

California Public Utilities Commission: Gaps Emerge in Telephone Consumer Protections

*A report prepared for the Rules Committee
of the California State Senate*

JULY 16, 2010



**California Senate Office of
Oversight and Outcomes**

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I. Executive Summary

By 2006, the day was past when phone service depended solely on a drooping wire from a wooden pole. Telecommunication choices had expanded exponentially; the sky – literally – was the limit. That year, responding to industry appeals and to federal and state law, the California Public Utilities Commission decided to step away from its traditional regulatory role and let the marketplace set telephone service prices. The Commission’s sweeping Uniform Regulatory Framework decision uncapped most rates for California’s biggest telephone carriers.

A decade earlier, the California Legislature passed a PUC-sponsored law that set a clear policy goal for telecommunications: “to remove the barriers to open and competitive markets.” Before those barriers are lifted, however, statute requires that consumer protections are in place to eliminate fraudulent marketing and “to assure that aggrieved consumers have speedy, low-cost, and effective avenues available to seek relief in a reasonable time.” Meanwhile, legislators retained the longstanding statutory requirement that *all* charges by public utilities must be “just and reasonable.”

This report does not revisit the basic public policy reflected in telephone deregulation. It examines the mandates of consumer protection that remain in the law, scrutinizing the Commission’s performance in several areas:

- Meeting its statutory obligation to ensure rates are just and reasonable.
- Monitoring the level of competition in the state’s telecommunications market.
- Uncapping the basic residential phone rate – and the Lifeline rate pegged to it.
- Providing the equitable resolution of consumer complaints.

- Making information public that will help consumers make informed choices.
- Tracking of complaints against so-called “crammers,” who bill for services that customers have never authorized.

The report, prepared by the Senate Office of Oversight and Outcomes, is divided into two parts. First is a section on the recent history of telephone deregulation in California, including a review of residential phone rates. Next, the report makes five findings, discusses them and suggests possible options.

Opening up the marketplace

The federal Telecommunications Act of 1996 triggered telephone deregulation across the country. This nationwide push reflected fundamental changes in telecommunications. Today, ratepayers no longer are limited to a landline telephone and a single local carrier – the traditional monopoly utility that the PUC was created to regulate. Now, consumers have a rapidly expanding array of telephonic choices, including cable, broadband, and wireless.

In its 2006 Uniform Regulatory Framework (URF) decision, the PUC declared that deregulation heralded a new day when competition among phone carriers would encourage innovation and keep rates down. Customers would “vote with their feet,” by leaving unresponsive or expensive phone carriers for their competitors. “We have determined that competitive market forces will assure that rate levels are ‘just and reasonable,’” the commissioners said.

They also detached themselves from monitoring rates. First, they allowed the four big carriers to raise most rates with just one day’s notice to the PUC. Next, commissioners urged the phone companies to “detariff” themselves, which frees them from having to notify the PUC of rate changes at all.

The bedrock of the PUC’s decision to deregulate is that California’s telecom industry is sufficiently competitive to guarantee consumer choice. The Commission arrived at that conclusion after conducting “an extensive and thorough statutory and market analysis,” PUC lawyers wrote in a 2007 court filing.

The competitiveness of the market has been questioned by the Commission’s Division of Ratepayer Advocates. In July 2008, the division reported that California’s two largest phone companies – AT&T and Verizon – together control 85 percent of the state’s residential landline phones. “All the evidence points to the existence of market dominance

by AT&T and Verizon, which allows them to raise prices without losing market shares,” according to the DRA.

Rates after deregulation

One rationale for deregulation is that it will keep rates down, but PUC data show, so far, that prices have gone up since the 2006 URF decision.

At the oversight office’s request, the PUC gathered information on landline rate changes levied since deregulation by AT&T, Verizon, Frontier and SureWest. The data show that no rates dropped and some increased by several hundred percent. Moreover, these increases were implemented on limited notice and with no immediate opportunity for protest or comment by the public.

Meanwhile, increases to the basic residential rate – and the subsidized Lifeline rate for low-income Californians – were phased in over a two-year period. The PUC’s aim, commissioners said, was to avoid “rate shock” that would result from uncapping these rates all at once. Under the phase-in, AT&T’s basic residential rate climbed 50 percent between 2008 and 2010. During the same period, the rate for the carrier’s Lifeline customers rose 25 percent, from \$5.47 monthly to \$6.84. These increases were reasonable, an AT&T spokesman said, given the fact that the PUC had frozen AT&T’s basic rate for more than a decade.

The cap on the basic residential rate is scheduled to come completely off on January 1, 2011.

Consumer protections

The same California law that urges removing barriers to telephone competition – Public Utilities Code Section 709 – also contains this policy goal:

To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

In the 2006-07 fiscal year, the PUC went to the Legislature with a \$12.7 million budget request to beef up consumer protections and improve complaint resolution. Lawmakers granted funding for the PUC to add 19 staffers to its Consumer Affairs Branch (CAB), the Commission’s frontline in handling and resolving ratepayer complaints. The PUC also received funding to double the customer-service call center’s hours and to hire bilingual speakers for 13 of the new consumer positions.

The results have been mixed. Overall, CAB staffing levels did increase, but dropped again last year. The targeted employment of bilingual workers was derailed by civil service hiring rules, according to CAB managers. Call center hours were increased by one hour, not the five promised. (In February, after Senate inquiries, the PUC added another two hours to the call center's schedule, bringing the added hours to three.)

What the CAB actually did in 2006 was to close thousands of unresolved consumer complaints. Senate investigators learned the complaint backlog shrank by 18,000 cases that year, with more than 2,700 cases closed in a single day. Each case represented an individual who came to the PUC for help after a utility failed to solve a problem.

Legislature's role

The California Constitution gives state lawmakers broad authority over the Public Utilities Commission. Article XII declares that public utilities owned by private parties are "subject to control by the Legislature." Section 5 of Article XII states:

The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission, to establish the manner and scope of review of commission action in a court of record, and to enable it to fix just compensation for utility property taken by eminent domain.

The state Senate also has the specific responsibility of confirming each commissioner appointed by the governor. This year and next, three of the five seats on the Commission will be up for appointment to six-year terms.

The report's five findings

Finding 1: California telecommunications policy laid out in the Public Utilities Code encourages an open marketplace. State law also requires the PUC to assess the economic consequences of its actions and to ensure that utility rates are “just and reasonable.” Those statutes obligate the Commission to monitor impacts on ratepayers. Oversight is impeded, however, by the PUC’s system in which deregulated telephone rates are not scrutinized and virtually any increase is automatically considered just and reasonable. Such increases are “not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory,” according to the Commission.

Finding 2: On January 1, 2011, price caps will come off the basic residential rate and the subsidized Lifeline rate. (Lifeline provides 2 million low-income Californians with a half-price discount on basic phone service.) No one knows what will happen to prices after that. The challenge for the PUC will be to assure that the basic rate remains just and reasonable – and that the Lifeline rate remains affordable.

Finding 3: The Consumer Affairs Branch (CAB) is the PUC’s front line in handling ratepayer problems, fielding 100,000 calls a year. Many callers are elderly, low-income, or speak limited English. Statute requires the PUC to provide for the “equitable resolution” of consumer complaints, but the focus has been on closing cases rather than on resolving them.

Finding 4: A key argument for deregulation is that informed consumers will “vote with their feet” by changing their telephone provider if rates are high or service is bad. The PUC collects information that could help consumers make comparisons: rates charged by different carriers, targets of fraud investigations, CAB’s complaint statistics, and “trouble” reports from the phone companies themselves. Currently, however, none of it is made public by the PUC, defeating the purpose.

Finding 5: “Cramming” – telecom jargon for billing customers for services they have not authorized – is recognized as one of the most widespread and flagrant abuses in wireless telecommunications. More than a decade ago, the Legislature required the PUC to track and report cramming complaints. The Commission did so for landline phone service. So far, though – despite years studying the matter – the Commission has failed to apply this requirement to wireless telephone carriers.

II. Glossary

Advice letter: Informal process the PUC uses for requests by utilities that are “expected neither to be controversial nor to raise important policy questions,” according to General Order 96-B. This isn’t a letter offering the PUC’s advice on a matter – it’s a letter from a utility *advising* the PUC what it intends to do. In telecom deregulation, the four major phone companies can notify the PUC of rate hikes with an advice letter one day before the increase takes effect.

Basic rate: Monthly rate for no-frills, residential, landline phone service. Under statute, carriers must notify the PUC 30 days before changing their basic rate. One of the last telephone rates to be deregulated, the PUC’s price cap comes off basic service on January 1, 2011. The subsidized Lifeline rate for low-income Californians cannot be more than 50 percent of a carrier’s basic residential rate.

CLEC: Acronym for Competitive Local Exchange Carrier, a telecommunications provider that competes with established original carriers known as ILECs (see below).

Consumer Affairs Branch (CAB): Arm of the PUC that fields 100,000 inquiries and complaints from utility consumers each year. Two-thirds of the calls involve telephone service, though CAB covers other utilities as well.

Cramming: Telecom jargon for the practice of billing customers for services they have not authorized. This unfair business practice has flourished with the advent of cell phones, in part because the complicated, lengthy bills generated by wireless service make it easier to disguise unauthorized charges.

Division of Ratepayer Advocates (DRA): PUC’s independent consumer advocacy arm. Created by statute, its mission is “to obtain the lowest possible rates for public utility service consistent with safe and reliable service levels, and to ensure that utility customers have access to the best possible information about their options and choices.”

ILEC: Acronym for Incumbent Local Exchange Carrier, usually applied to the original, monopoly provider of landline telephone service in a given area. In California, there are four Incumbent Local Exchange Carriers: AT&T, Verizon, SureWest and Frontier. Most rates for these carriers were deregulated in 2006.

Lifeline: Statutorily-established program that provides 2 million low-income Californians with a 50-percent discount off the price of basic residential service.

Tariff and detariffing: Public contract between a telephone carrier and its customers that is filed with the PUC. Tariffs outline terms and conditions of providing phone service, including rates, fees and other charges. Changes to a tariff must be reviewed by the Commission. “Detariffing” replaces the tariff overseen by the PUC with a service agreement strictly between the carrier and the customer.

TURN: The Utility Reform Network, a consumer advocacy group based in San Francisco.

Uniform Regulatory Framework (URF): PUC’s 2006 decision that deregulated most telephone rates for California’s four incumbent landline carriers: AT&T, Verizon, SureWest and Frontier.

Wireline: Telephone service that is hard-wired to a residence or business. Also called “landline” service. Currently, about 90 percent of California’s homes still use a wireline connection.

III. A Short History of Telephone Deregulation in California

The heart of the PUC's mission was spelled out by the Legislature in Section 451 of the Public Utilities Code:

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be **just and reasonable**. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. [Emphasis added.]

The idea was to protect Californians who would otherwise be at the mercy of monopoly utilities. But what if a single utility is no longer the sole provider of the service – what if consumers have other choices? That's the situation facing the Commission in today's world of freewheeling and constantly mutating telecommunications.

Legislative backdrop

The federal Telecommunications Act of 1996 triggered telephone deregulation across the country. The act made it possible for carriers new to local telephone markets to compete with existing companies. (In telecom parlance, the newcomers are called Competitive Local Exchange Carriers – CLECs – and the existing companies are Incumbent Local Exchange Carriers – ILECs.) To foster competition among these players, the 1996 law required the incumbent carriers to allow the newcomers access to their networks.

Responding to the nationwide push toward telephone deregulation, the California Legislature made clear its own support for an open marketplace. In 1995, PUC-sponsored AB 828 was signed into law as Public Utilities Code Section 495.7. It allows – but does not require – the Commission to exempt some telephone carriers from rate regulation, providing that competition is adequate and consumer protections exist.

The pro-competition policy is also reflected in Public Utilities Code Section 709, which outlines California’s telecommunications goals: “To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.” This provision was also added in 1995.

In 2002, the Legislature amended Section 709, this time adding a strong new consumer protection policy: “To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.”

PUC Uncaps Phone Rates

In 2006, the Public Utilities Commission ended most rate regulation of California’s largest telephone companies in exchange for a more competitive model. The Uniform Regulatory Framework decision – known as URF – uncapped telephone rates for California’s four incumbent landline carriers: AT&T, Verizon, SureWest and Frontier.

There was an exception: The PUC required that increases to the basic residential rate would be phased in over two years. But, on January 1, 2011, the cap comes off the basic rate. On that date, the subsidized Lifeline rate for low-income Californians will be uncapped, as well.

The commissioners went further than uncapping rates – they also detached the PUC from monitoring prices. First, they allowed the four biggest carriers to raise rates with just one day’s notice to the PUC. Next, they urged the phone companies to “detariff” themselves, which cuts them loose from notifying the PUC of rate changes at all. (Again the exception is the basic residential rate, protected by statute, which still requires a 30-day notice to the Commission before it can be increased.)

The California Public Utilities Commission had been the overseer of just and reasonable rates since the dawn of telephone service in 1915. With adoption of the URF decision, the PUC stopped regulating rates and let

the marketplace take over. The commissioners summed up their new stance this way : “We have determined that competitive market forces will assure that rate levels are ‘just and reasonable.’”

Deregulation heralded a new day, the commissioners declared, when competition among phone carriers would encourage innovation and keep rates down. Customers would “vote with their feet,” by leaving unresponsive or expensive phone carriers for their competitors.

PUC lawyers outlined the Commission’s rationale in a 2007 court filing. They wrote:

After soliciting various proposals from numerous parties, the Commission conducted an extensive and thorough statutory and market analysis and found that, based on current market conditions in California, competitive forces could be relied upon to produce “just and reasonable” rates for California’s telecommunications consumers. The Commission eliminated or reduced many of the vestiges of the old rate-of-return style of regulation, and granted carriers greater pricing flexibility concerning almost all telecommunications services, new telecommunications products, bundles of services, promotions, and contracts.

...Moreover, the Commission’s Decision is well reasoned and firmly anchored in an extensive evidentiary record, with over 900 footnotes linking the parties’ arguments and Commission’s analysis to the record in this proceeding. The proceeding generated several hundred pages of comments and expert declarations filed by nearly twenty parties, four days of workshops, four days of evidentiary hearings on competition, an en banc hearing, several hundred pages of legal briefs, and oral arguments.

The PUC reserved the option to return to the regulatory arena and reassert its jurisdiction. “Should we see evidence of market power abuses,” the Commission declared in the 2006 URF decision, “we retain the authority and firm resolve to reopen this proceeding to investigate such developments promptly.”

There is no definition of “market power abuse” in the policy order, according to Jack Leutza, who heads the PUC’s Communications Division. “The Commission relies on anti-trust standards as market power guidelines,” Leutza said. “Price increases might be one indicator of market abuse, but would likely be considered along with other factors by the PUC.”

The decision – and the PUC’s decision-making process – had its detractors. “The URF decision relies on anecdotal, vague and speculative evidence to justify the deregulation of the dominant telecommunications carriers in California based on the prospect of competition,” wrote lawyers for TURN (The Utility Reform Network), a consumer advocacy group, in a 2007 filing.

