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Decision ALTERNATE PROPOSED DECISION OF COMMISSIONER DIAN M. GRUENEICH

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)

DECISION ADOPTING A COMPREHENSIVE TELECOMMUNICATIONS CONSUMER PROTECTION PROGRAM

TABLE OF CONTENTS

DECISION ADOPTING A COMPREHENSIVE TELECOMMUNICATIONS CONSUMER PROTECTION PROGRAM

I. Summary

This Decision adopts a comprehensive consumer protection program for California telecommunications consumers. The integrated program addresses all four parts of consumer protection: Rights, Rules, Education, and Enforcement. This program responds to the rapid pace of change in the telecommunications industry, supports competition, and empowers consumers.

When we began our review of the Consumer Bill of Rights adopted in Decision (D.) 04-05-057 and codified in General Order (G.O.) 168 we asked ourselves three questions:

1. Do we need consumer protection rules given that we already have regulatory statutes and Commission Decisions in place addressing the issue of consumer protection?
2. Do the rules we create present a balance between consumer protection and an appropriate economic burden on carriers?
3. Does the Commission have the legal right to put these rules in place and is it appropriate to have the rules apply to all telecommunications carriers?

We answer each of these questions in the affirmative.

The record is clear: consumer protection rules are necessary. In 2004, the number of complaints related to wireless service increased by 63% as compared to a national average increase of 43%. The overall wireless subscriber rate

increase was the same nationally and in California -- 15%.[1] Complaints skyrocketed despite vigorous competition in the wireless industry, a voluntary Consumer Rights program by industry, and the implementation of a consumer education program on wireless service by the Federal Communications Commission (FCC).

This Commission is obligated to act on these complaints and other problems existing in the telecommunications industry. At the same time, we recognize that a traditional approach, which seeks to limit carriers to a narrow set of services and/or marketing practices and requires prior Commission review, is neither practicable nor desirable in the fast-changing world of telecommunication services. Likewise, we are extremely mindful of the need to avoid unnecessary regulations that will harm consumers by delaying the introduction of new services or limiting the deployment of new technologies.

The Commission has an affirmative obligation as set forth in the state constitution and statutes to act in the best interests of the consumers of California by setting clear and reasonable guidelines for consumer information, education and enforcement. Public Utilities (P.U.) Code § 2896 and § 2897 direct this Commission to require telephone corporations (including wireless carriers) to furnish their customers with sufficient information to make informed choices and to understand how to participate in the regulatory process and resolve complaints. The Rules we adopt here are the Commission's response to that legislative directive and our constitutional obligation to safeguard consumers. These Rules ensure that consumers:

[1] TURN Opening Brief (October 24, 2005), pp. 9, 13. ORA testimony (August 5, 2005), pp. 2-3

- have accurate information about the terms and conditions of service that they are purchasing;
- are provided with contracts and confirmations that are in the same language as the solicitations offering service;
- are protected against misleading and deceptive solicitations;
- are provided accurate and understandable bills;
- retain existing protections against unauthorized non-telecommunication charges ("cramming");
- have a clear avenue for efficient and effective resolution of complaints;
- are educated about their rights and responsibilities with regard to telecommunications service; and
- are assured the Commission will vigorously enforce its rules, statutes, and decisions protecting consumers.

Some carriers argue that additional state regulation will harm competition by driving businesses out of California. To address such concerns and our own goal of promoting telecommunication competition and innovation, we have deleted and streamlined numerous provisions of the original 2004 Rules. Moreover, 75 percent of the carriers had fully complied with the original G.O. 168 by December 2004 and there is no record evidence of carriers leaving the California market as the result of the previous Rules, or of the Rules affirmatively harming the carriers or consumers or measurably increasing rates.

This decision looks beyond the reflexive refrains that regulation is the enemy of competition or that carriers will defraud consumers if government does not act. There is a wide middle ground between overly prescriptive rules

and doing nothing. Our approach is practical, reflecting what needs to be done, what should be done, and what can be done.

II. Procedural Background

The history of the Commission's Consumer Bill of Rights proceeding is lengthy and complicated and we will not describe the process in detail in this decision. This rulemaking commenced in 2000 to address concerns over a marked increase in consumer complaints against telecommunications providers. After four years of workshops and numerous rounds of comments, on May 27, 2004 the Commission adopted G.O. 168, Rules Governing Telecommunications Consumer Protection. G.O. 168 was applicable to all Commission-regulated telecommunications utilities and set forth: a telecommunications Consumers' Bill of Rights (Part 1); Consumer Protection Rules to implement the rights (Part 2); Rules Governing Billing for Non-communications-Related Charges ("cramming") (Part 4); and Rules Governing Slamming Complaints (Part 5).

In response to numerous concerns from carriers regarding the implementation of G.O. 168, in January 2005 the Commission adopted D.05-01-058 which stayed G.O. 168 in part in order "to allow adequate time to address implementation issues, to ensure that California's consumer protection structure will be viable and enforceable, and to consider a broader re-examination of policy issues in the Decision [D.04-05-057]."[2] D.05-01-058 declared that the Commission intended "to act expeditiously to address the Petitions for Modification, implementation issues, and other matters affecting the

[2] Commission Decision 05-01-058, January 27, 2005, page 1.

structure for consumer protection in California."[3] D.05-01-058 noted that the stay would be effective until the Commission issued a new decision adopting a consumer protection structure with a sufficient implementation period. Additionally, D.05-01-058 stated the Commission's intent to issue a new decision no later than the end of 2005.

A March 10, 2005 Assigned Commissioner Ruling (ACR) scheduled a prehearing conference to discuss specific issues related to the proceeding:

- Which Rules are not redundant, low-cost to carriers, and address current or emerging technologies?
- What changes to the Rules are needed due to the 2005 Truth-in-Billing Order of the Federal Communications Commission (FCC)?
- Have any actions by the carriers or other parties eliminated the need for any of the Rules?
- What should be the issues in this proceeding and how should the Commission analyze those issues?
- Can we find a balance between effective but less restrictive approaches for providing consumer protection?

The Commission received comments from fifteen parties. A second ACR dated May 2, 2005 proposed to reinstate Parts 1, 4 and 5 of GO 168, together with Rules 13, 14 and 15 of Part 2, amended and renumbered (May ACR). The May ACR asked parties to comment on the reinstatement proposal and address three additional issues:

[3] Id., p. 4.

- Are the amended rights sufficient for protecting and empowering consumers?
- Are current laws and regulations sufficient for enforcing these rights?
- If not, what cost-effective revisions are necessary for effective enforcement?

Hearings were held on September 29 and 30, 2005, during which twenty-five representatives of industry and consumer groups organized in five different panels addressed these questions and topics. Written testimony from the witnesses also was accepted into the record. Opening briefs were filed on October 24, 2005. Reply briefs were filed on November 7, 2005.

A proposed decision (PD) was issued on December 21, 2005. The PD proposed to:

- Repeal the Commission's rules (G.O. 168, Part 4) governing the placement of non-communications charges on telephone bills (known as "cramming");
- Delay any protection rules for consumers with limited English proficiency, and instead require the preparation of a staff report;
- Permanently repeal Part 2 of G.O. 168, with the exception of rules on investigatory efforts of the Consumer Affairs Branch ("CAB"), employee identification and Emergency 911 access;
- Ease and move the anti-slamming rules (Part 5 of G.O. 168);
- Create a Commission consumer education program; and
- Place greater emphasis on the Commission's enforcement of laws and regulations.

III. Discussion

After a careful review of the record and relevant legal precedent, we affirm our holdings in D.04-05-057 and D.04-10-013 that this Commission is not preempted from regulating the terms and conditions of telecommunications law by federal law and that there is a large and growing need for consumer protection rules in telecommunications service.

A. Legal Authority

1. Federal Preemption

Section 332(c)(3) of the Federal Telecommunication Act preempts state regulation of wireless rates or entry but expressly confers on states the authority to regulate "other terms and conditions of wireless service."[4] In interpreting section 332(c)(3), the FCC has made clear that Congress' preference for market forces to shape the development of the industry is not "absolute" and Congress specifically chose not to "foreclose … state regulation."[5]

The 1996 Telecommunications Act (1996 Act) maintained the dual regulatory framework in § 332(c)(3) and reinforced the states' important role to protect consumers and to ensure reasonable terms and conditions of all telecommunications services. While the 1996 Act was designed to promote competition, Congress understood that the Act's provisions fostering competition "depend[ ] in part on state law for the protection of consumers in the deregulated and competitive marketplace" and that state "consumer protection

[4] 47 U.S.C. § 332(c)(3).

[5] *In re Pet. of Ohio*, 10 FCCR 7841, ¶¶ 9, 44 (1995). Courts agree. See *GTE Mobilnet v. Johnson*, 11 F.3d 469, 480 (6th Cir. 1997); *Cellular Telecom Indus. Ass'n v. FCC*, 168 F.3d 1332, 1335 (D.C. Cir. 1999).

laws …form part of the competitive framework to which the FCC defers."[6] Section 253(b) states that "[n]othing in this section [governing state regulatory authority] shall affect the ability of a State … to impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."[7]

If there is any lingering doubt about state authority, one need only to turn to section 601(c), which expresses Congress' clear intent not to occupy the field, and to limit the preemptive effect of the 1996 Act only to those specific areas where there is an express intent to preempt, "This Act … shall not be construed to modify, impair, or supercede … State…law unless expressly so provided."

2. The FCC's Truth In-Billing Order

In D.05-01-053, we held that recent actions and statements by the FCC warranted further consideration by the Commission. Specifically, in March 2005, the FCC adopted its Truth in Billing Order (TIB Order) which: 1) subjected wireless carriers to the requirement that billing descriptions be brief, clear, non-misleading and in plain language; 2) permitted non-misleading line items; 3) reiterated that it is misleading to represent discretionary line item charges in any manner that suggests such line items are taxes or charges required by the government; and 4) clarified that state regulations requiring or prohibiting the

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[6] *Ting v. AT&T*, 319 F.3d 1126, 1141, 1145 (9th Cir. 2003); *In re Pet. of Calif.*, 10 FCCR 7386, ¶ 108 (1995) (unreasonable business practices can and do arise in competitive markets).

