

Decision 07-07-043 July 26, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Address the Needs of
Telecommunications Customers Who
Have Limited English Proficiency.

Rulemaking 07-01-021
(Filed January 11, 2007)

**DECISION ADDRESSING THE NEEDS OF TELECOMMUNICATIONS
CONSUMERS WHO HAVE LIMITED ENGLISH PROFICIENCY**

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APPENDIX A -Rules for In-Language Support to Limited English Proficient
(LEP) Telecommunications Consumers

DECISION ADDRESSING THE NEEDS OF TELECOMMUNICATIONS CONSUMERS WHO HAVE LIMITED ENGLISH PROFICIENCY

1. Summary

This decision (Decision) adopts rules to improve services to California telecommunications consumers who do not speak English fluently. Our actions today are driven by the dynamics of the marketplace: if a carrier provides marketing in a language other than English then that carrier incurs an obligation to ensure that the customer understands what he or she has purchased and that the carrier will support service inquiries in the marketed language.

These rules will ensure customers with limited English proficiency (LEP) who are the target audience of corporate marketing in a language other than English have just, adequate and reasonable access to the information and assistance in the language in which they were marketed. As such, these rules will help LEP customers obtain and maintain telecommunications services, and help protect LEP customers from fraud or abuse. The rules establish minimum requirements, and carriers are encouraged to exceed them. The rules will not apply to carriers' services to wholesale or business customers, or to wireless services offered through prepaid or month-to-month contracts (exempt services).

The rules we establish recognize the diversity of carriers and the different ways they serve customers. They require carriers that market non-exempt services in a non-English language (i.e., "in-language") to provide live person-to-person customer service over the telephone, but provide a choice of ways to satisfy other in-language information obligations that accommodates their various marketing strategies and their different modes of operation while ensuring all telecommunications consumers of non-exempt services receive adequate information to make informed decisions about purchases of

non-exempt telecommunications services. A carrier that provides contracts and/or confirmation letters, and Commission-mandated notices and disclosures, in the non-English language(s) in which the carrier markets its non-exempt services is not required to use any other options for providing access to in-language information to be in compliance with these rules.

The Decision defines “in-language marketing” as a carrier-initiated and carrier-approved communication in a non-English language intended to induce a customer to purchase non-exempt telecommunications service(s), feature(s) or plan(s) that are in writing or publicly broadcast or made available through print media, television, radio or the Internet, or conveyed orally through a carrier-initiated and carrier-approved contact, such as outbound telemarketing or door-to-door sales¹, and it establishes rules for carriers that market non-exempt services in-language to ensure LEP customers have access to notices, disclosures and other important transaction or service-related information already required for carriers serving customers in English. The rules are driven by carrier-initiated action and are not intended to impose gag orders on multi-lingual employees or agents. The only prohibition is on employees and agents that engage in marketing, as it is defined in this decision, in a language that is not carrier-approved.

¹ This definition excludes in-language communications that are incidental to English language telemarketing or door-to-door marketing, individual conversations between sales representatives and customers or potential customers, and conversations between customer service representatives and consumers during consumer initiated calls. The definition shall also exclude “image” advertising, which may name the service(s), but does not include terms or prices of services, offered by the carrier .

The Decision establishes conditions to protect LEP consumers who may enter into English language contracts to obtain non-exempt telecommunications services, but does not require carriers to provide contracts in-language. Carriers must make available in-language instructions for how to obtain the information contained in Commission-mandated notices and disclosures or to obtain assistance with billing questions in the language(s) in which the carrier markets its non-exempt services. However, it does not require carriers that market non-exempt services in-language to provide Commission-mandated notices and disclosures, or billing in-language.

The Decision requires carriers that market non-exempt services in-language to report to the Commission annually on problems with fraud, and actions taken to combat it, and to require these carriers to inform their LEP customers upon initiation of service and annually thereafter about ways to protect against fraud. However, before implementing this requirement we seek comment on the content, format and timing of notification to LEP consumers and reports to the Commission. We also seek comment on defining reportable telecommunications complaints, and issues concerning in-language market trials.

The Decision directs Staff to design a program that integrates community based organizations (CBOs) in our outreach, education and complaint resolution processes, including documents and procedures needed for CBOs to represent LEP consumers in dealings with carriers and a mechanism for compensating CBOs for their efforts while ensuring financial accountability, and to present its recommendation as a resolution for Commission consideration before the end of calendar year 2007.

Finally, the Decision clarifies carriers' responsibilities for the actions of their agents, our authority with respect to the enforcement of in-language

requirements for prepaid calling cards, and penalties associated with our in-language requirements.

The Decision represents the first step toward comprehensively addressing for all telecommunications carriers the needs of California telecommunications consumers who do not speak English fluently. The following table summarizes the rules we adopt today:

<p>Rule I. When In-Language Rules Apply</p>	<p>I.A. Applicability. Telecommunications carriers (“Carriers”) that market telecommunications services, features or rate plans (“Services”) in a non-English language shall be subject to these In-Language Support Rules (“Language Rules”).</p> <p>I.B. Exemptions from Language Rules. These Language Rules do not apply to: (1) carriers’ services to wholesale or business customers; or (2) to wireless services provided through either prepaid/pay-in-advance methods or month-to-month contracts (“exempt services”).</p>
<p>Rule II. Marketing In-Language Definition</p>	<p>II.A. Marketing In-Language Definition. Marketing In-Language is defined as “a carrier-initiated and carrier-approved communication in a non-English language that are: (1) intended to induce a customer to purchase non-exempt telecommunications service(s); and (2) that are either (a) in writing; (b) publicly broadcast (e.g. television, radio or Internet) or made available through print media, (c) or conveyed orally through a carrier-initiated and carrier-approved contact, such as outbound telemarketing or door-to-door sales.”</p> <p>II.B. Exclusions. This Marketing In-Language definition shall exclude: (1) in-language communications that are incidental to English language telemarketing or door-to-door marketing; (2) individual conversations between sales representatives and customers or potential customers; (3) conversations between customer service representatives and consumers during consumer-initiated calls and follow up calls related thereto; (4) “image” or “brand” advertising, which may name the carrier and the non-exempt service(s), but does not include terms, prices or specific information about non-exempt services; and (5) communications in a non-English language that involve only the sale of telecommunications equipment (e.g. handsets) with no service component.</p> <p>II.C. Geographic Scope. The geographic scope of a carrier’s in-language obligation is limited to the in-language advertising area. If an individual reseller, dealer or agent conducts in-language marketing at a particular location, in-language obligations are triggered only for the location (e.g. store, kiosk) that does so.</p> <p>II.D. Unauthorized In-Language Marketing. Unauthorized In-Language Marketing occurs when a carrier’s dealer, agent or employee engages in the activities described above as “Marketing In-Language” without the approval or authorization of the carrier. A carrier that becomes aware of unauthorized in-language marketing by their dealers, agents or employees shall take corrective action within 30 days with such dealers, agents or employees, and shall document the corrective action taken to prevent further unauthorized in-language marketing.</p>

<p>Rule III. Language(s) Required</p>	<p>Language(s) Required. Any non-English language in which a carrier markets its non-exempt services in accordance with the Marketing In-Language Definition set forth above.</p>
<p>Rule IV. In-Language Customer Services Required</p>	<p>IV.A. Customer Service Requirement. During its normal business hours, carriers marketing non-exempt services in a non-English language shall provide access to live, person-to-person customer service over the telephone in the language(s) in which the carrier markets its non-exempt services. A carrier may provide in-person customer service, in addition to telephonic customer service, if a carrier chooses to do so.</p> <p>IV.B. Telephonic Customer Service Option. Carriers shall provide telephonic in-language customer service using either: (1) a customer service representative fluent in the language(s) in which the carrier markets its non-exempt service; or (2) through a third-party interpreter service, such as Language Line.</p>
<p>Rule V. In-Language Information Required</p>	<p>V.A. Information Required. In addition to the In-language Customer Services requirement in Rule IV, carriers, dealers or agents marketing a carrier's non-exempt services in a non-English language shall make available one or more of the following:</p> <ol style="list-style-type: none"> 1. A translation of the contract in the language in which the carrier markets its non-exempt services; or 2. A summary of the customer's transaction in the language(s) in which the carrier markets its non-exempt services (In-Language Confirmation Summary); or, 3. A summary of the customer's transaction in English (English Confirmation Summary) so long as the carrier, dealer, or its agent provides the customer with instructions on how to access the translation or interpretation of that English Confirmation Summary into the language(s) in which the carrier markets its non-exempt services. Carriers shall provide access to required information using at least one of the following methods: <ol style="list-style-type: none"> (a) Carriers may provide oral translation/interpretation through in-person or telephone customer service. (b) Carriers may use an interactive voice response (IVR) system to make required information available to LEP consumers orally over the telephone in the language(s) in which the carrier markets its non-exempt services. Carriers shall make a toll free phone number for the IVR system available at retail outlets, including those of dealers and agents, where non-exempt Services are marketed in-language. (c) Carriers may make required information available to LEP consumers in writing in the language(s) in which the carrier markets its non-exempt service, with the option to provide this information at the point-of-sale, by U.S. Mail, text messages or email if the customer is able to receive text messages or email. (d) Carriers may make the required information available through a website in the language(s) in which the carrier markets its non-exempt service. This website option may only be used if access to the website is available and offered to the LEP consumer at point of sale at the location of the carrier, dealer or agent. (e) Carriers may make required information available through use of "guides" in the language(s) in which the carrier markets its service. This in-language guide shall provide guidance to the LEP consumer to understand the English language version of the

	<p>document(s) (e.g. “Line 1 is the name of the rate plan, the monthly price, and how many peak and non peak minutes of use are provided under the plan. Line 2 is the term of the rate plan, if any. Line 3 shows any early termination fee if you terminate your plan earlier than the term show in Line 2. Line 4 is the ULTS monthly surcharge.” etc.). This In-Language guide shall be provided concurrently with the English-language document(s).</p> <p>V.B. Confirmation Summary Definition. A “Confirmation Summary” is defined as a summary of the transaction entered into by the carrier and the customer, showing the name of the service carrier, its contact information, and a brief description of the telecommunications services or wireless carrier calling plan(s) purchased by the customer, including pricing, term, and any early termination fee. This information may be conveyed in more than one document.</p> <p>V.C. Access to Commission-mandated Notices and Disclosures. Carriers are required to provide access to Commission-mandated notices and disclosures relating to regulated telecommunications services in the language(s) in which the carrier markets its non-exempt services. This access may be provided by website, IVR or other written document(s) sent to the customer via U.S. mail, email, or text message, if the customer has the latter two methods of contact information on file with the carrier in the normal course of business. If the required Commission notice is unrelated to the transaction initiating service, the notice shall be given in the same general time frame to in-language customers as notices in English are given to customers.</p> <p>V.D. Online Exception. If the customer interacts with a carrier marketing in language solely by ordering service on a website and manages the account online where communications are primarily by email, the carrier may satisfy the in-language obligations by providing required in-language information on a publicly available website. Any carrier doing business in this manner as to services must still comply with Rule IV as to In-Language Customer Service obligations.</p>
<p>Rule VI. Schedule for Providing Required Information</p>	<p>VI.A. Non-exempt Services sold under contract. Required information shall be presented (made available or postmarked) at either point of sale, or no later than ten (10) calendar days after the customer’s transaction, but not less than ten (10) calendar days prior to the expiration of any applicable carrier grace period to allow sufficient time for the customer to cancel the carrier’s service agreement without incurring an early termination fee or penalty.</p> <p>VI.B. Non-exempt Services not sold under contract. Required information shall be presented (made available or postmarked) within ten (10) days after the transaction.</p>

2. Background

This Order Instituting Rulemaking (OIR) was initiated to consider ways to improve services to California telecommunications consumers who do not read or speak English fluently, and to focus on ways of promoting consumer protection for telecommunications customers who have limited English proficiency. It represents the most recent effort in the Commission’s Consumer

Protection Initiative (CPI), and is undertaken pursuant to Decision (D.) 06-03-013, which examined the rights of and protections available to California telecommunications consumers, and raised questions as to whether consumers with limited proficiency in English faced disadvantages in the telecommunications market.

D.06-03-013, issued in Rulemaking (R.) 00-02-004, adopted revised General Order (GO) 168, Market Rules to Empower Consumers and to Prevent Fraud, and directed Commission staff to undertake a series of internal initiatives to transform the Commission's organizational culture to heighten its ability to respond to consumers. Initiative No. 23 directed Staff to analyze and report on special problems faced by LEP consumers.²

The Staff report, "Challenges Facing Consumers With Limited English Skills In The Rapidly Changing Telecommunications Marketplace," (Report) issued October 2006, sought to build upon the anecdotal evidence submitted in R.00-02-004.³ The Report was prepared to help us assess whether in-language needs are adequately met by our education and enforcement efforts, and whether the Commission should adopt any rules.⁴ The Report recommended a

² D.06-03-013, OP 25.

³ Parties to R.00-02-004 commented that, even when carriers provide accurate and useful information, many minority language customers typically cannot understand it due to language barriers, and minority language customers are targeted for fraudulent and deceptive communications in their own languages by unscrupulous businesses. Greenling Opening Comments, p. 9; Opening Brief of Latino Issues Forum, pp. 2, 4-6 (Oct. 24, 2005) ("LIF Opening Brief").

⁴ D.06-03-013, pp. 133-138.

formal proceeding be initiated immediately to determine the need for rules and to develop specific rules, as appropriate.⁵

Staff prepared the Report by working with a language access consultant to conduct a study, assembling information on the language demographics of California and the services currently available to LEP Californians through the Commission and telecommunications carriers,⁶ and identifying the challenges faced by LEP telecommunications consumers. The study relied on census and other demographic information, Commission records, and other information on the language accessibility practices of state and federal government agencies, information received from telecommunications carriers, and comments provided by carriers, CBOs and other consumer groups, in writing and orally at a series of workshops and public meetings.

The Commission held two workshops and, at the request of various CBOs, four public meetings around California to receive input from local CBOs.⁷ A draft Report was issued in August 2006 and, after receiving comments, the final Report was issued on October 5, 2006 and included as Attachment B to the OIR.⁸

⁵ Report, p. 89.

⁶ The terms “carrier” and “service provider” are used interchangeably in this decision.

⁷ Workshops were held on June 26 and August 24, 2006. Public meetings were held in Los Angeles on June 26 (Asian Pacific America Legal Center), in Fresno on August 3, 2006 (Central California Legal Services), in San Diego on August 8, 2006 (Scottish Rite Center), and in Stockton on August 10, 2006 (El Concilio).

⁸ A copy of the Report is available at:
<http://www.cpuc.ca.gov/PUBLISHED/REPORT/60608.htm>.

The Report recommends the Commission:

- Take immediate action to facilitate improved communications between carriers and CBOs to ensure problems facing the LEP communities are heard and resolved;
- Make Staff more available to consumers throughout the state to assist in filing informal and, when necessary, formal complaints with the Commission;
- Commit more attention and resources to its bilingual services office to augment its own ability to serve California consumers;
- Broaden the efforts of the Public Advisor's Office undertaken in the CPI to add telecommunications education in languages with increasing populations in the state, such as Russian and Armenian;
- Develop and propose a set of targeted rules for telecommunications carriers for consideration in a formal Commission proceeding.

After comments were received on the Report, Staff prepared a proposal (Proposal) containing options for the Commission to consider in a formal rulemaking. We then opened this OIR to consider ways to improve services to LEP telecommunications consumers. In particular, we sought to assess telecommunications carriers' current in-language efforts and capabilities, the availability of and need for improved in-language disclosures, and access to in-language customer service. The OIR named as respondents all California telecommunications carriers, including entities registered as providers of prepaid phone debit cards pursuant to Pub. Util. Code § 885.⁹ We asked for comments on carrier accountability for the actions of third party agents, and

⁹ All statutory references are to the Public Utilities Code, unless otherwise noted.

whether prepaid phone card terms of use, disclosures and access to customer service were adequate.¹⁰

We presented Staff's Proposal for comment, and asked which, if any, parts should be adopted or modified, and why.¹¹ We asked if LEP consumers needed information or disclosures to assist and protect them, whether existing laws are adequate, what rules might be necessary, to which carriers should the rules apply, and what were the costs and benefits of the rules. We asked what other state agencies require in-language marketing, what languages should be supported, how in-language obligations should be determined, and whether language preference and/or LEP complaint tracking were appropriate.¹²

We set out criteria for evaluating in-language recommendations, and sought comment on the appropriateness of the evaluation criteria, whether the recommendations in the Proposal satisfied those criteria, and if other criteria were appropriate.

The OIR also identified the California Utilities Diversity Council's (CUDC) adopted principles to guide California utilities in their efforts to serve LEP customers as potentially instructive suggestions for developing and improving services to LEP customers.¹³

¹⁰ R.07-01-021, pp. 10-11.

¹¹ The Proposal is included as Attachment A to the OIR.

¹² The Proposal also includes several specific questions for comment.

¹³ OIR, pp. 8-9. The CUDC was established in March 2003 as a resource and to work collaboratively with the Commission and regulated utility companies to promote and increase diversity within utilities' governance, customer service and marketing, employment, procurement, and philanthropy programs.

The Assigned Commissioner's Ruling (ACR) of January 17, 2007, clarified the OIR's scope and schedule, incorporating by reference the limited English proficiency aspects of the record of the CPI proceeding, R.00-02-004, and the meetings, workshops, comments and Report described in the OIR and summarized above.¹⁴

The following discussion summarizes the Report's assessment of telecommunications carriers' current in-language efforts and capabilities, and the comments on the Report, the Proposal and issues identified in the OIR.¹⁵

¹⁴ January 17, 2007 ACR, p. 2.

¹⁵ Comments and/or Reply Comments were filed by Pacific Bell Telephone Company dba AT&T California, AT&T Communications of California, Inc., New Cingular Wireless PCS, LLC (collectively referred to as "AT&T"); CA-CLEC LLC dba Crown Castle Solutions (Crown); California Association of Competitive Telephone Companies (CALTEL); Cal-Ore Telephone Co., Calaveras Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Global Valley Networks, Inc., Happy Valley Telephone Co., Hornitos Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., Ponderosa Telephone Co., Sierra Telephone Co., Inc., Siskiyou Telephone Co., Volcano Telephone Co., Winterhaven Telephone Co., (collectively referred to as "Small LECs"); Cbeyond Communications, LLC (Cbeyond); Comcast Phone of California, LLC (Comcast), Cox California Telcom, L.L.C., dba Cox Communications (Cox), Time Warner Cable Information Services California, LLC (Time Warner), (collectively referred to as "Joint Commenters"); Consumer Federation of California (Consumer Federation); Cricket Communications, Inc. and MetroPCS Wireless, Inc., (Cricket and MetroPCS); CTIA - The Wireless Association (CTIA); Division of Ratepayer Advocates (DRA); Greenlining Institute (Greenlining); Integra Telecom of California, Inc. (Integra); Time Warner Telecom of California, LP (TW Telecom), and XO Communications Services, Inc.(XO), (collectively referred to as "Joint CLECs"); Latino Issues Forum (LIF); SureWest Telephone Company (SureWest); The Utility Reform Network (TURN); MCI Communications Services, Inc. (MCI), MCImetro Access Transmission Services LLC (MCImetro), Verizon California Inc. (VC), Verizon Long Distance (VLD), Verizon West Coast, Inc. (VWC) (collectively referred to as "Verizon California"); and Cellco Partnership, Los Angeles SMSA Limited Partnership, Verizon Wireless (VAW) LLC, Fresno MSA Limited Partnership, Sacramento Valley Limited Partnership, GTE

Footnote continued on next page

3. Current In-Language Efforts of Telecommunications Carriers

In D.06-03-013, we recognized that carriers should be the first and most important source of information for consumers.¹⁶ In preparing the Report, Staff contacted all registered and certificated (wireless and wireline) telecommunications corporations in California asking for information on carrier services for and interactions with LEP consumers. Of the carriers contacted, only approximately 11% responded (109 responses were received on behalf of 147 carriers out of a total of approximately 1,300 carriers). However, we did receive responses from most incumbent local exchange carriers (ILECs) that serve over 90% of ILEC customers, major competitive local exchange carriers (CLCs), and major wireless carriers and these carriers serve the majority of telecommunications customers in California. Many respondents stated that they do not track this information or do not provide non-English services, and were unable to provide information on LEP customers. Nevertheless, several carriers provided information on their multilingual marketing, education, and outreach services, and the language demographics of their customers. We estimate that through the service territories of Verizon and AT&T alone, over 90% of residential customers have access to in-language support.

The Report found many telecommunications carriers provide their own in-language marketing, outreach, and education for existing customers and

Mobilnet of California Limited Partnership, GTE Mobilnet of Santa Barbara Limited Partnership, Modoc RSA Limited Partnership, California RSA No. 4 Limited Partnership and Cal-One Cellular Limited Partnership (collectively referred to as "Verizon Wireless").

¹⁶ D.06-03-013, p. 118.

prospective customers in order to provide better service or to attract new customers. Certain other in-language activities are undertaken to comply with prior Commission orders.¹⁷ Common carrier practices include soliciting a customer's preference for receiving information in a language other than English at the time a customer opens an account, and tracking a customer's language preferences to enable the carrier to send future information (ranging from written order confirmations to bills, new service offerings, and other information) in the customer's preferred language.

The Report found that larger carriers are more likely than smaller carriers to serve larger linguistic groups (e.g., Spanish, Chinese) with in-house employees, and to use Language Line telephone interpretation services for others.¹⁸ Several smaller carriers do not provide any non-English educational materials because these carriers do not see a need for such services among their customers.¹⁹ Some carriers serving multi-ethnic customers also provide in-house customer service in languages other than English, most commonly Spanish, but also several Asian languages, as well as Russian, Armenian, Arabic, and others. Carriers that do not have bilingual staff and do not utilize Language Line translation services suggest that LEP customers obtain their own interpreters to

¹⁷ For example, D.96-10-076 requires competitive local exchange carriers (CLCs) to provide specific information to customers in Spanish, Mandarin, Cantonese, Vietnamese, Korean, Japanese, and/or Tagalog, if they market services in those languages.

¹⁸ Language Line Services provides professional interpreters of 170 languages 24 hours a day, 7 days a week, 365 days a year. See: <http://www.language.com/>

¹⁹ Report, p. 68.

assist them when they shop for telecommunications services or translators to help them understand written communications from service providers.

In workshops, carriers reported that, in general, when they become aware of fraud or abusive marketing on the part of their dealers, and agents, the carriers discontinue contracts with those dealers. According to the Report, carriers expressed support for a voluntary and collaborative process for resolving the challenges faced by LEP consumers, primarily through cooperation between carriers, CBOs, and the Commission in resolving individual customer complaints.²⁰

The Report also reviewed the results of a 2005 CUDC survey of the language policies and practices within the CUDC utility companies and the Commission, and concludes those results largely agreed with information Staff received from telecommunications companies.²¹ The CUDC survey found all of those surveyed provide some level of customer service in at least one non-English language, and were either expanding their multilingual services or, in the case of the smaller companies, considering it. The CUDC survey also found most of those surveyed regularly monitor customer service telephone calls for quality assurance, several of those surveyed use telephone interpreter services to serve non-English speaking customers, all of those surveyed state most of their LEP customers speak Spanish, all of those surveyed translate some

²⁰ Report, p. 63.

²¹ The companies included in the CUDC survey were AT&T California, Verizon California, Pacific Gas and Electric, Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company, Southern California Water Company, and San Jose Water Company.

materials to Spanish, most of those surveyed provide diversity and cultural awareness training, and some of those surveyed offer pay differential for multilingual employees.

The Report found that larger carriers and those serving more diverse areas offer more services in more languages than smaller carriers. Services provided in-languages other than English include marketing and outreach information (such as brochures on understanding your phone bill) and customer service. Carriers providing in-language support usually provide information only in the most commonly spoken non-English languages, and few carriers provide in-language service contracts or in-language key terms and conditions.

Based on input from consumer advocates and from public participation hearings (PPHs), the Report concludes there is a need for more in-language information and services for LEP consumers, increased and speedier enforcement to address fraudulent activities and other violations, and increased attention to carriers' oversight of dealers, agents or resellers.²² According to the Report, consumer groups report the absence of in-language contracts or written summaries of terms and conditions makes it more difficult for LEP consumers to verify the services purchased are those represented during an in-language sale, with a potential for fraud or marketing abuse.