The Commission’s Division of Ratepayer Advocates is another vocal and persistent critic of telephone rate deregulation. The DRA is the independent consumer advocacy arm of the PUC. Its statutory mission is “to obtain the lowest possible rates for public utility service consistent with safe and reliable service levels, and to ensure that utility customers have access to the best possible information about their options and choices.”

In its 2009 annual report to the Legislature, DRA reiterated its criticism of phone deregulation: “In August 2006, the Commission declared California’s communications market competitive and decided to cease using its regulatory authority over rate-setting. DRA disagrees and firmly believes that some level of rate regulation is needed to protect customers.”

Phone rates since deregulation

A central premise for embarking on deregulation is that competition tends to keep prices down. So far, however, PUC data show that prices have gone up.

At the request of the oversight office, the PUC gathered information on landline rate changes levied by California’s four incumbent telephone carriers since their prices were deregulated in September 2006. The data show that some rates increased by several hundred percent. Moreover, these increases by AT&T, Verizon, Frontier and SureWest were all implemented on limited notice and with no formal opportunity for protest or comment by the public.

One example is the monthly rate customers are charged for having an unlisted number. AT&T raised the rate 614 percent in the first year of deregulation – from 14 cents a month to \$1 a month. SureWest raised its unlisted rate 563 percent, from 30 cents monthly to \$1.99. Verizon upped its rate 25 percent, from \$1 monthly to \$1.25. And Frontier increased it 99 percent, from \$1 monthly to \$1.99.

The following four tables, provided by the PUC, chart rate changes since deregulation:

AT&T	Sept/2006 ^{1/}	Sept/2007 (one yr)	Sept/2008 (two yr)	Sept/2009 (three yr)	\$ Rate Change (three year)	% Rate Changes (three year)
Residential Basic Rate						
Flat Rate Service/Month	\$10.69	\$10.69	\$10.94	\$13.50	\$2.81	26.3%
Measured Service	\$5.70	\$5.70	\$5.83	\$7.28	\$1.58	27.7%
Lifeline Basic Service *						
Flat Rate	\$5.34	\$5.34	\$5.47	\$6.11	\$0.77	14.4%
Measured Rate	\$2.85	\$2.85	\$2.91	\$3.27	\$0.42	14.7%
Other Associated Basic Services or Elements						
Local directory free allowance	3	3	1	0		
Local directory per call charge	\$0.46	\$1.00	\$1.50	\$1.50	\$1.04	226.1%
Non-published listing:						
(a) Exclude from white page directories/month	\$0.14	\$1.00	\$1.00	\$1.00	\$0.86	614.3%
(b) Exclude from white page directories & calls to DA/month	\$0.28	\$1.25	\$1.25	\$1.25	\$0.97	346.4%
Installation/Activation Charges	\$33.00	\$33.00	\$40.00	\$40.00	\$7.00	21.2%
Reactivation charge	\$19.00	\$19.00	\$25.00	\$25.00	\$6.00	31.6%
Visit Charge/hr	\$67.45 - 88.35	\$67.45 - 88.35	\$67.45 - 88.35	\$67.45 - 88.35	\$0.00	0.0%
Repair Service:						
-- WirePro/Month	\$2.99	\$5.00	\$6.00	\$6.00	\$3.01	100.7%
Returned Check Charge	\$6.65	\$25.00	\$25.00	\$25.00	\$18.35	275.9%
Late Payment (fixed charge)	0	\$5.50	\$2.50	\$2.50	\$2.50	
plus % apply to all unpaid when unpaid balance >= \$20 now \$30	1.5%	1.0%	2.0%	2%		
-- Assume unpaid balance \$10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%
-- Assume unpaid balance \$30	\$0.38	\$5.75	\$3.10	\$3.10	\$2.73	726.7%
-- Assume unpaid balance \$50	\$0.75	\$6.00	\$3.50	\$3.50	\$2.75	366.7%
Local Toll Service	\$0.028 -- \$0.092	\$0.07 -- \$0.12	\$0.09 -- \$0.14	\$0.09 - \$0.14	\$0.062 - 0.048	52 - 218%
Custom Calling Service						
Anonymous Call Rejection	\$1.90	\$4.00	\$5.00	\$6.00	\$4.60	215.8%
Call Forwarding	\$3.23	\$5.00	\$6.00	\$6.00	\$2.77	85.8%
Caller ID	\$6.17	\$9.00	\$9.99	\$9.99	\$3.82	61.9%
Call Waiting	\$3.23	\$5.00	\$6.00	\$6.00	\$2.77	85.8%
Three-Way Calling	\$3.23	\$5.00	\$6.00	\$6.00	\$2.77	85.8%

Verizon	Sept/2006 ^{1/}	Sept/2007 (one yr)	Sept/2008 (two yr)	Sept/2009 (three year)	\$ Rate Change (three year)	% Rate Changes (three year)
Residential Basic Rate						
Flat Rate Service/Month	\$16.85 - 17.25	\$16.85 - 17.25	\$17.25 - 17.66	\$19.50 - \$19.91	\$2.65 - \$2.66	15.0%
Measured Service	\$10.00	\$10.00	\$10.24	\$11.80	\$1.80	18.0%
Lifeline Basic Service *						
Flat Rate	\$5.34	\$5.34	\$5.47	\$6.03	\$0.69	12.9%
Measured Rate	\$2.85	\$2.85	\$2.91	\$3.21	\$0.36	12.6%
Other Associated Basic Services or Elements						
Access to local directory assistance						
(a) free allowance	5	0	0	0		
(b) per call charge	\$0.46	\$0.75	\$0.95	\$0.95	\$0.49	106.5%
Non-Published Rate	\$1.50	\$1.50	\$1.75	\$1.75	\$0.25	16.7%
Non-Listed Rate	\$1.00	\$1.00	\$1.25	\$1.25	\$0.25	25.0%
Installation/Activation Charges	\$23.00	\$23.00	\$23.00	\$23.00	\$0.00	0.0%
Reactivation Charge	\$23.00	\$23.00	\$23.00	\$23.00	\$0.00	0.0%
Repair Service						
-- WirePro/Month	\$2.99	\$5.00	\$5.95	\$5.95	\$2.96	99.0%
Labor Rate/hr	\$60 - \$240	\$60 - \$240	\$60 - \$240	\$60 - \$240	\$0.00	0.0%
Returned Check Charge	\$11.30	\$11.30	\$25.00	\$25.00	\$13.70	121.2%
Late Payment, fixed charge	0	0	2.5	\$2.50	\$2.50	
Late Payment variable charge of =>\$20	1.5%	1.50%	1.50%	1.5%	\$0.00	0.0%
-- Assume unpaid balance \$10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%
-- Assume unpaid balance \$30	\$0.45	\$0.45	\$2.95	\$2.95	\$2.50	555.6%
-- Assume unpaid balance \$50	\$0.75	\$0.75	\$3.25	\$3.25	\$2.50	333.3%
Local Toll Service	\$0.042 -- 0.136	\$0.086 -- 0.144	\$0.10 -- 0.16	\$0.10 -- \$0.16	\$0.058 - \$0.03	18 - 138%
Custom Calling Service						
Anonymous Call Rejection	\$1.00	\$1.00	\$1.00	\$1.00	\$0.00	0.0%
Call Forwarding	\$2.50	\$3.00	\$3.00	\$3.00	\$0.50	20.0%
Caller ID	\$7.95	\$7.95	\$7.95	\$7.95	\$0.00	0.0%
Call Waiting/cancel call waiting	\$3.50	\$4.00	\$4.50	\$4.75	\$1.25	35.7%
Three-Way Calling	\$3.50	\$3.50	\$4.00	\$4.00	\$0.50	14.3%

SureWest	Sept/2006 ¹¹	Sept/2007 (one yr)	Sept/2008 (two yr)	Sept/2009 (three year)	\$ Rate Change (three year)	% Rate Changes (three year)
<u>Residential Basic Rate *</u>						
Flat Rate Service/Month	\$18.90	\$18.90	\$18.90	\$18.90	\$0.00	0.0%
Measured Service	\$12.95	\$12.95	\$12.95	\$12.95	\$0.00	0.0%
<u>Lifeline Basic Service *</u>						
Flat Rate	\$5.34	\$5.34	\$5.47	\$5.47	\$0.13	2.4%
Measured Rate	\$2.85	\$2.85	\$2.91	\$2.91	\$0.06	2.1%
<u>Other Associated Basic Services or Elements</u>						
Access to local directory assistance:						
(a) free allowance	3	0	0	0		
(b) per call charge	\$0.25	\$0.45	\$0.45	\$0.45	\$0.20	80.0%
Non-published listing	\$0.30	\$1.99	\$1.99	\$1.99	\$1.69	563.3%
Installation/Activation Charges	\$23.75 - 83.25	\$23.75 - 83.25	\$23.75 - 83.25	\$23.75 - 83.25		0.0%
Visit Charge/hr	\$89.00	\$89.00	\$126.00	\$126.00	\$37.00	41.6%
Repair Service:						
-- WirePro/Month	\$1.00	\$2.00	\$2.00	\$2.00	\$1.00	100.0%
Returned Check Charge	\$10.00	\$20.00	\$20.00	\$20.00	\$10.00	100.0%
Late Payment (apply to all unpaid once unpaid > \$20)	1.5%	1.5%	1.5%	1.5%		0.0%
<u>Local Toll Service</u>	\$0.028 --0.099	\$0.028 -- 0.099	\$0.028 --0.099	\$0.028 -- 0.099	\$0.00	0.0%
<u>Custom Calling Service</u>						
Anonymous Call Rejection	\$1.50	\$1.50	\$2.99	\$2.99	\$1.49	99.3%
Call Forwarding	\$2.50	\$2.50	\$3.99	\$3.99	\$1.49	59.6%
Caller ID	\$5.95	\$5.95	\$7.99	\$7.99	\$2.04	34.3%
Call Waiting	\$3.75	\$3.75	\$3.75	\$4.99	\$1.24	33.1%
Three-Way Calling	\$3.75	\$3.75	\$3.99	\$3.99	\$0.24	6.4%

Frontier		Sept/2006 ^{1/}	Sept/2007 (one yr)	Sept/2008 (two yr)	Sept/2009 (three year)	\$ Rate Change (three year)	% Rate Changes (three year)
<u>Residential Basic Rate *</u>							
Flat Rate Service/Month		\$17.85	\$17.85	\$17.85	\$17.85	\$0.00	0.0%
Measured Service		\$9.60	\$9.60	\$9.60	\$9.60	\$0.00	0.0%
<u>Lifeline Basic Service *</u>							
Flat Rate		\$5.34	\$5.34	\$5.47	\$5.47	\$0.13	2.4%
Measured Rate		\$2.85	\$2.85	\$2.91	\$2.91	\$0.06	2.1%
<u>Other Associated Basic Services or Elements</u>							
Access to local directory assistance:							
(a) free allowance		5	5	5	5		
(b) per call charge		\$0.35	\$0.35	\$0.35	\$0.99	\$0.64	182.9%
Non-published listing		\$1.00	\$1.99	\$1.99	\$1.99	\$0.99	99.0%
Installation/Activation Charge		\$37.25 - \$68	\$37.25 - \$68	\$37.25 - \$68	\$37.25 - \$68	\$0.00	0.0%
Reactivation Charge		\$23.25	\$23.25	\$23.25	\$25.00	\$1.75	0.0%
Repair Service:							
-- WirePro/Month		\$1.00	\$1.99	\$2.99	\$2.99	\$1.99	199.0%
Visit Charge/hr		\$50 - 75	\$50 - 75	\$50 - 75	\$50 - 75	\$0.00	0.0%
Returned Check Charge		\$10.00	\$10.00	\$10.00	\$10.00	\$0.00	0.0%
Late Payment (charges apply to all unpaid balance when it exceeds \$20)		1.5%	1.5%	1.5%	1.5%	0.0%	0.0%
<u>Local Toll Service</u>		\$0.042 - \$0.147	\$0.042 - \$0.147	\$0.042 - \$0.147	\$0.042 - \$0.147	\$0.00	0.0%
<u>Custom Calling Service</u>							
Anonymous Call Rejection		\$3.50	\$3.50	\$3.50	\$4.99	\$1.49	42.6%
Call Forwarding		\$2.50	\$2.50	\$2.50	\$5.99	\$3.49	139.6%
Caller ID w/ Name		\$5.95	\$5.95	\$5.95	\$9.99	\$4.04	67.9%
Call Waiting		\$3.75	\$3.75	\$3.75	\$5.99	\$2.24	59.7%
Three-Way Calling		\$3.75	\$3.75	\$3.75	\$5.99	\$2.24	59.7%

In a July 2008 report on phone rates, the Division of Ratepayer Advocates wrote: “Since the Commission’s URF decision in 2006, rates on uncapped telecommunications services have skyrocketed, which strongly suggests that basic residential rates will also increase as the price controls are lifted. Since URF, market forces have not led to stable or reduced prices or prevented URF carriers from raising rates.”

California’s telephone rate hikes loom larger against a national backdrop. According to the federal Bureau of Labor Statistics, phone rates nationwide increased about 11 percent total between 2004 and 2008. That was less than the overall Consumer Price Index, which grew about 13 percent during the same four years.

The oversight office asked PUC President Michael Peevey for the Commission’s response to several of the findings in this report, including rate increases. His staff responded via memo on March 19 – this response is referenced throughout the report as President Peevey’s memo. (*The entire memo is Attachment 1.*) The memo notes while individual prices have gone up, buying packages of services can save consumers money. The same is true of “bundling,” where consumers purchase telephone service in combination with, for example, internet access and television.

The Division of Ratepayer Advocates questions whether savings from packages and bundling will do much to help customers who don’t have the money – or the need – for “high-end” features like broadband. These people are more likely to purchase stand-alone services, DRA said in its report on rates.

President Peevey’s memo also cited industry experts who predicted that rate increases were to be expected “in a transitioning period until market equilibrium is reached.”

Shielding the Basic and Lifeline rates

To prevent what it termed “rate shock,” the PUC acted to phase in increases to the basic residential rate and the Lifeline rate. Lifeline is a statutorily-established program to provide low-income Californians (e. g. \$24,000 annual income for a two-person household) with a 50-percent discount off the price of basic telephone service. Lifeline costs California ratepayers about \$200 million annually, paid for by a surcharge on other telephone services.

The two-year phase-in will end January 1, 2011, when basic residential rates will be uncapped – as will the Lifeline rates pegged to them. No one knows what will happen to rates after that, but a major increase might

well come as a shock to Lifeline customers, who paid a flat monthly rate of \$5.47 for a decade.

