

**GENERAL ORDER NO. \_\_\_\_**

PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

**Consumer Bill of Rights  
Governing Telecommunications Services**

Adopted \_\_\_\_\_; Effective \_\_\_\_\_  
(Decision \_\_\_\_\_ in Rulemaking 00-02-004)

IT IS ORDERED that all Commission-regulated telecommunications service providers shall respect the consumer rights and freedom of choice provisions set forth in this General Order.

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## **PART 1 – Consumer Bill of Rights and Freedom of Choice**

The primary responsibility of the California Public Utilities Commission is to protect consumers. The Commission's role in regulating the communications industry in recent years has changed dramatically with the development of national networks and markets, intermodal competition and changes in technology. Technology convergence, in particular, has blurred the lines between traditional, regulated voice services and largely unregulated services such as wireless, Voice over Internet Protocol (VoIP) and cable telephony.

As competition increases and new technologies mature, the regulatory regime must transition from a prescriptive model designed for public utilities of the last generation to an empowerment model designed for consumer protection in a more diverse and competitive market. The current regulatory framework, which imposes different sets of rules on providers of the same service hinders competition and imposes unnecessary costs on consumers while providing no consumer protection. A new framework for consumer protection must be developed that sets forth basic rights and principles that allow consumers to make informed choices regardless of who the provider is or what technology they choose.

The single most effective consumer protection in a competitive market is *freedom of choice*. In order for consumers to exercise that choice, laws and regulations against fraudulent and deceptive practices must be strictly enforced and consumers must be empowered to make informed decisions about the products they buy and the terms and conditions of service for which they contract. To achieve these objectives the Commission adopts the following principles in this "Consumer Bill of Rights" as a framework for consumer protection and freedom of choice in a competitive telecommunications market.

### **Freedom of Choice:**

- Consumers have a right to select their services and vendors, and to have those choices respected by the industry.
- Consumers have a right to access the lawful content of their choice, including voice services, over their broadband Internet connection without interference from the broadband provider<sup>1</sup>.

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<sup>1</sup> Consumers should not be restricted in their ability to reach any Internet location, Internet Service Provider or Web site of their choosing. This would prohibit unreasonable "port-blocking" and any other activity deemed anti-competitive by the FCC or any applicable federal or state statute (as opposed to blocking for purposes such as spam filtering). A consumer's right to access lawful content may be limited in accordance with the terms and conditions expressly agreed to by the customer in their service contract. Customers should be able to reach any website they choose and not be redirected to a website favored by the broadband Internet access provider. A customer's service should not be intentionally degraded if they choose to visit sites not affiliated with the broadband provider. Companies maintain the right to charge for access to proprietary content and may enforce legal restrictions on the use of that content. When restrictions are necessary to ensure the integrity of the network, such restrictions should be

- Consumers have a right to select any voice service provider of their choice, including no voice services, separate from their broadband service provider.<sup>2</sup>
- Consumers have the right to change voice service providers within the same local area and keep the same phone number.<sup>3</sup>

Disclosure:

- Consumers have a right to receive clear and complete information about rates, terms and conditions for products and service plans they select, and to be charged only according to the rates, terms and conditions they have agreed to.
- Consumers have a right to receive clear and complete information about any limitations affecting the services they select, including limitations on bandwidth, applications or devices that may be used in connection with their service.

Privacy:

- Consumers have a right to personal privacy, to have protection from unauthorized use of their financial records and personal information, and to reject intrusive communications and technologies.

Public Participation and Enforcement:

- Consumers have a right to participate in public policy proceedings affecting their rights, to be informed of their rights and what agencies enforce those rights, and to have effective recourse if their rights are violated.

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documented, clearly related to this goal, and clearly spelled out in the consumers' service contract. This includes information about a service provider's blocking and filtering policies and about expected performance with respect to upstream and downstream data rates and limitations of the service. This provision is not intended to prohibit a broadband service provider from offering tiered service (e.g., at lower or differentiated prices) where limitations on a consumer's ability to run certain applications is agreed to in their service contract. Nor is it intended to prohibit a broadband service provider from offering premium services (e.g. greater security, reliability or functionality) for a higher price or via private, managed networks.

<sup>2</sup> This provision is not intended to require unbundled or wholesale access to any network element including the Low Frequency Portion of the Loop. This provision is intended to prohibit broadband service providers or network owners from requiring customers to purchase local voice service from the broadband provider as a condition of providing broadband service.

<sup>3</sup> In accordance with the rules set forth by FCC regulations regarding Local Number Portability (See *In the matter of Telephone Number Portability, Intermodal Order*, 18 FCC Rcd 23697 (2003) and *United States Telecom Ass'n v. FCC*, 400 F. 3d 29 (D.C. Cir. 2005))

Accurate Bills and Redress:

- Consumers have a right to accurate and understandable bills for products and services they authorize, and to fair, prompt and courteous redress for resolving disputes and correcting errors.

Non-Discrimination:

- Consumers have the right to be treated equally to all other similarly-situated consumers, free from prejudice or discrimination.

