

Docket	:	<u>K.25-06-013</u>
Exhibit Number:	:	<u>CD-8</u>
Commissioner	:	<u>N/A</u>
Admin Law Judge	:	<u>Theresa Moore</u>
Witness	:	<u>Sandy Lam</u>



COMMUNICATION DIVISION
California Public Utilities Commission

Resolution T-17601 with Appendix A
Issued June 22, 2018

San Francisco, California
August 1, 2025

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**RESOLUTION T-17601
June 21, 2018**

R E S O L U T I O N

Resolution T-17601. Approval of a Citation Program To Enforce Compliance by Telecommunications Carriers With The Commission's Resolutions, Decisions, Orders, and The Public Utilities Code and Authorizes Staff To Issue Citations; Procedures For Appeal Of Citations

SUMMARY

Resolution T-17601 (Resolution) authorizes the Communications Division Staff (Staff) to implement a citation program for enforcing compliance by telecommunications carriers with the Commission's Resolutions, Decisions, Orders and the Public Utilities Code. This Resolution also adopts a citation procedure, a list of specific violations, and the corresponding amount of penalties as detailed in Appendix A, as well as an appeal procedure outlined in Appendix B.

BACKGROUND

The Commission has broad regulatory authority, as set forth in Article XII of the California Constitution and Public Utilities Code Sections 701, 702, 2101, and 2107. Specifically, these codes provide as follows:

- Public Utilities Code § 701

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

- Public Utilities Code § 702

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

- Public Utilities Code § 2101

The commission shall see that the provisions of the Constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the State therefor recovered and collected, and to this end it may sue in the name of the people of the State of California. Upon the request of the commission, the Attorney General or the district attorney of the proper county or city and county shall aid in any investigation, hearing, or trial had under the provisions of this part, and shall institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and statutes of this State affecting public utilities and for the punishment of all violations thereof.

- Public Utilities Code § 2107

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

Public Utilities Code § 7 states that the any public office of the Commission may authorize Staff to exercise powers and perform duties granted to the officer, unless expressly provided otherwise.¹ These may include the investigation of facts preliminary to agency action, and the issuance of citations for particular kinds of violations, up to specified amounts, subject to appeal to the Commission.² The Commission has

¹ The term "Staff" refers to the portion of the Commission's Staff designated by the Executive Director to carry out the particular function involved.

² See Decision 09-05-020, 2009 Cal. PUC LEXIS 250, at p. *4 [approving safety citation program for rail carriers].

exercised this authority by adopting citation programs in the following areas: household good movers, charter party carriers, passenger stage corporations, propane gas distribution system operators, power plant operators, telecommunication providers, and energy service providers, and the establishment of a pilot citation appeal program. This Resolution is consistent with these other approved citation programs.

DISCUSSION

As outlined above, the Commission has the jurisdiction to adopt a citation program and authorize Staff to issue citations to public utilities³. The Communications Division oversees compliance of telecommunications carriers. Therefore, we specifically authorize the Communications Division Staff issue citations and levy penalties consistent with the rules we adopt here, as set forth in Appendix A.

Delegating authority to Staff to issue citations for the violations listed in Appendix A is necessary to ensure that telecommunications carriers comply with the Commission's Resolutions, Decisions, Orders, and the Public Utilities Code. Our adoption of a citation program will provide Staff with an additional tool to address non-compliance issues in a more efficient manner. Although carriers currently are informed of their non-compliance, the existing process requires issuance of a Commission resolution, which takes time to prepare and bring before the Commission for a formal vote. By establishing a citation program, more immediate action can be taken at the Staff level to address and correct non-compliance, while simultaneously providing a clear process for a carrier to contest or appeal violations identified.

The citation program we adopt here would allow Staff to issue citations for violations of Commission compliance requirements. All citations will be authorized by Communications Division Management prior to issuance. Each violation would trigger issuance of a notice and would be considered an "event" for purposes of assessing a penalty. A carrier's failure to correct a violation would trigger another notice sent out after the expiration of the 30-day compliance deadline, potentially resulting in the imposition of additional penalties. For instance, if a carrier receives multiple notices for the same violation, each subsequent notice would increase the penalty amount.⁴ With the exception of operating without authority, the intent is that no other penalties will exceed \$3,000. If a carrier does not comply within six months, the company's license would be subject to revocation via Commission Resolution.