AT&T is by far the largest provider of Lifeline in California, serving 1.37 million of Lifeline's 2 million customers. Under the regulated phase-in, AT&T's basic and Lifeline monthly rates showed increases over the two years:

Residential Service	2008	2009	2010	% Change
Basic flat rate	\$10.94	\$13.50	\$16.45	+ 50%
Lifeline flat rate	\$5.47	\$6.11	\$6.84	+ 25%

In an interview, an AT&T spokesman said his company's rates are low, comparatively. "On the issue of the basic rate, AT&T has the lowest dial-tone rate in the state of California, and likely one of the lowest in the entire United States," according to the spokesman. "Our rate was frozen for 14 years. At the time pricing flexibility was granted, there was a phase-in process. In 2010, the truth is, AT&T did *not* take the maximum rate increase provided by the Commission."

President Peevey's memo also stated that California's basic residential rates are low. "These prices are still considered affordable when taking into account the rate of inflation since the last rate increases and the telephone rates nationally," it said. "The fact that the full amount of the allowable rate increase was not taken by any URF carrier shows that competition is tempering rate increases."

But consumer advocates are concerned that the across-the-board increases already in place do not bode well for Lifeline customers. According to DRA's latest annual report to the Legislature, presented in March 2010:

The prices are likely to continue trending higher, as in January 2011 the four largest wireline providers will have complete pricing freedom. The increasing basic service rates are the most devastating for vulnerable consumers, such as the working poor.

Promises to Bolster Consumer Protection

Coupled with deregulation was a dual commitment by the PUC (1) to beef up consumer education, so customers voting "with their feet" would be able to make the informed choices described in the statute; and (2) to provide better complaint resolution and tougher anti-fraud enforcement. The PUC made these commitments to the Legislature in a 2006 budget request – which the lawmakers granted.

The PUC's front line in handling ratepayer problems is its Consumer Affairs Branch, known as CAB. Its call center fields complaints about all kinds of utilities, but two-thirds of the cases involve telephone issues. CAB's representatives answer questions and resolve informal complaints about utility bills and services.

The CAB's operational manual notes that many of the 100,000 people who call each year are low-income, elderly and/or have limited English proficiency. These vulnerable Californians turn to the Public Utilities Commission for help in navigating the complex and sometimes daunting world of utility bills and services.

In the 2006-07 fiscal year, the PUC went to the Legislature to seek an additional \$12.7 million to "better protect consumers against fraud and customer abuse behavior in the increasingly dynamic and competitive telecommunications market. Consumers who are informed of their options and rights will make better choices, and their actions will encourage positive innovations in the telecommunications marketplace." The quotation is from the PUC's Budget Change Proposal dated April 20, 2006.

Among other requests, the PUC sought to add 15 consumer representatives to the CAB, plus 2 technicians and 2 supervisors. If this request was granted, the Commission said it would double the customer service telephone hours from 5 hours a day to 10 hours a day. It also pledged to hire bilingual speakers for 13 of the 15 new consumer representative positions: 7 fluent in Spanish, 3 in Chinese, 2 in Korean and 1 in Vietnamese.

The Legislature funded the PUC's proposal. Results were mixed:

- Overall, CAB staffing levels did increase, according to a 2008 PUC report to the Legislature. That year, CAB's roster stood at 3 managers, 10 supervisors, and 48 representatives who directly take calls. By late 2009, however, CAB staff was down to 2 managers, 7 supervisors, and 38 representatives, according to PUC officials. That's still more than the 31 reps on the payroll in 2005 – but fewer than the Commission promised.
- Call center hours were initially increased by 1 hour, not the 5 hours promised. (After the Senate's inquiries last fall, however, the PUC decided to add another 2 hours to the call center's schedule, bringing the total to 8 hours a day.)
- The targeted employment of bilingual workers was circumvented by civil service rules, CAB managers told Senate oversight staff.

What the CAB actually did was focus on eliminating its backlog of old complaints. Data provided to the Senate by the PUC show the backlog stood at 21,057 unresolved cases in January of 2006. The backlog shrank by 18,000 cases that year. More than 2,700 cases were closed in a single day in September 2006. Each case represented an individual who came to the PUC for help after a utility failed to solve the problem.

Asked last fall about these blanket closures, the PUC initially contended that all the backlogged cases had been resolved. On Dec. 7, 2009, however, Executive Director Paul Clanon wrote to the Senate Rules Committee acknowledging that an internal audit found thousands of complaints were closed without any resolution. “A great disservice was done to customers by our allowing their complaints to languish unanswered for a year or longer due to the backlog,” Clanon wrote. The decision to close cases en masse, he said, was “regrettable but necessary.”

IV. Findings

Finding 1: California telecommunications policy laid out in the Public Utilities Code encourages an open marketplace. State law also requires the PUC to assess the economic consequences of its actions and to ensure that utility rates are “just and reasonable.” Those statutes obligate the Commission to monitor impacts on ratepayers. Oversight is impeded, however, by the PUC’s system in which deregulated telephone rates are not scrutinized and virtually any increase is automatically considered just and reasonable. Such increases are “not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory,” according to the Commission.

Having declared telecommunications in California to be robustly competitive, the PUC left its traditional regulatory role to allow the marketplace to determine prices. Even so, Section 321.1 of the Public Utilities Code obliges the Commission to assess the impact of its actions:

It is the intent of the Legislature that the Commission assess the economic effects or consequences of its decisions as part of each ratemaking, rulemaking, or other proceeding, and that this be accomplished using existing resources and within existing Commission structures.

In its URF decision, the Commission pledged to keep an eye on the outcomes of telephone deregulation, stating: “Should we see evidence of market power abuses, we retain the authority and firm resolve to reopen this proceeding to investigate such developments promptly.”

The PUC has not revisited its 2006 declaration that the voice communications market in California is competitive – nor its position that such competition guarantees just and reasonable rates. “The CPUC found that consumers have choices for their telecommunications services when it approved the URF,” according to President Peevey’s March 19 memo to the Senate oversight office. “This fact has not changed in the intervening years.” (*Attachment 1.*)

Measuring competition

The bedrock of the PUC's decision to deregulate is that California's telecom industry is sufficiently competitive to guarantee consumer choice. The Commission's Division of Ratepayer Advocates contends the open-market hypothesis only works if competition is robust – an assumption it questions.

“All the evidence points to the existence of market dominance by AT&T and Verizon, which allows them to raise prices without losing market shares,” the Division of Ratepayer Advocates wrote in its 2008 petition asking the PUC to extend price controls for basic residential service.

DRA reported in July 2008 that California's two largest phone companies – AT&T and Verizon – together control 85 percent of the state's residential landline phones. AT&T's share is 66 percent; Verizon's is 19 percent.

The two big carriers control more than landlines. A December 2008 analysis by the PUC's Communications Division found that AT&T and Verizon control 65 percent of all residential landline, wireless and broadband connections in the state. The report found the two carriers “oligopolistic,” defined as a market where “a very small number of firms account for a large share of the industry's output, customers, revenue, etc.”

According to President Peevey's memo, the market concentration noted in the PUC staff report “in and of itself does not justify increased regulatory intervention.”

One-day advice letters

As part of telephone deregulation, the PUC dismantled its requirement that carriers notify the Commission in advance of rate changes. First, it allowed the four incumbent carriers to raise most rates with just one day's notice to the PUC. Next, the Commission urged the companies to “detariff” themselves, permitting them to raise rates with *no* notice to the PUC.

The one exception is the basic residential rate, protected by statute, which still requires a 30-day notice to the PUC before it can be increased. Also, carriers must notify their own customers 30 days in advance of service or rate changes.

The rationale for the Commission’s new hands-off policy was stated in its 2006 URF decision:

In a fast-moving technology space like telecommunications, there is no public interest in maintaining an outmoded tariffing procedure that requires the burdensome regulatory review of cost data and delays the provision of services (particularly new or less expensive ones) to customers. This system only made sense in a world where there was a single dominant ILEC [Incumbent Local Exchange Carrier], and active regulatory intervention was required to protect consumers. Thus, it is reasonable that all advice letters for tariffed services should go into effect on a one-day filing.

The term “advice letter” can be confusing to outsiders – this isn’t a letter offering the PUC’s advice on a matter. It is a letter from a utility *advising* the PUC what it intends to do unilaterally. Advice letters are a longstanding but informal process at the PUC, typically used for uncontroversial requests since there is no public hearing.

In a September 2007 decision, the Commission instructed PUC staff to treat the one-day advice letters in a strictly “ministerial” manner. These rate hikes *must* be approved, it states, so long as they are “squarely within the applicable statutes or Commission orders.”

The 2007 decision also restricted consumer protests to very narrow grounds: “Where the Commission does not regulate the rates of a specific type of utility, an advice letter submitting a rate change by a utility of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.”

President Peevey’s memo notes that parties can still file a formal complaint questioning the reasonableness of a utility’s rate. Such a complaint requires the signature of the mayor or board chairperson of the relevant city or county – or else must be signed by at least 25 consumers of the utility’s service. Formal complaints of any kind are rare at the Commission; since 2004, only eight formal proceedings have been initiated, the PUC told Senate staff.

In its comments on the decision, the Division of Ratepayer Advocates contended the PUC must retain the power to suspend a rate increase, since it still has an obligation to ensure that rates are just and reasonable. The Commission disagreed, responding:

This assertion by DRA suggests that DRA rejects or misunderstands the findings of our Phase 1 decision regarding the competitive telecommunications marketplace in California. In a competitive marketplace, the rates of the market participants are disciplined by each other's offerings. Moreover, even if there were a suspension procedure available, it could not be invoked to force the Commission to review rates that the Commission no longer regulates.

At the oversight office's request, the PUC provided a tally of one-day advice letters notifying the Commission of price increases since telephone deregulation in late 2006. Over the three years, the four phone companies filed 163 notices of price increases. Of these, 115 were by AT&T. (See Attachment 2. A breakdown of the rate changes is included in the first section of this report.)

The data show that the numbers of advice letters plummeted in 2009, after AT&T and Verizon "detariffed" themselves.

Detariffing: cutting the regulatory tether

A tariff, in this instance, is a public contract between a telephone carrier and its customers that is filed with the PUC. The tariff outlines the terms and conditions of providing phone service, including rates, fees and other charges. Changes to the tariff must be reviewed by the Commission. "Detariffing" replaces the tariff overseen by the PUC with a service agreement strictly between the carrier and the customer.

The commissioners saw detariffing as a logical step in fostering competition. At one point, they debated ordering all four of the incumbent phone companies to detariff nearly all of their services. "However, it is not clear that the Public Utilities Code authorizes us to take such a sweeping step," the 2007 decision noted.

"Once a service is detariffed, the carrier need not file anything further with the Commission regarding the detariffed service, including advice letters or contracts," according to the decision. So far, AT&T and Verizon have moved to detariff themselves from almost all business and residential services, except basic residential (which is required to be tarified by statute). SureWest and Frontier remain under tariff.

The detariffed carriers must give their own customers 30-day notice of rate increases and provide a web page containing rates, terms and conditions. All the Commission itself requires of the detariffed phone

companies is “a link to the carrier’s page for accessing tariffed and detariffed rates.”

President Peevey’s memo to the oversight office said the Communications Division “watches the rate developments closely and reports to the commissioners quarterly.” But Communications Division chief Jack Leutza, asked directly if the PUC monitors detariffed rates, sent this response by email: “There isn’t a reporting requirement, but we do sometimes discuss info we find publicly available with AT&T market and regulatory staff.”

Federal court says regulators must monitor rates

In a 2006 decision on an analogous matter, the U.S. Court of Appeals for the Ninth Circuit examined the use of the competitive marketplace as a standard for just and reasonable rates. In that case, the Federal Energy Regulatory Commission (FERC) was applying market-based rate regulation to the energy market.

The appeals court did not dispute that FERC was entitled to adopt such a regulatory regime – but ruled that it must be accompanied by effective oversight. “Only then can FERC meet its statutory duty to ensure that *all* rates are ‘just and reasonable,’ ” the court found in its ruling in *Public Utility District No. 1 v. FERC* (9th Cir., No. 03-72511, Dec. 19, 2006).

The court noted that FERC did require energy sellers to file quarterly reports, to make those reports public, and to submit data every three years to confirm that the market remained competitive. But that was not enough, according to the Ninth Circuit, to meet the standard of “just and reasonable” rates:

This data collection activity, however, was insufficient to fulfill FERC’s statutory obligation with respect to the contracts challenged here. As demonstrated by what actually happened during the California energy crisis, this sporadic data collection approach is pragmatically unlikely to expose in a timely manner the impact of market changes.

.....Ultimately, the fatal flaw in FERC’s approach to “oversight” is that it precludes timely consideration of sudden market changes and offers no protection to purchasers victimized by the abuses of sellers or dysfunctional market conditions that FERC itself only notices in hindsight.

The relevance to telephone deregulation in California is that the URF decision similarly offers no mechanism to allow for what the court calls “timely consideration of sudden market changes.” The Public Utilities Commission, in its effort to end an “outmoded tariffing procedure that requires the burdensome regulatory review of cost data,” risks running afoul of the findings in this case.

Conclusions

- One of the Legislature’s policy goals for telecommunications is “to remove the barriers to open and competitive markets.” At the same time, California statute also requires the PUC to assess the economic consequences of its actions and to ensure utility rates are “just and reasonable.”
- The Commission does not monitor – except informally and intermittently – most telephone rates levied by California’s two largest phone companies.
- The Commission has no formal system in place to document market power abuse.
- In an analogous case involving market-based rate regulation, a federal appeals court found that “sporadic data collection” offers no protection to consumers.

The result of these policies is an intentionally hands-off system that preempts protests that a rate may be unjust, unreasonable or even discriminatory.

One partial remedy might be to renew state legislation that sunsetted Jan. 1, 2004. That 1998 law, AB 1973, required the PUC “to submit an annual report to the Legislature on the status of competition, significant changes in the telecommunications marketplace, and recommendations of statutory changes,” according to a Senate staff analysis at the time. If reinstated, these public reports could also be required to track rate changes by each carrier.

Finding 2: On January 1, 2011, price caps will come off the basic residential rate and the subsidized Lifeline rate. (Lifeline provides 2 million low-income Californians with a half-price discount on basic phone service.) No one knows what will happen to prices after that. The challenge for the PUC will be to assure that rates remain just and reasonable – and that the Lifeline rate remains affordable.

Under Public Utilities Code Section 874, California Lifeline provides basic home telephone service at a significant discount – 50 percent – to low-income households. The discount is funded by a surcharge paid by Californians on virtually all in-state telecommunications services.

For more than a decade, the Lifeline rate was the same for all eligible consumers statewide. It was pegged at half of the AT&T rate for basic landline phone service – so Lifeline’s flat rate was \$5.47 a month. This situation changed with the Public Utilities Commission’s decision to deregulate phone rates.

To prevent what it termed “rate shock” after phone deregulation, the PUC phased in increases over two years to the basic residential rate and the subsidized Lifeline rate. On January 1, 2011, rate caps will be lifted on basic phone service. Based on this, the Lifeline rate – still set by statute at no more than half the basic rate – would rise (or fall) as phone companies adjust their charges to reflect deregulation.

