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Decision 83 06 066 JUN 15 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CAUSE (Campaign Against Utility Service Exploitation), Complainant, v. PACIFIC TELEPHONE AND TELEGRAPH COMPANY, Defendant.	Case 10107 (Petition for Modification filed November 26, 1982 and February 8, 1983)
LOUIS SAMUEL, Individually and in a representative capacity, Complainant, v. PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, Defendant.	Case 10142 (Petition for Modification filed November 26, 1982 and February 8, 1983)
CARY D. LOWE, Complainant, v. PACIFIC TELEPHONE AND TELEGRAPH COMPANY, INC., AND DOES 1 THROUGH X, Inclusive, Defendants.	Case 10204 (Petition for Modification filed November 26, 1982 and February 8, 1983)

Investigation on the Commission's own motion into the rules, practices and procedures of all telephone corporations, as listed in Appendix A attached to the OII, concerning disclosure of nonpublished telephone numbers, credit and other subscriber information.	Case 10206 (Petition for Modification filed November 26, 1982 and February 8, 1983)

O P I N I O N

This decision deals with the petition of General Telephone Company of California (General), filed on November 26, 1982, and the petition of The Pacific Telephone and Telegraph Company (Pacific), filed on February 8, 1983, to modify Decision (D.) 92860 and D.93361 in Cases (C.) 10107, 10142, 10204, and 10206. The petitions show that copies of the petition were served on the parties to the four cases and sundry others. No protests to the granting of the petitions have been received and no one has requested a hearing on the petitions.

Background

D.92860 and D.93361 issued in 1981 required all telephone companies to publish a set of uniform tariff rules governing the release of nonpublished information (unlisted telephone numbers and corresponding names and addresses) and the release of subscriber credit information and subscriber calling records. The Commission required the establishment of these uniform rules because the lack of uniformity and detail in telephone company tariff rules led to public misconception and dissatisfaction concerning the degree of privacy

accorded this subscriber information. Appendix B of those decisions set forth the rules under which telephone companies may release subscriber credit information and subscriber calling records. The combined petitions of General and Pacific seek to modify some of the rules found in Appendix B of those decisions.

Requested Modifications

Rule A(2). The petitioners request that this rule be amended by adding wording so that the rule would then read as follows (with the requested additional wording underlined):

"A. Definitions"

* * *

"(2) Calling Records

"Calling records are the records of calls made from a subscriber's telephone no matter how recorded and regardless of whether such information appears in the subscriber's monthly telephone service bill. Toll records, the name and address of the called party, and pen registers are examples of calling records."

We see no objection to this request as the name and address of the called party are part of a subscriber's calling records even though they do not appear on the bill for service. The requested additional wording will help clarify the definition of calling records.

Rules B(2), B(3), B(4), C(1), and C(2). These present rules provide as follows:

"B. Release of Subscriber credit information and Calling Records

"A subscriber's credit information and/or calling records shall be released by a telephone utility only under the following circumstances:

"(1) Upon receipt of a search warrant obtained pursuant to California or federal law; or

"(2) Upon making return to a subpoena or subpoena duces tecum, when in fact authorized by a state or federal judge to divulge the information or records; or

"(3) In the case of civil or administrative subpoenas, upon notifying the subscriber that a subpoena has been issued and affording the subscriber at least ten days to move to quash the subpoena; or

"(4) Upon receiving permission of the subscriber to release the information.

"C. Notification to the Subscriber

"(1) Except as provided below, the subscriber whose credit information or calling records are requested by judicial subpoena or search warrant shall be notified by the utility by telephone the same day that the subpoena or search warrant is received (only one attempt by telephone is necessary). Telephone notification, whether successful or not, shall be followed by written notification within twenty-four hours after the receipt of the subpoena or warrant.

"(2) Both oral and written notification shall state that a judicial subpoena or search warrant was received for credit information or calling records for the specified dates and telephone numbers, and provide the name of the agency making the request."

