed that all mobile carriers were required to disclose to new subscribers that third-party charges may be placed on the bill and allow the subscribers to block such access to the account. The carriers were required to give written notice to existing customers and offer the blocking option.

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evidentiary hearings, not legislative hearing, as was the case with GO 168. Consequently, Pub. Util. Code § 1708.5(f) does not require an evidentiary hearing to adopt changes to GO 168. Counsel for CTIA should have been aware of the nature of the 2005 hearings, having participated as a panelist, see R.00-02-004 transcripts at 1388, September 29, 2005.

[94] The MMA states that it is "a trade association comprised of major global and regional participants in the mobile media industry, including publishers, major studios and media outlets, content providers, agencies, brands, retailers, advertisers, service providers, mobile carriers and related marketing and market research firms."

[95] MMA Opening comments at 10.

tw Telecom supported the exemption for carriers that provide service only to business or wholesale customers, and suggested that the rule be clarified to state that it applies to non-communications related charges on the bill.

Cricket and MetroPCS California also supported the exemption for carriers that provide pre-paid service, but sought additional streamlining to the proposed rule. These carriers recommended removing the requirements that the pre-paid carrier be in "full" compliance with the rules and not require the carrier to tally "numbers of complaints" of unauthorized charges.

T-Mobile advised the Commission to focus on adopting rules for the efficient production of usable data, and not on an unnecessary revision of the existing cramming rules.

Valley Yellow Pages recommended minor changes to the PD to indicate that Billing Telephone Corporations and Billing Agents must give prior notice to Service Providers before resolving a customer dispute.

BSG Corporation contended that the proposed decision placed a heavy burden on the Billing Telephone Corporations for determining authorization of records, resolving any billing disputes, and submitting reports. BSG worried that should the Billing Telephone Corporations feel this burden is too much to comply with, then they may decide to not allow third-party billing on their telephone bills altogether, a great disservice to California consumers.

The Ad Hoc Coalition for Billing Services stated that prohibiting the Billing Telephone Corporation from deflecting a complaining customer to the Service Provider violated federal rules, and that the rules on referring a charge to collection or refunding charges that have been mistakenly paid are beyond the Commission's jurisdiction.

PaymentOne focused on proposed Rule 7 and argued that there was no support in the record and no justification for basing consumer notification and remedial action on complaints and refund levels, as opposed to documented instances of unconfirmed charges. This commenter concluded that basing Proposed Rule 7 on increases in "complaints" and "refund rates" was unworkable and would be harmful to consumers.

The small resellers explained that they have few cost-effective options other than using the billing services of the local exchange carriers, with which they compete for the long-distance business of California consumers. These Billing Telephone Corporations have every incentive not only to reverse and refund small resellers' customers' long-distance charges, but to market their own services at the same time, and the draft rules do not protect these resellers by requiring Billing Telephone Corporations to apply the same standard for refunding third-party charges as with their own end-users.

Reply comments were filed and served on October 11, 2010, by: DRA, TURN, AT&T, Verizon California, SureWest, Frontier Companies,[96] Small Local Exchange Carriers, CALTEL, Small Resellers, Cox California, tw telecom, Valley Yellow Pages, Cricket and MetroPCS, CTIA, Verizon Wireless, and T-Mobile.

In response to comments and reply comments, the proposed decision has been modified to expand the customer information to be made available via the CalPhoneInfo web site and the carriers' tariffs, web sites, and other customer

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[96] Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California, Frontier Communications West Coast Inc., and Frontier Communications of the Southwest Inc.

information. The decision also directs CPSD and the Communications Division to convene workshops to ensure on-going availability to consumers of information on third-party billing, disputing charges, and Billing Telephone Corporations' obligations.