“Future rates for Lifeline service cannot be predicted because future basic telephone rates cannot be predicted,” Randy Chinn, then the chief consultant to the Senate’s Energy, Utilities and Communications Committee, wrote in an analysis last fall.

Asked what will happen to the basic rate after January 1, one phone company spokesman replied, “I don’t have a crystal ball.” But consumer advocates fear that Lifeline rates will soar when the cap is lifted.

The Division of Ratepayer Advocates points to the four big carriers’ post-deregulation rate increases as a worrisome indicator of what might happen with the basic and Lifeline rates. The DRA looked at this in detail in a July 2008 report on rate increases, writing:

Based on the recent price increases by AT&T and Verizon, DRA predicts that they will increase basic residential service rates when the existing price controls expire. That will pose a serious threat to the Commission's successful public policy programs and to California's most vulnerable customers.

The PUC will monitor what happens to the basic rate, according to President Peevey's memo to the oversight office, which stated:

CPUC staff has evaluated the price of regulated "basic telephone service" in California and determined that in inflation adjusted dollars the rate increases approved for 2009 and 2010 result in rates that are less than or equal to prior rates approved by the CPUC. Historically, rate increases for basic residential service and Lifeline service have been infrequent. [See chart in Attachment 1.] The CPUC has approved rate flexibility for the largest California carriers that will allow it to adjust rates based on market conditions starting on January 1, 2011. The CPUC will continue to monitor basic service rates to determine whether price cap intervention is necessary. Further, the CPUC is currently conducting an affordability study to ensure that CPUC policies and programs reflect Californians experience with telephone affordability in both high-cost areas and statewide. The staff statewide report is due to the CPUC on June 31, 2010, and the high-cost area report is due to the Legislature on July 1, 2010.

Last year, a PUC commissioner proposed a new Lifeline system that would give low-income Californians a credit instead of guaranteed fixed-rate landline service. The idea was that the credit could be applied to cell phones or broadband instead of the basic landline service. That proposal, however, was withdrawn after questions were raised about its affordability and legality.

The PUC is aware of the significance of this issue, according to President Peevey's memo: "We are in a proceeding now, updating the Lifeline program in the best way possible, given the new competitive telephone market."

Conclusion

The Commission's Division of Ratepayer Advocates predicts that the lack of a price cap on the basic residential rate poses a "serious threat" to vulnerable Californians. After the cap comes off on January 1, the PUC must be vigilant in monitoring the impact of any rate changes.

Finding 3: The Consumer Affairs Branch (CAB) is the PUC’s front line in handling ratepayer problems, fielding 100,000 calls a year. Many callers are elderly, low-income, or speak limited English. Statute requires the PUC to provide for the “equitable resolution” of consumer complaints, but the focus has been on closing cases rather than on resolving them.

In Public Utilities Code section 709, the Legislature “finds and declares” eight policies for telecommunications in California. Section H spells out the PUC’s responsibilities to ratepayers:

To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

Last fall, Senate oversight staff found evidence that in 2006 the PUC dealt with a backlog of 21,000 consumer complaints by summarily closing them without resolving them. In a single day that September, more than 2,700 cases were closed. Each case represented an individual who came to the PUC for help after a utility failed to solve the problem.

Two Senate investigators spent three days at the PUC’s San Francisco headquarters in October and November, observing Consumer Affairs Branch operations and interviewing supervisors and employees. They learned that the emphasis on closing cases – rather than resolving them – continued at the PUC:

- In early 2009, there was another concerted effort to eliminate the backlog, according to CAB supervisor Jennifer Haug. In an interview, Haug said representatives were told to mark old cases closed if there had been a response from a utility – although they didn’t always know if the issue had been resolved. They were told not to contact the consumer. Said Haug, “It was thought it would just confuse people, people would get the letter and wonder, ‘What’s this?’”
- In April 2009 CAB eliminated 3,257 cases, a feat an internal CAB report termed “astonishing.” And in July 2009, representatives closed 1,910 cases, whittling the open complaints down by 22 percent.

In 2009, between 6,000 and 8,000 consumers called into the CAB each month, according to Phil Enis, a top manager in the Consumer Service & Information Division. Although CAB fields complaints about all utilities, two-thirds of the calls involve telephone problems. Callers are first asked if they contacted the utility to try to resolve their problem. If not, the consumer is told to call the utility and the matter is closed. Most calls are handled that way or else are directed to another agency because the complaint is outside the PUC's jurisdiction.

Callers with cell-phone billing problems are frequently – though improperly – directed to the Federal Communications Commission. This happens even though everything on a customer's bill – wireless or not – is under the PUC's purview when it comes to resolving a consumer complaint. Enis and workers at CAB concede that determining jurisdiction can be tricky, and many employees have little knowledge of the intricacies of the utilities. "Training is not as good as it should be," Enis said, although the 2006 Budget Change Proposal set aside \$300,000 for training.

Only a fraction of calls to the CAB – between 19 percent and 29 percent – are escalated to what are called informal complaints. Consumers are discouraged from filing *formal* cases, Enis said, because embarking on the quasi-judicial action is complicated and time-consuming. (Since 2004, only eight formal proceedings have been initiated.)

According to its operational manual: "CAB intends that in the vast majority of cases, closed cases stay closed."

Detariffed carriers balky

Once telephone companies are detariffed, the Consumer Affairs Branch has problems getting them to resolve differences, according to Enis and CAB manager Karen Dowd. Energy and water companies – monopoly utilities that operate under a state tariff – are more amenable. "We generally have more authority and power with those companies that have a written tariff," Enis said.

Dowd agreed. "With these detariffed utilities, it's hard to get their cooperation," she said. "When they do work with us, they behave as if they're doing us a favor. We can growl, but there's no teeth in our bite."

PG&E is one of those utilities with a tariff. Enis said PG&E has implemented its own internal rules for handling PUC-generated

complaints. Under PG&E's self-imposed policy, the utility must acknowledge to the customer within three days that it has been notified a complaint was lodged with the PUC. Then, PG&E must resolve the complaint within 20 days -- or pay the customer \$30.

Telecom companies have no such internal policy, according to Enis. If they fail to follow the PUC's rule to respond to complaints within 20 days, all they get is a warning letter. "And that," Enis concluded, "doesn't have a lot of bite."

Conclusions

For the last four years, the Consumer Affairs Branch focused on a "case closed" strategy instead of the "equitable resolution" of problems as mandated in statute. Recently, though, the CAB has made progress toward meeting its statutory mandate, according to manager Enis:

- After the Senate's inquiries last fall, the PUC decided to add two hours to the call center's 9 a.m. to 3 p.m. schedule. As of Feb. 8, the hours went up to 8:30 a.m. to 4:30 p.m. "We rejiggered the shifts and lengthened the time we take calls," Enis said in a follow-up interview. "Our plan eventually is to be open from 8 a.m. to 6 p.m."
- In April 2006, the Legislature gave the PUC \$2.5 million for a new computer database to more efficiently process consumer inquiries and complaints. The database went "live" in November 2008, and Enis said it is a major improvement over the old, outdated system. Rather than just tracking individual cases, the new database can track trends in complaints, allowing the CAB to focus on problems with specific carriers or more generalized issues. These results could be posted online and included in the PUC's annual report to the Legislature.

Handling Complaints in a New York Minute

When it comes to consumer complaints, the New York State Public Service Commission could be a role model for California.

"We have to be good at it, because New Yorkers really like to complain!" said Sandra S. Sloane, director of the Office of Consumer Services for the NY Commission. She wasn't joking.

One of the things that sets her office apart is its agreement with utilities to provide instant online access to the consumer's actual utility bill, service history and bill collection activity. This aids both efficiency and accuracy, according to Sloane, who was interviewed for this report in February.

"This can just save so much time," she said. "Callers often are confused or may misrepresent the situation. This way, we can see the bill ourselves and help the customer to understand it. The utilities like it as well because it saves a lot of complaints being filed. Our whole goal is to get the complaint resolved – this is a tool to help us. It expedites the complaint process. This puts everybody on the same playing field, in real time."

The California PUC sent CAB manager Juanita Hill to New York to study that state's successful methods. Hill was most impressed that her New York counterparts had such quick and easy access to ratepayers' bills. "It's a smart thing to do for a large state," she said in an interview. "You don't have to keep the customer on the line so long. This is definitely doable here."

Finding 4: A key argument for deregulation is that informed consumers will “vote with their feet” by changing their telephone carrier if rates are high or service is bad. The PUC collects information that could help consumers make comparisons: rates charged by different carriers, targets of fraud investigations, CAB’s complaint statistics, and “trouble” reports from the phone companies themselves. Currently, however, none of it is made public by the PUC, defeating the purpose.

On Oct. 2, 2008, the PUC ordered its staff periodically to gather CAB’s complaint data – including carrier identities – and post the results on the PUC website. This order was part of the so-called LEP decision, addressing the needs of telecom customers who have limited English proficiency. In that decision, the Commission found:

More information will enhance, not distort, competition, and more information will promote consumer choice. Carriers’ assertion that publishing carrier-specific complaint data will distort competition and may harm carriers reputations is without merit.

Despite the order, this data has not yet been published.

The question of posting CAB complaint statistics came up again in 2009 as part of the PUC’s “Service Quality Rulemaking” proceeding. In that matter, as required by statute, the Commission was reviewing and revising service standards required of telephone carriers.

The Division of Ratepayer Advocates filed comments urging that posting the CAB’s complaint data should be part of these new rules. The DRA noted that commissioners had already recognized the value of making the complaint data public in their LEP decision: “The Commission should (also) follow this policy in this proceeding and provide customers with this valuable tool to help inform purchase decisions. The Commission should publish all, not just LEP, complaint data on its website.” This recommendation was not adopted, however, and the July 2009 decision makes no provision for publishing the CAB statistics.

In the course of several interviews with Senate oversight staff, top CAB managers repeatedly said they endorse the idea of publishing their complaint data as a service to consumers. “You don’t have fair competition without information,” said program manager Phil Enis. “It’s

a philosophical argument: If you regulate less and educate more, you also have to beef up the complaint system.”

Up until 2008, however, the PUC’s outdated complaint-tracking system could not be relied on to produce accurate statistics. Now, with the new complaint database online for more than a year, the statistics are reliable and consistent, Enis said in February.

“Technically, it’s doable,” according to Enis. “We have 14 months of data at this time; it gives us a pretty good picture. The LEP decision provides a really good hook for us to be posting this information – it’s supposed to be related to LEP complaints, but we think it should extend to all consumer complaints.”

Posting “report cards” on carriers’ service quality

The Commission’s July 2009 “Service Quality Rulemaking” calls for gathering – and making public – information from landline telephone companies, including:

- data on customers’ “trouble reports.”
- how long it takes to get service started and to get repairs done.
- how long a customer with a complaint has to wait to speak to a live person.

Wireless companies, however, are only required to provide their coverage maps.

In testimony before the ruling was adopted, AT&T and Verizon argued that *no* service quality data should be published. In her June 2007 declaration, Verizon expert Dr. Debra Aron suggested that the competitive marketplace would adequately protect consumers:

The Commission can satisfy its “service quality duties” and uphold the principle of competitive neutrality by refraining from requiring carriers under its jurisdiction to file service quality monitoring reports....In the present context, where the Commission has already found the market to be competitive following an extensive evidentiary proceeding, forbearance is not abandonment, but rather a recognition that competition is the preferred means of promoting consumer welfare through reasonable prices and service quality.

But consumer advocates were equally adamant that published report cards – from wireless as well as landline phone carriers – would provide key information for customers.

This is from a May 2009 statement filed jointly by the Division of Ratepayer Advocates and The Utility Reform Network (TURN):

Customers benefit from having as much information as possible when they are shopping for telephone service. The Commission has recognized the importance of this in the URF decision. Therefore, the Commission should disregard requests from carriers to hide their performance from the public. DRA and TURN believe requiring only wireline carriers to report data on service quality would not give customers adequate information to compare between providers.

The consumer advocates won the general point on publishing the information – but lost on including wireless carriers. The Commission found: “It is reasonable to publish carriers’ reported service quality information since the information is public and could be helpful to customers.” However, the ruling also states it would be “premature” to address whether the Commission has jurisdiction to require service quality reporting for wireless carriers.

Conclusion

In 2008, the PUC ordered that complaint statistics collected by the Consumer Affairs Branch should be published on the Commission’s website. As yet, no complaint statistics have been published. In 2009, the PUC ordered that carriers’ service quality information should also be published. As yet, no service quality reports – wired or wireless – have been published.

New York State posts complaint data online

Again, the New York State Public Service Commission shows how it could be done. In an interview with Senate oversight staff, two New York managers talked about their Commission's long history of posting complaint statistics.

"We publish a monthly report – it's on our website," said Barry Bedrosian, New York's chief of consumer assistance. "It reports the number of complaints we receive against each company. We look at the initial complaints, and we also report how responsive the utilities are. Consumers can go on and look for themselves."

Bedrosian's boss, Sandra Sloane, summed it up: "We try to be as transparent as possible and give the public everything we can."

There are some significant differences between the two state commissions. Only 10 percent of New York's consumer complaints relate to telephone utilities, compared to 66 percent in California. And the New York Commission takes no complaints about cell phones. Even so, according to the PUC's Enis, New York can be a model for California as far as posting complaints.

The oversight office reviewed the New York data, which is posted at www.dps.state.ny.us/ocs_stats.html. Ten years of month-by-month complaint statistics are available. To allow consumers to compare very large utilities with smaller ones, a complaint rate per 100,000 customers is displayed. Each report has a clear explanation of how complaints are recorded and responsiveness is measured. (A recent monthly report is included as Attachment 3.)

Finding 5: “Cramming” – telecom jargon for billing customers for services they have not authorized – is recognized as one of the most widespread and flagrant abuses in wireless telecommunications. More than a decade ago, the Legislature required the PUC to track and report cramming complaints. The Commission did so for landline phone service. So far, though – despite years studying the matter – the Commission has failed to apply this requirement to wireless telephone carriers.

Cramming has flourished with the advent of cell phones, in part because the complicated bills generated by wireless service make it easier to disguise unauthorized charges. It takes a sharp-eyed customer to notice the extra dollars hidden in a multi-page monthly statement.

Thousands of tiny, unapproved charges can net millions of dollars for crammers. In March, a massive cramming operation was revealed by Federal Trade Commission investigators who alleged a San Francisco-based firm with international call centers had pulled in \$19 million over five years. In granting a preliminary injunction against the firm, U.S. District Judge William Alsup wrote: “This action highlights the vulnerable underbelly of a widespread and under-regulated practice....”

Since 1998, the PUC has been under statutory direction to establish reporting requirements regarding cramming complaints. The language in Section 2889.9 of the Public Utilities Code is unambiguous, saying the PUC shall establish rules that require each phone company to report any complaints of cramming it receives. Also, the statute requires the Commission to investigate if it gathers more than 100 cramming complaints against one entity in any 90-day period.

