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6/9/2011 Item 30

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Evaluate
the Status of Telecommunications
Competition in California and Its
Implications for Regulatory Policies.

Rulemaking _____

ORDER INSTITUTING RULEMAKING

TABLE OF CONTENTS

Title	Page
ORDER INSTITUTING RULEMAKING.....	1
1. Summary	2
2. Background	3
2.1. Telecommunications Markets	4
2.2. Wireless Telecommunications.....	8
2.3. Video and Broadband Communications in California.....	11 <u>12</u>
2.4. Information on Prices of Landline <u>Wireline</u> Voice Services	14
2.5. Quality of Customer Service	18 <u>19</u>
3. Preliminary Scoping Memo	22
3.1. Issues.....	22 <u>23</u>
3.2. Preliminary Schedule	26 <u>27</u>
4. Category of Proceeding and Need for Hearing	27 <u>28</u>
5. Service of OIR, Creation of Service List, and Subscription Service ...	28 <u>29</u>
5.1. During the First 20 Days	29 <u>30</u>
5.2. After the First 20 Days.....	29 <u>30</u>
5.3. Updating Information	30 <u>31</u>
5.4. Serving and Filing Documents.....	30 <u>31</u>
5.5. Subscription Service	31 <u>32</u>
6. Public Advisor	31 <u>32</u>
7. Intervenor Compensation.....	31 <u>32</u>
8. <i>Ex parte</i> Communications.....	31 <u>32</u>
ORDER	
31 <u>32</u>	

ATTACHMENT A - Market Share Analysis of Retail Communications in California 2001 through 2009, California Public Utilities Commission, Communications Division, March 10, 2011.

ATTACHMENT B - DIVCA Report: Third Annual Report to the Governor and the Legislature, California Public Utilities Commission, Communications Division, October 2010.

ATTACHMENT C - Affordability of Basic Telephone Service, Staff Report to the California Legislature, California Public Utilities Commission, September 30, 2010.

ATTACHMENT D - List of Telephone Corporations

ORDER INSTITUTING RULEMAKING

1. Summary

The Commission opens this rulemaking to assess whether developments in telecommunications markets warrant changes to the Commission's current regulatory program for telecommunications services.

This rulemaking identifies major reports in the Communications Division's ongoing oversight of the communications industry. These reports indicate the average household ~~landline~~wireline bill, after adjusting for inflation, has fallen 20% since 2004, a period embracing the adoption of the Uniform Regulatory Framework (URF) (Decision (D.) 06-08-030) and that the market structure of the communications industry in California is becoming less concentrated. The average wireless monthly bill is now lower than the average ~~landline~~wireline bill, and a large number of people are abandoning ~~landline~~wireline connections altogether.

Data communications have surpassed voice communications in most measures. California's broadband infrastructure is growing rapidly and the speeds of broadband connections are increasing. California's broadband infrastructure is improving relative to that in other states.

On the other hand, ~~the~~ Commission ~~has~~reports have identified several issues concerning the quality of service offered to customers. In addition, several particular telecommunications services, such as call waiting and three-way calling, have seen dramatic increases in rates.

This rulemaking seeks comments on these reports and seeks additional evidence on whether the current URF regulatory program should be changed in any way, whether developments in wireless communications markets require changes in any Commission policies, and whether the Commission should

modify its current program for assessing the quality of service offered to California customers. In addition, the Commission seeks to determine whether the public interest requires that the Commission assess developments in communications in California based on a market for “communications services” or whether the Commission should continue with market analyses based on “voice communications,” the approach adopted in Decision (D.) 06-08-~~030~~030, [the URF decision](#).

2. Background

D.06-08-030, based on an analysis of conditions in telecommunications markets and telecommunications technology, adopted a uniform regulatory framework that sought to treat voice communications in California as a single market. In addition, consistent with California statutes, the decision’s regulatory framework relied heavily on competition to drive both technological innovation, customer service, and to ensure that rates were reasonable.

