

M e m o r a n d u m

Date: April 3, 2007

To: The Commission
(Meeting of April 12, 2007)

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

Subject: **AB 826 (Levine) Telecommunications: customer service.**
As Introduced: February 22, 2007

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: NO RECOMMENDATION

SUMMARY OF BILL:

This bill directs the California Public Utilities Commission (Commission) to require a telephone corporation (Carrier) to provide additional disclosures to customers for services relating to bundled products and services, marketing, disclosure of charges, confirmation of orders, descriptions of service, and obtaining a customer's express consent to access proprietary customer information.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The Legislative Subcommittee was divided on whether to support or oppose this bill.

Support: This bill would reduce the ambiguity regarding what telecommunications carriers should disclose to consumers.

Oppose: This bill is inconsistent with the Commission's Consumer Protection Initiative, which determined that there are already sufficient statutory disclosure requirements in place, and California consumers would be better served through the Commission's devotion of more staff resources to the enforcement of existing laws and regulations. The bill also prejudices important disclosure issues currently before the Commission in Phase II of the Uniform Regulatory Framework (URF) decision.

SUMMARY OF SUGGESTED AMENDMENTS (if any):

None at this time.

DIVISION ANALYSIS (OGA & Communications Division):

- Current law requires that carriers provide customers with the information that they need to make an informed choice and prohibits misleading and confusing statements. For some carriers, tariffs specify exactly what disclosures a carrier must make while other carriers have freedom to craft disclosures as long as they fulfill these statutory requirements. Most PUC enforcement actions have relied on statutes to protect consumers from inadequate disclosures or misleading information.
- The relevant statutes are:
 - P.U. Code § 2896(a) requires carriers to offer customer service that provides sufficient information about services for subscribers to be able to make informed choices about services and providers. This includes, but is not limited to, information regarding the provider's identity, service options, pricing, and terms and conditions of service. A provider need only provide information to its customers on the services which it offers.
 - Carriers also must provide subscribers information concerning the regulatory process and how subscribers can participate in that process, including resolving complaints. (P.U. Code § 2896(d))
 - Additionally P.U. Code § 2890.2 requires, as of Jan. 1, 2007, that wireless carriers provide customers with a way that they can obtain reasonably current and available information on their calling plan and service usage.
 - Any charge to a customer that results from a false or misleading statement is almost certainly “not reasonable” and falls under the broad anti-fraud implications of P.U. Code § 451.
- In the past, most enforcement actions have relied on these statutes to protect consumers from inadequate disclosures or misleading information. The Commission’s investigation so far indicates that very few enforcement cases have used a tariff violation as a means for protecting customers.
- In Phase I of the URF decision (D.06-08-030), the Commission eliminated “all asymmetric requirements concerning marketing, disclosure, or administrative processes,” with the exception of conditions relating to basic residential rates, based on its findings that the Public Utilities Code directs regulations to be technology neutral and imposing disclosure requirements only on telecommunications providers under PUC jurisdiction (and not others – like VoIP providers) would be contrary to this statutory direction.
- However, on rehearing (D.06-12-044), the Commission suspended the ordering paragraph that eliminated asymmetric requirements. In Phase II, the Commission is developing a record that distinguishes between asymmetric marketing restrictions that arise from the creep of regulation over time and those that result from prior

enforcement actions. It is anticipated that the Commission will develop policies to address both situations. The proposed legislation will prejudge this determination.

- This bill's requirements that carriers (1) inform residential customers of the Universal Lifeline Telephone Service (ULTS) program and (2) obtain customer consent to access proprietary information are already covered by existing law.
 - PU Code section 489(b) directs carriers to inform subscribers about ULTS service.
 - PU Code section 2891 requires a customer's written consent to release personal information.
- This bill would be federally preempted to the extent that it seeks to require the disclosure of information on broadband and VoIP services offered in a bundled package.

PROGRAM BACKGROUND:

Excerpts from the summary of Decision 06-03-013, the Commission's Consumer Protection Initiative:

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.

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.

RELEVANT LEGAL ISSUES:

The scope of the state's jurisdiction over service providers varies. The state has full authority over traditional wireline telephone service, whether provided by an incumbent local telephone company or by a competitive local telephone company, or by a reseller.

Federal law reserves to the states authority over the "terms and conditions" but not rates of wireless service providers. The wireless industry has consistently challenged state attempts to regulate the industry, and the results of that litigation have been mixed.

The FCC has determined that states have no authority over broadband service.

