STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 13, 2004

Agenda ID #3569
Alternate to Agenda #2513

TO: PARTIES OF RECORD IN RULEMAKING 00-02-004

RE: NOTICE OF AVAILABILITY: INTERIM DECISION ISSUING GENERAL ORDER ____, RULES GOVERNING TELECOMMUNICATIONS CONSUMER PROTECTION IN RULEMAKING 00-02-004

Consistent with Rule 2.3(c) of the Commission's Rules of Practice and Procedure, I am issuing this Notice of Availability of the above-referenced alternate draft decision of Commissioner Susan P. Kennedy to the draft decision previously mailed to you by Commissioner Karl Wood. It is on the Commission's agenda at the regular meeting of May 27, 2004. The Commission may act then, or it may postpone action until later.

An Internet link to this document was sent via e-mail to all the parties on the service list who provided an e-mail address to the Commission. An electronic copy of this document can be viewed and downloaded at the Commission's Website (www.cpuc.ca.gov). A hard copy of this document can be obtained by contacting the Commission's Central Files Office [(415) 703-2045].

When the Commission acts on the draft 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 act does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's Rules of Practice and Procedure. These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.7(b), comments and replies to comments are governed by Rules 77.2 through 77.5.

All opening comments are due not later than May 20, 2004 and replies to comments are due not later than May 25, 2004.

Comments and replies to comments must be served separately on the Assigned Commissioner and assigned Administrative Law Judge (ALJ), and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service. In addition, parties should send an electronic copy of their comments and replies to the assigned Administrative Law Judge by e-mail to: jcm@cpuc.ca.gov. Finally, please send electronic service to Commissioner Susan P. Kennedy at sk1@cpuc.ca.gov, Karl Bemesederfer at kjb@cpuc.ca.gov, and Timothy Sullivan at tjs@cpuc.ca.gov. Electronic service will assist in final revisions to the alternate draft decision.

_/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER KENNEDY**
(Mailed 5/13/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Protection Rules Applicable to All Telecommunications Utilities	Rulemaking 00-02-004 (Filed February 3, 2000)

INTERIM DECISION ISSUING GENERAL ORDER ____, MARKET RULES TO EMPOWER TELECOMMNICATIONS CONSUMERS AND TO PREVENT FRAUD

I. SUMMARY

By this decision the Commission adopts General Order No. ___ (G.O.___), Market Rules to Empower Consumers and to Prevent Fraud, applicable to all Commission-regulated telecommunications utilities.

Consumer protection is the underlying goal of all regulatory functions of the California Public Utilities Commission. That role has changed dramatically with increased competition and advances in technology. The telecommunications industry has become more and more competitive, and intermodal competition increasingly blurs the line between regulated and deregulated providers and services. It is imperative that the Commission, whose regulatory tools were designed to regulate monopolies, periodically calibrate its rules to adjust to this new environment rather than to force competitors to adhere to ill-fitting rules.

The 1996 Telecommunications Act established a national telecommunications policy framework, setting us on a path toward full competition and deregulation. A central premise of that framework is recognition that competitive markets provide the most effective consumer protection: the power of choice. As competition takes hold and market forces mature, the regulatory regime must recognize and accede to the role competitive forces play in empowering consumer to protect themselves. If the regulatory regime fails to adapt, it becomes an impediment to both the consumer's benefit and the societal benefits of economic growth, innovation, and the efficiencies that competition was intended to produce.

The single most important tool a consumer can have to protect him- or herself is the power to say "No." Indeed, the objective of most consumer protection rules at both the federal and state level is to ensure that consumers have the information they need to exercise that fundamental choice. The rules adopted herein are designed to clarify the obligations of telecommunications carriers to provide consumers with information sufficient to make informed decisions, and to strengthen the regulations that empower consumers to protect themselves.

Consistent with the legislative mandate of Public Utilities Code §321.1, we also assessed the economic impact of each new provision considered for inclusion in these rules. In each case we sought to ensure that the rules were narrowly drafted to address a specific problem or weakness; to avoid unnecessary conflicts with existing statutes, federal regulations or relevant case law; and to provide for implementation in the least disruptive and most cost-effective way possible. In subjecting each provision to this test we attempted to ensure that the benefit of these rules to customers, separately and combined, outweighs the cost of implementing the rules. To make this judgment, we looked in the first instance at the incremental costs of regulation to the company. Such costs are normally passed on to customers in the form of higher prices. In the absence of compelling evidence that they will be absorbed by the company, they are a good measure of the burden the rules place on customers.

We also subjected each provision to a process we call the "Cricket" test.[1] It is easy for regulators to focus on the large carriers when designing rules. For the most part, the billing practices, customer service operations and back office functions are similar enough for large carriers in like industries that it is possible to draft a rule change in such a way that substantially mitigates implementation problems. But for a small provider, particularly a new entrant or one attempting a different business model, the change can be devastating, and even put them out of business.

For example, Cricket offers "low cost, low stress" cellular service with no term contract or early termination fees. They offer flat rate, all-you-can-eat plans on a month to month basis where their customers are free to switch providers at any time. This company relies heavily on third party and indirect retailers to market its product, and their handsets can be purchased by consumers at stores such as Costco, Staples, Office Depot, 7-Eleven and various grocery chains. This business model makes it imperative that a company such as this keep its overhead low and service quality high. A regulation as seemingly benign as disclosure rules requiring certain information to be delivered "at the point of sale," if not

[1] Cricket Communications is a wholly-owned subsidiary of Leap Wireless International, Inc. and serves the California communities of Modesto, Merced and Visalia.

drafted with enough flexibility, could force them to make costly changes to their entire operations or put them out of business. And, for companies that do not require term contracts, where customers can walk away at any time, imposing detailed and time consuming disclosure rules on a carrier would provide little or no benefit to consumers. Onerous, inflexible rules could also become a barrier to entry for other small or rural carriers, stifling competition.

Thus, with each provision of these rules, we tested their applicability to, and impact on, both the largest and the smallest telecommunications service providers.

Finally, it is important to recognize that attempting to apply regulations to the entire telecommunications industry is difficult at best, and disastrous to competition and innovation at worst. There are virtually no similarities between the wireline industry and the wireless industry in terms of technology, costs, business model, market dynamics, customer interaction, billing systems, contracts or regulatory structure. In fact, the only element of similarity is that they both provide services that allow the human voice to be transmitted between devices called by the same name – telephones. New technologies such as Voice over Internet Protocol (VoIP) are reshaping the entire telecommunications landscape as these rules are being drafted, making it even more difficult to apply any regulation on a one-size-fits-all basis.

There is little in the record to justify increasing regulation at all on the wireless industry, which is by far the most competitive and vibrant segment of the telecommunications industry today. Even if it were justified, as carriers from across the spectrum have commented, most of the regulatory tools we have were designed for monopoly wireline carriers and are simply inapplicable.

For example, the vast majority of our current regulatory framework focuses on the provision of "basic service" with an entire regime of additional requirements and regulations designed to protect consumers from being cut off from their only telephone service. The definition of "basic service" is based on local, wireline calling only, and has not changed in nearly 100 years. However, a significant percentage of consumers have already replaced their "basic" wireline service with wireless phones, and many carriers no longer differentiate between local and long distance calling. As voice services become available over other platforms, such as DSL, cable and electric power lines, and are bundled with other services such as video and high-speed Internet access, the definition of "basic service" and the regulations that apply to it will become meaningless. Having said that, changing the definition of "basic service" would be a monumental undertaking affecting the entire industry, and we do not attempt to change it in this decision.

Any attempt to treat disparate industries under the same broad brush would thwart competition, strangle innovation and harm California's economy without providing commensurate benefits. Therefore, in this decision, we carefully differentiate between which rules apply to wireline services and which rules apply to wireless services.

These rules focus on three main areas of concern: Carrier Disclosure, Service Terms and Conditions, and Billing.

II. BACKGROUND

The rulemaking order that initiated this proceeding relied upon a Commission staff report noting an increase in recorded complaints by customers against Commercial Mobile Radio Service (CMRS) carriers.[2] The report indicated that the Commission received in 1998, 2,404 and in 1999, 3,356 informal complaints regarding the 158 registered CMRS providers operating in California. The informal complaints were recorded during a time when carriers of all classes were engaging in aggressive marketing tactics resulting from increased competition both in the wireless industry and the newly competitive local wireline service. During this same period, carriers were also in the process of deploying new technologies and services such as ISDN and digital wireless. The staff reviewed a total of 81 of those 5,760 complaints. Based on these 81 complaints, the staff report recommended a set of rules for the entire telecommunications industry, with specific changes to industry tariffing, marketing and billing practices, changes to the limitation on liability of carriers, and establishment of a "Consumer Bill of Rights." Respondent utilities and interested parties were invited to submit comments and replies on the proposed rules in the staff report, and a full spectrum of stakeholders did so.

In January 2001, Assigned Commissioner Carl Wood issued two rulings seeking comments on two additional sets of proposed rules falling within the scope of the rulemaking proceeding. The first set was Proposed Rules on the Inclusion of Non-Communications-Related Charges

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[2] *Consumer Protections for a Competitive Telecommunications Industry*, Telecommunications Division Staff Report and Recommendations, February 3, 2000

on Telephone Bills. On September 29, 2000, Governor Gray Davis signed Assembly Bill (AB) 994 extending a ban on non-communications-related charges in telephone bills to July 1, 2001. AB 994 also added §2890.1 to the Public Utilities Code, explicitly directing the Commission to adopt by that date any additional rules it determined necessary to implement the billing safeguards set forth in § 2890. AB 994, §§ 1(c) and 1(d), cites this rulemaking proceeding as a proper vehicle for the Commission to do so. After considering some 31 sets of comments and replies, the Commission issued Decision (D.) 01-07-030 adopting a set of interim rules governing the inclusion of non-communications-related charges on telephone bills. We stated that those rules, possibly with some modifications, would be incorporated into and superseded by the new general order we adopt in this decision.