D. 06-08-030, however, envisioned that even as the telecommunications marketplace evolved, there would be a continuing need for regulatory oversight. In particular, the decision found:

73. There is a need for the Commission to remain vigilant in monitoring the voice communications marketplace in order to ensure that the market continues to serve California consumers well.¹

In addition, the Commission pledged continuing vigilance on behalf of consumers, stating:

¹ D.06-08-030, Finding of Fact 73, at 268.

We will ensure that basic residential service remains affordable and does not trend above the current highest basic residential rate in the state, no matter the technology employed to offer such service. Should we see evidence of market power abuses, we retain the authority and firm resolve to reopen this proceeding to investigate such developments promptly.²

Approximately five years have ~~lapsed~~passed since the start of the URF regulatory program. This decision describes the efforts of this Commission to assess conditions in the California telecommunications marketplace, the efforts of the Federal Communication Commission to assess conditions in the national telecommunications markets, recent developments in the price of ~~landline~~wireline basic telephone service, and reports prepared by other entities.

2.1. Telecommunications Markets

The Communications Division recently released its latest analysis of telecommunications markets, *Market Share Analysis of Retail Communications in California 2001 through 2009*, California Public Utilities Commission, Communications Division, March 20, 2011 (CD Report).³ This report ~~offered~~offers a variety of views on market concentration and changing technologies in California. The report ~~used~~use information collected by the FCC⁴ and, ~~using~~with varied assumptions, ~~used~~calculates quantitative measures, such

² *Id.* at 156-157.

³ This report is attachment A to this order and is also available at <http://www.cpuc.ca.gov/NR/rdonlyres/22731419-A492-4D52-A09A-0815C3D06A61/0/110322MarketShareAnalysis.pdf> .

⁴ D.06-08-030 found, in Finding of Fact 102, that “It is reasonable for California to rely on the monitoring reports provided by carriers to the FCC for state regulatory purposes.” (D.06-08-030 at 271).

as the Herfindahl-Hirschman Index (HHI),⁵ to assess the level of market concentration in California ~~and how it~~ under different assumptions concerning what constitutes the “telecommunications service” and how the level of concentration has changed over time.

The CD Report identifies four major statewide trends:

- Intermodal competition reduces total market concentration.⁶
- Wireline telephone is the most concentrated of the individual technology modes.⁷
- Market concentration remains evident.⁸
- Mergers have increased the level of concentration.⁹

On page 3, the CD Report provides a snapshot of subscribership trends for all communications services in California by technology. In interpreting the chart, the report observes:

The subscribership trends are clear. Traditional wireline telephone service is shrinking in absolute terms and relative to the total market. Further, subscribership in all technologies but traditional wireline telephone service is increasing. It is important to note that while wireline subscribership is declining, overall voice telephone subscribership has not declined. This fact is due to substitution to wireless and VoIP [Voice over Internet Protocol] services from wireline.¹⁰

⁵ The use of the HHI to examine market concentration is authoritatively described in United States Department of Justice and *Horizontal Merger Guidelines* (August 19, 2010), which is available at <http://ftc.gov/os/2010/08/100819hmg.pdf>

⁶ CD Report at 1.

⁷ *Id.* at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 4.

The Communications Division has continued to monitor this market since the release of the CD Report. The Communications Division ~~has~~ reported that wireline subscriptions ~~have~~has continued to drop in 2010, while wireless and VoIP have grown. Both fixed broadband and mobile broadband subscriptions have ~~grown~~increased, with the number of mobile broadband subscribers as of June 2010 approximately equal to the number of fixed broadband subscribers.¹¹

In addition, the CD Report includes a detailed HHI analysis of communications markets in a series of charts. The CD Report states that “A concentrated market is generally characterized by a score greater than 1800 and a moderately concentrated market is characterized by a score between 1000 and 1800 points.”¹² The report cites the U.S. Department of Justice and the Federal Trade Commission. The exact citation is to section 1.5 of the *Horizontal Merger Guidelines*¹³ which were issued on April 2, 1992, and revised April 8, 1997. Since the preparation of the CD Report, however, the U.S. Government has issued a new version of the *Horizontal Merger Guidelines*, dated August 19, 2010.¹⁴ This new version offers different guidance in interpreting HHI measures, stating:

Based on their experience, the Agencies [Department of Justice and the Federal Trade Commission] generally classify markets into three types:

- Unconcentrated Markets: HHI below 1500

¹¹ [Internal communication](#). Analysis of FCC data by the Communications Division as of June 2010 indicate that California has 9,623,838 mobile broadband subscribers and 9,628,872 fixed broadband subscribers.

