

## **COMMENTS ON THE COMMISSIONS CONSUMER BILL OF RIGHTS DECISION**

As is so often the case, today the specific vehicle around which policy debate ebbs and flows takes on a life of its own. So, too, is the case today of the so-called "Consumer Bill of Rights". Many view the alternative decision Item 28(a) as pro-consumer; while the proposed decision Item 28 is painted as opposed to consumer rights. It is a false proposition. Both decisions look to protect consumer rights while permitting the wonders of the marketplace to provide new, cheaper, better consumer opportunities. Each reflects the conviction of its proponents as to the best way to achieve that common objective.

I have been spared the bitter rhetoric of the past exchanges but not the obligation to give the matter my deep and careful consideration. Let me make a few observations in an attempt to add a newcomer's perspective to the discussion.

- 1) However we vote we abdicate no responsibility to protect consumers from the possible predations by carriers or other market participants. We recognize the abusive possibility of unfettered competition. The Commission is not closing its doors, rolling up its mandate nor turning out the lights. Our duty continues, and there will be no doubt, many succeeding examples of Commission intervention when consumers are abused or misled by inadequate disclosure of terms and conditions, predatory behavior, or unfair practices. However we vote, consumers will not be forever and unalterably abandoned to be abused, misled, slammed, crammed, or otherwise left adrift in the market. No matter

the comments of our critics, today this Commission adopts an activist agenda for reform.

- 2) Our actions today do not in anyway lessen or concede our jurisdiction in the area of regulation of any telecom activity. We remain vigilant and proactive, and indeed pledge to enhance our efforts in enforcement and education in order to empower reasoned choice. While we may be criticized for not enacting a plethora of new rules, we clearly articulate the standards of conduct and responsibility that we, and the citizens of California, expect from the carriers. Rules are the product of failed expectations. We will monitor complaints under new procedures and with increased resources. Bad practices will be exposed, violations investigated, facts will be adjudicated, sanctions levied, and the laws and rules protecting the consumer will be enforced. This Commission will not hesitate to enforce our standards and make public egregious examples of consumer abuse, including from this podium.
- 3) If we were to adopt the alternate, carriers will not flee California, go broke, fire management or cease to innovate or develop new services and products, though no regulation is without its costs.
- 4) Our task is to artfully get out of the way and let the market work its magic, while at the same time protecting the consumer from abusive excess.
- 5) Our goal is prospective, and there are parts of the reasoning in the proposed decision to which I do not fully subscribe. Some of the arguments put forward by the carriers are, quite honestly, fatuous. In addition, arguments about the validity of samples, surveys, and such talk miss the mark: the real question is, as a result of our decision today, will conduct that is unfair to consumers be demonstrably

reduced by our actions? Carrier practice is the key; practice implies regular or repetitive conduct, sanctioned or directed by the carrier – not just bad consumer service. Rules are appropriate for the former, publicity and consumer choice in the latter.

- 6) It is not just consumer protection with which we are concerned. Rather it is consumer benefit, and that includes the upside of new technology, choice, convenience, and price competitiveness. Our task is to balance both the legitimate concerns of our constituents, the consumers, and their opportunities. Absolutes are often easier to argue than balanced judgment. What you have today is the balanced judgment of three Commissioners sworn to do what is right for the consumer.
- 7) There is no “right” answer on which all reasonable people will agree. Those in the dissent today are every bit as sincere as the majority. They believe passionately in consumer welfare as we do but would go down a different path into a different garden.

The California Public Utilities Commission has a legislative and constitutional requirement to protect consumers from abusive, unfair and fraudulent behavior. I know each of my colleagues is committed to this mission.

I assure you, I am.

The question before us in this proceeding is not whether to provide such protection to consumers but rather how best to provide that protection. I believe that the best ways for this Commission to protect consumers are:

- A. Vigorous and effective enforcement in whatever venue is best suited to stop the wrongful conduct by a carrier, whether that is here at the CPUC, state court in a civil or criminal case, or even before a federal agency like the FTC or the FCC.

- B. A complaint process that is responsive to consumers and provides them with an avenue to seek satisfaction, with the Commission help, when they have a complaint regarding their telecommunications service.
- C. Empowering consumers through a proactive consumer education program that educates consumers in plain language, and in their own language.

I believe that the proposed decision before us is significantly better than the proposed decision that was issued at the end of last year. Though there are twenty-three consumer initiatives herein set forth, there are five specific areas where I needed to see improvements.

- The inclusion of anti-cramming rules
- Responsive and effective complaint resolution
- Enhanced Enforcement
- The ability of the AG to use violations of these rules in their actions against carriers and,
- Further investigation related to in-language issues.

First, the inclusion of a rule that prohibited the placement of unauthorized charges on a consumer bills is a key component of this decision and its inclusion is necessary from my point of view.

This decision makes it clear that it is the billing telecommunications companies' responsibility to not allow unauthorized charges and further clarifies that it is the responsibility of the billing carrier to immediately suspend collection of any charges that the subscriber says were not authorized. If the billing carrier cannot prove proper authorization the billing carrier shall remove that charge from the bill or, if the customer has already paid, refund the amount. Such a

clear and simple responsibility means that the consumer's risk is minimized, and more closely aligns the consumers interest with that of the carriers. .