Public Safety:

- Consumers have a right to maintain the safety and security of their person, property, and personal financial data.
- Consumers have a right to expect that providers of voice services utilizing numbers from the North American Numbering Plan and connecting to the Public Switched Telephone Network will offer reliable connections to E911 emergency services and Public Safety Answering Points, and to clear and complete disclosure of any limitations on access to 911 emergency services through the use of those services.

In adopting these principles the Commission does not assert regulatory jurisdiction over broadband service providers, Internet Service Providers, Internet content or advanced services, or any other entity or service not currently subject to regulation by the California Public Utilities Commission. The CPUC reserves the right to enforce these principles on Commission-regulated entities and services and to seek delegated authority from the Federal Communications Commission to make adherence to these principles a condition for any provider seeking authorization to use resources assigned to California from the North American Numbering Plan (NANP).

The principles contained in this Consumer Bill of Rights and Freedom of Choice shall serve the same purpose as a statement of legislative intent and are not intended to create a private right of action to impose liability on carriers or other utilities for damages, which liability would not exist had these regulations not been adopted. Nor are they intended to contravene Public Utilities Code § 1759, as interpreted by San Diego Gas & Elec. Co. v. Superior Court, C 4<sup>th</sup> 893 (1996), Hartwell Corp. v. Superior Court, 27 C 4<sup>th</sup> 256 (2002), and People ex. Re. Orloff v. Pacific Bell, 31 C 4<sup>th</sup> 1132 (2003).]

## **PART 2 – Consumer Protection and Public Safety Rules**

### **A. Applicability**

These rules are applicable to telecommunications services subject to the Commission's jurisdiction offered by telecommunication service providers.

Compliance with these rules does not relieve service providers of other obligations they may have under their tariffs, other Commission general orders and decisions, FCC orders and federal or state statutes.

For services offered under the Universal Lifeline Telephone Service program, carriers shall also comply with the requirements set forth in General Order 153, Procedures for Administration of the Moore Universal Telephone Service Act, where they apply. The requirements of General Order 153 take precedence over these rules whenever there is a conflict between them.

The Commission intends to continue its policy of cooperating with law enforcement authorities to enforce consumer protection laws that prohibit misleading advertising and other unfair business practices.

These consumer rights and regulations shall not be interpreted to create a private right of action or form the predicate for a right of action under any other state or federal law. The standard to be applied in the construction and application of these rules is that of a reasonable consumer.

These rules do not limit any rights a consumer may have to pursue remedies for conduct that is not addressed by these rules or services not subject to the Commission's jurisdiction.

### **B. Rules**

#### **Rule 1: Consumer Affairs Branch Requests for Information**

(a) Every carrier and service provider under the Commission's jurisdiction shall designate one or more representatives to be available during regular business hours (Pacific Time) to accept Consumer Affairs Branch inquiries and requests for information regarding informal complaints from subscribers. Every carrier and service provider shall provide to the Consumer Affairs Branch and at all times keep current its list of representative names, telephone numbers and business addresses.

(b) Every carrier and service provider under the Commission's jurisdiction shall provide all documents and information Consumer Affairs Branch may request in the performance of its informal complaint and inquiry handling responsibilities, including but not limited to subscriber-carrier service agreements and contracts, copies of bills, carrier solicitations, subscriber authorizations, correspondence

between the carrier and subscriber, applicable third party verifications, and any other information or documentation. Carriers and service providers shall provide requested documents and information within ten business days from the date of request unless other arrangements satisfactory to Consumer Affairs Branch are made.

(c) Nothing in these rules shall limit the lawful authority of the Commission or any part of its staff to obtain information or records in the possession of carriers when they determine it necessary or convenient in the exercise of their regulatory responsibilities to do so.

## **Rule 2: Employee Identification**

(a) Every carrier shall prepare and issue to every employee who, in the course of his or her employment, has occasion to enter the premises of subscribers of the carrier or applicants for service, an identification card in a distinctive format having a photograph of the employee. The carrier shall require every employee to present the card upon requesting entry into any building or structure on the premises of an applicant or subscriber.

(b) Every carrier shall require its employees to identify themselves at the request of any applicant or subscriber during a telephone or in-person conversation, using a real name or other unique identifier.

(c) No carrier shall misrepresent, or allow its employees to misrepresent, its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the subscriber's agreement to purchase products or services, and have the charge for the product or service appear on the subscriber's telephone bill.

## **Rule 3: Emergency Services 911 / E911**

All carriers and voice service providers providing end-user access to the public switched telephone network shall, to the extent permitted by existing technology or facilities and in accordance with all applicable Federal Communications Commission orders, provide every residential telephone connection, and every wireless device technologically compatible with its system, with access to 911 emergency service regardless of whether an account has been established. No carrier shall terminate such access to 911 emergency service for non-payment of any delinquent account or indebtedness owed to the carrier.

### **PART 3 — Rules Governing Billing for Non-Communications-Related Charges**

#### **A. Scope and Purpose**

The purpose of these rules 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 non-communications-related 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 that consumers have sufficient information to make informed choices about this service and, if they use it, to verify charges on their bills; 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.