¹² CD Report at 5.

¹³ The citation appears in footnote 11 on page 5 of the CD Report. The web link is http://www.justice.gov/atr/public/guidelines/horiz_book/15.html.

¹⁴ The report is available at <http://ftc.gov/os/2010/08/100819hmg.pdf>.

- Moderately Concentrated Markets: HHI between 1500 and 2500
- Highly Concentrated Markets: HHI above 2500.¹⁵

These new guidelines therefore offer a different perspective on the analysis contained in the CD Report. In each chart in the CD Report, the dotted line at 1800 HHI indicating a high degree of concentration would be replaced by a line at 2500. Chart 5, for example, which measures HHI market concentration for intermodal voice and total market, adjusted for ILEC [incumbent local exchange carrier] and Cable Service Territories, shows a decline ~~an~~in HHI ~~of~~from 4008 to 1801 ~~from~~in the period commencing with June 2001 ~~to~~and ending in December 2009 for “All Subscribers”¹⁶ Under the new interpretive rules, the telecommunications market would be viewed as “moderately concentrated” rather than “highly concentrated.”

When viewed through the filter of the more recent Horizontal Merger Guidelines, we tentatively conclude that the communications market is moving away from the “voice communications” as a single marketplace described in URF¹⁷ to a broad “communications market” consisting of both voice and broadband connections, where broadband connections include both wireline and wireless broadband ~~because they~~ which are also capable of providing voice services ~~as well~~. In addition, despite mergers that have taken place over the last decade, the communications market has grown substantially less concentrated so that the larger marketplace is now only “moderately concentrated.”

¹⁵ *Id.* at ~~19~~19.

¹⁶ See table in CD Report at 25 for raw values of data.

¹⁷ D.06-08-030 at 74-78.

This order invites comments by interested parties on the analysis prepared by the Communications Division as well as the observations above. In addition, the Commission invites the provision of additional information and analysis pertaining to the California market in general, and to specific geographic markets.

2.2. Wireless Telecommunications

The FCC issues important reports on the nature of competition in telecommunications markets. Although the FCC commonly analyzes the market on the national level, such an analysis frequently offers a good starting point for understanding the California market.

The FCC's most recent annual report on wireless markets finds that:

In the first half of 2009, 22.7 percent of households (or more than one out of every five), were wireless-only, up from 17.5 percent in the first half of 2008, 13.6 percent in the first half of 2007, and 10.5 percent in the first half of 2006.¹⁸

The report views this development as a sign of intermodal competition in communications markets, whereby mobile communications is replacing fixed wireline phone service. Moreover, the acceptability of wireless as a substitute for fixed wireline phone service is greatest among younger consumers:

339. The number of adults who rely exclusively on mobile wireless for voice service has increased significantly in recent years. According to the 2009 National Health

¹⁸ In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, *Fourteenth Report* (Wireless Report) (WT Docket No. 09-66), May 20, 2010, at 17. This report is available at <http://transition.fcc.gov/14report.pdf>

Interview Survey (NHIS), 21.1 percent of adults, or one out of every 5, lived in households with only wireless phones in the first half of 2009, up from 16.1 percent in the first half of 2008, 12.6 percent in the first half of 2007, and 9.6 percent in the first half of 2006. The results of this survey, which are shown in Chart 46, reveal that the proportion of wireless-only adults aged 30 years and older has steadily increased in recent years. In the first half of 2009, the majority of wireless-only adults (57.2 percent) were aged 30 and over, up from 48.4 percent three years earlier. More than one-third of adults aged 18-24 years (37.6 percent) and nearly half of adults aged 25-29 years (45.8 percent) lived in households with only wireless telephones. Approximately one-third of adults aged 30-34 years (33.5 percent) also lived in households with only wireless telephones. However, as age increases above 35 years, the survey found that the percentage of adults living in households with only wireless telephones decreases: 21.5 percent for adults aged 35-44; 12.8 percent for adults aged 45-64; and 5.4 percent for adults aged 65 years and over. Nevertheless, the percentage of wireless-only adults within each age group has increased over time.¹⁹

Moreover, even for those customers who do not “cut the cord,” wireless service has become a substitute for the traditional ~~landline~~wireline. A Yahoo-Nielsen study reports that 89% of mobile phone users make calls in the home using their mobile phones.²⁰

Concerning the overall mobile market place, the Wireless Report also identifies a trend towards a data-centric market:

¹⁹ Wireless Report at ¶ 339, footnotes omitted.