Several rules have been revised. The definition of Service Provider in Rule 2 has been limited to exclude products and services provided by the Billing Telephone Corporation. As noted by several parties, the Commission has comprehensive, existing authority over California Telephone Corporations. Rule 5 has been modified to remove the Billing Telephone Corporation's obligation to contact other subscribers to confirm authorizations. Rule 7 has been condensed to the essential monitoring requirements, and Rule 6 has been combined with Rule 5. Several components of Rules have moved to enhance clarity. The reporting rules have been separated into rules for wireless carriers and wireline, with the objective to retain the existing reporting rules for wireline.

Two procedural issues were raised. Certain parties have argued that the Commission must hold an evidentiary hearing as required by Pub. Util. Code § 1708.5(f). As noted above, however, the Commission held legislative, not evidentiary hearings when adopting GO 168. The requirements of Pub. Util. Code § 1708.5(f) are applicable only when rules are adopted after evidentiary hearing. Since no evidentiary hearings were held at the time GO 168 Part 4 was adopted, we are not required to hold evidentiary hearings to revise Part 4 to GO 168. The other procedural issue, that parties did not have adequate notice that the assigned Commissioner had determined that GO 168, Part 4, was within the scope of this proceeding, is fundamentally at odds with the Assigned Commissioner Ruling of February 12, 2010. That ruling set forth specific proposed revisions to Part 4. Thus, all parties of record to this proceeding

received notice that revisions to Part 4 were within the scope of this proceeding with the issuance of the Assigned Commissioner Ruling. Such parties and additional parties were able to participate in this quasi-legislative proceeding and present their views and proposals to the Commission.

7. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Based on previously filed comments and reply comments, as well as D.00-03-010, D.00-11-015, and GO 168, Part 4, Commission's Staff prepared a draft set of rules for California Billing Telephone Corporations, which the Assigned Commissioner mailed to all parties on February 12, 2010, along with an assigned Commissioner's Rule setting forth the procedural schedule for considering the draft rules and any proposals from the parties.

2. Comments on the proposed rules were received from 25 parties, and 18 parties filed reply comments.

3. The record in this proceeding shows that California telephone corporation subscribers continue to experience unauthorized charges on their telephone bills.

4. The person in possession of a wireless handset cannot reasonably be presumed to be the account subscriber, absent authorization from the subscriber for the Billing Telephone Corporation to place third-party charges on the subscriber's bill for the line served by the handset.

5. Disputing an unauthorized charge with the Billing Telephone Corporation is time-consuming and inconvenient, particularly for modest charges.

6. Unscrupulous Service Providers may place unauthorized charges on numerous subscriber bills, refund charges upon dispute, and retain all uncontested but unauthorized billings.

7. Billing Telephone Corporation subscribers should have the option of directing the Billing Telephone Corporation to place no third-party charges on the subscriber's bill.

8. Wireless providers are beginning to expand the types of third-party services available to subscribers.

9. The Commission should revisit the issue of whether subscribers should opt-in or opt-out of the ability to purchase services and content by third-party providers due to advances in the capabilities of wireless handsets and offerings by third-party service providers.

10. Subscribers should be informed that their bills are open to charges from third party service providers and that they have the option to block access at anytime and with no additional cost.

11. A subscriber cannot be presumed to authorize the placement of third-party charges on their telephone bill unless the subscriber is first informed that third-party charges may be placed on the bill and understands the consequences of allowing this to occur.

12. Billing Telephone Corporation subscribers who are aware that their bills are open to charges from other Service Providers may be more diligent in examining their bills for unauthorized charges.

13. The administrative burden of the reporting requirements can be eased in light of other directives to the Billing Telephone Corporations.

14. The Commission held legislative, not evidentiary, hearings when adopting GO 168.

Conclusions of Law

1. California Billing Telephone Corporations may only bill for charges authorized by the subscriber, and the subscriber is the person or entity responsible for paying the invoice from the Billing Telephone Corporation.

2. A person in possession of a wireless handset is not necessarily the subscriber and actions by that person may not be presumed to constitute subscriber authorization.