In the second January ruling concerning the second set of additional proposed rules, the Assigned Commissioner sent out for comments his second set of Proposed Rules for Slamming, prepared in response to the FCC's decision in CC Docket No. 94-129. The FCC rules gave each state the option to act as the adjudicator of slamming complaints, both interstate and intrastate. Under the FCC's order, each state that opts to take on that responsibility must notify the FCC of the procedures it will use to adjudicate individual slamming complaints. Twenty-four sets of comments and replies were received on those proposed rules.

On June 6, 2002, Assigned Commissioner Wood issued a draft decision and a proposed general order, "Rules Governing

Telecommunications Consumer Protection," for public comment. Thirty-two sets of comments were filed, followed by four days of workshops. Commissioner Wood suspended the proceeding schedule to allow carrier and consumer representatives to convene an informal working group to consider rule changes that both could agree to. The working group submitted its report with agreement on some issues and disagreement on others. The Assigned Commissioner sought two additional rounds of comments, following which a draft decision and general order were mailed for public comment on July 24, 2003 as required by Public Utilities Code §311(g)(1).

On November 17, 2003 Governor Arnold Schwarzenegger issued Executive Order S-2-03, directing all State agencies and departments to suspend action on and withdraw all proposed regulations not yet enacted for a period of 180 days in order to reassess the regulatory and economic impact on California businesses. On December 22, 2003, Governor Schwarzenegger sent a letter to the Commission requesting that the Commission voluntarily abide by this Order, seeking voluntary compliance in recognition of the Commission's independent status. In response to the Governor's request, the Assigned Commissioner delayed Commission action on this decision, and issued for public comment a Revised Draft Interim Decision on March 2, 2004. In the Revised Draft Decision, the Notice of Availability invited parties to include comments on economic effects of the proposed new general order[3] requiring that two

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[3] Revised Draft Interim Decision Notice of Availability, pg. 1 (March 2, 2000)

sets of comments be filed within two weeks from release of the 231 page order – one set addressing the proposed rules, and another set addressing the economic impacts.

Parties representing carriers and many California businesses uniformly indicated that the restrictive procedural schedule was unreasonable and impossible to effectively comply with, and that the short comment cycle did not provide sufficient time to permit meaningful consideration of the economic impacts of the proposed rules.[4] Carriers and other parties also objected to the level of consideration that the comments on economic impacts would receive, as outlined in the Notice of Availability, which states:

> *Because this is a quasi-legislative proceeding, new information will not be evaluated as to its factual accuracy but may be considered by the Commission, in its discretion, as it makes policy determinations.*[5]

Carriers argued that this treatment of the comments on economic impacts without testing the factual accuracy of the information before relying on the data to reach policy determinations would not be reasoned decision-making.

The Assigned Commissioner held no evidentiary hearings in this proceeding and did not accept any formal evidentiary submissions. As a result, the record consists of customer complaint data from 1998-1999,

[4] See *e.g* "Objections and Opening Comments of SBC California (U 1001 C) on Economic Impacts of Proposed Consumer Protection Rules", pg. 2 (March 23, 2004).

[5] Notice of Availability, pg. 2 (March 2, 2004).

statements made at public participation hearings, and comments filed by various parties.

The Wireless Carriers and the Wireline Group sought extensions in the proposed schedule by formal motion. The assigned Administrative Law Judge (ALJ) granted a one-week extension, denying the motion in all other respects without comment on the majority of those motions.

The Assigned Commissioner made additional changes in response to the parties' comments and posted a further revised draft on the Commission's website on March 24, 2004

III. STATUTORY FRAMEWORK FOR MARKET RULES

A. Statutory Overview

California consumers currently benefit from a comprehensive regime of existing state and federal statutes, regulations, rules, tariffs and decisions that are designed to protect consumers of telecommunication services and ensure they have the information they need to make informed decisions. These existing statutes and regulations address a wide array of issues, ranging from deceptive advertising to the resolution of billing disputes to appropriate provider employee identification.

Although not intended to be an exhaustive listing, some of the relevant statutes are set out in Appendix B to this Alternate Draft Decision.

B. Market Rules Not Rights

Consumer Empowerment in Place of Litigation

a. Safe Harbor for Compliance with Rules

These rules are designed to empower consumers to make informed decisions rather than to create a new legal basis for suing utilities, either before the Commission or in a civil court. Public Utilities Code §1759(a) authorizes public law enforcement agencies such as the Attorney General's office and local prosecuting attorneys to bring concurrent enforcement actions against utilities that are the subjects of Commission investigations, so long as those actions do not "enjoin, restrain or interfere with" the authority of the Commission.[6] The authority of public law enforcement agencies to pursue concurrent actions under this standard was recently upheld by the California Supreme Court in People ex rel Orloff v. Pacific Bell, 34 Cal 4th 1132 (2003). The Court reasoned that the Commission and the public attorneys would in most cases find it possible to coordinate their actions in such a fashion as to ensure that no remedy sought by the public attorneys would undermine or interfere with administrative remedies imposed by the Commission.[7] However, the Supreme Court observed, and we agree, that concurrent private litigation presented "more of a risk of a lack of coordination with PUC officials, and thus greater danger that the civil action might undermine an ongoing regulatory program or policy of the PUC."[8] In order to assert and protect the Commission's primary jurisdiction as it

[6] 1759(a) No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

[7] "[I]n situations encompassed by this statute and by analogous provisions, the PUC and public prosecutors are expected to coordinate their efforts to accomplish the most efficient and effective means of remedying any misconduct of the public utility." *Orloff, op. cit.* p. 1151.

[8] *Ibid.* FN 12, p. 1154.

relates to enforcement of these rules, and to provide a stable and predictable regulatory environment, we state clearly that these rules are not intended to form the basis for a private right of action and that such concurrent private suits are barred. However, these rules are not intended to, and do not in any way limit any other legal remedies that individuals may possess for conduct not addressed by these rules.

b. Preventing Fraud and Abuse

A primary purpose of any regulatory agency is to prevent and remedy fraud and abuse. In these rules we focus on disclosure with respect to items that have historically been the subject of abuse, such as pay-per-call features, third party charges and lack of blocking options for 900 and 976 numbers. We also focus on providing customers with additional leverage in proving fraud, such as a rebuttable presumption that charges a customer claims are unauthorized are, in fact, unauthorized. Some rules contain mandatory elements that must be present before a carrier can lawfully collect from a customer, or before a service provider or a service contract can be changed or terminated. The object of the anti-fraud provisions in these rules is to ensure that customers pay only for services they actually ordered or used and deal only with service providers they actually authorized.

IV. TELECOMMUNICATIONS MARKET RULES

Rule 1 Carrier Disclosure

Rules 1(a) and 1(b) Disclosures Required of All Carriers

Telecommunications carriers are required by law to provide consumers with sufficient and non-misleading information upon which to make informed decisions among telecommunications services and providers. In fact, there is a comprehensive statutory regime and voluminous body of law dedicated to enforcement of these obligations in the Public Utilities Code, the Business and Professions Code and the Code of Federal Regulations. [9] This decision seeks to clarify and strengthen Commission regulations that empower consumers to make informed decisions in this dynamic and complex market.

The first step is to ask "What problem are we trying to solve?" There is little evidence in the record that identifies a specific problem with current disclosure rules, and no evidence that further disclosure rules would produce benefits to consumers commensurate with the price increases that new rules would trigger. Proponents of increased disclosure requirements base their claims that additional rules are needed on customer complaint data. The primary customer complaint data cited in the record are five and six years old, and relate only to wireless carriers. Their usefulness today is questionable at best. More recent data furnished to the Commission show dramatic decreases in the level of wireless complaints. In fact, while the number of wireless subscribers in California increased 14% from 2002 to 2003, the rate of complaints *decreased* by 47%.[10]

Nevertheless, information in the record supports the idea that a persistent type of customer complaint is confusion about and between the various service offerings of telecommunications providers, their billing practices and early termination fees. However, it is unclear from the record whether the additional regulations proposed by parties to this

[9] Public Utilities Code § 2896(a), Business and Professions Code §§ 17200 & 17500, Joint FCC / FTC Policy Statement, FCC 00-72 Mar. 1, 2000.

[10] Opening Comments of T-Mobile, Exhibit B, March 23, 2004; See also CAB Complaint Data for 2003 and Second Competition Report at pp 26 and 48.

proceeding would reduce customer confusion or make cellular phone bills easier to understand.

Several parties, including UCAN, ORA and the Attorney General, would mandate a detailed, one-size-fits-all set of instructions for disclosure, marketing, billing and contracts on all telecommunications carriers, regardless of technology, business model or differences in the degree of competition within a specific industry such as wireless. This elaborate disclosure approach applies the same prescriptive disclosure requirements to every conceivable interaction between a carrier and a customer, from television and radio advertising, web pages and telemarketing, to printed brochures, newspaper ads and billboard signs on buses.

Such elaborate disclosure mandates would have the opposite impact of their intended benefit by making the interaction with the customer more complicated and confusing, not less so. Additionally, the added time and ad space for reciting lengthy, specific disclosures and the attendant legal disclaimers that would surely accompany them, would just as likely exacerbate customer frustration while providing no additional protections or benefits.

Overly prescriptive rules that restate existing laws using expanded or inconsistent language undermine the enormous body of existing law governing contracts, marketing and advertising. Terms such as “solicitation,” “misleading,” and “clear and conspicuous” have been developed through statutes and decades of case law at both the federal and state level. Many of these terms form the bedrock of contract law and commercial speech, and are used, relied upon, and universally understood by contracting parties, other regulatory agencies, and the judicial courts.

