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Decision 96-02-012 February 7, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of Roseville Telephone Company )  
(U 1015 C), a corporation, for )  
approval of Caller ID Service and )  
Roseville Telephone's Customer )  
Notification and Education Plan. )

Application 95-09-011  
(Filed September 5, 1995)

**ORIGINAL**

INTERIM OPINION AUTHORIZING IMPLEMENTATION  
OF CUSTOMER NOTIFICATION AND EDUCATION PLAN

On September 5, 1995, Roseville Telephone Company (Roseville) filed an application seeking authority to offer calling party identification service (Caller ID) and approval of its proposed customer notification and education plan (CNEP). By this decision, Roseville's CNEP is approved.

1. Background

In our decisions granting interim authority to Pacific Bell (Pacific), Contel of California, Inc., and GTE California Incorporated to provide certain new privacy-related Custom Local Access Signalling Services (CLASS) features,<sup>1</sup> we adopted certain conditions the applicant utilities needed to meet prior to making the features available to customers. The development, approval, and implementation of a CNEP was among these conditions.

In adopting the CNEP requirement, the Public Utilities Commission (Commission) outline(d) the principles, goals, central messages, and methods of the kind of utility customer

<sup>1</sup> See Decision (D.) 92-06-065 (44 CPUC 2d 694) and D.92-11-062 (46 CPUC 2d 482). Privacy related CLASS features include, for example, Call Return, Call Block, and Caller ID.

education plan we believe is essential to fully inform California citizens about the implications of these new services and enable them to protect their rights."<sup>2</sup> Further, the Commission stated that, as a result of the notification and education plan, there should be a reasonable assurance that the display of the calling party's number to the call recipient will be the result of the calling party's informed consent.<sup>3</sup> With this guidance and specific directives, the applicant utilities were instructed that privacy-related CLASS features were not to be provided until the applicants made a showing, approved by the Commission, indicating compliance with the customer notification and education requirements, adopted in 1992.

On May 4, 1995, the Federal Communications Commission (FCC) adopted its *Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking* (Recon Order). In relevant part, the Recon Order requires all local exchange carriers to pass calling party number (CPN) to interconnecting carriers starting December 1, 1995. It also provides that carriers with a compelling need for more time may seek and obtain a waiver from the FCC.<sup>4</sup> Further, FCC regulation, like our informed consent threshold, provides that "notification must be effective in informing subscribers how to maintain privacy."<sup>5</sup> The Recon Order supports each state's role in providing carriers

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<sup>2</sup> D.92-06-065, 44 CPUC 2d at 716.

<sup>3</sup> Id.

<sup>4</sup> Recon Order, ¶ 83. The December 1, 1995 implementation deadline was subsequently relaxed to June 1, 1996, by an FCC order which ruled on the waiver requests of a number of California carriers.

<sup>5</sup> See 47 C.F.R. § 64.1603.

notification and education guidelines or requirements. It expressly confirms that "California has considerable discretion to assure that its education programs address unique situations in that state."<sup>6</sup>

As the Commission Advisory and Compliance Division (CACD) stated in its June 22, 1995 data request to all California local exchange carriers, the Commission reads its decisions and the FCC Recon Order as requiring all local exchange carriers to comply with our CNEP requirements prior to passing CPN whether or not those carriers offer Caller ID services. It is against this backdrop that Roseville filed its application.

## 2. Roseville's Application and Proposed CNEP

Though originally filed on September 20, 1995, Roseville amended the CNEP portion of its application. After filing the original plan, Roseville conducted workshops with community based organizations to solicit their views. As a result of this input, on October 4, Roseville submitted a completely revised CNEP which incorporated the input and comments of community service and consumer groups.

On October 18, 1995, the Commission's Division of Ratepayer Advocates (DRA) filed a protest. With regard to the CNEP portion of the application, DRA's concerns centered on two issues: (1) the lack of time for Roseville to complete its CNEP process and demonstrate that it has effectively educated its customers prior to commencing passage of CPNs; and (2) the compounding of this timing problem caused by California's appeal of the FCC Caller ID decision, California v. FCC, 9th Circuit No. 94-70197, et al.

Roseville subsequently requested and received a waiver from the FCC December 1 deadline, which ameliorated part of DRA's

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<sup>6</sup> Recon Order, ¶ 92 (emphasis added).

concern. Then, on December 20, 1995, we adopted a resolution which authorized Pacific to implement a CNEP subject to certain conditions.<sup>7</sup> Our action there proved instructive to the parties to this application, especially with regard to how the Commission will evaluate the utility's demonstration that it has effectively educated its customers.