Although carriers and consumer groups commenting on the draft Report challenged Staff's recommendations, no commenter disagreed with or refuted the Report's assessment of telecommunications carriers' current in-language

²² Report, pp. 72-73.

efforts.²³ Therefore, we accept the Report's assessment of telecommunications carriers' current in-language efforts.

4. Discussion of the Staff Proposal and OIR Issues

Parties' comments addressed many of the issues identified in the OIR, but also focused on details of Staff's Proposal addressing the language access issues identified in the Report. The Proposal recommends options for providing information and assistance to LEP consumers, with the goal of improving language access and increasing consumer protection. The Proposal makes recommendations on how to define "in-language," and what actions would trigger in-language requirements. Finally, the Proposal makes recommendations on tracking in-language customers and complaints, and asks if penalties should be adopted for violations of in-language rules. We address the comments on issues in the OIR and the Proposal below.

4.1. Criteria for Evaluating Possible Options

The OIR set out the following criteria for evaluating the Proposal and other options to address the problems faced by LEP telecommunications customers:

- Promoting informed choice, while not discouraging in-language marketing efforts.
- Minimizing fraud, billing problems, and unresolved complaints.
- Feasibility using existing infrastructure, processes and technologies.

²³ The CTR disagreed with the Report's statement that "California is uniquely a state in which no ethnic group constitutes a majority," asserting Latinos are clearly the state's ethnic majority. CTR Recommendations and Comments on the Draft Report (September 14, 2006), p. 15.

- Doable at reasonable cost, and without undue financial burden.
- Compliant with applicable law.

We sought comment on the appropriateness of these criteria, asking if the Proposal satisfied the criteria and if other criteria were appropriate.

DRA states the criterion of “feasibility with existing infrastructure, processes and technologies” is reasonable, but should not foreclose ways to improve LEP services. DRA states the criterion for rules to be “implemented at reasonable cost and without undue financial burden” is difficult to satisfy because cost benefit analysis cannot be done without detailed cost information, and carriers have not provided detailed in-language support costs. DRA challenges carriers’ assertions that costs are prohibitive.²⁴

Greenlining states the criterion of “feasibility with existing infrastructure, processes and technologies” is inadequate because it limits potential improvement in LEP services, and the “financial burden” criterion can only be determined with accurate cost data from carriers.²⁵ LIF contends consumers should not have to bear a financial burden of any amount due to fraud.²⁶ TURN states the evaluation criteria are too narrowly drawn and skewed to protect carriers from incurring LEP support costs. TURN states benefits should be broadly defined to consider qualitative as well as quantitative benefits, and

²⁴ DRA Opening Comments, pp. 5-6.

²⁵ Greenlining Opening Comments, p. 5.

²⁶ LIF Opening Comments, pp. 10-11.

challenges carrier cost estimates and underlying assumptions as unsubstantiated.²⁷

Carriers recommend the evaluation criteria also include:

- Has the need for rules been substantiated?
- Are remedies available under existing law?
- Can an issue be addressed through the workings of the competitive marketplace?
- Does a proposed rule effectively address a problem?
- Are less restrictive alternatives available?
- Does a proposed rule satisfy a cost-benefit analysis?
- Does a proposed rule result in significant diversion of limited resources?²⁸

CTIA recommends the Proposal not be adopted, based on an assessment using the criteria of “feasibility,” “costs” and its suggested additional criterion (“significant diversion of limited resources”). Joint CLECs state most of the Proposal does not satisfy the evaluation criteria, is impractical and costly to implement, and raises significant legal concerns.²⁹

Discussion

We agree with carriers that when remedies addressing specific concerns are already available under existing law, additional rules may be unnecessary. D.06-03-013 summarizes existing consumer protection rules and regulations,

²⁷ TURN Opening Comments, pp. 9-16.

²⁸ CTIA Opening Comments, p. 12. Joint Commenters Opening Comments, p. 8. SureWest Opening Comments, pp. 2-4, 9. Small LECs Opening Comments, pp. 2, 9. Verizon California Opening Comments, p. 2.

²⁹ Joint CLECs Opening Comments, pp. 6-8.

generally.³⁰ The OIR and this Decision assess whether existing rules are adequate to enable LEP consumers to participate in markets where marketing takes place in-language. We also agree the least restrictive solution is preferred, so long as it effectively addresses a substantiated problem. We agree competition should be relied on when it is the most appropriate solution, and we should consider whether rules are cost-effective when adequate information is available to make that determination. Such information would include both the incremental costs to carriers and an assessment of the value to customers even where a specific monetary value may be difficult to assign to a benefit.

We recognize that the absence of detailed carrier cost information and the lack of quantitatively and qualitatively measured benefits prevents us from conducting a rigorous cost-benefit analysis. Nevertheless, we are still able to assess whether proposals are feasible with existing infrastructure, processes and technologies, and without undue financial burden, while providing substantial benefits that promote the public interest. Moreover, since our rules focus on carriers who conduct marketing in-language, it is clear that carriers subject to these rules already have dedicated some corporate infrastructure to function in-language. We seek to minimize burdens on carriers while ensuring LEP consumers are adequately informed and protected.

Certainly, there is no need to meet a cost-effectiveness test in order for a carrier to be required to correct fraudulent conduct or compensate victims of

³⁰ Appendix D to D.06-03-013 lists decisions and statutes providing consumer protections.

fraud. Carriers are not entitled to retain any ill-gotten gains and victims of fraud should always be made whole to the extent possible.

4.2. Do LEP Customers Need Information or Disclosures to Assist and Protect Them? To What Extent Does Existing California Law Already Protect Them?

Carriers state that existing laws and voluntary carrier actions adequately serve and protect LEP consumers. They contend Pub. Util. Code §§ 2890(b) and 2889.5, Business & Professions (B&P) Code §§ 17538.9(b) and 17539.6, Civil Code §§ 1567 and 1572, GO 153, D.96-10-076, D.98-08-031, D.00-03-020 as modified by D.00-11-015 and federal laws³¹ adequately protect LEP consumers.³²

³¹ § 2890(b) requires written or oral solicitation materials used to obtain a written order for a product or service to be in the same language as the written order.

§ 2889.5 requires any written authorization contained in a mailing be in the same language as the non-English solicitation mailed to a prospective subscriber.

B&P Code § 17538.9(b) requires disclosures on pre-paid calling cards be in the same non-English language used on the card or card packaging or advertising, and requires in-language customer service.

B&P Code § 17539.6 requires broadcast or print advertisement or notice containing a 900 number be written or spoken in the same language as that used in the 900 number call.

Civil Code §§ 1567 and 1572 address consent of parties to a contract and fraud.

GO 153 (Section 4.6) requires carriers to provide in-language notices and toll-free customer service in the languages in which Universal Lifeline Telephone Service (ULTS) service was sold.

D.95-07-054 as modified by D.96-10-076 establishing in-language requirements applicable to CLECs offering services in California's seven most commonly spoken non-English languages.

D.98-08-031 requires contract terms to be in the same language used when the contract was negotiated (Appendix A, Rule 3.d).

Footnote continued on next page

All commenting carriers state that formal rules are neither necessary nor desirable, due to the complexity of the issues facing carriers in serving their LEP customers and the varying characteristics and business models of carriers.

AT&T states §§ 2890(b) and 2889.5 do not apply to it because it does not use written orders or written authorizations contained in a mailing, and Civil Code § 1632 does not apply to its contracts for wireless service or its residential services provided pursuant to tariffs.³³ AT&T states the written order provision of § 2890 was designed to address authorizations for billings disguised as sweepstakes forms to prevent cramming and was not intended to establish in-language obligations. AT&T concludes that mandatory requirements will result in higher prices for consumers, and create unintended consequences, such as limiting the availability of in-language services from carriers that find compliance too expensive and onerous. AT&T recommends that the

D.00-03-020 as modified by D.00-11-015 establishes rules to prevent slamming (the unauthorized change in a customer's presubscribed carrier) and cramming (the unauthorized inclusion of charges on a telephone bill).

The Code of Federal Regulations (CFR) requires pay-per-call disclosures be in the same language as that used in advertisements (16 CFR 308.3(a)(1)); third party verifications (TPV) be conducted in the same language used in the underlying sales transaction (47 CFR 64.1120(c)(3)(iv)); letters of agency (LOAs) and be translated in their entirety into the same language as any promotional materials, oral descriptions or instructions provided with the LOA (47 CFR 64.1130(h)); notices of customer rights customer's right to restrict use of, disclosure of, and access to that customer's proprietary network information (CPNI) be translated in their entirety into the same language (47 CFR 64.2008(c)(6), and Commercial electronic mail message disclosures must be translated in their entirety into the same language (47 CFR 64.3100(d)(6)).

³² Joint Commenter Opening Comments, pp. 9-10. SureWest Opening Comments, pp. 4-6. Small LECs Opening Comments, pp. 4-6. Verizon Wireless Opening Comments, p. 20. AT&T Reply Comments, pp. 6-7, 12-13.

³³ AT&T Opening Comments, pp. 6-7.

Commission adopt the Proposal as voluntary industry guidelines, if revised as AT&T suggests.³⁴

CTIA also recommends a voluntary approach, proposing a “menu” of options from which carriers would choose to meet the in-language needs of their customers, including in-language web sites, interactive voice response (IVR) systems, welcome letters, brochures and printed material, and translation services.³⁵ Cricket and MetroPCS support CTIA’s recommendation for multiple voluntary alternatives.³⁶

Verizon Wireless states that rules are not needed or desirable, given carriers’ voluntary efforts and the competitive, national character of the wireless industry.³⁷ Verizon Wireless volunteers to take additional steps to ensure its customers have access to in-language information and support for every language in which its services are advertised in California.³⁸ Verizon Wireless states it will provide a written in-language disclosure at the point of sale on how to get in-language information and free Language Line translation service, a foreign-language website containing Customer Agreement Terms and Conditions, current calling plans, and other information in several languages, and an in-language IVR for customers to get information over the telephone.

³⁴ AT&T Opening Comments, pp. 1-2.

³⁵ CTIA Opening Comments, pp. 9-11. CTIA Reply Comments, p. 2.

³⁶ Cricket and MetroPCS Opening Comments, p. 2.

³⁷ Verizon Wireless Opening Comments, p. 3.

³⁸ Verizon Wireless Opening Comments, pp. 5-9. Verizon Wireless’s proposal does not apply to business customers.

Verizon Wireless maintains that its voluntary efforts are costly, but did not provide specific details.

If the Commission establishes rules, Verizon Wireless recommends that any rules should establish general obligations and allow carriers flexibility to meet them. Verizon Wireless suggests, for example, carriers be required to develop specific plans for serving LEP customers.³⁹

Joint Commenters state the need for rules is unsupported and numerous other pro-competitive solutions are available, citing §§ 2890(b) and 2889.5, D.95-07-054 and D.96-10-076, and voluntary efforts by carriers and CBOs. They recommend the Commission and parties first identify the specific problems LEP consumers face before determining appropriate solutions.⁴⁰ Joint Commenters maintain that mandatory in-language rules would harm competition, contending mandatory in-language rules could result in rate increases because the cost of compliance would be passed to consumers, and ILECs with already established in-language capabilities have a competitive advantage. Joint Commenters state carriers need flexibility to execute their unique business plans under the existing statutes and the in-language rules adopted in D.96-10-076.⁴¹

Verizon California states rules should only be adopted in response to a substantiated problem, and the Proposal does not do this.⁴² SureWest, Small LECs and Verizon California state the Proposal would be costly without

³⁹ Verizon Wireless Opening Comments, p. 8.

⁴⁰ Joint Commenters, Opening Comments, pp. 8-10.

⁴¹ Joint Commenters Opening Comments, pp. 2-5, Reply Comments, p. 2.

⁴² Verizon California Opening Comments, pp. 2-3.

providing clear benefits, and goes beyond any articulated problems that existing law does not already address.⁴³ SureWest, Small LECs and Verizon California state before establishing new rules the Commission must have clear evidence of a problem that cannot be solved by competition or existing laws. Only cost-effective, specifically targeted rules should be adopted as a last resort, and any adopted rules should not apply to business customers. SureWest and Small LECs recommend the Commission focus on consumer education and enhanced enforcement.

Consumers groups contend that certain wireless telephone and prepaid phone card dealers or agents target vulnerable LEP communities with unfair or fraudulent marketing tactics.⁴⁴ They maintain that the absence of in-language billing makes it difficult for LEP consumers to understand their bills, and conclude that appropriate consumer education and outreach (as opposed to marketing) materials and high-quality in-language customer service are needed from the Commission and carriers. Consumer advocates and CBOs recommend requiring that carrier information be available to non-English speaking customers, including service contracts, bills, and confirmation letters translated into the languages which a carrier markets or conducts sales.

Asian Law Caucus (ALC) states consumer education alone will not protect LEP consumers and rules are necessary. ALC states very little carrier-provided

⁴³ SureWest Opening Comments, pp. 2-8, 15-16. Small LECs Opening Comments, pp. 2-8, 15-17. Verizon California Opening Comments, pp. 2-3.

⁴⁴ Report, Appendix G (CTR Data Report). Asian Law Caucus Comments on the Study Plan on Language Access Issues for California Telecommunications Consumers, July 14, 2006 (ALC Comments), Lo Declaration.

in-language material benefits LEP consumers, so sales persons try to orally translate key provisions during in-language transactions but may negligently or intentionally fail to disclose key rates, terms or conditions.⁴⁵

Communities for Telecommunications Rights (CTR) states that current carrier practices are hostile to informed consumer choice and invites fraud against LEP consumers. CTR recommends in-language rules, tracking of LEP consumer complaints, and CBO involvement in consumer education and complaint resolution efforts. CTR states there is a need for more in-language information and services. CTR contends the paucity of carrier responses to Staff's survey is evidence the Commission can not rely on voluntary carrier efforts, suggesting the poor response rate demonstrates carriers' lack of cooperation with the Commission and is a harbinger of meager volunteerism in the future.⁴⁶

The Watsonville Law Center recommends carriers that market in-language should provide contracts and disclosures in-language.⁴⁷

LIF states that §§ 2889.5 and 2890(d) and Civil Code § 1632 do not specifically address LEP customer transactions and, unless further clarified, will not protect LEP consumers. LIF concludes that voluntary efforts cannot replace enforceable regulations.⁴⁸

⁴⁵ Asian Law Caucus Comments on the CPUC Staff's Draft Report (September 14, 2006), pp. 7-9.

⁴⁶ CTR Recommendations and Comments on the CPUC Staff's Draft Report (September 14, 2006), pp. 2-3, 7, 11, 22-23.

⁴⁷ Watsonville Law Center Comments on Draft Report (September 14, 2006), pp. 1-2.

⁴⁸ LIF Opening Comments, pp. 5-9.

Consumer Federation states participants at the June 26, 2006 workshop reported that deceptive practices prohibited by Civil Code § 1770 are nevertheless occurring.⁴⁹ Consumer Federation recommends the Commission enforce existing rules to stop illegal carrier practices, and hold carriers responsible for the actions of their agents.⁵⁰

Greenlining maintains that LEP consumers are underserved and vulnerable to fraud, and recommends procedures for speedy complaint resolution, targeted fraud investigation, and more useful consumer education.⁵¹

DRA states that while § 2889.5 establishes disclosure requirements, it does not require disclosures be in-language. DRA recommends carriers be required to provide in-language disclosures and give more attention to CBO involvement in resolution of LEP consumer complaints.⁵² DRA states that LEP consumers are less likely to complain if they are victims of fraud, pointing to testimony of workshop participants and the 2004 Federal Trade Commission (FTC) consumer fraud study (FTC Study).

DRA maintains that telecommunications service providers need to be sensitive to and adequately meet the needs of LEP community customers so they

⁴⁹ Consumer Federation Opening Comments, pp. 12-13.

⁵⁰ Consumer Federation comments on the CPUC Staff's Draft Report (September 14, 2006), pp. 3-4, 6.

⁵¹ Greenlining Opening Comments, p. 2.

⁵² DRA Comments on the Staff's Draft Report (September 14, 2006), pp. 1-2, 4.

are not denied the benefits of access to affordable high-quality telecommunications services.⁵³

TURN states the market is not meeting the needs of LEP consumers and existing laws do not adequately protect them.⁵⁴ It states § 2896 requires rules for carriers to provide sufficient information to make informed choices among telecommunications services and providers. TURN states § 2896 requires carriers to provide, among other things, information regarding the provider's identity, service options, pricing, and terms and conditions of service. TURN contends that, to the extent LEP consumers are not getting this information in an understandable format (i.e., in-language), the Commission and carriers are not in compliance with the statute. TURN states the Report found compliance with other statutes to be inconsistent and that the record in this proceeding substantiates the need for LEP consumer protections, including more in-language information, disclosures and services.⁵⁵

Some carriers state they already take steps to provide access to information and customer service to help LEP consumers understand their services. AT&T and Cox state they allow customers to authorize representatives from the CBOs to discuss their issues, and AT&T states it has bilingual employees and uses external translation services to serve certain LEP customers.⁵⁶ Verizon Wireless states it provides in-language sales and customer service through bilingual

⁵³ DRA Opening Comments, pp. 2-3, 8.

⁵⁴ TURN Opening Comments, p. 7.

⁵⁵ TURN Opening Comments, pp. 3-10.

⁵⁶ AT&T, Opening Comments at 14, 16. Joint Commenters Opening Comments, p. 9.

Spanish-speaking representatives.⁵⁷ Verizon Wireless also uses Language Line services with customers who request assistance in other languages, at no additional cost to the customer.

Verizon California states it provides in-language support to LEP consumers because it makes business sense to do so, and opposes prescriptive regulations. Verizon California states its in-language support increases customer retention, reduces call center volume, and increases customer satisfaction. It states it currently provides a description of its products and written confirmation of rates, terms and conditions in Spanish, and Verizon Long Distance and Verizon Online provide welcome letters in Korean, Vietnamese and Chinese.⁵⁸

CTIA states all major wireless carriers in California now translate a large portion of their documents, including terms and conditions brochures, as well as their websites, into Spanish, and bilingual customer service representatives are standard for the major wireless carriers.⁵⁹ Cricket and MetroPCS Wireless state they currently support significant in-language communications with their Spanish-speaking customers.⁶⁰

The Small LECs state they serve areas with relatively few non-English speaking customers, do not solicit business from LEP customers, and are not required to provide in-language customer service or disclosures. Nevertheless,

⁵⁷ Verizon Wireless Opening Comments, p. 1.

⁵⁸ Verizon California Amended Opening Comments, pp. 1, 8.

⁵⁹ CTIA Opening Comments, p. 2.

⁶⁰ Cricket and MetroPCS Opening Comments, p. 1.

some Small LECs offer limited translation and other in language customer services as a courtesy to customers.⁶¹

Discussion

We find that when carriers market in-language then in-language rules are necessary to ensure the proper functioning of a competitive market. Although many carriers provide a variety of in-language services, the extent of in-language support varies widely, and none fully or adequately meet the needs of LEP consumers. Many carriers provide at least some in-language customer support. Most do not. None appear to provide in-language information designed to protect LEP consumers from fraud or abuse. Existing statutes and rules do not adequately protect LEP consumers because they either do not require information to be “in-language” and understandable to LEP customers (as is the case with most existing consumer protection rules and regulations), they apply only to certain kinds of transactions or customers (e.g., § 2890(b), § 2889.5, GO 153), or they apply to some carriers serving LEP customers but not to others (e.g., tariffs, D.96-10-076, D.98-08-031).

While carriers state that no need has been shown for LEP protections, some voluntarily offer some LEP support as a courtesy or volunteer to take additional steps to ensure LEP consumers have access to in-language information and services. Carriers not only provide little data to support the position that no need has been shown for LEP protections, but oppose tracking or producing data which might assist the Commission in more precisely determining the extent of LEP needs.

⁶¹ Small LECs Opening Comments, p. 1.

In R.00-02-004, Omnipoint Communications, Inc., dba T-Mobile (T-Mobile) recommended the Commission first attempt to understand current carrier practices and customers experiences, then identify whether there are any issues that need to be addressed and finally to determine how best to address those issues.⁶² The Commission followed this approach when it surveyed all registered and certificated (wireless and wireline) telecommunications providers in California seeking information on services for and interactions with LEP consumers. Following is a summary of the Staff's survey results:

⁶² Reply Comments of T-Mobile, on the Proposed Decision of Commissioners Peevey and Kennedy, p. 3 (January 23, 2006) in R.00-02-004.

Summary of Survey of Registered and Certificated Carriers Services For and Interactions with LEP Consumers					
		LECs	CLCs/IECs	Wireless	All Respondents
Respondents	Number	17	105	25	147
Not Doing Business or Not Serving Residential Customers	Number	0	35	2	37
	Percent	0%	33%	8%	25%
Respondents who Track Language Preference	Number	4	29	16	49
	Percent	23.5%	27.6%	64.0%	33.3%
Respondents who Measure LEP Customer Satisfaction	Number	5	29	14	48
	Percent	29.4%	27.6%	56.0%	32.7%
Respondents who Track % of LEP Calls	Number	10	43	17	70
	Percent	58.8%	41.0%	68.0%	48%
Respondents who Provide In-Language Support of Any Kind	Number	9	41	20	70
	Percent	52.9%	39.0%	80.0%	48%
Of the 1,300 carriers contacted, 147 (11.3%) responded. The 11.3% (147 carriers) that did respond serve over 90% of California customers.					

Only about 11% of the carriers contacted responded (109 responses were received on behalf of 147 carriers). Most ILECs, major CLC and major wireless carriers responded, and these carriers serve the majority of telecommunications customers in California. Most of those responding stated they do not track this information (only 33% track LEP customer language preference) or do not provide non-English services of any kind (only 48% provide any kind of in-language support), and were unable to provide any information on their LEP customers. Since most responding carriers state they do not track their interactions with LEP consumers, there is little data we can point to showing they are meeting the needs of their LEP consumers. Therefore, the Commission cannot rely on carrier assertions that in-language support is adequate and no additional protection of LEP consumers is needed.

The carriers' response to the Commission's request for information does not allow the Commission to precisely determine the extent of existing in-language services or unmet LEP consumer needs.⁶³ However, less than half (48%) of responding carriers state they provide any in-language information or support whatsoever to LEP consumers making more credible consumer groups' assertions that useful in-language information for LEP customers is lacking. Moreover, organizations like the ALC have documented the absence of useful in-language information for LEP customers, further substantiating the lack of useful in-language support for LEP customers.⁶⁴

ALC provides information describing its effort to find useful in-language information on major wireless carrier websites, and the lack of useful in-language information it found in its research.⁶⁵ ALC also provides evidence in support of its claim that in-language marketing materials fail to include key terms and conditions, and are misleading or fraudulent. ALC states most complaints it assists are LEP consumers of wireless services, particularly wireless dealers operating in LEP communities.⁶⁶ ALC states confusing or fraudulent wireless dealer rebates are a particular problem, but inadequately disclosed

⁶³ Section 8 of D.06-03-013 went to considerable length to clarify carriers' obligations to respond to Commission requests for information.

⁶⁴ ALC Comments on the Study Plan on Language Access Issues for California Telecommunications Consumers, July 14, 2006.

⁶⁵ ALC Comments on the Study Plan on Language Access Issues for California Telecommunications Consumers, July 14, 2006, Martin Declaration.

⁶⁶ ALC Comments on the Study Plan on Language Access Issues for California Telecommunications Consumers, July 14, 2006, Lo Declaration.

terms and “secondary” early termination fee (ETFs) are also problems.⁶⁷ ALC contends one carrier refuses to assist with such disputes, directing complainants to its dealers.⁶⁸

Although competition has been in place in the state for over a decade, few carriers provide any in-language materials or services, and many of those that do are required by rules to do so. Some carriers are only now voluntarily taking additional steps to ensure LEP consumers receive adequate in-language information needed to make an informed competitive choice.

Verizon Wireless volunteers to provide a written in-language disclosure at the point of sale on how to get in-language information, free Language Line translation service, foreign-language websites containing Customer Agreement Terms and Conditions, current calling plans, and other information, and in-language IVR systems for LEP customers to get information over the telephone.

AT&T California and Cox currently allow LEP customers to authorize CBO representatives to discuss their issues with the carriers, and some small LECs voluntarily offer limited translation and other in language customer services to LEP customers. However, the type and extent of voluntary LEP information and support varies widely, but does not ensure LEP consumers consistently receive in-language key terms and conditions or other Commission-mandated notices and disclosures.