The PUC does collect cramming statistics from landline phone companies, but a similar requirement for wireless carriers has been in regulatory limbo for years. A 2008 PUC ruling gave this explanation: “The Commission has not required wireless carriers to comply with the cramming reporting requirements because, at the time of the 1997-2000 proceeding, wireless carriers were just beginning to enter the marketplace, and they were not active participants in the proceeding.”

Ferreting out major fraud

The wireless industry data is crucial, investigators say, to identify widespread fraud that affects thousands of consumers, rather than just one-at-a-time individual complaints. Without the broader data, investigators see only a minute part of the problem, according to Richard Clark, the PUC's division chief for Consumer Protection and Safety.

"Only two issues slow us down from pursuing cases on the larger folks," Clark told Senate staff last fall. "One, we don't have enough lawyers doing the work. Two, we don't have cramming complaint reports from the utilities. What I've told [former] Commissioner [Rachelle] Chong and Commissioner [John] Bohn and anyone else that will listen to me is I can't see what's below the surface of the ocean – what's beyond the tip of the iceberg. We're going out and trying to gather data in ways not nearly as efficient as having it reported in the same way cramming is reported from wireline companies."

Apparently Commissioner Bohn was listening. In February, he released proposed rules for reporting cramming violations – including wireless. The document underscores the importance of such rules:

This Commission has the responsibility to protect consumers in California from unscrupulous business practices of the entities and utilities that we regulate. The Legislature has recognized that we must take proactive steps in order to prevent unauthorized billing. The requirements that we will adopt in this proceeding will be an important tool in our efforts to protect the people of California. (From PUC Rulemaking 00-02-0004.)

Bohn lays out three key objectives: First, prevent unauthorized charges by requiring phone companies to bill accurately. Second, identify promptly any unauthorized billing, bring it to a halt, and obtain refunds for subscribers. Third, identify "bad actors" and prevent them from operating further in California. He specifically states that the rules will "apply to all California telephone companies, including wireless."

Clark said he and his enforcement team endorse Bohn's proposed rules. "We helped him write them – so we like it a lot," Clark said in February.

He acknowledged not everyone will share his view: "Given the history of this endeavor to get cramming rules, I don't expect the wireless carriers to be all that supportive. I predict pushback from the industry, but that's

what happens when you regulate. What is finally passed is up to the whole Commission, of course, but I do think the end is in sight.”

100 complaints in 90 days

As for part (e) of Section 2889.9, the statute is plain: If the PUC receives more than 100 cramming complaints in any 90-day period involving one entity, the “Commission’s consumer services division shall commence a formal or informal investigation.” In October, Senate oversight staff asked Consumer Affairs Branch managers how this requirement was working out. Their answer: They had never compiled the data.

Once the question was raised, however, CAB managers said they realized they had a solution at hand. Their new complaint database could be programmed to identify companies that generate 100 complaints in 90 days, said Phil Enis, the consumer service program manager. And that applies not just to cramming, he added, but to any kind of complaint against any type of public utility.

“The new database does have the capability to do that,” Enis said in February. “We are asking for reports of *any* complaints that number 100 in a 90-day period – not just cramming. So, for example, it could be early termination complaints against Verizon or complaints about PG&E smart meters. A spike in complaints will trigger an email sent directly to enforcement. The enforcement folks are happy about it as well.”

Conclusions

- More than a decade ago, the Legislature required the PUC to track and report cramming complaints. So far – despite years studying the matter – the Commission has failed to apply this requirement to wireless carriers. The proposed rules recently circulated by Commissioner Bohn’s office address this critical issue.
- The Consumer Affairs Branch can now use its new complaint database to meet its statutory obligation to track and investigate cramming complaints. These results could be made public and posted with other complaint statistics on the PUC website.

VI. Sources of Information

Special thanks to Consultant Terri Hardy, a Senate colleague in the Office of Research, who spent weeks studying PUC documents, conducting interviews, and helping to research and frame this report.

These individuals and documents provided information for the report:

Individuals:

- Edward Randolph, director, Governmental Affairs, PUC/Sacramento
- Jack Leutza, director, Communications Division, PUC
- Pam Loomis, former director, Governmental Affairs, PUC/Sacramento
- Phil Enis, program manager, Consumer Service & Information Division, PUC
- Karen Dowd, manager, Consumer Affairs Branch, PUC
- Karen L. Miller, public advisor, Consumer Service & Information Division, PUC
- Juanita Hill, manager, Consumer Affairs Branch, PUC/ Los Angeles
- Jennifer Haug, supervisor, Consumer Affairs Branch, PUC
- Richard W. Clark, director, Consumer Protection and Safety Division, PUC
- Dana S. Appling, director, Division of Ratepayer Advocates, PUC
- Sepideh Khosrowjah, policy advisor, Division of Ratepayer Advocates, PUC
- Regina Costa, telecommunications research director, The Utility Reform Network
- Christine Mailloux, telecommunications attorney, The Utility Reform Network
- William Nusbaum, managing attorney, The Utility Reform Network
- Michael Shames, executive director, Utility Consumers' Action Network
- Sue Macomber, Utility Consumers' Action Network

- Gail Saviar, AT&T customer
- Sandra S. Sloane, director, Consumer Services, New York Public Service Commission
- Barry Bedrosian, chief, Customer Assistance, New York Public Service Commission
- William Devine, lobbyist, AT&T
- Randy Chinn, chief consultant, Senate Energy, Utilities & Communications Committee

Documents:

California Constitution, Article 12: Public Utilities.

California Public Utility Code Section 309.5, Section 321.1, Section 451, Section 454, Section 495.7, Section 701, Section 709, and Section 2896.

Public Utility District No. 1 v. Federal Energy Regulatory Commission, Petition for Review. December 19, 2006. United States Court of Appeals for the Ninth Circuit. (Quotations are from pages 19599 and 19603.)

Petition for Writ of Review (CPUC Decision No. 06-08-030). January 18, 2007. Filed in the California State Court of Appeal, First Appellate District, by The Utility Reform Network.

Answer of Respondent to Petition for Writ of Review. March 23, 2007. Filed in the California State Court of Appeal, First Appellate District, by the California Public Utilities Commission.

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Report on Rate Increases of Verizon, AT&T, SureWest and Frontier California Following Adoption of the Uniform Regulatory Framework in Decision 06-08-030. July 29, 2008. Division of Ratepayer Advocates, California Public Utilities Commission.

CPUC Draft Responses to Findings of the Senate Office of Oversight and Outcomes. March 19, 2010. By Edward F. Randolph on behalf of Michael R. Peevey, President.

Decision Adopting General Order 133-C and Addressing Other Telecommunications Service Quality Reporting Requirements. Decision 09-07-019. July 9, 2009. California Public Utilities Commission.

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Why "Competition" is Failing to Protect Consumers. March 25, 2009. By Trevor R. Roycroft, Ph.D. for The Utility Reform Network (TURN.)

Market Share Analysis of Residential Voice Communications in California. December 2008. California Public Utilities Commission/ Communications Division – Policy Branch.

Federal Trade Commission v. Inc21.Com Corporation, et. al., Memorandum Opinion and Findings in Support of Preliminary Injunction. February 19, 2010. William Alsup, United States District Judge for the Northern District of California.

Letter from PUC Executive Director Paul Clanon to Senator Darrell Steinberg, chairman of the Rules Committee. December 7, 2009.

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Opinion Consolidating Proceedings, Clarifying Rules for Advice Letters Under the Uniform Regulatory Framework, and Adopting Procedures for Detariffing. September 6, 2007. California Public Utilities Commission.

Joint Protest of AT&T California's Advice Letter 33423 – Detariffing. September 18, 2008. Division of Ratepayer Advocates and The Utility Reform Network (TURN.)

Rules of Practice and Procedure, Article 4, Rule 4.1 (Who May Complain). California Public Utilities Commission.

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Consumer Affairs Branch Procedures Manual. Revision of October 14, 2008. California Public Utilities Commission.

Annual Report to the Legislature. January 2009. Division of Ratepayer Advocates, PUC.

Annual Report to the Legislature. January 2010. Division of Ratepayer Advocates, PUC.

Analysis of AB 1973 by the Office of Senate Floor Analysis. July 9, 1998.

VI. Attachments

Attachment 1: Memo to the Senate Office of Oversight and Outcomes from Edward F. Randolph on behalf of Michael R. Peevey, President, California Public Utilities Commission. March 19, 2010. (Note: Numbered findings mentioned in this memo do not correlate with numbered findings in the report.)

STATE OF CALIFORNIA
ARNOLD SCHWARZENEGGER, *Governor*



PUBLIC UTILITIES COMMISSION

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March 19, 2010

To: Mr. John Adkisson, Special Counsel
Ms. Dorothy Korber, Principal Consultant
Senate Office of Oversight and Outcomes

From: Edward F. Randolph on behalf of
Michael R. Peevey, President
California Public Utilities Commission (CPUC)

Re: The CPUC Draft Responses to Findings of the Senate Office of
Oversight and Outcomes.

Finding 1: In the 2006 URF decision, the Commission said it retains the firm resolve to investigate should it find evidence of market power abuses. In December 2008, the PUC Communications Staff prepared a “white paper” analysis of residential voice communications in California. The staff found that two carriers control 65 percent of all residential landline, wireless and broadband connections in the state. The staff observed that these markets are oligopolistic, defined as market where “a very small number of firms account for a large share of the industry’s output, customers, revenue, etc. The commission did not respond to these observations.

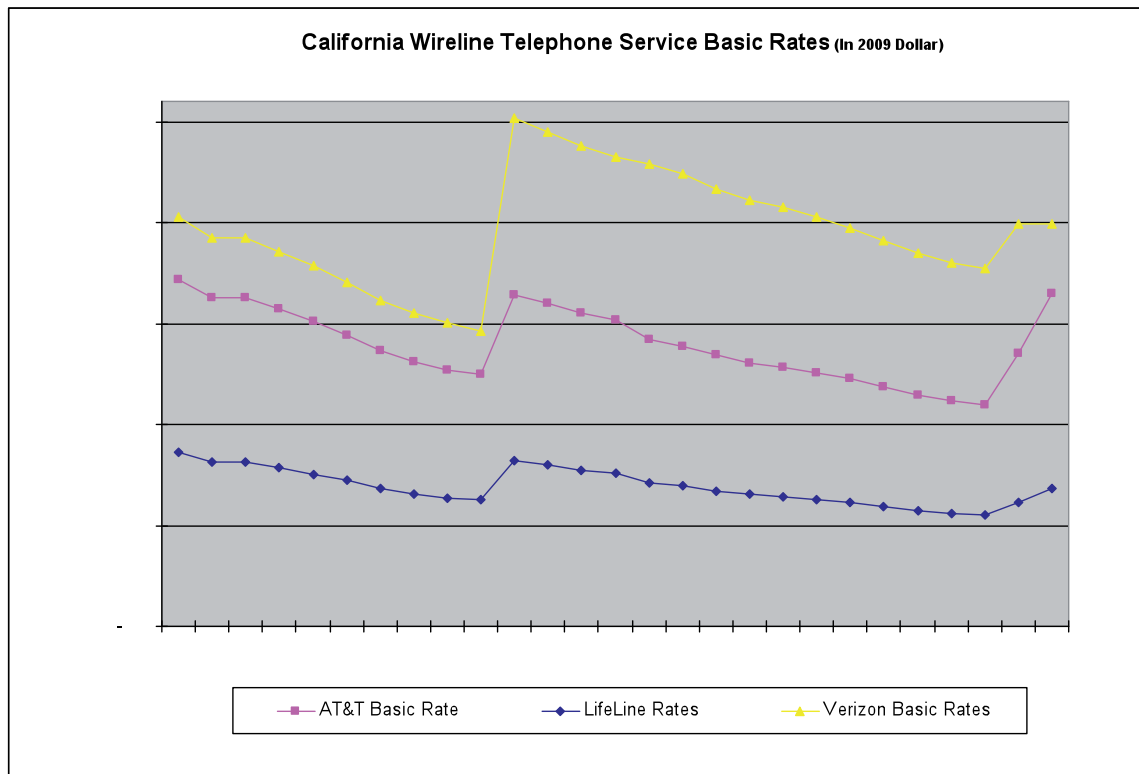
Response to Finding 1:

The CPUC responded to the white paper based on staff recommendations. First, the report states, “Staff makes no recommendation regarding how to address these findings, except that the Commission should continue to collect and analyze data to detect future trends.” Second, staff discussed the report in detail with Commissioners and their advisors. Staff recommended that no action was necessary at this time as there is insufficient evidence in the report to show that market concentration is leading to wide-scale market abuse such that the CPUC

would have to change its regulatory direction or policies adopted in the URF decision. The CPUC continues to monitor the market.

The CPUC found that consumers have choices for their telecommunications services when it approved the URF. This fact has not changed in the intervening years. The purpose of the report is to track changes in the market ownership structure and that it should be evaluated as one of many regulatory tools. The market concentration noted in the whitepaper in and of itself does not justify increased regulatory intervention. The Federal Communications Act of 1934, as amended, already requires the FCC and the CPUC to implement open access and interconnection policies. The CPUC continues to promote competition and market fairness when arbitrating interconnection agreements, addressing complaints, and enforcing consumer protections.

CPUC staff has evaluated the price of regulated “basic telephone service” in California and determined that in inflation adjusted dollars the rate increases approved for 2009 and 2010 result in rates that are less than or equal to prior rates approved by the CPUC. Historically, rate increases for basic residential service and Lifeline service have been infrequent, as shown on the chart below. The CPUC has approved rate flexibility for the largest California carriers that will allow it to adjust rates based on market conditions starting on January 1, 2011. The CPUC will continue to monitor basic service rates to determine whether price cap intervention is necessary. Further, the CPUC is currently conducting an affordability study to ensure that CPUC policies and programs reflect Californians experience with telephone affordability in both high-cost areas and statewide. The staff statewide report is due to the CPUC on June 31, 2010, and the high-cost area report is due to the Legislature on July 1, 2010. For more information, see the 2009 Universal Service Report, available at: <http://www.cpuc.ca.gov/PUC/Telco/generalInfo/Universal+Telephone+Service+Reports+to+the+Legislature.htm>



Finding 2: The commission does not publish complaint data collected by the Consumer Affairs Branch, although this would help consumers make informed decisions.

Response to Finding 2: As an outgrowth of the Consumer Protection Initiative Order (CPI or D.06-03-013) the Commission adopted new rules for telecommunications consumers that are limited English speakers. In the limited-English-proficiency Order (LEP or D.08-10-016) the Commission directed that the Consumer Affairs Branch (CAB) post its “contact” statistics on the Commission’s website. CAB contacts are comprised of consumer’s inquiries and consumer’s informal complaints.