These rules apply to: (1) any telephone corporation, as defined in Public Utilities Code Section 234, operating in California, whether providing landline or wireless telephone service, that chooses to open its telephone billing service to non-communications-related products and services; (2) any billing agent that presents such charges to a California telephone corporation on behalf of another entity; and (3) any vendor of non-communications-related products or services that bills for those products or services on a California subscriber's telephone bill, whether it makes billing arrangements directly with the California billing telephone company or indirectly through billing agents. Business entities in all three categories must comply with the applicable rules in this Part. These rules apply to billing for residential telephone service, business telephone service, and combined or undifferentiated residential/business telephone service.

These rules are intended to be consistent with other consumer protection laws that are or may be applicable to billing for products and services unrelated to telephone service. These laws include state and federal laws governing debt collection activity and consumer credit. The Commission's rules governing non-communications-related charges on telephone bills are not intended to deprive consumers of other remedies available under such laws.

Compliance with these rules does not relieve carriers of other obligations they may have under their tariffs, other Commission general orders and decisions, FCC orders, and state and federal statutes.

The Commission intends to continue its policy of cooperating with law enforcement authorities to enforce consumer protection laws that prohibit misleading advertising and other unfair business practices. These rules do not preclude any civil action that may be available by law. The remedies the Commission may impose for violations of these rules are not intended to displace other remedies that may be imposed by the courts for violation of consumer protection laws.

These rules are not intended to create a private right of action to impose liability on carriers or other utilities for damages, which liability would not exist had these rights not been adopted.

## **B. Authorization Requirements**

Effective July 1, 2001, non-communications-related charges may be included in a subscriber's telephone bill, provided both of the following conditions pertaining to authorization have been satisfied: (1) the subscriber has affirmatively "opted in", i.e., provided a general one-time authorization directly to the billing telephone company to open up the subscriber's account to non-communications charges; AND (2) the subscriber has authorized the specific charge placed on the account. Each of these authorization requirements is described in more detail below.

(1) General ("opt-in") authorization: The billing telephone company may place non-communications charges on a subscriber's account only if it has first obtained express written authorization, directly from the subscriber, to include non-communications charges on that subscriber's telephone bill, and the subscriber has not revoked that authorization. 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. Opt-in authorization information or confirmation, including any assigned or confirmed PIN, must be sent to the subscriber's billing address even if the authorization lists a different address for delivery of products or services.

*[Comment: The Legislature has acknowledged that additional safeguards are necessary to protect consumers from the risk of being "crammed" with charges that are unrelated to telephone service or other communications services. (See Stats 2000, ch 931 (AB 994).) Consumers should not be exposed to this risk unknowingly.*

*Accordingly, these interim rules require billing telephone companies to obtain express permission from a subscriber to include non-communications-related charges before any non-communications-related charges may be included on that subscriber's bill.]*

(a) In obtaining authorization to bill for non-communications charges, billing telephone companies must disclose in a clear and conspicuous manner all material terms and conditions related to this service. Material terms and conditions include any applicable fees and charges, including late payment penalties and interest; any available options for limiting authorization (for example, to a dollar amount per month); how a subscriber may dispute a charge; the fact that the billing telephone company may not terminate basic local service, file an adverse credit report, or charge interest or finance charges on disputed amounts; how a subscriber may revoke authorization; and how a subscriber's confidential information is protected.

*[Comments:*

*(1) Billing telephone companies may create forms for obtaining subscribers' authorization, although written authorization may be provided in other ways.*

*(2) Regardless of the manner in which written permission is given, billing telephone companies must provide sufficient information to enable consumers to make informed decisions about whether to allow non-communications charges on their telephone bills, and must abide by those decisions. (See § 2896.) They must disclose all material terms and conditions, and must not mislead subscribers in an effort to convince them to authorize the use of their telephone bill for non-communications-related charges. (See Id. and Business and Professions Code § 17500.) Companies that do so will be subject to sanctions by the Commission for violating the Public Utilities Code and these rules. Such practices may also lead to court-ordered remedies pursuant to California's Unfair Competition Law (Business and Professions Code §§ 17200 and 17500).*

*(3) If a subscriber disputes a charge on the ground that the subscriber had not authorized the billing telephone company to include non-communication-related charges on the subscriber's bill, the billing telephone company bears the burden of proving that the subscriber did in fact provide such authorization.*

*(4) See limitation on late payment penalties in Part 2, Rule 7(a).]*

*(2) Point-of-sale authorization: Only charges that the subscriber has specifically authorized may be included on the subscriber's bill. Authorization must be provided by use of PIN number or other equally reliable security procedure.*

*[Comments:*

*(1) The primary goal of Sections 2889.9 and 2890 and of these rules is to ensure that only authorized charges are billed to subscribers, i.e., to deter "cramming." Billing telephone companies, billing agents, and vendors all are responsible for ensuring that only authorized charges are billed.*

*(2) Requiring PIN number authorization is one way to ensure that a purchase is properly authorized at the point of sale. As commenters pointed out in response to the first draft of these rules, however, better methods of ensuring proper authorization may exist or may be developed in the future. Accordingly, these rules allow flexibility in the means used to ensure authorization. Whatever the security procedure used, it should be at least as reliable as a PIN number, however. In the event a subscriber claims that a charge was unauthorized, the billing telephone company may not require the subscriber to pay the charge until the billing telephone company has obtained proof of proper authorization from the vendor or from the billing agent that submitted the charge for billing.*

*(3) This type of authorization will be referred to as "point-of sale authorization" to*

*distinguish it from general authorization to include non-communications charges on a subscriber's telephone bill (see Rule C(1)).]*

(3) Subscribers may not be held liable for unauthorized charges. Subscribers must make a reasonable, good-faith effort to notify the billing telephone company promptly when the subscriber becomes aware of a probability of unauthorized use of the subscriber's account. If the billing telephone company is unable to verify authorization, a charge is deemed unauthorized.

