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	)))))	R.00-02-004 (Filed February 3, 2000)

REPLY COMMENTS OF THE UTILITY CONSUMERS' ACTION NETWORK AND CONSUMERS UNION ON PROPOSED DECISION OF ASSIGNED COMMISSIONER CARL WOOD

Michael Shames
Executive Director
Utility Consumers' Action Network
3100 5th Ave Suite B
San Diego, CA 92103
(619) 696-6966
mshames@ucan.org

Janee Briesemeister
Senior Policy Analyst
Consumers Union
Southwest Regional Office
1300 Guadalupe, Ste 100
Austin, Texas, 78701
(512) 477-4431 ext. 117
brieja@consumer.org

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I. INTRODUCTION

Utility Consumers' Action Network (hereinafter referred to as (UCAN") and Consumers Union ("CU") offers these Reply Comments in response to Comments made by carriers to the Proposed Decision of Assigned Commissioner Carl Wood (PD)[1]. The primary thrust of UCAN and CU's comments is to address the following points:

1) The voluntary code of conduct submitted by the wireless carriers is horribly inadequate and should not be accepted as a substitute to the PD;
2) Rule 8(b) is entirely appropriate and legal
3) Rule 7(a) is consistent with current Commission rules.

II. INADEQUACY OF VOLUNTARY CODE OF CONDUCT

At the same time the wireless carriers vehemently deny any **need** for the Bill of Rights, the wireless carriers have offered a voluntary industry Code of Conduct ("Code") as an alternative to the proposed Bill of Rights. (see: Cellular Carriers Association of California ("CCAC") at 2, 8-15, Nextel at 1, 4-5, 25, T-Mobile at 2, 17, 20, 22, Exhibit A, Cingular at 2-4, 19-21, Sprint- PCS at 2, 7, 10-13, 19, 22, Exhibit 1 and AT&T Wireless Services of California ("ATTWS") at 1-2, 4-6, 24.)

CU and UCAN appreciate the gumption required by the industry to finally acknowledge some concerted action is necessary to protect consumer rights. (Sprint PCS at 10). It is regrettable that the Code offered by the wireless industry is so thoroughly compromised by ambiguous and equivocal language lacking in any enforceability. It is also notable that the Code effectively endorses all existing practices by wireless carriers and paves no new ground or offers new protection to consumers.[2]

The Code does provide one benefit to the Commission; it is a long-awaited acknowledgement by the wireless industry's consumer practices leave much room for

[1] These reply comments are part of a coordinated response by consumer groups. UCAN and CU endorse the arguments presented by TURN and NCLC in their reply comments on the Proposed Decision and filed separately.

[2] One carrier expressly concedes that the voluntary code does nothing more than to codify current industry practices. T-Mobile at 2 .

improvement. This is affirmed by ample reports of widespread consumer dissatisfaction with wireless service-- from a one year 263% increase in complaints filed at the Better Business Bureau to the NRRI study that gave wireless the equivalent of a D as its grade on customer service, to the numerous suits filed by state attorneys general and private litigators.[3] Merely adopting current, minimal practices as a voluntary code will do nothing to address very real consumer dissatisfaction.

Several carriers claim the voluntary, industry-drafted code offers protections to consumers that are equivalent to the Bill of Rights. (Cingular at 2. Sprint PCS at 11. Nextel at 4). UCAN and CU do not agree. Instead, the voluntary code suffers from vague and ambiguous language, open to many interpretations—a claim the carriers freely throw at the Bill of Rights. The three page voluntary code is rife with undefined or open ended terms, such as, "material terms and conditions", "generally accepted methodologies and standards", "to the extent the advertising medium reasonably allows", etc. The voluntary code signatories promise to follow their own privacy policy, whatever that may be. Signatories promise to tell consumers how to contact customer service, but they don't promise to promptly answer the phone, avoid putting the consumer on endless "hold" or to resolve their complaint or question without delay.

