

M e m o r a n d u m

Date: July 17, 2006

To: The Commission
(Meeting of July 20, 2006)

From: Delaney L. Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 440 (Speier) – Telecommunications: billing.**
As Amended June 20, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: No recommendation.

SUMMARY OF BILL:

SB 440 would authorize a telephone subscriber to present evidence to rebut the prima facie evidence that a dialed call is deemed authorized, including but not limited to, evidence that the call was made on a stolen or lost phone. The bill would prohibit a phone company from requiring a subscriber to pay disputed charges and associated fees, send a disputed charge to collections or make an adverse credit report while an investigation is pending. Lastly, SB 440 requires information about subscribers rights if billed for unauthorized charges on the monthly billing statement.

DIVISION ANALYSIS:

The CPUC determined in D.06-03-013 that existing statutory and regulatory provisions provide sufficient protection for consumers in the area of disclosure. The decision concluded that most consumer protection problems stem not from lack of laws or rules, but instead from lack of consumer knowledge of existing protections and issues with CPUC enforcement of existing laws and rules. As part of D.06-03-013, the CPUC correspondingly mandated numerous consumer-related initiatives, including ones focused on consumer education, enhanced enforcement, and fraud prevention. The CPUC staff is already undertaking to implement these initiatives.

Also the CPUC recently adopted new rules to protect against cramming, the placement of unauthorized charges on a consumer's phone bill. In D.06-03-013, we enacted provisions establishing (1) a telephone company may not bill subscribers for any unauthorized charge, even if the telephone company did not originate the charge; (2) the burden is on the carrier to establish authorization of a disputed charge; and (3)

significant remedies are afforded to consumers who have been crammed. A cramming complaint investigation, as stipulated in our rules, must be resolved within thirty days of the date the carrier received the complaint. The rules dictate that while the complaint investigation is pending, a subscriber cannot be required to pay a disputed charge or any associated late charges or penalties. Section 2890 (g) and (h) mirrors the Commission's rules on these issues.

Further, the Commission found that a multilayered education campaign is needed to better inform consumers about their choices, rights and how to protect themselves relative to telecommunications service. The Commission will be launching an initial group of brochures and an informative website to better inform consumers. The Commission in adopting D. 06-03-013 found that a strong education campaign – not state specific requirements for bill inserts, billing statement requirements, etc. – was a better way to communicate with consumers on an overall message of choices, rights and consumer protection.

PROGRAM BACKGROUND:

On March 2, 2006, the CPUC adopted Decision 06-03-013, which establishes market rules to empower telecommunications consumers and prevent fraud. D.06-03-013 states in part:

The purpose of this revised General Order is to chart a new regulatory role for the Commission in the face of swift technological advances; the convergence of voice, data, and video; and increasing competition in the telecommunications marketplace.

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

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

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

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

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

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

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

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

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

LEGISLATIVE HISTORY:

Unknown.

FISCAL IMPACT:

None.

STATUS: This bill was heard in the Assembly Utilities and Commerce on Monday June 26, 2006 and passed on a vote of 7-3 and will be eligible for action on the Assembly Floor on June 29, 2006.

SUPPORT/OPPOSITION: (as of June 23, 2006)

Support

Attorney General Bill Lockyer
California Small Business Association
Consumer Federation of California
Consumers Union
Geoffrey Brown, PUC Commissioner
The Utilities Reform Network (TURN)
Watsonville Law Center

Opposition

Cingular Wireless
CTIA - The Wireless Association
Sprint Nextel
T-Mobile USA
Verizon Wireless

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BILL LANGUAGE:

BILL NUMBER: SB 440 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JUNE 20, 2006
AMENDED IN ASSEMBLY JUNE 8, 2006
AMENDED IN ASSEMBLY MARCH 13, 2006
AMENDED IN ASSEMBLY JUNE 14, 2005
AMENDED IN ASSEMBLY JUNE 6, 2005
AMENDED IN SENATE MAY 2, 2005
AMENDED IN SENATE APRIL 21, 2005

INTRODUCED BY Senator Speier

FEBRUARY 17, 2005

An act to amend Section 2980 of the Public Utilities Code,
relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as amended, Speier Telecommunications: billing.

Existing law authorizes the Public Utilities Commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation, and to require telephone corporations to provide certain customer services.

Existing law specifically requires a person, corporation, or billing agent to provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. Existing law establishes a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. Existing law requires the commission to require telephone corporations to provide customer service to telecommunication customers that includes, among other things, information concerning the regulatory process and how customers can participate in that process, including the process of resolving complaints.

This bill would ~~establish specified ways for~~
~~authorize~~ a subscriber to ~~establish that a dialed~~
~~call was not authorized~~ *present a person,*
corporation, or billing agent that has charged the subscriber for a
direct dialed telecommunications service with evidence to rebut that
prima facie evidence of authorization . The bill would prohibit
a billing telephone company, while a complaint investigation is
pending, from requiring the subscriber to pay the disputed charge or
any associated late charges or penalties, sending the disputed charge
to collection, or making an adverse credit report based on
nonpayment of the disputed charge. The bill would require a person,

telephone corporation, or billing agent that provides a bill for telecommunications services to include with each bill a statement of the subscriber's rights if billed for unauthorized charges, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2890 of the Public Utilities Code is amended to read:

2890. (a) A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.

(b) When a person or corporation obtains a written order for a product or service, the written order shall be a separate document from any solicitation material. The sole purpose of the document is to explain the nature and extent of the transaction. Written orders and written solicitation materials shall be unambiguous, legible, and in a minimum 10-point type. Written or oral solicitation materials used to obtain an order for a product or service shall be in the same language as the written order. Written orders shall not be used as entry forms for sweepstakes, contests, or any other program that offers prizes or gifts.

(c) The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the subscriber's basic local exchange telephone service, long-distance telephone service within a local access and transport area (intraLATA), long-distance telephone service between local access and transport areas (interLATA), and international telephone service.

(d) (1) A billing telephone company shall clearly identify, and use a separate billing section for, each person, corporation, or billing agent that generates a charge on a subscriber's telephone bill. A billing telephone company shall not bill for a person, corporation, or billing agent, unless that person, corporation or billing agent complies with paragraph (2).

(2) Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill shall do all of the following:

(A) Include, or cause to be included, in the telephone bill the amount being charged for each product or service, including any taxes or surcharges, and a clear and concise description of the service, product, or other offering for which a charge has been imposed.

(B) Include, or cause to be included, for each entity that charges for a product or service, information with regard to how to resolve any dispute about that charge, including the name of the party responsible for generating the charge and a toll-free telephone number or other no cost means of contacting the entity responsible for resolving disputes regarding the charge and a description of the manner in which a dispute regarding the charge may be addressed. Each telephone bill shall include the appropriate telephone number of the commission that a subscriber may use to register a complaint.

(C) Establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about its charges and to provide the appropriate addresses to which written questions or complaints may be sent. The person, corporation, or billing agent that generates

a charge may also contract with a third party, including, but not limited to, the billing telephone corporation, to provide that service on behalf of the person, corporation, or billing agent.

~~(D) (i) - Provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber.~~

(e) (1) In the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge.

(2) With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. ~~A subscriber may establish that a dialed call was not authorized with any of the following:~~

~~—(A) A record of lack of affirmative user authorization.~~

~~—(B) A lack of a demonstrated pattern of knowledgeable past use.~~

~~—(C) - Other persuasive evidence of lack of authorization.~~

(f) Notwithstanding paragraph (2) of subdivision (e), a subscriber may present a person, corporation, or billing agent that has charged the subscriber for a direct dialed telecommunications service with evidence to rebut the prima facie evidence that the direct dialed telecommunications service was authorized, including, but not limited to, evidence that a call was dialed using a lost or stolen telecommunications device.

~~—(3)~~

(g) While a complaint investigation is pending, the billing telephone company shall not do any of the following:

~~—(A)~~

(1) Require the subscriber to pay the disputed charge or any associated late charges or penalties.

~~—(B)~~

(2) Send the disputed charge to collection.

~~—(C)~~

(3) Make an adverse credit report based on nonpayment of the disputed charge.

~~—(F)~~

(h) If recurring charges arise from the use of those subscriber-initiated services, the recurring charges are subject to this section.

~~—(g)~~

(i) If an entity responsible for generating a charge on a telephone bill receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.

~~—(h) A~~

(j) *Notwithstanding any other provision of law, a person, corporation, or billing agent that provides a bill for telecommunications services shall provide with each bill a*

clear and conspicuous statement of a subscriber's rights if billed for unauthorized charges, ~~conforming to~~ including substantially the following statement:

~~"SUMMARY OF YOUR BILLING ERROR RIGHTS IN CASE OF ERRORS (UNAUTHORIZED CHARGES) OR QUESTIONS ABOUT YOUR BILL~~

~~If you think any charge on your bill is wrong, or if you need more information about a transaction on your bill, call us at (toll free number) (the toll free number shown on your bill) or write us (on a separate sheet) as soon as possible at:~~

~~(address) (the address shown on your bill.)~~

~~In your telephone call or letter, give us all of the following information:~~

~~(1) Your name and account number.~~

~~(2) The dollar amount of the suspected error.~~

~~(3) A description of the error. Explain, if you can, why you believe there is an error.~~

~~(4) If you need more information, describe the item you are unsure about.~~

~~You do not have to pay the amount in question or any penalties or late charges connected to that amount while an investigation is pending, but you are still obligated to pay the parts of your bill that are not in question.~~

~~While an investigation is pending, we cannot make a negative credit report based on nonpayment of the disputed charge or take any action to collect the amount you question.~~

~~We will advise you of the results of our investigation within 30 days of the date on which the complaint is received.~~

~~If you call us, and we are unable to resolve your question, it is advisable to follow up by writing to us and keeping a copy of that correspondence.~~

~~If you are dissatisfied with our response, you may also file a complaint with the Public Utilities Commission by calling or writing to the Public Utilities Commission at:~~

~~(name, address, and telephone number of the Public Utilities Commission) (the address and number shown on your bill.)~~

~~You may also file a complaint with the Federal Communications Commission by writing the Federal Communications Commission at:~~

~~(name and address)~~

~~You may have other legal rights in addition to the rights explained here."~~

"California Customers: Summary of Your Rights in Case of Errors (Unauthorized Charges) on Your Bill.

If you think that any charge on your bill is wrong, contact us at (insert toll-free telephone number or other no-cost means of contact, except that e-mail or another electronic means of contact shall not be the sole means of contact).

You do not have to pay the disputed charge or any associated late charges or penalties while an investigation into the disputed charge is pending, but you are still obligated to pay the parts of your bill that are not in question. While an investigation is pending, we cannot make a negative credit report based on nonpayment of the disputed charge or take any action to collect the disputed charge. We will advise you of the results of our investigation within 30 days of the date on which the complaint is received. You may have other legal rights in addition to the rights explained here."

—(i)

(k) As used in this section:

(1) "Billing agent" means the clearinghouse or billing aggregator.

(2) "Unauthorized charges" include charges incurred using a lost or stolen telecommunications device.