*[Comment: Section 2890 provides that a telephone bill "may only contain charges for products or services, the purchase of which the subscriber has authorized." This provision mandates a "zero-liability" rule for unauthorized charges.]*

### **C. Revocation of Opt-in Authorization**

(1) By subscriber: Subscribers may revoke authorization to allow non-communications charges on their bills at any time without charge. They may do so by notifying their billing telephone company, by telephone, in writing, or via the Internet, that they no longer wish to allow non-communications charges on their telephone bill. The billing telephone company must confirm the revocation in writing within 10 business days. This written confirmation shall indicate the date and time the subscriber notified the billing telephone company that authorization was revoked. Billing telephone companies must allow subscribers to revoke authorization by telephone 7 days a week, 24 hours a day. The right to revoke authorization to allow charges includes charges from standing authorizations previously made by the subscriber, such as charges for monthly dues or subscription service. This right is in addition to any other right that the subscriber may have to cancel the transaction that gave rise to the billing charge.

*[Comment: As with credit cards, the consumer must be able to revoke authorization at any time to protect the subscriber in the event of attempted fraudulent use of the subscriber's account. As subscribers cannot be held liable for unauthorized charges, this provision protects the billing telephone company as well.]*

(2) By billing telephone company: A billing telephone company may suspend a subscriber's authorization to bill for non-communications charges without prior notice if the company has reason to suspect fraudulent or unauthorized use of the subscriber's account. The billing telephone company shall give prompt notice to the subscriber of such action. In all other cases, a billing telephone company must provide reasonable notice before suspending or revoking the subscriber's authorization. Billing telephone companies must inform subscribers of their revocation policies when soliciting subscribers' authorization and when responding to subscribers' requests for information about the billing service.

(3) Any agreement by a subscriber not to revoke an authorization is contrary to public policy and of no effect.

**D. Billing Telephone Companies' Obligations to Screen and Monitor Entities for Whom They Bill**

(1) Billing telephone companies must take reasonable precautions to screen vendors and billing agents before agreeing to provide billing services for them, in order to screen out unreliable or untrustworthy business entities.

(2) Before providing billing services to any vendor or billing agent, billing telephone companies must require and obtain from the vendor or billing agent the following information:

(a) If the company is a corporation or other type of business entity required to file with the State of California (Secretary of State or other state agency) as a domestic or foreign corporation, its legal name as registered with the State of California, and if doing business under a different name in California, its fictitious name as registered in each county in California in which it is doing business under that fictitious name.

(b) If the company is not a corporation or other type of business entity required to register with the State of California (Secretary of State or other state agency), but is doing business under a fictitious name, its fictitious name as registered in each county in California in which it is doing business under the fictitious name. Billing telephone companies must provide this information to the Commission and the California Attorney General upon request.

(3) Contracts to provide billing services for vendors and billing agents must provide that the billing telephone company will require proof of authorization for all charges disputed by subscribers, including but not limited to the nature, time, place and fact of the authorization; the nature, qualities and price of the product or service; and other charges of any and every kind, such as taxes, charges for other products and services, shipping expenses, interest, and penalties; and the legal basis for any such charge, and that without such proof, the subscriber will be credited for the charge and the corresponding amount withheld from the vendor or billing agent. Billing telephone companies may impose fees on these vendors and billing agents for the cost of investigating and resolving subscriber complaints.

(4) Billing telephone companies must monitor the performance of the vendors and billing agents for whom they provide billing services, promptly investigate subscribers' complaints, whether written or verbal, of unauthorized charges and other billing errors, and promptly suspend billing on behalf of a vendor or billing agent whose charges are generating a significant percentage of complaints (over five percent in two out of three consecutive months), or if the billing company has any other reason to believe unauthorized billings are being presented to it. A billing telephone company may resume billing for a vendor or billing agent after

investigating the alleged billing errors, if it has determined that the problem(s) underlying the errors have been resolved.

*[Comment: Regarding what constitutes a “significant percentage” of complaints, the Federal Trade Commission has defined “excessive consumer dispute chargebacks” in the credit card context as chargebacks that exceed three percent of all credit card transactions for any single company for two out of three consecutive months. See In re Citicorp Credit Services, Inc. (1993), FTC No. C-3413, 116 F.T.C. 87, 1993 Lexis 19 (holding that failure to investigate excessive chargebacks and terminate billing when excessive chargebacks occur constitutes an unfair business practice in violation of the Federal Trade Commission Act.)]*

- (5) Billing telephone companies must keep records of all subscriber complaints, both written and verbal, of unauthorized non-communications charges and other billing errors related to those charges for at least four years, and be able to categorize those complaints by vendor and by billing agent. Billing telephone companies will make this complaint information available to Commission staff or the California Attorney General upon request.