To expand or change those definitions by regulatory fiat, with the CPUC enforcing its own set of standards and definitions different from those used in every other context and venue would create regulatory chaos, to the extreme detriment of California industries and consumers. In addition, to the extent the rules adopt definitions that expand the scope of existing statutes, the Commission simply lacks the authority to adopt them.[11]

Most carriers urge the Commission to impose no additional disclosure requirements, arguing that competition is forcing carriers to respond to customer needs far more effectively than additional regulations could, and citing significant reductions in consumer complaints in recent years to support these claims.[12] We agree.

However, while competition provides clear benefits to consumers, it also presents a unique challenge to this Commission. The changing telecommunications market makes it difficult to formulate uniform rules applicable to all telecommunications carriers. Part of this Commission's task is to adjudicate consumer complaints effectively. Uniform rules that don't fit the new market don't assist the Commission in this effort.

In this decision, we seek to

- strengthen areas of weakness in existing disclosure requirements

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[11] *Traverso v. Dept. of Transp.*, 46 Cal.App.4th 1197, 1206-07 (1996) (agency interpretation of statute may not enlarge its terms); *Public Utilities Comm'n v. Energy Resources Conservation and Development Comm'n*, 150 Cal.App.3d 437, 443-444 (1984) (agency may not alter or add words to statute to accomplish purpose different from that which is apparent on face of statute).

[12] See FCC CAB data cited in FN 9, above.

- provide a foundation for the future with clear and prioritized disclosure requirements designed not just for today's dynamic market, but for tomorrow's as well, and
- harmonize previous disclosure rules with this new regime.

The rules also recognize that the Internet has become a primary consumer information source and is able to provide the most convenient access to detailed information regarding service offerings. While mindful of the fact that many in the state are without access to the Internet, we seek to expand its use in place of more cumbersome disclosure requirements. Both tariffed and non-tariffed service offerings change frequently and it is both costly and inefficient to constantly modify printed materials to reflect those changes. By contrast, web published information can be readily modified as frequently as necessary, and consumers who make use of the Internet can be assured of having current information on hand when making choices among services and providers.

Rule 1(c) Responses to Customer Inquiries

This rule sets the minimum responses that service providers must give to customer inquiries regarding charges or other elements of a bill. Consistent with the consumer empowerment basis of these rules, this rule aims to ensure that customers receive the information they need from carriers regarding services for which they are being charged, whether that information is in the possession of the service provider or a third party.

Rule 1(d) Obligations of Basic Service Providers

The obligations of basic service providers are substantially greater than those of other providers because, even though the landscape is changing rapidly, basic local calling using the legacy wireline network is still considered, both legally and functionally, to be the "lifeline" that connects customers to vital services. Accordingly, this rule mandates a significant level of disclosure to be delivered to basic service customers by their providers, specifically including information about lifeline rates, and accessibility services for foreign language speakers and deaf and disabled customers. The rules incorporate the requirements of Public Utilities Code §§ 2889.6(a)[13] and 2894.10 (b); [14] and mandate the inclusion of local prefix information in telephone directories, in response to customer comments

[13] §2889.6 The Commission shall, by rule or order, require all local exchange carriers to…

(a) Include in their telephone directory information concerning emergency situations which may affect the telephone network. The information shall include the procedures which the corporation will follow during emergencies, how telephone subscribers can best use the telephone network in an emergency situation, and the emergency services available by dialing "911".

[14] §2894.10(b) Every local exchange telephone corporation whall provide its residential customers with information regarding state and federal laws that protect the privacy rights of residential telephone subscribers with respect to telephone solicitations by providing on an annual basis one or more of the following items of information in the billing statement of each residential customer and in conspicuous notices in the consumer information pages of the local telephones directories distributed by that telephone corporation:

(1) A copy of a publication prepared by the Department of Consumer Affairs, the Public Utilities Commission, the Federal Trade Commission, or any other federal or state governmental agency that generally describes telephone subscribers' privacy rights, under state and federal laws, with respect to telephone solicitations.

and in line with our decision D.02-08-069, and the names under which the local exchange carrier operates in California. These types of information are already provided in the telephone books issued by the state's two largest ILECs and we see no reason that CLEC customers should be placed at a comparative disadvantage.

Rule 1(e) Required Information in Service Agreements

These rules are designed to ensure that customers receive complete information at the time of signing a service agreement and that all necessary information is supplied simultaneously. The exceptions provided are narrowly tailored to ensure that any material incorporated by reference does not alter the basic terms and conditions of the service agreement. Carriers and consumer representatives agreed that incorporation by reference to tariffs should be permitted, provided carriers provide ready access to the tariff actions referenced. These rules reflect that agreement.

Rule 2: Service Initiation and Changes

Rule 2(a) Rules for all Carriers

This rule incorporates verbatim the requirements of PU Code §2896(a), the general mandate to carriers to provide adequate information on the basis of which customers may make informed choices. We do not view incorporation of the statute into these rules as either enlarging or narrowing the statutory obligations of telephone service providers as they existed prior to enactment of these rules. Nor do we depart from the current practice of setting the standard that all carriers must meet with the expectation that individual carriers will determine the best method to meet those standards. It is the obligation of this Commission to enforce these standards, and the Commission retains all the authority it needs to do so, in conjunction with other law enforcement agencies as appropriate. By including the language of the statute in these rules the Commission exercises its prerogative under PUC § 2897 to clarify the application of these policies and supplement them as needed consistent with other provisions, orders, rules and applicable tariffs.

In these rules the Commission makes clear that the obligations of carriers to provide adequate information extends to potential, as well as existing, customers.

In addition, the Commission specifically directs that wireline carriers provide information regarding the least expensive service plans that are responsive to customer inquiries. In the case of wireless service providers, we require disclosure of information regarding the availability and cost of pay-as-you-go service plans, or other service plans that do not require entering into a term contract.

Rule 2(b) Obligations of Basic Service Providers

This rule incorporates certain existing practices and statutory requirements including the requirement of PU Code §2889.4 that local exchange carriers inform new residential customers of pay per use features during the order process. The rule extends this protection to all new customers, residential and non-residential alike, in recognition of the fact that small businesses wireless customers are as likely as residential customers to make use of pay-per-use features.

Rule 2(c) Plan Disclosure by Non-Tariffed Service Providers

Among the most significant concerns raised by several parties about wireless service is that customers are often locked into long-term contracts with no escape unless they pay an early termination fee. This rule obligates wireless carriers to advise the customer of the availability and cost of service plans that do not require a long-term contract, if the carrier offers such plans.

Rule 2(d) Order Confirmations for Tariffed Services

We establish a simple uniform rule that orders for tariffed services must be confirmed within seven days of acceptance. We do not dictate the form or content of the order confirmation because there is little information in the record to suggest that existing order confirmation practices are inadequate or so varied as to require detailed regulation. Additional prescriptive rules regulating the form and content add materially to carrier cost without adding significantly, if at all, to consumer benefit.

Rule 2(e) Order Confirmations for Non-Tariffed Services

Non-tariffed services, especially wireless services, are delivered in a different manner from tariffed services. A typical wireless service initiation includes the purchase of a wireless device either through a carrier-owned outlet, a carrier agent or a retail store that sells consumer electronics and other goods in addition to wireless devices. The customer typically receives a variety of written materials at the point of purchase that may include a written contract, a summary of the wireless service plan, and general operating instructions for the device. This rule recognizes that the contract is the core document and that the customer is entitled to a copy of the contract at the time of purchase, or shortly thereafter, to allow sufficient time for the customer to review the terms in detail before the expiration of any trial period. The written contract, in conjunction with the wireless trial period mandated in the following Rule 2(e), provides the customer with the information required to determine if the service for which he or she has contracted will be satisfactory.

Non-profit interveners and the Attorney General urged us to require additional detailed disclosures in required formats with mandated type sizes and highlighted provisions (although which terms in the contract would need to be highlighted was left ambiguous). While an argument may be made for such a prescriptive approach in the absence of a trial period, the opportunity to take the contract home, try out the phone for a reasonable period of time, and return it within that period without incurring a penalty, other than paying for actual time used, eliminates the need for prescriptive disclosures.

Rule 2(f) Wireless Trial Period

The record established that the wireless industry, with some notable exceptions,[15] operates on a business model that involves subsidizing the cost of the handset and amortizing that subsidy over time with a term contract. It is important to note that competitive forces are motivating some carriers to promote service plans that do not require term contracts. Other carriers are differentiating themselves in the market by offering “cheap,” “no-frills” phones and services for customers more concerned with affordability than more complex features As handsets have become more complex and multi-functional, the level of subsidy and the

[15] Service providers such as Cricket Communications and Metro PCS sell handsets to customers at or near their full retail price, while permitting unlimited calling from a home calling area for a flat monthly fee. Some plans include customer rebates after some months of service. A rebate effectively functions as a handset subsidy, but that subsidy is earned by the customer’s usage rather than being provided as an incentive to sign up.

average term of the associated contract have both increased. Information in the record established that the average new subscriber receives a subsidy of up to $150 in the form of a discounted price for the handset and the typical service contract is now two years. To ensure recovery of the initial subsidy, many carriers have adopted an early termination fee (ETF). (If a subscriber terminates the contract and returns the phone, the carrier cannot legally resell it except as a used phone.)

While the rationale for the ETF is thus quite understandable, when it is coupled with a contract that does not permit the customer to try out the phone to determine if it works under the customer's real world conditions, imposition of the ETF confronts the customer with an unreasonable choice: either take the phone without knowing if it works well enough to meet your needs or run the risk of paying a substantial ETF. It is both the company's choice and to the consumer's benefit to provide subsidies as inducements to customers; but we believe the company should bear the risk if the phone does not work to the customer's satisfaction. Accordingly, we adopt a rule that requires at least a 14-day trial period during which the company is at risk for loss of the subsidy (as measured by the ETF) should the customer return the phone.