[7] 47 U.S.C. § 253(b); See, *Communications Telesystems Int'l v. CPUC*, 196 F.3d 1011, 1017 ([t]he Act was designed to prevent explicit prohibitions on entry by a utility into telecommunications, and thereby to protect competition in the industry while allowing states to protect consumers against unfair business practices).

use of line items for wireless providers constitute rate regulation and are preempted under section 332(c)(3)(A).[8]

In response to the March 10, 2005 ACR, parties submitted comments regarding the impact of the TIB Order on this proceeding. The Wireless Group[9] argued that the Order finds that state regulations requiring or prohibiting line items in wireless pricing equates to rate regulation and are therefore preempted.[10] The FCC, according to the Wireless Group, is defining the states' role in regulation of billing practices and any regulations exceeding federal standards will be preempted.[11]

The Office of Ratepayer Advocates (ORA, now known as the Division of Ratepayer Advocates) and the California Attorney General's Office (AG) contend that the FCC explicitly stated that its ruling did not preempt state consumer laws "to the extent such laws require or prohibit the use of line items."[12]

As discussed above, this Commission has the jurisdictional authority to regulate the terms and conditions of wireless service. The TIB Order reinforced this authority, explaining that:

> While we hold that state regulation prohibiting or requiring CMRS [commercial mobile radio service] line

[8] In the Matter of Truth-in-Billing and Billing Format, Second Report and Order, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-170, CG Docket No. 04-208, FCC 05-55, (March 15, 2005) (TIB Order).

[9] The Wireless Group consists of Cingular Wireless, LLC; Cricket Communications, Inc.; Nextel of California, Inc.; TMobile; Sprint Telephony PCS, L.P. and Sprint Spectrum L. P., as agent for Wireless Co., L.P.,*dba* Sprint PCS; Verizon Wireless; and CTIA – The Wireless Association™.

[10] Wireless Group Comments, p. 10.

[11] Id. p. 11.

[12] ORA and Attorney General's Comments (May 25, 2005), pp. 7-8.

items constitutes preempted rate regulation, we emphasize that this preemption does not affect other areas within the states' regulatory authority. For example, our ruling does nothing to disturb the states' ability to require CMRS carriers to contribute to state universal service support mechanisms or to impose other regulatory fees and taxes. .... Indeed, in distinguishing rate and entry regulations from "other terms and conditions," which are not expressly preempted under section 332, Congress explained that the latter includes "such matters as customer billing information and practices and billing disputes and other consumer protection matters . . . or such other matters as fall within a state's lawful authority."

The TIB Order continues,

> We also emphasize that not all regulation relating to a carrier's bills and its relationship with customers represents preempted "rate regulation." For example, state regulations that address the disclosure of whatever rates the CMRS provider chooses to set, and the neutral application of state contractual or consumer fraud laws, are not preempted by section 332. In addition, state requirements that are consistent with our federal truth-in-billing rules can coexist with these rules.[13]

The limited scope of the TIB Order is also of note. While the FCC sought comments on whether to go beyond the "line item" rules addressed in the TIB Order and preempt state regulation of CMRS carriers' billing practices, the FCC has not taken any further action.[14] In addition, the FCC's TIB Order evinced no intent to preempt state regulation in other areas, such as point of sale disclosures and advertising.

We conclude that the Commission is permitted to develop state telecommunications consumer protection rules, but those rules cannot conflict with federal rules. Furthermore, in its role as a consumer protection agent, the Commission has the authority to develop consumer protection rules that apply to all telecommunications providers.

3. Rates versus Terms and Conditions

The rules proposed herein fall well within the state's authority, and are not preempted. To run afoul of section 332 of the 1996 Act, a state consumer

[13] FCC TIB Order, ¶33.

[14] Id., ¶ 50.

protection rule must directly affect rates. Rate regulation does not occur when state consumer protection rules produce an "increased obligation" on the wireless carrier that "could theoretically increase rates."[15] Likewise, "Congress did not preempt all claims that would influence rates, but only those that involve the reasonableness or unlawfulness of the rates themselves."[16]

Section 332 demonstrates that Congress intended only a narrow preemption of state authority. Section 332 only denies states authority to "regulate" rates and entry. It does not use broader language, such as the prohibition on states' enacting or enforcing laws "relating to" rates, as is contained, for example, in the Airline Deregulation Action of 1978 or the Employee Retirement Income Security Act of 1974.[17]

The Wireless Group would broadly define "rates" to include all regulations that could have an impact, however indirect, on rates. For example, there has been a great deal of discussion on the issue of time limitations for early termination fees in this docket. Stayed rule 3(f) in Part II of G.O. 168 states that "[s]ubscribers may cancel without termination fees or penalties any new tariffed service or any new contract for service within 30 days after the new service is initiated." Some parties interpret Rule 3(f) as regulating rates by virtue of the

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[15] *Brown v. Washington/Baltimore Cellular, Inc*., 109 F. Supp. 2d 421, 423 (D. Md. 2000); *see also Phillips v. AT&T Wireless*, 2004 U.S. Dist. LEXIS 14544, at *36 (S.D. Iowa 2004 ('rate' must be narrowly defined or there is no ability to draw a line between economic elements of the rate structure and normal costs of operating a telecommunications business.")

[16] Id.

[17] 49 U.S.C.App. § 1305(a); 29 U.S.C. § 1144(a). See*, Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 385 (1992).

fact that this rule limits the enforceability of termination fees that most carriers include as part of their rate structure.

We find that the interpretation that the Wireless Group urges upon us is overly broad and decline to adopt it. As the court *in Iowa v. United States Cellular Corp*. held,

> US Cellular would have this Court construe "rates" so broadly as to incorporate anything that might touch upon U.S. Cellular's business. U.S. Cellular's interpretation requires numerous degrees of separation in order for a state claim to escape preemption by the Communications Act. This is problematic. Inherently, any interference with U.S. Cellular's business practices will increase its business expenses. These increased business expenses would likely be passed on to customers as rate increases. If "rate" included any action that indirectly induced rate increases, the exception would be swallowed by the rule. This could not have been Congress' intent. US Cellular's interpretation would destroy the Act's savings clause, making all actions affecting the company federal in nature."[18]

We agree with the court that the term "'rate' must be narrowly defined or there is no ability to draw a line between economic elements of the rate structure and normal costs of operating a telecommunications business that have no greater significance than as factors to be considered in determining what will ultimately be required of rates to provide a reasonable return on the business investment."[19]

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[18] *Iowa v. United States Cellular Corp*., 200 WL 33915909 (S.D. Iowa Aug. 7, 2000).

[19] Id.

B. A Comprehensive Consumer Protection Program is Necessary

1. The Evidentiary Record Demonstrates the Need for Consumer Protection Rules

Stronger consumer protection, properly tailored to a rapidly changing industry, is needed in California. In 2000, the Commission issued a staff report that demonstrated the need for specific consumer protection measures (including a telecommunications consumers' bill of rights), rules to implement those rights, and changes to the industry's current tariffing and limitation of liability practices.[20] It showed that the Commission's traditional mechanism for advancing consumer protection – tariff regulation – is ineffectual and does not serve consumers well in a competitive market.[21] Staff evaluated 1998 and 1999 consumer complaint data regarding CMRS carriers and concluded that a single set of consumer protection rules applicable to all telecommunications services was warranted.[22]

The need for consumer protection was underscored by the public response to the Commission's staff report. Between June and September 2000 the CPUC held 20 public participation hearing sessions throughout the state. The Commission received public statements from more than 300 of the 1200 hearing

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[20] *Consumer Protections for a Competitive Telecommunications Industry: Telecommunications Division Staff Report and Recommendations* (Feb. 3, 2000) (TD Staff Report).

[21] As noted in D.04-05-057, tariffs have been the primary vehicle for Commission-initiated consumer protections for all classes of carriers. However, the requirements for filing tariff have evolved differently for different classes of carriers. Incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLCs) still file tariffs, while non-ILEC affiliated interexchange carriers (IECs) have the choice to file tariffs. D.96-12-071 exempted CMRS carriers from filing tariffs but required them to continue following their existing consumer protection tariff rules on a transitional basis.

[22] TD Staff Report, pp. 13-14. The TD Staff Report indicated an increase in the number of informal complaints that the Commission received regarding 158 registered CMRS providers operating in California, with 2,404 informal complaints in 1998 and 3,356 such complaints in 1999.

attendees as well as another 2000 responses via letter and email. As D.04-05-057 recognized, "[t]he general public sentiment as expressed in both the public participation hearings and correspondence was overwhelmingly in favor of the Commission's taking a much stronger consumer protection role."[23]

While carriers contend that market forces and the existing enforcement mechanisms are sufficient to protect consumers adequately, evidence of consumer harm supports a different conclusion. For example, "[c]omplaint data gathered at both the federal and state level, national surveys, and state and federal enforcement activity combine together to create a clear picture of consumer need for a comprehensive set of consumer protection rules."[24] Some highlights from the state and federal data include:

- Comparing the first six months of 2005 with the same period in 2004 reveals an increase in complaint volume of about 7 percent.[25] In the Abusive Marketing sub-category, for the same six month periods, the number of wireless complaints increased nearly 80% in 2005. Over the five year period, the largest complaint category for both wireline and wireless carriers was "billing" and the next largest was "service."[26]
- In 2004, the FCC logged 21, 608 complaints about wireless service in the categories of Billing and Rates, Marketing & Advertising

[23] D.04-05-057, pp. 4-5.

[24] TURN Opening Brief (October 24, 2005), p. 1.