*[Comment: As a further deterrent to cramming, billing telephone companies are encouraged to consider including escalating fee provisions in their contracts with billing agents and vendors, so that those vendors whose charges generate a large number of complaints quickly suffer financial consequences. The purpose of such provisions is to make cramming unprofitable for vendors and billing agents, thereby eliminating the incentive to engage in the practice and reducing the harm to consumers, as well as the number of complaints addressed to billing telephone companies and the Commission.]*

- (6) The Rosenthal Fair Debt Collection Practices Act, Sections 1788-1788.17 of the California Civil Code, applies to the billing and collection activity of telephone corporations subject to these rules. Insofar as these rules require action inconsistent with an explicit requirement of that Act, that Act shall apply.

#### **E. No Disconnection of Basic Telephone Service for Nonpayment of Non-Communications Charges**

Billing telephone companies that provide basic local exchange service may not disconnect or suspend a subscriber's basic service for failure to pay any non-communications charge on the subscriber's telephone bill. Billing telephone companies must give subscribers notice of this rule when requesting initial authorization and on every bill that contains non-communication-related charges.

*[Comment: See definition of basic service and § 779.2].*

- (1) When discussing non-payment of charges with subscribers, orally or in writing, billing telephone companies must inform them of this rule in a clear and

conspicuous manner.

(2) Billing telephone companies and their agents, as well as billing agents, vendors, and their agents, including assignees of accounts receivables, may not tell subscribers or lead them to believe that subscribers' basic local exchange service may be disconnected for failure to pay for non-communications charges.

(3) Unless otherwise directed by the subscriber at the time the payment is made, billing telephone companies shall credit partial payment amounts in the following order: (1) local exchange telephone service and associated mandatory fees and taxes; (2) other communications-related charges; (3) other charges.

## **F. Complaint Procedures**

(1) The billing telephone company is responsible for ensuring that subscriber complaints about non-communication charges on its bills are processed as required by these rules. Subscriber questions and complaints concerning non-communications-related charges should be addressed to the billing telephone company, or to its agent, as designated on the bill. The telephone bill must include a prominently displayed toll-free customer service number for this purpose. The toll-free number must be adequately staffed by personnel with sufficient training and authority to answer questions, investigate complaints, and adjust bills in favor of subscribers when appropriate.

Telephone companies are required to provide adequate customer service as a telecommunications provider (see the Telecommunications Customer Service Act of 1993, codified at Sections 2895-2897). They must ensure that the additional customer service required of them in connection with non-communications charges does not negatively impact telephone customer service.

(2) Billing telephone companies or their agents shall promptly investigate subscribers' complaints of billing errors. Within 30 days of receiving a complaint of a billing error unrelated to the subscribers' telephone service, the billing telephone company must either credit the disputed charge to the customer or acknowledge, in writing, receipt of the complaint, and must verify the validity of the charge. Billing telephone companies must resolve such complaints within 60 days.

*[Comment: These rules are meant to be consistent both with Section 2890 and with federal regulations governing credit card transactions, which may be applicable as well in some cases. See 15 U.S.C. 1666(a)(3)(A),(B) and 12 C.F.R. 226.13(c)(1),(2).]*

(3) While the investigation is pending, the subscriber shall not be required to pay the disputed charge, no late charges or penalties may be applied, the charge may not be sent to collection, and no adverse credit report may be made based on non-payment of that charge.

(4) The billing telephone company or, if the vendor is handling the complaint, the vendor, will notify the subscriber in writing of the result of its investigation. If the vendor has failed to provide proof of authorization within the time allowed, the billing telephone company will credit the charge to the subscriber. If the billing telephone company has obtained proof of authorization within the time allowed, it may require payment of the charge within 30 days of sending written notice to the subscriber. The notice shall state the reason for the creditor's belief that the billing error alleged by the subscriber is incorrect and include the amount due and the date of payment. If, however, the subscriber alleges that the authorization provided was fraudulent, or the billing telephone company has reason to believe it was fraudulent based on other information, the billing telephone company has an obligation to investigate further. An authorization is fraudulent if it is inauthentic (not given by the subscriber) or obtained from the subscriber based on false or misleading information. Consumers must be given copies of evidence to support the billing telephone companies' allegations that charges are authorized if the consumer so requests. Consumers who request such evidence will be given a time period equal to one billing cycle or ten days, whichever is less, to determine if the evidence is authentic and to offer other evidence, by oral statements or otherwise, that would show the purchase was not authorized by the subscriber.

(5) If the subscriber alleges that a non-communications charge is improper because the subscriber had not "opted in," i.e., consented to the inclusion of non-communications charges on the telephone bill (see Rule C(1)), or had revoked such authorization, the billing telephone company bears the burden of proving that it had a valid general authorization from the subscriber at the time the particular charge was authorized.