It is important to note that the wireless industry on a national basis has voluntarily adopted a 14-day return policy as part of the CTIA Wireless Consumer Code[16]. This is a positive development that is

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[16] "CTIA Wireless Consumer Code:

4. Allow a Trial Period for New Service

When a customer initiates service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the customer cancels beneficial to consumers resulting from both consumers exercising their influence in the marketplace, and the carriers' desire to avoid more prescriptive regulations. These actions should be recognized and encouraged by regulators and policymakers. We adopt this rule, consistent with this national voluntary policy, to ensure that all carriers in California, including new market entrants, adhere to this minimum standard.

We rejected a longer rescission period (30 days) for three reasons. First, there is little evidence to suggest that a longer rescission period provides any additional benefit to customers that outweighs the additional cost to carriers. There is little information that a customer will obtain in 30 days that he cannot reasonably obtain in 14 days. It is not unreasonable to expect that if a customer voluntarily signs a contract for services, he bears some responsibility for examining the terms of the contract and testing the product within the trial period.

Second, a 14-day trial period is consistent with or longer than contract rescission periods provided in other industries for products or services of significantly greater value than a cell phone. Automobiles, home equity loans, home appliances and consumer electronics are just a few examples of large purchases that often involve long-term financial contracts, some of which have no rescission period. There is no evidence in the record to support a longer rescission period for wireless service contracts.

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service within this period, provided that the customer complies with applicable return and/or exchange policies. Other charges, including airtime usage, may still apply."

Third, the record indicates that longer rescission periods add significant costs to carriers. These additional costs will force carriers to increase the price of handsets at the point of sale, or could make it more difficult for small carriers to enter the market if they do not have the economies of scale to mitigate this additional risk in recovery of their up front costs. Again, the benefit to consumers simply does not outweigh the potential cost of this policy.

Finally, in addition to a growing number of carriers offering service without term contracts, some carriers are also voluntarily offering 30-day trial periods and are touting that customer-friendly policy as a means of differentiating themselves from their competitors. It is unclear at this point whether customers care more about the rescission period or lower upfront purchase costs. If the longer trial period is important to consumers, other carriers will follow. There is no compelling reason for regulators to interfere with competitive forces beyond the basic requirement of a reasonable minimum trial period.

Rule 2(g) Service Cancellation

This rule protects a customer who has cancelled service from a carrier from being reconnected to that carrier's service without a new, independent authorization. "Independent authorization" means that the carrier cannot resume service based on a provision in the cancelled contract, even one that purports to allow such service resumption without affirmative customer action. The rule derives from our anti-slamming rules for wireline carriers. However, technical advances will shortly make it possible to port wireless devices from carrier to carrier, as telephone numbers are now ported, at which point wireless slamming will also become possible. Since fraud prevention is one of the two basic purposes of these rules, we are acting now to ensure that the wireless market does not replicate the experience of the wireline market.

Rule 2(h) Credit Denial

This rule tracks California Civil Code §1787.2 that require a creditor to inform a credit applicant within 30 days of the reasons for credit denial.[17] Only if an applicant is given an explanation of the reasons for a credit denial is he or she able to challenge errors in credit files or other mistakes that may have led to the unavailability of service.

Rule 2(i) Disputed Charges

When a customer believes that a charge appearing on a bill is unauthorized, he or she typically informs the carrier and more often than not the carrier responds by removing the charge. However, that does not always happen, and the customer, who is dependent upon the carrier for information about an account, is usually at a disadvantage in proving that a charge was unauthorized. Weighing the competing interests of customers in not being forced to pay unauthorized charges and the company in not being forced to forego recovering legitimate charges, we come down on the side of the customers. If a customer disputes a charge, this rule assumes the charge is unauthorized unless the company proves otherwise. The rule also sets out three means by which the company can

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[17] California Civil Code §1787.2

(a) Within 30 days or at a later reasonable time specified in federal law or regulations, after receipt of a completed written application for credit, a creditor shall notify the applicant of its action on the application.

(b) Each applicant denied credit shall be entitled to a statement of the reasons for such action from the creditor.

establish the legitimacy of the charge. Because the company has compiled and is in possession of the records on which both customer and company must rely in determining the validity of a charge, it is both fairer and more cost effective to place the burden of proof on the carrier to demonstrate that a charge was authorized by the customer.

Rule 2(j) Credit for Missed Appointments

This rule requires a carrier's representative to arrive and begin work within a scheduled four-hour appointment window at which the customer must be present. The missed appointment fee is designed both to compensate customers for the value of their time and motivate the carriers to make their scheduled appointments.

Rule 3: Clear and Accurate Bills, Late Billing and Back Billing

Both company and consumer representatives stressed the importance of clear rules governing the presentation of the various charges that appear on a telephone bill. The Federal Truth-in-Billing Act (47 C.F.R. § 64.240(a)(3)) requires all telecommunications carriers to comply with specific standards for bill presentation with the stated purpose being to prevent fraud and slamming, as well as to provide consumers with the information they need to make informed choices in the market.

Federally imposed rules for this purpose are important because most carriers, large and small, have national billing systems that do not adapt easily to state-specific requirements. For this reason, the Federal Truth-in-Billing Act specifically indicates that any state requirements and enforcement must be consistent with the Federal Act.[18]

[18] C.F.R. 47 §64.2400(c) "*Preemptive effect of rules*. The requirements contained in this subpart are not intended to preempt the adoption or enforcement of ***consistent*** truth-in-billing requirements by the states." (emphasis added)

The rules adopted herein are therefore consistent with the Federal Act but further clarify that certain types of charges must be clearly distinguished on the bill so as not to be confusing or misleading for consumers.

In general, charges fall into one of three categories:

(a) usage and / or service fees for which the customer has contracted;

(b) taxes and other governmental charges which the carrier is required to pass on to the customer; and

(c) taxes and other governmental charges or "regulatory recovery fees" that the carrier may elect to pass on to the customer.

TURN, UCAN, ORA and the Attorney General were most concerned that phone bills should clearly distinguish between required governmental charges and charges the carrier elects to pass on to customers. Carriers argue that so-called "discretionary" charges were no different from mandatory charges in terms of their obligation to remit the funds to government entities. The only thing "discretionary" is whether or not the company explicitly recovers the costs from consumers or recovers them in rates. The carriers further argue that a government charge is a government charge, and if the government specifically permits the carrier to recover the cost from consumers it is not unreasonable for the company to highlight the source of the charge on customers' bills, just like any other government-mandated charge. Further, they argue that they should not be forced to make it appear as if the carrier had a choice in collecting the charge in the first place by not allowing it to be listed among other mandated fees and taxes. We agree. Government should take responsibility for the costs of regulatory mandates and openly defend the consumer or societal benefit of those mandates.

However we find odious the practice of some carriers in identifying miscellaneous, undisclosed costs for compliance with statutes and regulations as “regulatory recovery fees” and making it appear as if these are mandated charges that are remitted to government entities. While carriers are free to recover their legitimate costs from customers in any manner consistent with the Federal Act and applicable tariff requirements, they should not be free to disguise their cost of regulatory compliance as “taxes.”

These rules require carriers to clearly distinguish between taxes, fees and other charges that are collected by the carrier and remitted to federal, state or local governments from any other charges or fees collected and retained by the carrier. Additionally, carriers are not permitted to label cost recovery fees or charges as “taxes.”

The rules also prohibit late fees from being applied to a customer account after the carrier has received payment, impose a statute of limitations on back billing of three, four or five months, depending on the nature of the service being billed, and prohibit carriers from charging a higher price for a service than the price in effect on the date the service was actually used.

Rule 4: Slamming

Background

Slamming, the unauthorized change of a telephone customer's preferred carrier, has been a problem for consumers ever since it became possible for telephone customers to choose among competing providers. It has been equally vexing for the state and federal regulators responsible for protecting them. The Commission in 2000 completed a consolidated investigation and rulemaking proceeding[19]into slamming and, after workshops and several rounds of comments, issued D.00-03-020, Final Opinion on Rules Designed to Deter Slamming, Cramming, and Sliding.[20] D.00-03-020 addressed certain limited aspects of slamming including record keeping, letters of agency, third-party verification, and removing the economic incentive for slamming. On the latter topic, our staff had recommended that we require carriers to refund all charges paid by customers who allege that they were slammed. In response, we observed,

> In a recent proceeding, the FCC has adopted a rule similar to that proposed by Staff. On December 17, 1998, the FCC adopted its Second Report and Order and Further Notice of Proposed Rulemaking in its docket, CC No. 94-129, which is addressing unauthorized changes to consumers' long distance carriers. The FCC decision addresses many of the issues that have been presented in this proceeding in addition to removing the economic incentive for slamming.
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> On May 18, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision partially staying the FCC slamming rules. Those rules remain pending before the court.

[19] R.97-08-001, Rulemaking on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer; and I.97-08-002, Investigation on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer.

[20] Later modified by D.00-11-015. [70] 47 CFR 64.1100 *et seq.*

On June 27, 2000 the court lifted its partial stay, and the FCC subsequently issued its amended rules for handling preferred carrier changes, including remedies for slamming. We refer here to those rules[21] in their current form as the FCC slamming rules, or simply the federal rules.

In addition to slamming allegations, the federal rules cover carrier change order verification, letters of agency for changing carriers, preferred carrier freezes, and state administration of the unauthorized carrier change rules and remedies. It is this last topic we address here.

The FCC slamming rules give each state the option to act as the adjudicator of slamming complaints, both interstate and intrastate, and California has opted to do so.[22] Under 47 CFR 64.1110, each state which opts to take on that responsibility must notify the FCC of the procedures it will use to adjudicate individual slamming complaints. Our staff prepared an initial set of proposed slamming complaint handling rules in late-2000, and in January 2001, the Assigned Commissioner issued a ruling in this proceeding sending them out for comments and reply comments. After considering the parties' input and making modifications, the Assigned Commissioner included them in his first draft decision mailed June 6, 2002. There followed several additional opportunities for parties to provide input through comments, workshops, and working groups, all as described in the Background section above. The results were reflected in

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[21] 47 CFR 64.1110

[22] On January 4, 2001 the Commission directed the President of the Commission to notify the FCC that it was electing to take primary responsibility for adjudicating slamming complaints registered by California consumers. The President did so by letter to the FCC on January 5, 2001.

the Assigned Commissioner's July 2003 revised draft decision and once again circulated for comments.

The FCC Slamming Rules

The FCC prefers that subscribers who believe they have been slammed go first to the state commissions in states that have elected to handle slamming complaints. However, subscribers also have the option of filing a complaint with the FCC for slamming involving interstate service. The FCC will use the federal rules for complaints coming to them, and state commissions handling slamming complaints may administer the FCC rules using their own procedures. Because the FCC rules are complex, we set forth here only a simplified overview to help understand their major elements.

When a subscriber first reports having been slammed, the alleged unauthorized carrier must remove any unpaid charges for the first 30 days from the bill. If the carrier contests the allegation and loses after the subscriber files a complaint, it must also remit to the authorized carrier 150% of any payments it has received from the subscriber. From that amount, the authorized carrier reimburses the subscriber 50%[23]and retains the remaining 100%. The subscriber may also ask the authorized carrier to recalculate the bill using its own rates and attempt to recover from the alleged slammer on the subscriber's behalf any incremental amount in excess of the 50%. Any unpaid subscriber charges beyond the 30-day absolution period are to be recalculated and paid to the authorized carrier at the authorized carrier's rates.

[23] This 50% is a proxy for the reimbursement the subscriber might have received had his billings been recalculated based on the authorized carrier's rates.

If the carrier decides to contest the allegation, it must still reverse all unpaid charges for the first 30 days and inform the customer of his or her right to file a complaint and the procedures for filing. If the customer fails to file a complaint within 30 days after both the notice has been given and the charges reversed, the carrier may re-bill the customer.

The alleged unauthorized carrier may also decide not to contest the allegation, and instead grant the subscriber what the subscriber would have obtained had he or she filed a complaint and prevailed (*i.e.*, absolution for unpaid charges during the first 30 days, and 50% reimbursement or re-billing at the preferred carrier's rate for the period beyond 30 days and charges the subscriber has already paid). In that case, the subscriber need not file a complaint to be made whole unless he or she is dissatisfied with the outcome.

If the subscriber files a complaint, the agency[24] will notify the allegedly unauthorized carrier and require it to remove all unpaid charges for the first 30 days if it has not already done so. The allegedly unauthorized carrier then has 30 days to provide clear and convincing evidence that the carrier switch was valid and properly authorized. The agency will make a determination based on evidence submitted by the carrier and the subscriber, provided that, if the carrier fails to respond or to furnish proof of verification, it will be presumed to have slammed the subscriber.

The CPUC Slamming Rules

[24] The agency may be either the FCC or the state commission, depending on which is administering the slamming rules.

The Slamming Rules we adopt today are closely modeled on the federal slamming rules, so we will limit this discussion to recapping the comments and describing those elements that do not appear in the FCC slamming rules. The full text of our slamming rules may be found as Rule 4 of new G.O. ___, Appendix A to this order

Our description above of the federal rules applies in most ways as well to our new rules for local exchange carrier slamming allegations, and for intraLATA, interLATA and interstate toll slamming allegations. While the slamming rules proposed in the Assigned Commissioner's June 2002 draft decision paralleled the federal rules in many respects, there were some key differences explained in that earlier draft decision. In response to the comments described in a following section, we have reframed Rule 4, Sections B, D, E, F, and G to be very similar, and in most ways virtually identical, to the wording in the federal rules[25].

A key point for both the federal rules and our rules is that they do not necessarily require subscribers who have been slammed to file a complaint to obtain relief; a subscriber who has not paid for service provided during the first 30 days after the alleged slam occurred is entitled to have the unauthorized carrier remove the charges for that period. Only *after* the carrier has removed the charges *and* notified the subscriber that it will challenge the allegation must the subscriber file an informal complaint with CAB within 30 days to avoid being re-billed. Likewise, our rules (but not the federal rules) provide that carriers who learn of slamming

[25] Sections D, E, F, and G correspond to the federal rules found at CFR Title 47, Sections 64.1100, 64.1140, 64.1150, 64.1160 and 64.1170 respectively.

allegations against them may deter complaints by making mutually-satisfactory arrangements to compensate subscribers and return them to their preferred carriers even if charges have been paid, provided that the alleged unauthorized carrier has first informed the subscriber of the rights afforded under these rules.

When the subscriber is switched back to his or her preferred carrier, both sets of rules require the preferred carrier to re-enroll the subscriber in his or her previous calling plan.

If the alleged unauthorized carrier challenges the allegation and the subscriber then files an informal complaint, the matter will be decided by our Consumer Affairs Branch. If CAB decides against the subscriber, the subscriber may appeal to the Consumer Affairs Manager, and may file a formal complaint at any time.

Lastly, our rules state explicitly that they are in addition to any other remedy available by law. The FCC made a similar statement in its implementing order and included a limited provision to that effect in the text of its rules.[26]

The Parties' Comments

Fourteen groups representing 29 named entities, some of which were in turn associations of many more members, took the opportunity to file comments or replies to comments in response to the first set of draft slamming rules distributed in January 2001. Three contributors represented consumers, one represented small business, and the remaining ten represented carriers of all types. Approximately ten

[26] Sections D, E, F, and G correspond to the federal rules found at CFR Title 47, Sections 64.1100, 64.1140, 64.1150, 64.1160 and 64.1170 respectively.

more sets of comments relating to the proposed slamming rules were received following the Assigned Commissioner's June 2002 draft decision and the August 2002 workshops, and more still commented on the July 2003 draft. Most of the post-draft comments were from the wireline companies, both individually and as part of the wireline working group. All of those comments are grouped here for discussion purposes.

Carrier representatives generally opposed and non-profit interveners and the Attorney General generally supported the Commission's California-specific rules. There were exceptions among both groups with respect to particular provisions.

The most frequent comment from industry representatives was that the Commission may not implement one provision or another in the proposed rules because it is preempted from devising any rules that vary from the federal rules. Further, they argue, even if California has the authority to enact and enforce its own rules differing from the FCC's, it should wait for some period of time to see how the federal rules work first. We disagree on both counts. In establishing the federal rules, the FCC granted states which elect to handle slamming complaints great latitude in fashioning their own procedures: "We note that nothing in this Order prohibits states from taking more stringent enforcement actions against carriers not inconsistent with Section 258 of the [Communications Act of 1934, as amended by the Telecommunications Act of 1996]."[27] In that First Order on Reconsideration, the FCC went on to explain that its determination to entrust primary slamming enforcement to the states was

[27] CC Docket No. 94-129, First Order on Reconsideration, Corrected Version (released May 3, 2000), at footnote 20.

based on its belief that the states are close to the problem, experienced in addressing it, and have demonstrated that past state-devised slamming handling rules have been effective:

We agree with the National Association of Regulatory Utility Commissioners (NARUC) that the states are particularly well equipped to handle complaints because they are close to the consumers and familiar with carrier trends in their region. As NARUC describes, establishing the state commissions as the primary administrators of slamming liability issues will ensure that "consumers have realistic access to the full panoply of relief options available under both state and federal law...." Moreover, state commissions have extensive experience in handling and resolving consumer complaints against carriers, particularly those involving slamming. In fact, the General Accounting Office has reported that all state commissions have procedures in place for handling slamming complaints, and that those procedures have been effective in resolving such complaints.[28]

Thus, the FCC has expressed its confidence in the states' ability to fashion effective slamming rules and permits them to do so, so long as those state rules are not inconsistent with Section 258 of the federal Telecommunications Act. The rules proposed in the Assigned Commissioner's June 2002 draft decision met that test. Nonetheless, the rules we adopt today are much closer to the federal rules than the earlier set, thus satisfying the great bulk of the concerns carriers expressed in their

[28] CC Docket No. 94-129, First Order on Reconsideration, Corrected Version, at Paragraph 25, footnotes omitted.

comments. The federal rules are so complex that everyone involved - the carriers, our staff, and most importantly, slammed subscribers - will find it challenging to understand and apply them. The modest benefit to be gained by our adopting a second, differing set of slamming rules would not justify the additional complexity they would generate.

A number of commenting carriers found the earlier proposed definition for "subscriber" too narrow, and we agree. The Definitions section of the federal rules initially did not define the term, so the June 2002 draft's proposed rules limited it to the person or persons named on the account. The federal rules, and our rules modeled on them, have now changed to define subscriber more broadly to include the person(s) named on the account, any adult the accountholder has authorized to change telecommunications services or to charge services to the account, and any person lawfully authorized to represent the accountholder.

When CLCs first became eligible for certification, we adopted a set of Consumer Protection and Consumer Information Rules for CLCs as Appendix B to D.95-07-054. Rule 11B, Unauthorized Service Termination and Transfer ("Slamming"), from those CLC rules set forth carriers' and subscribers' rights and responsibilities where the alleged slam was of a subscriber's local exchange carrier. That rule applied to slams of and by both LECs and CLCs. The Assigned Commissioner's June 2002 and July 2003 draft decisions proposed to retain that slamming rule for unauthorized changes of subscribers' local exchange carriers because it offered a greater level of protection, but that proposal has been dropped in response to comments. Today's rules thus apply to slamming allegations of all types.