Staff proposes the citation process include the following violations and penalties:

³ Pursuant to Public Utilities Code § 216 (a) "Public Utility" includes telephone corporations.

⁴ See Appendix C for hypothetical penalty calculations

- Failure to Obtain Authority to Operate in California: \$1,000 per month for each month the carrier has been operating without authority;
- Failure to Submit Specified Filings, Notices, Reports and Other Items as Directed in Commission Resolutions, Decisions, Orders, and the Public Utilities Code as Listed in Appendix A: \$1,000 per event. Each subsequent Staff notice or event increases the penalty amount by an additional \$200;
- Failure to report and remit surcharge payments for at least six months as directed in Commission Resolutions, Decisions, Orders, and the Public Utilities Code: \$1,000 per event up to a maximum \$3,000;⁵
- Failure to report and remit user fee payments for at least 30 days: 25% of user fees due on delinquent payments;⁶
- Late-filed contracts: Subject to GO 96-B Section 8.2.1 and D.91-07-010: Between ¼% and 10% of the total contract revenues, depending on lateness of filing.

This proposed citation program ensures that the Commission is properly notifying telecommunications carriers in writing of compliance problems. In addition, the carriers would be given the opportunity to pay the penalty, correct violations and to advise Staff of any errors in Staff's evaluation and conclusions. Finally, carriers would have the opportunity to contest within 30 days the violation and the penalty amount. A carrier may request an extension of the 30-day deadline to achieve compliance. The Communications Division is authorized to grant a one-time extension of up to 60 days for additional time for carriers to achieve compliance if the carrier makes a written request to the Communications Division before the expiration of the 30-day compliance deadline. A carrier must demonstrate good cause for the additional time requested to correct violations and show a good-faith effort to correct violations. Staff may defer or suspend issuing citations, consistent with the process set forth in Appendix A. If Staff grants an extension, a new compliance deadline will be set. The lists of violations and the corresponding penalty amounts are shown in Appendix A. The penalty amounts selected are based on historical amounts that were imposed in previous Commission

⁵ The \$1000 penalty amount is in addition to the interest rate assessed on late filed surcharges. Surcharge funds must be reported and remitted no later than 40 days following the close of a reporting period. Carriers that report and/or remit surcharge funds after the due date will be charged interest equal to an annual rate of 10%. The 10% rate will be assessed on the surcharge amount due, including any adjustments, starting from the 41st day after the close of the reporting period to the date that the carrier remits the surcharge (See General Order 153 Section 11.4 on Universal Service and D.98-01-023.)

⁶ Pursuant to Public Utilities Code section 405, the Commission may assess a penalty not to exceed 25% of user fees due on delinquent payments.

Resolutions⁷. The penalty amount for the violation is due on the date stated in the Notice, or on the extension date. Penalties assessed on carriers cannot be recovered from customers via Commission rate setting proceedings.

Nothing in this Resolution affects the Commission's existing Constitutional and statutory authority to pursue enforcement actions for non-compliance by public utilities with any Commission order, decision, rule, direction, or requirement. More specifically, the establishment of a citation program does not prevent the Commission from taking other remedial measures, including, but not limited to the revocation of a carrier's Certificate of Public Convenience and Necessity and/or registration licenses. The citation program also does not affect a subscriber's right to file his or her own action pursuant to the Public Utilities Code and Commission rules and regulations.

The following procedures would govern the issuance and appeal of these citations. Such procedures would be consistent with other citation programs approved by the Commission.