CAB was directed to produce a template of the details of the statistics to be posted to the Commission’s website. The template should include the frequency of posting, the number of contacts by carrier and a methodology for data normalization that would allow consumers to compare carriers of differing sizes. The template would be offered in a Resolution for the Commission’s consideration. If the Resolution is approved, CAB would commence posting statistics to the Commission’s website.

The Commission also provided a major caveat to CAB with respect to data integrity. The Commission directed that CAB must ensure that data quality in its database, the Consumer Information Management System (CIMS), is accurate, reliable and consistent. CAB is actively working on fulfilling these data integrity mandates. Toward that end, CAB fully initiated use of the CIMS database in November 2008 and initiated an internal quality assurance (QA) program in June 2009.

The QA program is necessary to validate that data quality is reliable enough for publication on the Commission's webpage. CAB has adopted a set of key measures for data quality. The measures were developed from best practices utilized by the utility industry and other State PUCs. CAB is actively working to push the measures to a point where CIMS data can be considered accurate, reliable and consistent enough for public presentation. Development of a data reporting template and Resolution for the Commission's consideration is the next step.

Finding 3: The commission does not publish "report cards" that present carriers' service quality data – which would also help consumers make decisions about phone service.

Response to Finding 3: In 2009, the CPUC adopted service quality measures that are to be reported in a uniform and consistent format to aid consumers in comparing companies (see D.09-01-019 at p. 58). The reporting became effective January 1, 2010, and the CPUC's goal is to publish this information on its website. The CPUC staff is working to implement web-based reporting and consumer access to the data.

Finding 4: Since 1998, the PUC has been under legislative direction to establish industry reporting requirements regarding cramming violations. To date these guidelines have not been created.

Response to Finding 4: In March 2000, the CPUC adopted the rules for reporting of subscribers' cramming complaints (D. 00-03-020, modified in November 2000 in D. 00-11-015). These rules apply to wireline carriers only and remain in effect. The CPUC is currently considering the new rules in an ongoing proceeding in Rulemaking 00-02-004. On February 12, 2010, assigned Commissioner Bohn issued the "Proposed Billing Rules for California Telephone Corporations" for parties' comments.

<http://docs.cpuc.ca.gov/EFILE/RULINGS/113656.htm>.

On March 2, 2009, the assigned Administrative Law Judge reset the filing dates for the comments as follows: March 22, 2010, for Comments and April 19, 2010, for Reply Comments. <http://docs.cpuc.ca.gov/efile/RULINGS/114309.pdf>

Finding 5: One premise of phone deregulation is that competition would result in lower prices for consumers. Since 2006, however, rates charged by the four ILEC carriers have risen, some substantially.

Response to Finding 5: The URF decision was based on a number of factors. When the decision was approved it had been 18 years since the CPUC last reviewed most telephone regulations. In that time the wholesale market and wireless and cable industries had changed so much that telecommunications markets had gone from monopolies to competitive markets. The CPUC responded to the new market structures with reforms that were overdue and necessary in a competitive telephone market.

While prices for individual services have increased since 2006, market flexibility now allows consumers to choose either a package of services (such as local and long distance telephone service and added features like Voice Mail and Call Forwarding) or a bundle of services where the consumer can get a mix of wireline telephone service, wireless telephone service, internet access, and/or television (dish or cable) at prices that are lower than if the consumer purchased the services individually.

Although the CPUC found in 2006 in the URF proceeding that there was sufficient competition to provide the necessary constraints on the market and contain prices, some industry experts have noted that prices for services were below market for years and that the price increases observed were to be expected in a transitioning period until market equilibrium is reached. However, despite the basic rate increases that have been allowed for the URF carriers by the CPUC, the current basic rates stand between \$13.50-\$19.99 per month, all below the 2007 nationwide average.

These basic rates of the URF ILECs were highly regulated since the mid-1990s. In 2006, the CPUC saw that the AT&T basic rate (essentially unchanged since 1999) was very low compared to the other three URF ILECs and compared to the national average. For example, the monthly basic rate for AT&T in 2006 was \$10.69, which was about \$6.50 lower than the basic rate of the other URF ILECS (Verizon at \$17.25, Frontier at \$17.85, and SureWest at \$18.90). Further, the AT&T monthly basic rate was more than \$8 per month lower than the 2006 nationwide average, about \$19. While the low \$10.69 rate benefited AT&T consumers, it did not make sense when the basic rate of its neighbor to the south, Verizon, was much higher at \$17.25. While rates may have increased slightly, it is due to the fact that rates in California had not been increased for many years and no longer reflected the ILECs own costs.

To prevent any sudden rate increase, the CPUC froze basic telephone rates until January 1, 2009. This date was chosen to give the CPUC time to consider how to protect low income consumers and make changes to the Lifeline program in a competitive marketplace where basic rates would fluctuate with competition.

Further, the Legislature, in the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), restricted basic rate increases for two years through the end of 2008 with a provision that allowed for increases in rates due to inflation.. With inflation adjustments the AT&T basic rate in 2008 was \$10.94 and Verizon's was \$17.66.

In September 2008 in Decision 08-09-042, the CPUC extended the rate caps on basic telephone service for two more years until December 31, 2010. In extending the rate cap, the CPUC permitted a phase-in of rate adjustments of a maximum of \$3.25 a year for basic telephone service beginning January 1, 2009. This was intended to allow the basic rate to float up in a stepped manner in the interest of preventing rate shock to consumers in any one year. In 2009, AT&T took advantage of the flexibility to increase its basic rate to \$13.50, Verizon went to \$19.91, and SureWest went to \$19.99. Frontier did not change its rate. In 2010, AT&T further increased its basic rate to \$16.45. Verizon, SureWest, and Frontier did not change their rates in 2010. These prices are still considered affordable when taking into account, the rate of inflation since the last rate increases and the telephone rates nationally. The fact that the full amount of the allowable rate increase was not taken by any URF carrier shows that competition is tempering rate increases.

The CPUC further protects low income consumers by offering them a discount of 50% of the basic rate through our Lifeline program. We are in a proceeding now, updating the Lifeline program in the best way possible given the new competitive telephone market.

In all of the these proceedings, the CPUC has looked at the entire telecommunication markets development. While landline phone rates were frozen for many years, consumers moved to new technologies like wireless and VOIP. Customers are abandoning the wireline telephone at a significant rate, even as Californians enjoyed the lowest wireline basic rates in the nation. More than 10% of current California households are wireless only, a figure that has been growing dramatically over the past few years.

Neither the FCC nor the CPUC regulates the prices of telecommunications services in the competitive long-distance wireline and wireless markets. Thus, URF is consistent with direction provided by

state and federal statutes, and with the regulatory approach to competitive long-distance and wireless markets. It is a misnomer to say the CPUC deregulated; the CPUC continues to regulate telecommunication carriers.

Even with the reliance on competitive markets, the CPUC's Communications Division watches the rate developments closely and reports to the Commissioners quarterly. The Communications Division does not hesitate to recommend intervention when necessary to ensure reasonable rates. For example in 2008, AT&T filed an Advice Letter to increase certain Zone Usage Measurement (ZUM) rates. The filing was rejected by our staff because it could have effectively reduced the value of the basic service package. Further, because telephone companies continue to be required to file at the CPUC any rate increases that are related to basic service via Advice Letters, CPUC staff is able to closely monitor such requests as well as any protests submitted by various parties.

Finding 6: Public Utilities Code Section 451 requires that all charges by any public utilities shall be just and reasonable. The commission has declared: *We have determined that competitive market forces will assure that rate levels are "just and reasonable."* One result of this position is one-day notice advice letters on telephone rate increases. The commission states that such advice letters are "not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory." Thus, the PUC has mandated a system where almost any telephone rate increase is "just and reasonable" and therefore cannot be challenged except on narrow technical grounds.

Response to Finding 6: After evaluating California market conditions, the CPUC determined it could rely more heavily on competitive force to produce just and reasonable rates, but would monitor the marketplace periodically. In 2006, in the URF proceeding (D. 06-08-030), the CPUC found that there was sufficient competition in the service areas of the four largest ILECs to constrain the ability of these ILECs to raise prices above competitive levels, resulting in prices that are just and reasonable.

When the CPUC grants pricing flexibility for services, these services are not subject to protests as to whether the rates are just and reasonable (General Order 96-B, General Rule 7.4.2). Since the CPUC found that URF carriers lack market power, we concluded that URF Carriers will not be able to raise prices for telecommunications services unreasonably due to market forces. Permitting protests to Advice Letters for rate increases in a competitive market would negate pricing flexibility granted in the URF decision.

The inability to file an immediate protest on tariffed rates does not, however, foreclose consumers' rights to complain that rates are not just and reasonable. Pursuant to Public Utilities Code Section 1702, and the CPUC's Rules of Practice and Procedure Rule 4.1, a party may complain as to the reasonableness of any rate or charge, and bring such complaint before the CPUC. This procedure affords consumers the opportunity to have the CPUC consider whether rates and charges are no longer just and reasonable. In such a complaint proceeding, the CPUC may also determine whether conditions have changed to an extent to necessitate revisiting findings made in its prior decisions (including in URF Phase I). In this way the CPUC retains the authority to take corrective action if it finds that an ILEC rate(s) for telephone service is not just and reasonable.

The significance of the one-day Advice Letter has been somewhat reduced since carriers have been allowed to detariff many services, except basic residential service, which URF ILECs will be able to detariff on January 1, 2011. Once a service is detariffing, the company is required to provide customers with a 30-day notice of a price increase, or imposing more restrictive terms and conditions to detariffed services in a term contract, and permit the customer an opportunity to opt out of the contract without any penalty. Carriers must also post rates, terms, and conditions of such services on their websites and keep an archive of that information available for three years. This allows the CPUC and consumers access to a similar level of pricing information that was previously filed at the CPUC.

Attachment 2: Summary of one-day advice letters for service and rate changes in 2007, 2008, and 2009. Source: California Public Utilities Commission.

Total Number of Service Change Advice Letters for 2007, 2008 and 2009

Total Number of Service Change Advice Letters for 2007, 2008 and 2009		URF ILEC's ³						
		All Telco's ¹	All ILEC's ²	AT&T	Verizon	Frontier	SureWest	Total
2007	Total # of Service Change Advice Letters	531	235	136	39	8	17	200
	Total # of Price Increase Advice Letters ⁴			52	13	3	2	70
2008	Total # of Service Change Advice Letters	537	210	120	46	9	22	197
	Total # of Price Increase Advice Letters			54	17	2	4	77
2009	Total # of Service Change Advice Letters	332	122	54	33	14	4	105
	Total # of Price Increase Advice Letters			9	6	0	1	16

NOTE:

1. All Telcos - All regulated wireline telephone companies (includes LEC's, URF ILEC's, competitive local carriers [CLEC], and Long Distance)
2. All ILEC's - Local Exchange Carriers - Traditional phone companies in state includes 4 URF ILECs and 14 small ILEC's.
3. URF ILEC's - 4 large LEC's, AT&T, Verizon, Frontier, and SureWest
4. Total # of Price Increase Advice Letters - Out of the total number of service changes advice letters, this value is the amount of advice letters related to price increases.

Attachment 3: Sample report of New York State Public Service Commission complaint data. Online address:
http://www.dps.state.ny.us/MR_Feb_2010.pdf

Monthly Report on Consumer Complaint Activity

New York State



Publ

February 2010

Garry A. Brown, Chairman

*Sandra S. Sloane, Director
Office of Consumer Services*

April 1, 2010



Monthly Report on Consumer Complaint Activity

February 2010

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April 1, 2010

Dear Readers:

The Office of Consumer Services closely monitors the number and types of complaints received against all utilities operating in New York State. We strive to ensure that utilities fulfill their obligation to provide effective customer service in compliance with the laws, rules, regulations and policies we enforce.

Each month, this report provides an overview of complaint activity and utility responsiveness during the preceding month which is informative to both consumers and utility companies. Specific details regarding the way we measure the companies' activities are described in the section How Utility Complaint Data Is Reported.

The table titled Complaint Activity of New York's Major Utilities reports on the volume of complaints received against the largest utilities in each industry while the table titled Customer Service Response Index reports on the level of customer service and responsiveness delivered by each service provider under the Commission's jurisdiction.

The chart, Credit Adjustments Received for Consumers, reflects the amount of refunds or credits customers received as a result of our investigations. The Office of Consumer Services also monitors complaints against the competitive energy service companies (ESCO's) operating in New York. These complaints are reported in two tables; Number of Initial Complaints Received Against ESCO's and Number of Escalated Complaints Received Against ESCO's.

I hope this report is helpful in providing you with a summary of utility complaint activity. If you have any questions, please e-mail Barry_Bedrosian@dps.state.ny.us.

Sincerely,



Sandra S. Sloane

Director

Office of Consumer Services



If You Have a Complaint About Your Utility Service

If you're having difficulty resolving a dispute with your regulated energy, telephone, cable television or water company, the Public Service Commission staff is available to assist you.

The Office of Consumer Services takes all utility consumer complaints seriously. You can contact us toll-free by telephone, in writing or via the Internet. When you contact our office with a complaint about a utility or other service provider, we take immediate steps to address your concerns.

After we complete entering the details of your complaint we send your complaint to the utility by e-mail or fax. In an effort to ensure that utilities fulfill their obligation to provide effective customer service, we will first ask your utility to contact you and resolve your concern. If your complaint is related to the provision of service, your utility should contact you within two business hours. If your complaint is related to billing or another matter, the utility should contact you by the close of the following business day.

If the utility does not contact you with its initial acknowledgement, does not provide its response to you within two weeks or the matter remains unresolved after you have received a response, you can contact us. We will then further investigate the matter and notify you in writing or by telephone of the decision and the reasons for the decision.

If you believe the initial decision is wrong, you can request an informal hearing. This request may be in writing and made within 15 days of the initial decision. You may be asked to submit certain documents to support your position. If you and the utility are unable to settle the complaint, the hearing officer will make a decision on your complaint and notify you in writing of the decision.

If you believe that the informal hearing officer's decision was wrong, you can appeal it within 15 days of the decision to the Public Service Commission. Your appeal must be in writing and must contend that there was an error made by the hearing officer that affected the decision or that evidence not previously available would affect the decision. The Commission will make a decision on the appeal and notify you in writing of their decision.

If you have a complaint about your utility service you may contact us thru one of the following avenues:

By Telephone	Monday thru Friday 8:30am – 4:00pm	800-342-3377
Via the Internet	24 hours a day	www.dps.state.ny.us Click the Consumer Assistance Link
In Writing	Please be sure to include as much detail as possible, including your account number, service address, telephone number and the specifics of your complaint.	NYS Public Service Commission Office of Consumer Services Three Empire State Plaza Albany, NY 12223-1350



How Utility Complaint Data is Reported

The Office of Consumer Services reports complaint data by volume and by responsiveness. A complaint rate is used to compare small utilities to large utilities. A response index is used to measure how well utilities address consumer complaints we forwarded to them.

The Office of Consumer Services closely monitors the number and types of complaints received against all utilities operating in New York State. We expect utility companies to be highly responsive to their customers' needs, especially when the customer feels that it is necessary to seek the assistance of the Public Service Commission staff. Each month, this report provides an overview of complaint activity and utility responsiveness which we believe is informative to both consumers and utility companies.

The table titled **Complaint Activity of New York's Major Utilities** reports on the volume of complaints received against the largest utilities in each industry. These utility companies vary in size from just over 10,000 customers to several million customers. Therefore, in order to compare complaint volumes among companies, a complaint rate per 100,000 customers is displayed. This allows the reader to compare the complaints of a large company to that of a small company.

There are two measures of complaints which are reported each month. At first all complaints are recorded and forwarded to the utility for resolution directly with the customer. These are noted as initial complaints (QRS) in the table titled **Complaint Activity of New York's Major Utilities**. If the customer informs us that the utility failed to satisfy their complaint the matter is escalated for further handling and investigation by staff and is noted as escalated complaints (SRS). Both numbers are converted into a complaint rate which allows the reader to compare performance regardless of the size of a company's customer base. The escalation rate is a measure of how successful a utility is in satisfying their customer upon receipt of an initial complaint made through the Office of Consumer Services. The 12 month complaint rate is often used as one of several customer service measures that may be taken into consideration when staff monitors the quality of customer service delivered by an individual utility. This rate represents the average number of escalated complaints received per month per 100,000 customer accounts.

The table titled **Customer Service Response Index** (CSRI) reports on the level of customer service and responsiveness delivered by each service provider under the Commission's jurisdiction. The Customer Service Response Index is determined by measuring four metrics. Complete CSRI data is posted on the first page of the report for those service providers that average ten or more initial complaints per month. For all other service providers, the performance in each area is reported on subsequent pages of the table, less the actual index measures because the index measures for companies with fewer than ten initial complaints have been found to show significant fluctuations on a month to month basis. These fluctuations may result in the reader reaching an inaccurate conclusion as to a service provider's performance. If a company is not listed in a particular monthly report it is because there was no activity for the company in the reporting month.

The **Index** is determined by measuring four metrics:

The Consumer Satisfaction Metric (CSM) is a ratio of the number of initial complaints to the number of escalated complaints in the reporting month. A score of 5 points are awarded when a service provider receives no initial complaints during the reporting month. There is no score awarded if a service provider satisfies less than 50% of the customers that the PSC refers to them.

The Complaint Response Time Metric (CRM) is the average number of days it took the service provider to respond to initial complaints closed in the reporting month. A score of 2 points is awarded when a provider's average response time for initial complaints is 14 days or less. No points are earned if the average response time for initial complaints is more than 28 days (twice the acceptable reply standard).

The Escalated Complaint Response Time Metric (ERM) is the average number of days it took the service provider to respond to escalated complaints closed in the reporting month. A score of 2 points is awarded when a service provider's average response time for escalated complaints is 10 days or less. No points are earned if the average response time for escalated complaints is more than 25 days (two weeks past due).

The Pending Case Metric (PCM) is the average age of all cases awaiting response, determined on the last day of the reporting month. A score of 1 point is awarded when a service providers' average age of all cases is 14 days or less. No points are earned if the average age of all cases exceeds 70 days (two months delinquent). A negative score is applied if the average age of all cases is over 70 days.

COMPLAINT ACTIVITY OF NEW YORK'S MAJOR UTILITIES

February 2010

Utility Companies	Initial Complaints (QRS)		Escalated Complaints (SRS)		Escalation Rate	12 Month Escalated Complaint Rate
	No.	Rate*	No.	Rate*		
Central Hudson	34	11.6	0	0.0	0%	0.4
Con Edison	326	8.5	34	0.9	10%	1.6
National Grid-Long Island	21	3.9	1	0.2	5%	0.4
NYSEG	74	7.6	4	0.4	5%	0.7
National Grid-Upstate	115	6.7	10	0.6	9%	0.9
Orange & Rockland	38	17.0	0	0.0	0%	0.7
RG & E	96	24.0	2	0.5	2%	1.4
National Grid-Metro NY	88	7.4	7	0.6	8%	0.9
National Fuel Gas	62	12.1	0	0.0	0%	0.4
AT&T of New York	21		3		14%	
Citizens Telecommunications of NY	6	2.6	2	0.9	33%	0.8
Frontier Communications of NY	0	0.0	0	0.0	#DIV/0!	1.0
Frontier Telephone of Rochester	7	2.5	1	0.4	14%	0.9
Optimum Voice	7		3		43%	
Time Warner Res-Com	17		2		12%	
Windstream Communications	3	4.6	0	0.0	0%	0.0
Verizon	227	3.3	23	0.3	10%	0.6
Cablevision Systems	30		3		10%	
Time-Warner Cable	101		11		11%	
United Water - Westchester	0	0.0	0	0.0	#DIV/0!	0.0
Long Island Water	3	4.1	0	0.0	0%	1.1
Aqua NY fka New York Water	3	6.8	2	4.5	67%	1.9
United Water - New Rochelle	3	9.6	0	0.0	0%	3.2
United Water - New York	3	4.3	3	4.3	100%	1.4

All complaint rates are initially based on Dec. 2008 customer populations. Updates occur in April.

* - Complaints per 100,000 customer accounts where populations are reported by the utility

This table reports on the volume of complaints received against the largest utilities in each industry.

Initial Complaints (QRS) - This is the number (No.) of complaints we receive and forward to the utility company for resolution directly with the customer and the corresponding complaint rate (Rate) per 100,000 customer accounts.

Escalated Complaints (SRS) - This is the number (No.) of complaints that we escalated for further handling and investigation because the customer informed us that the utility failed to satisfy their initial complaint after we forwarded the initial complaint to the utility. The corresponding escalated complaint rate (Rate) per 100,000 customer accounts allows the reader to compare one utility to another regardless of the number of customer accounts.

Escalation Rate - This is a measure of how successful a utility is in satisfying their customer upon receipt of an initial complaint made through the Office of Consumer Services. The lower the rate the more successful the utility was in resolving initial complaints directly with the customer.

12 Month Escalated Complaint Rate - This rate represents the average number of escalated complaints received per month per 100,000 customer accounts. This is often used as one of several customer service measures that may be taken into consideration when staff monitors the quality of customer service delivered by an individual utility.

Customer Service Response Index February 2010

Service Provider	Complaints	Escalated Complaints	CSM Index	Complaint Response Time	CRM Index	E. Complaint Response Time	ERM Index	Avg. Age of Cases Pending	PCM Index	CSRI
National Fuel Gas Distribution	62	0	5.0	2.3	2.0	6.1	2.0	4.2	1.0	10.0
Orange & Rockland	38	0	5.0	2.7	2.0	0.0	2.0	4.2	1.0	10.0
Time Warner - Albany Division	21	0	5.0	6.8	2.0	8.7	2.0	8.1	1.0	10.0
Central Hudson Gas & Electric Corp.	34	0	5.0	7.0	2.0	10.4	1.9	2.8	1.0	9.9
Rochester Gas & Electric Corp.	96	2	4.8	3.7	2.0	5.5	2.0	5.6	1.0	9.8
New York State Electric & Gas Corp.	74	4	4.5	5.0	2.0	7.7	2.0	5.7	1.0	9.5
National Grid - L I	21	1	4.5	13.9	2.0	7.5	2.0	7.2	1.0	9.5
Just Energy New York Corp	13	1	4.2	6.3	2.0	0.0	2.0	6.5	1.0	9.2
National Grid - Upstate	115	10	4.1	3.7	2.0	7.0	2.0	8.7	1.0	9.1
National Grid - Metro Ny	88	7	4.2	5.1	2.0	8.0	2.0	16.4	0.9	9.1
Broadview Networks	11	1	4.1	10.0	2.0	0.0	2.0	9.0	1.0	9.1
Verizon Communications (LEC)	227	23	4.0	9.4	2.0	7.2	2.0	7.6	1.0	9.0
Time Warner ResCom of New York,LLC	17	2	3.8	7.9	2.0	0.0	2.0	5.0	1.0	8.8
AT&T 21	3	3	3.6	6.5	2.0	11.6	1.9	7.5	1.0	8.5
Time Warner - New York City Division	69	9	3.7	12.5	2.0	13.0	1.8	15.1	0.9	8.4
Cablevision of New York City	12	2	3.3	10.9	2.0	10.3	1.9	6.2	1.0	8.2
Spark Energy, L.P.	12	4	1.7	11.9	2.0	0.0	2.0	8.0	1.0	6.7
Con Edison of New York	326	34	3.9	10.1	2.0	38.3	0.0	27.0	0.7	6.6

This table reports on the current level of customer service and responsiveness delivered by each service provider under the Commission's jurisdiction. The Customer Service Response Index is determined by measuring four metrics. Complete CSRI data is posted on the first page of the report for those service providers that average ten or more complaints per month. For all other service providers, the performance in each area is reported on subsequent pages of the table, less the actual index measures because the index measures for companies with fewer than ten complaints have been found to show significant fluctuations on a month to month basis. These fluctuations may result in the reader reaching an inaccurate conclusion as to a service provider's performance. If a company is not listed on this report it is because there was no activity for the company in the reporting month. Below is an explanation of the data in each column.

Complaints - This is the number of complaints we receive and forward to the utility company for resolution directly with the customer.

Escalated Complaints - This is the number of complaints that we escalated for further handling and investigation because the customer informed us that the utility failed to satisfy their complaint after we forwarded the complaint to the utility.

CSM Index - The Consumer Satisfaction Index scores the ratio of the number of complaints to the number of escalated complaints in the reporting month. A score of 5 points are awarded when a service provider receives no escalated complaints during the reporting month. There is no score awarded if a service provider satisfies less than 50% of the customers that the PSC refers to them.

Complaint Response Time - This is the average number of days it took for a utility to respond to complaints in the reporting month.

CRM Index - The Complaint Response Time Index scores the service providers responsiveness to complaints closed in the reporting month. A score of 2 points is awarded when a provider's average response time for complaints is 14 days or less. No points are earned if the average response time for complaints is more than 28 days (twice the acceptable reply standard).

E. Complaint Response Time - This is the average number of days it took for a utility to respond to escalated complaints in the reporting month.

ERM Index - The Escalated Complaint Response Time Index scores the service providers responsiveness to escalated complaints closed in the reporting month. A score of 2 points is awarded when a provider's average response time for complaints is 10 days or less. No points are earned if the average response time for escalated complaints is more than 25 days (two weeks past due).

Avg. Age of Cases Pending - This is the average age of all the cases awaiting a response from the service provider.

PCM Index - The Pending Case Index scores the average age of all cases awaiting response by the service provider. A score of 1 point is awarded when a service providers' average age of all cases is 14 days or less. No points are earned if the average age of all cases exceeds 70 days (two months delinquent). A negative score is applied and if the average age of all cases is over 70 days.

CSRI - The Customer Service Response Index is the overall score received by the service provider. It is the sum of the four indices.

Customer Service Response Index

February 2010

<i>Service Provider</i>	<i>Complaints</i>	<i>Escalated Complaints</i>	<i>CSM Index</i>	<i>Complaint Response Time</i>	<i>CRM Index</i>	<i>E. Complaint Response Time</i>	<i>ERM Index</i>	<i>Avg. Age of Cases Pending</i>	<i>PCM Index</i>	<i>CSRI</i>
430 Realty LLC	0	0		0.0		0.0		24.0		
Accent Energy Midwest, LLC	4	2		9.5		0.0		6.8		
ACN Communication Services, Inc.	1	0		0.0		0.0		3.0		
Agway Energy Services, LLC.	2	0		1.5		0.0		10.0		
Ambit Energy	4	0		3.5		0.0		0.0		
Aqua New York	3	2		22.2		0.0		7.5		
BluCo Energy, LLC	0	0		0.0		0.0		38.0		
Brown's Fuel	0	0		0.0		0.0		0.0		
Business Network Long Distance, Inc.	0	0		0.0		0.0		97.0		
Cablevision - MediaOne - Rockland	1	0		2.0		0.0		0.0		
Cablevision - MediaOne - Westchester	1	1		16.1		0.0		0.0		
Cablevision Lightpath, Inc.	1	0		0.0		0.0		3.0		
Cablevision of Brookhaven	0	0		20.0		0.0		0.0		
Cablevision of Dutchess County	2	0		11.2		0.0		7.0		
Cablevision of Long Island	8	0		10.2		0.0		5.7		
Cablevision of Port Chester	1	0		12.1		0.0		0.0		
Cablevision of Riverhead	1	0		0.0		0.0		17.0		
Cablevision of Southern Westchester	1	0		0.0		0.0		18.0		
Cablevision of Westchester	5	0		6.5		0.0		7.7		
Capitol Green Apartments	0	0		0.0		27.9		0.0		
Champlain Telephone Co.	0	0		0.0		0.0		41.0		
Charter Communications	0	0		0.0		0.0		45.0		
Citizens Communications (ILEC)	6	2		5.7		3.7		6.5		
City of Jamestown Board of Public Utiliti	2	0		1.0		0.0		0.0		
Columbia Utilities Power, Llc (electric)	3	0		0.3		0.0		0.0		
Columbia Utilities Power, Llc (gas)	2	0		0.0		0.0		0.0		
Comcast Cable of New York - CATV	0	0		0.0		0.0		61.0		
Comcast Cable Of New York - Lec	2	0		17.7		0.0		0.0		
Comcast Telecommunications, Inc.	0	0		0.0		0.0		32.0		
Common Ground	0	0		0.0		0.0		4.0		
Con Edison Solutions	2	0		6.5		0.0		0.0		
Consumer Telecom, Inc.	1	0		7.0		0.0		0.0		
Cordia Communications Corp	6	0		4.3		0.0		0.0		
CornerStone Telephone Company, LLC	1	0		5.0		0.0		0.0		
Corning Natural Gas Corp.	1	0		32.2		0.0		0.0		
Covista Communications, Inc.	1	1		7.0		0.0		0.0		
CTC Communications Corp.	3	1		11.5		0.0		11.0		
DigiZip.Com, Inc.	0	0		0.0		0.0		21.0		
Direct Energy Services LLC	3	0		5.5		0.0		5.0		
Energetix, Inc.	1	0		0.0		0.0		0.0		
Energy Plus Holdings LLC	6	1		6.9		0.0		0.0		
Energy Service Providers, Inc.	2	0		10.0		0.0		0.0		
Frontier Communications of AuSable Va	2	0		2.2		0.0		3.0		
Frontier Communications of NY/fka High	0	0		7.2		36.0		0.0		
Frontier Communications of Seneca-Gol	0	1		69.0		1.7		0.0		
Frontier Telephone of Rochester, Inc.	7	1		8.8		6.9		6.0		
Garrow Water-Works Company, Inc.	0	0		0.0		0.0		0.0		
Gateway Energy Services Corp.	2	0		11.0		0.0		8.0		
Global Tel*Link Corporation	1	0		31.0		0.0		11.0		
Great Eastern Energy	2	0		1.0		0.0		25.0		
Grenadier Realty Corp	0	0		0.0		0.0		54.7		
H & S Property Management	0	0		0.0		0.0		21.0		
Hancock Telephone Company	1	0		10.0		0.0		0.0		
Hudson Energy Services, LLC	2	1		31.5		0.0		15.5		
IDT America, Corp.	6	4		4.8		6.0		13.0		
IDT Energy, Inc.	2	0		0.1		0.0		0.0		
Infinite Energy, Inc.	2	0		6.5		0.0		0.0		
InfoHighway Solutions	0	0		0.0		0.0		28.0		
Integrus Energy Services, Inc.	1	0		0.0		0.0		5.0		
InterGlobe Communications	0	0		15.0		0.0		0.0		
Interstate Gas Supply of New York, Inc.	1	0		3.0		0.0		0.0		
Jack Parker Corporation	0	0		0.0		0.0		54.9		
Legacy Long Distance International, Inc.	1	0		3.0		0.0		0.0		
Liberty Power Corp.	3	0		8.5		13.1		5.0		
Line Systems, Inc.	1	0		0.0		0.0		26.0		
Long Island Water Corporation	3	0		5.3		0.0		6.5		
Major Energy Services LLC	2	0		5.7		0.0		0.0		
Matrix Telecom, Inc.	0	1		20.0		0.0		0.0		
MCI	1	0		10.0		11.3		4.0		
Metropolitan Telecommunications	2	3		17.0		0.0		27.0		