[25] According to ORA, as of Sept. 16, 2005, data from CAB shows an increase from 5,431 in 2004 to 5,814 in 2005. The 2005 figure does not include complaints backlogged in the system.

and Contract Early Termination. This represents a 43% increase over 2003. Complaint statistics for 2005 were over 11,316 for the first two quarters of 2005.[27]

- For Fiscal Year (FY) 2003-2004, CAB ordered refunds totaling $8.2 million as a result of complaints, representing 6,829 refunds. For FY 2004-2005, CAB ordered refunds of $7.3 million, representing 5,395 refunds.[28]
- Wireless consumer complaints in California increased 63% from 2003 to 2004 and while wireless subscriber rates only increased by 15%.[29]
- The Commission's 2002 *Status of Telecommunications Competition Report* to the Legislature concluded that more effective consumer protections were needed as the state moves toward a more competitive telecommunications market. That report notes that "between 1998 and 2001 complaints regarding wireless providers increased by over 254%."[30]
- More than 30,000 consumer complaints about telecommunications services were filed with the Commission

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[26] From 2000 to 2004, wireline billing complaints comprised an average of 56% of total wireline complaints and wireless billing complaints averaged 74% of total wireless complaints. Also, 17% of wireline complaints were "service" ones while 12% of wireless complaints fell in that category.

[27] TURN Opening Brief, pp. 13-14 (based on analysis of FCC data).

[28] Alexander Opening Testimony (TURN), (Aug. 5, 2005), p. 30. TURN notes, "…these figures only include informal complaints where the customer deposited the disputed amount with the Commission, a relatively small percentage of all informal complaints."

[29] TURN Opening Brief, p. 9.

[30] Id., p. 8; TD Staff Report, p. 49.

each year between 2000 and 2004. The Consumer Affairs Branch (CAB) logged a total of over 160,000 telecommunications complaints from consumers during that period.[31]

- The California Attorney General has concluded that the deregulation of the telecommunications industry, while beneficial in some respects, has been accompanied by a well documented explosion of consumer fraud.[32]

We are not persuaded by the carriers' assertions that perceived limitations of the above data means that stronger consumer protections are not warranted. For example, the argument that the recorded number of complaints by the Commission is a small percentage of overall subscribership[33] is not persuasive. As several parties demonstrated, a small percentage of aggrieved customers is often representative of a larger problem since only a small percentage – often less than 1% -- of customers that experience problems actually seek help from their carriers, file complaints with governmental agencies, or pursue formal lawsuits when problems arise.[34]

Input from other sources further underscores the need for stronger consumer protection in California:

- The Better Business Bureau (BBB) statistics for 2004 showed that the wireless industry generated approximately 28,000 customer

[31] ORA Opening Brief (October 24, 2005), pp. 1-3; Maack Opening Testimony (ORA) (Aug. 5, 2005), pp. 2-5; Maack Reply Testimony, (Sept. 16, 2005), p. 5.

[32] Attorney General Opening Comments and Attorney General Reply Comments, (June 9, 2000), pp. 2-3.

[33] Schulte and Johnson Reply Testimony (Wireless Group) (Sept. 16, 2005) p. 1.

[34] TURN Opening Brief, p. 6; Alexander Opening Testimony, pp. 35-36; ORA Opening Brief, p. 10; Maack Opening Testimony, pp. 13-14.

complaints, more than any other industry. Moreover, wireline telephone companies made the list of BBB's ten most-complained of industries.[35]

- *Consumer Reports* found that consumer satisfaction with cellular service is lower than for other businesses they rate such as auto insurers or hotel chains.[36]
- The National Association of State Utility Consumer Advocates (NASUCA) brief in the FCC's Truth in Billing Docket found that competition among wireless and long-distance carriers has not been sufficient to protect consumers.[37]
- The National Association of Attorney Generals reports that for the past 5 years, surveys of Attorney General offices show that telecommunications related issues have consistently been the top four categories of most complaints, with the majority of those complaints related to wireless service.[38] Recent national surveys by the Consumers Union and the American Association of Retired Persons (AARP) also illustrate consumer concern over telecommunications services.[39]

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[35] ORA Opening Brief, p. 9; Reporter's Transcript (RT) (Sept. 29, 2005), p. 1269.

[36] ORA Opening Brief, p. 9; Three Steps to Better Cellular, *Consumer Reports* (February 2003).

[37] See, ORA Opening Brief, p. 12; Comments of the Attorney General and Office of Ratepayer Advocates (May 20, 2004), p. 5. citing, National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Monthly Line Items and Surcharges Imposed by Telecommunications Carriers, In the Matter of Truth in Billing and CC Docket No. 98-170 Billing Format (March 30, 2004), p. 10.

[38] Alexander Opening Testimony, p. 31.

[39] Id., pp. 32-34.

Residential customers are not the only group of consumers in need of stronger protections. According to the California Small Business Roundtable and the California Small Business Association (CSBRT/CSBA), which represent 203,000 small businesses,

> CSBRT/CSBA has been a strong supporter of [the cramming] rules because we heard from many small business owners who were shocked to find that they were being charged for products and services that they did not order, frustrated at the lack of responsiveness of carriers, billing agents and vendors and outraged by [sic] time and energy it took to reverse unauthorized charges on their phone bill. Thousands of customers were victimized by these unscrupulous practices costing them millions of dollars.[40]

In contrast to the wealth of evidence on the need for protections, the carriers failed to present evidence demonstrating consumer satisfaction or low number of complaints and inquiries to their own internal customer service departments.[41] Taken together, the evidence on the record provides compelling support for the need for a stronger consumer protection, including some expansion in rules.

Given the changing demographics in California, we are particularly concerned about adequate consumer protection for California's growing population who are not fluent in spoken and/or written English. According to the 2000 U.S. Census data, 39.5 percent of Californians speak a language other

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[40] CSBRT/CSBA Opening Comments on Proposed Decision (January 17, 2006), p. 3.

[41] TURN Opening Brief, pp. 5-6. TURN notes "While the carriers are calling into question the sufficiency of Commission complaint data or the significance of public participation hearings, what is noticeably absent is any attempt by the carries to support their critical analysis with their own internal data."

than English at home.[42] The Latino Issues Forum (LIF) explained that while the telecommunications issues facing non-English consumers are similar to other customers, the lack of language appropriate materials often makes these consumers vulnerable to fraud and abuse.[43] And, when technology is rapidly changing there is a threat of increased confusion and potential market abuse of non-English speakers.[44] Previous enforcement of these abuses has been expensive, and the results were less than acceptable to consumers.[45]

We are also concerned that the needs of the more than 6 million Californians with disabilities are not adequately addressed. Reliable, accessible and affordable telecommunications services are vital to the health, safety and well-being of disabled Californians and a vital part of our mission to protect all citizens of this state. As DRA points out, there is little data or studies on the needs of the disabled. We direct the Commission's Telecommunications Division to research the unique needs of telecommunications consumers with disabilities and provide a report to the Commission regarding those needs within one year from the mailing of this Decision. The reports shall include recommended next steps and potential solutions.

We conclude that the protection of our most vulnerable citizens through both education and adequate rules are necessary requirements in a California telecommunications consumer protection program. It is critical to that

[42] Available at www.census.gov.

[43] LIF Reply Brief (October 31, 2005), p. 2.

[44] LIF Opening Brief (October 24, 2005), p. 6.

[45] See, D.05-06-033, (Investigation of Clear World Communications).

we commence the long delayed phase of our consumer protection proceeding to address the needs of limited English proficiency and disabled consumers.

2. Even with a Competitive Market, Existing Consumer Protection Laws Are Not Adequate

While, competitive market forces greatly assist consumers, such forces alone are not sufficient to protect consumers. We agree with the FCC that actual rules, in addition to policy principles, voluntary action, and competition, are needed for effective consumer protection:

> As competition evolves, the provision of clear and truthful bills is paramount to efficient operation of the marketplace…(S)ome providers in a competitive market may engage in misconduct in ways that are not easily rectified through voluntary actions by the industry. It is critical for consumers to receive accurate billing information from their carriers to take full advantage of the benefits of the competitive marketplace.[46]

Certainly existing Commission decisions, state statutes, and federal laws and regulations provide some protection for consumers. However, we concur with the consumer groups' observation that there are gaps where additional protections are needed. ORA pointed out that "[the] gaps occur due to lack of consistent applicability to all carrier types and insufficient specificity in existing rules"[47] and that a number of the stayed Rules provide new protections to consumers which do not exist in current laws and regulations.[48] Many of the

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[46] FCC TIB Order, pp. 17-18.

[47] Maack Opening Testimony, p. 1.

[48] ORA Opening Brief, pp. 4-7. ORA cites rules 1(a)[in its entirety], 1(a)(1),1(a)(2), 1(c)(1), 1(e)(1), 1(e)(2), 1(f), 1(g), 1(h), 2(d) 3(e), 3(h), 3(i), 3(m), 5, 6(b), 6(c), 6(f), 6(g), 6(i), 6(j), 7(a), 7(b), 7(d), 8(a), 8(b), 8(e), 9(e),

Footnote continued on next page

existing consumer protection rules apply only to certain types of carriers and often do not include wireless carriers.[49] Thus, consumers are left with a patchwork of rules that provides inconsistent protection.

The Commission's existing consumer protection measures (not including the spamming and cramming rules) span a large number of decisions, some of which date back to the early 1990's. Currently, a consumer must be able to identify the *individual* PUC decision that relates to his or her specific carrier and the exact ordering paragraph within the decision that applies to the situation. As TURN points out, it is unreasonable to assume that any but sophisticated PUC practitioners can hope to accomplish this task. Moreover, since our decisions currently are available only in English, they are typically inaccessible to the numerous non-English telecommunication consumers in California. Today's decision simplifies the Commission's maze of rules, integrates them in a single document, and applies them on a uniform basis.

The carriers cite California's unfair business practices laws as sufficient protection for consumers.[50] Many parties testified that the barriers to bringing these cases to court, much less winning, are extremely high.[51] Although individuals may bring lawsuits under the Unfair and Unlawful Business Practices Act,[52] often the dollar amount at issue is too small for the average consumer to obtain legal counsel and to see a case to its conclusion. As we know

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11(d), 13(a), 14(b) as GO 168 rules that provide new protections to consumers which do not otherwise exist in current laws and regulations.

[49]TURN Opening Brief, pp. 30-31; ORA Opening Brief, pp. 7-8.