⁶⁷ Secondary ETFs are imposed by a dealer or agent that are different and in addition to the ETFs imposed by carriers.

⁶⁸ ALC Comments on the Study Plan on Language Access Issues for California Telecommunications Consumers, July 14, 2006, Lo Declaration at 1.

Competition to date has not systemically addressed the needs of LEP consumers, and it is not reasonable to conclude competition can adequately protect LEP consumers. Unacceptable practices like slamming and cramming have emerged *as a result of competition*, requiring Legislative and Commission intervention.⁶⁹ Only last year as part of our CPI, we embodied slamming and cramming rules in GO 168. However, as discussed below, evidence suggests LEP consumers remain particularly vulnerable to slamming because of their inability to understand oral offers made in English. We find that it is not appropriate to rely solely on the competitive marketplace to address the information needs of LEP consumers, particularly where LEP consumers that enter into annual or multi-year contracts may be exposed to significant ETFs. However, LEP consumers who purchase service through prepaid or month-to-month contracts are not locked in to long term commitments, and are able to easily cancel or change service at little cost or penalty. Thus, these LEP consumers are exposed to less financial risk.

Even with competition, achievement of important public policy objectives may require additional measures.⁷⁰ Where competition is in place, it should function more effectively as a result of our in-language rules because LEP

⁶⁹ Slamming is the unauthorized transfer of a customer to another carrier and cramming is unauthorized billing for services and products that have not been ordered. See Assembly Bill (AB) 284 (Stats. 1998, Ch. 672) amending § 2889.5, Senate Bill (SB) 405 (Stats. 1998, Ch.663) codifying D.97-06-096, D.00-03-020 as modified by D.00-11-015, addressing slamming. See AB 2142 (Stats. 1998, Ch. 1036) and SB 378 (Stats. 1998, Ch. 1041) adding §§ 2889.9 and 2890, respectively, to deter cramming.

⁷⁰ In D.06-03-013 we recognized some matters are independent of the marketplace and not something upon which competition can be relied for optimal outcomes. (Pp. 67, 74.)

customers will have better information upon which to make their purchasing decisions.

The evidence presented in R.00-02-004, in workshops and public meetings, and in comments on the OIR is consistent with the results of Staff's carrier survey, and shows many LEP consumers do not receive adequate notices, disclosures or other important information, and as a result do not receive the information needed to fully participate in the marketplace.⁷¹ Also, the Report describes how LEP consumers are vulnerable to fraud and marketing abuse by wireless phone and prepaid phone card dealers or agents.⁷² LEP consumers' special vulnerability to fraud and marketing abuse is supported by other evidence, as we discuss below.

The 2004 FTC Study described by DRA supports consumer groups' assertions that LEP consumers may be particularly vulnerable to fraud and marketing abuse.⁷³ The FTC Study examined a broad range of specific types of fraud, including among other things, slamming and other types of fraud involving cramming, or unauthorized billing for pay-per-call information

⁷¹ § 451 requires every public utility to furnish and maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the health, comfort, and convenience of its patrons, employees, and the public.

⁷² Report, pp. 61, 76-77.

⁷³ Consumer Fraud in the United States: An FTC Survey, Federal Trade Commission Staff Report, August 2004.

<http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf>

services. The FTC Study found slamming was the most prevalent source of fraud, estimating almost 18 million cases occur each year.⁷⁴

The FTC Study examined the racial and ethnic background of survey participants, and found members of several minority groups are significantly more likely to be victims than are non-Hispanic whites regardless of the type of fraud involved. The FTC Study found Hispanics are more than twice as likely to be victims as non-Hispanic whites. The FTC Study also found consumers who have limited English-language proficiency are a group that may be particularly vulnerable to fraud, suggesting Hispanics who speak Spanish at home are more likely to have been victims of fraud or slamming than Hispanics who do not speak Spanish at home.⁷⁵

The FTC Study presented tentative evidence suggesting those who speak Spanish at home are more likely to be victims of the unauthorized switching of long distance telephone service, indicating limited English proficiency causes some consumers to be at greater risk for fraud or slamming because of their inability to understand oral offers. (We note that it is not possible to engage in the “slamming” of wireless customers.) The FTC Study also suggested if victims of fraud are not fluent in English they may be less likely to complain about a fraudulent experience, presenting results indicating Hispanics who spoke Spanish at home were only about 60% as likely to complain as other Hispanics.⁷⁶ Comments filed in this OIR and in R.00-02-004 are consistent with the FTC

⁷⁴ FTC Study, p. 28.

⁷⁵ FTC Study, pp. 55, 61, 71, 75-76.

⁷⁶ FTC Study, pp. 76, 101.

Study. We find LEP consumers are disproportionately likely to be victims of fraud.

Aside from outright fraud, LEP consumers experience other significant problems due to language barriers such as misunderstandings between in-language oral conversations and English language written agreements. The August 2006 CTR Report identifies significant problems reported from 2004 to 2006 to CTR's CBOs by Latino and Asian and Pacific Island (API) consumers with limited English proficiency.⁷⁷ Among the most common problems CTR identifies are:

- The failure to disclose agreement terms and conditions during in-language telemarketing contacts, or in advertising or notices to consumers targeted by in-language marketing;
- Kiosks selling wireless services are the leading source of misrepresentations and other problems faced by LEP consumers and the CBOs assisting them;
- Difficulty understanding English language bills, and inadequate in-language assistance to help LEP consumers understand bills or resolve problems;
- Prepaid phone cards problems, especially for Filipino LEP consumers;
- Internet data and media download cramming, especially for API consumers;
- Carriers refusing to accept or record LEP consumer reports of lost or stolen phones or to assist with stolen phone problems; and
- Rude customer service or apparent discrimination against consumers with accents, and failure to log service calls.

⁷⁷ Report, Appendix G. CTR is a statewide network of CBOs providing education and support to LEP telecommunications consumers.

D.06-03-013 found that CBOs had unique insights into the consumer problems faced by specific communities.⁷⁸ We recognized the special relationship CBOs have with LEP consumers they assist with telecommunications problems.⁷⁹ CTR and other CBOs have identified areas where LEP consumers are especially disadvantaged because of language barriers. For example, ALC's comments on the draft Report describe how LEP consumers are vulnerable when they rely on in-language oral communications at the point of sale; communications which may not accurately or completely disclose key terms and conditions of English language contracts and secondary contracts.

ALC contends that it is "standard industry practice" for dealers located in LEP communities to impose "secondary" ETFs, and that confusion is likely, even if the dealer explains the differences between carrier ETFs and dealer ETFs.⁸⁰ Exhibit A to ALC's comments on the draft Report contains Verizon Wireless' response to ALC's inquiry as to why an LEP customer was charged an ETF even though the customer cancelled service after only one day, well within Verizon Wireless' 15-day grace period. Verizon Wireless' response states the terms of its dealer's "Activation Agreement" are completely separate from Verizon Wireless'

⁷⁸ D.06-03-013, Finding of Fact 49.

⁷⁹ D.06-03-013, p. 101

⁸⁰ Asian Law Caucus Comments on the CPUC Staff's Draft Report (September 14, 2006), p. 8.

“Service Agreement,” and Verizon Wireless’ contract with the dealer does not govern separate agreements made by its agent.⁸¹

Below, we address carriers’ responsibility for the actions of their agents, and how conflicts and ambiguities between in-language representations and English language agreements will be resolved. We discuss here the information presented by CTR and ALC to show how LEP consumers are especially susceptible to misunderstandings about in-language oral descriptions and English language written terms of service. We accept CTR’s findings as a reasonable summary of the most significant problems facing LEP Latino and API telecommunications consumers, and find the limited translation and other in language customer services some carriers provide voluntarily as a courtesy to LEP consumers are inadequate to protect or inform LEP consumers.

We note § 2892.3 obliges the Commission to require mobile telephony service providers to report to the Commission on problems with fraud and actions taken to combat it, and to require these providers to inform customers about ways to protect against fraud. The record in this proceeding shows LEP consumers, who represent about 20% of California’s population (as of 2000, over six million residents), are especially vulnerable to fraud and marketing abuse.⁸² LEP consumers, by definition, do not speak, read, write, or understand the English language sufficiently to access services to which they may be entitled.⁸³

⁸¹ Asian Law Caucus Comments on the CPUC Staff’s Draft Report (September 14, 2006), Exhibit A.

⁸² Report, p. 6, Appendix G. ALC Comments on Draft Report, pp. 7-9.

⁸³ Report, pp. 6-9. CTR Comments on Draft Report, p. 18.

Despite the particular vulnerability LEP consumers may have to fraud and marketing abuse, we are not aware of any carriers that provide in-language notices informing LEP consumers how to avoid fraud or marketing abuse. We find providing LEP customers with information about how to protect against fraud only in English is ineffective. We find the limited translation and other in language customer service some carriers provide voluntarily as a courtesy to LEP consumers are inadequate to protect or inform LEP consumers.

Based on the evidence described above, we conclude LEP consumers need additional in-language information and services in order to make fully informed purchasing decisions and to be protected from fraud and marketing abuse. We now address carrier assertions the Commission may not lawfully establish in-language rules.

4.3. Authority to Establish Rules

CTIA, Small LECs, SureWest and Verizon Wireless contend requiring carriers or their agents to communicate to LEP customers in specified languages interferes with carriers' rights to engage in lawful, non-deceptive commercial speech with customers, and infringes on carriers' first amendment rights.⁸⁴

Discussion

The parties' Constitutional argument is misplaced. The Commission's in-language rules do not raise an issue with regard to a utility's First Amendment commercial speech rights. In analyzing this legal question, the

⁸⁴ CTIA Opening Comments, p. 5. CTIA Reply Comments, pp. 7, 12. Small LECs Opening Comments, pp. 9-11. Small LECs Reply Comments, pp. 11-13. SureWest Opening Comments, pp. 9-11. SureWest Reply Comments, pp. 11-12. Verizon Wireless Opening Comments, pp. 4, 21-28. Verizon Wireless Reply Comments, pp. 2-3, 8.

correct standard to judge whether a party's rights have been violated was laid out by the United States Supreme Court in *Central Hudson*.⁸⁵ In the *Hudson* case, the Court found that:

Decisions have recognized "the 'commonsense' distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech." *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 455-456 (1978). The Constitution therefore accords a lesser protection to commercial speech than to other constitutionally guaranteed expression. 436 U.S., at 456, 457. The protection available for particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation.⁸⁶

The Court then noted "as we stated in *Ohralik*, the failure to distinguish between commercial and noncommercial speech 'could invite dilution, simply by a leveling process, of the force of the [First] Amendment's guarantee with respect to the latter kind of speech.'"⁸⁷

The Court then sets forth the test to determine whether commercial speech has been unlawfully restrained by a governmental restriction in violation of the First Amendment. First, it must initially be determined whether the expression is protected by the First Amendment to the extent that it concerns "lawful activity and [is] not misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental

⁸⁵ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n* 447 U.S. 557 (1980).

⁸⁶ 447 U.S. at 562-563.

⁸⁷ 447 U.S. at 563; citing *Ohralik*, 436 U.S. at 456.

interest asserted, and whether it is not more extensive than is necessary to serve that interest.”⁸⁸

Subsequent to the Hudson decision, the United States Supreme Court has refined the standard and differentiated between cases where the government is restricting speech and those where the government is regulating the manner in which speech is delivered. Thus, in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, the Supreme Court found that “the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides . . .”⁸⁹ The *Zauderer* Court also noted “in virtually all our commercial speech decisions to date, we have emphasized that because disclosure requirements trench much more narrowly on an advertiser’s interests than do flat prohibitions on speech. ‘[warnings] or [disclaimers] might be appropriately required...in order to dissipate the possibility of consumer confusion or deception.’”⁹⁰

In the instant case, the Commission is only requiring carriers that are marketing to consumers in-language to also provide in-language notices, disclosures and other important transaction or service related information already required for carriers serving customers in English. No content is being changed. Thus, the Commission’s in-language rules are even less intrusive than

⁸⁸ 447 U.S. at 556.

⁸⁹ 471 U.S. at 651; citing *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976).

⁹⁰ 471 U.S. at 651; citing *In re R.M.J.*, 455 U.S. 191, 201 (1976). Accord, *Central Hudson Gas & Electric*, 447 U.S. at 565; *Bates v. State Bar of Arizona*, 433 U.S. 350, at 384 (1977); *Virginia Pharmacy Board*, 425 U.S. at 772, n. 24.

those discussed in *Zauderer*. There can be no question that such in-language rules satisfy the standard articulated by the Supreme Court in *Zauderer*, which recognizes that there is a legitimate state interest in preventing the deception of consumers.⁹¹ Thus, the only potential issue here is whether the in-language rules are “reasonably related” to the legitimate state interest. Requiring vendors who market their services in a language that triggers the Commission's in-language rules to continue its dealings with customers in that same language is reasonably related to consumer protection in that it prevents deceptive, fraudulent and discriminatory practices.⁹² Thus, the claim that in-language rules amount to compelled protected speech has no merit.

Verizon Wireless contends federal law prohibits the Commission from imposing onerous in-language rules on the competitive wireless industry because state laws that dictate the modes and conditions under which wireless carriers choose to enter markets are preempted as entry regulation under 47 U.S.C. § 332. Verizon Wireless also contends 47 U.S.C. § 253(a) bars state regulations which prohibit or have the effect of prohibiting a company’s ability to provide telecommunications services, including provisions that indirectly prevent entry by imposing burdensome requirements, and any in-language rules this Commission might establish would undermine the national regulatory policy established for commercial mobile radio service.⁹³

⁹¹ See 471 U.S. at 651.

⁹² See *Sandoval v. Hagan*, 197 F. 3d 484 (11th Cir. 1999), reversed on other grounds, *Alexander v. Sandoval*, 532 U.S. 275 (U.S. 2001).

⁹³ Verizon Wireless Opening Comments, pp. 28-31, 32.

State law may be preempted when (a) a federal statute expressly preempts state law; (b) where federal law is so pervasive that it occupies an entire field, leaving no room for State action; or (c) where state and federal law actually conflict.⁹⁴ Particularly where, as here, the state's police power is challenged, Congressional intent to preempt state law must be "clear and manifest," and if the Court has any doubt, they should be resolved against a finding of preemption.⁹⁵

The Commission's rules with regard to language easily meet the standards. Federal law neither expressly preempts all state regulation, nor occupies the field of wireless telecommunications regulation. To the contrary, the Communications Act of 1934, 47 U.S.C. § 151 *et seq.*, as amended, expressly authorizes state regulations under several sections. Section 332 (c) (3) (A) authorizes states to establish terms and conditions for wireless service, other than those that directly regulate rates or market entry.⁹⁶ More generally, § 253 (b) confirms state authority to safeguard the rights of consumers.⁹⁷ And § 601 (c) of the Telecommunications Act of 1996 ("1996 Act") further provides a saving clause: "[t]his Act ... shall not be construed to modify, impair, or supersede... State... law unless explicitly so provided."⁹⁸ Thus, Verizon Wireless' argument that the Commission's language rules are preempted has no merit.

⁹⁴ See *Ting v AT&T*, 319 F.3d 1126, 1135-36 (9th Cir. 2003).

⁹⁵ *Chevron U.S.A., Inc. v. Hammond*, 726 F.2d 483, 488 (9th Cir. 1984).

⁹⁶ 47 USC § 332 (c) (3) (A).

⁹⁷ 47 USC § 253 (b).

⁹⁸ See Pub. L. No., § 601 (c) (1), 110 Stat. 143 (1996), reprinted in note to 47 USC § 152.

Verizon Wireless also contends the United States Commerce Clause limits the Commission's authority to adopt LEP rules requiring carriers to implement changes to their national billing, sales and customer service operations that are substantial, costly and unduly burdensome to interstate commerce in comparison to local benefits.⁹⁹

The Commerce Clause does not by its terms prohibit states from enacting laws that directly regulate or otherwise affect interstate commerce. Instead, the Constitution grants Congress authority to regulate interstate commerce.¹⁰⁰ This affirmative grant of authority has been held to "encompass... an implicit or 'dormant' limitation on the authority of the states to enact legislation affecting interstate commerce."¹⁰¹ State rules that facially discriminate against interstate commerce are generally struck down, as are state rules that regulate extraterritorially.¹⁰² If a state rule does not facially discriminate against interstate commerce it will generally be upheld, unless the burden imposed on such commerce is clearly excessive in relation to the local benefits.¹⁰³

Verizon Wireless argues that in-language rules violate the Commerce Clause because telecommunications services are not limited to a wholly intrastate service. Thus, Verizon Wireless argues that the rules necessarily

⁹⁹ Verizon Wireless Opening Comments, pp. 31-32.

¹⁰⁰ U.S. Const. Art. § 8, cl. 4.

¹⁰¹ *Healy v. Beer Institute*, 491 U.S. 324, 326, n.1, 109 S.Ct. 2494 n.1, 105 L.Ed. 2d 275 (1989).

¹⁰² See *Healy v. Beer Institute* 491 U.S. 324, 335-338 (1989).

¹⁰³ See *Pike v. Bruch Church* 397 U.S. 137, 142 (1970).

directly regulate or burden interstate commerce. This claim, however, fails as a matter of law. Congress has expressly delegated to individual states authority to regulate intrastate telecommunications carriers.¹⁰⁴ In the case of wireless carriers, Congress has expressly delegated to individual State authority to regulate the terms and conditions of the wireless service.¹⁰⁵ That fact directly negates the contention that California's exercise of this authority interferes with Congress' commerce power.

4.4. Which, If Any, of the Staff Proposals Should the Commission Adopt? How Should They be Modified, and Why?

The Proposal suggested criteria for evaluating options for addressing LEP customer in-language needs, proposed definitions of “in-language” and “marketing,” and presented options for in-language information and customer service rules, options for making exceptions to those rules, and recommended remedies for violating the rules. The Proposal also presented options for tracking of LEP customer language preferences and complaints, and options for addressing prepaid calling card issues.

The OIR sought comments on the Proposal. First, the OIR asks in what languages should information or services be provided, what kinds of rules are appropriate and why, to which carriers any rules should apply, and what are the costs and benefits of each proposed rule? The OIR also asks whether other state

¹⁰⁴ See 47 U.S.C. § 152.

¹⁰⁵ See 47 U.S.C. § 332 (c) (3) (A).

agencies require in-language marketing,¹⁰⁶ and if so, in which languages, and what, if any, other requirements (such as data tracking or complaint monitoring) are appropriate and why?

In addition to the issues listed in the OIR, the Proposal presents options for defining “in-language” and sought comments on how “marketing” should be defined. The Proposal also presents options for determining the content and timing of possible in-language notifications/disclosures, availability of in-language customer service, tracking of language preference and/or complaints, and the circumstances triggering carriers’ in-language obligations. Finally, the OIR sought comments on ways to improve consumer and carrier experiences with third-party vendors, and whether the Commission should adopt rules for pre-paid calling cards. We first address the question of whether any in-language rules should apply to carriers’ business customers.

4.4.1. Should In-Language Rules Apply to Carriers’ Wholesale and/or Business Customers?

AT&T, CALTEL, Cbeyond, Small LECs, SureWest and Verizon California urge the Commission to exempt wholesale or business customers from in-language rules.¹⁰⁷ Crown states it only provides its services on a wholesale basis to other carriers pursuant to individual case basis (ICB) contracts, and

¹⁰⁶ The OIR wanted comments on whether other state agencies had requirements governing in-language marketing. Unfortunately, this question was misstated in the OIR. AT&T states it is not aware of any requirements from state agencies that companies must provide in-language marketing. (AT&T Opening Comments, p. 7).

¹⁰⁷ CALTEL Opening Comments, p. 3. Small LECs Opening Comments, p. 16. Cbeyond Reply Comments, p. 4. SureWest Opening Comments, pp.15-16. Verizon California Opening Comments, pp. 3, 14-15. AT&T Reply Comments, pp. 1-2.

“in-language” requirements should not apply to wholesale providers like it.¹⁰⁸ Cbeyond states it would be forced to stop serving some business customers if it’s required to provide technical support in multiple languages or provide in-language contracts.¹⁰⁹

CALTEL and Verizon California state there is no mention of in-language challenges faced by business customers in the Report or elsewhere in this proceeding.¹¹⁰ Verizon California states its contracts with small businesses are negotiated in English, so translating its contracts to other languages would be inappropriate. CALTEL states, if the Commission determines small business customers require in-language protections, “small business” must be carefully defined to avoid unintended consequences such as inadvertently treating lines belonging to a larger, multi-location entity as “small business” lines.

TURN states any in-language rules should also apply to certain small business owners, contending many small businesses are “mom-and-pop” storefront businesses with the same in-language needs as residential customers.¹¹¹ TURN recommends the Commission develop narrowly tailored rules based on the number of employees, access lines, or other criteria that take into account concerns expressed by carriers.

¹⁰⁸ Crown Reply Comments, p. 1.

¹⁰⁹ Cbeyond Reply Comments, p. 4.

¹¹⁰ CALTEL Opening Comments, p. 3. CALTEL Reply Comments, p. 3. Verizon California Opening Comments, pp. 14-15.

¹¹¹ TURN Reply Comments, pp. 13-14.

Discussion

Except for TURN's Reply Comments, in the record contains little information on the need for in-language rules to protect wholesale customers or small businesses. In D.06-03-013, we established a three-pronged Commission-led consumer education program to reach out to both business and residential consumers to provide 1) a broad-based information campaign to help all telecommunications consumers, 2) an education program designed to inform consumers of their rights, and 3) a program combining the first two but and focusing on non-English or low-English proficiency speaking, seniors, disabled, or low-income customers. D.06-03-013 recognized that both small business and residential consumers needed to be aware of their rights when they sign service agreements, and needed to know how to file complaints with the Commission if their rights were not respected.¹¹²

D.06-03-013 also defined a "small business" for the purposes of the utility worker identification rule as "a business or individual that subscribes or applies for not more than ten telephone access lines from any single carrier." We applied the rule to individuals and small businesses that purchase, subscribe to, or apply for a telecommunications service subject to Commission jurisdiction.¹¹³ However, we did not use that definition for any other purpose.

Although we found our Commission-led consumer education program should reach out to both business and residential consumers, we have little record as to the number of small businesses operated by LEP consumers, or

¹¹² D.06-03-013, pp. 118-119.

¹¹³ D.06-03-013, p. 67, COL 7.

whether small businesses need in-language protection. As CALTEL and Verizon California note in their comments, neither the Report, the public meetings and workshops, nor in the LEP aspects of the record of the CPI proceeding did anyone address in-language issues as they may apply to business or wholesale customers. While TURN recommends in-language protections be extended to small businesses, it acknowledges the need to distinguish small businesses that may need protections from larger “enterprise” businesses that don’t. However, other than suggesting some general approaches that might be used to differentiate small businesses for purposes of applying in-language requirements, TURN does not propose a way to do this. Due to the sparse record on this issue, we lack sufficient information on which to conclude that carriers’ wholesale or business customers need in-language protection or how to distinguish those small businesses that may need protection from other businesses. Therefore, the in-language rules we adopt will not apply to carriers’ services to wholesale or business customers at this time.

4.4.2. Defining “In-Language”

The Proposal recommends defining “in-language” as “Spanish, Chinese, and any other language in which a company markets its products or services,” and sought comment on the appropriateness of this definition.¹¹⁴ The Proposal also sought comment on the definition of “marketing in language”, and what events would trigger obligations to provide and/or make available in-language services.

¹¹⁴ Proposal, p. 2.

The Proposal offers two alternatives for determining when a carrier's in-language obligations are triggered. The first option is based on the definition of "in-language" to include Spanish and Chinese as mandatory languages in addition to any other language in which a company markets its products or services. This option provides an exception for carriers that can show less than 5% of their customer base is proficient in Spanish or Chinese. To qualify for the exception, a carrier must demonstrate eligibility through a showing based on customer language proficiency data (if tracked by the company), customer survey data, or census or equivalent demographic data for the area served. If marketing in-language, a carrier must provide this information even if qualified for an exception in order to show it is eligible for the exception.

Consumer Federation agrees with the proposed definition, stating defining "in-language" to include each language in which the product is marketed makes economic sense and eliminates discrimination which harms non-English speakers.¹¹⁵ TURN supports the Proposal, but states the Commission should also require in-language key rates, terms and conditions at carrier and agent stores and web sites, written in-language confirmations at point of sale or within seven days of orders placed by telephone, in-language customer service, and language preference and complaint tracking by carriers and agents.¹¹⁶ TURN states carriers should provide sufficient in-language information for LEP consumers to make informed choices, and in-language obligations should apply when carriers

¹¹⁵ Consumer Federation Opening Comments, pp. 1-2.