(6) A subscriber dissatisfied with the billing telephone company's resolution of the complaint may file an informal complaint with the Commission's Consumer Affairs Branch (CAB). Consumers who believe they have been crammed may also notify other agencies such as the District Attorney's Office in their county or the Attorney General's Office.

(7) Pending CAB's investigation, the subscriber's obligation to pay the disputed charge is stayed, provided that the subscriber's complaint was filed with CAB within 30 days from the date the billing telephone company notified the subscriber of its decision in writing.

(8) If CAB obtains proof of proper authorization, CAB will so inform the subscriber and the billing telephone company in writing. Within 30 days of such a notice, the subscriber must pay the disputed charge if it has not been paid. If the subscriber believes CAB's conclusion was in error, the subscriber may appeal CAB's conclusion to a Consumer Affairs Manager. If the subscriber does not agree with the Consumer Affairs Manager's conclusion, the subscriber may file a formal complaint with the Commission. The filing of a formal complaint does not, however, stay the subscriber's obligation to pay the disputed charge.

(9) If CAB is unable to obtain proof of proper authorization, it will ask the billing telephone company, in writing, to remove the charge. If the billing telephone company fails to remove the charge, the subscriber may file a formal complaint with the Commission. CAB may refer the case to the Commission's Consumer Protection and Safety Division or to other law enforcement agencies for further investigation.

(10) A billing telephone company shall credit a payment to the subscriber's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge. If a billing telephone company fails to credit payment as required in this rule, in time to avoid the imposition of finance or other charges, the billing telephone company shall adjust the subscriber's account so that the charges imposed are credited to the subscriber's account during the next billing cycle.

(11) When a positive balance in excess of \$1 is credited on a telecommunications account (through transmittal of funds to the billing telephone company in excess of the total balance due on an account, through rebates of unearned charges, or through amounts otherwise owed to or held for the benefit of a subscriber) the billing telephone company shall: Credit the amount of the credit balance to the subscriber's account; refund any part of the remaining credit balance within seven business days from receipt of a written request from the subscriber; and make a good faith effort to refund to the subscriber by cash, check, or money order, or credit to a deposit account of the subscriber, any part of the credit balance remaining in the account for more than six months. No further action is required if the subscriber's current location is not known to the billing telephone company and cannot be traced through the subscriber's last known address or telephone number.

(12) When an entity other than the billing telephone company accepts the return of property or forgives a debt for services, and agrees to credit the subscriber's telephone bill, the entity shall, within seven business days from accepting the return or forgiving the debt, transmit a credit statement to the billing telephone company through normal channels for billing statements. The billing telephone company shall, within 3 business days from receipt of a credit statement, credit the subscriber's account with the amount of the refund.

(13) Nothing in these rules precludes a subscriber that has been the victim of cramming, misleading advertising, or other unfair business practice from pursuing other legal remedies and obtaining relief that the subscriber may be entitled to under state or federal law.

## **G. Bill Format**

(1) Telephone bills containing non-communications charges must be clearly organized, readily understandable, and provide sufficient information to enable subscribers to verify whether the charges they were billed for are the charges they authorized. They must satisfy all of the applicable requirements set forth in

Sections 2889.9 and 2890.

(2) Non-communications charges must be placed in one or more separate sections of the telephone bill clearly labeled "Non-communications-related charges," separate from the charges for telecommunications services. The name of the vendor and billing agent associated with each charge must be clearly identified.

(a) Upon request, billing telephone companies shall provide Commission staff and the Attorney General with information about the types of non-communications-related products and services they bill, and the names of the vendors and billing agents on whose behalf they bill for these charges. Billing telephone companies shall require the vendors on whose behalf they bill, either directly or indirectly through billing agents, to provide the necessary information.

(3) Each bill must provide a clear, concise, non-misleading description of the product or service for which a charge has been imposed. The description of the product or service must be sufficiently clear and specific to enable subscribers to determine whether the products or services for which they are being billed are the products or services that they have requested and received.

(4) If the telephone bill includes charges for local exchange service, the section of the bill containing non-communications charges must include a notice that states:

"The telephone company is not allowed to disconnect your basic local service for failure to pay this portion of your bill. It may, however, take steps other than disconnection, as permitted by law, to collect legitimate charges."

## **H. Confidential Subscriber Information**

Billing telephone companies may not release confidential subscriber information, credit or financial information, or any other confidential information about a subscriber, including information about a subscriber's spending patterns, to their affiliates or to other third parties, without the subscriber's informed, written consent, with the following exceptions:

Confidential information may be released: (1) to affiliates of the billing telephone company, or to others, to the extent necessary to provide and bill for telecommunication services; (2) to a law enforcement agency or other public agency for the purpose of responding to an emergency ("911"); (3) to law enforcement personnel in possession of a valid search warrant for the information sought; (4) if required to turn over such information by a court order; or (5) if otherwise required by law. In addition, information about unpaid charges may be released to a collection agency for the purpose of collecting a debt, subject to the requirements of Rule G (Complaint procedures) and all

*[Comment: See §§ 2891- 2891.1, and 47 U.S.C. § 222.]*applicable laws.

