

PUBLIC UTILITIES COMMISSION

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January 3, 2005

Harris R. Anthony
VP and General Counsel
BELLSOUTH
400 Perimeter Center, Suite 400
Atlanta, GA 30346

Dear Mr. Anthony:

This letter responds to all requests on behalf of telecommunications carriers requesting extended time under Rule 48(b) of the CPUC's Rules of Practice and Procedure to comply with certain requirements of Decision (D.) 04-05-057. That decision promulgated the Commission's new General Order 168, Rules Governing Telecommunications Consumer Protection. The decision required compliance with all G.O. 168 Rules and subparts within 180 days, no later than December 6, 2004, with the exception of those Rules requiring systemic changes in computer systems and billing systems or extensive use of outside contractors. Specifically, carriers have until July 31, 2005 to implement Rules 3(m), 5(c), 5(d), 6(j), and 7(d).

D. 04-05-057 established a process whereby carriers could request extended time to comply with specific rules or subparts by submitting a request in writing to the Executive Director. To obtain approval for the request, the carrier must show convincingly that it:

1. Has demonstrated that the delay was unavoidable;
2. Has tailored the request as narrowly as possible to encompass only that part of the order and general order for which it is truly needed;
3. Has submitted a reasonable plan and timetable for achieving compliance within the requested time extension;
4. Has taken all feasible steps to lessen the effects on customers of the requested delay; and
5. Is able to demonstrate good faith compliance with all other parts of the order and general order.

A total of 50 letters have been received from 45 carriers requesting extended time to comply with various Rules and subparts since adoption of G.O. 168 on May 27, 2004. After review and consideration of each request, I have granted 20 requests thus far, some that extend into December 2005. I denied two requests, because they were filed after the last day I am empowered to act

according to Rule 48(b). To date, eleven carriers have been instructed to submit further evidence supporting their requests for extended time. I previously granted a 30-day extension from December 6, 2004 to January 5, 2005 for certain carriers in order to allow staff to analyze carefully and thoroughly each of the many requests that were presented to me. I granted an additional 30-day extension from January 5, 2005 to February 4, 2005 to allow for further analysis.

The volume of extension requests received indicates that many carriers are not able to comply with all subparts of the Rules within the required 180 days as specified by G.O. 168. Twenty-three remaining carriers state that they will be unable to comply with specific Rules within the two successive 30-day extensions of time I have already granted. As of January 3, 2005, I have not yet fully reviewed all of the pending requests from those remaining carriers, who are requesting from 3 to 16 months extended time to comply with 26 specific subparts of the Rules.

Virtually all of the rules for which extended time has been requested involve substantial and complex changes to carrier billing systems, computer systems or contracts for vendor services where the carrier has limited control over the implementation schedule. Additionally, most carriers' billing systems are national and carriers requesting time extensions indicate that the modifications necessary for development of California-specific systems for billing, interest rates, bill format, receipts, contracts, confirmation and disconnection notices normally take twelve to eighteen months to plan, develop specifications, write code, test for accuracy and maintain quality assurance.

Certain carriers face the additional complexity of system integration due to merger with or acquisition of other companies. Changes to billing and computer systems that are already in progress as a result of planned mergers makes the implementation schedule in D.04-05-057 more difficult to achieve. Other, smaller carriers have indicated that they do not have the economy of scale to implement the billing or computer changes cost-effectively and have indicated that they may be forced to leave the California market if not granted a lengthy extension or permanent waiver of certain provisions of the Rules.

It is clear from the volume and nature of the extension requests that compliance with key provisions of G.O. 168 related to billing and computer systems will be greatly uneven among carriers and that there is significant risk of consumer harm if major changes are made to billing systems without adequate time for testing. Additionally, consumers will be harmed if carriers are unable to continue offering service as a result of not receiving an extension of time to comply.

In addition, two carriers (Cricket Communications and Time Warner Telecom of California) have filed motions seeking waivers that would exempt them from compliance with various provisions of the Rules they contend are particularly burdensome for them. A third carrier, U.S. Cellular, has stated that it intends to seek a waiver of another rule, and has indicated that it may withdraw from the California market if its forthcoming waiver request is not granted. There is no provision in D.04-05-057 that allows the Executive Director to waive any provision of G.O. 168 or provide exemptions from compliance with the Rules. Each of these carriers has sought extensions of time pursuant to Rule 48(b) pending the resolution of their waiver requests.

Carriers have also instituted litigation challenging the Rules. Although the CPUC rejected the carriers' legal challenges in D.04-10-013, denying their Applications for Rehearing, recent actions by

the Eighth Circuit Court of Appeals and statements by the FCC may warrant further consideration by the Commission.

The volume of extension requests, the requests for waivers, and the recent legal developments raise broad applicability and policy issues. The CPUC may wish to consider modifying D.04-05-057. That Decision states that the CPUC shall consider a broader re-examination of policy issues based on the Rule 48(b) requests:

“We are also concerned that the Rule 48 exemptions could result in great variation in applicability of rules among carriers. If several carriers request an extension of time to implement the same rule, the Commission shall consider consolidating and treating these extension requests as a petition to modify this decision, and require a Commission vote before the requests may be approved in full or in part.”

To preserve the CPUC’s ability to consider possible modification of the Rules in light of the policy issues mentioned above, I am, in accordance with the CPUC’s Rules of Practice and Procedure Rule 48(b), granting a 90-day extension until April 4, 2005 for all carriers whose requests for extended time under Rule 48(b) of the CPUC’s Rules of Practice and Procedure to comply with the following Rules I have not yet acted on:

- 1(b), 1(e)(1), 1(f)(6), 1(h)
- 2(c), 2(d)
- 3(c), 3(d), 3(e), 3(f)
- 4(c), 4(d)
- 5(b), 5(c)
- 6(e), 6(f), 6(g), 6(h), 6(i), 6(k)
- 8(b), 8(e)
- 9(a), 9(e)
- 11(a), 11(d)

This extension is prompted by requests for extensions of time to comply with Ordering Paragraph 2 of the Decision presented to me over several months and the important issues presented in those requests and in subsequent discussions between carriers and staff. If additional time is needed for compliance with the Rules specified above, carriers may submit requests for additional extensions as delineated in D. 04-05-057. This extension lengthens the compliance period only for those parts of the Rules listed above. The compliance dates for all other Rules and subparts in D. 04-05-057 remain in effect.

Yours truly,

/s/ Steve Larson
Steve Larson
Executive Director