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TO PARTIES OF RECORD IN RULEMAKING 05-04-005

This is the proposed decision of Commissioner Rachelle B. Chong. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Bemserfer at kjb@cpuc.ca.gov and Commissioner Chong's advisor Jane Whang at jjw@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:avs

Attachment

Decision PROPOSED DECISION OF COMMISSIONER CHONG
(Mailed 7/1/2008)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the Regulation of Telecommunications Utilities.

Rulemaking 05-04-005
(Filed April 7, 2005)

**DECISION REGARDING MONITORING REPORTS, RETAIL
SPECIAL ACCESS PRICING AND CUSTOMER DISCLOSURE RULES**

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DECISION REGARDING MONITORING REPORTS, RETAIL SPECIAL ACCESS PRICING AND CUSTOMER DISCLOSURE RULES

1. Summary

This decision concludes the Uniform Regulatory Framework (URF) proceeding. In initiating the URF proceeding, we sought to review the regulatory framework for all telecommunications carriers and to determine the extent to which dramatic changes in the communications market support revising the regulatory framework. As we recognized in the first phase of this proceeding, the market is now far more competitive than it was when we imposed the New Regulatory Framework (NRF) on the incumbent local exchange carriers. In California, we have various competitive alternatives to the traditional wireline incumbent local exchange carriers (ILECs), including numerous wireless carriers; competitive local exchange carriers (CLECs); cable companies that have added Voice over Internet Protocol (VoIP) telecommunications products to yield a “triple play” of voice, video and data offerings; and pure-play VoIP providers that add voice communications services to broadband connections.

Both federal and state policies have changed to recognize the dynamic and competitive nature of the telecommunications market. This Commission has expressed its goal to encourage growth and innovation of services and level the playing field. Consistent with those policies, in URF Phase I, we granted pricing flexibility for most services to the URF Carriers¹ and we found that many of the requirements, such as monitoring reports that the ILECs filed pursuant to NRF,

¹ The URF Carriers include the four largest incumbent local exchange carriers, CLECs, and interexchange carriers (IXCs). See D.07-08-018.

should be eliminated as no longer necessary. We left for Phase II of this proceeding, however, specific decisions regarding, among other things, whether additional monitoring reports are necessary; whether retail special access should be deregulated; and whether there is a need for additional consumer protection rules.

This decision addresses those remaining issues in Phase II of this proceeding and finds that: i) there is no need for additional monitoring reports of URF Carriers due to satisfactory information to be obtained from reports by them to the FCC and remaining URF reports; ii) we should not deregulate pricing for retail special access at this time; and iii) there is no need for additional consumer protection rules to govern URF Carriers, given significant actions by this Commission in the last two years in the area of consumer protection initiatives, including cramming and in-language protections, and new enforcement measures.

We affirm the tentative finding of the first phase of this rulemaking that the Commission does not need to adopt new reporting requirements to monitor the industry and may rely instead on carrier reports to the Federal Communications Commission (FCC) and other existing filings by URF Carriers to provide it with sufficient information necessary to meet its statutory obligations and exercise effective regulatory oversight. If certain FCC reports are no longer required in the future, we may reconsider these determinations.² We note that targeted third-party surveys may be an effective way to monitor

² We recognize that the FCC granted the petition of AT&T to forbear from enforcement of certain of the Commission's Cost Assignment Rules. *See In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, Petition of BellSouth Telecommunications, Inc., for*

Footnote continued on next page

industry developments under URF, particularly with regard to affordability of voice services; however, we decline to establish such third-party surveys at this time. Finally, we reiterate that the Commission always has authority to enforce the Pub. Util. Code and its rules and may audit and obtain records from carriers pursuant to Pub. Util. Code §§ 313 and 314 if necessary.

We find that the record does not support a reconsideration of our regulation of special access at this time. Instead, we will observe the pending FCC action on interstate special access prices, terms, and conditions, and may determine whether to revisit this issue in the future. We also decline to adopt additional customer disclosure rules beyond those adopted in Decision (D.) 06-03-013, as the Commission has taken several actions since the issuance of our Consumer Protection Initiative in D.06-03-013 to address issues of fraud, consumer education, and enforcement. We believe that our actions in these areas provide sufficient protections for consumers in a competitive environment.

We make these determinations based on our findings in the Phase I decision. The monitoring reports that were collected from the ILECs under NRF focused on data that pertained to rate-of-return or price-cap regulation; today, URF Carriers enjoy pricing freedom for most of their services. Moreover, we initially imposed the requirements for monitoring reports when the ILECs were the only providers offering voice services to consumers; today, consumers receive voice services from traditional landline, but also from wireless services,

Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket Nos.07-21, 05-342, Memorandum Opinion and Order, FCC 08-120 (AT&T Forbearance Order) (April 2008). As discussed below, we find that the FCC's action in this order does not affect our determination to eliminate NRF-specific reports or to not impose additional monitoring reports.

as well as VoIP providers. One recent survey of the levels of subscription to wireless services indicates that 15.8% of American homes relied only on wireless service (and have cut the cord to their wireline service) during the second half of 2007.³ Thus, the competitive nature of the market eliminates the need for most regulations; the dynamic nature of the market makes most regulations obsolete before they can be issued. The Commission has instead focused on developing targeted rules ensuring consumer protection for individuals who have limited English proficiency and on further developing its consumer education program to ensure consumers are aware of the laws and their rights. We have opted for a light-handed regulatory approach that emphasizes consumer empowerment through education while retaining the power to identify and penalize actions that violate our statutes and rules and harm consumers.

2. Procedural History

In D.06-08-030, which concluded Phase I of this Rulemaking (the Phase I decision), we granted carriers broad pricing freedoms concerning almost all telecommunications services, new telecommunications products, bundles of services, promotion, and contracts.⁴ We made contracts effective when executed,

³ *Wireless Substitution, Early Estimates from National Health Interview Survey July – December 2007*, Center for Disease Control (June 2008). Further, that same survey found that 13.1% of American homes communicated mostly on their wireless phone despite having a wireline phone.