A state's ability to regulate telephone service provided over broadband facilities is dubious. The FCC concluded in a declaratory ruling affecting one Voice over Internet Protocol (VoIP) provider that the VoIP service the company provided should be regulated as if it were a purely interstate service.¹ State regulation at issue in that decision was preempted by the FCC.² The Eighth Circuit Court of Appeals recently upheld this FCC decision, as it applies to Vonage and other "basic characteristics similar" to Vonage's VoIP service.³ Moreover, while the FCC decision did not conclusively require similar preemption for fixed VoIP services (like those offered by cable companies), the FCC decision nevertheless suggests that the FCC "would preempt state regulation" to "the extent other entities, such as cable companies, provide VoIP services."⁴ It is certain that any California regulation of VoIP providers will require litigation until the scope of state authority is determined.

Finally, the states have jurisdiction over traditional telephone service provided by cable companies. But to the extent a cable provider is using broadband facilities to provide VoIP service, the state's jurisdiction would be in doubt (for the reasons explained above.)

¹ *In re Vonage Holdings Corp.* 19 F.C.C.R. 22404, 22424 at ¶ 31 (recognizing the "impossibility of separating out" an intrastate component of Vonage's VoIP service).

² *Id.*

³ *Minnesota Public Utilities Commission v. Federal Communications Commission*, 2007 U.S. App. LEXIS 6448 (8th Cir. 2007).

⁴ *In re Vonage Holdings Corp.* 19 F.C.C.R. 22404, 22424 at ¶ 32 (recognizing the "impossibility of separating out" an intrastate component of Vonage's VoIP service).

LEGISLATIVE HISTORY:

The Commission has consistently opposed recent legislative attempts to establish proscriptive carrier rules in statute:

AB 2622 (Ruskin - 2006), relating to a 30-day right of rescission for cell phone contracts, was held by the Assembly Utilities & Commerce Committee.

AB 1010 (Ruskin - 2006), relating to a 21-day right of rescission for cell phone contracts, failed to get out of conference committee before the close of the 2006 Legislative Session.

SB 1068 (Escutia - 2006), relating to codifying the Commission's original General Order 168, which was stayed and then substantially modified, failed passage in the Assembly Utilities and Commerce Committee on June 19, 2006 (3-3 vote).

SB 128 (Bowen - 2003), relating to a minimum 30-day right of rescission for cell phone contracts, died on the Assembly Floor Inactive File.

SB 1601 (Bowen - 2002), relating to a 14-day right of rescission for cell phone contracts, died on the Senate Floor Inactive File.

FISCAL IMPACT:

Minor and absorbable costs to the Commission to enforce this bill if enacted.

STATUS:

This bill will be considered by the Assembly Utilities & Commerce Committee on April 23, 2007.

SUPPORT/OPPOSITION:

Unknown.

STAFF CONTACTS:

Pam Loomis
Office of Governmental Affairs

pcl@cpuc.ca.gov
(916) 327-8441

Lee-Whei Tan
Staff - Communications Division

lwt@cpuc.ca.gov
(415) 703-2901

Helen Mickiewicz
Deputy General Counsel

hmm@cpuc.ca.gov
(415) 703-1319

Date: April 3, 2007

BILL LANGUAGE:

BILL NUMBER: AB 826 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Levine

FEBRUARY 22, 2007

An act to add Section 2896.5 to the Public Utilities Code,
relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 826, as introduced, Levine. Telecommunications: customer service.

(1) The federal Telecommunications Act of 1996 preempts any state or local statute or regulation that may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service, but does not prohibit a state from imposing on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. The Telecommunications Customer Service Act of 1993 requires the commission to require telephone corporations to provide certain customer services to telecommunication customers, as specified. Pursuant to existing law, the commission has adopted a general order applicable to all commission-regulated telecommunications utilities known as the telecommunications Consumer Bill of Rights.

This bill would require the commission to require a telephone corporation to provide additional customer services relating to bundled products and services, marketing, disclosure of charges, confirmation of orders, descriptions of service, and obtaining a customer's express consent to access proprietary customer information.

(2) A violation of the act or an order or direction of the commission is a crime.

Because a violation of an order or decision of the commission implementing the requirements of the bill would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 2896.5 is added to the Public Utilities Code, to read:

2896.5. The commission shall require a telephone corporation to do all of the following:

(a) Make available to a customer each product or service, or both, that makes up a product and service bundle, along with rate and charge information for each individual product or service.

(b) Notify a customer that the components of a product and service bundle may be purchased separately.

(c) (1) Obtain a customer's permission to present marketing information.

(2) Notify a customer that a customer-initiated service order is complete before seeking permission to present marketing information concerning additional products or services.

(d) Provide disclosures and itemization of all recurring and nonrecurring charges for requested services, exchange access service, and each optional service.

(e) Confirm a service order within two working days.

(f) Describe to a customer generally each type of residential service available, including, but not limited to, Universal Lifeline Telephone Service.

(g) Obtain the customer's express consent to access proprietary customer information.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.