A consumer group suggested we require carriers to report their slamming statistics quarterly as a monitoring tool. In response, a carrier pointed out that the FCC already requires carriers to file biannual slamming reports. We have adopted the carrier's suggestion and adjusted our rule to call instead for copies of those FCC reports.

In addition to these substantive changes, the parties suggested numerous lesser revisions consistent with the federal rules and our proposed rules. We have accepted them where appropriate. Other suggestions, and some of the earlier draft proposals, do not appear in the final version because after consideration we found them unnecessary or inadvisable.

Rule 5: Contract Changes

Predecessors of this rule were the subject of extensive comments and discussions with carriers and consumer representatives. While both groups agree that a unilateral materially adverse change in the terms of a contract should give the customer the right to cancel the contract, there is little agreement on how or whether to write a more specific statement of the events that would trigger that right. TURN, UCAN, ORA and the Attorney General either want triggering events spelled out in detail in the rule or want customers to have a right to cancel if the carrier made any changes at all in the contract.

Carrier representatives argue that, particularly in the wireless area, contracts incorporate many dynamic elements including regulatory changes, changes in federal or state statutes, service area changes, and modifications or additions to intercarrier agreements. These changes, which generally impose no significant or additional burdens on customers, are unavoidable and spelling out each possible change in the contract is impractical. Carriers also pointed out that allowing customers to cancel the contract in the event of any change at all would undermine the entire idea of a term contract. Additionally, they argue that most carrier contracts already contain provisions that ensure carriers will not modify a material term of their subscribers' contract in a manner that is adverse to the subscribers without providing reasonable advance notice of the modification and allowing subscribers a minimum of 14 days to cancel the contract without penalty.

There is no compelling information in the record that indicates carriers are routinely making material changes to customer contracts without giving the customer a reasonable opportunity to cancel the contract without penalty. Therefore there is little justification for making major, costly changes in current practice.

We also note that the wireless carriers have incorporated provisions guaranteeing 14-day notice with an opportunity to cancel in their voluntary Code of Conduct.[29] This ability to cancel is an important tool for consumers and to ensure that all carriers meet this minimum standard, we include in these rules a requirement that carriers shall not modify a subscriber's term contract in a manner that is materially adverse to the subscriber without providing reasonable advance notice of the proposed modification and allowing the subscriber at least 14 days after receipt of the notice to cancel the contract with no early termination fee.

[29] See footnote 16, above.

Rule 6: Service Termination

This rule applies only to providers of basic services and details the steps they must follow in order to terminate service to a customer for non-payment of bills. The rule largely incorporates current practices and requirements set out in existing commission decisions which are here gathered together in a single rule for convenience. We find that there is no case made to change these current rules.

Rule 7: Reserved

Rule 8: Billing Disputes

This rule should be read together with the rebuttable presumption established in Rule 2(h) to provide for resolution of billing disputes. Because charges that the customer asserts are unauthorized are presumed to be unauthorized, the burden of investigation falls on the company that, as we have pointed out in connection with other rules, is in the best position to conduct the investigation. In general, the rule requires carriers to investigate promptly any disputed amounts and withhold any adverse action based on the disputed amounts during the period they are under investigation. The rule prohibits the carrier from disconnecting service in the 7 days following notification of the customer of the results of the investigation and further prohibits carriers from imposing inconvenient choices of law for the resolution of billing disputes. The rule allows time for a good-faith claim of non-responsibility to be investigated and resolved while still preserving the carrier's ability to disconnect service for a failure to pay legitimate charges or in case of fraud.

Rule 9: Reserved

Rule 10: Consumer Affairs Branch Requests for Information

No comment required.

Rule 11: Utility Employee Identification

No comment required.

Rule 12: Emergency 911 Service

Rule 12 is modeled after § 2883, which requires carriers provide residential telephone connections with access to 911 services, even if they have been disconnected for nonpayment. Section 2883 explicitly does not include wireless carriers. Section 2892, on the other hand, requires something very similar of wireless carriers. As drafted by staff, proposed Rule 12 covered both wireline and wireless and did not limit its applicability to residential telephones. About one-half of the initial industry commenters sought to have the rule more closely conformed to § 2883. The June 2002 draft decision did that by restating it in words more similar to those of § 2883, at the same time integrating into it requirements from § 2892. As explained in this order and in the new general order, our intent is that these rules apply where feasible to both residential and small business services. Although this is academic for wireless carriers because, as they have been quick to point out, they do not typically distinguish between residential and business service, it is not academic for wireline. We have acceded to the wireline carriers' request that we not go beyond the residential connection requirement that § 2883 places on them, and have revised Rule 12 accordingly. One other minor change was made to eliminate another possible source of ambiguity: Whether it is true or not that, as one commenter stated, wireless carriers don't provide "access services," we intend wireless carriers to be covered.[30] That term has been changed here to make it clear that the rule applies to carriers who provide end-user access to the public switched telephone network.

Non-profit interveners and the Attorney General generally agreed with Rule 12 as proposed. One suggested that we tighten the rule by eliminating the qualifier, "to the extent permitted by facilities." No carrier, the reasoning went, should have been certificated in the first place if it couldn't provide ubiquitous 911 access. However, the rule as drafted conforms to § 2883 in that respect and represents a very practical standard. We have retained the qualifier.

In response to comments from the wireless industry, we have modified the rule to clarify that a wireless carrier's obligation to provide 911 service is limited by applicable Federal Communications Commission orders.

In the initial comments, a carrier asked that we clarify whether we intend Rule 12 to be consistent with the existing rules for reseller CLCs. We do. In D.95-07-054, Appendix B, our Consumer Protection and Consumer Information Rules for CLCs, Rule 10.C. required continued 911 access to residential services even after disconnection for nonpayment. In D.95-12-056, we further interpreted Section 2883's applicability to CLCs by requiring them to provide 911 service (which we referred to there as "warm line" service) to residential customers

[30] As noted earlier, at least one CMRS carrier has sought carrier of last resort status from the Commission, characterizing its wireless service as "indistinguishable from the basic, required services provided by [California's two largest ILECs]."

disconnected for nonpayment for as long as the CLC maintains an arrangement for resale service to the end user's premises. When the resale arrangement is terminated, the obligation to provide 911 access reverts to the underlying facilities-based carrier. We decline to revisit that earlier-decided issue here.

Rule 13: Sunset Provision

The three-year sunset provision is included in the rules in recognition of the dynamic nature of the telecommunications industry and the rapid evolution of additional competing technologies, such as Voice Over Internet Protocol, as to which the commission has recently opened an investigation. Development of new, internet-based competitors for both wireline and wireless service providers will almost certainly change the regulatory landscape again in ways that will require approaches that are likely to be different from those we adopt in this order. The sunset provision guarantees that we will revisit these issues as those new technologies take root and spread and will have the opportunity to adapt the rules to the changed environment in a timely fashion.

Implementation Schedule

Any rule that would necessitate a computer system change is a complex, multi-step process that requires built-in time for testing before being implemented. Changes to both software and hardware systems may be required, technology platforms must be integrated (for example a change in billing system or disclosures in contracts might also require changes in web-pages and customer service operations) and employees must be trained. Although we attempted to carefully draft these rules to be as minimally disruptive as possible, many carriers will likely need to make changes to their systems, including those mentioned above. There is no compelling reason not to give carriers the time they indicated is necessary to make these changes with minimal interruption to service or confusion for customers. Therefore, Commission-regulated telecommunications carriers of all classes shall bring their operations into full compliance G.O ____ and this interim order not later than 18 months after the date of enactment. Any carrier unable to meet this schedule for compliance shall file an advice letter with the Commission's Telecommunications Division explaining the reasons for its inability to meet the 18 month deadline and stating a date certain by which it will be in compliance, which shall in no event be more than 24 months from the effective date of this interim order.

V. DISCUSSION OF ECONOMIC STUDIES AND RECORD LIMITATIONS AND DISPOSITION OF PENDING MOTIONS

We address here three wireless carrier motions concerning the economic effects of the proposed new general order. Those motions are granted to the extent described below.

On September 15, 2003, seven wireless carrier representatives[31] filed a motion to have two studies ("the LECG studies") accepted into the proceeding record.[32] Those studies, they maintain,

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[31] AT&T Wireless Services, Inc.; Nextel of California, Inc.; Omnipoint Communications, Inc. dba T-Mobile; Pacific Bell Wireless LLC dba Cingular Wireless, LLC; Sprint Spectrum, L.P.; Verizon Wireless; and the Cellular Carriers Association of California (jointly, "wireless representatives").

[32] *The Financial and Public Policy Implications of Key Proposed Telecommunications Consumer Protection Rules on California Wireless Carriers and Customers: Economic Analysis (September 2003)*; and, *The Financial Implications of Key Proposed Telecommunications Consumer Protection Rules on California Wireless Carriers and*

"provide an in-depth economic analysis of the impact that the Proposed Rules [of Assigned Commissioner Wood] will have on the welfare of wireless customers in California, as well as on jobs, investment and economic activity in the state."[33] The carriers also requested the time for filing responses to their joint motion be reduced, but that request was not granted and is now moot. Two replies were filed in opposition, one by the Commission's Office of Ratepayer Advocates and the California Attorney General's Office (ORA / AG), and the second by the National Consumer Law Center (NCLC), the Utility Consumers' Action Network (UCAN), The Utility Reform Network (TURN), and Consumers Union (CU).

On October 7, 2003, the wireless carrier representatives filed a motion seeking leave to file a reply to the consumer groups' responses, and tendered with it their reply.