Customer Service Response Index February 2010

<i>Service Provider</i>	<i>Complaints</i>	<i>Escalated Complaints</i>	<i>CSM Index</i>	<i>Complaint Response Time</i>	<i>CRM Index</i>	<i>E. Complaint Response Time</i>	<i>ERM Index</i>	<i>Avg. Age of Cases Pending</i>	<i>PCM Index</i>	<i>CSRI</i>
Mid Hudson Cablevision, Inc.	3	0		0.3		0.0		0.0		
MXenergy	4	2		20.8		0.0		14.6		
NYSEG Solutions, Inc.	1	1		2.5		0.0		0.0		
Oasis Power LLC, d/b/a Oasis Energy	2	0		0.0		0.0		8.5		
One Touch Communications	2	0		14.0		0.0		5.0		
OneLink Communications, Inc.	1	0		0.0		0.0		35.0		
Optimum Voice	7	3		9.2		7.2		5.0		
Orchard Hill Water Co.	0	0		0.0		0.0		41.0		
PAETEC Communications, Inc.	0	1		260.0		0.0		0.0		
Plymouth Rock Energy LLC	1	0		0.0		0.0		0.0		
Rainbow Water Co. Inc.	1	0		0.0		0.0		21.0		
Resdntl Comms. Netwrk of NY	1	0		4.0		0.0		0.0		
Rowlands Hollow Water Works, Inc.	0	0		0.0		0.0		34.0		
Sprint Communications	1	0		0.0		0.0		13.0		
St. Lawrence Gas	1	0		2.0		0.0		0.0		
Stellar Management Company	0	0		0.0		33.0		0.0		
Stonehenge Management	0	1		0.0		0.0		21.3		
Sunrise Ridge Water Company	1	0		2.0		0.0		0.0		
Taconic Telephone Corp.	6	0		6.6		0.0		3.0		
Talk America, Inc.	1	0		0.0		0.0		0.0		
Talkspan Inc.	0	0		0.0		0.0		56.0		
Telecarrier Services, Inc.	1	1		8.0		0.2		0.0		
Tiffany Mews	0	0		0.0		0.0		90.0		
Time Warner - Binghamton	0	0		0.0		0.0		48.0		
Time Warner - Buffalo Division	9	0		3.4		0.0		3.5		
Time Warner - Rochester	4	1		11.2		0.0		0.0		
Time Warner - Syracuse Division	2	1		6.3		0.0		11.0		
Titan Gas, LLC	1	1		16.0		0.0		4.0		
Titan Outdoor Com, Inc.	0	0		0.0		0.0		35.0		
Trinsic	0	0		0.0		0.0		0.0		
Tristate Bell Inc	3	1		6.0		0.0		4.0		
Underdog Communications Corp.	0	1		0.0		0.0		13.0		
United Water-New Rochelle	3	0		31.3		0.0		18.3		
United Water-New York	3	3		34.5		0.0		22.7		
USA Datanet Corporation	0	0		0.0		0.0		109.0		
Value Added Communications	1	0		0.0		0.0		6.0		
Vectren Retail, Llc D/b/a Vectren Source	1	0		1.0		0.0		0.0		
Village of Freeport Electric	0	0		0.0		0.0		67.0		
Village of Theresa	0	0		18.0		0.0		0.0		
Village of Wellsville	1	0		1.0		0.0		0.0		
Whistle Tree Development Co, Inc.	1	0		0.0		0.0		18.0		
Whitlock Farms Water Corp.	1	0		0.0		0.0		5.0		
Wholesale Energy New York Inc.	1	0		0.0		0.0		17.0		
Windham Ridge Water Corp.	1	0		0.0		0.0		20.0		
Windstream Communications, Inc.	3	0		4.7		0.0		52.0		
XChange Telecom	4	3		29.7		0.0		12.8		
XO Communications, Inc.	1	0		11.7		0.0		3.0		
Zoom-I-Net Communications, Inc.	1	0		2.0		0.0		0.0		

2010
Credit Adjustments Received
For Consumers

As a result of our investigation into consumers' complaints, when staff determines that a consumer was overbilled, the utility is directed to refund to the consumer, any monies it collected above and beyond what was allowed by tariffs, rules and regulations.

The chart below identifies the credits obtained on behalf of consumers.

JAN '10	\$	1,277,278.60
FEB '10	\$	237,758.28
MAR '10	\$	-
APR '10	\$	-
MAY '10	\$	-
JUNE '10	\$	-
JULY '10	\$	-
AUG '10	\$	-
SEPT '10	\$	-
OCT '10	\$	-
NOV '10	\$	-
DEC '10	\$	-
2010 Total	\$	1,515,036.88

Number of Initial Complaints Received Against ESCO's

CODE	FULL NAME	2010	2009	Feb-10	Jan-10	Dec-09	Nov-09	Oct-09	Sep-09	Aug-09	Jul-09	Jun-09	May-09	Apr-09	Mar-09	Feb-09
D128	Accent Energy Midwest, LLC	6	57	4	2	4	2	5	2	6	4	4	9	4	9	8
D105	ACN Energy, Inc.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D001	Agway Energy Services, LLC	3	6	2	1	1	0	1	0	2	0	1	1	0	0	0
D230	Ambit Energy	9	63	4	5	4	3	4	0	3	2	7	5	22	7	6
D002	Amerada Hess Corp.	0	1	0	0	0	0	0	0	1	0	0	0	0	0	0
D240	Ameristar Energy, LLC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D222	BluCo Energy, LLC	0	10	0	0	0	1	0	0	0	1	1	1	1	4	1
D217	BlueRock Energy, Inc.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D113	Brown's Fuel	0	3	0	0	2	0	0	0	0	0	0	0	1	0	0
D238	Clearview Energy, Inc.	0	5	0	0	1	0	1	0	3	0	0	0	0	0	0
D038	Colonial Energy, Inc.	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0
D231	Columbia Utilities Power, LLC - elec	2	18	2	0	0	2	1	1	2	0	0	1	4	5	2
D040	Columbia Utilities, LLC - gas	3	11	2	1	0	1	1	0	2	1	1	2	1	1	1
D086	Con Edison Solutions	2	12	2	0	2	1	2	0	2	0	2	1	0	0	2
D084	Constellation NewEnergy	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0
D176	Direct Energy Services, LLC	5	38	3	2	2	0	3	2	4	2	7	3	4	6	5
D175	Dominion Retail, Inc.	0	2	0	0	0	0	0	1	0	0	0	1	0	0	0
D087	Energetix, Inc.	1	13	0	1	1	1	1	0	0	0	2	3	2	2	1
D183	Energy Cooperative of New York	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D243	Energy Plus Holdings	13	21	5	8	1	0	3	0	2	0	4	4	2	3	2
D137	Energy Service Providers	5	12	2	3	3	2	1	3	0	0	0	1	1	0	1
D138	FFC Energy	0	1	0	0	0	0	0	0	0	0	0	1	0	0	0
D046	Gateway Energy fka Econnergy	6	35	2	4	4	3	1	4	3	7	1	2	4	2	4
D104	Great Eastern Energy	2	3	2	0	0	0	0	0	0	0	2	1	0	0	0
D127	Green Mountain Energy	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0
D254	High Rise Energy Group, LLC	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0
D120	Hudson Energy Services, LLC.	7	154	1	6	5	8	12	19	12	17	11	16	10	24	20
D177	IDT Energy, Inc.	2	116	0	2	3	3	5	5	6	8	7	13	16	26	24
D167	Infinite Energy, Inc.	2	25	2	0	3	2	1	4	2	0	3	1	4	4	1
D234	Integrus Energy Services, Inc.	1	4	1	0	0	0	0	1	0	1	0	0	0	1	1
D013	Interstate Energy Resources Inc.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D188	Interstate Gas Supply of New York, Inc.	0	15	0	0	0	0	0	0	0	0	0	1	0	6	8
D213	Just Energy (fka U.S. Energy Savings Co	22	213	10	12	15	3	23	22	18	11	21	25	29	23	23
D117	Liberty Power Corp.	3	36	3	0	1	0	1	0	3	4	5	7	3	5	7
D214	Major Energy Services, LLC	7	38	2	5	2	2	2	2	3	6	6	1	6	3	5
D032	MX Energy, Inc.	10	120	3	7	5	6	5	6	13	11	8	8	13	25	20
D020	Natgasco, Inc.	0	3	0	0	2	0	0	0	0	0	0	0	0	0	1
D021	National Fuel Resources, Inc.	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0
D148	NOCO Natural Gas LLC	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0
D103	NYSEG Solutions, Inc.	4	8	1	3	0	1	0	0	0	2	1	0	0	2	2
4921OA	Oasis Power, LLC	2	0	2	0	0	0	0	0	0	0	0	0	0	0	0
D171	Plymouth Rock Energy, LLC	4	11	1	3	1	0	4	1	0	0	0	1	1	2	1
D114	Pro-Energy Marketing, LLC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D093	Robison Energy of Westchester	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0
D160	S.J. Fuel Co., Inc.	0	2	0	0	0	0	0	1	0	0	0	0	0	1	0
D186	Spark Energy, L.P.	16	98	11	5	2	2	6	6	4	10	8	6	19	23	12
D159	Strategic Energy, LLC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D121	Stuyvesant Energy, LLC	1	1	0	1	0	0	0	0	0	0	0	0	0	0	1
D162	Suez Energy Resources Na, Inc.	0	2	0	0	0	0	0	0	0	0	1	0	1	0	0
D223	Titan Gas, LLC	1	19	1	0	2	0	1	1	0	3	1	1	6	1	3
D119	U.S. Gas & Electric, Inc.	0	51	0	0	1	1	0	1	4	1	2	3	9	8	21
D198	Vectren Retail, LLC	1	13	1	0	0	1	0	0	2	2	1	4	2	1	0
D245	Wholesale Energy New York, Inc.	1	3	1	0	0	0	0	0	1	0	0	0	0	2	0
	Total	141	1250	70	71	68	47	84	82	98	94	107	123	166	198	183

Number of Escalated Complaints Received Against ESCO's

CODE	FULL NAME	2010	2009	Feb-10	Jan-10	Dec-09	Nov-09	Oct-09	Sep-09	Aug-09	Jul-09	Jun-09	May-09	Apr-09	Mar-09	Feb-09
D128	Accent Energy Midwest, LLC	2	17	2	0	1	2	2	1	0	0	4	1	0	3	3
D105	ACN Energy, Inc.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D001	Agway Energy Services, LLC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D230	Ambit Energy	1	11	0	1	0	0	1	0	0	0	1	1	3	3	2
D222	BluCo Energy, LLC	0	2	0	0	0	0	0	0	0	1	1	0	0	0	0
D113	Brown's Fuel	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
D238	Clearview Energy, Inc.	0	4	0	0	0	0	1	1	1	1	0	0	0	0	0
D231	Columbia Utilities Power, LLC - e	1	3	1	0	0	0	0	0	0	0	0	1	1	1	0
D040	Columbia Utilities, LLC - gas	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D086	Con Edison Solutions	0	1	0	0	0	0	0	0	1	0	0	0	0	0	0
D176	Direct Energy Services, LLC	1	3	1	0	0	0	0	0	0	1	1	0	1	0	0
D087	Energetix, Inc.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D243	Energy Plus Holdings, LLC	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
D137	Energy Service Providers	1	1	0	1	0	0	0	0	0	0	0	0	1	0	0
D138	FFC Energy	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D046	Gateway Energy fka Econnergy	0	6	0	0	0	0	1	1	1	2	1	0	0	0	0
D104	Great Eastern Energy	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0
D127	Green Mountain Energy	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D120	Hudson Energy Services, LLC.	3	61	2	1	1	0	4	9	4	2	7	6	5	9	14
D177	IDT Energy, Inc.	1	11	1	0	0	0	0	0	0	1	3	2	1	1	3
D167	Infinite Energy, Inc.	0	3	0	0	1	0	1	0	0	0	0	0	1	0	0
D188	Interstate Gas Supply of New York	0	5	0	0	0	0	0	0	0	0	0	0	1	2	2
D213	Just Energy (fka U.S. Energy Sav	3	30	1	2	1	0	0	2	1	0	3	7	7	4	5
D117	Liberty Power Corp.	0	11	0	0	0	0	0	0	2	1	2	1	2	0	3
D214	Major Energy Services LLC	0	8	0	0	0	0	0	1	1	0	3	0	1	0	2
D032	MX Energy, Inc.	6	48	5	1	3	4	2	1	4	6	2	0	7	11	8
D020	Natgasco, Inc.	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
D021	National Fuel Resources, Inc.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D148	NOCO Natural Gas LLC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D103	NYSEG Solutions, Inc.	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
D171	Plymouth Rock	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D160	S.J. Fuel Co., Inc.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D186	Spark Energy, L.P.	4	17	4	0	0	1	0	0	0	1	3	5	4	2	1
D159	Strategic Energy, LLC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D121	Stuyvesant Energy, LLC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D223	Titan Gas, LLC	3	4	3	0	0	0	0	0	0	0	2	0	2	0	0
D119	U.S. Gas & Electric, Inc.	0	6	0	0	0	0	0	0	1	0	0	1	0	0	4
D198	Vectren Retail, LLC	0	2	0	0	0	0	0	0	0	0	1	1	0	0	0
D245	Wholesale Energy New York, Inc.	0	3	0	0	0	0	0	0	0	0	3	0	0	0	0
	Total	6	259	23	6	7	7	12	16	16	16	38	26	37	36	48



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