Following a meet-and-confer session ordered by the Administrative Law Judge, a prehearing conference was held on December 21, 1995. The DRA and Roseville stated that they were in agreement that the Commission should issue a decision on the CNEP portion of Roseville's request ex parte, assuming the Commission would apply evaluation criteria to Roseville comparable to those it applied to Pacific in the December 20 resolution. Further, Roseville stated that in the event the State is successful in its appeal of the FCC decision on Caller ID, and the default blocking option changed, it would contact subscribers to nonpublished service to inform each one of the change in default blocking option.<sup>8</sup> Therefore, DRA's concerns regarding the CNEP were addressed.

On January 31, 1996, the United States Court of Appeals for the Ninth Circuit denied our appeal of the FCC decision.<sup>9</sup> In the event we appeal the circuit court opinion and prevail, Roseville should contact subscribers to nonpublished

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<sup>7</sup> See Resolution T-15827.

<sup>8</sup> If none of its nonpublished subscribers select a blocking option prior to a circuit court action overturning the FCC order, Roseville states that it would have to contact 32,000 customers, a number it regards as "manageable." (PHC 1 TR 5, ln 18.)

<sup>9</sup> U.S. Court of Appeals opinion in California v. FCC, 9th Circuit No. 94-70197, et al.

service to inform each one of the change in default blocking option.

### 2.1 CNEP Development Process

In Ordering Paragraph 9 of our final decision establishing CNEP requirements (D.92-06-065, 44 CPUC 2d 694, as modified by D.92-11-062, 46 CPUC 2d 482 at 493), the Commission lays out the process each applicant utility must undertake to develop its CNEP. We state:

"In developing the customer notification and education plan, the applicants shall consult extensively with community and consumer leaders; applicants shall hold workshop(s) which will be open to all those interested, to review and comment on the plan prior to filing; we expect that applicants will modify their draft to reflect comments received, prior to filing. The plan shall not be implemented until approved by the Commission." (Emphasis added.)

As Roseville indicates in its October 4 amendment, it held the required workshops and revised its plan to reflect the input and comments received.

### 2.2 CNEP Content

Roseville's CNEP emphasizes educating customers about the effects of passing CPNs, call blocking options, and how the offering of Caller ID will affect them. Attention is paid to educating customers and training staff on the importance of privacy and the need for customers to know what their choices are.

#### 2.2.1 Special Mailing and Bill Inserts

Roseville's initial notification to its customers will be a special mailing.<sup>10</sup> It will contain educational material which emphasizes the privacy implications of CPN passage and

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<sup>10</sup> The text of the special mailing is contained in Revised Exhibit A, Attachment 2-A.

Caller ID, and informs customers of their blocking choices. It will include a postage-paid "blocking request" form for the customer to complete and return to the company, making the ordering of blocking options simple. This blocking request approach complies with our Ordering Paragraph 7.k requirement.<sup>11</sup>

In conditionally authorizing Pacific to proceed with its CNEP, we required it to send a letter to unlisted/nonpublished customers which would explain the privacy issues associated with CPN passage and the status of blocking choices. Consistent with our treatment of Pacific, we will require Roseville to include this information in addition to the special mailing materials when it sends the special mailing to unlisted/nonpublished customers.

Roseville is reminded that, pursuant to Ordering Paragraph 7.d, all utility consumer education efforts are to use the same terminology and be as similar as possible. Therefore, consultation with other carriers is warranted. Roseville shall submit the special mailing to the Director of the CACD. CACD shall expeditiously review the special mailing to ensure the terminology in this customer education effort is as similar as possible to other utilities' CNEP messages.

The special mailing will be followed with a bill insert, in compliance with Ordering Paragraph 7.a which will be mailed to each customer twice. As stated in our Caller ID decision, they are to be sources of objective, neutral information and not sales messages (Ordering Paragraph 7.e). Further, the bill inserts are to include:

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<sup>11</sup> This and all subsequent references to ordering paragraphs refer to D.92-11-062, Attachment 1 (46 CPUC 2d 491), which contains the post-hearing order conformed ordering paragraphs.

1. Notice of the availability of Caller ID and other privacy-related services which may result in the CPN being disclosed to the called party, whether or not the calling party subscribes to such services (OP 7.a);
2. Information on the blocking options available to prevent disclosure of the CPN (OP 7.a);
3. An indication that customers may call the company's 24-hour toll free number for more information (OP 7.a and i);
4. An indication that customers may call the company in the event of complaints (OP 7.a and j);
5. Notice that customers may contact the Commission's Consumer Affairs Branch regarding complaints that cannot be resolved with the company (OP 7.a and j);
6. An indication that the written message is being provided by the carrier as required by the Commission (OP 7.f); and
7. A notation that presently there is no capability to block disclosure of the calling party's number when making "800" or "900" calls (OP 7.m).

