

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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TO PARTIES OF RECORD IN RULEMAKING 00-02-004

This is the proposed decision of Commissioner John A. Bohn. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Maribeth A. Bushey at mab@cpuc.ca.gov and Commissioner Bohn's advisor Amy Yip-Kikugawa at ayk@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER BOHN**
(Mailed 9/13/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Establish Consumer
Rights and Consumer Protection Rules Applicable
to All Telecommunications Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

**FINAL DECISION ADOPTING CALIFORNIA
TELEPHONE CORPORATION BILLING RULES**

1. Summary

This decision revises Part 4 of General Order No. 168, Market Rules to Empower Consumers and to Prevent Fraud - Rules Governing Cramming Complaints. The revised rules combine and clarify two previously issued sets of rules into a comprehensive standard set of rules applicable to all Billing Telephone Corporations, including resellers and wireless service providers. Further, these rules establish cramming reporting requirements applicable to all Billing Telephone Corporations and Billing Agents.

2. Background

In Decision (D.) 06-03-013, the Commission adopted revised General Order (GO) 168. Among other things, GO 168 included a cramming rule, which established that: (1) telephone companies may only bill subscribers for authorized charges; (2) the burden is on telephone companies to establish authorization of a disputed charge; and (3) prior to establishing this

authorization, the carrier must treat a charge as if it was unauthorized and may not require the subscriber to make any payment of the disputed charge. The Commission also emphasized that carriers are responsible for the charges placed on their bills and for policing their bills. The decision also directed staff to hold a workshop to determine appropriate reporting requirements pursuant to P.U. Code § 2889.9 and propose cramming-related reporting requirements.

(D.06-03-013, OP 7.)

On February 22, 2008, the then-assigned Commissioner issued his Assigned Commissioner Ruling initiating a process by which the Commission would develop a record upon which to issue a final decision adopting cramming reporting requirements. The ruling provided for opening and reply comments on numerous issues.

Based on these comments and the existing rules from D.00-03-020, D.00-11-015, and General Order 168, Part 4, Commission staff prepared a standard set of rules for billing which would apply to all California telephone companies, including wireless carriers. The proposed rules covered subscriber authorization, requirements for offering billing services, dispute resolution responsibility, and reporting requirements.

On February 12, 2010, the assigned Commissioner issued a ruling seeking comment on the proposed rules. In response to the ruling, 25 comments were received and 18 reply comments were submitted. These comments and replies are summarized below.

In July 2010, CITA - The Wireless Association, initiated a series of meetings with the Commission's Consumer Protection and Safety Division (CPSD), Commissioner offices and consumer groups to present their alternative proposal to the proposed rules. On August 7, 2010, at the request of the assigned

Commissioner, CTIA filed its proposal in the form of supplemental comments. Comments on CTIA's alternative proposal were filed on August 16, 2010.

3. Positions of the Parties

The Division of Ratepayer Advocates (DRA)

DRA encouraged the Commission to protect consumers by fulfilling its promise to step up its enforcement efforts and adopt the proposed rules, with several recommended enhancements. DRA challenged the carriers' claims that they can "self-police" with "best management practices" because each entity in the "third-party billing food chain gets a slice of the revenues."¹

DRA presented evidence that instances of unauthorized charges on local exchange and wireless bills are increasing, and reflect sophisticated international schemes to defraud customers.² DRA included summaries of victims' complaints showing the financial and clerical burden imposed on victims who must hunt down unauthorized charges in increasingly complicated billing statements and obtain refunds only after repeated telephone calls.³ DRA also included in its Opening Comments an injunction issued by the Honorable William Alsup of the U.S. District Court for the Northern District of California against crammer Inc21.com Corporation. Among other things, Judge Alsup's injunction chastised the local exchange carriers for failing to protect their

¹ Opening Comments of the Division of Ratepayer Advocates on Cramming Complaint Reporting Rules Pursuant to February 12, 2010, Assigned Commissioner Ruling at 6.

² *Id.* at 3 - 7.

³ *Id.* at 7 - 8.

customers from these fraudulent charges.⁴ DRA recommended that all Billing Telephone Corporations be required to provide subscribers with a cost-free option to block all third-party billing, and actively inform their customers of the option.⁵ DRA explained that the Commission has received complaints of carriers telling subscribers who request such a block that state and federal law mandates that the carrier provide billing to third parties.⁶

DRA supported aggressive billing termination processes and suggested clarifications to the standards. DRA also recommended that the Commission publish each carrier's termination and complaint data on the Commission's web site for prospective subscribers.⁷

The Utility Consumers Action Network (UCAN)

UCAN described the proposed rules as an "overdue step forward" to address a key failure in protecting communications consumers – the systemic practice of Billing Telephone Corporations to refuse to investigate and resolve customer complaints of unauthorized charges.⁸ UCAN explained that the practices of Billing Telephone Corporations enables unauthorized billing to continue because these Corporations have no incentive or requirement to

⁴ Memorandum Opinion and Findings In Support of Preliminary Injunction, Feb. 19, 2010, *F.T.C. v. Inc21.com Corp.*, No. C 10-00022 (N.D. Cal. March 16, 2010).

⁵ *Id.* at 10.

⁶ *Id.*

⁷ *Id.* at 13 – 14.

⁸ Comments of the Utility Consumers' Action Network on Assigned Commissioner's Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules at 2.

aggressively prevent and, failing that, to identify and remedy unauthorized billing.

UCAN recommended that the key to adopting rules that will prevent unauthorized billings is that the revised rules clearly state that Billing Telephone Corporations are responsible for all items in bills presented to subscribers.⁹

UCAN found the proposed rule “unsettlingly vague” in light of the importance of this provision. UCAN proposed significant revisions to the rule to articulate standards for ensuring that only authorized charges for legitimate service providers are included on subscribers’ bills. UCAN’s revisions focused on the need for mandating investigations by Billing Telephone Corporations of all disputed charges, and requiring that the Billing Telephone Corporation “take responsibility for its billings” and not force subscribers to pursue unresponsive third parties.¹⁰

UCAN supported the disclosure requirements for service providers but suggested that Billing Telephone Corporations and Billing Agents be required to retain records of their pre-contract inquiry into a prospective billing service customer.¹¹

UCAN recommended that the requirements for the billing termination process be clarified to specify exactly when a Billing Telephone Corporation or Billing Agent must investigate and report bad actors to the Consumer Protection and Safety Division (CPSD).¹² UCAN pointed out that alleged service provider

⁹ *Id.* at 11.

¹⁰ *Id.* at 12 - 14.

¹¹ *Id.* at 14.

¹² *Id.* at 14 - 17.

errors could be used to explain unacceptable levels of unauthorized billings which would allow bad actors to continue to avoid detection.

UCAN supported the proposed complaint reporting requirements but recommended that the obtained information, redacted to remove customer-specific data, be published on the Commission's web site.¹³ UCAN stated that having this information available for consumers and other Billing Telephone Corporations will assist in preventing future unauthorized billings.

The Utility Reform Network (TURN)

TURN commended the assigned Commissioner for proposing "real protections for consumers" and intensifying the Commission's focus on prevention of unauthorized charges by providing strong disincentives to "all players in the billing value chain."

TURN took issue with the proposed rule requiring subscriber authorization and contended that "specific, written authorization" should be required as was recently adopted in Illinois. TURN recommended deleting the rule that proposed for direct-dialed telephone service, that evidence that the call was dialed be prima facie evidence of authorization.

TURN opposed the "watered-down" standard of "commercially reasonable" actions to ensure that only authorized charges are presented on a bill. TURN explained that this loophole was confusing for all the parties, and that at least one Billing Telephone Corporation interpreted it as a reduction in the level of consumer protection required. TURN provided quotations from Verizon Communications, Inc., in a federal court pleading describing the

¹³ *Id.* at 17.

proposed rules as reflecting “a more modest obligation” to prevent unauthorized billings. TURN pointed out that telecommunications providers have no financial incentive to monitor the actions of their billing partners because these providers achieve “significant profitability” from the sale of billing services. TURN identified another, similar loophole in the proposed rule for disclosure requirements, and sought clarification on the “10%” standard of billing service termination.