⁴ We froze rates for basic service subsidized by CHCF-B subsidies, pending further review in R.06-06-028 and found that price caps for basic residential service not subsidized by CHCF-B shall be lifted on January 1, 2009. In D.07-09-020, we permitted an increase in the basic primary residential service rate for Verizon and AT&T, equivalent to the consumer price index rate of inflation, beginning January 1, 2008.

and, with few restrictions, permitted carriers to add services to “bundles” and target services to specific geographic markets.

In D.07-09-018, we consolidated this proceeding with Rulemaking (R.) 98-07-038 in order to address some of the remaining issues in Phase II of this proceeding; in that decision, we adopted procedures for advice letter filings under the Uniform Regulatory Framework and procedures to detariff services. In D.08-04-057, we approved with modification two advice letters filed by AT&T pursuant to the provisions of the Phase I decision.

Our earlier decisions left the following issues for resolution in the final phase of this proceeding:

- (a) Elimination of Commission-specific reports and their replacement by Automatic Reporting Management Information System (ARMIS) reports, other reports filed by carriers with the Federal Communications Commission, or new Commission-specific reports that can meet a cost-benefit test;
- (b) Prices, terms and conditions that apply to retail special access service; and
- (c) Determining whether there is any continuing need for customer disclosure rules in addition to the customer disclosure rules adopted in D.06-06-013.⁵

3. Discussion

On March 2, 2007, opening comments on the issues listed above were filed by Cox California Telecom LLC, Time-Warner Telecom of California LP, Pacific Bell Telephone Company, the Division of Ratepayer Advocates,

⁵ *Assigned Commissioner's Ruling and Revised Scoping Memo* (December 21, 2006) pp. 3-5. Other issues identified in this scoping memo have been addressed with in the prior decisions cited above.

XO Communications Services, Inc., Bell Atlantic Communications, MCI Communications Services, Inc. MCI Metro Access Transmission Services, NYNEX Long Distance Company, TTI National, Inc. Teleconnect Long Distance Services & Systems Company, Verizon California Inc., Verizon Select Services Inc., The Utility Reform Network, SureWest Telephone, the United States Department of Defense, Citizens Telecommunications Company of California Inc., Cricket Communications, Inc., Sprint Communications Company, LP, T-Mobile, CTIA-The Wireless Association, California Association of Competitive Telecommunications Companies, and Disability Rights Advocates.

On March 30, 2007 reply comments were filed by Pacific Bell Telephone Company, Sprint Nextel, Time Warner Telecom of California LP, Cox California Telecom, LLC, Time Warner Cable Information Services, the Division of Ratepayer Advocates, California Association of Competitive Telecommunications Companies, the United States Department of Defense and all other Federal Executive Agencies, Nextel of California, Inc., Omnipoint Communications, Inc., Sprint Communications Company, L.P., Sprint Spectrum L. P. as agent for Wireless Co., L.P., Sprint Telephony PCS, L.P. The Utility Reform Network, Bell Atlantic Communications, Inc., MCI Communications Services, Inc., MCI Metro Access Transmission Services, NYNEX Long Distance Company, TTI National, Inc., Teleconnect Long Distances Services & Systems Company, Verizon California, Verizon Select Services Inc., SureWest Telephone, Integra Telecom of California, Inc., Pac-West Telecomm, Inc., XO Communications Services, Inc., Citizens Telecommunications Company of California Inc., and CTIA-The Wireless Association.

3.1. Monitoring Reports

3.1.1. Proposals and Comments

In Phase I of this proceeding, we eliminated the monitoring reports imposed on the URF ILECs through the New Regulatory Framework (NRF) and related audits, noting that the NRF reporting requirements make little sense where we are not engaged in ratemaking for the four largest ILECs. We also noted that these NRF reports have not provided much benefit to ratepayers, particularly in recent years as we moved away from rate-of-return regulation.⁶ Given the foregoing, the Commission determined to rely instead on the FCC ARMIS data. As we stated in URF Phase I:

We expect that companies in a competitive marketplace will respond to market abuse by filing complaints with the Commission or a court.⁷

We further acknowledged, however, that we should consider whether there are any new monitoring reports that the Commission should adopt in a competitive environment under URF. To that end, the Assigned Commissioner issued a Ruling seeking review of the reports that carriers currently file with the Commission and the FCC.⁸ In conjunction with that Ruling, the Commission's Communications Division held a workshop on December 12, 2006 to discuss with carriers and other parties the form and content of the existing reports and to discuss the information that the reports are

⁷ D.06-08-030, at p. 213.

⁸ *Assigned Commissioner Ruling dated November 9, 2006 Directing the Production of Reporting Requirement Related Documents and Setting Schedule for Consideration of Additional Monitoring Reports. See also Assigned Commissioner's Dated November 16, 2006, Ruling Clarifying November 9, 2006 Ruling* (stating that the ruling applies to parties on the service list and clarifying that the issue of reporting requirements will be explored in Phase II of this proceeding).

designed to capture.⁹ Further, in that Ruling, the Commission directed parties to file and serve before January 5, 2007 any proposals regarding additional reports that the carriers should file or whether the carriers should resume filing reports previously discontinued. On December 12, 2006, the Commission's Telecommunications Division held a preliminary workshop regarding monitoring report issues. Parties were asked to provide comments on the various reports that they currently file, the costs/benefits of such reports, and the content of such reports.

In the Phase 2 scoping memo dated December 21, 2006, the Assigned Commissioner directed parties to address the elimination of Commission-specific reports and their replacement by ARMIS reports, other reports filed by carriers with the FCC, and whether new Commission-specific reports can meet a cost-benefit test.¹⁰ Parties submitted proposals for new monitoring requirements on February 7, 2007. The Assigned ALJ held a second workshop on these topics on February 16, 2007, focusing on the costs and benefits of any additional reporting proposals. Although all parties were invited to submit proposals for new or reinstated reports, only the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) did so.

DRA proposed six new monitoring reports to obtain information about service availability, affordability, and competition:

- 1) A report from each provider indicating by zip code (or Census tract) whether the provider offers local voice service to "residential" and business customers

⁹ Pursuant to that November 9 and 16 Ruling, carriers filed lists of reports that they file with the FCC and the Commission.

¹⁰ *Assigned Commissioner Ruling dated December 21, 2006, supra*, pp. 3-5.

- and by what technology; and whether the service provider offers broadband service to residential and business customers and if so, by what technology;
- 2) Either a price list from each provider including all recurring and nonrecurring rates for stand-alone services and associated fees as well as a list of typical service bundles; or an annual report from each service provider with pricing and related information for each product/service by relevant geographic area;
 - 3) A quarterly report from each service provider of total revenue by product (including service bundles), service volumes by product and average revenue by customer type, to be submitted in electronic format;
 - 4) Reinstatement of the NRF Field Research affordability study with modifications to increase the coverage areas, increase reporting granularity and to include customers subscribing to service providers other than ILECs;
 - 5) Service provider reports regarding the total universe of telecommunications services in California from either:
 - a. A supplement to the FCC Form 477 reports, or
 - b. Extracts of the E911 databases supplemented with information from the ILECs concerning resold lines.
 - 6) Commission subscriptions to third-party competition and bill survey data to track trends in the market shares of individual service providers (and of categories of providers such as non-cable VoIP and wireless).¹¹

¹¹ *DRA Proposal* (February 2, 2007), Appendix A.

DRA further argued that the Commission should require the carriers to post service availability and price information from these reports on a consumer-friendly Web site, such as www.calphoneinfo.com. DRA asserted that the Commission has the authority to impose this requirement on wireless carriers as part of its residual jurisdiction over “other terms and conditions” in a wireless contract. DRA also contended that information supplied by carriers was complementary to, and different from, information obtained from consumers and that the Commission needs both types of information in order to function effectively.

TURN proposed similar reporting requirements and only differs from DRA’s proposal in that it did not propose third-party competition reports or aggregating service/price information on a website:

- 1) Price data (quarterly reports regarding current prices for various services, including stand-alone residential basic exchange service, Universal Lifeline Telephone Service, other bundles, privacy-related services, and features for individuals with disabilities, by geographic area, including zip codes for each rate zone).
- 2) Competition and broadband data (service availability and total subscribers by carrier per zip code for both voice and broadband services).
- 3) Statewide total revenue and total line counts by product type; service volumes by product; and average revenue per customer type.
- 4) Reinstatement of the Field Research Affordability Study (augmented to procure survey data on the extent of customer use of competitive

telecommunications services such as wireless, high speed broadband and video service).¹²

TURN asserted that the most efficient way to track prices is to require carriers to submit quarterly reports on prices. TURN emphasized that if the Commission adopts detariffing, “rate information should be provided by carriers based on their price lists.”¹³ TURN also asserted that service availability is another important piece of information that the Commission should monitor by requiring carriers to provide data by zip code as to: i) whether the carrier offers local residential voice service; ii) whether the carrier offers ULTS service; iii) whether the carrier offers local single-line business voice service; iv) what technology is used to provide each local voice service (circuit switched wireline, VoIP, cable, non-cable VoIP, wireless); v) whether the carrier offers residential broadband service and if so by which technology and the minimum/maximum data speeds; and vi) whether the carrier offers business broadband service and if so by which technology and the minimum/maximum data speeds.

TURN argued that this information must be available on a zip code basis to identify specific offerings in an area and the characteristics of areas.¹⁴ TURN joined DRA in urging for the Commission to reinstate the “Field Affordability” study that is conducted on behalf of the Commission by

¹² *TURN Proposal* (February 2, 2007), pp. 11-12.

¹³ *TURN Proposal* (February 2, 2007) at p. 12.

¹⁴ *TURN Proposal* (February 2, 2007) at p. 19. Although the FCC’s Form 477 provides data regarding line counts, it does not provide this information by zip code and TURN suggests that the Form 477 could be modified to provide such information.

Field Research for a period of five years after the cap on residential basic exchange rates is lifted.¹⁵

In both workshops and in their subsequently filed comments, the four large incumbent local exchange carriers (ILECs) argued for the elimination of all state-specific monitoring reports, stating that the commission receives all the information necessary for it to carry out its statutory obligations and exercise effective regulatory oversight from the so-called ARMIS reports and other reports that carriers file with the FCC.¹⁶ The ILECs argued that:

- (1) FCC reports are on-line so that there is no incremental cost to the commission to obtain the information found in those reports;¹⁷
- (2) ARMIS data has been collected for years, so it is relatively easy to identify and analyze trends in the data;¹⁸
- (3) FCC data permits the commission to benchmark and compare the performance of carriers in California with carriers in other states;¹⁹

¹⁵ *TURN Proposal* (February 2, 2007), at p. 23.

¹⁶ *Opening Comments of Pacific Bell Telephone Company on Phase 2 Issues (Pacific Bell Opening Comments)*, (March 2, 2007) pp. 23-40 ; *Opening Comments of Verizon California Inc. and its Certificated California Affiliates On All Phase 2 Issues Other Than Detariffing*(*Verizon Opening Comments*), (March 2, 2007) pp. 8-13; *Opening Comments of SureWest Telephone Company on Phase 2 Issues (SureWest Opening Comments (March 2, 2007))* pp. 5-17; *Opening Comments of Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California on Phase II Issues Other than Detariffing of Decision 06-08-030 and the Revised Scoping Memo (Citizens Opening Comments)* (March 2, 2007) pp. 5-21.