Roseville's proposed bill insert and special mailing comply with these requirements. Again, Roseville is reminded that, pursuant to Ordering Paragraph 7.d, all utility consumer education efforts are to use the same terminology and be as similar as possible. Therefore, consultation with other carriers is warranted. Roseville shall submit the bill insert to the Commission's Public Advisor for prior review and approval. The Public Advisor shall expeditiously review the bill insert to

ensure the terminology in this customer education effort is as similar as possible to other utilities CNEP bill inserts.

2.2.2 Media Coverage and Community Outreach

In our Caller ID decisions and the December 20 Resolution, we emphasized the need to reach consumers with this education campaign through a comprehensive set of media and outreach approaches (OP 7.g and 7.h, and Resolution, pp. 7-8). Roseville's CNEP includes the use of newspaper advertisements (coordinated with Pacific where practicable), Public Access Television Channels,<sup>12</sup> educational video tapes, and community outreach.<sup>13</sup>

We also require carriers to ensure outreach to non-English speaking phone users is conducted (OP 7.g and h). In compliance, each of the written messages Roseville proposes has a Spanish language referral for how to obtain complete information in Spanish.

Once again, uniformity of terminology and message within a utility's CNEP and between various utilities' CNEPs is important. Roseville shall submit proposed media and outreach to the Director of CACD. CACD shall expeditiously review the material to ensure the message and terminology in this customer

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<sup>12</sup> Roseville, in a co-production with the Placer Women's Center, will air an interview, question and answer program. The questions and concerns will be developed by Placer Women's Center, with participation from other women's and domestic violence shelters in the Placer, Sacramento, and El Dorado County areas. Roseville employees will respond to the questions and concerns raised.

<sup>13</sup> In its community outreach effort, Roseville employees will be available to present instruction and information at various community meetings, schools, luncheons, or special events sponsored by, for example, police departments, youth organizations, senior citizen groups, service clubs, and churches.



education effort is as similar as possible to other utilities' CNEP media coverage and outreach.

2.2.3 Ongoing Education

We recognized in our Caller ID decision that educating consumers about the privacy affects and blocking choices associated with Caller ID and CPN passage needs to be ongoing for as long as the services are offered (OP 7.b and c). Roseville's CNEP clearly states how, through the use of a 24-hour number, brochure, white page directory information, annual customer notice, and employee training and outreach, it will fulfill its customers ongoing information needs as required by this Commission.

2.2.4 Confirmation Letter

Roseville's CNEP includes a proposed confirmation letter. Roseville states that it will send each customer -- existing and new subscribers -- a confirmation letter reminding them of the blocking option they selected.

Ordering Paragraph 3, however, requires utilities to provide:

"each telephone subscribers (sic) with a clear and easily understandable notice informing the subscriber (1) of the blocking option applicable to that party's telephone service, (2) whether that option was determined by choice or by default, (3) of the right of the subscriber to change the blocking option applicable to that subscriber's service one time free of charge, and (4) of the nature of the available blocking options to which the subscriber might wish to change."

Roseville's confirmation letter provides the first of those four messages. It should be modified to address all four elements. Further, as proposed, Roseville's confirmation letter will be sent only to subscribers who actively select a blocking option, rather than each telephone subscriber. Roseville should

send a confirmation letter to each telephone subscriber, including those whose blocking option is determined by default.

2.2.5 Additional Efforts

Two additional elements of Roseville's CNEP lay the foundation for increasing the likelihood that its customers will be exercising informed consent when using phone services in its territory. These elements were not explicitly required by our Caller ID decision. Taking these additional steps further demonstrates Roseville's sincere effort to educate its consumers.

First, Roseville indicates that it will establish a telephone number customers may call to determine what call blocking option is on the telephone from which the call is placed. When the customer calls, Roseville explains, they will receive a recording advising them whether the line they are calling from is equipped with per-call or per-line blocking. This number will be published with the 24-hour information number.

In addition to having a number to call to determine what blocking option is on the line that is being used, Roseville states that it will provide labels that can be placed on the phone.

3. CNEP Evaluation

In our Caller ID decision, we state that:

...Caller ID service shall not be provided... until the applicant has made a showing, approved by the Commission, that the applicant has notified all of its customers of the nature of the service and the means by which they can protect their privacy, consistent with the provisions of this order. (OP 10.)

Roseville states that it is working with an independent firm to conduct a penetration study to see if Roseville is successful in reaching its subscribers with CPN, Caller ID, and blocking option information. It intends

to provide a report to the Commission based on this penetration study.