One example of the essential flaws of the proposed Code is the second "rule" that states:

> **2. Make available maps showing where service is generally available.**
> Wireless carriers will make available at point of sale and on their web sites maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps will be generated using generally accepted methodologies and standards to depict the carriers outdoor coverage. All such maps will contain an appropriate legend concerning limitations and/or variations in wireless coverage and map usage, including any geographic limitations on the availability of any services included in the rate plan. Wireless carriers will periodically update such maps as necessary to keep them reasonably current. If necessary to show the extent of service coverage available to customers from carriers roaming partners, carriers will request and incorporate coverage maps from roaming partners that are generated using similar industry-accepted criteria, or if such information is not available, incorporate publicly available information regarding roaming partners coverage areas.

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[3] www.bbb.org/alerts/2003/2002stats.asp; CONSUMER UTILITY BENCHMARK SURVEY: A COMPARISON OF CONSUMER PERCEPTIONS OF CUSTOMER SERVICE. Francine Sevel, Ph.D. Senior Consumer Affairs Policy Analyst and Ling Bei Xu, Graduate Research Assistant. *The National regulatory Research Institute* at The Ohio State University, www.nrri.ohio-state.edu. February 2003
"Unhappy customer more likely to switch carriers," 8/29/03, www.cellular-news.com/story/9618.shtml;

This provision is intriguing as it addresses an issue that is at the core of a current Commission investigation – I. 02-06-003. In that investigation, Cingular Wireless was accused of misleading its customers, in part, based upon ambiguous or misleading maps (called rate maps) by the carrier. The provisions in this "voluntary code" would effectively permit Cingular to continue the practices that have been called into question in that OII. For example, there is no requirement that the maps provide any degree of "granularity" or specificity. The glossy brochures containing sketchy regional maps currently offered by wireless carriers for coverage maps would be tolerable under this rule. It refers to "generally accepted methodologies" of which Cingular testified under oath at Commission hearings that there are none. "Periodic updates" could mean annual or biannual updates, or even longer. To deal with the tricky roaming coverage matters, carriers are only required to "request" maps from roaming partners. In sum, this code offers nothing of substance whatsoever, as affirmed by NARUC recently.[4]

UCAN and CU note Sprint PCS's suggestion that the voluntary code's disclosure provisions equate to the identified list of "important terms" in the Consumer Group Comments on the Working Group Report. (Sprint PCS at 19.) Regardless of whether the voluntary code incorporates some or even most of the recommended "important terms", the Consumer Group proposal was made in the context of a comprehensive, non-voluntary, and enforceable rule. To the extent that Sprint's representation is accurate, it merely affirms the appropriateness of the "important terms" identified by Consumers and, in large part, incorporated into the Proposed Decision.

In addition to being ambiguous and inadequate, the voluntary code is rendered meaningless because it is unenforceable. A key feature of the Bill of Rights is enforcement and consumer redress; both key features are glaringly absent from a voluntary, industry-sponsored code. Where does a consumer turn when a signatory to the code violates one of its provisions? If consumers complain to the Commission, does it have jurisdiction to take action? Is the only consumer remedy a self-regulatory slap on the wrist?

Finally, carriers ask the Commission to assess its performance under a voluntary code of conduct, rather than adopt the proposed rules. (Nextel at 5. Cingular at 4, 20. ATTWS at 2, 4).

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[4] "NARUC Offers Comment on CTIA's Proposed Voluntary Consumer Code," August 26, 2003, Press Release of the National Association of Regulatory Utility Commissioners, 1101 Vermont Aveneu, NW, Washington, D.C. 20005

CU and UCAN submit that such an assessment would be impossible. Carriers refuse to provide quality of service data to regulators (See April 2003 report by GAO; "FCC Should Include Call Quality in its Annual Report"). They do not collect or share customer complaint data. (Evidentiary record in I. 02-06-003) And customer complaints continue to stream into regulatory offices, most recently, over imposition of fabricated surcharges and fees. This Commission has already seen what the wireless industry does on a voluntary basis notwithstanding three years of notice. The industry's voluntary failure to respond in a meaningful way to consumers has lead to the drafting of the Consumer Bill of Rights. The voluntary code now proposed by wireless carriers is a not so subtle delaying tactic and should be rejected by the Commission.