¹¹⁶ TURN Opening Comments, pp. 11-12.

solicit in-language. Consumer Federation supports the Proposal, recommending similar revisions to those TURN recommends.¹¹⁷

Greenlining states a carrier's service area demographics or subscribership should trigger in-language requirements, and carriers should submit quarterly reports on LEP customers and complaints to the Commission.¹¹⁸ Greenlining recommends carriers who market in-language provide in-language contracts at the time of signing, in-language key rates, terms and conditions, and in-language customer and operator service (including dispute resolution).¹¹⁹ Greenlining states the Proposal does not adequately integrate CBOs in the complaint resolution process, and the scope of proposed in-language materials is not comprehensive enough.¹²⁰

DRA states the Proposal's definition of "in-language" would ensure LEP consumers access to in-language services, and recommends adding more required languages.¹²¹ DRA recommends adoption of the Proposal and the Report's education and customer service recommendations. DRA also recommends increased availability of in-language services and coordination between CBOs and carriers.¹²²

¹¹⁷ Consumer Federation Opening Comments, pp. 6-7.

¹¹⁸ Greenlining Opening Comments, p. 6.

¹¹⁹ Greenlining Opening Comments, pp. 2-5.

¹²⁰ Greenlining Opening Comments, pp. 3-4.

¹²¹ DRA Opening Comments, pp. 5-6.

¹²² DRA Opening Comments, p. 4.

LIF recommends requiring carriers and agents to disclose key rates, terms, and conditions of a transaction in a single written document which customers may review prior to sale, or within seven days of orders placed by telephone, with an option to cancel. LIF also recommends requiring third-party resellers to provide two toll-free telephone numbers for consumers with complaints (one number for the dealer's/reseller's complaint department and the other for the primary carrier's complaint department). LIF recommends the Commission allow LEP customers to authorize CBOs to represent them in dealings with carriers. LIF supports consumer education for LEP customers, but contends rules are still necessary and recommends complaint resolution be made a high priority. LIF recommends consumer education be designed to help LEP consumers shop for telecommunications services, avoid fraud, and resolve problems. LIF and Greenlining recommend CBOs be funded to increase the effectiveness of services to LEP consumers by allowing CBOs to help the Commission develop culturally responsive materials, devise effective outreach strategies and assist complaint resolution.¹²³

Most carriers state in-language rules are not needed to ensure LEP consumers get adequate support, and oppose mandatory rules of any kind.¹²⁴ Carriers object to the inclusion of Spanish and Chinese as "default" languages for

¹²³ LIF Opening Comments, pp. 3-7, 9. Greenlining Opening Comments, p. 3. The ALC recommends the same in its Comments on Draft Report, pp. 4-6.

¹²⁴ AT&T Opening Comments, p. 2. Small LECs Opening Comments, p. 3. Joint Commenters Opening Comments, pp. 1-4. Cricket and MetroPCS Opening Comments, pp. 5-6. CTIA Opening Comments, pp. 9-10. Joint CLECs Opening Comments, p. 2. SureWest Opening Comments, pp. 2-3. Verizon California Opening Comments, p. 1. Verizon Wireless Opening Comments, p. 4.

which support must be provided even if a carrier serves no customers speaking those languages. Most carriers recommend in-language obligations apply only to the languages in which a carrier markets its services.

SureWest and CTIA oppose mandatory Spanish and Chinese disclosures or customer service, and contend requiring carriers to communicate to LEP customers in specified languages infringes on carriers' first amendment rights.¹²⁵ However, if the Commission adopts in-language requirements, CTIA states a carrier's LEP support obligations should be linked to the languages in which a carrier markets its services.

AT&T and Verizon California state a carrier's marketing practices should determine any obligations to provide non-English information. AT&T and Verizon California oppose a requirement to include Spanish and Chinese in the definition of "in-language." AT&T contends its recommended approach will protect LEP consumers from fraud by ensuring pertinent in-language information is provided when a sale is made in-language.¹²⁶

Verizon Wireless states the Commission may not lawfully require carriers to communicate to LEP customers in specified languages, and contends a requirement to serve specific languages is unjustified and wasteful.¹²⁷ Verizon Wireless states it would be costly to implement the Proposal. Verizon Wireless recommends rules be flexible enough to allow carriers to differentiate their LEP

¹²⁵ SureWest Opening Comments, pp. 3, 9-11. SureWest Reply Comments, p. 11. CTIA Opening Comments, p. 5. CTIA Reply Comments, pp. 4-5.

¹²⁶ AT&T Opening Comments, pp. 4, 8. Verizon California Opening Comments, pp. 4-5.

¹²⁷ Verizon Wireless Opening Comments, p. 9.

services and serve LEP customers in different ways. Verizon Wireless proposes, if a carrier advertises its services in one or more foreign languages, the carrier provide customers a way to get information about the carrier's services in each advertised foreign language.¹²⁸

Joint Commenters oppose inclusion of Spanish and Chinese languages in the definition of "in-language" and contend requiring all carriers to provide services in Spanish would undermine a competitive advantage they contend a particular carrier enjoys in the San Diego market."¹²⁹

The Joint CLECs state CLECs should not be subject to any requirement other than market forces to make information or services available in a language other than English. However, if the Commission adopts rules, the Joint CLECs recommend any rules or policies apply only to carriers who market in-language and only to the languages in which they market.¹³⁰

CTIA states the proposed "triggers" are inconsistent and create an unnecessarily complex system. CTIA states the Proposal's requirement to provide information in Chinese is inconsistent with the exception granted to carriers with less than five percent of their customers speaking a non-English language, noting the Report shows the portion of the Chinese speaking population in California which is not English proficient does not meet the level

¹²⁸ Verizon Wireless Opening Comments, p. 3.

¹²⁹ Joint Commenters Opening Comments, p. 3-5, Reply Comments, p. 2.

¹³⁰ Joint CLECs Opening Comments, p. 2.

of the 5% trigger. CTIA states it would be costly for carriers to compile such data, and the data would likely be unreliable.¹³¹

CTIA states any requirement to provide in-language services should be activated when a carrier engages in marketing to customers in that language, but recommends a more limited definition of “marketing.” CTIA recommends marketing be defined as, “an advertising or marketing effort which includes written material and/or is publicly broadcasted (e.g., via television, radio or internet) in a non-English language which is produced by the carrier itself or affirmatively approved by the carrier prior to distribution or publication in accordance with the carrier’s standard advertising approval policies and procedures.”¹³² CTIA contends carriers cannot know each and every action of their agents, do not control their agents’ advertising, and attempts to control such commercial speech would be illegal. CTIA states the geographic scope of a carrier’s obligation once in-language obligations are triggered should be limited to the in-language advertising area.¹³³

Cricket and MetroPCS recommend affirmative in-language marketing by the carrier (as defined by CTIA) trigger in-language obligations. Cricket and MetroPCS state the “menu of options” approach proposed by CTIA provides flexibility for addressing the needs of LEP customers.¹³⁴

¹³¹ CTIA Opening Comments, pp. 3-4.

¹³² CTIA Opening Comments, p. 5.

¹³³ CTIA Opening Comments, p. 6.

¹³⁴ Cricket and MetroPCS Opening Comments, pp. 2-5.

AT&T recommends marketing be defined as “a communication initiated by the carrier through a mailing, phone call, or door-to-door sales to a specific consumer for the purpose of selling the consumer a specific product or service”, and in-language obligations apply to carriers serving 5% or more of their customer base who are LEP.¹³⁵ AT&T contends general advertising of the carrier’s brand, products, and services should not be considered “marketing” because they don’t try to sell a particular product or service to a specific customer and do not complete a transaction. AT&T states translation services to assist LEP telephone callers with questions about services should not be included in the definition of marketing for the same reasons.¹³⁶

Although Cbeyond recommends carriers serving business and wholesale customers be exempt from in-language rules, if the Commission adopts rules for carriers serving business or wholesale customers Cbeyond supports AT&T’s recommendation for triggering carrier in-language obligations.¹³⁷

While CALTEL urges carriers serving business and wholesale customers be exempt from in-language rules, it recommends any in-language rules adopted for business customers be triggered by a carrier’s decision to market in a certain language and not by factors such as the demographics of an area.¹³⁸

¹³⁵ AT&T Opening Comments, p. 9.

¹³⁶ AT&T Opening Comments, p. 5.

¹³⁷ Cbeyond Reply Comments, pp. 4-5.

¹³⁸ CALTEL Opening Comments, p. 6.

Verizon California states carriers should be exempt from in-language rules if less than 20% of their customer base prefers a particular language.¹³⁹

Verizon Wireless opposes percentage-based triggers because of data collection costs and the possibility of offending customers by inquiring about their language preferences. Verizon Wireless opposes oral triggers, asserting it is impossible to police the conversation of thousands of agents and store personnel. Like CTIA, Verizon Wireless supports an advertising-based trigger, but only where a carrier uses in-language advertising in any broadcast or print media or its agent does so with the express approval of the carrier. Verizon Wireless also recommends any local store-based advertising trigger in-language obligations only in the stores advertising in-language.¹⁴⁰

SureWest and Small LECs recommend in-language solicitations trigger carrier obligations, and “solicitation” be defined as “a communication that constitutes a legal offer.” SureWest and Small LECs state carriers voluntarily providing in-language customer support should not trigger other in-language obligations.¹⁴¹

Consumer representatives recommend a carrier’s in-language support obligations should apply, at a minimum, to the languages in which a carrier markets its services. TURN and Consumer Federation state, to the extent LEP consumers do not receive information they need in an understandable format,

¹³⁹ Verizon California Opening Comments, p. 3.

¹⁴⁰ Verizon Wireless Opening Comments, p. 11-12.

¹⁴¹ SureWest Opening Comments, pp. 13-15. Small LECs Opening Comments, pp. 14-16.

carriers and the Commission are not meeting the requirements of § 2896, which directs the Commission to require telephone corporations to provide consumers with...sufficient information upon which to make informed choices among telecommunications services and providers, including “the provider’s identity, service options, pricing and terms and conditions of service.”¹⁴²

Consumer Federation states the obligation to provide in-language materials should be triggered when a company markets in-language.¹⁴³ Consumer Federation supports requiring in-language assistance to people speaking a language in which products or services are marketed, and recommends in-language marketing be defined to include the publication of press releases concerning a sales initiative in a particular market. Consumer Federation would also include in-language web site product information postings as in-language marketing.¹⁴⁴

Joint Commenters contend Consumer Federation’s recommended definition is too broad, and would likely prevent carriers from taking steps to provide useful information in languages other than English.¹⁴⁵ Joint Commenters recommend prior to adopting any rules concerning in-language marketing triggering in-language obligations, the Commission should conduct a

¹⁴² TURN Opening Comments, p. 10. Consumer Federation Opening Comments, p. 2.

¹⁴³ Consumer Federation Comments, pp. 6-7.

¹⁴⁴ Consumer Federation Opening Comments, pp. 2-3.

¹⁴⁵ Joint Commenters Reply Comments, p. 2.

workshop and allow interested parties to discuss where it is appropriate and feasible to define “in-language marketing” or “solicitation.”¹⁴⁶

Greenlining states it is critical LEP customers receive in-language materials, and recommends carriers who market in a particular language be required to provide contracts, service summaries, customer service, operator assistance and dispute resolution in the same language in which the customer was marketed.¹⁴⁷

LIF states §§ 2889.5 and 2890(d) are inadequate to protect LEP consumers, and supports the Proposal with modifications. LIF recommends confirmation summaries be provided by carriers and resellers in advance and in writing or within seven days of telephone orders, with a 21-day rescission option.

DRA states most ILECs already provide in-language support, and any carrier whose LEP customers make up 5% or more of its customer base (based on census or survey data) should be required to provide in-language support. DRA states LEP consumers are disadvantaged during service disputes and are targets of fraud. DRA contends competition alone will not ensure adequate service to LEP customers. DRA recommends carriers provide in-language summaries of service terms and conditions, billing and customer service in the same languages as any printed carrier or agent materials or advertising.¹⁴⁸

¹⁴⁶ Joint Commenters Opening Comments, pp. 2-3

¹⁴⁷ Greenlining Opening Comments, p. 5.

¹⁴⁸ DRA Opening Comments, pp. 9-12.

Discussion

Carriers recommend that rather than establishing new rules, the Commission should instead focus on education and enforcement efforts. The Commission has already undertaken greater consumer education and enhanced enforcement efforts, and these efforts are continuing. However, no matter how much general education the Commission might provide on how to shop for telecommunications services, LEP consumers still need specific information about the rates, terms and conditions of service so they may make informed purchasing decisions. LEP consumers also need to discuss their particular service problems and need a way to get their problems addressed. This kind of information and customer support can only come from the carrier setting the rates terms and conditions of its services, and must be provided in-language for LEP consumers to understand.

CTIA states the Proposal's requirement to provide information in Chinese is inconsistent with the exception granted to carriers with less than five percent of their customers speaking a non-English language, noting the Report shows the portion of the Chinese speaking population in California which is not English proficient does not meet the level of the 5% trigger. CTIA confuses a trigger based on the percentage of a carrier's customers that are Chinese LEP with a trigger based on the percentage of Chinese LEP consumers in California. While California's Chinese LEP population may be less than five percent of California's total population, a carrier exclusively serving San Francisco's Chinatown may nevertheless have a high percentage of Chinese LEP consumers. However, under this approach, carriers would need to track the language proficiency of each of its customers to determine if it even qualifies for the exception. We will not adopt a trigger that relies on the collection or monitoring of demographic or

customer profile information, because the management of such a system is too complex and the quality of collected information too unreliable.

Requiring carriers to provide LEP support in specified mandatory languages even though a carrier does not market to customers speaking that language imposes unnecessary costs on carriers with no benefit to consumers. This will either require carriers to incur additional unnecessary costs that will likely be passed on to consumers in the form of higher prices, or discourage carriers from serving or marketing to LEP consumers in a particular language out of fear such conduct will trigger LEP obligations and costs to support LEP services in other languages of no use to the carrier's customers.

Therefore, we require carriers to provide in-language support to customers speaking the language(s) in which a carrier already markets its service.

Choosing as the trigger "*when a company markets its products or services in a particular non-English language*" is simple to determine and enforce, and is not unduly burdensome to carriers. Some carriers already do this voluntarily, or are required to do so under existing rules. Some carriers already communicate with customers in-language for marketing or other business reasons, so to provide in-language assistance to ensure LEP consumers have access to important information requires little additional effort. Most carriers and consumer groups recommend any adopted rules apply only to carriers marketing in-language and only to those languages in which the carrier markets. We agree.

We define "in-language" as "any non-English language in which a company markets its products or services." LEP customers must receive adequate service just like other customers, and to do otherwise is

unreasonable.¹⁴⁹ The definition we establish is consistent with and no more onerous than the in-language rules adopted in D.96-10-076 for CLCs or the in-language rules adopted in D.00-10-028 for carriers providing Universal Lifeline Telephone Service (ULTS).¹⁵⁰ This approach will ensure LEP customers are protected without imposing unnecessary costs on carriers. It is in the public interest to establish clear and efficient rules that carriers can follow to ensure LEP customers have a wide range of competitive service alternatives.

The proposed decision (PD) issued in this proceeding on June 15, 2007 would have required carriers regulated on a cost-of-service basis to comply with in-language rules even if such carriers did not market in language. The PD was concerned that LEP consumers in areas where competition is not authorized would not have access to adequate in-language information and support. Because the PD would have imposed obligations on cost-of-service regulated carriers without those obligations being triggered by a carriers' action to market in-language, the rules resulted in more stringent requirements on those carriers than on carriers which market in-language, including requirements to provide in-language support in any language requested by a customer.

¹⁴⁹ No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. § 453(c).

¹⁵⁰ Any utility that sells ULTS in a language other than English shall provide its ULTS customers to whom ULTS was sold in a language other than English with (i) Commission-mandated ULTS notices, certification forms, and re-certification forms that are in the same language in which ULTS was originally sold; and (ii) toll-free access to customer service representatives fluent in the language in which ULTS was originally sold. D.00-10-028, Ordering Paragraph 63.

After considering the comments on the PD, we conclude the proposal to impose in-language obligations on cost-of-service carriers that do not trigger the obligations by marketing in-language should be deleted. While local exchange competition has not been authorized in the territories of cost-of-service regulated carriers, these carriers may nonetheless face competition from wireless and Voice over Internet Protocol (VOIP) providers¹⁵¹. As revised, this decision treats cost-of-service carriers like other carriers, and cost-of-service carriers would still have in-language obligations should they choose to market in-language. Thus, a telecommunications company that markets its services in one or more non-English languages is required to comply with the adopted in-language rules for the non-English language(s) in which the company markets its non-exempt services.

Now we turn to the question of what constitutes “marketing in-language.”

4.4.3. Defining “Marketing In-Language”

If the Commission adopts rules, most parties recommend in-language obligations be triggered when a carrier markets in-language. Parties disagree on how “marketing in-language” should be defined and what the in-language obligations should be.

Carriers prefer the Proposal’s option which does not require the mandatory inclusion of Spanish or Chinese languages, but does require information to be available in any language (and only those languages) in which a carrier markets its services. Consumer representatives, with the exception of

¹⁵¹ Small LEC Opening Comments on Proposed Decision, p. 4.

DRA, recommend, at a minimum, a carrier's LEP in-language support obligations should apply to the languages in which a carrier markets its services.

Discussion

SureWest and the Small LECs contend the term "marketing" is overly broad and ambiguous, with no specific meaning under California law and therefore should not be relied upon. They maintain the term "marketing" may expose carriers to in-language requirements if triggered by advertising or customer service, discouraging carriers from reaching out to LEP consumers and defeating the goal of promoting informed choice for these consumers. SureWest and the Small LECs instead recommend the term "solicitation" be used, and defined as a "communication that constitutes a legal offer."¹⁵²

We find SureWest's and the Small LECs' definition to be too narrow. AT&T's recommended definition of marketing as "a communication initiated by the carrier through a mailing, phone call, or door-to-door sales to a specific consumer for the purpose of selling the consumer a specific product or service," is likewise too narrow. AT&T's recommended definition could be interpreted to exclude marketing by their agent's (e.g., at kiosks), and both proposed definitions would exclude in-language mass marketing to LEP communities, including television and radio advertising, clearly intended to persuade members of those communities to purchase a carrier's products and services.

The PD issued in this proceeding on June 15, 2007 defined marketing as "an advertising or marketing effort that includes written material or is orally

¹⁵² Small LECs Opening Comments, pp. 14-15. SureWest Opening Comments, pp. 13-14.

communicated, or publicly broadcast or made available through television, radio or the Internet in a non-English language.” However, comments on the PD complained that the definition’s inclusion of “verbally communicated” was too broad, and exposed carriers to the risk of inadvertently triggering in-language obligations by providing non-marketing related in-language assistance or by unauthorized actions of employees or agents.¹⁵³ Carriers also recommended that image or brand advertising be excluded from the definition of marketing. For example, CTIA contends carriers cannot know each and every action of their agents, and recommends that the definition of “marketing” be limited to efforts produced by the carrier itself or affirmatively approved by the carrier prior to distribution or publication.¹⁵⁴ Similarly, Verizon Wireless recommends that only in-language advertising done with the express approval of the carrier be included in the definition.¹⁵⁵ We are persuaded that the definition’s inclusion of “verbally communicated” is too broad, and should be narrowed to ensure carriers are not discouraged from assisting consumers by communicating with them in-language without fear of triggering obligations the carriers may not be able to comply with. We modify the definition to clarify the kinds of oral communications that will be considered “marketing,” and to exclude image

¹⁵³ AT&T Opening Comments on PD, pp.2-3. Cricket/MetroPCS Opening Comments on PD, pp.12-13. CTIA Opening Comments on PD, pp.2-6. Omnipoint Communications Opening Comments on PD, pp.3-6. Small LEC Opening Comments on PD, p.7. Surewest Opening Comments on PD, pp.2-3. Verizon California Opening Comments on PD, pp.3-4, 5-6. Verizon Wireless Opening Comments on PD, pp.11-12.

¹⁵⁴ CTIA Opening Comments on PD, pp.3-6.

¹⁵⁵ Verizon Wireless Opening Comments on PD, pp.11-12.

advertising from the definition. We will define marketing as “a carrier-initiated and carrier-approved communication in a non-English language intended to induce a customer to purchase telecommunications service(s), feature(s) or plan(s) that are in writing or publicly broadcast or made available through print media, television, radio or the Internet, or conveyed orally through a carrier-initiated and carrier-approved contact, such as outbound telemarketing or door-to-door sales.” The definition shall exclude in-language communications that are incidental to English language telemarketing or door-to-door marketing, individual conversations between sales representatives and customers or potential customers, and conversations between customer service representatives and consumers during consumer initiated calls. The definition shall also exclude ‘image’ advertising, which may name the service(s), but does not include terms or prices of services, offered by the carrier.

Although we will not limit the definition of marketing to include only “affirmatively approved” advertising, we will provide a means for carriers to address circumstances where a carrier contends in-language requirements were inadvertently triggered by unauthorized in-language marketing. We shall require that, once a carrier becomes aware of unauthorized in-language marketing, the carrier must take corrective action within 30 days with employees or agents who conducted the unauthorized in-language marketing and document the corrective action taken to prevent further unauthorized in-language marketing.

We agree with CTIA that the geographic scope of a carrier’s obligation once in-language obligations are triggered should be limited to the in-language advertising area, and we will so order. Further, to the extent that a particular carrier’s outlet (including a carrier’s dealer or agent locations) trigger in-

language requirements by conducting in-language marketing, in-language obligations are triggered only for each carrier outlet that does so. However, this refinement in the geographic scope of a carrier's obligation does not exempt or relieve carriers from their responsibility for the actions of their agents, as we discuss below.

4.4.4. Availability of Non-English Service Information and Access to Non-English Customer Service

AT&T recommends a voluntary guideline that a carrier with LEP customers comprising 5% or more of its customer base provide in-language customer service.¹⁵⁶ AT&T and Verizon California support providing in-language disclosures (confirmation letters and statements of terms and conditions) when carriers market in-language, but recommend carriers have flexibility in the timing and form of delivery.¹⁵⁷ AT&T supports providing in-language disclosures to existing customers, recommending flexibility for carriers in the timing and form of delivery, but opposes in-language billing or repair as unjustified and too costly.¹⁵⁸ SureWest, Small LECs and Verizon Wireless also opposes in-language billing as unjustified and too costly.¹⁵⁹

¹⁵⁶ AT&T Opening Comments, p. 16.

¹⁵⁷ AT&T Opening Comments, pp. 14-15. Verizon California Opening Comments, pp. 7-9.

¹⁵⁸ AT&T Opening Comments, pp. 14-15. AT&T Reply Comments, p. 10.

¹⁵⁹ SureWest Opening Comments, p. 16. SureWest Reply Comments, p. 2. Small LECs Opening Comments, pp. 16-17. Small LECs Reply Comments, p. 3. Verizon Wireless Opening Comments, pp. 17-19.

Cricket and MetroPCS contend that their simple, affordable, month-to-month pay-in-advance no-contract plans are possible because they minimize operational costs. They contend compliance with in-language rules would be complex, costly and incompatible with their “no paper, low frills” business models.¹⁶⁰ Cricket and MetroPCS state the current per-minute rates for the AT&T Language Line interpreter services range from \$2.80 to \$4.87 per minute, and estimates a five-minute translated call to cost \$14.00, about half the monthly rate for Cricket’s and MetroPCS’ lowest-priced calling plans.

Verizon California states in-language disclosures are too costly, and no evidence supports the need for in-language bill formats. Verizon California recommends limiting in-language customer support to service order and billing questions.¹⁶¹

CTIA states the Commission should consider carrier differences in size, geographic scope, operations and methods of communicating with customers, and recommends the Commission adopt guidelines that carriers could voluntarily use to address the needs of LEP consumers. However, if the Commission adopts mandatory rules, CTIA recommends that the Commission allow carriers flexibility in how they satisfy their in-language obligations.¹⁶² CTIA proposes that the Commission allow carriers to choose one or more of the following option(s) that best meets a carrier’s needs, and that the carrier believes will be favored by its customers:

¹⁶⁰ Cricket and MetroPCS Opening Comments, pp. 3-7.

¹⁶¹ Verizon California Opening Comments, pp. 9-10.