²⁰ <http://www.yadvertisingblog.com/blog/2011/04/20/inforgraphic-mobile-use-outside-inside-home/>.

Transition to a Data-Centric Market. Data traffic has grown significantly, due to the increased adoption of smartphones and data consumption per device. Indeed, with overall revenue per mobile customer generally remaining flat the past several years, revenue from newer data services is replacing revenue from traditional services.²¹

Nielsen reports that in 2007 text messaging had overtaken voice calls and that by the second quarter of 2008, an average user sent 357 text messages, while placing only 204 voice calls.²² The New York Times, in a May 13, 2010, article, reports that the number of voice minutes by a cell phone user has fallen, that conversations are shorter, and that:

The number of text messages sent per user increased by nearly 50 percent nationwide last year, according to the CTIA [CTIA-The Wireless Association], the wireless industry association. And for the first time in the United States, the amount of data in text, e-mail messages, streaming video, music and other services on mobile devices in 2009 surpassed the amount of voice data in cellphone calls, industry executives and analysts say.²³

This order invites comments by interested parties on the FCC's analysis of wireless markets as well as the observations above. In addition, this order invites the provision of additional information and analysis pertaining to the wireless market in California, and geographic wireless markets. ~~In addition, the~~ The order also requests comments on whether the Commission should view the market as

²¹ Wireless Report at ¶ 4.

²² http://blog.nielsen.com/nielsenwire/online_mobile/in-us-text-messaging-tops-mobile-phone-calling/ .

²³ New York Times, "Cellphones Now Used More for Data Than for Calls," by Jenna Wortham, May 13, 2010. The online story states that "A version of this article appeared in print on May 14, 2010, on page B1 of the New York edition." The online version is at <http://www.nytimes.com/2010/05/14/technology/personaltech/14talk.html>.

one for “communication services” -- including voice and data — rather than as one for “voice services” alone that was adopted in the URF decision.

In addition to the market developments analyzed in the FCC report, the Communications Division’s ongoing analysis indicates that the wireless market and its current ownership pattern are the key drivers of the level of concentration in the larger communications market in California. At the time of the writing of this Order Instituting Rulemaking (OIR), AT&T has proposed a merger with T-Mobile. This merger, if it goes forward, will lead to an increased concentration within the wireless industry, on the one hand, but may also lead to an increase in the supply of wireless communications services through the more efficient use of radio-frequency spectrum, on the other.

The Commission’s policy concerning wireless mergers was set in D.95-10-032, almost 16 years ago. Although this proceeding is not the forum for examining the proposed T-Mobile merger with AT&T, it is the appropriate forum for examining whether the shift from voice to data within the wireless market, an overall shift away from “voice” towards a “communications” market, the increasing constraints on available spectrum, and changes in wireless ownership warrant a different regulatory approach by the Commission to this market. For this reason, we invite comments and the submission of further data pertaining to the wireless market in particular and recommendations on the extent to which the public interest is served by forbearance, as set in D.95-10-032, or by the exercise of the Commission’s authority to regulate “other terms and conditions” of service.²⁴

²⁴ 47 U.S.C. 332(c)(3)(A).

2.3. Video and Broadband Communications in California

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA)²⁵ made it a goal of communications policy to “promote the widespread access to the most technologically advanced cable video services to all California communities in a nondiscriminatory manner regardless of socioeconomic status.”²⁶ In addition, the legislation required an annual report by the Commission to the Governor and to the Legislature. The most recent report is Attachment B to this OIR.²⁷ The DIVCA Report concluded:

The number of households offered video by all state-issued video franchise holders and their local affiliates increased 13% to 18.5 million during 2009...