- 1) *Contents*. The citation served upon the telecommunications carrier (Respondent) by the Staff will include:
 - (a) A specification of each alleged violation, including citation of the Resolution, Decision, Order, or Public Utilities Code Section allegedly violated;
 - (b) A statement of the facts upon which each alleged violation is based, including supporting documents;
 - (c) The amount of the fine;
 - (d) A statement that the Respondent may correct the violation and pay the amount of the penalty set forth in the citation and the conditions for payment, and alternatively, the Respondent may file an appeal of the citation within 30 days pursuant to Resolution ALJ-299 Appendix B;

⁷ These resolutions include: Res. T-17558 Imposing Fines on those Voice over Internet Protocol (Digital Voice Service) Providers Who Have Failed to Report and Remit California's Public Purpose Program Surcharges in Accordance with Public Utilities Code Section 285 Approved on September 14, 2017; Res. T-17571 Conditionally Approving the Wireless Identification Registration Application of Republic Wireless, Inc., Subject to the Payment of Past Due Surcharges and User Fees Including Penalties and a Fine for Operating Without Authority Approved on September 14, 2017 ; Res. T-17578 Conditionally Approving The Wireless Identification Registration Application of Redding MSA Limited Partnership DBA Verizon Wireless, Subject To The Payment Of Past Due User Fees Including Penalties And A Fine For Operating Without Authority Approved on October 12, 2017; .Res. T-17597 Imposing Fines and Subsequently Revoking the Operating Authority of Telephone Corporations for their Failure to Comply with User Fee, Public Purpose Program Surcharge and Performance Bond Requirements Approved on March 22, 2018 .

- (e) An explanation on how to file an appeal, including the Respondent's right to have a hearing, to have a representative at the hearing, to request a transcript, and to request an interpreter;
- (f) The form for Notice of Appeal and the form for requesting an interpreter; and
- (g) A notation that CD Management has approved the citation.

2) *Service of Citation.*

Staff will issue citations by Certified Mail to the Respondent's designated regulatory contact. A copy of the citation will also be emailed to the Respondent's designated regulatory contact.

3) *Response.*

- a) Within 30 days after the date of the citation, Respondent shall correct the violation and remit the full amount of the penalty with notice to Staff, or serve a Notice of Appeal to Staff. Before the expiration of the 30-day deadline, Staff or an Administrative Law Judge (ALJ) may extend the time for response upon a showing of good cause.
- b) Unless otherwise specified, a requirement to notify Staff or to serve Staff means to send a written communication by U.S. Mail or an express mail service to the address specified in the citation. **These written communications should not be filed with the Commission's Docket Office.** In addition to communications by mail service, Staff may allow electronic submissions.

4) *Payment of penalty; default.*

- a) A carrier submitting payment of penalties shall mail or deliver the payment to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check or money order, payable to the California Public Utilities Commission. The Respondent's representative shall write on the face of the check or money order "For deposit to the State of California General Fund per Resolution T-17601."
- b) If Respondent pays the full amount of the penalty within the time allowed, the citation shall become final. Failure to pay the full amount of the penalty by the due date specified in the Notice or the extension date, or to file a Notice of Appeal will place Respondent in default, the citation shall become final, and the Respondent will have forfeited its right to appeal the citation. A late payment is subject to a penalty of 10 percent. Payments are considered late if they are received after the due date specified in the Notice or after the extension date.

5) *Appeal.*

Resolution ALJ-299 sets forth the appeals process for all CPUC citation programs unless otherwise noted in Resolution ALJ-299. Any appeal of a citation issued under this Resolution shall be in accordance with the procedures set forth in Resolution ALJ-299 (Appendix B).

SAFETY

By authorizing Staff to issue citations, we intend to assure that telecommunications carriers comply with all applicable Commission Resolutions, Decisions, Orders, and Public Utilities Code sections, including all safety related requirements that may be contained therein.

NOTICE AND PROTESTS

In compliance with Public Utilities Code § 311 (g), the Commission on May 1, 2018 provided notice to all telephone carriers that this draft Resolution is available at the Commission's website <http://www.cpuc.ca.gov/> and is available for public comment. Additionally, Communications Division informed these parties of the availability of the conformed Resolution at the same website.

Notice of Draft Resolution T-17601 was published in the Commission Daily Calendar on May 1, 2018.

On May 21, 2018 the California Association of Competitive Telecommunications Companies (CALTEL), the Communications Industry Coalition (CIC), and the Utility Reform Network (TURN) submitted comments on six areas of the Draft Resolution. A summary of the comments and Staff responses to those comments are shown below.

1. List of Items Subject to Fines

Comments:

- CIC requested that the Resolution be modified to:
 - Clearly specify the grounds for potential fines; and
 - That the violation and penalty schedules in Appendices A and C be revised to reflect these proposed modifications.
- CALTEL requested that the Resolution be modified to:
 - State that penalties subject to the "catch-all" requirement will only be applied after a provider has failed to respond to an initial notice of failure to comply.

Responses:

- Staff finds the comments of CIC and CALTEL reasonable and has updated Appendices A and C to provide clarity and simplicity.

2. Penalty Amounts

Comments:

- CALTEL requested that the Resolution be changed to:
 - Adopt a sliding scale based on provider revenues.
- CIC requested that the Resolution be modified so that:
 - For all categories except for failure to obtain authority and late-filed contracts the maximum penalty amount is \$3,000.
- TURN:
 - Requested that the Resolution be modified to either increase the penalties related to citations or at a minimum revise the timeframe and penalty amounts listed for failure to pay surcharges; and
 - Stated twelve months is too long for the Commission to wait before issuing a citation for failure to pay surcharges.

Responses:

- To CALTEL's Comments:
 - Staff is not persuaded that a sliding penalty scale based on provider revenues is a more effective and efficient way to implement the citation program. The citation program proposed here is intended to be straight-forward in terms of implementation and uniform in application.
- To CIC's Comments:
 - With respect to CIC's comments that the maximum penalty amount be \$3,000 for many of the items listed in this Draft Resolution, Staff notes that most fines listed will be \$3,000 or less as shown in Appendix C and further edits are not needed to this Resolution.
- To TURN's Comments:
 - Staff has modified the Resolution to revise the timeframe that carriers are out of compliance with the surcharge requirement prior to issuing a citation from twelve months to six months.

3. Availability of Citation Information and Implementation of Comment Period

Comments:

- CALTEL stated:
 - A single webpage should be created in which compliance requirements are catalogued; and

- The citation program should only be implemented in conjunction with this streamlined information.
- TURN requested that the Resolution be modified to state:
 - Citations, carrier responses, and appeals will be web posted; and
 - A Notice of Availability of citations will be mailed to a standing service list.

Reponses:

- To CALTEL's Comments:
 - Staff did not adjust the proposed Resolution. The compliance requirements are already currently listed on the Commission's webpage. Further, Staff sends reminder notices for certain compliance requirements including annual performance bond filings, annual tariff filings, and annual and affiliate transaction report filings.
- To TURN's Comments:
 - Staff did not modify the Resolution to include provisions for the Notices of Availability, implementation of a comment period, posting citations, or carrier responses to citations. These processes are inconsistent with other citation programs adopted by the Commission. If a carrier chooses to appeal a citation, and a hearing is granted, the notice of an appeal hearing will appear on the Commission's Daily Calendar. At such time, other parties may seek to participate in the appeal hearings.

4. Authorization and Mailing of Citations

Comments:

- CIC:
 - Asserted that penalties should only be authorized by the Deputy Director or Director; and
 - Requested that the Resolution either be revised to indicate that citations will be served via both Certified Mail and email or that the time to remit the penalty or submit an appeal is 30 days from receipt of the citation.

Responses:

- To CIC's Comments:
 - Staff has modified the Resolution to clarify that Staff issued citations will be approved by CD Management, (i.e. the Communications Division Director, Deputy Director, or Program Managers); and
 - Staff has revised the Resolution to indicate that a courtesy copy of the citation will be emailed to the carrier's regulatory contact in addition to the copy that is sent via Certified Mail.