## **I. Penalties**

The Commission may impose fines and other penalties on billing telephone companies, billing agents, and vendors that fail to comply with these rules. Nothing in these rules, however, precludes district attorneys, the Attorney General, or other law enforcement agencies from obtaining injunctive relief, civil penalties, and other relief permitted by law against a billing telephone company, billing agent, or vendor that engages in business practices that violate these rules and/or the provisions of state law. The Commission will make relevant complaint data and investigation reports available to the Attorney General and to district attorneys who are investigating possible consumer fraud.

*[Comments:*

*(1) On the Commission's authority to impose penalties on billing agents and vendors, see §§ 2889.9- 2890.*

*(2) Government Code § 26509 requires the Commission to give district attorneys access to complaints against, and the Commission's investigation of, a person being investigated by a district attorney regarding possible consumer fraud.]*

## **PART 4 — Rules Governing Slamming Complaints**

### **A. Purpose and Scope**

The purpose of these rules is to establish carriers' and subscribers' rights and responsibilities, and the procedures both must follow, for addressing slamming complaints that involve California's regulated telecommunications carriers. Slamming is the unauthorized change of a subscriber's presubscribed carrier. These California-specific rules are designed to supplement and work in conjunction with corresponding rules issued by the Federal Communications Commission.

The California Public Utilities Commission is the primary adjudicator of both intrastate and interstate slamming complaints in California. A subscriber may request that the FCC rather than the Commission handle an interstate slamming complaint, in which case the FCC would apply its rules, and these rules would govern any related intrastate complaint. Where these rules differ from the FCC's slamming rules, the differences are in recognition of California-specific issues and are consistent with the FCC's mandate to the states.

Compliance with these rules does not relieve carriers of other obligations they may have under their tariffs, other Commission general orders and decisions, FCC orders, and state and federal statutes. Nor do these rules limit any rights a consumer may have.

The Commission intends to continue its policy of cooperating with law enforcement

authorities to enforce consumer protection laws that prohibit misleading advertising and other unfair business practices. These rules do not preclude any civil action that may be available by law. The remedies the Commission may impose for violations of these rules are not intended to displace other remedies that may be imposed by the courts for violation of consumer protection laws.

These rules take precedence over any conflicting tariff provisions on file at the Commission. The remedies provided by these rules are in addition to any others available by law.

## **B. Definitions**

### **Authorized Carrier**

Any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with state and federal law.

### **Commission**

California Public Utilities Commission, unless otherwise noted.

### **Consumer Affairs Branch (CAB)**

The Commission office where California consumers may complain about a utility service or billing problem they have not been able to resolve with the utility.

### **Days**

Calendar days, unless otherwise noted.

### **Executing Carrier**

Any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

### **FCC**

Federal Communications Commission.

### **LATA**

Local Access and Transport Area.

### **Submitting Carrier**

Any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

### **Subscriber**

Any one of the following:

- (1) The party identified in the account records of a carrier as responsible for payment of the telephone bill;
- (2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or
- (3) Any person contractually or otherwise lawfully authorized to represent such party.

#### Unauthorized Carrier

Any telecommunications carrier that submits a change, on behalf of the subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with state and/or federal law.

#### Unauthorized Change

A change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures described in state and/or federal law.

### **C. Authorization and Verification of Orders for Telecommunications Services**

Authorization and verification of orders for telecommunications services shall be done in accordance with applicable state and federal laws.

### **D. Carrier Liability for Slamming**

(a) **Carrier Liability for Charges.** Any submitting telecommunications carrier that fails to comply with the required procedures for changing carriers or verifying subscriber authorization shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in Part 5.H. The remedies provided in this Part 5 are in addition to any other remedies available by law.

(b) **Subscriber Liability for Charges.** Any subscriber whose selection of telecommunications services provider is changed without authorization verified in accordance with legally-required procedures is liable for charges as follows:

- (1) If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. Any charges imposed by the unauthorized carrier on the

subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of Part 5.G(e).

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in paragraph (a) of this section, the authorized carrier shall refund or credit to the subscriber any amounts determined in accordance with the provisions of Part 5.H(c).

(3) If the subscriber has been absolved of liability as prescribed by this section, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

#### **E. Resolution of Unauthorized Changes in Preferred Carrier**

(a) Notification of Alleged Unauthorized Carrier Change. Executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) Referral of Complaint. Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber to CAB for resolution of the complaint.

(c) Notification of Receipt of Complaint. Upon receipt of an unauthorized carrier change complaint, CAB will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by Part 5.B, has occurred, if it has not already done so.

(d) Proof of Verification. Not more than twenty business days after notification of the complaint, the alleged unauthorized carrier shall provide to CAB a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in Parts 4.F through 4.G. CAB will determine whether an unauthorized change, as defined by Part 5.B, has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

#### **F. Absolution Procedure Where the Subscriber Has Not Paid Charges**

(a) This section shall only apply after a subscriber has determined that an

unauthorized change, as defined by Part 5.B, has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by Part 5.B, from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by Part 5.B, occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: the complaining subscriber must file a complaint with CAB within 30 days of either: the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section or; the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and a failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to paragraph (b) of this section being reinstated on the subscriber's bill and, consequently, the complaining subscriber will only be entitled to remedies for the alleged unauthorized change other than those provided for in Part 5.E(b)(1). No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If CAB, under Part 5.I. below, determines after reasonable investigation that an unauthorized change, as defined by Part 5.B, has occurred, it shall notify the carriers involved that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges.