Video penetration of households served by state-issued video franchisees and their local affiliates is 49.9% (6,394,538 households).

Over 63% of California households (8.1 million) are now located in census tracts in which two or more state video franchise holders offer video services.

The number of broadband subscribers (both business and residential) has almost tripled to 9.5 million over the six years since 2003, in California. Between 2007 and 2009, the number of residential broadband subscribers served by state-issued video franchisees and their local affiliates increased by 23.8% to 8.5 million households in

²⁵ Ch. 700, Stats. 2006.

²⁶ § 5810(2).

²⁷ *DIVCA Report: Third Annual Report to the Governor and the Legislature*, California Public Utilities Commission, Communications Division, October 2010 (DIVCA Report). This report is also available on the Commission’s website at <http://www.cpuc.ca.gov/NR/rdonlyres/97257C23-B4D8-4843-BB10-C38CB712F8B5/0/2010DIVCAReport.pdf>.

California, resulting in a wireline broadband penetration rate of 66%, up from 55% in 2007.

Forty-five percent of the residential broadband connections (3.8 million) provided by state issued video franchise holders and their local affiliates have maximum advertised bandwidth speeds of greater than 6 mbps.²⁸

The DIVCA Report describes “good news in all areas.”²⁹

It ~~is somewhat~~ has proved difficult to obtain ~~comparative~~ information on how California’s broadband infrastructure compares to the infrastructure in other states. Akamai, an internet firm, produces a quarterly report titled “The State of the Internet.” Akamai’s fourth quarter 2010 report, the most recent one available, ranked California seventh among the 50 states in terms of average measured connection speeds and reports that the average connection speed rose 19% over the year 2010.³⁰ In contrast, Akamai’s first quarter 2008 report does not find California in the top 10.³¹ Although this data suggests that California is improving relative to other states, Akamai provides little information on the sources of its data or the methodology that it uses to assess broadband markets.

This order invites comments by interested parties on the Commission’s analysis of broadband communications and the observations above. In addition,

²⁸ *Id.* at 1.

²⁹ *Id.*

³⁰ The fourth quarter 2010 report is available, after registration, at http://www.akamai.com/dl/whitepapers/Akamai_State_Internet_Q4_2010_APAC.pdf?curl=/dl/whitepapers/Akamai_State_Internet_Q4_2010_APAC.pdf&solcheck=1&

³¹ This first quarter 2008 report is available, after registration at the site, at http://www.akamai.com/dl/whitepapers/akamai_state_of_the_internet_q1_2008.pdf?curl=/dl/whitepapers/akamai_state_of_the_internet_q1_2008.pdf&solcheck=1&

this order invites the provision of additional information and analysis pertaining to broadband investment and deployment in California. As mentioned above, this order also requests comments on whether the Commission should view the telecommunications market as one for all “communication services” -- including broadband services -- rather than as a market for “voice services” that was adopted in the URF decision, or a “voice and text” market such as that which ~~dominates~~now characterizes wireless services.

The order also seeks comments on the conclusions of the Communications Division on the success of the DIVCA legislation. The order ~~also, in particular,~~ seeks comments on whether the advances in broadband identified in Attachment B result from the Commission’s reliance on market forces and competition, as called for in the DIVCA legislation and adopted in URF regulations pertaining to communications markets or whether there is some other source for the improvements in broadband infrastructure.

2.4. Information on Prices of ~~Landline~~Wireline Voice Services

Economic theory ~~would predict~~predicts that as regulation is relaxed and competition replaces regulatory fiat that prices would tend towards cost. Prices that were set by regulation below cost will rise. Prices set above cost by regulation will fall. To the extent, however, that regulation had yielded prices in line with overall costs, economic theory would predict that average bills would remain largely unchanged as competition ~~replaced~~replaces regulation. Moreover, to the extent that customers purchase a bundle of telecommunications services and not just one service, the change in the total bill provides the best estimate of how changes in the industry and in regulation are affecting customers.