General states that the notice obligation in present Rule B(3) was imposed on telephone companies by the Commission because at the time D.92860 and D.93361 were issued in 1981 there was no statutory obligation imposed on any one to give notice to a subscriber of a telephone company that the subscriber's records were being subpoenaed from the telephone company in a civil proceeding. Hence, present Rule B(3) lent assurance that a subscriber would be notified when his records were subpoenaed in time to seek a motion to quash the subpoena if the subscriber desired to contest the subpoena. Now, however, Code of Civil Procedure (CCP) § 1985.3, as amended by Assembly Bill No. 2473 effective January 1, 1983, places a statutory obligation on the party subpoenaing customer records from a telephone company in a civil proceeding to give notice to the customer and to allow the subscriber time to contest the subpoena.[1]

General contends that since the subpoenaing party in a civil proceeding is now under a statutory obligation to give this notice telephone companies should be relieved of this obligation. Therefore, General proposes that in lieu of Rules B(2) and B(3) that a new Rule B(2) be inserted, that Rule B(4) be renumbered B(3), and, in furtherance of the result intended, that Rules C(1) and C(2) be deleted. General's proposed new Rule B(2) would read as follows:

> "(2) Upon making return to a subpoena or subpoena duces tecum, when it reasonably appears to the telephone utility that the procedures set out in Code of Civil Procedure Section 1985.3, or successor provisions, as they then exist, have been followed. The utility shall not produce

[1] Pertinent portions of CCP § 1985.3 are set forth in the attachment to this decision.

> the records if there has not been compliance with CCP Section 1985.3. The utility shall abide by all orders to quash, protective orders and similar court orders which may be issued with regard to the subpoenaed credit information and calling records."

General contends that its proposed modification will not have a detrimental effect on telephone company subscribers as they will have to be notified by the subpoenaing party. Notification by the telephone company after notification by the subpoenaing party will not only be a duplication but may confuse the subscriber. General points out that more time for the subscriber to seek an order to quash is provided by CCP § 1985.3, in some cases, than is provided by present Rule B(3). Also, under CCP § 1985.3(g) the time of return can be shortened by court order.

Pacific advances the same reasons for modifying the rules but proposes a different manner of amending them to achieve the same result. Pacific suggests that present Rule B(3) be amended by deleting the word "civil" from the rule, leaving Rule B(3) to apply only to administrative subpoenas, and adding a new rule, Rule B(5), to read the same as General's suggested new Rule B(2). Pacific agrees with General that Rules C(1) and C(2) should be deleted.

We see no need, with one exception, to amend the rules as requested by petitioners. With that one exception, there is no conflict between CCP § 1985.3 and Rule B(3). It is true that in many cases there may be a duplication of notification to the subscriber if the rules are not changed, but we see no harm in this. Notification

by the telephone company will act as insurance that the subscriber will be notified of the subpoena in any event. There may be cases where it does not reasonably appear to a telephone company that the subscriber was properly served as set out in CCP § 1985.3. In such a case, we think the subscriber should know about the outstanding subpoena to give the subscriber time to also personally defend against the giving up of his records. If a telephone company did not notify the subscriber, then the subscriber would not know of the outstanding subpoena.

There may also be cases where it reasonably appears to the telephone company from the proof of service attached to the subpoena that the subscriber was served with the subpoena but that the subscriber, in fact, was not properly served. In this case, if the telephone company did not notify the subscriber of the subpoena, the subscriber would not be able to file timely objections to the subpoena before the telephone company gave up the subscriber's records. Therefore, the requested amendment will lessen the degree of protection to a subscriber's right to confidentiality of his credit information and calling records as contrasted to that now offered by our present Rule B(2) through B(4).

While it may be also true that CCP § 1985.3 allows, in some instances, more time for a subscriber to file a motion to quash a subpoena than the minimum 10 days time set forth in present Rule B(3), this rule does not preclude a telephone company from giving the subscriber more than 10 days to file a motion to quash where the law gives the subscriber more than a minimum of 10 days to file the motion, as in the case of a subpoena which demands the production of records 30 days in the future. Indeed, a telephone company would be acting at its peril if it released the records before the time called for in the subpoena, as a motion to quash may

be filed and granted after it released the records and before the date called for the production of the records. The fact that CCP § 1985.3 allows more time to file a motion to quash than the 10 days minimum set out in present Rule B(3) presents no reason to change our present rule.