As we stated in the December 20 Resolution, we recognize that, at least initially, 100% customer awareness of Caller ID, the passage of CPN, and blocking options is not reasonably attainable. In that resolution, we relied upon the expert opinion of our public education communications consultant who indicated that initial awareness levels for CPN passage of 70% aided awareness that numbers will be passed, 60% volunteered understanding of blocking options and overrides and 30% action are reasonably attainable.<sup>14</sup>

We are holding Pacific to these awareness levels in determining whether its showing demonstrates adequate notification. We see no reason to treat Roseville differently. Therefore, we will require Roseville to attain these initial awareness levels before CPN is passed or Caller ID service is offered. Roseville shall file its report stating its attained awareness levels with the Director of the CACD. If it appears that these awareness levels will not be attained prior to June 1, 1996, the burden shall be on Roseville, well in advance of that date and, in any event, no later than May 1, 1996, to explain why the levels cannot be attained and to provide the Commission with a plan for attaining those levels in a timely manner.

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<sup>14</sup> "Aided awareness" is the ability of customers to name the blocking options and overrides when coached by the interviewer. "Volunteered understanding" is the ability of customers to name the blocking options and overrides without prompting or coaching. "Action" is the exercise of affirmative choice customers demonstrated by return of a ballot or order by phone.

Findings of Fact

1. Although DRA filed a protest, DRA and Roseville are now in agreement that the Commission should issue a decision on the CNEP portion of Roseville's request without first holding hearings.

2. Roseville's CNEP emphasizes educating customers and training staff on the importance of privacy and the need for customers to know what their choices are.

3. The bill inserts, media coverage, community outreach, and ongoing education elements of Roseville's CNEP comply with the Commission's requirements articulated in D.92-06-065 (44 CPUC 2d 694) and D.92-11-062 (46 CPUC 482).

4. To ensure the message and terminology in this education effort is as similar as possible to other utilities' CNEPs, Roseville shall submit its bill inserts to the Public Advisor for review and approval, and its other written messages to the CACD for review and approval.

5. Roseville's confirmation letter should be modified to provide all four message elements required in Ordering Paragraph 3 of D.92-11-062 as reported in 46 CPUC 2d 491, attachment 1.

6. In Resolution T-15827, the Commission relied upon the expert opinion of its public education communications consultant who indicated that initial awareness levels for CPN passage of 70% aided awareness, 60% volunteered understanding of blocking options, and 30% action (affirmative choice by return of a ballot or order by phone) are reasonably attainable.

7. Pacific's showing demonstrating the effectiveness of its CNEP will be evaluated on the basis of these awareness levels when the Commission considers whether its showing demonstrates adequate notification.

Conclusions of Law

1. In the event the State appeals the U.S. Court of Appeals opinion in California v. FCC, 9th Circuit No. 94-70197, et al., and prevails, Roseville should contact subscribers to nonpublished service to inform each one of the change in default blocking option.

2. Roseville should attain the following initial awareness levels before the passage of CPN will be allowed and before Caller ID service will be offered: 70% aided awareness, 60% volunteered understanding of blocking options, and 30% action (affirmative choice by return of a ballot or order by phone).

3. If it appears that these awareness levels will not be attained prior to June 1, 1996, the burden should be on Roseville, well in advance of that date and in any event no later than May 1, 1996, to explain why the levels cannot be attained and to provide the Commission with a plan for attaining those levels in a timely manner.

4. There is no reason to evaluate the effectiveness of Roseville's showing demonstrating the effectiveness of its CNEP differently than Pacific's showing.

5. Roseville should file a report wherein it demonstrates its attained awareness levels with the Director of the CACD.

6. Since the FCC requires the passage of CPN on June 1, 1996, the notification and education plan must be completed, and the awareness levels demonstrated prior to the passage of CPN, this decision is effective immediately.

O R D E R

IT IS ORDERED that:

1. Roseville Telephone Company (Roseville) is authorized to implement its Customer Notification and Education Plan, in consultation with the Public Utilities Commission's (Commission) Advisory and Compliance Division (CACD) and Public Advisor, and once modified, as required above.

2. Roseville shall file its report stating its attained awareness levels with the Director of the CACD. If it appears that the awareness levels identified above will not be attained prior to June 1, 1996, the burden shall be on Roseville, well in advance of that date and in any event no later than May 1, 1996, to explain why the levels cannot be attained and to provide the Commission with a plan for attaining those levels in a timely manner.

3. In the event that the State of California appeals the U.S. Court of Appeals opinion in California v. FCC, 9th Circuit No. 94-70197, et al., and prevails, Roseville shall contact subscribers to nonpublished service to inform each one of the change in default blocking option.

This order is effective today.

Dated February 7, 1996, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners