

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

FILED
PUBLIC UTILITIES COMMISSION
FEBRUARY 3, 2000
SAN FRANCISCO OFFICE
RULEMAKING 00-02-004

ORDER INSTITUTING RULEMAKING

Summary

By this order the Commission initiates a proceeding to establish rules for protecting consumer rights in today's competitive telecommunications services marketplace. Interested parties are invited to file comments on the analyses and recommendations contained in a report prepared by our Telecommunications Division, and to present alternative ideas and proposals they may have to promote consumer protection in the telecommunications industry.

Background

The decade of the 1990's has seen a rapid evolution in the telecommunications industry, not only in the technology it employs but as well in the industry's structure, the mix of services it provides, and in the ways it provides those services. A wide variety of what were once monopoly services is increasingly available from competing providers. Regulatory policies have likewise been evolving in ways aimed at enabling and promoting competition and all the benefits competition can provide. At the same time, legislators and regulators have not been blind to the potential for market abuse that exists in any market, regulated or fully competitive. This Commission has for some time recognized that the ongoing shift to a more competitive telecommunications

marketplace challenges it to find new methods to protect consumers and has made great strides in meeting that challenge.

In March, 1998, the Commission initiated an evaluation of its role and responsibilities with respect to consumer protection in the utility and transportation industries. Commissioner Josiah Neeper, who at that time was the coordinating commissioner for consumer protection issues, created a staff interdivisional task force to offer recommendations to the Commission and, as part of an information gathering effort, hosted a consumer protection roundtable in April, 1998. Industry representatives were invited to discuss the agency's consumer protection role and responsibilities. Participants raised the following main points:

1. The Commission should foster a marketplace in which consumers are empowered and have confidence. This can be achieved through establishing rules, educating consumers, and helping consumers understand service pricing.
2. There are measures that are essential to consumer protection, including setting clearly defined and uniform standards for the competitive marketplace, aggressively ensuring adherence to those standards, removing violators from the marketplace, and promoting consumer choice.
3. Consumer choice itself will encourage utilities to set high standards in order to stay competitively viable.

On July 31, 1998, the Commission task force released its *Staff Report on the California Public Utilities Commission's Consumer Protection Role and Responsibilities*. That product of several months of discussion by the staff task force and extensive roundtable, interview, and written input from stakeholder groups discussed the Commission's consumer protection mission and objectives, and the Commission's organizational structure and resources employed to meet them. It identified four major challenges for the Commission:

1. Improve the public intake and informal complaint process.

2. Proactively identify consumer problems and take expeditious corrective actions.
3. Streamline consumer protection rules for competitive utility service providers.
4. Ensure that consumers are knowledgeable about their rights and that service providers are aware of market rules.

While individual commissioners and staff management have taken internal action to address the challenges and the task force's recommendations, there are some issues that are most properly put before the Commission and the public and other outside stakeholders for review. Specifically, recommendation 6(a) states, "The Commission should establish minimum and consistent consumer protection rules for the telecommunication industry." In their roundtable statements and in filed comments following the task force recommendations, most parties expressed support for the Commission to establish consumer protection rules for the competitive marketplace.

Our staff has been following up for much of the past year to lay a foundation for us to take the next step and has issued a comprehensive report, *Telecommunications Division Staff Report and Recommendations: Consumer Protections for a Competitive Telecommunications Industry*, in which it recommends the Commission take these actions:

1. Recognize a list of telecommunications consumer rights that it will enforce within the scope of its jurisdiction.
2. Establish telecommunications consumer protection rules consistent with those rights.
3. Apply those telecommunications consumer protection rules to wireless carriers.
4. Replace tariffs for competitive services with consumer protection rules.
5. Review the limitation of liability policy.

In this rulemaking, we seek stakeholder input on the topics and recommendations set forth in the Telecommunications Division's Report.