The only conflict, as we see it, between Rule B(3) and CCP § 1985.3 is that CCP § 1985.3(g) allows the subpoenaing party to secure an order, on good cause shown, waiving the service requirements or shortening the time between service of the subpoena and the date for the production of records. This conflict can be resolved by a minor change in Rule B(3) and we will amend the rule to read as follows (underlined words reflect addition to the rule):

> "(3) In the case of civil or administrative subpoenas, upon notifying the subscriber that a subpoena has issued and affording that subscriber at least ten days, <u>or such other time provided by judicial order</u>, to move to quash the subpoena; or..."

Petitioners' recommendation that Rules C(1) and C(2) be deleted will be discussed in the next section dealing with Rule D(5).

<u>Rule D(5)</u>. Pacific states that it has been its experience that occasionally a judicial subpoena or search warrant with a large number of subscribers listed in it has been served on Pacific late in the day, thus making present same-day telephonic notice and 24-hour written notice, as required by Rule D(5), impractical. Pacific would like three business days to attempt telephonic notification and provide written notice when a single judicial subpoena or search warrant in a criminal case requests records for more than 10 subscribers. To achieve this purpose Pacific requests that Rule D(5) (with the suggested additional words underlined) be amended to read as follows:

"D. Deferral of Notification"

* * *

"(5) Except as provided in D(1)-(3), the subscriber whose credit information or calling records are requested by judicial subpoena or search warrant shall be notified by the utility by telephone the same day, if practicable, that the subpoena or search warrant is received (only one attempt by telephone is necessary). Telephone notification, whether successful or not, shall be followed by written notification within 24 hours, if practicable, after the receipt of the subpeona or warrant. In instances where a single subpoena or warrant requests records for more than 10 subscribers, both oral and written notice shall be provided within three (3) business days. Both oral and written notification shall state that a judicial subpoena or search warrant was received for credit information or calling records for the specified dates and telephone numbers, and provide the name of the agency making the request."

Even if we were to allow the requested changes in Rule D(5), the result intended by the changes would not be achieved. The notification provisions of present Rule D(5) are to be used only in criminal cases and only after the expiration of a deferred notification period.[2] This deferred notification period initially runs for 90 days and may be extended for 90-day periods,[3] plus the five days allowed in Rule D(4). It would be superfluous to grant telephone companies extra time to give notification following a deferred notification period since they should have had sufficient time to prepare during the extensive deferred notification period.

Together, Rules C(1) and C(2) read the same as Rule D(5), except for the respective introductory clauses. The notification provisions of Rules C(1) and C(2) apply when there has been no deferred notification period. Hence, deleting those two rules, as requested by petitioners, would leave no provision for notification when there has not been a deferred notification period. We will not delete Rules C(1) and C(2).

If the proposed amendment to Rule D(5) were made to Rule C(1), petitioners' purpose would be achieved. However, we think the requested amendments, if made to Rule C(1), thwart the principal purpose of that rule which is to give speedy notification to the subscriber. For instance, where a search warrant or subpoena requests records of more than 10 subscribers, the requested amendment

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[2] Rule D(4) reads as follows: "Within five working days of the expiration of any outstanding certification, or renewal or such certification, the deferred notification shall be given in writing to the subscriber in accordance with (5) below."

[3] Rules D(1) through D(4).

would allow a telephone company up to a maximum of three business days to give telephonic and written notification. If the subpoena or search warrant is served on a telephone company on a Wednesday, Thursday, or Friday, this could delay the giving of notification up to five calendar days because of the intervening weekend. Such prolonged delay is not consonant with the principal purpose of the rule.

In the case of a subpoena or search warrant requesting records of 10 subscribers or less, the requested amendment would allow a telephone company to refuse to abide by the same-day telephonic notification and 24-hour written notification time limits if a telephone company decided that it was not practicable to meet those time limits. The phrase "if practicable" is not only too vague in its application, but also opens the way for delay on the part of telephone companies in giving timely notice to its subscribers. We will deny the requested amendment to Rule C(1).

Rule E(1). Petitioners request that additional entities be added to this rule so that the rule will read as follows (suggested additional wording underlined):

> "E. Exception to Procedure for Release or Credit and Calling Records
>
> "(1) The procedure set forth above does not apply where the requester is a collection agency working for the utility on the customer's account or is an independent telephone company, other common carrier/interexchange carrier, Bell Operating Company, or Bell Company.