TURN opposed the flexible compliance option for unauthorized billing record retention and stated that this option gives the Billing Agents and Billing Telephone Corporations “way too much discretion.”

TURN supported the monthly report preparation and proposed that the report be submitted monthly, rather than quarterly. Finally, terming the proposed amount “literally a pittance,” TURN recommended that the fine for not filing a report be increased to correlate with revenues earned by the billing entity.

AT&T California (AT&T)¹⁴

AT&T explained that it requires all service providers, including those billing through a Billing Agent, to complete an application process before billing begins. AT&T reviews the applications and checks the applicants against an internal data base to “identify possible problems.”¹⁵ AT&T collects cramming complaint data monthly for both Billing Agents and individual service

¹⁴ AT&T California submitted joint comments with AT&T Communications, Inc. and New Cingular Wireless, PCS, LLC.

¹⁵ Opening Comments of AT&T California, AT&T Communications of California, Inc, and New Cingular Wireless PCS, LLC. at 5.

providers. If the monthly reports exceed unspecified “threshold” levels, then AT&T may impose remedial action including terminating billing services. For every customer complaint of unauthorized charges, the responsible service provider must pay AT&T \$150 and additional fees apply for “excessive adjustments to end-user bills above a threshold.”¹⁶

AT&T stated that in response to continuing customer complaints, it has recently adopted “even more stringent anti-cramming measures” for its billing services customers and that it has had to completely discontinue billing for voice mail, e-mail, web hosting, and internet-based directory assistance because “cramming complaint rates were notably high.”¹⁷ AT&T also recently provided all its customers service representatives with enhanced training to identify and respond to cramming complaints. As a result of this training, AT&T has been able to obtain better cramming complaint reports and has used this data to terminate billing services to service providers.

AT&T concluded that it is “in the process of considering several possible, new anti-cramming measures, and it is open to considering all reasonable options.” AT&T cautioned, however, that any such measures “must be carefully considered in light of its effectiveness, cost, complexity, and burdens imposed both on industry and on customers seeking to pay for purchases through their telephone bills.”¹⁸

AT&T’s primary objection to the proposed rules were several areas of “vague and overbroad language” that “fail to set clear and specific standards.”

¹⁶ *Id.*

¹⁷ *Id.* at pages 5 – 6.

AT&T focused this criticism on Rules 4 and 5, which require Billing Telephone Corporations to “monitor” billings and take “all commercially reasonable steps” to ensure that only authorized charges are billed.¹⁹

For wireless carriers, AT&T recommended limiting their reporting requirements to service providers that have been terminated from billing services.²⁰

AT&T also contended that the Commission has sufficient authority over wireline Billing Telephone Corporations that requiring these corporations to tally and report complaints of their own unauthorized charges is unnecessary and inefficient.²¹ AT&T opposed including false, misleading, or deceptive charges within the meaning of cramming.

In reply to the comments filed by other parties, AT&T emphasized that: “there is no evidence that stricter monitoring requirements or reporting obligations will offer any additional protections to consumers.”²² AT&T supported workshops to discover whether “any modifications should be made to current rules to encourage more robust consumer-driven measures against incidences of cramming.”²³ AT&T supported focusing on the “customer acquisition end” of third-party sales transactions rather than on the “billing

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 8 – 11.

²⁰ *Id.* at 6 – 7.

²¹ *Id.* at 17.

²² Reply Comments of AT&T California, AT&T Communications of California, Inc., and New Cingular Wireless PCS, LLC. at 2.

²³ *Id.*

end.” AT&T conceptually supported DRA’s call for “the cost-free option to block third-party billing at any time,” and recommended workshops to sort out the details.²⁴

Verizon California Inc. (Verizon)

Verizon stated that the proposed rule revisions upset the balance created in earlier decisions in this docket between allowing third-party billing for the benefit of consumers and imposing safeguards that protect consumers.²⁵ In light of the significant changes proposed, Verizon recommended that the Commission hold further hearings or workshops to allow for further comments on concerns expressed by the parties.

Verizon opposed expanding existing reporting requirements to include charges imposed by Billing Telephone Corporations.²⁶ Verizon explained that the volume of customer billing issues regarding its own services would overwhelm Commission’s staff with useless information and obscure the relevant information about Verizon’s customer complaints that the Commission’s staff already receives in the Consumer Affairs Branch. Moreover, the ultimate sanction of prohibiting further billing services would be unavailable with carriers of last resort, such as Verizon.

Verizon spelled out the additional protections its customers have from unauthorized charges:²⁷

²⁴ *Id.* at 10.

²⁵ Opening Comments of Verizon California, Inc. on the Assigned Commissioner Ruling Requesting Comments on New Cramming Rules at page 3.

²⁶ *Id.* at 7 – 12.

²⁷ *Id.* at 8.

1. Verizon only allows “authorized users” to add or change services, and offers an optional security code to further limit account access.
2. Verizon mails a written confirmation letter setting out the terms and conditions of any change to an account.
3. Customers are offered a free block of all pay-per-use service charges as required by California and federal law, and have a one time bill adjustment for such services that were inadvertently ordered.
4. California law also requires Verizon to offer its customers a free block of all charges for 900 and 976 services.

Ultimately, Verizon concludes, the proper remedy for unauthorized billings by a Billing Telephone Corporation such as itself is an Order Instituting Investigation triggered by complaints directly to the Consumer Affairs Branch.²⁸ As such, there is no need for Verizon to compile the voluminous details of its customer disputes and separately report them to the Commission a second time.

SureWest Telephone (SureWest)

SureWest argued that the proposed rules exceeded the scope of this phase of the consumer protection proceeding and were procedurally improper and substantially unjustified. SureWest stated that the proposed rules go far beyond the directive in D.06-03-013 to craft rules for reporting requirements and the record includes no evidentiary basis for the proposed rules.²⁹

SureWest claimed that the proposed rules “improperly shift the burden of third-party oversight and enforcement onto carriers rather than the CPUC.”

²⁸ *Id.* at 12.

²⁹ Opening Comments of SureWest Telephone on the Assigned Commissioner Ruling Requesting Comments on Proposed California Telephone Corporation Billing Rules at 1 -5.

Decrying the onerous, unnecessary burden to “police their own bills,” SureWest argued that this was an improper abdication of the Commission’s responsibility for consumer protection.³⁰

SureWest argued that the proposed definition of “customer complaint” was overly broad: “Disputes regarding the terms and conditions of service, including associated allegations from consumers that they have been misled, should not fall under the term ‘cramming.’³¹ Including these matters in a cramming reporting regime will only distort ‘cramming’ issues and thwart efforts to pinpoint the real problems that the Commission should be identifying.”³²

SureWest concluded its comments with a list of rules that required additional clarification.

Small Local Exchange Carriers

The small local exchange carriers echoed SureWest’s comments, and added that they do not generally bill for unaffiliated third parties, will often have no unauthorized billing complaints and, consequently, should not be required to submit quarterly reports.³³

³⁰ *Id.* at 5 – 8.

³¹ *Id.* at 7.

³² *Id.*

³³ Opening Comments of Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Company, The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company on the Assigned Commissioner’s Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules.

California Association of Competitive
Telecommunications Companies (CALTEL)

CALTEL opposed extending the rules beyond third-party billing by Billing Telephone Corporations. CALTEL explained that its members provide service, often by individual case basis contracts, to small and medium sized businesses and do not provide billing and collection services for third parties. As such, CALTEL's members have few if any complaints of unauthorized charges, and customers with billing disputes have the business sophistication to address the dispute directly with their provider. CALTEL argued that including wholesale and business customers, as well as a carrier's own billings, in the cramming reporting rules was "overkill" that will impose unnecessary expense on the providers with no public benefit.³⁴

³⁴ Comments of the California Association of Competitive Telecommunications Companies on on Assigned Commissioner's Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules at 3 – 5.