¹⁶² CTIA Opening Comments, pp. 2, 6-11.

- Internet Website where the carrier will post in-language information on its most popular, currently offered calling plans and an in-language explanation of its bill format and content.
- Interactive Voice [Response] (IVR) systems allowing customers to select in-language information on the carrier's most popular, currently offered calling plans and describe a typical customer bill.
- Welcome Letter or confirmation letter summarizing the key terms of the service, and provided during the grace period to allow customers to cancel contract without incurring an early termination fee.
- Collateral material (e.g., printed brochures) summarizing in-language the key terms of the carrier's most popular, currently offered service plans or providing an explanation of the carrier's bill.
- Translation Services provided through third party translation services such as Language Line so LEP customers may speak to a customer service representative in the customer's native language regarding any concerns relating to service initiation, ongoing service or billing.

CTIA supports allowing CBOs to represent LEP consumers in service interactions and for complaint resolution.

Verizon Wireless opposes mandatory written plan-specific in-language disclosures in stores or post-sale confirmation summaries. Verizon Wireless estimates it would cost \$15 million annually to translate its printed service plan information in California's five most commonly-spoken languages, and similar costs for in-language confirmation summaries. Verizon Wireless contends the

cost burdens would delay or prevent service improvements. Verizon Wireless also opposes requiring in-language billing as too costly and complex.¹⁶³

The ALC states there is very little carrier-provided in-language material that benefits LEP consumers, so sales persons try to orally translate key provisions during in-language transactions but may negligently or intentionally fail to disclose key rates, terms or conditions. ALC states secondary ETFs are a standard industry practice and are imposed by cellular dealers in LEP communities separately from ETFs imposed by carriers. While dealers may explain *carrier* ETFs, LEP customers often do not understand that *dealers* may impose their own separate ETFs even if customers discontinue service during the carrier's grace period.¹⁶⁴

Consumer Federation states in-language materials should be provided in writing when an order for services is placed and when a transaction is completed. Consumer Federation recommends in-language key terms and conditions, confirmation letters, bills, billing notices, and other service-affecting communications.¹⁶⁵ Consumer Federation recommends that carriers who market in-language be required to provide in-language customer service, and retain advertising materials to assist in dispute resolution.¹⁶⁶

¹⁶³ Verizon Wireless Opening Comments, pp. 13-19.

¹⁶⁴ Asian Law Caucus Comments on the CPUC Staff's Draft Report (September 14, 2006), pp. 7-9.

¹⁶⁵ Consumer Federation Opening Comments, pp. 8-11.

¹⁶⁶ Consumer Federation Opening Comments, pp. 11-13.

DRA recommends that when an ILEC's customers comprise five or more percent of its customer base, it be required to provide in-language billing, service plan information, operators, and complaint resolution services.¹⁶⁷ LIF recommends carriers be required to clearly and conspicuously disclose key rates, terms, and conditions of a transaction in a single written document.¹⁶⁸

Discussion

The rules we adopt today require carriers that market in-language to provide at least the minimum information LEP consumers need to obtain and maintain telecommunications services, and to protect these customers from fraud or abuse. Although we adopt mandatory in-language rules, we recognize the diversity of carriers, customers, and the ways carriers and customers interact. Therefore, we adopt rules that provide flexibility to carriers that market in-language but at the same time help ensure LEP consumers will receive adequate information, including a way to access in-language information contained in Commission-mandated notices and disclosures. We recognize that due to language barriers, LEP customers need in-language assistance to understand the terms of transactions to which they are bound by annual or multi-year English language contracts, or to discuss service or billing problems. We have determined that when a carrier markets to consumers in a particular language, that carrier then assumes the obligation to provide consumers enough information in the language in which the carrier is marketing to allow consumers to make informed purchasing decisions and resolve service or billing problems.

¹⁶⁷ DRA Opening Comments, pp. 9-10.

¹⁶⁸ LIF Opening Comments, p. 5.

Therefore, we will require carriers that market in-language (except wireless services provided through prepaid or month-to-month contracts) to provide a LEP customer access to customer service for assistance with service or billing questions in the language(s) in which the carrier markets its services or through a third-party interpreter service such as Language Line. We exempt from our rules wireless services provided through prepaid or month-to-month contracts because LEP customers are not locked in to long-term agreements, and are able to easily cancel or change these services at little cost or penalty. Thus, these LEP consumers have less need for the in-language information and disclosures than consumers who are required to sign expensive, long-term contracts. At the same time, we recognize the wide differences in the kinds of carriers, modes of operation, and services offered, and the need for rules that carriers are able to comply with without undue cost. We believe there are several ways in which carriers can ensure LEP consumers acquire the necessary customer support or transaction-related information in the language(s) in which the carrier markets its services to allow them to make informed purchasing decisions and to discuss service or billing problems. Today's technology provides many options for communicating the in-language information LEP consumers need. For example, as long as key terms of a LEP customer's transaction are available in-language, carriers should have some flexibility in how they provide this information. However, there are cases where written in-language support may be inadequate, and LEP consumers must have a way to obtain information or communicate orally. Again, today's technology allows more than one way to do this, and carriers should have some flexibility to use alternatives that works best for them and their customers.

We are especially interested in CTIA's and other carriers' recommendation for a menu of options that provide different carriers different ways to satisfy in-language obligations.¹⁶⁹ CTIA's proposal provides carriers a choice of ways to satisfy in-language obligations that accommodates the variety of carrier types, their diverse marketing strategies and their different modes of operation. However, it does not ensure LEP consumers who may be required to sign annual or multi-year contracts have access to sufficient information to understand the terms and conditions of their specific transactions. Therefore, we will adopt a modified version of the CTIA proposal to ensure a balanced approach.

First, we urge all carriers to provide in-language information on all of their currently offered services, calling plans and explanations of bills. However, this alone is inadequate to ensure LEP consumers who sign annual or multi-year contracts are able to understand the terms and conditions of their specific transactions or to make informed choices among telecommunications services and providers. Therefore, carriers that market non-exempt services in-language will be required to make available a confirmation summary in the language(s) in which the carrier markets its services, including the provider's name, address, telephone number, and a brief description of the services ordered and itemizing all charges which will appear on the customer's bill. However, services provided through prepaid or month-to-month contracts are exempt from these rules (i.e., "exempt services). Carriers will have alternative ways for providing this information as we describe below.

¹⁶⁹ CTIA Opening Comments, pp. 10-11. Verizon Wireless describes a similar proposal it states it will adopt voluntarily. Verizon Opening Comments, pp. 5-8.

The PD issued in this proceeding on June 15, 2007 required carriers to use a minimum of two options for giving LEP consumers access to in-language information. Many parties commenting on the PD mistakenly concluded that it requires a written in-language confirmation letter¹⁷⁰, then lament the difficulties of complying with such a requirement. Some parties understood that the PD allowed confirmation summaries to be provided orally or in writing, but contend that carriers should be required to provide the confirmation information at the point of sale and with considerable detail.¹⁷¹ We clarify that in-language confirmation information may be provided either orally or in written form. The confirmation summary must provide a brief description of the services ordered, including pricing term, and any early termination fee. This level of detail is what the Commission currently requires for local exchange carriers that sell services in specified non-English languages.¹⁷²

In its comments on the PD, Verizon California proposes an “alternative option” for providing the LEP customer with a confirmation summary that would combine written and oral communications.¹⁷³ Verizon would “send a notice to the customer in his or her preferred language (a) referring the customer

¹⁷⁰ AT&T Opening Comments on PD, pp. 4-6. Cricket/MetroPCS Opening Comments on PD, pp. 8-10. CTIA Opening Comments on PD, pp. 7-8. Omnipoint Communications Opening Comments on PD, pp. 7-10. Verizon California Opening Comments on PD, pp. 7-10. Verizon Wireless Opening Comments on PD, pp. 4-9.

¹⁷¹ DRA Opening Comments on PD, p. 1. LIF Opening Comments on PD, p. 4. Consumer Federation Opening Comments on PD, p. 8.

¹⁷² D.96-10-076, Appendix A. Bilingual Customer Notification and Billing Rule.

¹⁷³ Verizon California Opening Comments on PD, pp. 9-10.

to the correct Multilingual Sales and Service Center call-in number, and (b) providing the URL to a language-relevant website that lists and describes current packages and telecommunications services. In this fashion, a Korean LEP customer, e.g., would know which number to call and, once on the phone with the customer service representative (CSR) could simultaneously refer to the Korean-language website. The Korean LEP customer would also have access to the website to prepare for the call with the MSSC or as a reference thereafter.” Verizon’s example would comply with the in-language confirmation summary requirements as envisioned by the PD (and as revised below) by providing access to an in-language summary of the customer’s transaction through in-language customer service.

In its comments on the PD, Verizon Wireless provides an example where it “could inform LEP customers by...providing in-store written disclosures in-language to LEP customers explaining how to access in-language customer service assistance and how to obtain written in-language information about their calling plan and terms of service...[and]...providing in-language customer service through use of Language Line and dedicated Spanish-speaking customer service representatives...”¹⁷⁴ This example, too, would comply with the in-language confirmation summary requirements as revised below.

Verizon California and TURN seek clarification as to whether “access to customer service” means access to a live person in real time, and recommend that access to customer service be a stand-alone requirement not subject to the

¹⁷⁴ Verizon Wireless Opening Comments on PD, p. 6.

two-option provision.¹⁷⁵ Consumer Federation states that the rules do not require carriers to provide a means for a LEP customer to communicate with carriers, and Greenlining recommends the rules require access to a live person who can answer customers' questions.¹⁷⁶ Although the PD originally envisioned that customer service could be provided through other means in addition to telephonic oral communication (e.g., Internet chat, etc.), our review of the comments on the PD convince us that efficient, timely customer support requires person-to-person communication. Verizon California states most carriers have already invested in the infrastructure necessary to have customer service representatives ready to answer questions over the telephone,¹⁷⁷ and CTIA states bilingual customer service representatives are standard for the major wireless carriers.¹⁷⁸ Therefore, we will require carriers to provide access to in-language customer service as a stand-alone requirement, and that "access to customer service" means access to a live person in real time.

AT&T's comments on the PD complained that requiring carriers to provide LEP consumers two ways to access to important information was burdensome, and provided LEP consumers more ways to access information than are usually available to English-speaking customers.¹⁷⁹ AT&T nevertheless

¹⁷⁵ Verizon California Opening Comments on PD, pp. 11-12. TURN Opening Comments on PD, pp. 7-9.

¹⁷⁶ Consumer Federation Opening Comments on PD, p. 10. Greenlining Opening Comments on PD, p. 5.

¹⁷⁷ Verizon California Opening Comments on PD, p. 12.

¹⁷⁸ CTIA Opening Comments, p. 2.

¹⁷⁹ AT&T Opening Comments on PD, pp. 2-3.

recognizes that use of an option such as a website requires a computer that may not be available to all consumers, and acknowledges that a second option may be required when carriers use the website option.¹⁸⁰ Comments on the PD from consumer groups also complain that many customers, and particularly LEP consumers, do not have computers or Internet access, and carriers offering only web-based access would be inaccessible to most LEP consumers.¹⁸¹ TURN further recommends that carriers be required use each of the selected options to provide LEP consumers access to information.¹⁸²

After reviewing the comments on the PD, we agree that, even requiring carriers to use two methods for providing LEP consumers information, exclusive use of website options to make available in-language information may deprive many LEP consumers access to this information. Therefore, we modify the rules so that use of websites to provide information in either audio form, written form, or both shall be considered “one” acceptable method for providing LEP consumers information.

We disagree that requiring carriers to use at least two methods for providing LEP consumers information provides LEP consumers greater access to information than is available to English-speaking consumers. English-speaking consumers receive bills, notices and other communications in English. If they have questions, most carriers provide English-speaking customer service

¹⁸⁰ AT&T Opening Comments on PD, p. 2.

¹⁸¹ Consumer Federation Opening Comments on PD, p. 9. DRA Opening Comments on PD, pp. 2-3. Greenlining Opening Comments on PD, pp. 3-4. LIF Opening Comments on PD, p. 3. TURN Opening Comments on PD, pp. 6-7.

¹⁸² TURN Opening Comments on PD, pp. 3-5.

representatives, and in many cases, customers are able to obtain information in English on a carrier's website or IVR. Thus, English-speaking consumers have multiple ways to receive information from carriers.

We find inadequate the use of only one option to provide most information and support to LEP consumers. This is because many LEP consumers who may be required to sign annual or multi-year contracts may not have access to one or more of the options approved for carriers to provide in-language information. For example, many LEP consumers may not have computers or access to the Internet, and would not have access to information that a carrier provides only via the Internet.

Our requirement to provide access to a customer service representative fluent in the language(s) in which the carrier markets its non-exempt service and use at least one other option to provide in-language access to information and support for LEP consumers provides carriers the flexibility to choose methods that accommodate their various marketing strategies and their different modes of operation while ensuring LEP consumers have access to important information in the language(s) in which the carrier markets its non-exempt service(s). Therefore, carriers that have initiated non-exempt service with a consumer as a result of in-language marketing must make available live, person-to-person customer service over the telephone, and use at least one of the following options to provide in-language information.

First, carriers that market non-exempt services in-language basis may use an IVR system to provide required information to LEP consumers orally over the telephone in the language(s) in which the carrier markets its service. The IVR system must allow callers to select a language and receive the required

information in the selected language. Carriers must make the phone number for the IVR system available at retail outlets, including those of dealers and agents.

Carriers that market non-exempt services in-language may provide required information to LEP consumers in writing in the language(s) in which the carrier markets its service with the option to provide this information by U.S. mail, text messages or email if the customer is able to receive text messages or email.

For services sold under contract, the required information should be presented (provided or postmarked) within ten (10) calendar days of the transaction but at least ten (10) calendar days prior to the expiration of any applicable grace period to allow sufficient time for the customer to cancel the agreement without incurring an early termination fee or penalty. For services not sold pursuant to a contract, the required information must be presented within ten (10) calendar days after the transaction.

Carriers may make required information about non-exempt services available through a website in the same language(s) in which the carrier markets its non-exempt services in-language. However, because many LEP consumers that enter into annual or multi-year contracts may not have Internet access, use of the Internet/website to provide information in either audio form, written form, or both shall be considered "one" acceptable method for providing LEP consumers information.

Carriers that market non-exempt services in-language may make required information available in writing at the point of sale.

We will require carriers marketing non-exempt service in-language to provide access to telephonic customer service and use at least one other method to provide transaction-related information to LEP consumers who are required

to sign annual or multi-year contracts. Specifically, if a carrier marketing non-exempt services in-language enters into a contract with a LEP customer who is required to sign an annual or multi-year contract and that contract is written in the language in which the carrier markets its services, then that carrier has satisfied the requirement to provide in-language customer-specific transaction-related information and the carrier is not required to provide other access to in-language information about the LEP customer's transaction.

If a carrier marketing non-exempt services in-language enters into an English language contract with a LEP customer who signs an annual or multi-year contract but provides the LEP customer a written confirmation summary written in the language in which the carrier markets its non-exempt services, then that carrier has satisfied the requirements to provide in-language customer-specific transaction-related information and the carrier is not required to provide other access to in-language information about the LEP customer's transaction.

If a carrier marketing non-exempt services in-language enters into an English language contract and provides an English-language confirmation summary, then that carrier is required to provide access for the LEP customer to obtain oral or written customer-specific transaction-related information in the language in which the carrier markets its non-exempt services. This information may be provided orally through face-to-face or telephonic oral communication (but not via the Internet). Alternatively, carriers marketing non-exempt services in-language may provide in writing a "guide" describing the customer's pricing, applicable rate plan description and terms, and carrier contact information (name, address, telephone number and email address) in the language in which the carrier markets its services. Carriers that use a guide to provide in-language

customer-specific transaction-related information must indicate (e.g., circle, mark or check-off) the pricing, rate plan, and terms applicable to the LEP customer's transaction.

If a non-exempt carrier enters into an English language contract and provides an English language confirmation summary, then that carrier is required to provide access for the LEP customer to obtain oral or written customer-specific transaction-related information in the language in which the carrier markets its services. This information may be provided orally through face-to-face or telephonic oral communication (but not via the Internet). Alternatively, non-exempt carriers may provide in writing a guide describing the customer's pricing, applicable rate plan description and terms, and carrier contact information (name, address, telephone number and email address) in the language in which the carrier markets its services. Carriers that use a guide to provide in-language customer-specific transaction-related information must indicate (e.g., circle, mark or check off) the pricing, rate plan, terms applicable to the LEP customer's transaction.

Carriers that market non-exempt services in-language may make available in the same language(s) in which the carrier markets its non-exempt services information on calling plans or currently offered non-exempt service. However, the availability of information on calling plans or currently offered non-exempt services will not by itself satisfy carrier in-language obligations because such information does not provide LEP customers sufficient information about the rates, terms or conditions of the particular non-exempt service(s) LEP customers have selected.

We will not require carriers that market non-exempt services in-language to provide contracts in-language. However, we establish conditions to protect

LEP consumers who enter into contracts for non-exempt services only in English because we find LEP customers are unable to understand contracts written in English, and in-language oral communications at the point of sale may not accurately and completely disclose key terms and conditions contained in English language contracts. We also find written in-language brochures or other collateral marketing materials may not accurately or completely disclose key contract terms and conditions contained in English language contracts. Yet, when disagreements arise concerning terms and conditions of in-language sales versus English language contracts, the contract terms usually prevail. As a result, LEP consumers are especially disadvantaged in signing agreements for non-exempt services to which they are bound by contracts written in English.

Although we do not require contracts to be written in the language(s) in which the carrier markets its non-exempt services, we will require that any in-language representation about non-exempt services disseminated via IVRs, web sites, confirmation letters or other marketing information be consistent with the terms and conditions of the applicable contract.

Comments on the PD contend the PD goes too far when it determines that “prior or contemporaneous representations will control to the extent they favor the customer”, even where an English language contract contains an integration clause, purporting to override prior or contemporaneous, additional or inconsistent, oral or written representations.¹⁸³ We agree. We do not intend to change the terms of English language contracts with LEP consumers for non-

¹⁸³ AT&T Opening Comments on PD, pp. 8-10. Cricket/MetroPCS Opening Comments on PD, pp. 11-12. CTIA Opening Comments on PD, pp. 9-10. SureWest Opening Comments on PD, pp. 4-8. Verizon Wireless Opening Comments on PD, pp. 9-11.

exempt services when there is an allegation that contract terms do not comport with carrier representations to LEP consumers. However, dissemination of in-language information that is not consistent with the terms and conditions of the applicable contract for non-exempt services will be in violation of our rules. We believe that this requirement in combination with the existing provisions in the California Civil Code related to contract construction and interpretation are sufficient to address our concern that LEP consumers are especially disadvantaged in negotiating or understanding contracts for non-exempt services written in English.

We will not require carriers that market non-exempt services in-language to provide required notices or bills in-language, but we will require these carriers marketing non-exempt services to provide in-language instructions for how to obtain the information contained in required notices or assistance with billing questions in the language(s) in which the carrier markets its non-exempt services. This includes requiring mobile telephony service providers that market non-exempt services in-language to inform their LEP customers how to protect against fraud pursuant to § 2892.3. We will require other carriers that market non-exempt services in-language to do the same, pursuant to our authority under § 701.¹⁸⁴

We note that the Customer Guide section of the AT&T White Pages currently contains information in English on how to protect against fraud and

¹⁸⁴ § 701 states the Commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

certain other consumer information in multiple languages, but does not provide in-language information on how to protect against fraud.¹⁸⁵ The Verizon directories contain even less in-language information. Thus, LEP customers, who we find are particularly vulnerable to fraud, have access to little or no in-language information on how to protect themselves.

We intend to require carriers that market non-exempt services in-language to report to the Commission annually on problems with fraud, and actions taken to combat it, and to require carriers to inform their LEP customers upon initiation of service and annually thereafter about ways to protect against fraud. However, before implementing this requirement, the assigned Commissioner will issue a ruling seeking comments on the content, format and timing of notification to LEP consumers about ways to protect against fraud and report to the Commission on problems with fraud and actions taken to combat it. Implementation of this requirement for the general body of customers, however, will be addressed in future Commission action.

In its comments on the PD, Verizon California contends that, because the Commission did not ask parties to address the costs and benefits of draft rules based on the PD's definition of "marketing in-language" to include most oral communications, it cannot adopt the proposed rules consistent with Section 321.1.¹⁸⁶ In response to comments on the PD, we have revised the definition of "marketing in-language" in a way that should address Verizon

¹⁸⁵ This assessment is based on a limited review of directories, including the AT&T San Diego, San Francisco, and San Fernando Valley directories and the Verizon West Los Angeles directory.

¹⁸⁶ Verizon California Opening Comments on PD, pp. 4-5.

California's concern that the PD's definition would have imposed significant costs on carriers.

The Small LECs contend in their comments on the PD that the Commission failed to analyze the impact of requiring the Small LECs to communicate in any language demanded by a customer.¹⁸⁷ Also in response to comments on the PD, we have removed the requirement that cost-of-service carriers comply with in-language rules even if such carriers did not market in language, including requirements to provide in-language support in any language requested by a customer, to which the Small LECs object.

We recognize that some carriers already meet most of the minimum requirements we establish, and other carriers have committed to voluntarily undertake steps that would satisfy these requirements. Carriers that market non-exempt services in-language but currently provide no in-language support must now take steps to ensure their LEP customers receive adequate information and service. Nevertheless, we have crafted rules that, in our assessment, carriers should be able to follow using existing infrastructure, processes and technologies, and without undue financial burden, while providing substantial benefits that promote the public interest.

The rules are targeted to address the areas that will most benefit LEP consumers by providing protections and information concerning annual and multi-year contracts for telecommunications services, and access to Commission-mandated notices and disclosures in the languages in which a carrier markets non-exempt services. As noted in Verizon California's comments on the PD,

¹⁸⁷ Small LECs Opening Comments on PD, pp. 5-6.

most carriers have already invested in the infrastructure necessary to provide the person-to-person customer service support the rules require. We also allow carriers to use a variety of methods to satisfy in-language obligations that accommodate their different methods of operating. Thus, the rules we establish are designed to minimize the cost for carriers to comply while ensuring LEP consumers have access to important information.

As we stated in D.06-12-042, § 321.1 only requires the Commission to “assess” the economic effects of a decision. It does not require the Commission to perform a cost-benefit analysis or consider the economic effect of its decision on specific customer groups or competitors. Although parties did not provide quantitative information that would permit us to perform a quantitative analysis of the economic impact of our rules, we assessed the feasibility of satisfying the rules with existing infrastructure, processes and technologies, and without undue financial burden, while ensuring LEP consumers are adequately informed and protected. However, in our assessment, the rules we have crafted provide benefits to the public that exceed the costs to carriers. Therefore, we have complied with the requirements of §321.1.

4.4.5. Language Preference and Complaint Tracking Requirements

While carriers contend there is no substantiation to support adopting in-language rules, they also oppose tracking language preferences or complaints of LEP customers. Only about one-third of carriers responding to Staff’s survey state they track customer language preference or monitor LEP customer satisfaction. Nevertheless, CBOs and consumer groups cite substantial evidence supporting their concerns that LEP consumers receive inadequate service and

information, making their purchases of appropriate telecommunications services more difficult and unnecessarily exposing them as targets for fraud.

AT&T contends that language preference tracking is complex and costly, and places carriers in the awkward position of speculating about a customer's language preference or risk offending customers. AT&T recommends a workshop to consider the costs and benefits of any tracking requirements. AT&T also maintains that tracking agent complaints is not justified, and carriers should handle these complaints internally. AT&T states workshops might assist the Commission in developing its own complaint tracking processes and to clarify any carrier tracking requirements the Commission might adopt.¹⁸⁸

CTIA states language preference and LEP complaint tracking is too costly and complex. CTIA claims that carriers are not able to measure language proficiency or monitor agents, so data would be unreliable.¹⁸⁹

Joint CLECs state they do not and should not be required to track customers' language proficiency, and carriers should not be required to track complaints received by third-party representatives unless carriers actively market in a non-English language, and then only for the language(s) in which the carrier markets.¹⁹⁰

SureWest and Small LECs argue that it is unreasonable for carriers to track the language preference of customers, and opposes any requirement. SureWest

¹⁸⁸ AT&T Opening Comments, pp. 8, 11-14.

¹⁸⁹ CTIA Opening Comments, pp. 14-16.