In support of this rule change Pacific points out that companies other than independent telephone companies now provide telephone service to subscribers in the State. Just as it was necessary in the past for telephone companies to have access for credit information and calling records, so now it is necessary for these other newer companies, sometimes referred to as common carriers or interexchange carriers, to have access to this information. These companies similarly require the names and addresses of called parties in order to resolve billing problems relating to the provisons of these services.

We see no objection to amending Rule E(1) in the manner requested.

United States District Court Case

None of the petitioners requested amending the tariff rules in Appendix B of D.93361 to conform them to the dictates in the case of U. S. v. P.U.C. et al, U.S. Dist. Ct., S.D. Cal., Civ. #81-08-31-S(M). However, we believe this is an appropriate opportunity to make such amendments. Shortly after D.93361 was issued the United States, in the cited court case, obtained a permanent injunction restraining the Commission from requiring telephone companies to withhold "disclosure of subscriber credit information and calling records from the federal government when such information was sought by federal grand jury subpoena or federal agency subpoena." The court also restrained the Commission from requiring telephone companies "to notify any subscriber of the fact that such telephone company has been requested, subpoenaed, summoned or ordered by any federal court or agency of the United States government to disclose subscriber credit information or telephone calling records, or that such information has been disclosed, when the court or agency making the

request (or for whose benefit the order, subpoena or summons is issued), certifies that there is reason to believe that such notification could impede the investigation in which the request is made." The court held the proscribed requirements violated Article VI, Cl. 2 of the United States Constitution. The court helpfully suggested a means of curing the violation:

> "Specifically, the court suggests that a simple amendment to subpart B of Appendix B to Decision No. 93361 of July 22, 1981 which would state, in effect, that disclosure will also be made in response to a federal grand jury subpoena or federal agency subpoena, and an amendment to subpart D of Appendix B to provide for certification for nondisclosure based upon 'reason to believe that such notification could impede the investigation in which the request is made'..."

Following the suggestion of the court, we will amend Rule B(1) to read as follows (underlined words reflect additions to the rule):

> "(1) Upon receipt of a search warrant obtained pursuant to California or federal law, or of a federal grand jury subpoena or a federal agency subpoena."

We will also amend Rule D(1) to read as follows (words dashed out are those words deleted and underlined words are additions to the rule):

> "(1) Notification to the subscriber will be deferred, and no disclosure made for a period of 90 days if there is a certification for nondisclosure in the body of a subpoena or search warrant. The certification for nondisclosure must contain a statement that there is ~~probable cause to believe notification to the subscriber would impede the investigation of an offense pursuant to which the subpoena or warrant was issued.~~ sufficient reason to believe that such notification would impede the investigation in which the request is made. Upon making return

> to the court to a subpoena, the telephone utility shall request instruction from the court whether it should notify the subscriber of its receipt of the subpoena before divulging the information or records requested."

Findings of Fact

1. The requested amendment to Rule A(2) will assist in clarifying the definition of calling records.

2. The requested amendments of Rules B(2) through B(4) will lessen the degree of protection to a subscriber's right to confidentiality of his credit information and calling records in contrast to the protection now offered by present Rules B(2) through B(4).

3. With one exception, there is no conflict between CCP § 1985.3 and present Rules B(2) through B(4).

4. CCP § 1985.3 conflicts with present Rule B(3) in that the rule does not recognize the production of records by a telephone company on less than 10 days where the subpoenaing party secures a court order authorizing such shortened time.

5. The notification provisions of Rules C(1) and C(2) apply when there has been no deferred notification period.

6. Deleting Rules C(1) and C(2), as requested by petitioners, would leave no provision for notification when there has not been a deferred notification period.

7. The notification provisions of Rule D(5) apply only after there has been a deferred notification period.

8. Amending Rule D(5), as requested by petitioners, would not achieve the result intended by petitioners.

9. If the proposed amendements to Rule D(5) were made to Rule C(1), then petitioners' purpose would be achieved.

10. Allowing a telephone company three business days in which to give telephonic and written notice to a subscriber where the judicial subpoena or search warrant asks for the records of more than 10 subscribers is not consonant with the principal purpose of Rule C(1).

11. The phrase "if practicable", which petitioners request be added to Rule C(1), is too vague in its application and opens the way for delay on the part of telephone companies in giving timely notice to their subscribers.