Cox California Telcom LLC, dba Cox Communications,
Cox TMI Wireless, LLC and Astound Broadband

These carriers opposed the proposed rule that Billing Telephone Corporations report their own customer complaints about direct billings.³⁵ These carriers also recommended that customers served pursuant to a contract should be excluded from any complaint tally because these contractual disputes are not necessarily unauthorized billing, and the wholesale and business customers that obtain service via contract do not require Commission protection from unauthorized charges.³⁶

Cox contended that the proposed prohibition of Billing Telephone Corporations directing customers to contact service providers directly would increase the Billing Telephone Corporation's cost of doing business and would conflict with existing law. Cox also opposed as vague and unnecessary the proposed rules requiring Billing Telephone Corporations to monitor third-party billings and suspend billing services where unauthorized charges occur.³⁷ Cox supported the Commission adopting reporting rules for third-party billing complaints that are limited to service providers for which the Billing Telephone Corporation has terminated providing services.

³⁵ Comments of Cox California Telcom LLC, dba Cox Communications, Cox TMI Wireless, LLC and Astound Broadband on Assigned Commissioner's Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules at pages 3 - 5.

³⁶ *Id.* at 5 - 7.

³⁷ *Id.* at 10.

BSG Clearing Solutions

BSG stated that it is the largest third-party billing aggregator in the United States and that it has been operating for over two decades.³⁸ Before BSG will accept billings from a service provider, BSG conducts a comprehensive due diligence process that includes, but is not limited to, background checks of all officers, directors, and individuals with decision-making authority, site visits, inquiries to local exchange carriers for past termination history, internet search for regulatory issues, and purchasing the product as if a customer.³⁹ The due diligence process takes three to six months and costs up to \$1,000.⁴⁰ Once BSG accepts the service provider, BSG conducts monthly reviews of its customer service inquiries and has a pre-set threshold for terminating billing services.⁴¹ BSG also explained that it has developed a validation and authentication tool --named "URU" - for service providers that solicit over the internet. The URU tool uses thirteen different vendors to scrutinize each transaction, including Lexis/Nexis to confirm name, address, and last four of the social security number all match.⁴²

Cbeyond Communications, LLC. (Cbeyond)

Cbeyond stated that it provides telecommunications services to business customers only and that it does not allow charges for third-party services or products to be placed on its customers' bills. Cbeyond contended that the

³⁸ Comments of BSG Clearing Solutions at 1.

³⁹ *Id.* at 2.

⁴⁰ *Id.*

⁴¹ *Id.* at 3.

⁴² *Id.* at 4.

proposed rules were overly broad in including business customers because these customers are sophisticated and possess sufficient bargaining power to resolve any billing issues with a carrier.⁴³ Cbeyond recommended that the Commission focus its resources on carriers with a history of applying or allowing unauthorized charges on residential and small business customer bills, rather than on carriers that serve larger businesses.⁴⁴

Miller Isar, Inc.

This regulatory consulting firm represents four non-facilities-based interexchange carriers that bill through incumbent local exchange carriers in California. These carriers read the proposed rules as applying to customer transfer requests, which are already subject to stringent customer authorization requirements. Based on this reading, these carriers concluded that the proposed rules would allow incumbent local exchange carriers to attempt to “win back” customers that have validly requested transfer to another carrier because the Billing Telephone Corporation is the final arbiter of billing disputes.⁴⁵

ILD Teleservices, Inc. (ILD)

ILD recommended that the Commission focus on adopting the most effective and efficient ways to identify cramming and deal with subscribers and removing offending service providers from the marketplace. ILD suggested that the definition of customer complaint should exclude those instances where a

⁴³ Opening Comments of Cbeyond Communications, LLC, on on the Assigned Commissioner Ruling Requesting Comments on Proposed California Telephone Corporation Billing Rules at 1 – 2.

⁴⁴ *Id.* at 3 – 5.

⁴⁵ Comments at 7 – 9.

proper authorization was on file.⁴⁶ ILD strongly supported allowing Billing Telephone Corporations to deflect a subscriber inquiry to the Billing Agent as the most efficient means to resolve the inquiry.⁴⁷ ILD opposed the proposed percentage standard for discontinuing billing services and supported using a longer term average, perhaps a three-month rolling average. Finally, the record keeping requirements for Billing Agents should not include the subscriber name because Billing Agents do not typically have that information.⁴⁸

tw telecom of California, lp

This facilities-based carrier provides business telecommunications services only and does not bill for third parties. This carrier argues that applying the proposed record keeping and reporting rules to carriers that provide only business and wholesale telecommunications services is unwarranted, and that the Commission should exempt these carriers from the proposed rules as the Commission did with in-language rules in D.07-07-043.⁴⁹

Unitedtel, LLC

Unitedtel stated that the proposed rules overly focus on individual complaints and unfairly penalize service providers that have refund rates greater than 10%. Unitedtel recommended adopting industry-wide standards for order

⁴⁶ Opening Comments of ILD Teleservices, Inc., on the Assigned Commissioner Ruling Requesting Comments on Proposed California Telephone Corporation Billing Rules at 1.

⁴⁷ *Id.*

⁴⁸ *Id.* at 2.

⁴⁹ Opening Comments of tw of California, lp at 2.

validation as a better means to identify “bad actors” without discouraging refunds.⁵⁰

Preferred Long Distance Inc. (Preferred Long Distance)

Preferred Long Distance opposed requiring the Billing Telephone Corporation to address complaints of unauthorized charges because these Corporations are often incumbent local exchange carriers that are in direct competition with resellers and the Billing Telephone Corporation will be overly eager to issue a refund to the customer and a charge back to the service provider, and also try to win the customer back.⁵¹ Preferred Long Distance recommended that the service provider be part of the dispute resolution process and have a right to appeal the outcome.

CTIA - The Wireless Association

CTIA stated that the proposed rules were not necessary because existing rules prohibit unauthorized charges on bills and carriers have adopted measures to prevent such practices. The “major participants in the mobile media value chain including wireless operators, aggregators, median networks, third-party content providers, agencies, brands, advertisers, hand-held device manufacturers, service providers, and market research firms” have formed the Mobile Marketing Association to develop the acceptable method by which charges for mobile content can be placed on a customer’s bill.⁵² CTIA stated that:

⁵⁰ Opening Comments of Unitedtel LLC on Assigned Commissioner’s Ruling Requesting Comment and Briefing on Cramming Reporting Requirements at 3.

⁵¹ Comments of Preferred Long Distance, Inc., at 1 - 4.

⁵² Opening Comments of CTIA - The Wireless Association on the Assigned Commissioner Ruling Requesting Comments on Proposed California Telephone Corporation Billing Rules at 6 - 9.

“rather than interfacing directly with each of the numerous [mobile content] providers, wireless carriers contract with a smaller group of companies known as aggregators, who in turn contract with the providers.”⁵³ The Association’s methodology provides a standard for valid customer authorization to purchase third-party content, such as ringtones or wallpaper.

CTIA opposed obtaining the identity and regulatory compliance history of each Service Provider and instead proposed a “targeted exchange of information between carriers and CPSD” to share information on “bad actors” to preclude them from presenting further billings in California.⁵⁴ CTIA also explained that collecting and retaining all the information listed in the proposed rules would require “significant and costly operational and system changes” in each wireless carrier’s customer service center, and the data obtained will “not be reliable” due to the complex and subjective assessments each customer service representative would be required to make.⁵⁵

Verizon Wireless

Verizon Wireless opposed the proposed rules as “unjustified” and creating an impediment to offering innovative services demanded by wireless customers.⁵⁶ Verizon explained that it allows “hundreds” of third-party content providers access to its customers’ bills, and that learning the identity and regulatory compliance history of these providers would “slow down the

⁵³ *Id.* at 7.