¹⁹⁰ Joint CLECs Opening Comments, pp. 5-6.

and Small LECs state a customer's language preference should be presumed to be English unless the customer specifically states otherwise.¹⁹¹

Verizon California states language preference tracking should apply only to carriers marketing in a particular language. Verizon California states it presently tracks customer language preferences for Spanish, Tagalog, Korean, Vietnamese, Japanese, Mandarin, Cantonese and Russian, and sees little benefit in tracking other languages. Verizon California states the Proposal's complaint tracking requirement is vague and costly, with questionable benefits.¹⁹²

Verizon California also opposes tracking complaints made to third-party vendors, stating the Proposal does not define "complaint," what information is to be collected, or how that information would be used. Verizon California states tracking complaints made to third-party vendors is potentially costly, and recommends further examination of the problem.¹⁹³

Verizon Wireless opposes the Proposal's complaint tracking requirements as impractical. Verizon Wireless states it is unrealistic for carriers to monitor and track inquiries and complaints, and the data collected would be subjective and inaccurate. Verizon Wireless also states it is impractical and burdensome to require carriers to track complaints made to carriers' agents, and the information

¹⁹¹ SureWest Opening Comments, pp. 10-12, 15. Small LECs Opening Comments, pp. 11-13, 16.

¹⁹² Verizon California Opening Comments, pp. 5-7.

¹⁹³ Verizon California Opening Comments, pp. 5-6, 15-16.

collected would be unreliable because what constitutes a “complaint” is inherently subjective.¹⁹⁴

DRA maintains that complaint tracking is necessary to protect LEP consumers, and recommends quarterly reporting by customer language. DRA also recommends that the Consumer Protection and Safety Division (CPSD) publish a report of complaints against carriers and agents by LEP customer group.¹⁹⁵

LIF supports requiring carriers track customer language preferences and to inform the Commission if a carrier’s customer service does not support its customer’s preferred language. LIF recommends that quarterly reporting of carrier and reseller LEP complaints and language preference data be compiled, analyzed and made publicly available by the Commission. LIF also recommends that the Commission require carriers to use standardized complaint resolution procedures, including time limits for carriers and the Commission to resolve complaints, and confirmation numbers for easy reference. LIF contends that inconsistent practices among carriers leads to confusion and service problems, and delayed complaint resolution results in service disconnections and negative credit reporting.

Consumer Federation supports tracking of customer language preference and LEP complaints, but states complaint tracking procedures are complicated and customers should not be denied service if they refuse to state a language

¹⁹⁴ Verizon Wireless Opening Comments, pp. 19-20.

¹⁹⁵ DRA Opening Comments, p. 13.

preference.¹⁹⁶ Greenlining states carriers should be required to track all consumer complaints against carriers' third-party dealers and also track how those complaints are resolved.¹⁹⁷

Discussion

We are not persuaded by carriers' arguments against tracking customer language preference and LEP customer. Carriers contend language preference tracking is too complex and costly. However, collecting extensive and detailed information about their customers is a common, if not essential, practice of modern businesses seeking to provide products and services of interest and value to their customers. Sophisticated businesses such as telecommunications carriers routinely collect vast amount of data about their customers ranging from demographic and financial information to calling patterns and purchasing decisions, and obtain this information from numerous sources as varied as applications for service to Internet "cookies." Similarly, successful businesses are keenly interested in knowing whether their customers are satisfied, and routinely compile complaint data and/or conduct customer satisfaction surveys for many reasons, including improving services and monitoring employee performance.¹⁹⁸ Many responses to Staff's in-language survey acknowledge that non-English speaking customers need access to in-language customer service, IVR systems and in-language written communications.

¹⁹⁶ Consumer Federation Opening Comments, pp. 7-8.

¹⁹⁷ Greenlining Opening Comments, p. 4.

¹⁹⁸ For example, most CUDC survey respondents regularly monitor customer service telephone calls for quality assurance.

Today's technology also makes serving customers and collecting information about them easier. IVRs and call answering systems typically offer customers a choice of language at the beginning of a call, and are able to use this information to route calls for appropriate handling and for data collection. Thus, carriers using IVRs and automated call answering systems do not have to speculate about the customer's preferred language or risk offending customers by asking the question because the customer self-selects their language preference. Likewise, Internet-based systems can offer customers a choice of languages to select from and use the customer's selection to direct customers to information in their preferred language and record their selection.

Carriers commenting on the PD oppose tracking customer language preference and LEP consumer complaints. CTIA contends the PD does not justify the need for or the benefits of tracking, and recommends deferring this issue to a later phase of the proceeding.¹⁹⁹ AT&T states issues related to LEP consumer complaint tracking should be resolved before ordering complaint tracking.²⁰⁰ These issues include clearly defining what is meant by "complaint", identifying the specific information to be tracked, whether the Commission's Consumer Affairs Branch (CAB) and any other carriers track the same information, and whether carriers should track on behalf of their agents.

Joint Commenters contend the PD's tracking requirements are burdensome and costly, and lack record support for how tracking will help to

¹⁹⁹ CTIA Opening Comments on PD, pp. 11-14.

²⁰⁰ AT&T Opening Comments on PD, pp. 10-12.

address the needs of LEP consumers.²⁰¹ Joint Commenters state consumer groups have not advocated for a language preference tracking requirement and none provided good reasons for justifying a language tracking requirement. Verizon California states LEP consumer complaint tracking is costly and unnecessary because it provides little additional value to the CAB complaint tracking established by D.06-03-013.²⁰²

Cricket/MetroPCS contend that in-language obligations are triggered by a carrier marketing in a non-English language, so there is little or no benefit to be gained by tracking customers' language preferences.²⁰³ Verizon Wireless states that difficulty determining when customers have limited English proficiency makes language preference tracking unreliable. Verizon Wireless also contends that language preference or LEP complaint tracking is not feasible with its existing infrastructure, and the limited usefulness of any data would not justify the costs.²⁰⁴ Verizon Wireless recommends that the Commission rely on the CAB database for LEP consumer complaint data because CAB already has the data and a database structure that enables organizing by language and CAB's database would be less costly to analyze.

LIF contends that tracking customer language preference and LEP consumer complaints is appropriate, not burdensome to carriers, and is needed to

²⁰¹ Joint Commenters Opening Comments on PD, pp. 2-4.

²⁰² Verizon California Opening Comments on PD, pp. 12-14. Verizon Wireless Opening Comments on PD, pp. 13-15.

²⁰³ Cricket/MetroPCS Opening Comments on PD, pp. 10-11.

²⁰⁴ Verizon Wireless Opening Comments on PD, pp. 13-14.

gauge the effectiveness of the new rules.²⁰⁵ Greenlining supports the PD's tracking requirements but opposes the exemption for small carriers, contending that it is often these small carriers that market to LEP communities.²⁰⁶ Greenlining supports an improved CAB database designed to track the language in which complaints to the Commission are made and allows review and analysis of complaints by language. Greenlining recommends that the Commission make CAB data available to CBOs to assist in developing more effective complaint resolution processes. TURN also supports the PD's tracking requirements but opposes the exemption for small carriers as providing too large an exception.²⁰⁷ TURN recommends the Commission take further comment on this issue before granting tracking exemptions to small carriers.

Carriers have not provided substantiated cost data supporting their contentions that LEP consumer complaint and language preference tracking is too costly. However, in order to yield useful information, several critical issues must be resolved before requiring carriers to track LEP consumer complaint and language preference tracking. These issues include developing a definition of "complaint" that is consistently applied, identifying the specific information to be tracked, how that information will be used, and what kinds of exceptions to any tracking requirements are appropriate. Addressing these issues will require considerable effort.

²⁰⁵ LIF Opening Comments on PD, p. 8.

²⁰⁶ Greenlining Opening Comments on PD, pp. 8-9.

²⁰⁷ TURN Opening Comments on PD, pp. 12-14.

D.06-03-013 directed the Commission's Executive Director to seek augmentation of the Commission budget to improve CAB ability to respond to consumer complaints, by requesting funds to update our complaints database system and hire new CAB personnel.²⁰⁸ We also recognized we could improve our complaint resolution efforts by working more with CBOs which possess unique insights into problems faced by specific communities, because CBOs have knowledge about the telecommunications markets and communities they serve, have earned the trust of their constituencies, and show a passion for helping consumers.

The Commission's Consumer Affairs Branch (CAB) database has been designed to track the language in which complaints to the Commission are made, and allows the review of complaints by language, the number of complaints, the number and size of refunds of impounds, and the dispositions of complaints by language.²⁰⁹ The new CAB database, scheduled to be operational in 2007, is expected to provide improved information and better tracking of language trends. Efforts to resolve the issues raised by parties concerning carrier tracking of LEP consumer complaint and language preference would undoubtedly benefit from our own experience working with the new CAB database.

We also note that we have new eight (8) person telecommunications fraud unit that is working with CAB and CBOs to prevent fraud with prompt investigation.

²⁰⁸ D.06-03-013, pp. 6, 99.

²⁰⁹ Report, p. 50.

In addition, as further discussed below, we are taking steps to integrate CBOs in our efforts to educate LEP consumers and to assist them in resolving telecommunications issues. We believe these efforts are appropriate first steps toward gaining knowledge and experience about what kinds of LEP consumer complaint and language preference information should be tracked by carriers and how that tracking should be done.

Therefore, instead of ordering tracking by companies of their complaints by language preference and tracking of companies of their customer base by language preference at this time, we will defer these issues to the next phase of this proceeding.

As part of our effort to address LEP consumer complaint and language preference tracking issues, we intend to establish a definition of “reportable telecommunications complaint” that distinguishes telecommunications-related complaints we want to track from other customer contacts or inquiries and request comments on this issue in the next phase of this proceeding. The assigned Commissioner will issue a ruling seeking comments how “reportable telecommunications complaint” should be defined, and related LEP consumer complaint and language preference tracking issues.

We intend to make telecommunications information collected by CAB to be made widely available, once the new database becomes operational. We expect Staff to notify us after the new database becomes operational and before CAB begins publishing its telecommunications-related complaint data.

DRA, LIF and Greenlining recommend that the Commission continue to facilitate efforts between carriers and CBOs to develop more effective complaint

resolution processes.²¹⁰ LIF states CBOs are the first place LEP consumers turn to for information and assistance, and they rarely contact the Commission or carriers directly to resolve a telecommunications service problem. LIF recommends that CBOs be authorized to represent LEP customers, and urges funding to support CBO participation in LEP consumer complaint resolution, process design, and operation. CTIA recommends establishing a way for CBOs to work directly with carriers on behalf of LEP consumers. CTIA states involving CBOs in resolving LEP issues directly addresses and reduces the language barrier issues deterring LEP consumers from bringing issues to carriers.²¹¹

We believe CBOs play an important role in bridging barriers to effective communications between carriers and LEP consumers. The Report identifies several programs in which CBOs have assisted the Commission in developing culturally responsive, language appropriate materials, and perform education and outreach activities in ethnic communities. The Report recommends that the Commission explore ways to assist CBOs working on in-language outreach, education, and complaint resolution issues.²¹²

As stated earlier, we also recognized we could improve our complaint resolution efforts by working more with CBOs. We specifically sought funding for CBOs as part of the Commission's budget proposal to the Legislature to

²¹⁰ DRA Opening Comments, p. 4. LIF Opening Comments, pp. 3-5. Greenlining Opening Comments, p. 3.

²¹¹ CTIA Opening Comments, pp. 2-3.

²¹² Report, pp. 51-59, 84, 90.

create and monitor our consumer education program, and received appropriations earmarked to fund CBOs to assist the Commission conduct outreach, education and complaint resolution efforts.

We are now able to design and implement a program that takes advantage of the unique role CBOs can play in reaching and educating LEP consumers, and assisting them in resolving telecommunications issues while ensuring CBOs' efforts are compensated for their work. We look forward to CBO assistance in developing language appropriate materials, performing education and outreach activities, assisting LEP consumers resolve informal disputes with carriers, and assisting our CPSD in identifying fraud against LEP consumers.

In order for CBOs to act as liaisons or representatives, we make clear a CBO may be designated to act on behalf of any LEP consumer who has explicitly authorized a CBO to do so. Some carriers currently allow CBOs to represent LEP consumers as a way to improve communications and expedite issue resolution. All carriers shall permit CBOs to represent any customer who has authorized a CBO to assist it in dealings with carriers.

We direct Staff to design a program that integrates CBOs in our outreach, education, and complaint resolution processes, including a mechanism for compensating CBOs for their efforts while ensuring financial accountability and prudent use of the public funds. Staff is directed to include in its proposal any necessary documents or procedures needed to ensure LEP consumers and carriers are protected from consequences of unauthorized representation, and to ensure LEP consumers and CBOs authorized relationships are recognized and respected by carriers. Staff is directed to present its recommendation as a resolution for Commission consideration before the end of calendar year 2007.

4.4.6. In-Language Market Trials

In its comments on the PD, Verizon California raises the issue of allowing carriers to test the responsiveness of non-English speaking communities to which they do not currently advertise (i.e., “market trials”).²¹³ Verizon California contends that our rules will have a chilling effect on marketing in languages other than those for which a carrier already has the infrastructure to support. Verizon California states that the rules as currently crafted require carriers seeking to market in a new non-English language to establish the infrastructure needed to support the new language before it knows whether such efforts will be successful.

Verizon California states a carrier may want to test a particular non-English speaking market by advertising in-language to that market for a period of time to determine whether that community is sufficiently responsive to in-language marketing to justify investing in infrastructure to support in-language information and services. Verizon California contends that, if test marketing triggers the entire universe of rules contemplated in the PD, carriers are unlikely to expand their current in-language support. Verizon California recommends that the Commission provide an exception for these types of marketing tests, and that this issue should be the subject of further comment by the parties.

Discussion

One of the purposes of this proceeding is to consider ways to improve services to California telecommunications consumers who do not read or speak English fluently. We do not want our rules to have the unintended effect of

²¹³ Verizon California Opening Comments on PD, pp. 14-15.

discouraging carriers from offering telecommunications services to non-English speaking telecommunications consumers, and we want to encourage carriers to provide in-language support to these consumers in ways that help to inform and protect them. We believe the issue that Verizon California raises is important, and should be addressed. However, we are concerned that because the issue was raised for the first time in comments on the PD, we lack a record upon which to consider this proposal. Therefore, this decision directs the assigned Commissioner to issue a ruling seeking comments on whether in-language market trials should be permitted, and if so, what rules, if any, should apply to in-language market trials.

4.5. Responsibility of Carriers for Third-Party Vendors, Agents and Resellers

The OIR recognizes that carriers are legally responsible for the actions of their third-party dealers, vendors, or agents, and sought comment on whether policies or rules were necessary to ensure consumers are protected. The OIR asks what, if any, requirements such as data tracking or complaint monitoring would promote understanding of and improvements to consumer and carrier experiences with third-party vendors, and why.

Consumer groups state the Commission should give increased attention to carriers' oversight of dealers, agents or resellers under contract with carriers. LIF contends that kiosk sales of wireless services are the leading source of contract disputes and sales misrepresentations, with little recourse through carriers. LIF recommends the Commission clarify carrier-agent obligations and require agents

and third-party resellers to provide consumers with toll-free numbers to reseller and underlying carrier complaint departments.²¹⁴

Consumer Federation states all companies should be responsible for the actions of their agents, and recommends that entities receiving a benefit from the sale of a telecommunications service be jointly and severally liable to the consumer for damages caused by a violation of the rules.²¹⁵

DRA states carriers should be held responsible for the actions of their direct and indirect resellers. DRA contends third-party agents of major carriers do not provide LEP support and often defraud LEP consumers.²¹⁶ DRA recommends the Commission require carriers' third-party vendors and agents comply with any in-language rules applicable to the underlying carrier.

TURN and Greenlining recommend third-party agents be required to comply with the same rules as may be established for carriers.²¹⁷ Greenlining states rules should establish carrier accountability for the actions of their third-party dealers.²¹⁸

Carriers state they do not have the resources to effectively or systematically monitor agents' compliance. Carriers assert, however, when they become aware of fraud or abusive marketing on the part of their dealers, agents

²¹⁴ LIF Opening Comments, pp. 6-7.

²¹⁵ Consumer Federation Opening Comments, pp. 9-10.

²¹⁶ DRA Opening Comments, pp. 13-14.

²¹⁷ Greenlining Opening Comments, pp. 2-4, 6. TURN Opening Comments, pp. 11-12.

²¹⁸ Greenlining Opening Comments, p. 4.

or resellers under contract to market their products, the carriers discontinue contracts with those dealers.²¹⁹

CTIA states it is not practical or feasible for carriers to monitor every action of their agents, but all major wireless carriers have terminated relationships with dealers who are “bad actors” when carriers became aware of them.²²⁰ CTIA contends that in order for a carrier to be responsible for providing in-language services and information it must be able to control the activity which triggers the obligation, but carriers may not always have a way to know each and every action of its agents.

AT&T states there is a difference between dealers and resellers for wireless carriers. Dealers sell wireless service on behalf of the wireless carrier (i.e., dealers are agents), while resellers buy bulk service facilities-based wireless carriers and resell the service under their own brand name (i.e., resellers are independent carriers).²²¹

Verizon Wireless states it requires all of its agents to submit for pre-approval any advertising for Verizon Wireless services, but it can't prevent instances in which an agent may fail to satisfy its advertising pre-approval obligation. Verizon Wireless states it can and does take action, including termination, to address issues when they arise²²²

²¹⁹ Report, pp. 70-72.

²²⁰ CTIA Opening Comments, p. 5. CTIA July 14, 2006 Comments on Study Plan for Language Access Issues, pp. 3-4.

²²¹ AT&T Reply Comments, p. 14.

²²² Verizon Wireless Opening Comments, p. 12.

Verizon California believes current law makes principals responsible for the acts of authorized agents, citing § 2109 and Civil Code §§ 2295-2369. Verizon California states additional rules are not needed.²²³

Discussion

We first clarify that resellers that are registered or certificated by the Commission are independent carriers, and not agents of facilities-based carriers from whom they purchase on a wholesale basis and sell under their own brand name. Dealers are agents who sell on behalf of a facilities-based or resale carrier under the carrier's name.

Carriers are responsible for the acts of their agents under the Civil and Public Utilities Codes. Current law defines an agent as "one who represents another, called the principal, in dealings with third persons," and provides that all the rights and liabilities accruing to the agent accrue to the principal.²²⁴ Thus, despite their assertions that they can't monitor every action of their agents, carriers are nonetheless responsible for the actions of their agents.²²⁵

Pursuant to §§ 2109 and 2110, any act, omission, or failure of agent of a public utility, acting within the scope of his official duties or employment, in every case is the act, omission, or failure of the public utility, and any agent of a public utility who violates or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the Commission is guilty of a

²²³ Verizon California Opening Comments, pp. 5-6, 15-16.

²²⁴ Civil Code §§ 2295 and 2330.

²²⁵ (See Witkin, Summary of California Law, 9th Edition, Vol.2, §§ 41 et seq., §§ 75 et seq.)

misdemeanor and is punishable by a fine not exceeding one thousand dollars (\$1,000), or imprisonment in a county jail for up to one year, or both.²²⁶

Therefore, to the extent this Decision imposes in-language requirements on carriers, their agents must comply with those requirements and both the carrier and the agent may be held liable for non-compliance. Similarly, where this Decision provides that in-language representations must be consistent with the terms and conditions of applicable tariffs or contracts, this provision applies to in-language representations made by agents of carriers.

We earlier stated that consumers need to understand when secondary agreements apply, and LEP consumers should be informed of this in the language(s) in which the carrier markets its services. Comments on the PD contend the PD goes too far when it requires in-language disclosure of any key terms or conditions in secondary agreements that differ from those in the carrier's contract with the customer.²²⁷ AT&T contends that, while its wireless affiliate controls the terms of the contract for the service, a dealer may require a separate agreement for equipment. AT&T states it is not a party to the dealer equipment agreement, does not receive copies of those agreements, and does not benefit financially from such agreements. AT&T asserts the Commission lacks jurisdiction to regulate customer premises equipment (CPE).²²⁸ CTIA states carriers do not control the agent/dealer's sale of equipment, and the

²²⁶ §§ 2109, 2110.

²²⁷ AT&T Opening Comments on PD, pp. 9-10. CTIA Opening Comments on PD, p. 11. Verizon Wireless Opening Comments on PD, pp. 12-13.

²²⁸ AT&T Opening Comments on PD, p. 9.

Commission has no jurisdiction to regulate these equipment sales.²²⁹ Verizon Wireless states that the requirement would inhibit competition for equipment and create perverse incentives for dealers not to provide in-language disclosures about their secondary agreements in order to shift the cost of their equipment to carriers.²³⁰

We disagree that a requirement to disclose terms in secondary agreements that differ from carrier contracts is an attempt to regulate CPE. The PD's requirement for disclosures of secondary agreements is an effort to ensure that LEP consumers are informed of terms and conditions of which they may not otherwise be aware due to their difficulty understanding English language contracts. Nevertheless, we are concerned that imposing this requirement on carriers may create incentives for carriers and dealers, who are competitors in the CPE market, to use the requirement as a way to competitively disadvantage each other. Because our goal is to ensure that LEP consumers are adequately informed about the existence of secondary agreements and what effect these agreements may have on consumers, we believe this is an issue of education that may best be addressed through our consumer outreach and education efforts. As an initial step to address this issue, Commission staff, working with CBOs, should develop and disseminate information as part of the Commission's education and outreach programs to make LEP consumers aware of secondary agreements and how such agreements can affect consumers purchasing decisions.

²²⁹ CTIA Opening Comments on PD, p. 11.

²³⁰ Verizon Wireless Opening Comments on PD, p. 13.

The rules we adopt today and our existing enforcement powers will allow us to protect LEP consumers from fraudulent or abusive conduct by carriers or their agents. Therefore, adequate enforcement tools are in place to ensure carriers manage their agents' compliance with our in-language requirements, and additional rules are unnecessary.

4.6. Should the Commission Adopt Rules for Prepaid Calling Cards?

The OIR asks whether the Commission should adopt rules to govern the sale of and practices related to prepaid phone cards to protect customers with limited English proficiency, if customers proficient in English need disclosures about prepaid phones cards in other languages, and if customers need in-language information about customer service. The Proposal recommends rules similar to those contained in Business and Professions Code §§ 17538.9(a) and (b) to facilitate enforcement by the Commission.

DRA contends that many LEP consumers use prepaid calling cards, and disclosures and customer service rules are needed.²³¹ Greenlining recommends that prepaid phone cards include a complete description of terms, fees, and a toll-free number for customer service in the same languages used on the card or accompanying packaging.²³² LIF states many prepaid phone cards sold by small retailers frequently don't provide the minutes promised and fees are not adequately disclosed. LIF supports the Proposal, but recommends the

²³¹ DRA Opening Comments, pp. 14-15.

²³² Greenlining Opening Comments, pp. 6-7.

Commission provide consumer education and exercise greater enforcement oversight of prepaid phone cards.²³³

AT&T states existing laws on prepaid phone cards are adequate, and new rules are unnecessary and impermissible. AT&T states the Proposal's recommendation to adopt a similar rule to Business and Professions Code § 17538.9 is an improper attempt to confer enforcement authority on the Commission because the Legislature has already designated the Attorney General to enforce § 17538.9, and the Courts have determined the Commission does not have authority to enforce the Business and Professions Code.²³⁴ CTIA, SureWest and Small LECs state existing laws protect prepaid phone cards users and additional rules are unnecessary.²³⁵

Discussion

Entities that are interexchange carriers and offer prepaid phone cards or entities that purchase bulk time from underlying interexchange carriers and thereby offer prepaid phone cards are required to register with the Commission pursuant to § 1013, unless already certificated by the Commission.²³⁶ Entities which are required to register, but have failed to do so, and entities denied registration that offer telephone prepaid debit cards are subject to fines or other

²³³ LIF Opening Comments, p. 8.

²³⁴ AT&T Opening Comments, pp. 17-18.

²³⁵ CTIA Opening Comments, pp.17-18. SureWest Opening Comments, pp. 2, 8. Small LECs Opening Comments, pp. 3, 9.