[50] Business & Professions Code (B&P) §§17200, 17500.

[51] See, e.g., TURN Opening Brief, pp. 31-34.

[52] B&P Code § 17200, et seq.

from our hearings this past winter on the impact of higher natural gas rates on low income customers, an astounding percentage of working Californians cannot afford basic living expenses and any increase in expenses could mean a choice between paying the utility bill and buying food.[53] Litigation is not a feasible solution for many, if not most, aggrieved consumers. Even if litigation is commenced, customers likely must wait months, if not years, for a resolution of their problem. As we stated in our decision adopting the cramming rules, after the fact enforcement of existing laws is an inadequate substitute for up-front standards of conduct and consumer protections because "imperfect legal remedies and fly-by-night operators often make it impossible to make the victims whole."[54]

Moreover, California's unfair business practices laws are not an efficient and effective solution for the carriers. The reliance on these laws does not provide the "national, uniform" solution that the wireless carriers seek. If consumers are forced into court in order to resolve most disputes with their providers, the result will be a flurry of litigation dispersed throughout the state. Each case will have its own unique set of facts and a different judge to interpret those facts, most likely creating a unique outcome for each case. Indeed one already sees this problem with regard to conflicts among federal circuit court holdings on many consumer-brought complaints against wireless providers.[55]

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[53] See, Greenlining Opening Comments to Proposed Decision (January 17, 2006), p. 5 (70% live paycheck to paycheck and one-third live at or below the poverty level).

[54] D.01-07-030, p. 10.

[55] *See, e.g., Fedor v. Cingular Wireless Corp*, 355 F.3d 1069 (7th Cir. 2004) (complaint over delays in billing airtime charges not preempted rate regulation); *Phillips v. AT&T Wireless*, 2004 U.S. Dist. LEXIS 14544 (S.D. Iowa 2004) (early termination fee is not a "rate" and therefore complaint re: reasonableness of ETF

Footnote continued on next page

Confusion and uncertainty exists because the rules governing service are scattered in a number of statutes of varying degrees of specificity and a number of Commission decisions dating back to 2000. Consumers and carriers – in particular new entrants - are greatly benefited by the ability to find the applicable rules in a single document. This current hodgepodge makes it virtually impossible for consumers to understand their rights. Even with a costly and vigorous education campaign, consumers will have great difficulty in understanding where to go to determine what their rights are and how to enforce them, absent an integrated set of rules.

3. Rights Without Enforceable Rules Are Meaningless

Some parties argued that the Commission only needs a set of consumer rights and that rules are not necessary. We disagree. Standing alone, consumer rights promulgated by this Commission provide important policy directives and perhaps better understanding of the Commission's views, but no more. In contrast, rules provide the legal ability to implement and enforce the policies. As one witness testified,

> That proposal [to implement a Bill of Rights without revised Rules] is nothing more than a statement of generic ideals that lacks any enforceable, specific regulations and does not provide any of the protections that were designed to be included in the May 2004 general order. (RT, p. 1276)

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can be brought in state court); *But see also*, *Redfern v. AT&T Wireless Servs*., 2003 U.S. Dist. LEXIS 25745 (S.D. Ill. 2003) (ETF was part of rate structure so state law claim preempted), *Chandler v. AT&T Wireless Servs*., 2004 U.S. Dist. LEXIS 14884 (S.D. Ill. 2004).

The May 2, 2005 ACR provided an attached proposed decision that included a Consumer Bill of Rights. The proposed decision explained that the principles listed in the Bill of Rights serve the same purpose as a statement of legislative intent[56]. Several Parties pointed out in their Comments to the May 2, 2005 proposal pointed out that legislative intent is unenforceable.[57] The Wireless Group noted that, "the proposed General Order appears to contemplate the adoption of the Bill of Rights as a statement of legislative intent and not a list of enforceable rights."[58] They further explain that a legislative intent is a statement of policy and is unenforceable.[59] Disability Rights Advocates (DRA) pointed out the inherent problems of rights without rules, noting that such rights "would function only to give consumer a false sense of security. Carriers would use it as evidence to claim that they are regulated, but in reality the carriers will not be held accountable."[60]

While we acknowledge the importance of a consumer bill of rights, we conclude that absent a set of consumer protection rules, the rights are inadequate. The rights simply state the Commission's policy views – which may be useful, but are not enforceable absent rules. And, even worse, rights without rules are confusing to consumers who easily may believe that the Bill of Rights confers protections that the Commission or others will or can enforce.

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[56] May 2, 2005 ACR, Attached Proposal, p. 2.

[57] See Disability Rights Advocates Comments (May 31, 2005), p. 2 (Part II rules are a necessary support to each corresponding right); ORA Comments (May 31, 2005), pp. 3-4 (rights without rules are unenforceable); TURN Comments (May 31, 2005), p. 3 (without specific and enforceable rules, the rights do very little to help consumers).

[58] Joint Wireless Group Comments (May 31, 2005), p. 4.

[59] Id., p. 5.

[60] DRA Opening Comments on Proposed Decision (January 17, 2006), p. 3.

4. The Evidence On The Cost Of Compliance Is Not Persuasive

The Commission approved the stay of G.O. 168, in part, to address the concerns regarding the cost of compliance. In our review of the stayed rules, we have eliminated a number of provisions and streamlined others, to reduce any carrier complaints of undue costs.

Likewise, we have considered the record with respect to the economic impact of adopting consumer protections. In 2003, parties submitted several studies regarding economic impacts on the record. The Utility Consumers' Action Network (UCAN) submitted a study ("the Navarro paper"[61]), seven wireless carrier representatives[62] tendered "the LECG Studies,"[63] and the Cellular Carriers Association offered "the Hazlett Paper."[64] All these items were accepted into the record in D.04-05-047. That decision accurately identified critical flaws in the LECG Cost studies.[65] We concur with the D.04-05-057 statement that "even if full faith were awarded to the LECG studies

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[61] UCAN Comments, (August 25, 2003), Appendix A, (Peter Navarro, *An Economic Justification for Consumer Protection Laws and Disclosure Regulations in the Telecommunications Industry)*.

[62] 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, LP; Verizon Wireless; and the Cellular Carriers Association of California.

[63] *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 Customers: Cost Study Report (September 2003)* (the LECG Studies).

[64] 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).*

[65] D.04-05-057, pp. 136-138. The LECG studies flaws were: 1) reliance on implementation cost estimates of untested accuracy, 2) the assumption that 100% of the implementation costs will be passed onto consumers, 3) failure to take into account any consumer benefits, and 4) failure to address any potential cost savings that could partially offset implementation costs.

estimation of implementation costs, its overall findings [are] largely mitigated by the revisions to the rules made since the study was conducted."

None of the evidence submitted on the record after the aforementioned studies warrants abdication of consumer protection rules. Carriers present a great deal of general information on the record. For example, wireline carriers claim that compliance with G.O. 168 (before the stay) resulted in substantial up-front implementation costs including time-consuming and inefficient work-around processes to meet compliance deadlines.[66] Moreover, they state that if the G.O. were reinstated, carriers would have substantial ongoing compliance costs, including software development and maintenance, increased contact time in customer interactions, printing and postage.[67] Similarly, Nextel presents system development costs of $15-20 million that it could incur to comply with consumer protection rules enacted in 2003[68] as evidence of GO 168 compliance costs. It also asserts that complying with state specific consumer protection rules will raise carrier costs (among other issues) to a level that will outweigh "any intended benefits to the consumer."[69]

While the evidence submitted on the record provides further context to carrier concerns about cost issues, it continues to suffer from many of the same flaws as the LECG studies. We concur with the consumer group observations that this part of the record is an inadequate basis to reject adoption of consumer

[66] Wireline Group Reply Comments (June 15, 2005) p. 10.

[67] Id.

[68] Byers Opening Testimony (Nextel) (July 25, 2005), p. 6.

[69] Herman Opening Testimony (Nextel) (August 5, 2005), p. 16; See also, Nextel Opening Brief (October 24, 2005) pp. 2, 11-15.

protection rules. For example, ORA notes the limitations of the evidence Nextel presents:

> "[Nextel] …has not specified which rule or rules would necessitate this expenditure, what types of system modifications would be needed nor what processes or system features would be impacted requiring change. Mr. Byers has presented an unsubstantiated claim that Nextel's costs might increase and by a one-time amount that pales in comparison with the normal costs of running and maintaining Nextel's Ensemble system, assertedly in the hundreds of millions of dollars per year."[70]

> Moreover, "[Nextel] asserts that complying with consumer protection rules will raise carrier costs to a level that will outweigh "any intended consumer benefits." (Declaration of Henry J. Herman, p.16) This broad statement is presented without factual support in terms of citing specific rules, costs caused thereby, or consumer benefits outweighed."[71]

We do not find the testimony on the burden created by the cost of complying with G.O. 168 to be compelling, especially in light of the streamlined version of Part 2 that we adopt today. In D.04-05-057, we found that consolidation of the consumer protection rules provides economic benefits through reduced regulatory uncertainty as well as reduced complexity.[72] In fact, compliance with a well designed set of rules and regulations will give consumers confidence in

[70] Maack Reply Testimony, p. 1.

[71] Id, pp. 4-5.

[72] D.04-05-057, p. 134.

the telecommunications industry and encourage growth and development of markets.[73]

While the carriers argued that the cost of implementing the rules outweighed the benefits of the rules, the carriers provided little evidence to support the claim and we find no reasonable basis for reversing our earlier findings on the cost of compliance.

According to the Commission's Telecommunication Division, 130 carriers or almost 75% of all carriers indicated that they had fully complied with GO 168 as of December 6, 2004—approximately six months following the effective date of the Decision. Eighty percent of the requests for extensions concerned only subparts of four rules.[74] Consumer groups and CALTEL concluded that the fact that so many carriers did not seek extensions to comply with the majority of the rules and that many were in compliance with those rules before they were stayed is strong evidence that implementing the rules did not create a hardship on carriers.[75] Furthermore, ORA and the AG argued that not reinstating G.O. 168 "would cause unnecessary hardship on carriers who, in good faith, have complied with the rules and will now have to modify their operations or procedures to undo the rules that they have implemented."[76] And, as we noted above, absent a comprehensive set of rules and consistent

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[73] CSBRT/CSBA Opening Comments on Proposed Decision, p. 5

[74] ORA and Attorney General Comments (May 31, 2005), p. 16.