Consumer Rights

Telecommunications Division staff would have the Commission recognize the following single set of telecommunications consumer rights to be enforced across the industry within the scope of its jurisdiction. These rights would then become the foundation upon which the Commission would construct consumer protection rules for the regulated telecommunications industry as a whole.¹

1. **Disclosure:** Consumers have a right to receive clear and complete terms and conditions for service agreements and disclosure of prices for goods and services, and to affirmatively accept all terms and conditions before being charged for services.
2. **Choice:** Consumers have a right to select their service vendors, and to have that choice respected by industry.
3. **Privacy:** Consumers have a right to personal privacy, to protection from unauthorized use of their records and personal information, and to reject intrusive communications and technology.
4. **Public Participation:** Consumers have a right to participate in public policy proceedings and shall be informed of means to participate.
5. **Oversight and Enforcement:** Consumers have a right to be informed of their rights and what agency enforces those rights. Consumers have a right to address how well state and federal regulators monitor and implement consumer protections on their behalf.
6. **Accurate Bills and Redress:** Consumers have a right to be accurately billed for services they authorize and the opportunity of redress for problems they encounter. Vendors of telecommunications services

¹ The staff report defines the telecommunications industry for this purpose as an aggregate of five classes of telecommunications carriers: Interexchange Carrier (IEC), both tariffed and non-tariffed; Commercial Mobile Radio Service, a.k.a., wireless (CMRS); Competitive Local Exchange Carrier (CLC); and Incumbent Local Exchange Carrier (ILEC).

shall provide clear information explaining how and where consumers can complain. Consumers shall have their complaints addressed without harassment.

The concept of first establishing telecommunications consumers' rights and then crafting a set of measures to secure them is one we find very appealing. In addition to communicating to the public what it is the Commission sees as its charge, those rights once defined will help focus stakeholders on finding solutions that work. When participants see shortcomings in particular consumer protection rules that others propose, their responsibility will be clear to propose alternative measures to the same end lest the right at issue be lost.

This, then, is the first topic on which we seek input. Recognizing that a telecommunications consumer bill of rights is the first step toward crafting consumer protection rules, are the rights proposed by the Report the appropriate ones, and are they correctly defined?

Consumer Protection Rules

Telecommunications Division staff recommends replacing consumer protection rules specific to each class of telecommunications carrier with generic rules applicable to the entire regulated telecommunications market. This, staff believes, would be efficient and would help ensure that no provider has a cost advantage from not honoring fundamental consumer rights, that service disclosures are adequate to promote informed consumer choice, and that consumers are treated fairly. Staff's recommended rules are set forth in Appendix A to the Report.

As the Report notes, we already have in place or are in the process of establishing consumer protection rules for several telecommunications utility classes. In our 1995 local exchange service competition investigation and

rulemaking, we adopted consumer protection and consumer information rules for CLCs, which remain in effect today.² The Legislature in enacting Pub. Util. Code § 495.7 required the Commission to establish consumer protection rules before allowing telephone corporations to apply for exemption from tariffing requirements for their competitive services. We did so in D.96-09-098.

Subsequently, we reexamined those rules as part of our Streamlining investigation and rulemaking and crafted revised rules applicable to competitive, non-tariffed services offered by non-dominant IECs.³ Through our current Slamming investigation and rulemaking, we are in the process of establishing rules applicable to billing telephone companies, typically ILECs, to protect consumers against slamming and cramming abuses.⁴ Our rulemaking to revise General Order 96-A⁵ is considering changes that include disclosure requirements, one of the proposed consumer protection rights the Report recommends, and may touch less directly on other consumer protection aspects. And the Report's recommendations would have us apply the consumer protection rules flowing from this proceeding to wireless providers, thus resolving the sole remaining issue in our investigation into mobile telephone service and wireless communications.^{6 7}

² Appendix B of Decision (D.) 95-07-054 in Rulemaking (R.) 95-04-043 and Investigation (I.) 95-04-044.

³ Appendix A of D.98-08-031 in R.94-02-003 and I.94-02-004.

⁴ R.97-08-001 and I.97-08-002.

⁵ R.98-07-038.

⁶ See D.96-12-071, Ordering Paragraph 2, in I.93-12-007: "The assigned ALJ is directed to issue a procedural ruling addressing the development of consumer protection rules for CMRS providers."

The potential for overlaps with consumer protection requirements from completed and current proceedings need not argue for rejecting the broad approach Telecommunications Division recommends. Rather, it signals a need to be cautious and consider carefully the possible interactions. According to the Telecommunications Division Report, its proposals are generally consistent with current policies but do revise some previously adopted rules and correct current rule deficiencies. Report Appendix B identifies those proposed rules which would change current consumer protection policies.