²³⁶ § 885.

sanctions that may be ordered by the Commission.²³⁷ We also have authority under § 1013 (g) and (h) to cancel, revoke, or suspend the registration of any telephone corporation that violates our rules.²³⁸

Standards and requirements for consumer disclosure and services applicable to the advertising and sale of prepaid calling cards and prepaid calling services, including in-language requirements, are contained in Business and Professions Code § 17538.9(b). This Business and Professions Code section can be enforced only in court. *Greenlining Institute v. Pub. Util. Comm.* (2003), 103 Cal. App. 4th 1324, 1333-34. Among other things, violations of these sections of the Business and Professions Code can result in a misdemeanor conviction. This Commission lacks criminal jurisdiction. On the other hand, there is nothing in the *Greenlining Institute* decision to suggest that the Commission lacks authority to establish substantive rules that parallel requirements in the Business and Professions Code, and that are enforced by the Commission in its proceedings where it may impose those remedies which the Commission has authority to impose.

Here, we note that not all entities that are subject to this Business and Professions Code section are telephone corporations registered or certificated by this Commission. We do not here propose to apply our regulations to anyone who is not required to be registered or certificated by the Commission. We believe the Commission should continue the efforts initiated by D.06-03-013

²³⁷ § 886.

²³⁸ § 1013(g) and (h).

where we ordered Staff to collaborate with law enforcement.²³⁹ Staff's work with the Attorney General in the case against Devine Communications is an example of such collaborative law enforcement.²⁴⁰ In the case of prepaid calling cards, Staff should continue working closely with the Attorney General in prosecuting potential violations by providers who defraud or otherwise take advantage of vulnerable consumers.

4.7. Penalties

The Proposal recommends that carriers which violate in-language rules be penalized by providing for customers to be released from a contract or service agreement without penalty, paying only reasonable costs for services actually used (e.g., long-distance or usage minutes) and not be subject to early termination or other fees for changing or canceling service.²⁴¹

SureWest and CTIA state any penalties should be case-specific.²⁴²

AT&T argues that any LEP practices should be voluntary guidelines, and penalties are inappropriate. AT&T states it provides service to residential consumers pursuant to tariffs, and existing complaint processes are sufficient. AT&T maintains that if the Commission adopts rules, no specific penalties are

²³⁹ D.06-03-013, Ordering Paragraph 18.

²⁴⁰ Superior Court of the State of California in California vs. Devine Communications, Inc. Case No. CG07-46325.

²⁴¹ Proposal, p. 3.

²⁴² CTIA Opening Comments, pp. 16-17. SureWest Opening Comment, pp. 12-13. Small LECs Opening Comment, pp. 13-14. Verizon Wireless Opening Comment, p. 20.

needed because § 2100 *et seq.* authorize penalties for violations of Commission rules.²⁴³

Small LECs and SureWest state rescinding a contract is an excessive penalty, and recommends the Commission instead rely on existing available penalties and reserve its right to take enforcement against non-compliant carriers.²⁴⁴ Verizon Wireless opposes the Proposal's remedy for violating in-language rules, and states the Proposal would promote abuse and fraud by customers who just want to get out of their contracts.²⁴⁵

Consumer Federation supports the Proposal to release a customer from a contract/agreement without penalty or fees as a remedy for failure to comply with in-language rules, citing Civil Code § 1670.5.²⁴⁶

Discussion

Except to the extent specified in our discussion above concerning secondary contracts, we will not deem contracts drawn by a carrier who is in violation of in-language rules to be *per se* unconscionable, and therefore will not determine in advance that a customer should be automatically released from a contract or service agreement without penalty. Consistent with Civil Code § 1670.5, upon the filing of a formal complaint we will determine based on the specific facts presented whether a contract should be enforced in whole or in

²⁴³ AT&T Opening Comments, pp. 9-10, 18.

²⁴⁴ SureWest Opening Comments, pp. 12-13. SureWest Reply Comments, pp. 2, 20. Small LECs Opening Comments, pp. 13-14. Small LECs Reply Comments, pp. 2, 20.

²⁴⁵ Verizon Wireless Opening Comments, p. 20.

²⁴⁶ Consumer Federation Opening Comments, p. 7.

part, if at all.²⁴⁷ We have sufficient authority under § 2100 *et seq.* to impose substantial penalties for violations of our in-language rules, so the establishment of additional penalties or remedies is unnecessary.

5. Implementation Schedule

The implementation date for compliance with the in-language support services ordered by this decision shall be 180 days from the effective date of this decision. Carriers that market in-language shall provide telephonic person-to-person customer service, and shall make in-language information available to LEP consumers through at least one (1) of the approved options listed in Appendix A, Rule V.A.3., on or before 180 days from the effective date of this decision. Implementation of the program for integrating CBOs in our outreach, education, and complaint resolution processes shall be deferred until after the Commission adopts or modifies Staff's recommendation. A resolution for Commission consideration is expected before the end of calendar year 2007, and an implementation schedule will be established after that and sometime during 2008. In the meanwhile, all carriers shall permit CBOs to represent any customer who has authorized a CBO to assist it in dealings with carriers.

²⁴⁷ § 1670.5(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

6. Comments on Proposed Decision

The proposed decision of the assigned Commissioner in this matter was mailed to the parties in accordance with Public Utilities Code Section 311 and Rule 14.2(a) of the Rules of Practice and Procedure. Comments were received on July 5, 2007, from AT&T, CALTEL, Small LECs, Joint Commenters, Consumer Federation, Cricket and MetroPCS, CTIA, DRA, Greenlining, LIF, T-Mobile, SureWest, TURN, Verizon California, and Verizon Wireless. Reply comments were received on July 10, 2007, from AT&T, Small LECs, Joint Commenters, Frontier,²⁴⁸ Consumer Federation, Cricket and MetroPCS, CTIA, DRA, Greenlining, LIF, T-Mobile, SureWest, Verizon California, and Verizon Wireless.

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

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Richard Smith is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.06-03-013 directed Staff to analyze and report on special problems faced by limited English proficient consumers.
2. Consumers who are limited English proficient (LEP) are consumers who do not speak English fluently.

²⁴⁸ Frontier is comprised of Citizens Telecommunications Company of California Inc. dba Frontier Communications of California, Citizens Telecommunications Company of Tuolumne dba Frontier Communications of Tuolumne, and Citizens Telecommunications Company of the Golden State dba Frontier Communications of the Golden State.

3. "In-language" means "in a non-English language" (or "in the non-English language," etc.).

4. The Staff report, "Challenges Facing Consumers With Limited English Skills In The Rapidly Changing Telecommunications Marketplace," (Report) issued October 2006, sought to build upon the anecdotal evidence submitted in R.00-02-004, and was prepared to help assess whether the needs of LEP consumers are adequately met by education and enforcement efforts, and whether the Commission should adopt any rules.

5. The Report study relied on census and other demographic information, Commission records, and research into the language accessibility practices of state and federal government agencies, information received from telecommunications carriers, and comments provided by carriers, CBOs and other consumer groups, in writing and orally at a series of workshops and public meetings.

6. This OIR was initiated to consider ways to improve services to LEP telecommunications consumers and to assess telecommunications carriers' current in-language efforts and capabilities, the availability of and need for improved in-language disclosures, and access to in-language customer service.

7. All California telecommunications carriers, including entities registered as providers of prepaid phone debit cards pursuant to Pub. Util. Code § 885, are respondents to this proceeding.

8. The ACR of January 17, 2007, incorporated by reference the limited English proficiency aspects of the record of the CPI proceeding, R.00-02-004, and the meetings, workshops, comments and Report.

9. D.06-03-013 recognized carriers should be the first and most important source of information for consumers.

10. In preparing the Report, Staff contacted all registered and certificated (wireless and wireline) telecommunications corporations in California asking for information on carrier services for and interactions with LEP consumers (Staff Survey).

11. Only 11% of the carriers contacted responded to Staff's Survey (109 responses were received on behalf of 147 carriers out of a total of approximately 1,300 carriers). However, most incumbent local exchange carriers (ILECs), major CLCs and major wireless carriers responded and these carriers serve the majority of telecommunications customers in California. The ILECs responding to Staff's Survey represent over 95% of ILEC customers.

12. Most carriers responding to the Staff Survey do not track information about LEP customers, (67%) or do not provide non-English services of any kind (52%), and were unable to provide any information on their LEP customers.

13. Since most responding carriers state they do not track their interactions with LEP consumers, they have provided little data we can point to showing they are meeting the needs of their LEP consumers.

14. The carriers' response to the Staff request for information does not allow the Commission to precisely determine the extent of existing in-language services or unmet LEP consumer needs.

15. Several carriers responding to the Staff Survey provided information on their multilingual marketing, education, and outreach services, and the language demographics of their customers.

16. Many telecommunications carriers provide their own in-language marketing, outreach, and education for existing customers and prospective customers in order to provide better service or to attract new customers.

17. Larger carriers are more likely than smaller carriers to serve larger linguistic groups (e.g., Spanish, Chinese) with in-house employees, and to use Language Line telephone interpretation services for others.

18. Several smaller carriers do not provide any non-English educational materials because these carriers do not see a need for such services among their customers.

19. Some carriers serving multi-ethnic customers also provide in-house customer service in languages other than English, most commonly Spanish, but also several Asian languages, as well as Russian, Armenian, Arabic, and others.

20. The California Utilities Diversity Council (CUDC) was established in March, 2003, as a resource and to work collaboratively with the Commission and regulated utility companies to promote and increase diversity within utilities' governance, customer service and marketing, employment, procurement, and philanthropy programs.

21. In 2005, the CUDC conducted a survey of the language policies and practices within the CUDC utility companies and the Commission.

22. All of those responding to the CUDC survey provide some level of customer service in at least one non-English language.

23. Most of those responding to the CUDC survey regularly monitor customer service telephone calls for quality assurance, and several respondents use telephone interpreter services to serve non-English-speaking customers.

24. Larger carriers responding to the CUDC survey and those serving more diverse areas offer more services in more languages than smaller carriers. Services provided in languages other than English include marketing and outreach information (such as brochures on understanding phone bills) and customer service.

25. Carriers providing in-language support usually provide information only in the most commonly spoken non-English languages, and few carriers provide in-language service contracts or in-language key terms and conditions.

26. The Commission agrees with the Report's assessment of telecommunications carriers' current in-language efforts.

27. The absence of detailed carrier cost information and the lack of quantitatively and qualitatively measured benefits prevents us from conducting a rigorous cost-benefit analysis.

28. Carriers oppose tracking or producing data that might assist the Commission in more precisely determining the extent of LEP needs.

29. Even without detailed carrier cost information and the lack of quantitatively and qualitatively measured benefits, we are still able to assess if proposals for in-language rules are feasible with existing infrastructure, processes and technologies, and without undue financial burden while providing substantial benefits that promote the public interest.

30. Although many carriers provide a variety of in-language services the extent of in-language support varies widely.

31. Existing practices and rules do not adequately protect LEP consumers because they either do not require information to be "in-language" and understandable to LEP customers (as is the case with most existing consumer protection rules and regulations), or they apply only to certain kinds of transactions or customers or they apply to some carriers serving LEP customers but not to others (e.g., tariffs, D.96-10-076, D.98-08-031).

32. None of the currently mandated annual notices are required to be in-language for LEP consumers.

33. Providing disclosures in English does not allow an LEP consumer sufficient information to make an informed choice.

34. Less than half (48%) of carriers responding to the Staff Survey provide any in-language information or support whatsoever to LEP consumers.

35. The Asian Law Caucus (ALC) declaration describing its effort to find useful in-language information on major wireless carrier websites substantiates the lack of useful in-language support for LEP customers.

36. The U.S. Census survey data for tracts in small LEC areas show several of small LECs operate in areas with significant (more than 5%) LEP populations, and some operate in areas with much greater LEP populations.

37. LEP customers who receive but do not understand notices and other important information provided only in English are not receiving adequate service with respect to important information carriers are required to provide customers.

38. While local exchange competition has not been authorized in the territories of cost-of-service regulated carriers, these carriers may nonetheless face competition from wireless and Voice over Internet Protocol (VOIP) providers.

39. Although competition has been in place elsewhere in the state for over a decade, few carriers provide any in-language materials or services, and many that do are required to do so by rules adopted in D.96-10-076 for CLCs or the in-language rules adopted in D.00-10-028 for carriers providing ULTS.

40. Competition to date has not addressed the needs of LEP consumers, particularly where LEP consumers may enter into annual or multi-year contracts which may limit their ability to cancel or change service that is not meeting their needs.

41. LEP consumers who purchase service through prepaid or month-to-month contracts are not locked in to long term agreements, and able to easily cancel or change service at little cost or penalty.

42. Where competition is in place, it should function more effectively as a result of our in-language rules because LEP customers that enter into annual or multi-year contracts will have better information upon which to make their purchasing decisions.

43. In 2003, slamming was the most prevalent source of fraud, and Hispanics were more than twice as likely to be victims as non-Hispanic whites.

44. Consumers who have limited English-language proficiency are a group that may be particularly vulnerable to fraud or slamming because of their inability to understand oral offers.

45. LEP consumers that may enter into annual or multi-year contracts are vulnerable when they rely on in-language oral communications at the point of sale because oral communications may not accurately or completely disclose key terms and conditions of English language contracts and secondary contracts.

46. LEP consumers may not speak, read, write, or understand the English language sufficiently to access services to which they may be entitled.

47. Providing LEP customers with information only in English about how to protect against fraud is ineffective.

48. The limited translation and other in-language customer services some carriers provide voluntarily as a courtesy to LEP consumers are inadequate to fully protect or inform LEP consumers enter into annual or multi-year contracts.

49. Victims of fraud who are not fluent in English may be less likely to complain about a fraudulent experience.

50. Despite the particular vulnerability of LEP consumers to fraud and marketing abuse, no wireless or other carriers provide in-language notices informing LEP consumers how to avoid fraud and marketing abuse.

51. CBOs have unique insights into the consumer problems faced by specific communities.

52. There is not sufficient information to conclude carriers' wholesale or business customers need in-language protection.

53. No matter how much general education the Commission might provide on how to shop for telecommunications services, LEP consumers that enter into annual or multi-year contracts still need specific information about the rates, terms, and conditions of service so they may make informed purchasing decisions.

54. Only the carrier setting the rates, terms, and conditions of its services can provide the information needed by LEP consumers enter into annual or multi-year contracts to get their problems addressed.

55. A trigger for in-language obligations that relies on the collection or monitoring of demographic or customer profile information is too complex to manage and the quality of collected information too unreliable.

56. A company marketing its non-exempt services in a particular non-English language is a trigger that is simple to determine and enforce.

57. Requiring carriers marketing non-exempt services to provide in-language support to customers speaking the language(s) in which a carrier already markets its services is not unduly burdensome to carriers.

58. In-language obligations should apply only to carriers marketing non-exempt services in-language and only to those languages in which the carrier markets.

59. Due to language barriers, LEP customers that enter into annual or multi-year contracts for non-exempt services need in-language assistance understanding the terms of transactions to which they are bound by English language contracts, or to discuss service or billing problems.

60. There are several ways in which carriers can ensure LEP consumers to acquire the necessary customer support or transaction-related information in the language(s) in which the carrier markets its non-exempt services to allow them to make informed purchasing decisions and to discuss service or billing problems.

61. In-language information on carriers' currently offered services, calling plans and explanations of bills does not provide sufficient information for LEP consumers that enter into annual or multi-year contracts to understand the terms and conditions of their specific transactions.

62. LEP customers enter into annual or multi-year contracts need access to a summary of their transactions in the language(s) in which the carrier markets its services (Confirmation Summary).

63. LEP customers that enter into annual or multi-year contracts need access to information contained in Commission-mandated notices and disclosures in the language(s) in which the carrier markets its services.

64. LEP customers that enter into annual or multi-year contracts need access to Customer Service in the language(s) in which the carrier markets its services or through a third-party interpreter service such as Language Line for assistance with service or billing problems.

65. LEP customers that enter into annual or multi-year contracts need access to in-language instructions for how to obtain Customer Service assistance in the language(s) in which the carrier markets its services.

66. The use of only one method to provide in-language information and support to LEP consumers that enter into annual or multi-year contracts is inadequate.

67. LEP customers that enter into annual or multi-year contracts are unable to understand contracts written in English.

68. In-language oral communications at the point of sale may not accurately and completely disclose key terms and conditions contained in English language contracts for non-exempt services.

69. Written in-language brochures or other collateral marketing material may not accurately or completely disclose key contract terms and conditions contained in English language contracts.

70. LEP consumers that enter into annual or multi-year contracts are especially disadvantaged in negotiating agreements to which they are bound by contracts written in English.

71. Collecting extensive and detailed information about their customers is a common, if not essential, practice of modern businesses seeking to provide products and services of interest and value to their customers.

72. CBOs play an important role in bridging barriers to effective communications between carriers and LEP consumers.

Conclusions of Law

1. Competition should be relied on when it is the most appropriate solution, and we should consider whether rules are cost-effective when adequate information is available to make that determination.

2. It is not reasonable to conclude competition can adequately protect limited English proficient (LEP) consumers, particularly where LEP consumers enter

into annual or multi-year contracts which may limit their ability to cancel or change service that is not meeting their needs.

3. LEP consumers who purchase service through pre-paid or month-to-month contracts do not need the in-language information and disclosures because they are not locked in to long term agreements and are able to easily cancel or change service at little cost or penalty.

4. Services to wholesale or business customers, and wireless services offered through pre-paid or month-to-month contracts should be exempt from our in-language requirements.

5. Section 2892.3 obliges the Commission to require mobile telephony service providers to report to the Commission on problems with fraud and actions taken to combat it, and to require these providers to inform customers about ways to protect against fraud.

6. It is in the public interest to establish clear and efficient rules that carriers marketing non-exempt services can follow to ensure LEP customers that enter into annual or multi-year contracts have a wide range of competitive service alternatives

7. In-language obligations should apply only to carriers marketing non-exempt services in-language and only to those languages in which the carrier markets.

8. Carriers marketing non-exempt services that become aware of unauthorized in-language marketing by their employees or agents should be required to take corrective action within 30 days with employees or agents who conducted the unauthorized in-language marketing and document the corrective action taken to prevent further unauthorized in-language marketing.

9. LEP customers that enter into annual or multi-year contracts are entitled to reasonable, just and adequate service just like other customers, a failure to do so is unreasonable.

10. There is no need to meet a cost-effectiveness test in order for a carrier to be required to correct fraudulent conduct or compensate victims of fraud.

11. Carriers are not entitled to retain any ill-gotten gains and victims of fraud should always be made whole to the extent possible.

12. Existing practices and rules do not adequately protect LEP consumers that enter into annual or multi-year contracts and in-language rules are necessary.

13. The Commission can not rely on carrier assertions that in-language support is adequate and no additional protection of LEP consumers is needed.

14. LEP consumers that enter into annual or multi-year contracts who do not receive adequate notices, disclosures or other important information do not receive the information needed to fully participate in the marketplace.

15. We should not rely solely on the competitive marketplace to address the needs of LEP consumers that enter into annual or multi-year contracts because even with competition achievement of important public policy objectives requires additional measures.

16. Rules that require carriers that market non-exempt in-language to also make available in-language notices, disclosures and other important transaction or service-related information already required for carriers serving customers in English do not raise an issue with regard to a utility's First Amendment commercial speech rights.

17. Requiring a carrier who markets its non-exempt services in a language that triggers the Commission's in-language rules to continue its dealings with

customers in that same language is reasonably related to consumer protection in that it prevents deceptive, fraudulent and discriminatory practices.

18. Section 332(c)(3)(A) of the Communications Act of 1934, 47 U.S.C. § 151 *et seq.*, as amended, authorizes states to establish terms and conditions for wireless service, other than those that directly regulate rates or market entry.

19. Section 253(b) of the Communications Act of 1934, 47 U.S.C. § 151 *et seq.*, as amended, confirms state authority to safeguard the rights of customers.

20. Congress has expressly delegated to individual states authority to regulate intrastate telecommunications carriers and has expressly delegated to individual states authority to regulate the terms and conditions of wireless service.

21. The claim that in-language rules amount to compelled protected speech has no merit.

22. The argument that the Commission's language rules are preempted has no merit.

23. In-language should be defined as “a non-English language.”

24. Services should be defined as “telecommunications services, features or rate plans.”

Marketing in-language should be defined as “carrier-initiated and carrier-approved communication in a non-English language intended to induce a customer to purchase non-exempt services that are in writing or publicly broadcast or made available through print media, television, radio or the Internet, or conveyed orally through a carrier-initiated or carrier-approved contact, such as outbound telemarketing or door-to-door sales.” The definition of marketing in-language should exclude in-language communications that are incidental to English language telemarketing or door-to-door marketing, individual conversations between sales representatives and customers or

potential customers, conversations between customer service representatives and consumers during consumer-initiated calls and follow up calls related thereto, and “image” or “brand” advertising, which may name the Carrier and the non-exempt Service(s), but does not include terms, prices or specific information about non-exempt Services; and communications in a non English language that involve only the sale of telecommunications equipment (e.g. handsets) with no Service component.

25. The geographic scope of a carrier’s obligation once in-language obligations are triggered should be limited to the in-language advertising area.

26. To the extent that a carrier’s business establishment(s) (including a carrier’s dealer or agent locations) separately trigger in-language requirements by conducting in-language marketing of non-exempt services, in-language obligations should be triggered only for each carrier location that does so.

27. A carrier that becomes aware of unauthorized in-language marketing by their dealers, agents or employees should be required to take corrective action within 30 days with such dealers, agents or employees, and should be required to document the corrective action taken to prevent further unauthorized in-language marketing.

28. Resellers which are registered or certificated by the Commission are independent carriers, and not agents of facilities-based carriers from whom they purchase on a wholesale basis and sell under their own brand name.

29. Dealers are agents who sell on behalf of a facilities-based or resale carrier under the carrier’s name.

30. Carriers are responsible for the acts of their agents under the Civil and Public Utilities Codes.

31. Adequate enforcement tools are in place to achieve carriers' agents' compliance with our in-language requirements.

32. The Commission has authority to impose fines or other sanctions on entities which are required to register, but have failed to do so, and entities denied registration that offer prepaid phone cards.

33. Carriers that market non-exempt services in-language should be required to make available to LEP consumers that enter into annual or multi-year contracts information needed to obtain and maintain telecommunications services, and to protect these customers from fraud or abuse.

34. In-language rules should provide flexibility to carriers that market in-language but at the same time ensure LEP consumers that enter into annual or multi-year contracts receive adequate information, including a way to access in-language information contained in Commission-mandated notices and disclosures.

35. When a carrier markets non-exempt services in a particular language to consumers that enter into annual or multi-year contracts, that carrier should be obligated to make available to consumers enough information in the language the carrier is marketing in to allow consumers to make informed purchasing decisions and resolve service or billing problems.

36. Carriers that market non-exempt services in-language should make available a LEP customer that enters into annual or multi-year contract a summary of the customer's transaction in the language(s) in which the carrier markets its non-exempt services, including the name of the Service Carrier, its contact information, and a brief description of the telecommunications Services or wireless carrier calling plan(s) purchased by the customer, including pricing, term, and any early termination fee (Confirmation Summary).

37. Carriers that market non-exempt services in-language should make available to a LEP customer that enters into annual or multi-year contract access to information contained in Commission-mandated notices and disclosures in the language(s) in which the carrier markets its non-exempt services.

38. Carriers marketing non-exempt Services in a non-English language should be required to provide during its normal business hours access to live, person-to-person customer service over the telephone in the language(s) in which the Carrier markets its non-exempt Services. A carrier should be allowed to provide in-person customer service, in addition to telephonic customer service, if a carrier chooses to do so.

39. Carriers should have a choice of ways to satisfy in-language obligations that accommodates the variety of carrier types, their diverse marketing strategies and their different modes of operation.

40. Carriers should have alternative ways of making available to LEP consumers that enter into annual or multi-year contracts confirmation information in the language(s) in which the carrier markets its non-exempt services.

41. Carriers which have initiated service with a consumer as a result of in-language marketing of non-exempt services should make available by telephone live, person-to-person customer service and use at least one other method to make available in-language support to LEP consumers.

42. Carriers that market non-exempt services in-language should be allowed to use an interactive voice response (IVR) system as one of the ways carriers may make required information available orally over the telephone in the language(s) in which the carrier markets its no-exempt service to LEP consumers.

43. Carriers that use IVR systems to make required information available orally over the telephone to LEP consumers that enter into annual or multi-year contracts should allow callers to receive the required information in the language(s) in which carriers market their non-exempt services.

44. Carriers that use IVR systems to make required information available orally over the telephone to LEP consumers that enter into annual or multi-year contracts should make the phone number for the IVR system available at retail establishments, including those of dealers and agents.