[75] Id, pp. 23-24; CALTEL Reply Comments (April 4, 2005), p. 2; ORA Opening Brief (October 24, 2005), p. 19 (cites Verizon Wireless example of compliance with 10 point font requirement as evidence of lack of burden on carriers).

[76] Id. pp. 16-17.

interpretation of the rules, the carriers will face potentially costly litigation that can result in fragmented rules and outcomes.

IV. The Telecommunications Consumer Protection Program

The Program we adopt today contains four elements -- a revised Consumer Bill of Rights (Rights), a set of associated rules (Rules), Education and Enforcement. This Program provides the foundation for the Commission and carriers to assure consumers of fair practices while permitting and encouraging innovation and competition. The Rules are an evolved and streamlined set of rules developed from the stayed rules in D.04-05-057. We considered the concerns of the involved parties and address many of those concerns in the revisions. We direct staff to continue to closely monitor implementation of our new rules and to alert us of changes needed, either to provide additional protection or to avoid unintended restrictions on innovation or competition.

The Rights and Rules work hand-in-hand with existing statutes to provide clarity and direction to both carriers and consumers. However, the Rights and Rules are only half of our Program. This Decision also includes Education and Enforcement.

This Decision directs the Commission's Executive Director and the Directors of the Telecommunications Division (TD), the Consumer Services and Information Division (CSID) and the Consumer Protection and Safety Division (CPSD) to work together to create an extensive consumer education program. The first element will be the development of two documents—one for carriers and one for consumers—that will summarize our Rights and Rules and will be available in English and non-English versions. We discuss below other critical elements of the extensive Commission education program we order today.

The final piece of our Program is Enforcement. This Decision orders the Directors of CPSD, CSID (using our Consumer Affairs Branch (CAB)), and TD to create a database to track and analyze consumer complaints. Beginning July 2006, the CPSD and CAB shall provide quarterly reports to the Commission on the status of consumer complaints. Lastly, given the high level of activity at the FCC, we direct the Commission's General Counsel, working with the TD, to develop a specific advocacy plan to guide this Commission's consumer protection filings at the FCC to promote consumer protection.

A. The Revised Consumer Bill of Rights and Rules

1. Approach

In tackling the development of a set of rights and rules, we looked at three approaches. One, we could keep in place pre-existing rules for ILECs and CLECs and create new and different rules for wireless carriers.[77] Second, we could keep in place the pre-existing rules for ILECS and CLECS and not create any new rules for wireless carriers. Third, we could create a single place for consistent rules applicable to all carriers that would set a minimum set of requirements.[78]

We determine that the best approach is the third one - to create one set of consistent rules for all carriers. Our authority to regulate the terms and conditions of wireless service allows us to develop rules that apply to all carriers providing service to California consumers. Furthermore, both the wireless and

[77] See, D.95-07-054 (approving rules for Competitive Local Exchange Carriers); D.98-08-031 (approving rules for Non-Dominant Interexchange Carriers).

[78] These rules supersede the CLEC and NDIEC rules we have previously approved.

wireline industries have been calling for neutrality in telecommunications rules, i.e., treating all carriers alike.

While consistency is an important goal of our consumer protection program, another goal is to create a program that is feasible to implement and understand. We have eliminated rules that we found could be incorporated into the education or enforcement portions of the Program. We also have eliminated duplicative rules and rules that could be overly burdensome. In the end, we have significantly simplified the rules from the 2004 stayed decision.

Appendix A contains the Consumer Bill of Rights and revised rules we adopt today.

2. Part I - The Bill of Rights

Our adopted Consumer Bill of Rights sets forth the principles for telecommunications consumer protections in California and provides a policy directive to carriers and consumers from the Commission. Our goal is to provide a clear and concise list of rights that are comprehensible to telecommunications consumers and carriers.

We have reviewed the original Bill of Rights adopted in D.04-05-057 and the proposed Bill of Rights included in the May 2, 2005 ACR. These two sets of rights have many similarities. Both sets of rights cover the issues of disclosure, choice, privacy, public participation, accurate bills, non-discrimination, and safety. We include these areas in today's decision. However, we find that inclusion of some of the new areas proposed in the May 2005 ACR is problematic.

First, we agree in principle with the right to access lawful content over the Internet and the right to purchase broadband services. However, these two rights pertain to "information services" that are under the authority of the

FCC and not within the purview of this Commission. The Wireline Group also argued that these rights are not within Commission's jurisdiction.[79] Because we have no authority over information services and we cannot control FCC rules on this matter, we decline to adopt these rights in order to avoid consumer confusion.

The FCC currently requires carriers to provide local number portability (LNP) within a local calling area. While we agree that without LNP, consumers do not have as much freedom to change providers, we find the proposed right to LNP to be a function of the right to choose and not a right within itself. Furthermore, we find it confusing to include a "rule" in our set of rights and decline to adopt it as such.

Certain carriers claim that the use of the term "right to personal and financial security" is vague, standing alone. We agree. However, we recognize security to be a privacy issue, and therefore, we have subsumed the right regarding security into the right to privacy. The Wireline Group recommended that the two rights on disclosure be combined for clarity.[80] As it is our goal to create a concise set of rights, we have created one right to disclosure that combines the disclosure of clear and complete information with the right to be charged according to agreed upon rates, terms and conditions.

ORA noted that limiting a right of privacy to financial records and personal information appears contradictory to P.U. Code § 2891, which provides consumers with very broad privacy protections extending beyond financial

[79] Wireline Group Comments (May 31, 2005), p. 7.

[80] Id., p. 18.

records.[81] Section 2891 prohibits carriers from sharing, without written authorization, information including but not limited to calling patterns, personal information, and purchases. We agree and adopt ORA's proposal. In addition, we made language revisions for the purposes of clarity and streamlining.

[81] ORA Comments (May 31, 2005), p. 3.

We adopt the following Consumer Bill of Rights:

Choice: Every consumer has a right to select their services and vendors, and to have those choices respected by the industry.

Non-Discrimination: Every consumer has the right to receive products and services free of prejudice or disadvantage.

Safety: Every consumer has a right to safety and security of their persons and property, including the ability to receive clear and complete information about access to 911 emergency services.

Privacy: Every consumer has a right to personal privacy, to have protection from unauthorized use of their records and personal information, and to reject intrusive communications and technology.

Disclosure: Every consumer has the right to receive clear and complete information about rates, terms and conditions for available products and services, and to be charged only according to the rates, terms and conditions they have agreed to.

Accurate Bills: Every consumer has the right to accurate and understandable bills for products and services they authorized.

Public Participation: Every consumer has the right to participate in public policy proceedings and to be informed of their rights and protections.

3. Part II - Consumer Protection Rules

We adopt a streamlined Part 2, Consumer Protection Rules and add important protections for non-English speaking consumers.

Our goal in adopting these revised Rules is to ensure the viability of the rules, by having rules that are legal; clear, simple and non- duplicative; and provide adequate implementation time. We discuss each of these aspects below. We also address the carrier concerns regarding in-language documentation.

- Legality

We address the question of overall jurisdiction in section III.A. above. In addition we have reviewed the legal arguments raised by the carriers regarding specific rules. For example, we find that stayed Rule 6(g) regarding separate line items on government mandated charges violates the TIB Order.[82] However, the TIB Order states that it is misleading for carriers to state or imply that a charge is required by the government when it is the carriers' business decision as to whether and how much of such costs they choose to recover directly from consumers through a separate line item charge. In light of that holding we have revised this Rule to state, "Carriers shall not label or describe non government fees or charges in a way that could mislead consumers to believe those charges are remitted to the government." We have also consolidated this rule with Rule 5(a).

Similarly, we find that the restriction on the amount of late payment charges in stayed Rule 7(a) is rate regulation, as the Commission itself has determined that late payment charges are "part and parcel" of rates charged[83]. We therefore revise this Rule to delete the sentence, "Any authorized late payment penalty may not exceed 1.5% per month on the balance overdue." We have also consolidated stayed Rule 7 to other more appropriate areas.

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[82] FCC TIB Order, ¶ 30.

[83] See, D.93-05-062 (late payment charges are part and parcel of the rates charged for telephone services).

Some parties expressed the concern that some of the stayed rules were unconstitutionally vague. We do not agree with the legal analysis, but have as one of our primary goals the creation of rules that members of the general public understand. We reviewed the language of the stayed rules including the definitions, and have revised vague language while still giving carriers the flexibility to conduct business. While we cannot anticipate every possible quibble with wording, we have aimed to use plain English and to establish clear standards that are understandable by the public as well as the carriers.

We eliminated several potential conflicts with state or federal laws by revising the rules. For example, we eliminated the requirement in stayed Rules 1(f), 2(c), 3(d) that a contract "shall be in a minimum of 10 point font." Instead, we now require a contract to be "clear and conspicuous and otherwise in compliance with existing law." We also eliminated most requirements of exact phrasing, which we considered prescriptive and unnecessary. Instead we require that certain information be provided.

None of the rules adopted today constitutes impermissible rate regulation of wireless carriers. The rules do nothing more than require carriers to make meaningful disclosures of information to their customers; adhere to conscionable contracting practices; adopt fair billing and collection techniques; offer refunds if carriers secure advance payment for services they do not provide (i.e., prepaid calling cards); and provide customers who sign long-term contracts a reasonable rescission period – at any rate the carriers may choose.[84] None of these rules is preempted by federal law.

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[84] Many of the rules adopted herein simply consolidate into a general order those rules currently in place. Compare Rule 8(a) specifying 7-day grace period prior to termination of service for nonpayment with

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In order to ensure meaningful disclosure of information to customers, and in accordance with conscionable contracting practices, Rule 1 requires carriers that promote their services in languages other than English to disclose basic terms and conditions of these services to subscribers whose language is other than English. To enable customers to make informed choices among services, Rules 2 and 3(a-e) require carriers to provide a clear and conspicuous disclosure of information about the nature and scope of the service, including a short summary of the key terms and conditions of service. Rule 9 requires the carriers' employees to properly identify themselves to customers. None of these disclosure rules constitutes impermissible rate regulation.