On November 4, 2003 the Cellular Carriers Association of California (CCAC) filed a motion to admit into the record a 38-page paper[34] ("the Hazlett paper") in rebuttal to a study ("the Navarro paper") UCAN had included as part of its comments on the July 2003 draft decision.[35] CCAC expressly did not move to strike the Navarro paper portion of UCAN's comments with which it disagreed.

Customers: Cost Study Report (September 2003). These are jointly referred to here as the LECG studies.

[33] September 15, 2003 wireless representatives' Motion at page 2.

[34] Thomas W. Hazlett, *Cellular Telephone Regulation in California – A Critique of Peter Navarro's Paper Submitted to the California Public Utilities Commission (November 3, 2003).*

[35] Peter Navarro, *An Economic Justification for Consumer Protection Laws and Disclosure Regulations in the Telecommunications Industry (August 25, 2003),*

The Motions and Studies

The wireless representatives' September 15, 2003 motion claims that cost issues have not been analyzed in this proceeding, and further, that the proposed rules issued for comment on July 24, 2003 would have specific costs that compare unfavorably with the rules' benefits. The motion seeks permission to enter into the record the two LECG studies prepared for a wireless industry group. In these reports, consultants Debra J. Aron and William Palmer estimate the compliance costs for the wireless industry with the rules then under consideration. In addition, they criticize the July 2003 draft decision for failing to include a cost-benefit analysis, and argue against adoption of the proposed rules.

Aron and Palmer find that the initial rules proposed in this proceeding would add 10% on average to the bills of wireless customers, would result in a loss to the California consumers of $2.3 billion per year, would drive out investment in the wireless infrastructure, and generate a loss of 12,300 jobs.

The AG and ORA (filing jointly), and the NCLC , UCAN, TURN, and CU (filing jointly) opposed the motion on the grounds that (1) it is untimely, (2) the Commission has already considered costs and benefits of the rules, and (3) the Aron and Palmer statements do not offer competent evidence about the economic impact of the rules on the California economy.

UCAN's August 25, 2003 comments on the Assigned Commissioner's July 2003 draft decision included the Navarro paper that

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submitted as Attachment A to the Comments to the Draft Decision filed by UCAN on August 25, 2003.

UCAN characterized as addressing the need for and justification for the new rules. UCAN's filing was timely and, *including* the Navarro paper, within the 25-page limit established for comments. On September 4, 2003 CCAC filed a timely reply to parties' comments addressing, among other topics, some aspects of those UCAN comments that were included in the Navarro paper.

CCAC characterizes the Hazlett paper as responding to the assertions made in UCAN's paper more fully than CCAC's initial comments.

The Assigned Commissioner circulated a revised draft decision on March 3, 2004 that responded to earlier comments and proposed to grant the wireless representatives' motions. In addition, for the first time in over four years of this proceeding, the parties were explicitly invited to comment on the wireless representatives' studies, and to submit relevant studies of their own if they desired. Parties, however, were initially allowed only two weeks to perform and submit relevant studies. Subsequently, this deadline was extended by a week.

Despite this truncated timetable, TURN-UCAN-NCLC-CU, AT&T, AT&T Wireless, Nextel, Cingular, Omnipoint, Sprint, Verizon Wireless and the CCAC (the Wireless Group), theAG/ORA, and Sprint submitted comments on the economic consequences of these rules.

This decision accepts the two LECG studies, the Navarro paper, and the Hazlett paper into the record.[36] We note, however, that the Wireless Group, in its March 23 Comments, submitted new reports -- by

[36] UCAN's Navarro paper is already in the record, being part of UCAN's timely filed comments.

Dr. Michael Katz, by Dr. Debra Aron, by Mr. Palmer, and by Mr. Lowenstein that respond to earlier criticisms and directly address issues raised in the March 3 Draft Decision of Commissioner Wood and by the extremely short period for preparing economic analyses.

AT&T, SBC, Sprint, and the Wireless Group, who have submitted economic comments, argue that the procedural timetable for preparing and submitting economic analyses denies parties their due process rights and commits procedural error. In particular, the report of Palmer (in the Wireless Group's filing), who conducted the most extensive analysis of primary cost data, stated that despite this prior experience, the vagueness of the rules and the adopted timetable for implementing the changes made it impossible to venture a cost estimate for the revised rules.

C. Economic Considerations in the Proceeding

The deficiencies in the economic analysis in this record are plain to see. The limited rules adopted in this decision result from a balancing of the need to empower consumers in telecommunications markets and to prevent fraud, on the one hand, with the costs and economic effects that these rules would impose on consumers, telecommunications utilities, and the California economy. The rules adopted herein are necessarily limited because there has been no systematic effort to develop a record that shows that any other rule would produce benefits that exceed its costs.

As a consequence of this deficient record, the rules adopted here rely heavily on a bringing together in one place rules mandated by law or by prior Commission action, the adoption of industry "good practices," and a conscious effort to prevent fraudulent actions that both harm consumers and undermine competitive markets. In particular, consolidation into a single new general order existing rules and common industry practices will generate economic benefits through reduced complexity and regulatory uncertainty while imposing no new costs. Second, by relying on good practices to support new standards, we are confident that the costs imposed by new standards would pass a market test (because the industry would not move to such a standard unless it provided consumer value that exceeded costs). Third, since markets cannot function well in the face of fraud, we adopt rules that deter fraudulent practices, such as slamming. Thus, we believe our effort to bring together existing rules, to adopt industry “good practices” and to deter fraud in this General Order would meet a cost-benefit test had the record in this proceeding developed information that would make such an analysis possible.

As discussed below, the wireless representatives’ main claim in their September 2003 motion—that the Commission ignored economic issues and ignored relevant law—is lamentably true, and we find it necessary to strictly control the scope and sweep of the rules embodied in our General Order. This decision now contains a discussion of economic issues to the best of our ability given the failure to develop an adequate record on this issue in this proceeding.

The Wireless Studies

Several flaws in the record of this proceeding significantly reduce our ability to use the LECG studies to refine or adopt new rules. First, despite the request of LECG and the wireless industry, the Commission failed to hold evidentiary hearings exploring the implementation cost estimates developed by Palmer. This is lamentable, because Palmer engaged in calculations that produce a plausible estimate that the implementation costs of the proposed rules is approximately $5.74-5.76 per subscriber line per month. This estimate is in fact produced by aggregating cost estimates provided by the five largest wireless representatives in California. The carriers' estimates were in no way analyzed or cross-examined in this record. Moreover, their very plausible estimate of costs adds up to a colossal impact on the California economy. The added costs would drive out investment in the cellular infrastructure in California. In addition, spill-over effects on those who use or supply the wireless industry would lead to total economic costs of $2.3 billion and 12,300 jobs. These costs would ripple throughout the entire California economy, not just in the wireless industry

Second, in Exhibit C to the Wireless Economic Comments, Palmer notes that updating the costs to reflect revised rules "is not a simple matter." (p. 9) He notes that the length of time to prepare the report was inadequate to create a detailed estimate. He concludes, however "if the 120-day implementation period is considered in conjunction with the new requirements of the revised draft rules, it would not be surprising to find . . . that the financial impact of the entirety of the rules [included in the draft decision of Commissioner Wood] would still be very substantial and possibly well within the range of the order of magnitude estimated in the September 2003 report." (p.12) Clearly, this makes it difficult to use these costs to adopt a particular new rule. On the other hand, it is clear that this study justifies great caution in adopting new rules. Moreover, since the Palmer study stands unrebutted and develops the most serious economic estimates of the costs of the March 3, 2004 rules, its makes wholesale adoption of that set of rules unreasonable.

Third, as economic studies frequently do, the LECG studies rely on a large number of assumptions. The record in this proceeding, however, failed to test the plausibility of these assumptions or subject them to cross-examination. For example, Aron estimates that an average customer's bill will increase by a specific percentage assumes that the wireless market is sufficiently competitive with a flat supply curve so that 100% of those cost increases will be passed on to the consumer.[37] Aron also argues that the rules may not be necessary because carriers have a profit motive to initiate consumer protections on their own. Although these assumptions are common in economic analysis, the record of this proceeding fails to test whether these assumptions reasonable apply to the situation at hand.

Aron also opines that the proposed rules "may induce significant nuisance litigation costs."[38] Although the AG and ORA argue that there is no reason to believe that Aron is qualified to offer a legal opinion, they fail to recognize that this is an economic opinion, and the high costs of litigation and regulatory uncertainty are well known and documented throughout the economic profession. Moreover, they fail to counter this opinion with any qualified information indicating that these costs would be low.

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[37] Moreover, even if the costs were entirely borne by industry, a concern for the public interest would mandate their consideration.

[38] Aron, page 34.

In summary, the professional nature of the LECG studies and the fact that they stand unrebutted in the record makes it unreasonable to adopt the aggressive regulatory changes proposed by many in this proceeding. Particularly deficient is the failure of rule proponents to offer any quantifiable justification for the rules that they propose other than vague assertions that the rules will be good for consumers. As a result, the conclusion that the aggressive consumer protection rules proposed by many will be harmful, particularly given the absence of documentation of genuine potential benefits, stands unrebutted. As mentioned previously, we have instead brought existing rules together and have adopted rules that serve to empower consumers in telecommunications markets and protect against fraud.

The Need to Analyze the Economic Effects of Proposed Rules

The wireless representatives further argue that the Commission has not met legal requirements to "assess the potential adverse economic impact on California business enterprises of proposed rules and regulations." This argument is unfortunately true.