III. LEGITIMACY OF RULE 8(B)

The carriers complaint that Rule 8(b) as currently constructed would "be inconsistent with fundamental liberty to change contract" (AT&T Wireless at 16) SBC alleges that it would "allow non-consenting carriers to force carrier to offer services at a lower rate than their cost….." (SBC at 20). Carriers' criticisms of Rule 8(b) represents a fundamental misconstruction of this rule. The key provision in this rule is that the change be "material" and it be subject to a term contract. SBC raises a scenario where a change in how calls are measured could not be implemented without customer consent; this is a scenario that is exactly the kind of material abuse against which customers should be protected. If the change is beneficial to customers, then SBC can either obtain consent (which should not be resisted by the customer). If it is not beneficial, then the sanctity of contract dictates that SBC refrain from imposing this new, material and non-negotiated change upon a customer. SBC's scenario of a regulatory change is not applicable to this rule. In the event that regulators compel a modification of service terms, customer contracts can be deemed to be modified to comply with that regulatory order.

IV. RULE 7(A) IS CONSISTENT WITH CURRENT COMMISSION POLICY

SBC also expresses concerns about Rule 7(a). These concerns are baseless. (SBC at 16-17) SBC's concern is primarily founded upon the "absence of an evidentiary record" which is not

a valid basis to object to a Rulemaking. SBC alleges that the "no less than 22 day" rule is inconsistent with current policy. Yet, a review of SBC's own tariffs show that billing periods are 30 days. (SBC Tariff A.2 (General Regulations) 2.1. Rule 9C) The 22-day period is merely a minimum period and has no detrimental impact upon SBC or any other local carrier tariffs.

SBC's concern about the absence of mailing dates on envelopes is similarly baseless. SBC provides "billing dates" on its bills and then provides customers 30 days in which to make payments. SBC seems to fixate on use of the term "mailing date" instead of "billing date" in Rule 7(a). Yet, SBC's own tariffs refer to "mailing date" (See: Tariff A.2 (General Regulations) 2.1. Rule 9D) The Rule properly assumes that mailing will occur within two business days of a day that a bill is issued. It is unnecessary for the Commission to establish another rule requiring mailing of bills within 10 days of issuance. As SBC knows – and its own tariffs acknowledge - a carrier can show mailings occur proximate to billing dates.

Finally, SBC takes offense at the prohibition against deminimus late fees. SBC's demurrer actually is compelling evidence in support of the need for protection from irritating late fees for basic service customer. The bill for an SBC customer who only takes local service from SBC a generally averages $17 per month (including taxes). A late charge may amount to 20 cents for that customer. With first class postage being 37 cents, it is actually more economic for the customer to absorb the late fee but it gives SBC a windfall at interest rates far above its own cost of capital. Thus, it is preying on high postage costs to reap 18% returns on 4% capital that is available to prime customers. For these reasons, Rule 7(a) should not be modified.

Dated: September 4, 2003

Respectfully Submitted,

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Michael Shames
On behalf of UCAN and CU
3100 Fifth Ave. Suite B
San Diego, CA 92103
mshames@ucan.org

PROOF OF SERVICE

I, Betty Mallard, declare: I am employed in the City and County of San Diego, California. I am over the age of 18 years and am not a party to this action. On September 4, 2003, I served the Reply Comments of UCAN and CU on the parties in this proceeding by placing a true and correct copy thereof, addressed as shown on the attached service list via first class mail and e-mail.

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Betty Mallard