The Communications Division, pursuant to Senate Bill 780 (Ch. 342, Stats. 2008) has continued to monitor closely both the bills and the prices of

telecommunications services provided in California and provided reports to the Legislature.³² Concerning the bills of AT&T and Verizon, the major carriers affected by the URF decision, the Communications Division Affordability Report (Affordability Report) found that for Verizon, the mean household bill in 2004 was \$78 a month, while in 2010 the mean bill fell to \$75.46, a drop of ~~16%~~³³4%, and a drop of 16% when adjusted for inflation.³³ The Affordability Report also found that for AT&T, the mean household bill was \$66 in 2004, while in 2010 the mean bill fell to \$59.11, a decrease of ~~22%~~³⁴11%, and a drop of 22% when adjusted for inflation.³⁴ The weighted average drop in the mean household bill was 21%³⁵ on an inflation-adjusted basis.³⁵ In addition, the median bill declined 7%³⁶ on an inflation-adjusted basis.³⁶ Thus, over a 6-year period starting shortly before the adoption of URF, the bills for traditional ~~landline~~wireline services in California dropped substantially in both nominal and inflation-adjusted terms.

Despite this general good news for California telecommunications customers, the prices of some services, long held fixed by regulation, have risen. Specifically, the table that follows provide the tariff prices for basic wireline residential service.

³² *Affordability of Basic Telephone Service*, Staff Report to the California Legislature, California Public Utilities Commission, September 30, 2010 (Affordability Report). This report, along with the Affordability Surveys conducted by the Public Research Institute of San Francisco State University that supported the Communications Division's analysis, can be found on the Commission's website by following the links found at <http://www.cpuc.ca.gov/PUC/Telco/generalInfo/2010AffordabilitySurveys.htm> .

³³ *Id.* at 3.

³⁴ ~~*Id.*~~*ibid.*

³⁵ ~~*Id.*~~*ibid.*

³⁶ ~~*Id.*~~*ibid.*

Basic Service Rates for: Local Exchange Carriers Regulated under URF-LEC's

Company	2006 Basic Rate	2011 Basic Rate	Change
AT&T	\$10.69	\$19.95	\$9.26
Frontier	\$17.85	\$19.00	\$1.15
SureWest	\$18.90	\$19.99	\$1.09
Verizon	\$16.85 - \$17.25	\$20.91	\$4.06-3.66

During the same period, however, California telephone companies regulated under cost-of-service regulation also experienced increases rates for basic service:

**Basic Service Rates for Small ~~LEC's~~ Local Exchange Carriers'
Subject to Traditional Regulation**

Company	2006 Basic Rate	2011 Basic Rate	Change
Calaveras Telephone Company	\$16.05 - \$17.00	\$20.25	\$4.20
Cal-Ore Telephone Company	\$16.05	\$20.25	\$4.20
Ducor Telephone Company	\$18.20	\$20.25	\$2.05
Happy Valley Telephone Company	\$16.85 - \$22.00	\$16.85 - \$22.00	\$0
Forest Hill Telephone Company	\$16.05	\$20.25	\$4.20
Hornitos Telephone Company	\$16.05	\$16.05	\$0
Kerman Telephone Company	\$19.40	\$20.25	\$0.85
Pinnacles Telephone Company	\$16.05	\$20.25	\$4.20
Ponderosa Telephone Company	\$16.85	\$20.25	\$3.40
Sierra Telephone Company	\$16.85	\$20.25	\$3.40

Siskiyou Telephone Company	\$16.85	\$20.25	\$3.40
Volcano Telephone Company	\$16.85	\$20.25	\$3.40
Winterhaven Telephone Company	\$17.50	\$17.50	\$0

~~Thus, although~~ Because of this movement in rates, even though the average bills fell over this period, it is likely that some customers whose bills are dominated by the cost of basic telephone service did see increases in their bills. Although the drop in the median bill ~~indicates~~ suggests that more people saw bill decreases than saw bill increases, it does not mean that everyone saw a bill decrease.

The Affordability Report also contains interesting data showing the convergence of cost for wireline and wireless services. The Affordability Report reports that the mean monthly wireless bill was \$66.51 while the mean wireline bill is \$68.53, slightly higher. The median wireless bill, however, was \$56, while the median wireline bill was \$50, slightly lower.³⁷ The cost of wireless service for customers, however, is very close to that of residential wireline service.