12. The amendments suggested by petitioners to Rule E(1) are reasonable.

Conclusions of Law

1. Rules A(2) and D(5) should be amended as requested by petitioners.

2. Rule B(3) should be amended by adding the words "or such other time as provided by judicial order" between the words "at least ten days" and before the words "to move".

3. The petitions should be denied in all other respects.

O R D E R

IT IS ORDERED that:

1. Rule A(2) in Appendix B of D.92860 and D.93361 are amended to read as follows:

"(2) Calling Records

"Calling records are the records of calls made from a subscriber's telephone no matter how recorded and regardless of whether such information appears in the subscriber's monthly telephone service bill. Toll records, the name and address of the called party, and pen registers are examples of calling records."

2. Rule B(1) of Appendix B of D.93361 is amended to read as follows:

> "(1) Upon receipt of a search warrant obtained pursuant to a California or federal law, or of a federal grand jury subpoena or a federal agency subpoena."

3. Rule B(3) in Appendix B of D.93361 is amended to read as follows:

> "(3) In the case of civil or administrative subpoenas, upon notifying the subscriber that a subpoena has issued and affording that subscriber at least ten days, or such other time provided by judicial order, to move to quash the subpoena; or..."

4. Rule D(1) of Appendix B of D.92860 and D.93361 are amended to read as follows:

> "(1) Notification to the subscriber will be deferred, and no disclosure made for a period of 90 days if there is a certification for nondisclosure in the body of a subpoena or search warrant. The certification for nondisclosure must contain a statement that there is sufficient reason to believe that such notification would impede the investigation in which the request is made. Upon making return to the court to a subpoena, the telephone utility shall request instruction from the court whether it should notify the subscriber of its receipt of the subpoena before divulging the information or records requested."

5. Rule E(1) in Appendix B of D.92860 and D.93361 are amended to read as follows:

> "(1) The procedure set forth above does not apply where the requester is a collection agency working for the utility on the customer's account or is an independent telephone company, other common carrier/interexchange carrier, Bell Operating Company, or Bell Company."

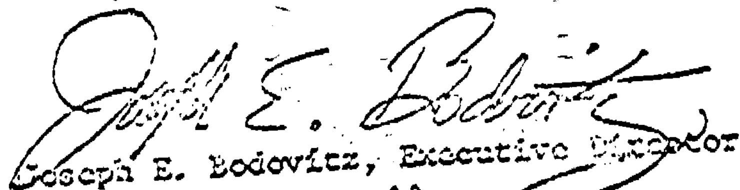
6. Within 60 days after the effective date of this order and upon five days' notice, all respondent telephone corporations named in the Order Instituting Investigation of C.10206 shall amend their Release of Credit Information and Calling Records rules in conformity with Ordering Paragraphs 1, 2, and 3.

7. To the extent not granted in this order, the petitions of General Telephone Company of California and The Pacific Telephone and Telegraph Company to modify D.92860 and D.93361 are denied.

This order becomes effective 30 days from today.

Dated JUN 15 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners



Joseph E. Bodovitz, Executive Director

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Following are pertinent portions of Code of Civil Procedure Section 1985.3:

"(a) For purposes of this section, the following definitions apply:

"(1) 'Personal records' means the original or any copy of books, documents or other writings pertining to a consumer and which are maintained by any 'witness' which is a...telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code."

* * *

"(3) 'Subpoenaing party' means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, ...

"(b) The date specified in a subpoena duces tecum for the production of personal records shall not be less than 15 days from the date the subpoena is issued. Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, and of the notice described in subdivision (e). Such service shall be made both:

"(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of

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Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record.

"(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

"(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

"(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

"(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign such authorization on behalf of the consumer acted with the consent of the consumer.

"(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies thereof.

"(e) Every copy of the subpoena duces tecum and affidavit served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the

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consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court prior to the date specified for production on the subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

"(f) Any consumer whose personal records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of bringing of that motion shall be given to the witness prior to production. No witness shall be required to produce personal records after receipt of notice that such a motion has been brought, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

"(g) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown."

* * *

"(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum."

(END OF ATTACHMENT)

accorded this subscriber information. Appendix B of those decisions set forth the rules under which telephone companies may release subscriber credit information and subscriber calling records. The combined petitions of General and Pacific seek to modify some of the rules found in Appendix B of those decisions.