Rules 4(e) and 3(f) enforce for the basic proposition that customers should receive services promised. Under Rule 4(e), a carrier must refund prepaid charges when the carrier does not provide the service at the price or quality represented to customer – a requirement that is an exercise of permissible state regulation to ensure fairness and to prevent fraud.[85]

Rule 3(f) allows customers to cancel a new service or contract within 30 days without incurring termination fees or penalties with 30 days. This Rule ensures fairness with respect to enforcement of contractual provisions; it does not dictate rates. While it may be argued that early termination of service might cost carriers money that they may want to recover through an early termination penalty, courts have rejected the claim that such penalty constitutes a rate.[86] As

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Order Instituting Rulemaking re Competition, 60 CPUC 2d 611, 649 (1995) (Notices to discontinue service for nonpayment of bills shall be provided in writing …. not less than 7 calendar days prior to termination.)

[85] See, *In re Wireless Consumers Alliance*, 15 FCCR 17,201, ¶¶ 25-27 (2000); *Spielholz*, 86 Cal.App. 4th at 1370.

[86] Early termination fees are not rates, but are akin to a liquidated damages provision and thus constitute "other terms and conditions." See, e.g., *Esquival v. Southwestern States Cellular Corp.*, 2000 WL 33915909, at

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stated in *Phillips*, "'rate' must be narrowly defined or there is no ability to draw a line between economic elements of the rate structure and normal costs of operating a telecommunications business that have no greater significance than as factors to be considered in determining what will ultimately be required of rates to provide a reasonable return on the business investment."[87]

Other rules set forth notice requirements. Rules 3(d) and 6(a) do not constitute rate regulation; they require carriers to notify customers of any change that carriers may unilaterally make.[88] Rules 6(b) and (c) and 8 set forth customer notice requirements before a carrier may withdraw service or terminate it for nonpayment. These basic rules of consumer protection do not tell the carriers what rate to charge.

Rules 5, 6, 7 and 8 adopt fair billing and collection techniques, ensuring, among other things, that customers are billed only for the services they have authorized; that they are provided clear information about payment due dates; and that they are informed about bill dispute resolution procedures. These rules all relate to billing and do not regulate rates. For example, Rule 5(a) requires that bills be based on the rates in effect at the time the service was used. Carriers cannot raise their rates and then apply the new rate retroactively to services already used. Rule 5(h) in turn requires carriers to credit payments

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*3-6 (S.D. Iowa 2000); *Phillips*, 2004 U.S. Dist. LEXIS 14544, at *25, 32 (court rejected claim that early termination fee part of AT&T's wireless rate structure when customer attempted to cancel contract because dissatisfied with service); see also, *Brown*, 109 F.Supp. 2d at 423 (state consumer protection rules are preempted only when they challenge the "reasonableness or the lawfulness of the rates themselves.")

[87] *Phillips*, 2004 U.S. Dist. LEXIS 14544, at *25, *36.

[88] Unlike the statute at issue in *Cellco v. Hatch*, 2005 U.S. App. LEXIS 26887 (8th Cir. 2005), Rule 3(c) does not require a subscriber to "opt-in" to the changes that affect rates proposed by the carrier before they become effective. *Hatch*, however, makes clear that a subscriber has the right to "opt-out" of such changes.

effective the business day that payments are received. This type of regulation – of billing practices -- is not preempted by federal law.

- Clarity, Simplification, Duplication

We have reviewed the rules to determine where they could be streamlined and simplified. For example, we deleted several subparts of the stayed rules that we found to be duplicative, overly intrusive, and otherwise unnecessary. In reviewing the language in stayed Rule 1(h), we were concerned that the word, "legibly" had not been defined in this proceeding. Because the term "clear and concise" has been defined in case law, we have substituted that term where applicable. Several carriers submitted comments asserting that the information required in stayed Rule 6(k) was lengthy and thus contributed to a cluttered phone bill for customers.[89] We have therefore simplified the required statement.

In order to provide consumers with clear information on the services to be received, we add a rule that requires carriers to provide subscribers with a short summary of key rates, terms and conditions at the time of sale. We consider this new rule to be a key element of our consumer protection program that gives consumers the information they need while giving carriers the flexibility to determine the format of their contracts, bills and marketing materials.

[89] SBC California and Sprint Communications Company LP on Behalf of the Wireline Group Consolidated Comments (March 23, 2004), pp. 21-22.

- Implementation

Stayed G.O. 168 required carriers to implement 142 separate items by December 6, 2004 (approximately 6 months following adoption.) As we previously stated, 177 companies -- approximately 75% of all carriers -- submitted a Certificate with the Commission complying fully or in part with G.O. 168 by the required 180 days.[90] The remaining 25% who complied in part requested extensions of time. Many of the requests addressed the same rules and the bulk of the requests focused on stayed Rules 3, 6, and 8.

Thus, most carriers were able to comply with the Rules in a timely manner. Those carriers unable to comply within the initial six month time period rarely requested more than an additional six months.[91]

In order to address past problems with timely implementation and provide additional time to implement these revised (and streamlined) rules, we require the carriers to implement these revised rules by January 1, 2007.

- In Language Documentation

As addressed in our prior discussion on in language issues, there are many problems surrounding telecommunication services to non-English speaking consumers, and those who are not English literate readers or writers. Currently, Public Utilities Code § 2890 (b) provides that "[w]ritten or oral solicitation materials used to obtain an order for a product or service shall be in the same **language** as the written order." We have built upon this statute and added the requirement that if a language other than English is used in the

[90] According to the Telecommunications Division, many of the 177 companies hold several Certificates of Public Convenience and Necessity (CPCN) due to mergers and acquisitions.

[91] Of the 172 individual extension requests, only 32 requested more than a six-month extension.

advertising or promotion of a carrier's services, the information disclosed in service agreements or contracts must be provided in that language. We consider this provision to be central to our obligation to protect consumers in California, given the state's rapidly changing demographics.

4. Part 3 – Rules Governing Non-Communications-Related Billings ("Cramming")

In July 2001, the Commission issued D.01-07-030 adopting rules governing the inclusion of non-communications-related charges on telephone bills. In doing so, the decision explained that cramming -- the submission or the inclusion of unauthorized, misleading, or deceptive charges for products or services on the subscriber's telephone bills -- has become a serious and widespread problem in California, draining time and money from California consumers and businesses.[92]

The Commission approved the addition of the non-communications related billing rules in D.04-05-057. The purpose of the so-called Cramming rules in Part 4 of G.O. 168 is:

> to protect consumers from unauthorized charges on their telephone bills, specifically, charges for non-communications-related products and services. Effective July 1, 2001, such charges are no longer barred by statute. These rules are intended to give consumers control over whether to use their telephone bills to pay for non-communications-related products and services; to ensure

[92] The FCC has commented on the problem as well, noting that " . . . it is significantly easier to bill fraudulent charges on telephone bills than on credit card bills. While credit card charges require access to a customer account number that consumers understand should be treated as confidential, all that is often required to get a charge billed on a local telephone number is the consumer's telephone number. This number is not only expected to be widely distributed, but can easily be captured by an entity even when the consumer has not authorized charges or made a purchase. FCC TIB Order, ¶ 7, fn. 18.

> that consumers have sufficient information to make informed choices about this service and, if they use it, to verify charges on their bills; and to provide for prompt and effective recourse if they find unauthorized charges or other billing errors related to non-communications charges on their telephone bills; and to protect the confidentiality of information they provide to telephone companies.[93]

In our stay of the Rules, we specifically left D.01-07-030 in effect stating,

> In no way does this extension of time impact the Commission's enforcement of the existing interim "Cramming Rules" (Rules Governing Billing for Non-Communications-Related Charges) set forth in D.01-07-030, nor the existing "Slamming Rules" (Final Opinion on Rules Designed to Deter Slamming, Cramming and Sliding) set forth in D.00-03-020. We are committed to continuing our ongoing efforts of enforcing the Cramming and Slamming rules previously adopted by this Commission.[94]

The May ACR also proposed to retain Part 4 without major revision. We have found no reasonable basis in the record to eliminate Part 4.

The wireless carriers have proposed the repeal of Part 4 arguing that no rules of any kind are needed until significant harm has been shown to have occurred.[95] As discussed above, the record shows that significant harm has occurred. Having settled the need for strong, proactive measures to prevent

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[93] D.01-07-030, Appendix A.

[94] D.05-01-058, p. 4.

[95] Until their reply brief of November 2005, even the Wireline Group, although not in favor, had not opposed the continued application of the non-communications-related billing rules. They had, in their words, "acceded to the permanent adoption of the Non-Com Rules in the stayed GO168."

cramming, we turn next to the carriers' arguments against the non-communications-related billing rules specifically.

The carriers base their arguments on excessively narrow readings of the rules. The carriers in particular have argued that the requirement for a PIN (personal identification number) to provide security at the point of sale impedes technological development, "Moreover, as described in the Joint Wireless Carriers' Opening Brief, the requirement that each transaction involve a PIN is unduly burdensome and in certain instances would make the use of a wireless phone for the transaction infeasible."[96] In fact, our rules provide that, "The billing telephone company must use a PIN number *or other equally reliable security procedure* designed to prevent anyone other than the subscriber and individuals authorized by the subscriber from placing charges on the subscriber's account."[97] This point is made clear in both the rules and the decision. Thus our rules do not bar technological development and are not unduly burdensome.

No party has opined that PINs would or should be the only acceptable method, or that the ESN (electronic serial number) resident in every wireless instrument is not "an equally reliable security procedure." Carriers, in fact, argued that ESN is reliable.[98] Moreover, the carriers themselves recognize the need for reliable security procedures: "[C]arriers and vendors on whose behalf they bill have a strong incentive to establish security procedures that

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[96] The Wireless Group Reply Brief, (November 7, 2005), p. 21.