In addition to the reports produced by the Communications Division pursuant to legislation, the Commission's Division of Ratepayer Advocates (DRA) has produced a report titled "The Failure of Consumer Protection" (DRA Report).³⁸ The DRA Report is subtitled "How the CPUC's Assumptions About

³⁷ *Id.* at 13.

³⁸ The Failure of Consumer Protection: How the CPUC's Assumptions About Competition Harm Consumers, The Division of Ratepayer Advocates, October 2010 (DRA Report). The DRA Report is available at

Footnote continued on next page

Competition Harm Consumers.” The DRA Report observes “Rising rates contradict the promises of the URF carriers and contradict the assumptions of the Commission.”³⁹ DRA concludes by calling for the Commission to consider whether to “reinstitute price controls.”⁴⁰

This order invites comments on the Communications Division’s Affordability Reports by interested parties on the Commission’s analysis of [landlinewireline](#) voice bills and its Affordability reports. In addition, this order invites the provision of additional information and analysis pertaining to the Commission’s analysis of [landlinewireline](#) bills in California. In addition, the order requests comments on whether and how the Commission should regulate [landlinewireline](#) rates in light of the convergence of [landlinewireline](#) and wireless bills and the decrease in the average monthly household [landlinewireline](#) bill. Finally, the order seeks comments on whether DRA’s focus on the rates of certain communications services and call for a reinstatement of rate regulation is warranted.

2.5. Quality of Customer Service

The Commission requires the reporting by local telecommunications companies of certain customer service metrics. These metrics are set forth in General Order (G.O.) 133-C. Annually, the Communications Division staff analyzes and reports to the Commission on the data submitted by the local exchange companies in the form of a Service Quality Report. The last report was

<http://www.dra.ca.gov/NR/rdonlyres/3E5E2B57-F34E-4182-A826-0DADAA0B3D0C/0/FailureofConsumerProtection.pdf>

³⁹ *Id.* at 13.

⁴⁰ *Id.* at 4.

completed in March 2011.⁴¹ The report describes the G.O. 133-C process as follows:

G.O. 133-C has five standards to measure telephone service quality that primarily apply to residential customers and small businesses with 5 or fewer lines: 1) Service Installation time (within 5-days), 2) Meeting Installation Commitments 95% of the time, 3) % of Trouble Reports per number of lines, 4) Out-of-Service Restoration Time (90% within 24 hours) for outages that were within the control of the utility, and 5) Answer Time to reach a live operator (80% of calls in less than 60 seconds). Measures 1-5 apply to the small local exchange companies (Small LECs) and measures 3-5 apply to the four large phone companies and competitive local carriers regulated under the Uniform Regulatory Framework (URF), collectively referred to as URF Carriers. Twenty seven wireline carriers (4 large, 8 CLEC [competitive local exchange carriers], and 15 small LECs) submitted G.O. 133-C reports.⁴²

The Service Quality Report finds that all 27 carriers met the standard pertaining to “Trouble Reports,”⁴³ but that carriers had difficulty meeting the “Out of Service Restoration Time” standard or restoring service to 90 percent of customers within 24 hours.⁴⁴ The Service Quality Report also indicates that concerning the Answer Time goal, “[n]one of the URF ILECs were able to meet the Answer Time goal of routing callers to a live operator within 60 seconds for each quarter of the year, SureWest achieved the goal 3 of 4 quarters in 2010,

⁴¹ *Report on Telephone Carrier Service Quality for the Year 2010*, Telecommunications Division, March 2011 (Service Quality Report), which is available at <ftp://ftp.cpuc.ca.gov/Telco/ServiceQualityReports/3-29-11%20Final%20CD%20Service%20Quality%20Report.doc>

⁴² *Id.* at 2.

⁴³ *Id.* at 2-3.

⁴⁴ *Id.* at 3.

Citizens and AT&T achieved the goal 2 of 4 quarters, and Verizon did not meet the standard in any quarter.”⁴⁵ The report also finds:

Five of the eight CLECs [none incumbent Competitive Local Exchange Carriers] met the Answer Time standard in all four quarters of 2010. One company met the goal 3 of 4 quarters, one company did not meet it in any quarter, and one company did not report anything.⁴⁶

Thus, the ~~competitive carriers~~non-incumbent CLECs appear to provide better customer service along this dimension.