5. Subscribers' Rights to File Complaints

Comments:

- TURN recommended adding the following language to the Resolution:
 - "The citation program does not affect a subscriber's right to file his or her own action pursuant to the Public Utilities Code [and Commission rules and regulations]" in order to clarify that the CPUC does not intend to interfere with, prevent, or diminish a subscriber's private right of action.

Responses:

- To TURN's Comments:
 - Staff has modified the Resolution to incorporate TURN's suggestion about subscriber's rights.

6. Other Clerical Changes

Comments:

- TURN recommended:
 - Citing previous Commission Resolutions or providing a list of prior penalties assessed that were the basis for the penalties listed in the Draft Resolution.
- CIC requested:
 - That page 5 of the Draft Resolution be modified to indicate that carriers have the opportunity to correct violations, in order to make the language consistent with the language on page 4 of the Draft Resolution.

Responses:

- To TURN's Comments:
 - Staff notes that Footnote 7 in this Resolution lists prior CD Resolutions in which penalties were assessed.
- To CIC's Comments:
 - Staff has modified the Resolution to indicate that carriers have the opportunity to correct violations and to make the language consistent with the language on page 4 of the Draft Resolution.

CONCLUSION

The Commission finds that the proposed citation program in this Resolution is similar to other citation programs we have approved in the past and is within the Commission's regulatory authority. Therefore, we find it reasonable to authorize the

Communications Division to issue citations to telecommunications carriers as discussed herein, adopt the procedures for appealing citations set forth in Appendix B, and adopt the Specified Violations and Maximum Penalty Schedule set forth in Appendix A.

FINDINGS

1. Public Utilities Code § 701 authorizes the Commission to supervise and regulate every public utility in the State.
2. Public Utilities Code § 702 mandates every public utility to obey and comply with every Commission order, decision, direction, or rule.
3. Public Utilities Code § 2101 mandates the Commission shall ensure that the provision of the Constitution and statutes affecting public utilities are enforced and obeyed.
4. Public Utilities Code § 2107 mandates that utilities are subject to a minimum penalty of five hundred dollars (\$500) and a maximum penalty of fifty thousand dollars (\$50,000) for each compliance failure in cases in which a penalty has not otherwise been provided .
5. The Commission may authorize Staff to investigate and issue citations for particular types of violations up to specified amounts, subject to appeal to the Commission.
6. Since the Communications Division oversees compliance of telecommunications carriers, authority should be extended to include issuing citations.
7. Authorizing Staff to issue citations as proposed in Appendix A would assure that telecommunications carriers comply with the Commission's Resolutions, Decisions, Orders, and the Public Utilities Code.
8. A citation program will encourage compliance with Commission requirements, provide Staff with an additional tool to address non-compliance, and will allow the Commission to take prompt action.
9. Appendix A contains specified violations and a maximum penalty schedule, for which Staff may issue a citation. Staff is authorized to grant a one-time extension of up to 60 days for additional time for carriers to achieve compliance. A carrier must demonstrate good cause for the additional time requested to correct violations and show a good faith effort to correct violations.
10. When a telecommunications carrier fails to correct a violation by the expiration of the compliance deadline, Staff will send another notice to the carrier, which may result in the imposition of multiple penalties. Therefore, enhanced penalties may be

imposed for multiple violations. However, Staff must issue separate notices containing separate penalty amounts for each violation.

11. Appendix C contains hypothetical penalty calculations for the violations identified in Appendix A.
12. Telecommunications carriers bear responsibility for payment of penalties. Penalties assessed on carriers cannot be recovered from customers through Commission rate setting mechanisms or proceedings.
13. The establishment of a citation program does not prevent the Commission from taking other necessary enforcement actions including revoking a carrier's Certificate of Public Convenience and Necessity and/or registration licenses.
14. The citation program gives a cited carrier the right to appeal Staff's issuance of citations and penalties. The citation appeal process is approved by the Commission in Resolution ALJ-299 and is attached as Appendix B of this Resolution.
15. The citation program does not affect a subscriber's private right of action.
16. A cited telecommunications carrier may either correct the violation and pay the citation or file an appeal.