¹⁷ *Verizon Opening Comments*, p. 10, *Pacific Bell Opening Comments*, p. 37.

¹⁸ *Verizon Opening Comments*, p. 10.

¹⁹ *Id.*, p. 11.

- (4) FCC reports include data on wireless carriers and other voice service providers not subject to commission jurisdiction;²⁰ and
- (6) Third-party consumer surveys would provide more meaningful information regarding consumer choices and service availability than carrier-generated reports.²¹

CalTel recommended at the second monitoring workshop and in its comments that a third party survey or study should evaluate the competitive nature of the telecommunications market.²² Cox California Telecom noted in its Phase II comments that there should not be any new reporting requirements unless the reports offer more benefits to the Commission in its regulatory role in this competitive market than costs for providing the reports. Cox supported the CalTel recommendation that the Commission develop third-party studies of consumer attitudes and behavior to monitor the competitive status of the California telecommunications market.²³

The Joint Wireless Carriers noted that DRA's and TURN's proposed monitoring reports would create significant costs for carriers such as wireless carriers, and that it would be "ironic... if under the banner of supposedly creating more competition, the Commission saddled competitive carriers with burdensome and expensive requirements for reporting data that they do not

²⁰ *Ibid.*

²¹ *Pacific Bell Opening Comments, pp. 23, 39-40.*

²² *Opening Comments of the California Association of Competitive Telecommunications Companies on Elimination of Commission-Specific Reports and Their Replacement by ARMIS Reports, Other Reports Filed by Carriers with the FCC or New Commission-Specific Reports (Phase 2) (CalTel Opening Comments) pp.4-5 (March 2, 2007).*

²³ *Cox Opening Comments (March 2, 2007) at p. 11.*

have to assemble or report today.”²⁴ The Joint Wireless Carriers suggested that the Commission focus on reviewing changes in the industry from a consumer-oriented perspective and that a limited and focused third-party availability/affordability survey might provide the Commission with information to understand how the market is operating.²⁵ The Joint Wireless Carriers noted that the costs of funding such third-party reports could be funded through existing Commission surcharges.

On April 4, 2008, TURN sent a letter to the Assigned Commissioner pointing out that five ILECs, including AT&T and Verizon, had recently petitioned the FCC to be relieved of the obligation of filing ARMIS reports²⁶ and that the FCC had opened dockets to consider the issues raised by the petitions.²⁷ TURN also pointed out that the commission had formally opposed the forbearance petitions in comments filed with the FCC.²⁸ The TURN letter urged the commission to adopt new state-specific monitoring reports in anticipation of the possibility that the FCC might grant one or more of the forbearance petitions.

On April 11, 2008, AT&T sent a letter to the Assigned Commissioner in response to the TURN letter pointing out that in its comments in Phase II it had consistently questioned the value to the commission of relying on ARMIS data. Similarly on April 11, 2008, Verizon submitted a letter to the Assigned

²⁴ *Joint Wireless Carriers Opening Comments* (March 2, 2007) at p. 5.

²⁵ *Joint Wireless Carriers Opening Comments* (March 2, 2007) at p. 6.

²⁶ The Verizon petition went further and asked the FCC to pre-empt all state-imposed reporting and recordkeeping requirements.

²⁷ See FCC Docket Nos. WC 07-139, WC 07-204, WC 07-07-273.

²⁸ *Comments of the California Public Utilities Commission and the People of the State of California to the FCC* in WC Docket No. 07-273, February 1, 2008, p. 4.

Commissioner responding to the TURN letter. Verizon argued that it and other carriers have not sought to eliminate other FCC non-ARMIS reports, including the Form 477, which provides data on intermodal competition. Further, Verizon emphasized that the Commission retains inherent authority to seek additional data from carriers if issues arise in the future and to address those issues through the enforcement process. Verizon also noted that TURN had failed to indicate in its letter that Verizon and other carriers proposed sponsoring a third party consumer survey to obtain additional information.

3.1.2. No New Reporting Requirements Necessary

We clarify that URF Carriers shall continue to file the existing reports that they indicated that they file with the Commission. Many of these reports are filed pursuant to existing General Orders (*e.g.*, GO 133) or other Commission decisions. However, we determine not to impose new additional reporting requirements on URF Carriers at this time. The purpose of the monitoring reports in the past was to provide the Commission with information to enforce certain rules or requirements governing, among other things, incumbent local exchange carriers' rates and transactions with affiliates. We have not been engaged in rate-of-return regulation of the carriers subject to URF for some time, and in URF Phase I, we granted pricing flexibility for URF Carrier services, with limited exceptions. Because URF Carriers have pricing flexibility for their services and we have determined that there is competition in the URF Carriers' markets, concerns about cross-subsidization of unregulated services with regulated rates do not exist either. Therefore, the purpose of monitoring reports under the URF is less clear than under the prior regulatory framework. We find that in a competitive environment, the Commission is interested in ensuring that it has access to information about whether services are affordable

as well as whether carriers are complying with the law and the Commission's rules.

Having considered DRA's and TURN's proposed reporting requirements and the arguments presented on the proposals, we find that these proposed reporting requirements are not justified in light of the costs that would be imposed, particularly on those competitive and wireless carriers that have not had to file such reports previously. Although we agree with DRA and TURN that affordability and competition are areas that we may have an interest in reviewing periodically, we believe that existing information available to the Commission (from advice letters and other sources) and reports filed with the FCC (ARMIS and non-ARMIS) provide us with sufficient information to enforce the law and our rules as well as to monitor the industry.

With regard to the issue of affordability, DRA and TURN expressed concerns that in a detariffed environment, the Commission would no longer be able to monitor the prices of carriers' services. However, even under URF, carriers are still required to file tariffs with the Commission, unless they are detariffing services. URF Carriers may not detariff basic service and therefore, the rates for basic service will continue to be tariffed.²⁹ To the extent that they file tariffs, the Commission will continue to have information as to the pricing of such services throughout the state. In D.07-09-018, we established detariffing rules for URF Carriers.³⁰ As a condition of detariffing, we required that carriers at all times and without charge, webpublish and provide without charge via request to a toll free number the applicable retail rates, charges, terms and

²⁹ Pub. Util. Code § 495.7(b).

conditions for any service available to the public on a detariffed basis.³¹ Such website postings will enable consumers to obtain this information to make informed choices and will be publicly available so that the Commission may also monitor this information. Therefore, there is no basis for DRA's and TURN's concerns that the Commission will not be able to monitor prices of telecommunications services in California on an ongoing basis under a detariffed environment.³² Consequently, we do not see a need for detailed price reports as proposed by DRA and TURN.

With regard to DRA's and TURN's proposals for detailed information regarding broadband offerings, we have established broadband data gathering requirements for video franchise holders in D.07-03-014 in our Digital Infrastructure and Video Competition Act (DIVCA) proceeding pursuant to Pub. Util. Code Section 5960. We most recently proposed additional reporting requirements regarding the speed tiers that franchise holders or their affiliates offer in California.³³ Our proposal would track the broadband data collection efforts of the FCC; the FCC recently issued an order establishing detailed broadband data requirements on a census tract basis.³⁴ The data collection

³⁰ See also D.07-09-19 (establishing GO 96-B Telecommunications Industry Rules).

³¹ D.07-09-018.

³² The Commission continues to have a duty to ensure that rates are just and reasonable, and to ensure that carriers do not discriminate in their rate, charges and in other respects. (See Pub. Util. Code §§ 451 and 453.)

³³ The proposed decision is currently circulating for comment.

³⁴ *In Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No.07-38, Report and Order and Further Notice of

Footnote continued on next page

requirements that the FCC imposed would greatly expand the *Form 477* broadband connection reporting requirement to require service providers to submit information pursuant to various speed tiers with new categories for download and upload speeds.³⁵ The FCC also established that providers shall report, for each Census Tract and each speed tier in which the provider offers service, the number of subscribers and the percentage of subscribers that are residential.³⁶ Accordingly, the FCC's expanded *Form 477* data reporting requirements address a number of concerns that DRA and TURN raised about obtaining information about residential broadband connections as well as the speeds of broadband connections.

The Commission will be collecting similar information in its DIVCA broadband reports from franchise holders. Although there may be concerns that not all carriers will become franchise holders, under our DIVCA framework, we now have authority to collect information from a wider universe of providers

Proposed Rulemaking; FCC 08-89 (*Form 477 Order*) (2008); and *In Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No.07-38, Order on Reconsideration, FCC 08-148 (*Form 477 Reconsideration Order*) (2008).

³⁵ See *Form 477 Order*, FCC 08-89, at para. 20. The FCC established the following reporting tiers applicable to both download and upload transfer rates under the new *Form 477* collection: (1) greater than 200 kbps but less than 768 kbps; (2) equal to or greater than 768 kbps but less than 1.5 mbps; (3) equal to or greater than 1.5 mbps but less than 3.0 mbps; (4) equal to or greater than 3.0 mbps but less than 6.0 mbps, (5) equal to or greater than 6.0 mbps but less than 10.0 mbps; (6) equal to or greater than 10.0 mbps but less than 25.0 mbps; (7) equal to or greater than 25.0 mbps but less than 100.0 mbps; and (8) equal to or greater than 100 mbps.

³⁶ *Form 477 Reconsideration Order*, FCC 08-148.

than before – namely, cable companies – than prior to the enactment of the DIVCA law.³⁷ In any event, the FCC will be collecting information from all providers of broadband services in its Form 477 reports. We will be using this information to monitor the deployment of broadband offerings throughout the state, consistent with our goals to promote advanced telecommunications services.³⁸

DRA and TURN were also concerned as to whether consumers had access to information about the various service providers and services that are offered in a given area within the state. LECs, such as Verizon and AT&T and numerous competitive carriers, have provided some of this information to the Commission in their annual reports.³⁹ We believe that this information may be useful to consumers and therefore, the Commission has updated its website to include information regarding the various service providers that are offering “residential voice service” within a given zip code.⁴⁰ We do not find, however, that this information must be mandated, as there are a variety of other resources

³⁷ In addition, the largest URF Carriers (AT&T and Verizon) have become franchise holders; as a practical matter, therefore, we will be obtaining broadband subscription information for a significant portion of the state’s consumers.

³⁸ *See also* D.07-12-054 (expressing the Commission’s goal to promote deployment of additional broadband within unserved or underserved areas).

³⁹ The Commission has recently revised its annual report form to seek information from providers as to whether they are providing residential voice service within zip codes. Certificated carriers have voluntarily responded with this information, although some carriers (wireless carriers in particular) have asserted that this information is beyond the Commission’s jurisdiction.

⁴⁰ <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/carrierlists.htm>. This information is compiled from service providers that voluntarily provide information about their services to the Commission.

available for consumers to determine whether a given provider serves that area and what services that provider offers.⁴¹ There are limits to the amount of information that the Commission can provide to consumers regarding the various service providers offering telephone service in a given area. The Commission cannot demand this information from providers outside of its jurisdiction.⁴² DRA and TURN also proposed that we obtain information about providers' revenues by product or service type, bundles, and by customer type. The Commission requires information about a carrier's intrastate revenues for purposes of its various public policy programs and the Commission User surcharge. However, as discussed above, we are not engaged in ratemaking functions for URF Carriers and do not see a need for this type of detailed reporting.

As for the status of competition, there are various sources from which the Commission can obtain such information. The FCC ARMIS reports and the non-ARMIS reports that are filed with the FCC provide significant and relevant data on local competition (FCC Local Wireline and Wireless Competition Reports); broadband and access lines (Form 477); trends in telecommunications (the Wireline Competition Bureau Statistical Report); and telephone price indices (report from the Industry Analysis Division). These reports monitor availability of different types of telephone service (wireline,

⁴¹ Consumers are still provided access to the White Pages and Yellow Pages when they relocate. Moreover, many consumers now rely on the Internet to find information about telecommunications choices and offerings.

⁴² For example, the Commission has declined to regulate VoIP providers at this time. (See D.06-06-010.)

wireless), as well as the price trends, and levels of competition – the very areas that DRA asserts that the Commission should continue to monitor.

We recognize that the ILECs have petitions pending at the FCC for forbearance from some of the ARMIS reporting obligations and that the FCC granted AT&T's petition to forbear from some of the FCC's cost assignment rules.⁴³ Those rules pertain to accounts that AT&T maintained for nonregulated activities, affiliate transactions, jurisdictional separations, and cost apportionment. Because the FCC does not regulate AT&T's interstate services pursuant to rate-of-return regulation, among other things, the FCC found that the enforcement of these rules were not necessary to ensure that AT&T's charges are just, reasonable, and not unjustly or unreasonable discriminatory.⁴⁴ The FCC did not, however, grant forbearance generally from Part 32 of its rules and thus other requirements remain in place (such as revenue accounting). The FCC further conditioned its forbearance of the cost assignment rules on certain conditions, including requiring AT&T to file a compliance plan that will explain how it will continue to preserve its accounting system for costs and revenues to ensure that if the FCC seeks such data in the future, it will be available and reliable.⁴⁵

⁴³ See *AT&T Forbearance Order*, FCC 08-120.

⁴⁴ The FCC found that other prongs of the forbearance test were also met: enforcement of the regulations were not necessary to protect consumers; and forbearance is consistent with the public interest.

⁴⁵ *AT&T Forbearance Order*, FCC 08-120, at para. 21. The FCC also required that the compliance plan explain how AT&T will continue to fulfill obligations under the Telecommunications Act of 1996, including sections 272(e)(3) and 254(k).

The critical aspect of the FCC's grant of the forbearance petition for our purposes is that the FCC found that the cost assignment rules were no longer necessary to determine whether rates are "just, reasonable, and not unjustly or unreasonably discriminatory" because it was not regulating AT&T's rates by rate of return regulation.⁴⁶ We similarly are not engaged in ratemaking for URF Carriers's retail services (with the exception of basic service rates in the interim). The Commission has not, in fact, relied on cost information for the URF ILECs for many years nor does the information gathered in the cost assignment rules provide relevant data that we need today for regulation under URF. Accordingly, we do not believe that the FCC's forbearance from the cost-assignment rules for AT&T requires us to consider new reporting requirements. The FCC's order noted that AT&T "has committed to work with the state commissions in its in-region territory to address state needs" as to information and that AT&T has promised that "total company cost information will remain readily available if needed for valid regulatory purposes."⁴⁷

We reserve the right to reconsider these issues and to revisit the topic at any time. Further, if the FCC should grant other pending forbearance petitions, we may consider whether we need to impose new requirements on data we would need to gather in place of the information currently supplied by the FCC reports.

We adopt this approach in view of the dynamic and rapidly evolving market for voice communications. If the market changes as rapidly in the next decade as it did in the last, it is a virtual certainty that the information

⁴⁶ *AT&T Forbearance Order*, FCC 08-120, at para. 16.

we will need to act as a responsible regulator in the future will be significantly different from the information currently gathered either by the FCC or by us.⁴⁸ Any state-specific reporting requirement we put in place today is likely to be obsolete tomorrow. Reports from the carriers subject to our jurisdiction will produce a partial and inaccurate picture of the total market and one that is likely to become more inaccurate over time as consumers migrate from traditional landlines to the various unregulated forms of voice communication now available to them.

As most of the parties suggested, one possible area of further data collection may be through the third-party targeted surveys. Such third party surveys may provide useful information regarding consumers' experiences and perceptions with their telecommunications services. However, we will not adopt such third-party surveys at this time. The Commission issues an annual report on subscribership in the state; if the annual report on subscribership reflects a drop in subscribership, the Commission may consider at that time whether to conduct surveys on affordability or to impose new reporting requirements. We believe that the Commission may consider the development of a third-party survey after observing how the market develops.⁴⁹

⁴⁷ *AT&T Forbearance Order*, FCC 08-120, at paras. 34-35.

⁴⁸ On May 20, 2008 the National Center for Health Statistics, a department of the National Institutes of Health, reported that 15.8% of American households were wireless only in the latter half of 2007, up from 6.1% in the same period in 2004.

⁴⁹ Further, the Commission is determining whether to conduct surveys on service quality in R.02-12-004; if it does so in that proceeding, those surveys may also be revised in the future to incorporate questions on affordability if and when the Commission finds it necessary. The Commission may also on its own motion open a proceeding in

Footnote continued on next page

In conclusion, we find that it is best to wait and observe how the market develops before considering whether to impose new state-specific reporting requirements on the carriers subject to our jurisdiction or take other steps, such as the consumer surveys suggested by the ILECs, to obtain the necessary information.

3.2. Pricing of Special Services

In response to the December 21, 2006 Assigned Commissioner's Ruling and Scoping Memo seeking comment on the prices, terms and conditions that apply to retail special access services, AT&T argues that the market for retail special access is competitive and that its retail private line services should be given the same pricing flexibility as given to other retail business services. AT&T explains that its retail special access offering consists of retail private line service that provides circuits to connect two or more customer locations within a Local Access and Transport Area (intraLATA).⁵⁰ AT&T's prices, terms, and conditions for both retail and wholesale special access currently are contained in the same tariffs; it asserts that retail private line is primarily purchased by retail customers such as medium to large businesses and government agencies. AT&T also asserted that there are several competitive companies such as Level 3, and TelePacific, as well as wireless companies, that offer private line services that compete with AT&T's retail private line services.⁵¹ AT&T proposes that its retail private line services should be granted full pricing flexibility under URF; if such

the future to consider whether to conduct surveys as a method of monitoring affordability and the telecommunications market.