⁵⁴ *Id.* at 9 – 13.

⁵⁵ *Id.* at 15 – 19.

⁵⁶ Comments of Verizon Wireless on Assigned Commissioner’s Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules, at 1.

approval process.”⁵⁷ Verizon Wireless argued that the cost of the approval process could discourage carriers from offering content that did not have wide-spread appeal, resulting in fewer offerings. Verizon Wireless contended that because a carrier is a “purveyor” of information, the First Amendment to the United States Constitution prevented this Commission from imposing “pre-approval investigation requirements” on the carrier prior to accepting a billing services customer.⁵⁸

Verizon Wireless stated that its nationwide call centers receive over 10 million calls a month and that due to the sheer volume of calls the cost of any additional information tracking requirement will be “very large.”⁵⁹ Verizon Wireless focused on the expense of tracking customer complaints of unauthorized charges and explained that a California-specific rule would be expensive to implement because the customer service representative would need to determine where the customer resided and then whether the call related to an unauthorized charge. The resulting data, Verizon Wireless concluded, would also be unreliable because each of its thousands of representatives would necessarily be making subjective assessments of the purpose of the call.

Verizon Wireless opposed suspending billing service for any Service Provider with a specified customer complaint or refund rate, and instead advocated that suspension decision be made as Verizon Wireless does now “based on the totality of the circumstances specific to the situation at hand.”⁶⁰

⁵⁷ *Id.* at 5.

⁵⁸ *Id.* at 12 -14.

⁵⁹ *Id.* at 15.

⁶⁰ *Id.* at 23.

Verizon Wireless also opposed revealing the identity of Service Providers with high levels of unauthorized billings to the Commission's CPSD because such Service Providers might not cooperate further with Verizon Wireless. Finally, Verizon Wireless opposed rules for lost or stolen handsets, contending that absent a "good reason" it was the subscriber's responsibility to notify the carrier of the loss or theft.⁶¹

Verizon Wireless recommended that the Commission retain its existing rules and add three additional rules. First, Verizon Wireless supported allowing CPSD to request and obtain a copy of a carrier's policies for approving and monitoring third-party billing customers. Second, Verizon Wireless reiterated its earlier proposal that the Commission adopt a rule requiring each carrier to notify CPSD upon terminating billing services for a Service Provider. Finally, Verizon Wireless agreed that carriers could make information or data on circumstances surrounding the billing services contract termination available to Commission enforcement staff.⁶²

⁶¹ *Id.* at 27.

⁶² *Id.* at 31 – 32.

Cricket Communications and MetroPCS (Cricket and MetroPCS)

Cricket and MetroPCS stated that they each offer wireless telecommunications services on a pay-in-advance basis. Customers do not receive a post-delivery bill for services but rather pay in full for a billing period prior to the period commencing. Service is offered on an unlimited basis at a constant amount for each billing period; customers who wish to purchase extra services must first establish a separate, completely optional, account to pay for the extra services.⁶³

Cricket and MetroPCS described their processes for authorizing service providers of the extra services:

Cricket and MetroPCS allow a very limited number of reputable third-party content and service providers to access their billing systems, e.g., to bill customers directly for additional content and services. Cricket and MetroPCS individually screen these third-party content and services providers and require such providers to abide by the [Mobile Marketing Association] Guidelines, including the “double opt-in” requirement [of two affirmative acts by the customer].

Cricket and MetroPCS individually evaluate and verify the legitimacy of any third-party provider through established protocols specifically designed to complement the pay-in-advance service model. Specifically, any third-party provider wishing to provide content or service via Cricket’s or MetroPCS’ billing system is required to submit a program summary for approval before access is granted. Cricket and MetroPCS can also audit third-party campaigns to ensure that

⁶³ Comments of Cricket Communications, Inc., and MetroPCS California, LLC. at 3 – 6.

they are functioning according to accepted standards and billing procedures.⁶⁴

Ad Hoc Coalition for Enhanced Billing Services

This Coalition is a group of companies that provide “information and related services to consumers” and collects fees from those customers “by means of their local telephone company invoice.”⁶⁵ The Coalition contends that the Commission has exceeded its jurisdiction over “non-regulated entities that rely on LEC billing” and that some of the proposed rules are pre-empted by federal rules which allow customers to be directed to billing clearinghouses to resolve complaints.⁶⁶

AGI Publishing, Inc., d/b/a Valley Yellow Pages

Valley Yellow Pages supported preventing unauthorized charges and providing subscribers refunds for unauthorized charges.⁶⁷ Valley Yellow Pages encouraged the Commission to adopt stronger protections for valid billings from service providers. For example, it recommends that the rules be revised to state that a service provider’s account shall not be subject to chargeback or debit for any refunds issued if the service provider has timely submitted proof of authorization. Further, it proposes that a service provider be given the opportunity to contact a subscriber to resolve a complaint, in lieu of the Billing Telephone Corporation.⁶⁸

⁶⁴ Cricket and MetroPCS Opening Comments at 6 - 7.

⁶⁵ Comments of the Ad Hoc Coalition for Enhanced Billing Services at 1.

⁶⁶ *Id.* at 2 - 3.

⁶⁷ Opening Comments of AGU Publishing, Inc. D/B/A/ Valley Yellow Pages at 1.

⁶⁸ *Id.* at 3-4.

PaymentOne Corporation

In reply comments, PaymentOne stated that is a billing aggregator providing access to local exchange carriers for “companies selling digital products or services” and that its billing platforms include credit card, cell phone, direct and account debit billing.⁶⁹ PaymentOne explained that it has “recently initiated an authentication protocol pursuant to which PaymentOne validates and authenticates the transaction and identity of the customer on the front” and that this new procedure has “resulted in a substantial decrease in instances of unauthorized billings.”⁷⁰

4. Supplemental Comments From CTIA – The Wireless Association

On August 6, 2010, CTIA filed and served its supplement comments which included a proposed set of reporting rules for wireless carriers.⁷¹ CTIA explained that the wireless parties to this proceeding⁷² had developed an alternative to General Order 168 that would be applicable only to wireless carriers. The proposal called for the wireless carries to submit after-the-fact reports on termination or suspension of “campaigns or short codes” and any campaign or codes that have customer refund rates that exceed 15% for two consecutive months and \$5,000/month. Such reports may be for aggregated national or California-specific data, at the election of the wireless billing telephone corporation. The proposal also called for annual reports to CPSD on the blocking

⁶⁹ Reply Comments of PaymentOne Corporation at 1.

⁷⁰ *Id.* at 6.

⁷¹ The Assigned Commissioner informally authorized this filing, with the understanding that other parties would have an opportunity to file reply comments.

⁷² AT&T, Spring/Nextel, T-Mobile, Verizon Wireless, and Cricket.

options offered and any charges imposed. Finally, the proposal included workshops to enhance customer education.

On August 16, 2010, TURN and DRA replied in opposition to CTIA's proposal.⁷³ TURN stated that the CTIA "reporting proposals personify the worst aspects of poor regulation - reports that serve no purpose to demonstrate an appearance of protecting consumers."⁷⁴ Specifically, TURN argued that the CTIA proposal was deficient in that it only applied to PSMS campaigns and/or short codes and was "toothless" in that the proposal had no requirement for mandatory termination of such providers that place unauthorized charges on subscribers' bills.⁷⁵ TURN concluded that the CTIA proposal also failed to fulfill the requirements of Public Utilities Code Section 2889.9(d) which mandates that billing telephone companies and billing agents must report "complaints made by subscribers."⁷⁶

DRA submitted detailed comments that thoroughly analyzed the CTIA proposal and concluded that the Commission should summarily dismiss the proposal as procedurally improper and substantively fatally flawed.⁷⁷ DRA explained that the CTIA proposal consisted largely of subjective reports that would be useless for the Commission's enforcement efforts without any mandatory requirements prohibiting the placement of unauthorized charges on

⁷³ AT&T, Verizon Wireless, and Cricket also filed reply comments in support of their joint proposal with CTIA.