THEREFORE, IT IS ORDERED that:

1. We hereby adopt the citation program described above and in the Specified Violations and Maximum Penalty Schedule, attached as Appendix A, to govern the issuance and appeal of citations for non-compliance with the Commission's Resolutions, Decisions, Orders, and the Public Utilities Code.
2. We hereby adopt the citation appeal process described in Resolution ALJ-299, attached as Appendix B, to govern the appeal of citations for non-compliance with the Commission's Resolutions, Decisions, Orders, and the Public Utilities Code.
3. We authorize the Communications Division to issue citations and levy scheduled penalties as discussed in this Resolution and as set forth in Appendices A, B, and C.

This Resolution is effective today.

I hereby certify that the California Public Utilities Commission adopted this Resolution at its regular meeting on June 21, 2018. The following Commissioners approved it:

/s/ Alice Stebbins

ALICE STEBBINS

Executive Director

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners

APPENDIX

APPENDIX A
SPECIFIED VIOLATIONS AND MAXIMUM PENALTY SCHEDULE

SPECIFIED VIOLATIONS	PENALTY SCHEDULE UP TO
Failure to obtain authority to operate in California	\$1,000 per month for each month that a carrier has been operating without authority.
<p>Failure to submit the following specified filings, notices, reports and other items as directed in Commission Resolutions, Decisions, Orders, and the Public Utilities Code :</p> <ul style="list-style-type: none">• Financial Reports (Annual and Affiliate Transaction Reports Pursuant G.O. 104-A and D.93-02-019)• Initial Tariff Filings following issuance of a CPCN or other registration• Annual Tariff Filings• Performance Bonds (Includes both Initial and Annual Performance Bond Advice Letter filings and Advice Letter filings of updated or newly issued performance bonds)• Service Quality Reports as ordered in G.O 133-D• Advice Letters required to implement company name change, Transfer of Control, withdrawal of operating authority, or tariff changes• Regulatory Contact Information changes• License Acceptance Notification• Service Commencement Notification	\$1,000 for the first event. Each subsequent notice increases the penalty amount by an additional \$200.

Failure to report and remit surcharge payments for at least six months as directed in Commission Resolutions, Decisions, Orders, and the Public Utilities Code ⁸	\$1,000 per event up to a maximum \$3,000.																						
Failure to report and remit user fee payments for at least 30 days as directed in Commission Resolutions, Decisions, Orders, and the Public Utilities Code	Subject to Public Utilities Code Section 405. The Commission may assess a penalty not to exceed 25% of user fees due on delinquent payments.																						
Late filed contracts	<p>Subject to GO 96-B and D.91-07-010. The penalty amounts are as follows:</p> <table> <tr> <th>Lateness of Filing in Months</th><th>Penalty Amount to Be Applied to Total Contract Revenues</th></tr> <tr> <td>1 or fraction</td><td>1/4/%</td></tr> <tr> <td>2</td><td>1/2/%</td></tr> <tr> <td>3</td><td>1%</td></tr> <tr> <td>4</td><td>4%</td></tr> <tr> <td>5</td><td>5%</td></tr> <tr> <td>6</td><td>6%</td></tr> <tr> <td>7</td><td>7%</td></tr> <tr> <td>8</td><td>8%</td></tr> <tr> <td>9</td><td>9%</td></tr> <tr> <td>10 or more</td><td>10%</td></tr> </table>	Lateness of Filing in Months	Penalty Amount to Be Applied to Total Contract Revenues	1 or fraction	1/4/%	2	1/2/%	3	1%	4	4%	5	5%	6	6%	7	7%	8	8%	9	9%	10 or more	10%
Lateness of Filing in Months	Penalty Amount to Be Applied to Total Contract Revenues																						
1 or fraction	1/4/%																						
2	1/2/%																						
3	1%																						
4	4%																						
5	5%																						
6	6%																						
7	7%																						
8	8%																						
9	9%																						
10 or more	10%																						

(End of Appendix A)

⁸ Amount is in addition to interest equal to an annual rate of 10% assessed on surcharge funds reported and/or remitted after the due date.