(e) If the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the subscriber for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the subscriber for the same services had an unauthorized change, as described in Part 5.B, not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the subscriber for 50% of the rate the unauthorized carrier would have charged the subscriber for the services provided. However, the subscriber shall have the right to reject use of this 50% proxy method and

require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.

(f) If the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in Part 5.H shall apply to those payments. If CAB, under Part 5.I. below, determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred.

#### **G. Reimbursement Procedures Where the Subscriber Has Paid Charges**

(a) The procedures in this section shall only apply after a subscriber has determined that an unauthorized change, as defined by Part 5.B, has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.

(b) If CAB, under Part 5.I. below, determines after reasonable investigation that an unauthorized change, as defined by Part 5.B, has occurred, it shall direct the unauthorized carrier to forward to the authorized carrier the following:

- (1) An amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and
- (2) Copies of any telephone bills issued from the unauthorized carrier to the subscriber. This order shall be sent to the subscriber, the unauthorized carrier, and the authorized carrier.

(c) Within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to CAB that it has given a refund or credit to the subscriber.

(d) If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(e) If the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving CAB's determination as described in paragraph (b) of this section, inform the subscriber and CAB if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

- (f) Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

*[Comment: Nothing in these Part 4 rules is intended to prohibit a subscriber and an alleged unauthorized carrier from making mutually-agreeable arrangements for compensating the subscriber and restoring the service to the authorized carrier without the subscriber's having to file a complaint with CAB; provided, however, that the alleged unauthorized carrier must first have informed the subscriber of the 30-day absolution period and the subscriber's right to file such a complaint.]*

## **H. Informal Complaints**

The following procedures shall apply to informal complaints to the Commission alleging an unauthorized change of a subscriber's preferred carrier, as defined by Public Utilities Code § 2889.5 or the FCC's slamming rules.

- (a) *Address:* Complaints shall be mailed to:

Slamming Complaints  
Consumer Affairs Branch  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

- (b) *Form:* The complaint shall be in writing, and should contain: (1) the complainant's name, address, telephone number, and e-mail address (if the complainant has one); (2) the names of the alleged unauthorized carrier, the authorized carrier, and the executing carrier, if known; (3) the date of the alleged unauthorized change, if known; (4) a complete statement of the facts (including any documentation) showing that the carrier changed the subscriber's preferred carrier without authorization; (5) a copy of the subscriber's bill which contains the unauthorized changes; (6) a statement of whether the complainant has paid any disputed charges to the alleged unauthorized carrier; and (7) a statement of the specific relief sought.

- (c) *Procedure:*

- (1) The CAB staff will acknowledge receipt of subscriber's complaint and

inform the subscriber of the procedures for resolving it.

(2) The CAB will notify the executing carrier, the authorized carrier, and the alleged unauthorized carrier of the alleged unauthorized change.

(3) The CAB staff will require the alleged unauthorized carrier to produce evidence of authorization and verification, and any other information or documentation the CAB staff may need to resolve the subscriber's complaint. The alleged unauthorized carrier shall provide evidence of subscriber authorization and verification within twenty (20) business days of CAB's request. If a carrier requests an extension of time from the CAB Staff, the carrier shall provide a written explanation why the required explanation cannot be provided within twenty (20) days, and an estimate of when it will provide the information. If evidence of authorization and verification is not provided within twenty (20) business days, a presumption exists that an unauthorized change occurred, and CAB staff will find that an unauthorized change did occur.

(4) Upon request by the CAB staff for information other than the subscriber authorization and verification, the alleged unauthorized carrier shall provide such information within twenty business days of CAB's request or provide a written explanation as to why the information cannot be provided within the required twenty business days and an estimate of when it will provide the information.

(5) The CAB staff will determine whether an unauthorized change has occurred. CAB's investigation may include review of the alleged subscriber authorization, verification, solicitation methods and materials, and any other information CAB staff determines is relevant to the investigation.

(6) Upon concluding its investigation, the CAB staff will inform the subscriber, the executing carrier, the alleged unauthorized carrier, and the authorized carrier of its decision.

(d) *Appeals:*

(1) If the subscriber is not satisfied with the CAB staff decision, the subscriber may appeal the decision to a Consumer Affairs Manager. The subscriber shall present new information or explain any factual or legal errors made in the CAB staff decision.

(2) If the subscriber is not satisfied with the resolution of the complaint by the Consumer Affairs Manager, the subscriber may file a formal complaint with the Commission according to the Commission's Rules of Practice and Procedure, Article 3.

(3) If the CAB staff finds that an unauthorized change has occurred but the unauthorized carrier disagrees and pursues billing or collection against the subscriber, CAB staff will forward this information to Commission's

enforcement staff and advise the subscriber to file a formal complaint.

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PUBLIC UTILITIES COMMISSION  
STATE OF CALIFORNIA

By Steve Larsen  
Executive Director