45. Carriers that market in-language should be allowed to make available information in writing in the language(s) in which the carrier markets its service as one of the ways carriers may provide required information to LEP consumers that enter into annual or multi-year contracts.

46. Carriers that provide information to LEP consumers in writing should have the option to provide this information by U.S. Mail, text messages or email if the customer is able to receive text messages or email.

47. For non-exempt services sold under contract to LEP consumers that enter into annual or multi-year contracts, the required in-language information should be presented (made available or postmarked) at either point of sale, or no later than ten (10) calendar days after the transaction but not less than ten (10) calendar days prior to the expiration of any applicable grace period to allow sufficient time for the customer to cancel the carrier's service agreement without incurring an early termination fee or penalty.

48. For non-exempt services not sold under contract, the required in-language information should be presented (made available or postmarked) at either point of sale, or no later than ten (10) calendar days after the transaction.

49. Carriers that market non-exempt services in-language should be allowed to make required information available through a website in the same language(s) in which the carrier markets its service as one of the ways carriers may provide required information.

50. If the customer interacts with a Carrier marketing in-language solely by ordering service on a website and manages the account online where communications are primarily by email, the Carrier should be allowed to satisfy the in-language information obligations by providing required in-language information on a publicly available website. However, any carrier doing business in this manner should still be required to comply with in-language customer service obligations.

51. However, because many LEP consumers that enter into annual or multi-year contracts may not have Internet access, use of the Internet/website to provide information in either audio form, written form, or both should be considered "one option".

52. Carriers that market non-exempt services in-language should be allowed to make required information available in writing at the point-of-sale in the language(s) in which the carrier markets its service as one of the ways carriers may provide required information to LEP consumers that enter into annual or multi-year contracts.

53. Carriers that market non-exempt services in-language should not be required to provide contracts in-language.

54. Any representation made in the in-language information provided via IVRs, web sites, confirmation letters or other written or oral presentations should be consistent with the terms and conditions of the applicable contract.

55. Carriers that market non-exempt services in-language should not be required to provide Commission-mandated notices or bills in-language. However these carriers should be required to make available in-language instructions for how to obtain the information contained in Commission-mandated notices or assistance with billing questions in the language(s) in which the carrier markets its non-exempt services.

56. Carriers that market non-exempt services in-language should inform their LEP customers that enter into annual or multi-year contracts upon initiation of service and annually thereafter about ways to protect against fraud. However, the Commission should first determine the content, format and timing of notification to LEP consumers.

57. Carriers that market non-exempt services in-language should be required to report to the Commission annually on problems with fraud and actions taken to combat it. However, the Commission should first determine the content, format and timing of reports to the Commission.

58. In order to yield useful information, several critical issues must be resolved before requiring carriers to track LEP consumer complaint and language preference tracking, including developing a definition of "complaint" that is consistently applied, identifying the specific information to be tracked, how that information will be used, and what kinds of exceptions to any tracking requirements are appropriate.

59. Efforts to resolve the issues raised by parties concerning carrier tracking of LEP consumer complaint and language preference should benefit from our own experience working with the new CAB database.

60. Imposing LEP consumer complaint and language preference tracking requirements on carriers at this time is premature.

61. Telecommunications complaint information collected by the Commission's Consumer Affairs Branch (CAB) should to be made widely available, once the new database becomes operational.

62. Community based organizations (CBOs) should be authorized to act on behalf of any LEP telecommunications consumer who has explicitly authorized a CBO to do so.

63. All carriers should permit CBOs to represent any customer who has authorized a CBO to assist it in dealings with carriers.

64. Commission Staff should be directed to design a program that integrates CBOs in our outreach, education and complaint resolution processes, including a mechanism for compensating CBOs for their efforts while ensuring financial accountability.

65. The Commission should consider additional comments before establishing a definition of "reportable telecommunications complaint" and related LEP consumer complaint and language preference tracking issues.

66. The rules we adopt today and our existing enforcement powers should allow us to protect LEP consumers from fraudulent or abusive conduct by carriers or their agents.

67. Entities that are interexchange carriers and offer prepaid phone cards or entities that purchase bulk time from underlying interexchange carriers and thereby offer prepaid phone cards are required to register with the Commission pursuant to § 1013, unless already certificated by the Commission.

68. The Commission has authority to impose fines or other sanctions on entities that are required to register, but have failed to do so, and entities denied registration that offer telephone prepaid debit cards. The Commission has have

authority under § 1013(g) and (h) to cancel, revoke, or suspend the registration of any telephone corporation that violates our rules.

69. Standards and requirements for consumer disclosure and services applicable to the advertising and sale of prepaid calling cards and prepaid calling services, including in-language requirements, are contained in Business and Professions Code § 17538.9(b).

70. This Business and Professions Code section can be enforced only in court

71. Among other things, violations of Business and Professions Code § 17538.9(b) can result in a misdemeanor conviction.

72. This Commission lacks criminal jurisdiction.

73. Not all entities that are subject to this Business and Professions Code section are telephone corporations registered or certificated by this Commission.

74. The Commission does not propose to apply its regulations to anyone who is not required to be registered or certificated by the Commission.

75. The Commission should continue the efforts initiated by D.06-03-013 where it ordered Staff to collaborate with law enforcement.

76. Staff should continue to work with the Attorney General in enforcing Business and Professions Code § 17538.9.

77. We have sufficient authority under § 2100 *et seq.* to impose substantial penalties for violations of our in-language rules.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The in-language rules contained in Appendix A to this decision are hereby adopted.

2. The in-language rules contained in Appendix A shall not apply to carriers' wholesale or business customers or wireless services offered through prepaid or month-to-month contracts (exempt services).

3. Carriers that market non-exempt products or services in a non-English language shall comply with the in-language rules contained in Appendix A.

4. In-language marketing shall be defined as "a carrier-initiated and carrier-approved communication in a non-English language intended to induce a customer to purchase non-exempt services that are in writing or publicly broadcast or made available through print media, television, radio or the Internet, or conveyed orally through a carrier-initiated and carrier-approved contact, such as outbound telemarketing or door-to-door sales." This definition shall exclude in-language communications that are incidental to English language telemarketing or door-to-door marketing, individual conversations between sales representatives and customers or potential customers, and conversations between customer service representatives and consumers during consumer initiated calls and follow up calls related thereto, and "image" or "brand" advertising, which may name the Carrier and the non-exempt Service(s), but does not include terms, prices or specific information about non-exempt Services; and communications in a non-English language that involve only the sale of telecommunications equipment (e.g., handsets) with no service component.

5. The geographic scope of a carrier's obligation once in-language obligations are triggered shall be limited to the in-language advertising area.

6. Whenever a carrier's business establishment(s) (including a carrier's dealer or agent locations) separately trigger in-language requirements by conducting

in-language marketing of non-exempt services, in-language obligations shall be triggered only for each location that does so.

7. Carriers that become aware of unauthorized in-language marketing of non-exempt services by their employees or agents shall take corrective action, within 30 days and shall document the corrective action with employees or agents who conducted the unauthorized in-language marketing to prevent further unauthorized in-language marketing.

8. Carriers that market non-exempt services in-language shall use at least two of the options listed in Appendix A to provide in-language support to limited English proficiency (LEP) consumers, one of which shall be through oral in-language customer service by telephone.

9. Any representation made in the in-language information provided via interactive voice response (IVR) systems, web sites, confirmation letters or other written or oral presentations shall be consistent with the terms and conditions of the applicable contract.

10. The assigned Commissioner shall issue a ruling seeking comments on the content, format and timing of notification to LEP consumers about ways to protect against fraud and reports to the Commission on problems with fraud and actions taken to combat it.

11. The assigned Commissioner shall issue a ruling seeking comments on whether in-language market trial should be permitted, and if so, what rules, if any, should apply to in-language market trials.

12. The assigned Commissioner shall issue a ruling seeking comments on a definition of "reportable telecommunications complaint" in addition to related LEP consumer complaint and language preference tracking issues.

13. Staff shall design a program that integrates community based organizations (CBOs) in the Commission's outreach, education and complaint resolution processes, including a mechanism for compensating CBOs for their efforts while ensuring financial accountability and prudent use of public funds. Staff shall include in its proposal any necessary documents and/or procedures needed to ensure LEP consumers and carriers are protected from consequences of unauthorized representation, and to ensure LEP consumers and CBOs authorized relationships are recognized and respected by carriers. Staff shall present its recommendation as a resolution for Commission consideration before the end of calendar year 2007.

14. All carriers shall permit CBOs to represent any customer who has authorized a CBO to assist it in dealings with carriers.

15. Where the Attorney General is designated to enforce Business and Professions Code §17538.9, Staff shall continue to work with the Attorney General in enforcing prepaid calling card standards and requirements.

This order is effective today.

Dated July 26, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

I reserve the right to file a concurrence.

/s/ DIAN M. GRUENEICH
Commissioner

I reserve the right to file a concurrence.

/s/ RACHELLE B. CHONG
Commissioner

I will file a concurrence.

/s/ TIMOTHY ALAN SIMON
Commissioner

APPENDIX A

Rules for In-Language Support to Limited English Proficient (LEP)
Telecommunications Consumers

<p>Rule I. When In- Language Rules Apply</p>	<p>I.A. Applicability. Telecommunications carriers (“Carriers”) that market telecommunications services, features or rate plans (“Services”) in a non-English language shall be subject to these In-Language Support Rules (“Language Rules”).</p> <p>I.B. Exemptions from Language Rules. These Language Rules do not apply to: (1) carriers’ services to wholesale or business customers; or (2) to wireless services provided through either prepaid/pay-in-advance methods or month-to-month contracts (“exempt services”).</p>
<p>Rule II. Marketing In- Language Definition</p>	<p>II.A. Marketing In-Language Definition. Marketing In-Language is defined as “a carrier-initiated and carrier-approved communication in a non-English language that are: (1) intended to induce a customer to purchase non-exempt telecommunications service(s); and (2) that are either (a) in writing; (b) publicly broadcast (e.g. television, radio or Internet) or made available through print media, (c) or conveyed orally through a carrier-initiated and carrier-approved contact, such as outbound telemarketing or door-to-door sales.”</p> <p>II.B. Exclusions. This Marketing In-Language definition shall exclude: (1) in-language communications that are incidental to English language telemarketing or door-to-door marketing; (2) individual conversations between sales representatives and customers or potential customers; (3) conversations between customer service representatives and consumers during consumer-initiated calls and follow up calls related thereto; (4) “image” or “brand” advertising, which may name the carrier and the non-exempt service(s), but does not include terms, prices or specific information about non-exempt services; and (5) communications in a non English language that involve only the sale of telecommunications equipment (e.g. handsets) with no service component.</p> <p>II.C. Geographic Scope. The geographic scope of a carrier’s in-language obligation is limited to the in-language advertising area. If an individual reseller, dealer or agent conducts in-language marketing at a particular location, in-language obligations are triggered only for the location (e.g. store, kiosk) that does so.</p> <p>II.D. Unauthorized In-Language Marketing. Unauthorized In-Language Marketing occurs when a carrier’s dealer, agent or employee engages in the activities described above as “Marketing In-Language” without the approval or authorization of the carrier. A carrier that becomes aware of unauthorized in-language marketing by their dealers, agents or employees shall take corrective action within 30 days with such dealers, agents or employees, and shall document the corrective action taken to prevent further unauthorized in-language marketing.</p>

<p>Rule III. Language(s) Required</p>	<p>Language(s) Required. Any non-English language in which a carrier markets its non-exempt services in accordance with the Marketing In-Language Definition set forth above.</p>
<p>Rule IV. In-Language Customer Services Required</p>	<p>IV.A. Customer Service Requirement. During its normal business hours, carriers marketing non-exempt services in a non-English language shall provide access to live, person-to-person customer service over the telephone in the language(s) in which the carrier markets its non-exempt services. A carrier may provide in-person customer service, in addition to telephonic customer service, if a carrier chooses to do so.</p> <p>IV.B. Telephonic Customer Service Option. Carriers shall provide telephonic in-language customer service using either: (1) a customer service representative fluent in the language(s) in which the carrier markets its non-exempt service; or (2) through a third-party interpreter service, such as Language Line.</p>
<p>Rule V. In-Language Information Required</p>	<p>V.A. Information Required. In addition to the In-language Customer Services requirement in Rule IV, carriers, dealers or agents marketing a carrier's non-exempt services in a non-English language shall make available one or more of the following:</p> <ol style="list-style-type: none"> 1. A translation of the contract in the language in which the carrier markets its non-exempt services; or 2. A summary of the customer's transaction in the language(s) in which the carrier markets its non-exempt services (In-Language Confirmation Summary); or, 3. A summary of the customer's transaction in English (English Confirmation Summary) so long as the carrier, dealer, or its agent provides the customer with instructions on how to access the translation or interpretation of that English Confirmation Summary into the language(s) in which the carrier markets its non-exempt services. Carriers shall provide access to required information using at least one of the following methods: <ol style="list-style-type: none"> (a) Carriers may provide oral translation/interpretation through in-person or telephone customer service. (b) Carriers may use an interactive voice response (IVR) system to make required information available to LEP consumers orally over the telephone in the language(s) in which the carrier markets its non-exempt services. Carriers shall make a toll free phone number for the IVR system available at retail outlets, including those of dealers and agents, where non-exempt services are marketed in-language. (c) Carriers may make required information available to LEP consumers in writing in the language(s) in which the carrier markets its non-exempt service, with the option to provide this information at the point-of-sale, by U.S. Mail, text messages or email if the customer is able to receive text messages or email. (d) Carriers may make the required information available through a website in the language(s) in which the carrier markets its non-exempt service. This website option may only be used if access to the website is available and offered to the LEP consumer at point of sale at the location of the carrier, dealer or agent. (e) Carriers may make required information available through use of "guides" in the language(s) in which the carrier markets its service. This in-language guide shall provide

	<p>guidance to the LEP consumer to understand the English language version of the document(s) (e.g. “Line 1 is the name of the rate plan, the monthly price, and how many peak and non peak minutes of use are provided under the plan. Line 2 is the term of the rate plan, if any. Line 3 shows any early termination fee if you terminate your plan earlier than the term show in Line 2. Line 4 is the ULTS monthly surcharge.” etc.). This in-language guide shall be provided concurrently with the English-language document(s).</p> <p>V.B. Confirmation Summary Definition. A “Confirmation Summary” is defined as a summary of the transaction entered into by the carrier and the customer, showing the name of the service carrier, its contact information, and a brief description of the telecommunications services or wireless carrier calling plan(s) purchased by the customer, including pricing, term, and any early termination fee. This information may be conveyed in more than one document.</p> <p>V.C. Access to Commission mandated Notices and Disclosures. Carriers are required to provide access to Commission-mandated notices and disclosures relating to regulated telecommunications services in the language(s) in which the carrier markets its non-exempt services. This access may be provided by website, IVR or other written document(s) sent to the customer via U.S. mail, email, or text message, if the customer has the latter two methods of contact information on file with the carrier in the normal course of business. If the required Commission notice is unrelated to the transaction initiating service, the notice shall be given in the same general time frame to in-language customers as notices in English are given to customers.</p> <p>V.D. Online Exception. If the customer interacts with a carrier marketing in language solely by ordering service on a website and manages the account online where communications are primarily by email, the carrier may satisfy the in-language obligations by providing required in-language information on a publicly available website. Any carrier doing business in this manner as to services must still comply with Rule IV as to In-Language Customer Service obligations.</p>
<p>Rule VI. Schedule for Providing Required Information</p>	<p>VI.A. Non-exempt Services sold under contract. Required information shall be presented (made available or postmarked) at either point of sale, or no later than ten (10) calendar days after the customer’s transaction, but not less than ten (10) calendar days prior to the expiration of any applicable carrier grace period to allow sufficient time for the customer to cancel the carrier’s service agreement without incurring an early termination fee or penalty.</p> <p>VI.B. Non-exempt Services not sold under contract. Required information shall be presented (made available or postmarked) within ten (10) days after the transaction.</p>

(END OF APPENDIX A)

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Commissioner Dian M. Grueneich, concurring:

I support today's decision adopting formal rules to assist telecommunications consumers with limited English proficiency **as a first step**. Frankly, I think the Commission should and could have done more. But the Commission has been studying this issue for over five years. I could not in good conscience advocate putting off adoption of even a modest rule yet again. Thus, I support the adoption of today's rule as a reasonable first step that moves the Commission and telecommunication carriers in the right direction.

I applaud the decision's requirement for in-language customer representatives and the multiple options available to applicable carriers to provide written in-language transaction confirmations. These requirements will help to protect customers whose first language is not English. At the same time, the menu of options will alleviate additional costs for most if not all applicable carriers. But, our goal is not and legally cannot be to adopt only those rules that impose no costs on carriers.

I am disappointed in the limitations of the final decision and would have supported adoption of the proposed decision as originally issued by President Peevey. Our decision today does not require in-language transaction documentation at the point of sale; it does not require language preference tracking; and it does not establish either a system for monitoring compliance with the rules we adopt today nor a clear enforcement protocol. I would have preferred to provide customers with an assurance that violations of these rules would result in the ability to cancel a contract without additional fees.

Of particular concern is the decision's failure to establish a monitoring program. Regulatory commissions typically establish systems to monitor compliance with their rules in order to know if the rules are being followed and to understand what, if any, additional public education, rule clarification, or enhanced enforcement actions are needed. Today's decision provides neither the public, our telecommunication carriers, nor this Commission with the information needed to know whether the rules we adopt today are sufficient to protect limited English proficiency customers.

Today's decision does include some initial steps in the area of monitoring. We commit to utilize our in-house resources along with the expertise of community-based organizations. We also commit to a Phase II to look at the feasibility of applicable carriers reporting in-language complaints to the Commission. We

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cannot be certain of the success of these rules without carriers providing this additional data. For this reason, we must start Phase II immediately and, I believe, we should commit to issuing a decision on Phase II by the end of the year.

Last year when the Commission adopted its telecommunications consumer protection initiative, I was concerned that our actions left out a large portion of California telecommunications customers - those forty percent of California households that speak a language other than English at home. Today's step, well overdue, is a reasonable and significant first step in protecting all Californians, not just those proficient in English. For these reasons I support the decision.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich

Commissioner

San Francisco, California

July 26, 2007

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Commissioner Rachelle B. Chong, concurring:

I fully support today's Language decision and the rules. Today's action is one of the most innovative of its kind in the nation. Twin goals of this Commission have been both consumer protection and encouraging a vibrant competitive telecommunications market in California's information economy.

Publicly I have said that I would support language rules, and I am keeping that promise today. As a descendant of Chinese immigrants who came to California during the gold rush in the 1850s, I understand the importance of immigrants to our great nation. The diversity of California is one of our greatest strengths.

I further understand how important telecommunications is to an immigrant's life. It is a link to their family back in their home country and a key tool to function in a modern information society. The PUC is letting our phone companies know that these newcomers to our society need to understand the basic service agreements they are entering into, and have a way to get their service questions answered.

I want to put today's action in context. This decision represents a bold next step in the Commission's consumer protection efforts. Last year, we issued our Consumer Protection Initiative (CPI) decision in March in which we articulated seven consumer rights. *See* D.06-03-013. In that decision, we committed to launch 23 new Commission-led consumer initiatives. We have been delivering on those initiatives in the last year and four months, in an unprecedented effort across this Commission.

Our 23rd initiative directed our PUC staff to report on specific problems facing telecom consumers with limited English proficiency (LEP). Staff put together a thorough study. The PUC held numerous public meetings around the state to gather information on language issues. I attended two workshops and a public meeting and listened to consumers and community based organizations describe their issues. The PUC then opened this rulemaking.

Many of our Consumer Protection Initiatives are already helping LEP consumers. For example,

- The PUC added fifteen new Consumer Affairs Bureau employees – nine of which are bilingual -- to respond more effectively to consumers with complaints and to reduce our complaint backlog.

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- We developed consumer friendly brochures in thirteen languages on topics, like “10 Tips for Buying Wireless Service,” “Slamming & Cramming,” and “Understanding Your Bill.”
- We also put this important consumer education information on the new CalphoneInfo.com website – in thirteen languages.
- We held five consumer bill fairs around the state – which have focused on educating the LEP, senior, and low income communities on consumer education issues, and complaint resolution. The bill fairs have been well attended and popular.
- We have also partnered and trained dozens of community based organizations to help with consumer education and intake of consumer complaints, particularly from limited English communities who may for cultural reasons be hesitant to come to a government agency for help.
- We are in the process of launching a second consumer education program in early September. This will be a statewide campaign in print, television, and radio. The ads will be in English, Spanish, Cantonese and Mandarin.
- Finally, we have created a Telecommunications Consumer Fraud Unit. We expanded our toll free hotline for this purpose.

Our efforts are paying off. The PUC recently worked with the Attorney General’s office in filing a complaint in Superior Court against a prepaid phone company. The court issued a ground-breaking judgment – requiring that company to pay penalties, and to disclose fees, surcharges and other costs with their cards, and prohibiting misleading advertising.

Today’s new language rules will further empower this Commission to address the problem of “bad actors” in the telecom market. The Commission makes clear it will not tolerate fraud upon its consumers, no matter what language it is conducted in. We further make clear that telecommunications carriers are responsible for their agents’ actions. We expect the carriers to train their employees, dealers and agents in the new Language Rules and to comply with them.

I believe the new rules strike a fair balance between, on the one hand, ensuring that limited English consumers have access to customer service and in language information about the services they bought, and on the other hand, ensuring that our rules are simple and pragmatic so that they

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get the job done but are not unnecessarily costly or burdensome on carriers.

It is a fact that these telecommunications carriers are national carriers. Overly burdensome language rules for our state may cause carriers to make cost-benefit analyses when they consider marketing in a non English language. I was concerned that overly zealous rules that are costly to comply with may result in 'English only' policies being ordered by the carriers for employees, dealers and agents. I do not think that such an inadvertent result would serve the public interest in a state as marvelously diverse as California. For these reasons, I strongly support this decision today.

/s/ Rachelle B. Chong
Rachelle B. Chong
Commissioner

San Francisco, California
July 26, 2007

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Commissioner Simon, concurring:

This order has my full support. I write this concurrence to clarify the specific reasons that lead me to conclude that the policies it adopts best serve Californians.

Today, 95% of all Californians live in areas where companies offer customer service and support for telecommunications services in languages other than English. This strikes me as responsible corporate behavior that merits commendation.

Fundamentally, markets work best when consumers are informed and have choices. If firms have a proactive campaign to market their services in a language other than English, then it is reasonable to require that they provide the customer with information on what he or she has purchased and provide a minimal level of customer support in the language used to make the sale. The rules that we adopt offer carriers a flexible menu of choices that will ensure that this happens. Most importantly to me, if a carrier markets in a language other than English, the carrier incurs the obligation to enable a consumer to reach a live person that speaks the language and can assist the customer.

Today's decision seeks to insure that these rules of conduct, already followed by major carriers, become a standard practice throughout California. Today's decision is about making markets work by empowering consumers with information.

Let me discuss briefly two other major aspects of this decision. First, fraud is fraud and a violation of California and the common law, whether the fraud takes place in English or some other language. The rules we adopt today will empower Californians, deter fraudulent business practices and help us to enforce California anti-fraud laws. Second, Californians who have limited proficiency in English are not powerless – indeed, they are often the most resourceful individuals in our state.

As an American of African decent, my family has spoken English since before the American Revolution. As a Californian, the abilities of those who come to California not speaking English with native proficiency are made clear to me daily. My chief of staff, Marzia Zafar, for example, arrived at the age of 14 in California from Kabul, a Pashtune-speaking Farsi. She has made it clear to me the importance of avoiding a misguided altruism that marginalizes those it purports to assist. When I served as Governor Schwarzenegger's appointment secretary, it became clear that pronouncing our state as Cal "ee" "phone" is not a

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sign of weakness that requires regulatory assistance. Today's decision creates market rules without belittling as victims those who are not native English speakers.

Let me also point out that today's decision does not impose a "gag order" in the workplace or prevent salespersons from providing assistance to those of limited English proficiency. Only a deliberate corporate solicitation triggers the requirements adopted today, not the spontaneous communications of multi-lingual individuals. Thus, this area will continue to be one that rewards entrepreneurial ability, particularly small businesses, whether the ability is exercised in English or in some other language.

In summary, I support today's rules as a reasonable approach to the complex realities of California's telecommunications markets.

/s/ TIMOTHY ALAN SIMON

Timothy Alan Simon

Commissioner

San Francisco, California

July 26, 2007