⁷⁴ TURN Reply Comments to CTIA Proposal at 4.

⁷⁵ *Id.* at 5.

⁷⁶ *Id.*

⁷⁷ DRA Reply Comments to CTIA Proposal at 6.

subscribers' bills. These proposed reports, DRA concluded, failed to meet the statutory requirement that carriers report subscriber complaints of third party billing for unauthorized charges.⁷⁸

5. Discussion

5.1. Need to Clarify Existing Rules

Despite the existence of General Order 168, extensive efforts by this Commission and our staff, along with the carriers, the record shows that unauthorized charges continue to vex California telecommunications customers. DRA presented Commission records from deeply frustrated customers showing unauthorized charges that reappear on monthly bills despite extensive time and effort to dispute the charges. The U.S. District Court opinion describes this “vulnerable underbelly” and finds the market “under-regulated.” AT&T has entirely discontinued billing for certain services due to the high rate of customer complaints, and is considering additional stringent limitations.

A key objective in establishing cramming reporting requirements is to provide information to assist the CPSD in identifying unauthorized billing, bringing it to a halt, and obtaining refunds for subscribers. However, this objective can only be achieved if the information requirements are clearly articulated such that the resulting reports are useful.

Since unambiguous substantive requirements are necessary to achieve our compliance objectives, we find that it is important to ensure that Part 4 of General Order 168 clearly specifies the rules required to ensure that only authorized charges are placed on a subscriber's bill. Accordingly, we clarify the

⁷⁸ *Id.* at 6 – 10.

current rules in Part 4 of General Order 168 so that there is no ambiguity concerning the carriers' obligations under the Public Utilities Code to ensure that only authorized charges are placed on a subscriber's bill.

These rules will also provide a consistent set of rules that would apply to all carriers.

5.2. Wireless Carriers and Subscriber Authorization

Currently, wireless carriers do not block subscribers from accessing Premium SMS or pay-per-use services provided by third parties unless specifically requested by a subscriber. The carriers state that charges for third party content cannot be placed on a subscriber's bill unless the subscriber first sends a text message to request the third party content and then affirms that the content is still wanted after being informed of the price. The carriers maintain that this "double opt-in" process ensures that only third-party charges authorized by the subscriber are placed on the subscriber's bill. Finally, CTIA states that the "best practices guidelines" developed by the Mobile Marketing Association (MMA) directly addresses how charges can be placed on a subscriber's bill. It has been suggested that these proposed rules are not needed due to the adoption of the MMA's best practices guidelines by most of the wireless carriers. We do not agree, as we do not believe the MMA guidelines sufficiently meet the requirements of §§ 2889.9 and 2890. For example, the MMA guidelines would allow any person in possession of the wireless handset to

authorize charges to be placed on the subscriber's bill,⁷⁹ not just the subscriber as mandated by § 2890.⁸⁰

As clarified in the revised rules, only the subscriber may authorize that a charge be placed on his/her bill. Since the current MMA guidelines do not currently limit authorization to the subscriber, use of the double opt-in process to purchase third party content and services does not, by itself, demonstrate affirmative authorization by the subscriber.

We have considered whether the rules should be revised to require that subscribers "opt-in" to third-party billing - all bills would be closed to third party charges absent affirmative subscriber authorization - or "opt-out" by requesting a block be placed on their lines. In their comments, some parties have proposed an "opt-in" approach as an alternative means to enhance consumer protection while simultaneously offering abundant options, and without imposing undue costs on Billing Telephone Corporations. While it is clear that an opt-in option would offer subscribers more protection from unauthorized charges, this would represent a significant operational change from current third-party billing practices and may result in customer confusion and dissatisfaction. At the same time, we are concerned that allowing all subscribers of Billing Telephone Corporations to be open to all third-party billings, regardless of the subscriber's preference, leaves subscribers too vulnerable.

⁷⁹ See Verizon Wireless Comments at 6 - 8.

⁸⁰ We note as well that BSG's "URU" tool described above, which uses thirteen vendors to confirm that the identity of the person ordering the service, similarly does not confirm that the person placing the order is the subscriber.

DRA recommended that all Billing Telephone Corporations be required to provide subscribers with a cost-free option to block all third-party billing, and actively inform their customers of the option.⁸¹ Further, both DRA and UCAN proposed that subscribers be provided with an option to block all third party charges when they initiate service.⁸² DRA explained that the Commission had received complaints of carriers telling subscribers who request such a block that state and federal law mandates that the carrier provide billing to third parties. In response, both AT&T and Verizon stated that most Billing Telephone Corporations offer subscribers the ability to block third party charges, free-of charge.⁸³

We believe it is important for Billing Telephone Corporations to provide subscribers with the option to block offerings, such as Premium SMS content, by third party providers. However, the record does not support a conclusion at this time that providing subscribers with the option to block all third party charges when they initiate service is warranted. As noted by both AT&T and Verizon, subscribers have the ability to block third party charges at any time. We believe that the ability for subscribers to obtain this option, at no cost, presents an important step in preventing cramming. Thus, we encourage all Billing Telephone Corporations to provide their subscribers with options to block or limit offerings by third parties at no charge and to actively inform their

⁸¹ DRA Opening Comments at 10.

⁸² *Id.*; UCAN Opening Comments at 18.

⁸³ Reply Comments of AT&T California, AT&T Communications of California, Inc., and New Cingular Wireless PCS, LLC at 10; Reply Comments of Verizon California Inc. at 13.

subscribers of these options. Billing Telephone Corporations shall also apprise CPSD of the available blocking options on an annual basis. To this end, we include in our reporting requirements CTIA's proposed Blocking Report.

While we recognize that the wireless industry utilizes varying types of "opt-out" techniques with respect to Premium SMS content, we are unconvinced that allowing subscribers to opt-out of third party content is the appropriate policy as the wireless industry advances and other types of third party services become available to subscribers.⁸⁴ It is possible that as the capabilities of wireless handsets and the types of third-party charges that can be placed on a subscriber's bill increase, the most efficient means to prevent unauthorized charges may be to allow subscribers to choose whether their bills will be open to third-party billing.

While we do not believe that conditions in the wireless industry warrant consideration of adopting an "opt-in" approach at this time, it is important that we revisit this issue in the future. Therefore, we direct the Communications Division staff, in collaboration with CPSD, to prepare a report on developments in the wireless industry, including new types of offerings by third-party providers beyond Premium SMS content. The report should also contain findings on whether the cramming rules adopted by this decision sufficiently protect customers from unauthorized charges, including an assessment of whether the existing "opt-out" options and processes provided by the Billing Telephone Corporations sufficiently protect subscribers. This report shall be

⁸⁴ For example, a recent Bloomberg article reported that both AT&T and Verizon Wireless have entered into a pilot test to allow their subscribers to use smartphones as credit or debit cards. (See, <http://www.bloomberg.com/news/2010-08-02/at-t-verizon-said-to-target-visa-mastercard-with-smartphones.html>.)

prepared and served on parties to this proceeding by no later than January 1, 2013.

5.3. Billing Telephone Corporation Responsibility to Investigate

The record shows that customers do not carefully check bills and often pay small charges, even if unauthorized, due to the time and inconvenience of disputing the charge. Ensuring comprehensive refunds for all unauthorized charges, even where the subscriber has not complained, is essential to removing the reward for unauthorized billing. Billing Telephone Corporations must remain responsible for refunding up to one year after the bill, even if mistakenly paid by the subscriber. Notice to other customers that may have been the victims of unauthorized charges is essential, with follow up options for requesting additional refunds. If these efforts are not undertaken, the entire program invites what the federal court called “fraudsters” to attempt to surreptitiously place unauthorized charges on many bills, cheerfully refunding to those that complain, and pocketing the payments from the unsuspecting. To comprehensively address this situation for all wrongfully billed subscribers, the unsuspecting must receive notice of the potentially unauthorized charge.