Although the Wireless Industry relies upon Government Code § 11346.3 to support its claims, we find that it is Public Utilities Code § 321.1 that is most relevant to our analysis. Section 321.1, as mentioned above, signals that it is the "intent of the Legislature that the commission assess the economic effects or consequences of its decisions." The failure of the participants in this proceeding to analyze the economic consequences of their proposed rules produces a record that fails to justify sweeping changes in rules. However, we believe that the approach taken herein – grouping existing rules, sharply limiting new rules, and adopting only those rules where the market has itself attested to their value or where the rules prevent fraud that undermines the market – ensures that the benefits of the rules we adopt outweigh the costs.

The Record's Inadequacy for Adopting Major New Rules

The National Consumer Law Center, UCAN, The Utility Reform Network, and Consumers Union state in their reply to the wireless representatives' September 2003 motion:

> It is often the case that regulations that protect the public health, safety and welfare impose significant costs on the regulated industry that can be estimated, even if imprecisely, while providing benefits that cannot easily be reduced to dollar terms. Examples include . . . and the Federal Communications Commission's ("FCC") number portability rules, where the industry must invest millions of dollars in the technology that allows for number portability while consumers gain the hard-to-quantify benefit of being able to switch carriers more easily.[39]

Although these comments are true, the example used to oppose conducting a cost-benefit analysis demonstrates exactly the opposite. Empowering customers to exercise choice is identified in virtually every aspect of federal law and FCC regulations as one of the highest priorities in telecommunications regulations and a most cost-effective means of consumer protection. There is arguably no more important tool to facilitate consumer choice in telecommunication today than Local Number Portability (LNP). While it may be difficult to put a financial estimate on the value of LNP to customers, a reasonable regulator could be assured that a weighing of the cost and benefits of this important

[39] Reply of NCLC, TURN, UCAN and CU to Wireless Industry Motion for Leave to File Economic Analysis, pages 8 and 9.

provision would have justified the net benefits of increasing consumer choice.

In conclusion, most of the rules that we have included in the General Order are not new policy decisions, but instead were previously adopted to fulfill statutory requirements binding on both the carriers and the Commission. We have taken care to cite those statutes in the sections on rules above. Those few new rules that we adopt – such as the grace period for returning mobile phones or the anti-slamming provisions – reflect situations where the market indicates that benefits to consumers exceed the costs that they would pay or the preservation of consumer power requires the policing of fraud. We therefore believe that the rules we adopt today are either required by statute or would pass a systematic cost benefit test.

VI. COMMENTS

VII. ASSIGNMENT OF PROCEEDING

Findings of Fact

1. Increasing competition in the provision of telecommunications services reduces the need for commission regulation of telephone service providers.
2. All forms of telephone service compete with one another.
3. Although the public witnesses who appeared in this proceeding expressed dissatisfaction with some aspects of their telephone service, there is no showing on the record that telephone customers in general are significantly dissatisfied with their service or that their level of dissatisfaction is increasing.

4. Carriers introduced credible evidence that detailed prescriptive regulations would impose significant new costs on them.
5. No party assigned a dollar value to the benefits associated with implementation of the rules.
6. All calls made through a wireline phone could be made through a wireless phone.
7. Many calls made using a wireless phone could be made using a wireline phone.
8. Some rules are applicable only to providers of basic service.
9. Some rules applicable to providers of basic service are not applicable to providers of wireless service.
10. Rules governing the carrier use of customer-supplied information should be the subject of a separate proceeding.
11. Required disclosures should be made to customers through written materials delivered at the point of sale or shortly thereafter and via the Internet.
12. Actual use under real world conditions is the best way to determine if a wireless phone meets a customer’s needs.
13. Bills should be clear and complete.
14. Customers should be billed only for services actually authorized and used.
15. If a carrier makes material unilateral changes in contract terms the customer should have a reasonable opportunity to cancel the contract without penalty.
16. Basic service should not be terminated for failure to pay legitimate charges until the customer has been given reasonable notice and an opportunity to pay the charges.

17. The record developed in this proceeding on the economic consequences of new regulations does not support the wholesale adoption of new rules.
18. The inclusion of existing telecommunications rules in a single General Order reduces the costs of finding them and introduces no new economic burdens.
19. Consumer practices that emerge in competitive markets – such as the adoption of a fourteen-day grace period for trying out wireless phones – demonstrate that such a rule would provide consumer benefits that exceed the costs to consumers of such a practice.
20. Rules that prevent fraudulent behavior – such as anti-slamming rules – are critical to the functioning of a competitive market.

Conclusions of Law

1. All telecommunications carriers should abide by basic standards of disclosure and customer service.
2. The rules in G.O___, Part 2 should supersede the Consumer Protection and Consumer Information Rules for CLCs set forth in D. 95-07-054, Appendix B.
3. The rules in G.O.___, Part 2 should supersede the Consumer Protection Rules for non-tariffed, non-dominant IECs in D.98008-031, Appendix A.
4. Any previously filed commercial mobile radio service consumer protection tariff rules should be superseded and canceled.

5. Except as otherwise provided therein, the Rules in G.O____. Part 2, apply to Commission-regulated carriers of all classes and their agents.
6. Except as otherwise provided therein, the Rules in G.O.___, Part 2 are for the benefit of individual, residential and business customers alike.
7. Except as set forth in the ordering paragraphs below, this interim order and G.O.____ do not relieve any carrier from compliance with any existing Commission decision, rule or general order, any state or federal statute, or any other requirement under the law.
8. The Commission should adopt the G.O.____, Rules Governing Telecommunications Consumer Protection and Fraud Prevention, Appendix A to this interim order.
9. No evidentiary hearings are needed.
10. The Commission's adoption of G.O.___ and its associated Rules does not create a private right of action against any telecommunications carrier for violation of the Rules.
11. In view of the potential conflict between private enforcement of claims against telecommunications carriers regarding matters within the Commission's primary jurisdiction, such private actions are barred.
12. The Commission's adoption of G.O.___ and its Rules does not enlarge or diminish any other rights or preclude any other civil action that may be available by law.

13. Over the course of the proceeding, the parties have had only limited opportunity to present on the record information regarding the costs and economic effects of the new Rules.
14. Unrebutted evidence introduced regarding costs of compliance with prior versions of the Rules suggests that imposition of extensive prescriptive rules would impose significant new costs on telecommunications carriers.
15. In concluding that the current version of the Rules produces benefits that exceed their costs, the Commission has complied with Public Utilities Code §321.1, which directs the Commission to assess the economic effects or consequences of its decision as part of its normal consideration in a rulemaking proceeding.
16. In a rulemaking proceedings such as this one, the Commission may consider relevant, publicly available reports and decisions and reports issued by this Commission and by other state and federal agencies without taking official notice of them.
17. The rules in G.O. ___ will not produce economic consequences adverse to the California economy.
18. Since the rules in G.O. ___ reflect current rules, the common practice in competitive markets, or are key to avoiding fraudulent practices that undermine the functioning of a market, the incremental benefits that they generate clearly outweigh the incremental costs that they impose.
19. The rules adopted in G.O. ____ are reasonable.
20. This interim order should be effective today.

I N T E R I M   O R D E R

IT IS ORDERED that:

1. General Order___ (G.O.___) Rules Governing Telecommunications Consumer Protection and Fraud Prevention, Appendix A to this interim order is adopted and shall become effective as of the effective date of this interim order.

2. Commission-regulated telecommunications carriers of all classes shall bring their operations into full compliance with G.O.___and this interim order no later than 540 days after the date this decision was mailed. Not later than 540 days after this decision was mailed, each carrier shall serve on the Commission's Telecommunications Division a letter certifying that it is in compliance with this ordering paragraph. Each such certification letter shall be in a format provided by Telecommunications Division, and shall be verified following the procedure set forth in the Commission's Rules of Practice and Procedure, Rule 2.4, Verification. Any carrier unable to meet the 540-day deadline shall file a letter with the Commission's Telecommunications Division not less than 60 days prior to the end of the compliance period setting for the reasons for such inability and date by which full compliance will be achieved, which date shall in no event be later than 720 days from the mailing date of this decision.

3. The Consumer Protection and Consumer Information Rules for CLCs set forth in D. 95-07-054, Appendix B are superseded by G.O.___. Each affected carrier is relieved of its obligation to comply with those rules as of the date that the carrier achieves full compliance with G.O.___as directed in Ordering Paragraph 2 of this interim order.

4. The Consumer Protection Rules for Detariffed Servicesset forth for non-tariffed, non-dominant interexchagne carriers in D. 98-08-031, Appendix A are superseded by G.O.___. Each affected carrier is relieved of its obligation to comply with those rules as of the date that the carrier achieves full compliance with G.O.___as directed in Ordering Paragraph 2 of this interim order.

5. Any previously filed commercial mobile radio service consumer protection tariff rules are superseded and shall be canceled.

6. Each Commission-regulated telecommunications carrier having California intrastate tariffs in effect shall evaluate those tariffs for compliance with the requirements of G.O.___ and the ordering paragraphs of this interim order. Each carrier having tariff provision(s) inconsistent with G.O.___, or required to be revised or canceled to conform to the ordering paragraphs of this interim order shall file not later than 90 days after this decision was mailed and make effective on the 180th day after this decision was mailed an advice letter in accordance with G.O. 96 Series making only such revisions or cancellations as are necessary to bring its tariffs into compliance with G.O.___ and this interim order. Advice letters which do not comply with the requirements of this interim order are subject to suspension as provided in Commission Resolution M-4801.

7. The provisions of G.O___ are severable. If any provision of G.O___or its application is held invalid, that invalidity shall not affect other provisions of applications that can be given effect without the invalid provision or application.

8. The various motions described in the Pending Motions section of this order are granted and denied as set forth in that section. The two LECG

studies and the Hazlett paper tendered in those motions are accepted into the proceeding record.

This interim order is effective today.

Dated __________________________, at San Francisco, CA

O R D E R

IT IS ORDERED that:

This order is effective ^.

Appendix A General Order