

CONCURRENCE OF COMMISSIONER GRUENEICH ON STAY OF THE TELECOMMUNICATION CONSUMER BILL OF RIGHTS

Today I vote to stay the Telecommunications Bill of Rights in order to allow time for additional review of the rules, implementation schedule, and plan for enforcement of the rules, set forth in the original decision adopting the Bill of Rights, D.04-05-057. I appreciate that almost four years of effort went into developing the Bill of Rights and that there are crucial matters surrounding consumer protection and the telecommunications industry that necessitated this effort.

In order for there to be effective implementation and enforcement of the Bill of Rights by the Commission, a majority – and hopefully all – of the currently sitting Commissioners must agree upon the goals of the program, the rules themselves, the implementation schedule, and its ongoing enforcement.

My goal for today's decision is to emerge this year with a refined Bill of Rights that addresses problems with the implementation schedule and which addresses other issues currently being raised by consumer groups and carriers. And ultimately, a decision that all of the Commissioners sitting here today support and are committed to implementing.

In studying the Bill of Rights I have discovered several areas of concern.

I am troubled by information I have received from Commission staff about the implementation of the Bill of Rights. 112 of the 170 carriers working with the Commission on compliance have filed extension requests. I have spoken with the technical staff and there are significant implementation details to work out.

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Many carriers have also filed petitions to modify which will inevitably lead to a review of the Bill of Rights, albeit in a piecemeal fashion.

As an attorney, I am concerned that there were no evidentiary hearings held in adopting these rules. While I do not seek to be overly legalistic, it is difficult to believe there were no factual issues in dispute in this proceeding, which would have necessitated hearings. And, I am concerned that the Commission does not have a plan, backed by adequate staffing and resources, to enforce the consumer rules that it adopts.

Given these concerns, I have concluded that a review of the Bill of Rights is warranted, focusing on the rules themselves, implementation issues, and enforcement.

Having reached this conclusion, I then considered whether I should support a stay of the rules while the Commission examines and resolves these troubling issues or whether I should proceed with partial implementation of some of the rules by some of the carriers, with likely changes to the rules and implementation requirements coming.

I have decided that a stay tied to a firm commitment to review the rules is the best course.

My reasons for supporting the stay are as follows:

1. I have been advised by Commission staff that the Commission has the legal authority to stay its rules to examine these issues.
2. It will be less confusing to the carriers and ultimately to consumers to have an overall stay, rather than confusing and partial implementation.

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3. It does not make sense for the carriers to proceed with investing in implementation compliance, knowing the rules may change.
4. It also does not make sense for the Commission staff to try to resolve the very troublesome implementation issues if there is a possibility that the rules themselves may change.
5. Finally, a stay puts all the carriers in this competitive industry in a similar circumstance, rather than the current approach of only exempting those carriers who have asked the Commission for more time.

I am able to support today's decision and stay because it is tied to a clear commitment to proceed with an orderly review of the Bill of Rights, including devising a workable implementation schedule and ensuring enforcement. It is important that the duration of this stay is not open-ended, and therefore the language in this decision that states that the Commission intends to issue a decision no later than the end of this year is essential. Given the probable need for evidentiary hearings, the Commission staff will need this time to address the issues in this proceeding.

In addition, I have identified three further actions I will take to ensure that there is adequate consumer protection in telecommunications:

First, I will ask the Assigned Commissioner to seek comments on whether there are any portions of the rules that can be reviewed in an early stage of the re-examination process to resolve concerns surrounding these issues in order to allow them to be revised or reinstated on an expedited basis.

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Second, I will hold an all day conference on telecommunication issues generally, seeking input from all parties on the significant issues they see before the Commission this year. I intend to issue a notice scheduling this conference no later than February 7, 2005.

Third, with regard to the Bill of Rights, I intend to hold an all-party meeting in which parties will have the opportunity to explain to me what works and what does not work in the rules so that I am more fully up to speed on these issues and can be a force in helping to adopt a viable consumer protection structure in California for telecommunication consumers.

Finally, I would like to emphasize that I am a strong proponent of the language in the decision that affirms that the Commission continues to enforce the existing interim "Cramming Rules" set forth in the July 2001 decision and the existing "Slamming Rules" set forth in March of 2000. I know that these rules are of great concern to consumers and their representatives. I am committed to ensuring that we continue our ongoing efforts of enforcing the Cramming and Slamming rules previously adopted by this Commission.

Dated January 27, 2005 in San Francisco, California.

/s/ DIAN M. GRUENEICH

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Commissioner