We expect billing carriers to actively monitor the entities they provide billing services to in order to ensure that proper authorization is obtained and that their bills are not used to facilitate illegal cramming.

While the alternate decision before us today has a rule that seeks to prevent cramming by retaining existing rules governing the use of a bill for non-communications products and services, it does not address cramming of communications related charges. I prefer a rule that prohibits the billing for unauthorized charges regardless of whether they are communications or non-communications services.

Holding the billing carriers responsible for what they allow to be placed on consumer bills will enlist their support in protecting the integrity of the consumer bill and policing the behavior of their business partners. Excuses that it was a third party that caused an unauthorized charge to be placed on a customers bill, does not relieve the billing carrier from their obligation to immediately remove the charge from the consumers bills unless persuasive proof is offered that the charge was indeed authorized. Failure by billing carriers to adequately protect consumers by monitoring who the carrier performs billing services for, can lead to enforcement action directly against the billing carrier.

Second, I have worked very hard to ensure that the proposed decision includes steps to make our informal complaint process more responsive to consumers and more effective.

Consumers with a complaint about their telecommunications can contact the carrier directly or they may contact the Commission's Consumer Affairs Branch. However, many consumers contact local community based organizations for assistance in resolving their complaints with

telecommunications providers. This is particularly true in communities of limited or non-English speaking consumers. I have actively worked to see that CBOs will play an enhanced role in our complaint resolution process and will continue to do so. Community Based Organizations are important in assisting consumers with their complaints and we applaud their efforts, in particular the Communities for Telecommunications Rights or CTR. CTR is a statewide network of over 40 non-profit, community based organizations that provide telecommunications consumer education and protection to limited-English Speaking consumers.

This innovative, practical and effective consumer protection mechanism could provide greater benefits to California consumers and significantly aid the consumer complaint activities of the Commission if the Commission could develop a process that:

- utilizes the knowledge these CBO have about the telecommunications markets and the communities they serve,
- employs the trust such groups have with their constituencies and
- Harnesses their passion for helping consumers.

To achieve this, the proposed decision orders the Commission staff to develop a program that creates a special relationship between these CBOs and the Commission. The objective is to create a framework that gives CBOs working with the Commission to resolve consumer issues greater access to CAB personnel and develop a true partnership between these CBOs and the Commission in assisting consumers with complaints.

Just as the Commission is developing relationships with these CBO and formalizing roles that they could play in aiding the Commission's consumer protection programs, I seek to bring about such special relationships between

CBOs and telecommunications carriers. The Commission will facilitate interaction between CBOs and carriers that will foster greater responsiveness by providers and quicker and more effective resolution of consumer complaints. I am convinced that such relationships will bring significant benefit to consumers, particularly limited-English speaking consumers and other vulnerable communities who make up the constituencies of these CBOs.

The Commission has begun the process of developing such relationships already. On January 30, the Commission hosted a meeting in Los Angeles attended by myself and President Peevey that brought together representatives from major telecommunications providers, both wireline and wireless, representatives of Community Based Organizations, and senior members of the Commission's staff to begin the process of better utilizing the unique skills and dedication of CBO in assisting consumers resolve their complaints.

The proposed decision has calls for a significant increase in our capability to deal with complaints filed by the commission. The proposed decision calls for additional funding for updating our antiquated complaint database system and for the hiring of a significant number of new call center personnel. I strongly support this budget augmentation and have been and will continue to advocate with the administration and the legislature for adequate funding.

The proposed decision also calls for greater responsiveness of the carriers to the commission. It has specific sections that make it clear that carriers have an obligation to respond to information requests from Commission staff.

Additionally in order to facilitate the cooperation of carriers with staff, the proposed decision calls for the development of the ability for managers and supervisors in the Consumer Affairs Branch to contact senior managers, within each company, so that particularly troublesome or timely complaints can be addressed manager to manager.

Additionally we seek to develop, if practicable, the ability for real time, three-way conversations with CAB staff, the carrier and the consumer, in order to seek immediate resolution of the complaint.

Third, we must have effective enforcement.

Let me give you some examples of our successes with enforcement even in the absence of any new consumer protection rules. These are a few examples I gleaned from the Commission annual reports since 2000.

- **Cingular Wireless** -- fined \$12 million, and ordered restitution that could amount to another \$20 million for violating consumer protection laws that included failure to disclose important information.
- **Verizon Wireline** -- fined \$4.8 million for failing to comply with contract rules and submitting false and incomplete information.
- **NOS Communications** -- fined \$2.5 million and ordered to pay restitution to 1,400 consumers.
- **Talk America** - fined \$625,000 and paid an additional \$374,000 in restitution to 15,000 California consumers.
- **WorldCom.** - On July 20, 2000, the California Attorney General and the Commission jointly filed a civil complaint against WorldCom. On March 7, 2002, the Commission entered into a settlement agreement where WorldCom agreed to pay \$8.5 million in civil penalties. WorldCom also agreed to cease certain business practices that the Commission felt contributed to high levels of slamming and cramming complaints.
- **Long Distance Charges & Tel-Save**-\$136,000 in penalties and \$152,000 in restitution to 6,000 California consumers.
- **Telmatch Telecommunications** - revoked operating authority and fined the company \$1.74 million plus ordered \$5.5 million in restitution to California consumers.