The revised rules clarify that the Billing Telephone Corporation has an affirmative duty to investigate allegations of unauthorized billings to determine whether other subscribers may have been victimized as well. This investigation could include confirming whether other subscribers in fact authorized similar charges from the Service Provider. The revised rules also make clear that a Billing Telephone Corporation is responsible for refunding all unauthorized charges presented in its bill, regardless of whether the unsuspecting subscriber may have paid the charge.

5.4. Reporting Requirements

This Commission is required to adopt rules that provide for reports on the number of subscriber complaints of unauthorized charges being placed on their bills:

The Commission shall establish rules that require each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers' telephone bills, to provide the Commission with reports of complaints made by subscribers regarding the billing for products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company.⁸⁵

Over the years the Commission has adopted a series of rules culminating in the current version found in General Order 168, Part 4, that provide for reports to the Commission staff. As noted earlier, these rules require clarification, particularly regarding wireless carriers.⁸⁶

As set out in Rule 11 of the revised General Order 168, Part 4, included with today's decision, we clarify that all Billing Telephone Corporations must retain sufficient subscriber records to enable refunds to be issued if necessary. This information need not reside in a single database. However, the Billing Telephone Corporation must be able to compile the information, upon request by the Commission and its staff, to enable refunds to customers. We have also added substantial flexibility to this requirement.

⁸⁵ Pub. Util. Code § 2889.9(d).

⁸⁶ Some of the current rules were initiated in the late 1990's, when the wireless industry was in a nascent stage and did not offer third-party billing. See, e.g., D.00-03-020.

We do not adopt the reports proposed by CTIA, as they do not meet the requirements of § 2889.9(d). Among other things, CTIA's proposed reports are limited by "campaigns," not service providers. This would not provide sufficient information for CPSD staff to pursue an enforcement action against firms or natural persons. Moreover, CTIA's proposed termination and suspension reports include no objective standards.⁸⁷ Finally, these proposed reports would be based on national, rather than California-specific, data. Nonetheless, we find that with some modifications, the report formats proposed by CTIA would provide the necessary information to assist CPSD in identifying service providers who warrant further investigation. Once these service providers are identified, CPSD may seek further information from the Billing Telephone Corporation or the Billing Agent through data requests.

We adopt the reports listed below. We recognize that further refinements to the reporting requirements may be needed once we gain experience with the data provided. Any future refinements to the rules would only be considered to the extent that the revisions are necessary and will assist in detecting potential service providers engaged in cramming.

Report of Refunds

On a quarterly basis, all Billing Telephone Corporations and Billing Agents shall submit a calendar month summary of all refunds made to subscribers with California area codes. This report shall provide the following information by service provider:

1. Name of service provider

⁸⁷ We are mindful of Verizon Wireless' statement that it terminates third-party billing customers based on "the totality of the circumstances" as described above.

2. Name of aggregator
3. Description of service provided
4. Total number of purchases by subscribers
5. Total dollar amount billed
6. Total number of refunds issued
7. Total dollar amount of refunds

We believe that the information required in this report reasonably balances our mandate under § 2889.9(d) with the desire to not overly burdening the Billing Telephone Corporations. Although § 2889.9(d) refers to subscriber “complaints,” we have expanded the rule to include “refunds” as a proxy for complaints. This expansion of the rule addresses the concerns raised by the wireless carriers that tallying subscriber complaints of unauthorized charges would be excessively burdensome. We understand that a tally of refunds will necessarily include items beyond unauthorized charges, but over time the resulting data will be useful to indicate unusual increases in customer contacts, which could form the basis for further investigation. In a similar manner, we recognize that a report by California area code may include wireless subscribers who do not reside in California and exclude subscribers who reside in California, but have a wireless handset with a non-California area code.

Report of Suspensions and Terminations

On a quarterly basis, all Billing Telephone Corporations and Billing Agents shall submit a report listing all third party services that have been suspended or terminated, grouped by service provider. The report of suspensions and terminations shall not include services that are complete or otherwise expired. The report may be based on either national or California-specific data and shall include the following information:

1. Name and contact information of service provider
2. Description of service
3. Whether service was suspended or terminated
4. Reason for suspension or termination. If the service is suspended, the date or conditions for reinstatement should be included.

This report shall include not only Premium SMS campaigns, but also any other offerings by third party providers.

In addition to the Report on Suspensions and Terminations, Billing Telephone Corporations and Billing Agents shall be required to notify the Director of CPSD of any terminations of service providers within 3 business days. This notification will include contact information for the service provider and an explanation of why the provider was terminated.

Blocking Report

On an annual basis, all Billing Telephone Corporations shall submit a report describing the means offered to subscribers to restrict or otherwise block the purchase of Premium SMS or third party services.

5.5. Easing of Administrative Burdens

Today's decision clarifies the rules previously adopted in General Order 168, Part 4 and adopts reporting requirements for all Billing Telephone Corporations. In light of these directives as well as the voluminously articulated comments on the cost of reporting requirements, we have eased the requirement that Billing Telephone Corporations and Billing Agents have in place and comply with a protocol for identifying unauthorized charges and terminating billing service to any Service Provider or Billing Agent that submits such billings. The revised rules require that the protocol be submitted to the Director of CPSD upon request. The revised rules also require that the protocol mandate

notification to the Division upon discovery of unauthorized charges involving more than 5% of a Billing Agent's or Service Provider's customers, rather than immediate suspension as set out in the initially proposed rules.

Finally, in response to many comments seeking blanket exemptions from the reporting rules, a process for requesting such an exemption is created for pre-paid wireless carriers and carriers that provide service only to business and wholesale customers.

6. Comments on Proposed Decision

The proposed decision of Commissioner Bohn in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

7. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Based on previously filed comments and reply comments, as well as D.00-03-010, D.00-11-015, and General Order 168, Part 4, Commission's Staff prepared a draft set of rules for California Billing Telephone Corporations, which the assigned Commissioner mailed for comment on February 12, 2010.
2. Comments on the proposed rules were received from 25 parties, and 18 parties filed reply comments.
3. The record in this proceeding shows that California telephone corporation subscribers continue to experience unauthorized charges on their telephone bills.

4. The person in possession of a wireless handset cannot reasonably be presumed to be the account subscriber.

5. Disputing an unauthorized charge with the Billing Telephone Corporation is time-consuming and inconvenient, particularly for modest charges.

6. Unscrupulous Service Providers may place unauthorized charges on numerous subscriber bills, refund charges upon dispute, and retain all uncontested but unauthorized billings.

7. Billing Telephone Corporation subscribers should have the option of directing the Billing Telephone Corporation to place no third-party charges on the subscriber's bill.

8. Wireless providers are beginning to expand the types of third party services available to subscribers.

9. The Commission should revisit the issue of whether subscribers should opt-in or opt-out of the ability to purchase services and content by third party providers due to advances in the capabilities of wireless handsets and offerings by third party service providers.

10. Billing Telephone Corporation subscribers who are aware that their bills are open to charges from other Service Providers may be more diligent in examining their bills for unauthorized charges.

11. The administrative burden of the reporting requirements can be eased in light of other directives to the Billing Telephone Corporations.

Conclusions of Law

1. California Billing Telephone Corporations may only bill for charges authorized by the subscriber, and the subscriber is the person or entity responsible for paying the invoice from the Billing Telephone Corporation.

2. A person in possession of a wireless handset is not necessarily the subscriber and actions by that person may not be presumed to constitute subscriber authorization.

3. No California Billing Telephone Corporation is required to offer billing services to third-parties.

4. Billing Telephone Corporations should provide their subscribers with options to block or limit offerings by third party service providers at no cost and to actively inform subscribers of these options.

5. Billing Telephone Corporations should remain fully responsible for refunding all unauthorized charges presented to subscribers in the Billing Telephone Corporations' bills, regardless of whether the subscribers unsuspectingly paid the charges.