The Report's last two recommendations are reflected in its proposed new consumer protection rules. First, staff proposes to replace tariffs for those competitive services for which the Commission does not regulate rates with the consumer protections set forth in its recommended rules. Individualized tariffs in a competitive market are a burden on the industry to file, staff to screen and the public to view, and can be used to the detriment of consumers when carriers are permitted to revise rules with little or no Commission scrutiny. The Commission and the industry would more efficiently utilize resources by disposing of the trappings of traditional regulation such as individualized tariff rules, in favor of explicit consumer protection rules that the public could understand and the Commission would enforce. The proposed consumer protection rules would also revise current non-tariff policy and allow oral service agreements, although the accompanying terms and conditions would have to be conveyed in writing to the customer.

⁷ We note that the courts also have a role in protecting consumers, particularly in the absence of the Commission's having asserted itself with rules in this area. We do not intend by this rulemaking order to pre-empt that role.

Second, the Report recommends the Commission reexamine its longstanding limitation of liability protections. The Commission-sanctioned limitation of liability permitted in utility tariffs has historically served to protect carriers and ratepayers from increased rates due to excessive liability costs. The advantage to consumers is less clear when the limitation is applied to competitive services for which the Commission no longer sets rates based on cost of service. Further, carriers foregoing tariffs are not afforded a tariff limitation of liability, although their non-tariffed service contracts may include corresponding clauses not enforced by the Commission. This policy encourages some carriers to file tariffs in order to maintain Commission-enforced liability protection. Staff questions the public benefit of policies that encourage an outdated tariff filing practice and which result in unequal liability protection. If the Commission does choose to continue a limitation of liability, staff recommends that the underlying standard be revised to one of negligence rather than gross negligence, and that liability limits be raised to better reflect inflation and the damage claims small businesses or residential consumers may incur.

This brings us to our second set of requests for stakeholder input. Should the Commission promulgate new consumer protection rules? Should any such rules be broadly applicable to services offered by all classes of telecommunications utilities, including wireless? Should these rules replace tariffs for those competitive services for which the Commission does not regulate rates? Do the rules proposed in Telecommunications Division's Report cover all of the consumers' Commission-enforceable rights, and is each rule appropriate? Should a higher level of protection apply to basic exchange access services? What accommodations should be made for the Commission's existing telecommunications consumer protection rules and those being considered in current proceedings? What changes, if any, should the Commission make to its

limitation of liability rules? Lastly, we invite any input commenters wish to provide on legal issues that may be raised by changes contemplated in this rulemaking.

The Telecommunications Division's proposals have much to recommend them. Stakeholders to whom we are directing this rulemaking have among them a wealth of valuable experience and, no doubt, wide-ranging viewpoints on whether and how the Commission should implement additional consumer protection measures. We value their expertise and seek their input. And, while we specifically invite comments directed at the Telecommunications Division's proposals, we will not foreclose comments suggesting alternative approaches.

Preliminary Scoping Memo

This rulemaking will be conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure. As required by Rule 6(c)(2), this order includes a preliminary scoping memo as set forth below.

The issues to be considered in this proceeding are:

Should the Commission revise its existing consumer protection rules and/or establish new rules applicable to regulated telecommunications providers?

If so, what specific rules should be revised or established, and for which classes of telecommunications carrier?

Pursuant to Rule 6(c)(2), we preliminarily determine the category of this rulemaking proceeding to be quasi-legislative as the term is defined in Rule 5(d).

We intend to consider revising our telecommunications consumer protection policies through new and revised rules applicable to regulated

telecommunications utilities. We do not anticipate holding formal hearings.⁸ We do intend to hold public participation hearings in various locations to gather input from the general public. We need not determine at this time whether to hold hearings to receive testimony regarding adjudicative facts.⁹ Any party that believes a hearing is required to receive testimony regarding adjudicative facts must make an explicit request to that effect in its opening comments, and must (1) identify what it believes to be the material disputed facts, (2) explain why a hearing must be held, and (3) describe the general nature of the evidence that party proposes to introduce at a hearing. Any right a party may otherwise have to such a hearing will be waived if it does not follow these procedures.

The timetable for this proceeding will depend on the input we receive from the parties. For purposes of addressing the scoping memo requirements, we establish the following schedule:

February 3, 2000	Order Instituting Rulemaking
April 3, 2000	Opening Comments
May 3, 2000	Reply Comments
May 24, 2000	Assigned Commissioner's Scoping Ruling
June, July, 2000	Public Participation Hearings
September 25, 2000	Proposed Decision
October 16, 2000	Comments on Proposed Decision

⁸ Under Rule 8(f)(2), "'Formal hearing' generally refers to a hearing at which testimony is offered or comments or argument taken on the record... In a quasi-legislative proceeding, 'formal hearing' includes a hearing at which testimony is offered on legislative facts, but does not include a hearing at which testimony is offered on adjudicative facts." And, under Rule 8(f)(3), "'Legislative facts' are the general facts that help the tribunal decide questions of law and policy and discretion."