⁵⁰ *Pacific Bell Opening Comments*, p. 5.

⁵¹ *Pacific Bell Opening Comments*, pp. 10-16.

treatment were granted, AT&T would move its retail private line services included in its Special Access Tariffs into its existing retail private line tariff, separate from its wholesale private line service.⁵²

Verizon argues that there are many substitutes for retail special access services including SONET Ring, LAN interconnect and other interexchange and CLEC providers that offer special access. Given this array of competitors, Verizon argues that there is no longer a need for regulation of special access pricing.⁵³ Similar to AT&T's proposal, Verizon suggests that the Commission grant full pricing flexibility for retail special access services. Verizon also proposes detariffing for retail special access services, while retaining tariffs for its wholesale special access customers.⁵⁴

Sprint Nextel, Time Warner and XO Communications (Joint Commenters) argue that the PUC should reject full pricing flexibility for retail special access services. These carriers argue that the Commission cannot grant full pricing flexibility for retail special access as the Commission has failed to identify the proper geographic market for determining competition in the special access market; these carriers assert that although there may be competitive options for special access in some areas of the state, such alternatives do not exist statewide.⁵⁵ The Joint Commenters specifically point out that the FCC has considered and used the Metropolitan Statistical Area (MSA) as the relevant geographic area for determining the level of competition in order to

⁵² *Pacific Bell Opening Comments*, pp. 4-19.

⁵³ *Verizon Opening Comments*, pp. 2-8.

⁵⁴ *Verizon Opening Comments*, p. 3.

⁵⁵ *Joint Commenters Reply Comments*, pp. 6-8.

grant pricing flexibility for special access.⁵⁶ The Joint Commenters also contended that the Commission cannot assume that wholesale special access and the unbundled network elements (UNEs) will provide competitors with tools to compete. They argue that if the ILECs get full pricing flexibility they will undercut competitors by offering retail special access at a price less than the price of wholesale special access, as well as offering retail special access exclusively for the benefit of their wireless affiliates.⁵⁷

XO Communications and PacWest argue similarly that retail special access cannot be segregated from wholesale special access services because AT&T's private line services are now offered to both retail and wholesale customers, and that permitting deregulation of retail special access services will allow the companies to discriminate against wholesale customers.⁵⁸

We find that there is not sufficient evidence on the record to compel us to reconsider or change our rules governing retail special access services at this time. As pointed out by some of the parties, the FCC considered a specific geographic area in determining whether to grant pricing flexibility for interstate special access. We are not convinced by the arguments that pricing flexibility should be granted on a statewide basis at this time.

The FCC is reviewing its rules governing interstate special access in WC Docket No. 05-25, RM-10593 currently, and in particular has asked parties to comment on the price and availability of interstate special access. Although the

⁵⁶ *Joint Commenters Reply Comments*, p. 7.

⁵⁷ *Sprint Nextel Opening Comments* pp. 2-6; *Joint Reply Comments of Sprint Nextel and Time Warner*, pp. 2-12 (March 30, 2007).

⁵⁸ *XO Communications Opening Comments* pp. 3-6.

FCC's action focuses on interstate special access services and does not preclude us from considering on our own the prices and terms and conditions of intrastate special access, we believe that it may be useful to review the record in that proceeding before we undertake any significant change in our regulation of retail special access. Accordingly, we decline to revise our regulation of special access at this time, but will monitor the FCC's proceeding on interstate special access as it may provide useful guidance to us if we later determine to revisit the pricing of intrastate special access.

3.3. Additional Customer Disclosure Rules

We also sought comment on whether there was a need for additional consumer disclosure rules beyond those that we adopted in our Consumer Protection Initiative decision, D.06-06-013 (adopting General Order (GO) 168).

Both DRA and TURN argue that GO 168 does not provide sufficient customer disclosure rules. DRA noted that, in an environment without tariffs, it is unclear what basis a consumer would have to bring a complaint or challenge regarding rates, terms, and conditions. DRA argues that numerous pieces of information should be available to consumers at carrier websites, particularly in an environment where services are detariffed.⁵⁹ Among its proposed disclosure requirements are the following, in 10 point font: current rates and charges for all services and technologies; current rates or fees by geographic region; clear statement of the billing process; clear explanation of the fees, taxes, surcharges that appear on bills; and various other terms and conditions related to obtaining service from a carrier. DRA also proposes detailed rules governing carrier communications with customers.

TURN asserts that many of the Pub. Util. Code provisions that the Commission cites in D.06-06-013 are not specific enough to allow a consumer to bring a complaint at the Commission or to a court; and that the Commission should define the scope of any “customer disclosure” requirements. TURN notes that, if the Commission were to eliminate existing customer disclosure requirements, it must be clear as to the process and procedure and which notices are no longer mandated.⁶⁰

TURN also argues that, “to the extent that the Commission moves forward with the goal of eliminating certain customer disclosure requirements ... the staff, perhaps with the help of the parties to the proceeding, prepare a list of all PUC regulations and requirements that would be subject to this review.”⁶¹ TURN also notes that the Commission cannot make a final determination on this issue until it completes its rulemaking addressing the needs of limited English proficient customers.

The carriers argue that there is no need for additional consumer protection rules. AT&T asserted that the Commission adopted D.06-03-013 based on the Commission’s findings of a dynamic and competitive telecommunications environment and that those rules already accounted for a competitive market.⁶² SureWest asserted that the Commission properly chose to implement a bill of rights that emphasizes the right to disclosure, without adopting prescriptive disclosure rules and argued that DRA’s proposed

⁵⁹ *DRA Opening Comments*, Appendix F.