Requested Modifications

Rule A(2). The petitioners request that this rule be amended by adding ~~additional~~ wording so that the rule would then read as follows (with the requested additional wording underlined):

"A. Definitions"

* * *

"(2) Calling Records

"Calling records are the records of calls made from a subscriber's telephone no matter how recorded and regardless of whether such information appears in the subscriber's monthly telephone service bill. Toll records, the name and address of the called party, and pen registers are examples of calling records."

We see no objection to this request as the name and address of the called party are part of a subscriber's calling records even though they do not appear on the bill for service. The requested additional wording will help clarify the definition of calling records.

Rules B(2), B(3), B(4), C(1), and C(2). These present rules provide as follows:

"B. Release of Subscriber credit information and Calling Records

"A subscriber's credit information and/or calling records shall be released by a telephone utility only under the following circumstances:

"(1) Upon receipt of a search warrant obtained pursuant to California or federal law; or

be filed and granted after it released the records and before the date called for the production of the records. The fact that CCP § 1985.3 allows more time to file a motion to quash than the 10 days minimum set out in present Rule B(3) presents no reason to change our present rule.

The only conflict, as we see it, between Rule B(3) and CCP § 1985.3 is that CCP § 1985.3(g) allows the subpoenaing party to secure an order, on good cause shown, waiving the service requirements or shortening the time between service of the subpoena and the date for the production of records. This conflict can be resolved by a minor change in Rule B(3) and we will amend the rule to read as follows (underlined words reflect addition to the rule):

> "(3) In the case of civil or administrative subpoenas, upon notifying the subscriber that a subpoena has issued and affording that subscriber at least ten days, <u>or such other time provided by judicial order</u>, to more to quash the subpoena; or..."

Petitioners' recommendation that Rules C(1) and C(2) be deleted will be discussed in the next section dealing with Rule D(5).

<u>Rule D(5)</u>. Pacific states that it has been its experience that occasionally a judicial subpoena or search warrant with a large number of subscribers listed in it has been served on Pacific late in the day, thus making present same-day telephonic notice and 24-hour written notice, as required by Rule D(5), impractical. Pacific would like three business days to attempt telephonic notification and provide written notice when a single judicial subpoena or search warrant in a criminal case requests records for more than 10 subscribers. To achieve this purpose Pacific requests that Rule D(5) (with the suggested additional words underlined) be amended to read as follows:

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"D. Deferral of Notification"

* * *

"(5) Except as provided in D(1)-(3), the subscriber whose credit information or calling records are requested by judicial subpoena or search warrant shall be notified by the utility by telephone the same day, <u>if practicable</u>, that the subpoena or search warrant is received (only one attempt by telephone is necessary). Telephone notification, whether successful or not, shall be followed by written notification within 24 hours, <u>if practicable</u>, after the receipt of the subpeona or warrant. <u>In instances where a single subpoena or warrant requests records for more than 10 subscribers, both oral and written notice shall be provided within three (3) business days.</u> Both oral and written notification shall state that a judicial subpoena or search warrant was receive for credit information or calling records for the specified dates and telephone numbers, and provide the name of the agency making the request."

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would allow a telephone company up to a maximum of three business days to give telephonic and written notification. If the subpoena or search warrant is served on a telephone company on a Wednesday, Thursday, or Friday, this could delay the giving of notification up to five calendar days because of the intervening weekend. Such prolonged delay is not consonant with the principal purpose of the rule.

In the case of a subpoena or search warrant requesting records of 10 subscribers or less, the requested amendment would allow a telephone company to refuse to abide by the same-day telephonic notification and 24-hour written notification time limits if a telephone company decided that it was not practicable to meet those time limits. The phrase "if practicable" is not only too vague in its application, but also opens the way for delay on the part of telephone companies in giving timely notice to its subscribers. We will deny the requested amendment to Rule C(1).

Rule E(1). Petitioners request that additional entities be added to this rule so that the rule will read as follows (suggested additional wording underlined):

"E. Exception to Procedure for Release or Credit and Calling Records

"(1) The procedure set forth above does not apply where the requester is a collection agency working for the utility on the customer's account or is an independent telephone company, other common carrier/interexchange carrier, Bell Operating Company, or Bell Company.