- **VarTec Telecom** - ordered VarTec to pay \$80,000 in fines and, on behalf of its subsidiary, U.S. Republic, to provide restitution to 101 former customers who were slammed. .
- **Vista Communications** - fined Vista \$7 million for slamming and ordered \$215,000 in restitution to approximately 10,000 California consumers.
- **Pacific Bell, now AT&T.** In October 2000 levied a \$25 million fine against Pacific Bell for abusive sales practices and ordered changes to customer service practices.
- **Qwest** -fined \$20 million for unauthorized changes for long distance service - slamming - and for billing for unauthorized services - cramming.
- **SBC (now AT&T)** -- penalized \$27 million. The Commission adopted in which the company acknowledged billing problems and complaint reporting deficiencies.

The Commission can, and has taken, effective enforcement action against carriers. Such enforcement has resulted in real penalties and resulted in changed behavior to the benefit of consumers.

The proposed decision calls for an enhanced enforcement capabilities. This is no idle threat. Carriers are hereby on notice, our enforcement activities will be focused, effective and if necessary brutal, to stop abusive behavior by carriers. If it comes to the point where the Commission needs to take formal enforcement action to stop abusive behavior, we will do so with vigor and determination and in any venue where we think we can get the best outcome for consumers.

I fully support, in fact I insist, that the commission increase cooperation with local law enforcement personnel. We pledge to use our expertise, experience and investigation and information gathering ability to work with law enforcement officials that are developing and prosecuting cases.

Federal agencies, such as the FCC and the Federal Trade Commission enforce consumer protection laws and can pursue enforcement actions and remedies that are unavailable to the Commission. If the Commission finds that a carrier is violating a Federal law, regulation or rule, we can build a case and take that case, either informally or formally to the relevant federal agency. We can be an advocate for California consumers at these federal agencies in the same manner that we filed complaints with the Federal Energy Regulatory Commission with respect to manipulation in the wholesale electric market.

Fourth, I want to turn to concerns raised by the Attorney General's office that the proposed decision hampers the ability of the AG to build cases around violation of Commission rules. I point you to Conclusion of Law 11 (Eleven) which says that the rules and regulations contained in Part 2, 3 and 4 of General Order 168 may be utilized by law enforcement authorities to form the predicate for civil or criminal action in their enforcement of generally applicable consumer protection laws. This language is a crucial.

Fifth, I am concerned that folks with limited English proficiency and recent immigrants, who are unfamiliar with the U.S. telecommunications marketplace, can be particularly susceptible of abuse. I am concerned by the evidence of Greenlining and the Latino Issues Forum that minority customers are often targeted for fraudulent and deceptive communications in their own language by unscrupulous businesses that prey on this community.

That is why it is essential that our consumer educational efforts focus on consumers with no or limited ability to speak and read English. I think that it is key that we develop more information on special problems faced by consumers with limited-English proficiency. By the same token we do not want to create barriers to deployment of advanced telecommunications services to these same consumers. For those concerned that we are not dealing with the in-language requirement, it is important to note the extensive focus of the consumer

education program on these very same consumers. The education program will provide in-language materials so that these consumers are better able to protect themselves when dealing with telecommunications companies.

At its heart this decision is not about whether to protect consumers but rather the best way to protect consumers. All of us up here are committed to protecting consumers. Do not do us the disservice of belittling anyone's commitment to the well being of consumers because we differ about the means of ensuring that well being.

I am committed to consumer protection. I am committed to vigorous enforcement and when carriers are found in violation, swift and immediate corrective action. Further, where necessary I am committed to significant and effective punishment.

We have a great many laws and rules governing telecommunications consumer protections. As laid out in Appendix D there are a myriad of laws, rules regulations and decisions that serve to protect consumers.

My staff has compiled these rules into a handy reference for me that now runs in excess of 100 pages detailing existing laws and rules that govern this aspect of our jurisdiction. I think that on balance, we need more emphasis on enforcement of existing laws, regulations, rules and decisions than the creation of new, detailed more prescriptive rules.

We need a clear prohibition against cramming regardless of whether the service is a communications related service or not.

We need an education campaign that will empower consumers to protect themselves in their dealings with telecommunications companies, one focused on consumers with limited English speaking ability.

We need effective consumer complaint processes that provide a useful and user friendly means of resolving problems between consumers and telecommunications providers we regulate.

We need better cooperation between all agencies charged with protecting consumers. This involves cooperation with the Attorney General, local District Attorney's, other state law enforcement officials and federal agencies such as the FTC and the FCC.

We need to explore the issue of in language and devote considerable effort to understanding the difficulties of recent immigrants and consumers with limited English proficiency so that we can better protect them from abuse.

The proposed Decision does all of this. I think that between the two proposals before us the proposed decision, Item 28, strikes the best balance. I will support item 28, the proposed decision of President Peevey.

/s/ John A. Bohn