3. No California Billing Telephone Corporation is required to offer billing services to third parties.

4. Billing Telephone Corporations should provide their subscribers with options to block or limit offerings by third-party service providers at no cost and to actively inform subscribers of these options.

5. Billing Telephone Corporations should remain fully responsible for refunding all unauthorized charges presented to subscribers in the Billing Telephone Corporations' bills, regardless of whether the subscribers unsuspectingly paid the charges.

6. The definition of subscriber as used in Pub. Util. Code §§ 2889.9 and 2890 includes persons lawfully in possession of a wireless handset where the subscriber has been informed by the Billing Telephone Corporation that the subscriber's line is open to third-party charges.

7. CTIA's alternate proposal does not comply with the requirements of Pub. Util. Code § 2889.9(d).

8. It is reasonable to use refunds to subscribers as a proxy for subscriber complaints.

9. The Director of the CPSD should be authorized to issue citations to any Billing Telephone Corporation or Billing Agent that fails to submit the quarterly

report as required by the California Telephone Corporation Billing Rules in a complete and timely fashion as follows:

a. Up to 30 days late, a citation requiring payment of $500 to the General Fund;
b. 30 to 60 days late, a citation requiring payment of $5,000 to the General Fund;
c. No less than 10 days before issuing a citation, the Director shall give the Billing Telephone Corporation or Billing Agent notice of the impending citation and an opportunity to submit the report; and
d. The Commission may also take such further actions as may be necessary to protect the public interest.

10. The Commission should exercise its remedial statutory authority granted pursuant to Pub. Util. Code § 2889.9(b) over Billing Agents and Service Providers using the billing services of California Telephone Corporations.

11. The Public Utilities Code provides the Commission comprehensive authority over the billing practices of California Telephone Corporations.

12. Safeguarding the rights of consumers requires that California Billing Telephone Corporations, Billing Agents, and Service Providers comply with the California Telephone Corporation Billing Rules.

13. The California Telephone Corporation Billing Rules, Attachment A to today's decision, should be adopted as Revised GO 168, Part 4.

14. Safeguarding the rights of consumers requires that the Commission's staff supervise the availability of enhanced consumer education materials at the CalPhoneInfo web site.

15. Safeguarding the rights of consumers requires that the carriers meet as necessary with the Commission's staff to review and update consumer education materials in the carrier's tariffs, web sites and customer information.

16. Safeguarding the rights of consumers requires the carriers to expand and enhance the availability of useful information on third-party billing, including not to dispute and block such charges, to all consumers.

17. No evidentiary hearings are required.

O R D E R

IT IS ORDERED that:

1. The California Telephone Corporation Billing Rules attached to this decision as Attachment A are adopted as Revised General Order 168, Part 4. All Billing Telephone Corporations, Billing Agents, and Service Providers must comply therewith at the earliest practicable date but in no event later than 90 days after the effective date of this order.

2. The Communications Division staff must prepare a report, in collaboration with the Consumer Protection and Safety Division, on developments in the wireless industry, including new types of offerings by third-party providers beyond Premium short messaging services. The report must include findings on whether the cramming rules adopted by this decision sufficiently protect customers from unauthorized charges. This report shall be prepared and served on parties to this proceeding by no later than January 1, 2013.

3. All Billing Telephone Corporations who offer third-party billing and collection services shall cooperate with the Telecommunications Division and the Consumer Protection and Safety Division and participate in meetings and workshops for the purpose of developing materials to educate consumers on how to avoid having unauthorized charges placed on bills. The workshops shall not only develop content for the CalPhoneInfor web site maintained by the Commission, but also shall discuss actions taken by the Billing Telephone

Corporations to inform consumers of the ability to block third-party services and their related charges. Such workshops must occur no less than once each calendar quarter for the first year after the effective date of this decision and no less than annually thereafter. The consumer information must contain clear and concise descriptions of third-party billing, specific steps to dispute an unauthorized charge, a summary of the responsibilities of a Billing Telephone Corporation, comprehensive information on means to block or limit such charges and such other information as the Commission may require to safeguard the rights of consumers. All carriers offering third-party billing services must participate in such workshops.

4. Rulemaking 00-02-004 is closed.

This order is effective today.

Dated October 28, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

Commissioner Dian M. Grueneich, being necessarily absent, did not participate.

ATTACHMENT A

Revised General Order 168, Part 4

California Telephone Corporation Billing Rules

1. Applicability:

These rules apply to all Billing Telephone Corporations and Billing Aggregators and specify the responsibilities and procedures that must be followed to address and report cramming-related issues. Cramming occurs when an unauthorized charge is placed on a Subscriber's telephone bill.

These rules supersede the rules adopted in Decision (D.) 00-03-020, as modified by D.00-11-015, and replace General Order 168, Part 4, adopted in D.06-03-013. Compliance with these rules does not relieve Billing Telephone Corporations of other obligations they may have under their tariffs, other Commission General Orders and decisions, FCC orders, and state and federal statutes.

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.

2. Definitions:

2.1. Billing Agents: Any entity which provides billing services for Service Providers directly or indirectly through a Billing Telephone Corporation.

2.2. Complaint: Any written or oral communication from a Subscriber alleging that an unauthorized charge was included in the Billing Telephone Corporation's bill to the Subscriber.

2.3. Service Provider: A person or entity, other than a Billing Telephone Corporation, that originates the charge or charges that are billed to the Subscriber of the Billing Telephone Corporation.

2.4. Billing Telephone Corporation*:* A telephone corporation that bills a Subscriber for products and services.

2.5. Telephone Corporation: Any telephone corporation (as defined in Pub. Util. Code § 234) operating within California. This term includes resellers and wireless telephone service providers.

2.6. Unauthorized Charge: Any charge placed upon a Subscriber's telephone bill for a service or goods that the Subscriber did not agree to purchase, including any charges that resulted from false, misleading, or deceptive representations. Charges that relate to a change in a subscriber's selection of a provider of telecommunications service are excluded from these rules and are subject to Part 3 (Rules Governing Slamming Complaints) of this General Order.

2.7. Subscriber: Either one of the following:

(1) The person or entity identified in the account records of a carrier as responsible for payment of the telephone bill;

(2) Any person authorized by such party to charge services to the account;

(3) Any person lawfully in possession of a wireless handset where the subscriber of record, after being fully informed of the optional nature of this feature and the associated responsibilities, has authorized the Billing Telephone Corporation to place third-party charges on the Subscriber's bill for the line serving the handset. This provision does not relieve the subscriber of any obligation to under their service agreement to promptly report a lost or stolen wireless handset to the Billing Telephone Corporation.

2.8. Investigation: An inquiry conducted by (i) the person or entity from which the disputed charge originated, (ii) a Billing Telephone Corporation, (iii) the Commission, or (iv) any other

relevant government agency, such as the District Attorney's office in the Subscriber's county or the State Attorney General.

3. Authorization Required:

Billing Telephone Corporations shall only place charges that have been authorized by the Subscriber on the Subscriber's telephone bill. All charges billed without Subscriber authorization are unlawful.

All disputed charges for which no verification of Subscriber authorization is available are subject to a rebuttable presumption that the charges are unauthorized. A Billing Telephone Corporation may establish that the Subscriber authorized the charge by (i) providing a record of affirmative authorization from the Service Provider, (ii) a demonstrated pattern of knowledgeable past use, or (iii) other persuasive evidence of authorization. With regard to direct dialed telephone services, evidence that a call was dialed is prima facie evidence of authorization. This presumption can be rebutted with evidence that the call was not authorized.

4. Billing for Authorized Charges Only:

Billing Telephone Corporations shall bill Subscribers only for authorized charges. Billing Telephone Corporations shall adopt protocols which prohibit Billing Agents and Service Providers from submitting, directly or indirectly, charges for billing through a Billing Telephone Company that the Subscriber has not authorized. Billing Telephone Corporations must monitor or cause to be monitored, either directly or through a Billing Agent, or other entity, each Service Provider's continuing compliance with this requirement. Such monitoring shall include review of the Service Provider's marketing materials, scripts, customer verification records, or other such

information as may be necessary to demonstrate that the Service Provider is obtaining valid Subscriber authorizations.

5. Responsibilities of Billing Telephone Corporations:

The Billing Telephone Corporation bears ultimate responsibility for all items presented in a Subscriber's bill and must take the following measures to ensure that only authorized charges from lawful Billing Agents and Service Providers are included in the bill. Prior to approving a Service Provider or Billing Agent for the provision of billing services, the Billing Telephone Corporation shall directly or through another entity conduct a reasonable inquiry of the Service Provider's or Billing Agent's history of violations of state or federal law or rules relating to consumer protection and current ability to operate lawfully.

At service initiation, all Billing Telephone Corporations shall disclose to Subscribers that the Billing Telephone Corporation has opted to provide billing and collection services to Third Parties and that such charges may be placed on the Subscriber's bill, absent action by the Subscriber.

Wireless Billing Telephone Corporations shall explain at service initiation in clear and concise written terms that the Subscriber's line is open to charges from third-party Service Providers and that the Subscriber has the option to block these charges. The Billing Telephone Corporation shall not charge for blocking and must allow Subscribers to add or remove this feature quickly and easily. Billing Telephone Corporations must remind Subscribers in writing no less than once each calendar year that third-party charges may be placed on the bill and of the option to block such charges at anytime and at no additional cost. The Billing Telephone Corporation shall explain the

blocking option in neutral terms and shall not attempt to influence the Subscriber's decision.

For wireline Billing Telephone Corporations, this option to block third-party services shall not extend to any services they are required by law to provide, such as the option to purchase long distance services from a competitor, or services or products offered by their affiliates.

The Billing Telephone Corporation has an affirmative duty to investigate Subscriber allegations of unauthorized billings, and where there are reasonable grounds of concern that a pattern of unauthorized charges may have occurred, to take the initiative to determine whether other Subscribers may have been subjected to unauthorized charges. The Billing Telephone Corporation shall resolve all Subscriber complaints of unauthorized charges as required in Rule 8, Resolution. If a Subscriber contacts the Billing Telephone Corporation to dispute a billed item from a Service Provider, the Billing Telephone Corporation must promptly address and resolve the dispute without deflecting the Subscriber to the alleged Service Provider. Except as allowed under these rules, the Billing Telephone Corporation shall not state or imply the law or regulations require it to provide billing services to third parties.

6. Monitoring of Subscriber Billings:

Each Billing Telephone Corporation is responsible for monitoring the billings it controls for the purpose of preventing and detecting unauthorized charges, and for the prompt termination of billing services to Billing Agents and Service Providers that present unauthorized charges. Each Billing Telephone Corporation shall have in place and comply with a protocol for

identifying unauthorized charges and suspending or terminating billing services to any Billing Agent or Service Provider that has submitted unauthorized charges.

7. 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. Pursuant to Pub. Util. Code § 2889.9(g), Billing Telephone Corporations, Billing Agents and Service Providers shall provide all requested information and shall cooperate fully with the Commission's staff in any investigation and prosecution.

8. Resolution:

If a Billing Telephone Corporation or Billing Agent receives a complaint that the Subscriber did not authorize the purchase of the product or service associated with a charge, the Billing Telephone Corporation or Billing Agent, whichever is the recipient of the complaint, not later than 30 days from the date on which the complaint is received, shall either (i) verify and advise the Subscriber of authorization of the disputed charge or (ii) credit the disputed charge and any associated late charges or penalties to the Subscriber's bill, and offer the option of blocking all future third party billings at no charge as set forth in Rule 5.

9. Other Available Rights:

Nothing herein shall prevent a Subscriber from exercising his or her other rights. The Billing Telephone Corporation shall also notify the Service Provider of any credits issued.

10. Record Retention for Refunds:

The Billing Telephone Corporation is ultimately responsible for refunding all unauthorized charges collected from its Subscribers, including those Subscribers who may have mistakenly paid the unauthorized charges and not requested a refund. Every Billing Telephone Corporation and Billing Agent shall maintain accurate and up-to-date records of all billings and Service Providers sufficient to demonstrate compliance with these rules and to facilitate customer refunds. Such records shall be retained for no less than twenty-four months.

In order to enable refunds to Subscribers, Billing Telephone Corporations and Billing Agents must retain records containing the following information:

a. the Subscriber name;
b. the Subscriber telephone number;
c. the name of the Service Provider responsible for the charge complained about;
d. the name of the Billing Agent(s), if any;
e. the amount of the alleged unauthorized charge and the date the charge was incurred and billed;
f. a description of the product or service billed;
g. for Billing Agents, the total dollars billed and total amount refunded for each Service Provider; for Billing Telephone Corporations, the total dollars billed and total dollars

refunded for each Service Provider for which the Billing Telephone Company directly bills and each Billing Agent; and

h. for Billing Agents, the total number of working telephone numbers or purchases billed by each Service Provider; for Billing Telephone Corporations, the total number of working telephone numbers or purchases billed by each Service Provider for which the Billing Telephone Corporation directly bills and each Billing Agent. Flexible Compliance Option: Billing Telephone Corporations and Billing Agents may also elect to maintain records that meet the Commission's standard of sufficient information to enable refunds to customers but do not include each item listed above.

11. Reporting Requirements

11.1. All wireless Billing Telephone Corporations shall create a calendar month summary report every quarter listing refunds made to Subscribers with California area codes for charges originated by Service Providers. The report of refunds shall be summarized by Service Provider and contain the following information:

a. Name of Service Provider
b. Name of Billing Agent (if any)
c. Description of service provided
d. Total number of purchases by Subscribers
e. Total amount billed by the Billing Telephone Corporation on behalf of the Service Provider
f. Total number refunds to Subscribers
g. Total amount refunded by the Billing Telephone Corporation

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

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

11.2. All wireless Billing Telephone Corporations shall create a calendar month summary report every quarter listing all third party services that have been suspended or terminated. These services shall include, but are not limited to, Premium short messaging service (SMS) campaigns. The report of suspensions and terminations shall not include services that are complete or otherwise expired and may be based on national data. The report of suspensions and terminations shall be summarized by Service Provider and contain the following information:

a. Name and contact information of Service Provider
b. Description of service that was suspended or terminated
c. Whether service was suspended or terminated
d. Reason for suspension or termination. If the service is suspended, the date or conditions for reinstatement should be included.

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

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

11.3. All wireline Billing Telephone Corporations and their Billing Agents shall create a calendar month summary report which shall include the following information:

a. the total number of consumer complaints received each month for each Service Provider and Billing Agent;

b. Billing Telephone Corporations shall report the name, address, and telephone number of each entity receiving complaints, excluding Billing Agents;

c. the total number of working telephone numbers billed for each entity for which complaints were received;

d. for Billing Agents, the total number of subscribers billed by each Service Provider for which complaints were received; for Billing Telephone Corporations, the total number of Subscribers billed by each Service Provider for which the Billing Telephone Corporation directly bills and each billing agent;

e. for Billing Agents, the total dollars billed by each Service Provider; for Billing Telephone Corporation, the total dollars billed by each Service Provider for which the

Billing Telephone Corporation directly bills and each Billing Agent.

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

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

If no complaints exist, in lieu of this report, a letter shall be sent to the Director of the Consumer Protection and Safety Division affirmatively stating that no complaints exist for the quarter.

11.4. If a Billing Telephone Corporation terminates a Billing Agent or Service Provider for any reason, it shall notify the Director of the Commission's Consumer Protection and Safety Division within 10 business days of the termination date. The notification shall include the identity of the Service Provider or Billing Agent and any principals and the reason(s) for the termination.

11.5. All Billing Telephone Corporations shall submit a report to the Director of the Commission's Consumer Protection and Safety Division once a year that documents the means offered to Subscribers to restrict or otherwise block third-party billing. The report shall

contain copies of consumer information and describe the Billing Telephone Corporation's actions to publicize the availability of third-party blocking.

11.6. Exemptions from Reporting Requirement

The following types of Billing Telephone Corporations may by letter request that the Director of the Consumer Protection and Safety Division suspend or modify their obligation to file the Report of Refunds and the Report of Suspensions and Terminations:

a. Carriers offering wireless services through prepaid or pay in advance methods.
b. Carriers that provide service only to business or wholesale customers.

The letter request must demonstrate that the specific Billing Telephone Corporation provides the types of services specified and is in compliance with these rules, and that the filing of the report(s) is not necessary to protect Subscribers. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. Once an exemption is granted, a Billing Telephone Corporation shall file an annual certification or letter affirming that continued exemption is warranted. The annual certification or letter shall be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure.

The Director of the Consumer Protection and Safety Division may grant or deny, in whole or in part, or apply such conditions as may be necessary to protect Subscribers in response to the letter request. The

Director of the Consumer Protection and Safety Division may also revoke the exemption for good cause.

12. Ongoing Collaboration With Staff:

Representatives from the Consumer Protection and Safety Division and the Telecommunications Division shall meet at least annually with all wireless Billing Telephone Corporations who offer third-party services to their customers to discuss recent developments in the wireless industry regarding cramming issues and any Commission concerns regarding cramming.

13. Consumer Education:

All Billing Telephone Corporations who offer third-party billing and collection services shall cooperate with the Telecommunications Division and the Consumer Protection and Safety Division and participate in meetings and workshops for the purpose of developing materials to educate consumers on how to avoid having unauthorized charges placed on bills. The workshop, shall not only develop content for the CalPhoneInfo web site maintained by the Commission, but also shall discuss actions taken by the Billing Telephone Corporations to inform consumers of the ability to block third-party services and their related charges.

14. Effect of Failure to Supply Reports:

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

a. Up to 30 days late, a citation requiring payment of $500 to the General Fund,

b. 30 to 60 days late, a citation requiring payment of $5,000 to the General Fund, and

c. No less than 10 days before issuing a citation, the Director shall give the Billing Telephone Corporation or Billing Agent notice of the impending citation and an opportunity to submit the report.

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

15. Actions Based on Reported Information:

The Consumer Protection and Safety Division may request that a Billing Telephone Corporation or Billing Agent provide further information concerning a Service Provider. This requested information may include, but is not limited to, the Service Provider's contact information, Subscriber name and telephone number, and the amount of the alleged unauthorized charge. The Billing Telephone Corporation and Billing Agents shall provide all requested information within a reasonable period and shall cooperate fully with the Commission's staff in any investigation and prosecution.

The Consumer Protection and Safety Division, in consultation with the Communications Division, may convene such industry-wide or carrier-specific meetings or workshops as may be necessary to facilitate compliance with these rules and other law and regulations.

As provided in § 2889.9(b), the Commission's remedial statutory authority over public utilities, including the potential for fines up to $20,000 per violation, extends to all Service Providers and Billing Agents using the

billing services of Billing Telephone Corporations. Billing Agents and Service Providers, like Billing Telephone Corporations, are subject to such remedial directives as the Commission finds necessary to protect the public interest.

(END OF ATTACHMENT A)