⁶⁰ *TURN Opening Comments*, at p. 13.

⁶¹ *TURN Opening Comments*, at p. 15.

⁶² *AT&T Reply Comments* at pp. 15-18.

disclosure requirements may violate the First Amendment.⁶³ Cox and Time Warner asserted that revenue data from carriers is not useful and that carriers vary in size, and market territories so that revenue levels will not adequately reflect competition levels.⁶⁴ CTIA argued that DRA has provided no basis to reconsider the Commission's decision in D.06-03-013 to emphasize education and not to impose prescriptive disclosure requirements, and that the Commission should focus instead on expanding its consumer education website.⁶⁵ In response, TURN refuted the carriers' arguments and noted that GO 168 (adopted in D.06-03-013) only offered principles and no enforceable rights.⁶⁶

We find that it is not necessary at this time to establish new consumer protection disclosure requirements, in light of the extensive actions we have taken pursuant to D.06-06-013 to ensure consumers are educated, and protected from fraud and bad actors. D.06-06-013 established the Consumer Protection Initiative, which established 23 initiatives for the Commission in the areas of consumer education, fraud prevention/enforcement, and complaint resolution. Since the decision was adopted, the Commission has completed most of the listed initiatives.

Among other things, the Commission established a consumer website – www.calphoneinfo.com, launched an extensive media and bill fair outreach effort to educate consumers; improved its consumer complaint resolution database, added additional consumer representatives to its Consumer Affairs

⁶³ *SureWest Reply Comments* at pp. 14-17.

⁶⁴ *Cox and Time Warner Reply Comments* at p. 4.

⁶⁵ *CTIA Reply Comments* at pp. 10-12.

⁶⁶ *TURN Reply comments* at p. 27.

Bureau; and established a Telecommunications Fraud Unit focusing on fraud issues and working jointly with the Attorney General's Office on cases. In addition, the Commission has initiated the LEP proceeding (R.07-01-021), in which it adopted rules requiring telecommunications carriers that market in a language other than English to provide certain customer support in that non-English language. (See D.07-07-043.) The Commission is also considering currently in R.00-02-004 whether to adopt any reporting requirements governing cramming complaints.

Moreover, to the extent that parties expressed concerns about the lack of information and protection that consumers may experience in a detariffed environment, in D.07-09-018, we established specific rules and conditions for detariffing. Specifically, we required carriers that detariff services to post on their websites the generally available terms and conditions related to those detariffed services.

Finally, we reject the assertions that without detailed new disclosure requirements, consumers will be unable to enforce their rights or that the Commission cannot enforce statutes. Under Public Utilities Code Section 701 and California Constitution, Article 12, Section 6, the Commission has statutory and constitutional authority to regulate both wireline and wireless carriers with regard to consumer protection matters, and will continue to enforce the law vigorously. Recently, in D.08-04-057, as part of our consideration of whether to modify an underlying enforcement decision, we required AT&T to make additional consumer disclosures in conversations between Customer Service Representatives and consumers, as well as to post information on its Web site in accordance with the requirements of Pub. Util. Code § 2896(a).

For the foregoing reasons, we believe that no further disclosure rules are necessary at this time.

4. Assignment of Proceeding

Rachelle B. Chong is the Assigned Commissioner and Karl Bemederfer is the Assigned Administrative Law Judge.

5. Comments on Proposed Decision

The proposed decision of Commissioner Rachelle B. Chong in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

Findings of Fact

1. All interstate carriers currently file multiple reports with the Federal Communications Commission including ARMIS reports.
2. In Phase I of this proceeding, the Commission determined that most reports previously filed by carriers subject to state regulation, including so-called NRF-specific reports, were no longer necessary to the Commission's discharge of its statutory duties in a competitive market.
3. The Commission is able to obtain timely information about changes in the pricing of tariffed services from advice letters filed by carriers.
4. The Commission is able to obtain timely information about the nature and price of detariffed services from carrier-specific price lists posted on carriers' websites, as required by our detariffing rules.
5. The Commission will be able to obtain information about the status of competition through the carriers' filings of FCC ARMIS and non-ARMIS Reports.

6. The Commission will obtain detailed information about broadband subscription through the DIVCA Reports as well as through reports filed with the FCC.

7. The FCC has opened dockets to consider petitions from incumbent local exchange carriers requesting forbearance from the requirement of filing one or more ARMIS reports.

8. The Commission has opposed the forbearance petitions in comments filed with the FCC.

9. The FCC is reviewing the issue of interstate special access in WC Docket No. 05-25, RM-10593.

10. The Commission adopted a comprehensive consumer protection regime in D.06-03-013.

11. The Commission established additional consumer protection rules in its LEP proceeding R.07-01-021.

12. The Commission is considering additional consumer protection rules in its cramming docket R.00-02-004.

13. The Commission enforced § 2896(a) of the Pub .Util. Code by requiring additional consumer protection disclosures in a specific case.

Conclusions of Law

1. ARMIS and other reports filed with the FCC, together with data gathered by Commission staff and advice letters that continue to be filed with the Commission, provide adequate information for the Commission to meet its statutory obligations and exercise effective regulatory oversight.

2. No additional monitoring reports should be required of URF Carriers at this time.

3. The Commission should not deregulate retail special access at this time.

4. No additional consumer protection disclosures are required at this time.

O R D E R

IT IS ORDERED that:

1. No additional monitoring reports are required of any carrier subject to Commission jurisdiction at this time.
2. There are no changes in the Commission's pricing regulations for retail special access services at this time.
3. No additional consumer protection disclosures are required at this time.
4. Rulemaking 05-04-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated July 1, 2008, at San Francisco, California.

/s/ ANTONINA V. SWANSEN
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