[97] D.01-07-030, Appendix A, § C(1).

[98] Wireless Group Opening Brief (October 24, 2005), p. 44 ([O]nce a customer has agreed to purchase a service or product, the mobile device passes a unique identifier to the carrier's billing system so that the carrier can identify the phone and place the charge on the appropriate bill. Because this identifier is generated by the network, it is not possible to place a charge on another phone bill.)

prevent the unauthorized billing of non-communications related service."[99] But while they cite numerous examples of credit and debit billing practices in other industries that use less secure methods than PINs,[100] nowhere have they cited an example where the magnitude of the purchases is as great as in the telecommunications industry. Nor are we aware of any.

Our last point may prove to be the most important. Most arguments against cramming rules focus on the idea that non-communications charges are initiated only through the use of handsets. While that may be the way most such charges originate, it is by no means the only way. As the FCC has observed, "[A]ll that is often required to get a charge billed on a local telephone number is the consumer's telephone number."[101] Consumer phone numbers are readily available and thus could be used for non-communications charges without consumer authorization absent our rules. Thus, the heart of the issue is not the use of telephone *handsets*, but the potential for fraud, cramming and privacy violations through the non-authorized use of the consumer's telephone *number*.

As an example, carriers could contract with billing aggregators to place non-communications-related charges on customers' bills.[102] Those customers could have identified themselves by entering their telephone numbers on keypads, or by swiping or scanning vendor-issued cards at the register. Vendors could submit those charges to billing aggregators who process and submit them to carriers for inclusion in the customers' telephone bills. Carriers

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[99] Id., p. 47.

[100] See, e.g., Katz Testimony (August 5, 2005), ¶55.

[101] FCC TIB Order, ¶ 7, fn 18.

[102] This occurs today for communications charges.

could buy receivables at a discount from a wide variety of sources including aggregators, with the intent of including them in customers' telephone bills, and have no knowledge of the originating vendors and no method for determining whether the charges are legitimate.[103] None of these possibilities need involve charges placed through the use of a handset, only a working telephone number that is in most cases freely available through directories and other public sources. Absent an effective set of non-communications-related billing rules, customers have no way to control the charges in their billing envelopes.

Carriers contend that allowing consumers to choose for themselves whether to give or withhold authorization for non-communications billing is burdensome.[104] Specifically, carriers argue that the cost of keeping track of which customers have consented and which have not would make it prohibitive to offer their billing services to vendors. But carriers already track when their customers add or drop any of the thousands of services they offer. No carrier has explained how tracking a consumer's choice to prohibit or allow non-communications charges is different or more difficult than tracking the consumers' telecommunications choices.

[103] Consider the possibilities. Carriers could, for example, become fearsome competitors in the debt collection industry by virtue of their exceptional collection leverage and access to billing information for nearly every American. When faced with a crammed bill, how many customers will succumb to the very credible threat of losing every wireless line in the account and the associated instruments (which, as the record shows, carriers have typically locked to prevent customers carrying them to their competitors' otherwise-compatible systems); suffering hundreds of dollars in early-termination fees charged to the credit card accounts they used to establish service; and having their credit ratings trashed?

[104] Verizon Wireless Opening Brief (October 25, 2005) p. 46.

After considering all of the evidence on the record, we conclude the non-telecommunications-related billing rules should remain in force and unchanged. We have renumbered these rules as Part 3 in the attached G.O. 168.

5. Part 4 - Rules Governing Slamming Complaints

D.05-01-058 did not stay our Part 5 Rules governing slamming. We find nothing in the record that compels us to revise the Part 5 rules that were adopted in D.04-05-057. We retain these rules and renumber them to Part 4.

6. Consumer Education

We consider the education of consumers to be a responsibility shared by the Commission, carriers and consumers. With that in mind, we adopt a four phase education program. Full implementation of this consumer education program is dependent upon the Legislature providing additional staffing and funding for the Commission both immediately and over a continuing period of time.

The four elements of our program are as follows:

- **Phase I: Preparation of consumer protection pamphlets for carriers and for consumers**

  We order the Directors of the Consumers Services and Information Division (CSID), the Consumer Protection and Safety Division (CPSD), and the Telecommunications Division (TD) to work together to develop two pamphlets: one for consumers and the other for carriers. The pamphlets will detail the consumer protection program we adopt today. The consumer pamphlet will include clear information on our rules protecting consumers and information on who to contact for any questions or complaints. The carrier pamphlet will include information on implementation timelines and will help new entrants to understand our consumer protection regulatory framework.

The pamphlets shall be initially produced in English, Spanish, and Chinese. If need warrants, they shall be made available in other languages.

- **Phase II: Statewide Distribution of the Pamphlets and Commission Website**

Statewide distribution of the pamphlets will be a cooperative effort among carriers, consumer groups, and the Commission, particularly our Public Advisor's office. We direct our Public Adviser to work with CSID, CPSD, TD, carriers, and external groups to develop a distribution plan. The Commission will provide the pamphlets to consumer groups who have participated in the consumer protection proceeding. In addition, the Commission will call upon other community groups and government agencies to assist us in getting the information to consumers. Pamphlets will also be disseminated through the efforts of the California Universal Service public purpose programs.

In addition, the Commission will highlight the new consumer protection program on the Commission website in English, Spanish, and Chinese. All carriers shall include a prominent link on their web sites to the Commission web page within 20 days of the launch of the Commission webpage.

- **Phase III: Public Outreach Campaign**

This phase will include a series of press releases first launching the new consumer protection program, then providing details on the program. In addition, all California carriers will be required to send current customers a one-page bill insert announcing the program and how to obtain more information. The outreach campaign will include a number of public awareness events sponsored by the Commission. The events will highlight the specific rights and rules of our program as well as general information on such topics as how to understand a wireless contract, what one needs to know when selecting a telephone provider, or who to contact when one has a problem with a carrier.

We will coordinate this effort with the FCC's existing program. The Commission will focus on outreach to non-English speaking and low income communities.

- **Phase IV: Continuing Education**

The Commission will maintain a dynamic consumer protection web page that not only provides information on the Rules and Rights, but educates consumers on current practices by carriers. The Commission will continue its public awareness events across the state.

We recognize that a viable continuing education program is dependent upon additional staff resources and funding. The Governor's recent budget includes additional resources for the consumer education and enforcement portion of the Program. We will work with the Governor's Office and the Legislature in obtaining the staffing and funding needed for this effort.

Lastly, we establish an ongoing funding source for the Communities for Telecommunications Rights (CTR) program. Originally established with funding as a result of penalties imposed in two complaint proceedings, CTR educates consumers that the Commission has been unable to reach. CTR works as an unofficial extension of the Commission to educate low-income and non-English speaking consumers. CTR educates these consumers about their telecommunications rights, and in their own language. We will continue to use CTR to reach out to those populations that the Commission otherwise would not reach. CTR shall continue its educational responsibilities as well as assist the Commission in taking complaints. CTR shall provide quarterly complaint reports to CAB and CPSD.

Twenty-five percent of all consumer-related telecommunications complaint penalties shall be devoted to CTR funding. In those cases where

CPSD and carriers are able to resolve their disputes through settlement, 25% of any resulting penalties shall be provided to CTR.

7. Enforcement

Two Commission divisions, CSID and CPSD, share the responsibility for consumer protection and enforcement. Under CSID, the Consumer Affairs Branch (CAB) is responsible for the resolution of telecommunications inquiries and complaints. CPSD's mission is to ensure that California consumers enjoy a high quality of service and are protected from fraudulent, unfair and anticompetitive business practices. While providing two separate functions, CPSD and CAB work together to protect consumers.

With the adoption today of our consumer protection program, we must be prepared to enforce our rules. We will require additional staff resources and improved analytical tools.

Currently, CAB has a limited number of Consumer Affairs Representatives that take calls, log the calls in a database, answer questions, analyze complaints, track the complaints, and attempt to resolve the complaints. These representatives take complaints on all industries that the Commission regulates, not just telecommunications. In order to ensure that the calls are taken in an efficient manner, we will seek additional staffing for CAB to log and track telecommunications complaints and assist in analysis of the more complicated telecommunications issues.

CPSD also has a limited number of staff to research complaints and assist Legal Division in any formal proceedings. As with CAB, CPSD is responsible for enforcement across all industries under the Commission's jurisdiction. We recognize that increased education campaigns may lead to a need for increased investigations of carriers. So as to provide timely

investigations, we will also seek funding for additional staff devoted to CPSD telecommunications investigations.

To address the need for improved analytical tools, we direct the Directors of CPSD, CAB and TD to develop, within 180 days, a detailed database to track and analyze all consumer complaints. The database shall be dynamic and flexible and able to adapt to the ever changing telecommunications industry. Beginning in October 2006, CAB and CPSD will provide quarterly reports to the Commission on the status of consumer complaints.

The Commission will firmly, but fairly, use fines and penalties to punish a carrier for inappropriate behavior. If the analysis of the previously mentioned complaint report should show negative trends in compliance, the Commission shall invoke any penalties. Further, the CPSD has the Commission-preferred option of a negotiated settlement for the purpose of not only punishing inappropriate carrier behavior, but also for creating a positive change in company practices.

Given the FCC's prominent role in consumer protection, we direct the Commission's General Counsel and TD to form a Federal Consumer Protection Team within 45 days of adoption of this Decision to advocate at the FCC regarding consumer protection. The team will be responsible for informing the Commission of FCC activities, developing comments, and developing proposals on complying with current and future FCC rules and regulations.

8. Implementation Schedule

D.05-01-058 discussed several concerns regarding the implementation schedule of those rules. D.05-01-058 noted that 45 carriers had requested compliance extensions for the consumer protection rules. Most of the extension requests stemmed from the lengthy time needed to make substantial

and complex changes to carrier billing systems, computer systems or contracts for vendor services. Although the Commission's Executive Director had granted 21 requests, some carriers indicated that, without a lengthy extension or permanent waiver, they could be forced to leave the California market.