6. CTIA's alternate proposal does not comply with the requirements of Pub. Util. Code § 2889.9(d).

7. It is reasonable to use refunds to subscribers as a proxy for subscriber complaints.

8. The Director of the CPSD should be authorized to issue citations to any Billing Telephone Corporation or Billing Agent that fails to submit the quarterly report as required by the California Telephone Corporation Billing Rules in a complete and timely fashion as follows:

- a. Up to 30 days late, a citation requiring payment of \$500 to the General Fund;
- b. 30 to 60 days late, a citation requiring payment of \$5,000 to the General Fund;
- c. No less than 10 days before issuing a citation, the Director shall give the Billing Telephone Corporation or Billing

Agent notice of the impending citation and an opportunity to submit the report; and

- d. The Commission may also take such further actions as may be necessary to protect the public interest.

9. The Commission should exercise its remedial statutory authority granted pursuant to Public Utilities Code Section 2889.9(b) over Billing Agents and Service Providers using the billing services of California Telephone Corporations.

10. The public interest requires that California Billing Telephone Corporations, Billing Agents, and Service Providers comply with the California Telephone Corporation Billing Rules.

11. The California Telephone Corporation Billing Rules, Attachment A to today's decision, should be adopted as Revised General Order 168, Part 4.

O R D E R

IT IS ORDERED that:

1. The California Telephone Corporation Billing Rules attached to this decision as Attachment A are adopted as Revised General Order 168, Part 4, and all Billing Telephone Corporations, Billing Agents, and Service Providers must comply therewith.

2. The Communications Division staff shall prepare a report, in collaboration with the Consumer Protection and Safety Division, on developments in the wireless industry, including new types of offerings by third-party providers beyond Premium SMS services. The report shall include findings on whether the cramming rules adopted by this decision sufficiently protect customers from unauthorized charges. This report shall be prepared and served on parties to this proceeding by no later than January 1, 2013.

3. Rulemaking 00-02-004 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

Revised General Order 168, Part 4

California Telephone Corporation Billing Rules

1. Definitions:

- 1.1 *Billing Agents:* Any entity which provides billing service for Service Providers directly or indirectly through a Billing Telephone Corporation.
- 1.2 *Customer Complaint:* Any written or oral communication from a subscriber alleging that an unauthorized charge was included in the Billing Telephone Corporation's bill to the subscriber.
- 1.3 *Service Provider:* The person or entity that originates the charge or charges that are billed to the subscriber of Billing Telephone Corporation, including products and services provided directly by the Billing Telephone Corporation.
- 1.4 *Billing Telephone Corporation:* A telephone corporation that bills a subscriber for products and services.
- 1.5 *Telephone Corporation:* Any telephone corporation (as defined in Pub. Util. Code § 234) operating within California. This term includes resellers and wireless telephone service providers.
- 1.6 *Unauthorized Charge:* Any charge placed upon a subscriber's telephone bill for a service or goods that the subscriber did not agree to purchase, including any charges that resulted from false, misleading, or deceptive representations.
- 1.7 *Subscriber:* Any one of the following:
 - (1) The party identified in the account records of a carrier as responsible for payment of the telephone bill;
 - (2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or

- (3) Any person contractually or otherwise lawfully authorized to represent such party.

2. Applicability:

These rules apply to all Billing Telephone Corporations, Billing Agents, and Service Providers doing business in California and specify the responsibilities and procedures for addressing subscribers' allegations of unauthorized charges on telephone bills.

These rules supersede the rules adopted in Decision (D.) 00-03-020, as modified by D.00-11-015, and replace General Order 168, Part 4, adopted in D.06-03-013.

3. Authorization Required:

Prior to billing or causing to be billed any charge to a subscriber on a telephone bill, the Service Provider must obtain the subscriber's authorization. All charges billed without subscriber authorization are unlawful.

The requirements for written authorizations are set out in Pub. Util. Code § 2890(b). Oral authorizations must contain the same information as written authorizations. All disputed oral and written authorizations for which no record of verification is available are subject to a rebuttable presumption that the charges are unauthorized. A Service Provider may establish that a charge was authorized by (i) a record of affirmative authorization, (ii) a demonstrated pattern of knowledgeable past use, or (iii) other persuasive evidence of authorization. With regard to direct dialed telephone services, evidence that a call was dialed is prima facie evidence of authorization. This presumption can be rebutted with evidence that the call was not authorized.

4. Billing for Authorized Charges Only:

Billing Telephone Corporations may bill subscribers only for authorized charges. Billing Agents and Service Providers may not submit, directly or indirectly, charges for billing through a Billing Telephone Company that the subscriber has not authorized. Billing Telephone Corporations and Billing Agents must monitor each Service Provider's billings and customer billing disputes to ensure continuing compliance with this requirement. Such monitoring shall include review of the Service Provider's marketing materials, scripts, customer verification records, and other such information as may be necessary to demonstrate that the Service Provider is obtaining valid subscriber authorizations.

5. Responsibilities of Billing Telephone Corporations:

The Billing Telephone Corporation bears ultimate responsibility for all items presented in a subscriber's bill and must ensure that only authorized charges from legitimate service providers are included in the bill. The Billing Telephone Corporation has an affirmative duty to investigate all subscriber allegations of unauthorized billings and to take the initiative to determine whether other subscribers may have been subjected to unauthorized charges as well. Such initiatives may include, but are not limited to, contacting other subscribers (or a representative sample thereof) to confirm authorization for the charges. The Billing Telephone Corporation is ultimately responsible for refunding all unauthorized charges collected from its subscribers and the fact that the subscriber may have mistakenly paid the unauthorized charges does not diminish the Billing Telephone Corporation's obligation to refund all unauthorized charges collected through its bill.

The Billing Telephone Corporation shall resolve all subscriber complaints of unauthorized charges as required in Section 9, Resolution. If a subscriber contacts the Billing Telephone Corporation to dispute a billed item from a Service Provider, the Billing Telephone Corporation must promptly investigate and resolve the dispute without deflecting the subscriber to the alleged Service Provider.

6. Disclosure Requirements for Service Providers and Billing Agents:

Prior to approving a Service Provider or Billing Agent for the provision of billing services, the Billing Telephone Corporation shall conduct a reasonable inquiry into the Service Provider's or Billing Agent's and principals' history of regulatory compliance and customer disputes. No Billing Telephone Corporation or Billing Agent shall approve a Service Provider or Billing Agent for billing services if the Service Provider's or Billing Agent's and principals' history of regulatory compliance includes violations of state or federal law or rules relating to consumer protection or public utility regulation.

7. Monitoring of Subscriber Billings:

Each Billing Telephone Corporation and Billing Agent is responsible for monitoring the billings it controls for the purpose of preventing and detecting unauthorized charges, and for the prompt termination of billing services to Billing Agents and Service Providers that present unauthorized charges. Each Billing Telephone Corporation and Billing Agent shall have in place and comply with a protocol for quickly identifying unauthorized charges and suspending or terminating billing services to any Billing Agent or Service Provider that has submitted unauthorized charges.

Billing Telephone Corporations and Billing Agents shall immediately investigate any material increases in subscriber complaints or refund rates, and, if such complaints or refund rates involve more than 5% of the Billing Agent's or Service Provider's customers, shall test the validity of other billings presented by the Billing Agent or Service Provider by contacting other billed subscribers or representative sample thereof to confirm authorization. If the Billing Telephone Corporation is unable to confirm subscriber authorization, the Billing Telephone Corporation shall notify all subscribers billed by the Billing Agent or Service Provider that unauthorized charges may have been placed on the subscriber's account and provide a convenient means for customers to request refunds.