⁹ Rule 8(f)(1): "'Adjudicative facts' answer questions such as who did what, where, when, how, why, with what motive or intent."

October 23, 2000 Reply Comments

November 21, 2000 Decision on Commission Agenda

The assigned Commissioner through his scoping memo and subsequent rulings, and the assigned Administrative Law Judge (ALJ) by ruling with the assigned Commissioner's concurrence, may adjust the timetable as necessary during the course of the proceeding. In no event do we anticipate this proceeding to require longer than 18 months to complete.

Interested parties may file opening comments that respond to the questions set forth in Appendix A to this order, and shall follow the requirements of Rule 14.5, Form of Proposals, Comments, and Exceptions. Pursuant to Rule 6(c)(2), parties shall include in their opening comments any objections they may have regarding (1) the categorization of this proceeding as quasi-legislative, (2) the determination not to hold hearings, and (3) this preliminary scoping memo.

Following the receipt of opening comments, the assigned Commissioner will issue a ruling which determines the category, need for hearing, scope, and schedule of this rulemaking (Rules 6(c)(2) and 6.3). The ruling, only as to category, may be appealed under the procedures in Rule 6.4.

Commissioner Carl Wood and ALJ James McVicar are assigned to this proceeding.¹⁰

¹⁰ Pursuant to Rule 5(k)(3), the assigned Commissioner is the presiding officer in a quasi-legislative proceeding, except that the assigned ALJ shall act as the presiding officer in the Commissioner's absence at any hearing other than a formal hearing as defined in Rule 8(f)(2).

Service List

The consumer protection rules proposed in the staff's Report could, if implemented in whole or in part, affect many or all intrastate telecommunications providers, and could constitute modifications to rules issued or to be issued in R.95-04-043/I.95-04-044, R.94-02-003/I.94-02-004, R.97-08-001/I.97-08-002, R.98-07-038, and I.93-12-007. We will therefore direct that this rulemaking order and a copy of the Telecommunications Division staff Report initially be served on all parties in those proceedings, and a Notice of Availability in the form of that contained in Appendix B be served on all regulated telecommunications carriers. Those interested in participating may request copies of this rulemaking order and the staff Report by contacting the Commission's Central Files, or may view and download copies from the Commission's Internet site ([www .cpuc.ca.gov](http://www.cpuc.ca.gov)).

After initial service, a new proceeding service list will be formed by the Process Office, published on the Commission's Internet site and updated throughout the proceeding. The new service list will *not* automatically include those who received service of this order or the Notice of Availability. Parties filing comments in response to the proceeding schedule will be added to the service list automatically *after* their comments are received. Others who wish to be included on the service list must submit a written request to the Commission's Process Office, copy to the assigned ALJ, stating their full name, the entity they represent, the postal address and telephone number of the person to be served, an e-mail address where available, and their desired service list category (Appearance, State Service, or Information Only). All interested parties are reminded to submit written requests in a timely fashion if they expect to be served opening comments. Parties serving documents may rely on the Internet

service list published as of the date their documents must be served or may obtain a copy of the service list by calling the Process Office at (415) 703-2021.

Parties are requested, but not required, to provide an electronic copy of all formal filings to the assigned ALJ (jcm@cpuc.ca.gov). Any common PC-compatible word processing format is acceptable, although WordPerfect or Microsoft Word, any version, is preferred. Submittal may be by e-mail or by including a floppy disk with the ALJ's hardcopy served in accordance with Rule 2.3(a).

IT IS ORDERED that:

1. A rulemaking is instituted on the Commission's own motion for the purpose of considering whether to revise existing consumer protection rules and/or establish new rules applicable to regulated telecommunications utilities; and if so, what specific rules should be revised or established, and for which class or classes of telecommunications utilities.

2. This rulemaking is preliminarily determined to be a quasi-legislative proceeding as that term is defined in the Commission's Rules of Practice and Procedure, Rule 5(d).