We agree that the implementation schedule in D.05-01-058 was not realistic for all of the carriers. As we discussed earlier, most carriers were able to comply with the original implementation schedule. However, we acknowledge that there were several rules that certain carriers needed additional time to implement. Hence, we provide until January 1, 2007 for carriers to implement the revised G.O. 168.

V. Other Procedural Matters

A. Petitions for Modification of D.04-05-057

On January 6, 2005, the Wireline Group and Wireless Carriers filed separate petitions for modification of D.04-05-057. D.05-01-058 stayed D.04-05-057 pending completion of this phase of the proceeding. This decision supersedes D.04-05-057 and renders those petitions moot.

B. Petitions for Rehearing of D.05-01-058

On March 7, 2005, TURN and the City of San Francisco filed separate petitions for rehearing of D.05-01-058. This decision supersedes D.05-01-058 and renders those petitions moot.

C. Other Motions

On November 9, 2004, Cricket Communications ("Cricket") filed a motion for partial waiver of the provisions of original G.O. 168. On December 16, 2004, Time-Warner Telecom ("Time-Warner") filed a motion for a partial waiver of the provisions of original G.O.168. In light of this decision, we

deny the motions but give leave to Cricket and Time-Warner to refile if necessary.

On May 31, 2005, TURN filed a motion seeking the recusal of Commissioner Kennedy and her replacement as Assigned Commissioner. The resignation of Commissioner Kennedy and the re-assignment of this proceeding have rendered the issues raised in the Recusal Motion moot.

On January 11, 2005, U. S. Cellular filed a motion to file confidential financial material under seal. The motion is granted.

VI. Assignment of Proceeding

President Peevey is the Assigned Commissioner and Administrative Law Judge James McVicar is the assigned ALJ.

VII. Comments on Draft Decision

The alternate proposed decision of Commissioner Grueneich in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(e) and Rule 77.3 of the Rules of Practice and Procedure.

On _____filed Initial Comments and on _____ filed Reply Comments.

Findings of Fact

1. Despite increased competition in the wireless industry, the number of consumer wireless complaints has risen.

2. The Commission is obligated to act on consumer complaints.

3. There is no record evidence of telecommunications carriers leaving the California market as a result of the implementation of the prior General Order 168 rules.

4. There is no evidence in the record that the prior G.O 168 Rules harmed the carriers or consumers, or measurably increased rates.

5. The Commission has the authority to develop consumer protection rules by which all telecommunications providers operating in California must abide.

6. The Commission's traditional mechanism of consumer protection, tariff regulation, is ineffectual in a competitive market.

7. The deregulation of the telecommunications industry has been accompanied by an increase in consumer fraud.

8. Taken together, the evidence on the record provides compelling support for stronger consumer protections.

9. According to 2000 U.S. census data, 39.5% of Californians speak a language other than English at home.

10. The lack of language appropriate materials often makes the limited English proficiency consumers vulnerable to fraud and abuse. And, when technology is rapidly changing there is a threat of increased confusion and potential market abuse of non-English speakers.

11. Telecommunications consumers with disabilities have unique consumer protection needs that the Commission has not addressed.

12. Previous enforcement of these abuses has been expensive, and the results were less than acceptable to consumers.

13. Competitive market forces alone are not sufficient to protect consumers.

14. There are gaps in existing California consumer protections laws, rules and regulations.

15. Consumers and carriers are benefited by the ability to find all consumer protection rules in a single document.

16. A Consumer Bill of Rights only provides a policy directive and is not enforceable by itself. Standing alone, it may also confuse consumers since rights cannot be enforced absent rules.

17. Consolidation of the consumer protection rules reduces regulatory uncertainty.

18. Seventy-five percent of California telecommunications carriers certified by December 6, 2004 that they fully complied with the prior G.O. 168.

19. Cramming has become a serious and widespread problem in California.

20. The non-communications rules adopted in G.O. 168 do not bar technological development.

21. Consumer's phone numbers are readily available to be used by non-communications charges without a consumer's authorization.

22. Carriers currently track when their customers add or delete any of the telecommunications services the carrier provides.

23. The Commission's Consumer Safety and Information Division and Consumer Protection and Safety Division share the responsibility for consumer protection.

24. Increased education campaigns lead to a need for additional Commission staffing requirements.

25. The implementation schedule in D.04-05-058 was not realistic for all carriers and for all of the rules.

26. Public Utilities Codes §2896 and 2897 direct the Commission to require telephone corporations to furnish customers with sufficient information that allows them to make informed choices, understand how to participate in the regulatory process, and resolve complaints.

Conclusions of Law

1. Public Utilities Codes §2896 and 2897 direct the Commission to require telephone corporations to furnish customers with sufficient information that allows them to make informed choices, understand how to participate in the regulatory process, and resolve complaints.

2. Congress expressly conferred on states authority to regulate "other terms and conditions of wireless service."

3. The FCC has made clear that Congress' preference for market forces to shape the development of the industry is not "absolute" and Congress specifically chose not to "foreclose … state regulation."

4. The rules adopted herein fall well within the state's authority, and are not preempted. More specifically, to run afoul of § 332, a state consumer protection rule must directly affect rates. Rate regulation does not occur when state consumer protection rules merely produce an "increased obligation" on the wireless carrier that "could theoretically increase rates."

5. There are gaps in existing California consumer protections laws, rules and regulations.

6. California's unfair business practices laws, standing alone, are inefficient and ineffective for protecting California telecommunications consumers.

7. Limiting the right of privacy to financial records and personal information contradicts P.U. Code § 2891.

8. The Consumer Protection and Consumer Information Rules for CLCs set forth in D.95-07-054, Appendix B, are superseded by the revised G.O. 168.

9. The Consumer Protection Rules for Detariffed Services set forth for non-tariffed non-dominant IECs in D.98-08-031, Appendix A, are superseded by the revised G.O. 168.

10. Any previously filed CMRS consumer protection tariff rules are superseded and canceled, consistent with the intent stated in D.96-12-071.

11. Commission-regulated carriers of all classes, their agents, and other entities providing telecommunications-related products or services which the Public Utilities Code makes subject to the Commission's rules are required to respect the consumer rights and comply with the new rules in G.O. 168, Part 2.

12. The rights and rules in G.O. 168 are just and reasonable.

13. The Commission hereby adopts revised G.O. 168, Rules Governing Telecommunications Consumer Protection, Appendix A to this order.

O R D E R

IT IS ORDERED that:

1. General Order 168 is hereby adopted. A copy of the General Order is attached to this decision as Appendix A. The General Order adopted today supercedes the stayed General Order 168 adopted by this Commission in D.04-06-057.

2. Commission-regulated telecommunications carriers of all classes shall bring their operations into full compliance with G.O. 168 not later than January 1, 2007. Not later than January 1, 2007, 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 verified following the procedure set forth in the Commission's Rules of Practice and Procedure, Rule 2.4, Verification.

3. The Consumer Protection and Consumer Information Rules for CLCs set forth in D.95-07-054, Appendix B, are superseded by G.0. 168. Each affected carrier is relieved of its obligation to comply with those D.95-07-054, Appendix B, rules as of the date that carrier achieves full compliance with G.O. 168 as directed in Ordering Paragraph 2 of this order.

4. The Consumer Protection Rules for Detariffed Services set forth for non-tariffed non-dominant interexchange carriers in D.98-08-031, Appendix A, are superseded by G.0. 168. Each affected carrier is relieved of its obligation to comply with those D.98-08-031, Appendix A, rules as of the date that carrier achieves full compliance with G.O. 168 as directed in Ordering Paragraph 2 of this order.

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

6. Each Commission-regulated telecommunications carrier having California intrastate tariffs in effect shall evaluate those tariffs for compliance with the requirements of G.O. 168 and the ordering paragraphs of this interim order. Each carrier having tariff provision(s) inconsistent with G.O. 168, or required to be revised or canceled to conform to the ordering paragraphs of this interim order, shall file not later than 60 days after this decision is mailed and make effective on January 1, 2007 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. 168 and this interim order; provided, however, that no carrier shall use the advice letter filed in accordance with this interim order to

make any tariff revision reducing the level of any current consumer protection. Each carrier shall also submit with its advice letter a tariff-tracking inventory demonstrating how its tariffs will be in compliance with G.O. 168. 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. Each carrier having tariffs on file and having determined that none of its tariffs need revision under Ordering Paragraph 6 shall not later than 60 days after this decision was mailed serve an information-only compliance letter on the Telecommunications Division notifying the Commission that it has evaluated its tariffs as ordered herein and found none needing revision. Each such information-only compliance letter shall be verified following the procedure set forth in the Commission's Rules of Practice and Procedure, Rule 2.4, Verification. Each such carrier shall also submit with its information-only compliance letter a tariff-tracking inventory demonstrating how its tariffs already comply with G.O. 168.

8. The provisions of G.O. 168 are severable. If any provision of G.O. 168 or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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

10. Consistent with this Decision, the Directors of the Consumer Services and Information, Consumer Protection and Safety, and Telecommunications Divisions are ordered to:

(a) Develop two consumer protection pamphlets – as described above - within 60 days of the effective date of this Decision;
(b) Create a web page describing the Program adopted in this Decision on the Commission website within 15 days of this Decision;

(c) Develop a detailed database to track and analyze all consumer complaints as described above within 180 days of this Decision; and
(d) Translate this Decision and revised General Order 168 into Spanish and Chinese within 30 days of this Decision and post the translation on the Commission's website.

11. The Commission's General Counsel and Director of the Telecommunications Division shall, within 45 days of this decision, create a Federal Consumer Protection team to advocate at the FCC on matters related to consumer protection and develop an advocacy plan for the team.

12. The Telecommunications Division shall research the unique needs of telecommunications consumers with disabilities and provide a report to the Commission regarding those needs within one year from the mailing of this Decision. The reports shall include recommended next steps and potential solutions.

13. All carriers shall include a prominent link on their web sites to the Commission web page within 15 days of the launch of the Commission webpage. In addition, all California carriers shall send current customers a one-page bill insert announcing the program and how to obtain more information.

14. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.