The protocol shall also include notification to the Commission's Consumer Protection and Safety Division within 3 business days of discovery of unauthorized charges involving more than 5% of a Billing Agent's or Service Provider's customers. The notification shall include the identity of the Service Provider or Billing Agent and any principals, the details of the unauthorized charge, the steps taken to obtain refunds for customers, and the billing status of Service Provider or Billing Agent. The Billing Telephone Corporation and Billing Agents shall provide all requested information and shall cooperate fully with the Commission's staff in any investigation and prosecution.

8. Nonpayment of Charges While an Investigation is Pending:

While a Billing Telephone Corporation investigates an allegedly unauthorized charge, the subscriber shall not be required to pay the disputed charge or any associated late charges or penalties; the charge may

not be sent to collection; and no adverse credit report may be made based on non-payment of that charge.

9. Resolution:

If a Billing Telephone Corporation or Billing Agent receives a complaint that the subscriber did not authorize the purchase of the product or service associated with a charge, the Billing Telephone Corporation or Billing Agent, whichever is the recipient of the complaint, not later than 30 days from the date on which the complaint is received, shall either (i) verify and advise the subscriber of authorization of the disputed charge or (ii) credit the disputed charge and any associated late charges or penalties to the subscriber's bill, and offer the option of blocking all future third party billings at no charge.

10. Other Available Rights:

Nothing herein shall prevent a subscriber from exercising his or her other rights.

11. Record Retention for Refunds:

Every Billing Telephone Corporation and Billing Agent shall maintain accurate and up-to-date records of all billings and service providers sufficient to demonstrate its compliance with these rules and to facilitate customer refunds. Such records shall be retained for no less than twenty-four months.

Billing Telephone Corporations and Billing Agents that maintain records with the following information shall be subject to a presumption of having sufficient information to enable refunds to customers:

- a. the subscriber name;

- b. the subscriber telephone number;
- c. the name of the Service Provider responsible for the charge complained about;
- d. the name of the Billing Agent(s), if any;
- e. the amount of the alleged unauthorized charge and the date the charge was incurred and billed;
- f. a description of the product or service billed;
- g. the number of contacts by the subscriber;
- h. the disposition of the dispute;
- i. for Billing Agents, the total dollars billed and total amount refunded for each service provider; for Billing Telephone Corporations, the total dollars billed and total dollars refunded for each Service Provider for which the Billing Telephone Company directly bills and each Billing Agent; and
- j. for Billing Agents, the total number of working telephone number billed by each service provider; for Billing Telephone Corporations, the total number of working telephone numbers billed by each service provider for which the Billing Telephone Corporation directly bills and each Billing Agent.

Flexible Compliance Option: Billing Telephone Corporations and Billing Agents may also elect to maintain records that meet the Commission's standard of sufficient information to enable refunds to customers but which do not include each item listed above. Such Billing Telephone Corporations and Billing Agents must affirmatively demonstrate to the Consumer Protection and Safety Division Director that the records meet the Commission's standard of having sufficient information to enable refunds

to customers. The information specified below for monthly reporting is not subject to this option.

12. Reporting Requirements

12.1. All Billing Telephone Corporations and Billing Agents shall create a calendar month summary report every quarter listing refunds made to subscribers with California area codes. The report of refunds shall be summarized by Service Provider and contain the following information:

- a. Name of Service Provider
- b. Name of aggregator
- c. Description of service provided
- d. Total number of purchases by subscribers
- e. Total amount billed by the Billing Telephone Corporation on behalf of the Service Provider
- f. Total number refunds to subscribers
- g. Total amount refunded by the Billing Telephone Corporation

The Report of Refunds shall be submitted to the Director of the Commission's Consumer Protection and Safety Division pursuant to the following schedule:

- Report for January, February, and March due no later than April 30th;
- Report for April, May and June due no later than July 31st;
- Report for July, August and September due no later than October 31st; and
- Report for October, November, and December due no later than January 31st of the following year.

12.2. All Billing Telephone Corporations and Billing Agents shall create a calendar month summary report every quarter listing all third party services that have been suspended or terminated. These services shall include, but are not limited to, Premium short messaging service (SMS) campaigns. The report of suspensions and terminations shall not include services that are complete or otherwise expired and may be based on national data. The report of suspensions and terminations shall be summarized by Service Provider and contain the following information:

- a. Name and contact information of Service Provider
- b. Description of service that was suspended or terminated
- c. Whether service was suspended or terminated
- d. Reason for suspension or termination. If the service is suspended, the date or conditions for reinstatement should be included.

The Report of Suspensions and Terminations shall be submitted to the Director of the Commission's Consumer Protection and Safety Division pursuant to the following schedule:

- Report for January, February, and March due no later than April 30th;
- Report for April, May and June due no later than July 31st;
- Report for July, August and September due no later than October 31st; and
- Report for October, November, and December due no later than January 31st of the following year.

12.3. If a Billing Telephone Corporation terminates a Billing Agent or Service Provider for any reason, it shall notify the Director of the

Commission's Consumer Protection and Safety Division within 3 business days of the termination date. The notification shall include the identity of the Service Provider or Billing Agent and any principals and the reason(s) for the termination.

12.4. All Billing Telephone Corporations shall submit a report to the Director of the Commission's Consumer Protection and Safety Division once a year that describes the means offered to subscribers to restrict or otherwise block the purchase of services offered by Service Providers.

12.5. Exemptions from Reporting Requirement

The following types of Billing Telephone Corporations may by letter request that the Director of the Consumer Protection and Safety Division suspend or modify their obligation to file the Report of Refunds and/or the Report of Suspensions and Terminations:

- a. Pre-paid wireless carriers
- b. Carriers that provide service only to business or wholesale customers

The letter request must demonstrate that the specific Billing Telephone Corporation is in full compliance with these rules, that there are no significant numbers of complaints to the Corporation or the Commission, and that the filing of the report(s) is not necessary to protect subscribers. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. Once an exemption is granted, a Billing Telephone Corporation shall file an annual certification or letter affirming that continued exemption is warranted. The annual certification or letter

shall be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure.

The Director of the Consumer Protection and Safety Division may grant or deny, in whole or in part, or apply such conditions as may be necessary to protect subscribers in response to the letter request. The Director of the Consumer Protection and Safety Division may also revoke the exemption if there is good cause to believe that the Billing Telephone Corporation may have placed unauthorized charges on its subscribers' bills.

13. Effect of Failure to Supply Reports:

Any Billing Telephone Corporation or Billing Agent that fails to submit its reports in a complete and timely fashion is subject to citation by the Director of the Consumer Protection and Safety Division as follows:

- e. Up to 30 days late, a citation requiring payment of \$500 to the General Fund,
- f. 30 to 60 days late, a citation requiring payment of \$5,000 to the General Fund, and
- g. No less than 10 days before issuing a citation, the Director shall give the Billing Telephone Corporation or Billing Agent notice of the impending citation and an opportunity to submit the report.

In addition to the above-listed citations, any Billing Telephone Corporation or Billing Agent failing to timely supply the required reports is subject to a Commission decision or resolution taking such further actions as may be necessary to protect the public interest.

14. Actions Based on Reported Information:

The Consumer Protection and Safety Division may request that a Billing Telephone Corporation or Billing Agent provide further information concerning a Service Provider. This requested information may include, but is not limited to, the Service Provider's contact information, subscriber name and telephone number, and the amount of the alleged unauthorized charge. The Billing Telephone Corporation and Billing Agents shall provide all requested information within the time period specified by Commission staff and shall cooperate fully with the Commission's staff in any investigation and prosecution.

The Consumer Protection and Safety Division, in consultation with the Communications Division, may convene such industry-wide or carrier-specific meetings or workshops as may be necessary to facilitate compliance with these rules and other law and regulations.

As provided in § 2889.9(b), the Commission's remedial statutory authority over public utilities, including the potential for fines up to \$20,000 per violation, extends to all Service Providers and Billing Agents using the billing services of Billing Telephone Corporations. Billing Agents and Service Providers, like Billing Telephone Corporations, are subject to such remedial directives as the Commission finds necessary to protect the public interest.

(END OF ATTACHMENT A)