3. This proceeding is preliminarily determined not to need a formal hearing.

4. The expected timetable for this proceeding is as set forth in the body of this order. The assigned Commissioner through his scoping memo and subsequent rulings, and the assigned Administrative Law Judge (ALJ) by ruling with the assigned Commissioner's concurrence, may adjust the timetable as necessary during the course of the proceeding, provided that in no event shall this proceeding require longer than 18 months to complete.

5. The issues to be considered are those set forth in the body of this order.

6. Interested parties are invited to file opening comments responding to the questions in Appendix A to this order. Comments shall conform to the

requirements of the Rules of Practice and Procedure, Article 3.5 (Rulemaking), and shall be filed and served not later than April 3, 2000. Replies to comments may be submitted and shall be filed and served not later than May 3, 2000.

7. Pursuant to Rule 6(c)(2), parties shall include with their opening comments any objections they may have regarding (1) the categorization of this proceeding as quasi-legislative, (2) the determination not to hold hearings, and (3) the preliminary scoping memo.

8. Any party that believes a hearing is required to receive testimony regarding adjudicative facts must make an explicit request to that effect in its opening comments, and must (1) identify what it believes to be the material disputed facts, (2) explain why a hearing must be held, and (3) describe the general nature of the evidence that party proposes to introduce at a hearing. Any right a party may otherwise have to such a hearing will be waived if it does not follow these procedures.

9. The Executive Director shall cause this order to be served on those on the service lists for the following dockets: R.95-04-043/I.95-04-044, R.94-02-003/I.94-02-004, R.97-08-001/I.97-08-002, R.98-07-038, and I.93-12-007, along with a copy of the report, *Telecommunications Division Staff Report and Recommendations: Consumer Protections for a Competitive Telecommunications Industry*.

10. The Executive Director shall cause a Notice of Availability in the form of Appendix B to this order to be served on all regulated telecommunications carriers.

11. After service of this order, the service list for this proceeding shall be formed following the procedures set forth in the Service List section in the body of this decision. The assigned ALJ, with the concurrence of the assigned

R.00-02-004 ALJ/JCM/hkr

Commissioner, shall have on-going oversight of the service list and may institute changes to the list or the rules governing it, as needed.

This order is effective today.

Dated February 3, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners

APPENDIX A
Questions to be Addressed in Opening Comments

1. Are the consumer rights proposed by the report, *Telecommunications Division Staff Report and Recommendations: Consumer Protections for a Competitive Telecommunications Industry*, the appropriate ones, and are they correctly defined?
2. Should the Commission promulgate new telecommunications consumer protection rules?
3. Should any such rules be broadly applicable to services offered by all classes of telecommunications utilities, including wireless?
4. Should consumer protection rules replace tariffs for those competitive telecommunications services for which the Commission does not regulate rates?
5. Do the rules proposed in the staff Report cover all of the consumers' Commission-enforceable rights, and is each rule appropriate?
6. Should a higher level of consumer protection apply to basic exchange access services?
7. What accommodations should be made in this rulemaking for the Commission's existing telecommunications consumer protection rules and those being considered in current proceedings?
8. What changes, if any, should the Commission make to its limitation of liability rules?
9. What alternative approaches to telecommunications consumer protection should the Commission consider beyond those recommended in the staff Report?
10. Do the changes being examined in this rulemaking raise legal issues of which the Commission should be made aware?

(END OF APPENDIX A)

APPENDIX B
Notice of Availability

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

**NOTICE OF AVAILABILITY OF ORDER INSTITUTING RULEMAKING TO
ESTABLISH CONSUMER RIGHTS AND CONSUMER PROTECTION RULES
APPLICABLE TO ALL TELECOMMUNICATIONS UTILITIES**

This is to notify you that the Commission has issued the Order Instituting Rulemaking noted in the caption above. Through this rulemaking the Commission will consider whether it should revise its existing consumer protection rules and/or establish new rules applicable to regulated telecommunications providers, and if so, what specific rules should be revised or established, and for which classes of telecommunications carrier.

Interested parties are invited to file comments on the analyses and recommendations contained in a report prepared by the Commission's Telecommunications Division, and to present alternative ideas and proposals they may have to promote consumer protection in the telecommunications industry. Opening comments are due by April 3, 2000, and reply comments by May 3, 2000.

You may obtain copies of this rulemaking order and the staff report through the Commission's Central Files, (415) 703-2045, or you may view and download copies from the Commission's Internet site (www.cpuc.ca.gov).

(END OF APPENDIX B)