The Service Quality Report states:

CD [Communications Division] recommends that the Commission initiate an Order Instituting Investigation (OII), and/or an Order Instituting Rulemaking (OIR) to review the G.O. 133-C standards, particularly with regards to Out-of-Service restoration times and assess why carriers consistently could not meet this standard, why carriers are not regularly meeting the operator answer time standard of 60 seconds or less, consider adopting new standards or modify existing standards, and consider penalty mechanisms for companies that consistently fail to meet one or more standards.⁴⁷

In summary, the G.O. 133-C reports tell a story of communications companies failing to meet service targets.

In addition, the California Senate Office of Oversight and Outcomes recently issued a report concerning consumer protection in telecommunications.⁴⁸

⁴⁵ *Id.* at 3.

⁴⁶ ~~*Id.*~~*ibid.*

⁴⁷ *Id.* at 4-5.

⁴⁸ *California Public Utilities Commission: Gaps Emerge In Consumer Protections*, California Senate Office of Oversight and Outcomes, July 16, 2010 (Senate Report), which is

Footnote continued on next page

In addition to findings ~~concerning~~criticizing the Commission's regulatory oversight of prices and the handling of complaints, the report asks that the Commission address the issue of "cramming" -- billing customers for services they have not authorized -- and make publicly available information that would inform consumers about the quality of service offered by different carriers.⁴⁹

Concerning the issue of "cramming," the Commission adopted a series of reforms in D.10-10-034. Thus, the Commission continues to target this problem through the regulation of billing telephone corporations and billing aggregators.⁵⁰ ~~The decision~~D.10-10-034 also calls on the Commission to evaluate the effectiveness of these new rules in a report due January 1, 2013. Thus, this issue remains under active examination by the Commission.

Concerning the issue of providing information to customers concerning the quality of service offered by different carriers, the Commission invites parties to comment on whether and how the Commission can provide such information. As noted above, the Commission has long measured service quality for ~~landline~~wireline local carriers by criteria related to line trouble, service restoration, and time to a live customer service agent. These standards are not relevant for all communications service providers (wireless carriers do not have "line trouble"). The Commission, however, has not developed ~~for~~ broad customer satisfaction measures. ~~Would this~~ that are valid across the range of

available on the internet at

<http://www3.senate.ca.gov/deployedfiles/vcm2007/senoversight/docs/Gaps%20Emerge%20Report%20pdf>

⁴⁹ *Id.* at 5-6.

⁵⁰ D.10-10-034 added part 4 to General Order 168 to regulate billing telephone corporations and billing aggregators.

communications services. Could some broad measure of consumer satisfaction offer a way of providing the information that the Senate Report identifies as desirable?

3. Preliminary Scoping Memo

As required by Rule 7.1(d)⁵¹ of the Commission's Rules of Practice and Procedure, this Order Instituting Rulemaking (OIR) includes a Preliminary Scoping Memo. In this Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding.

3.1. Issues

The California Public Utilities Code states that :

"the essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured."⁵²

The URF decision reviewed the Pub. Util. Code's discussion of competition. ~~H~~The URF decision states:

... the California Legislature also provides direct guidance on the means regulators should employ to achieve these goals. Specifically, Public Utilities Code § 709.5 endorses a reliance on competitive markets to achieve these goals. According to the Public Utilities Code, "[i]t is the intent of the Legislature that all telecommunications markets subject to commission jurisdiction

⁵¹ "Rulemakings. An order instituting rulemaking shall preliminarily determine the category and need for hearing and shall attach a preliminary scoping memo. The preliminary determination is not appealable, but shall be confirmed or changed by assigned Commissioner's ruling pursuant to Rule 7.3, and such ruling as to the category is subject to appeal under Rule 7.6."

⁵² § 8281(a).

be opened to competition not later than January 1, 1997. The commission shall take steps to ensure that competition in telecommunications markets is fair and that the state's universal service policy is observed."⁵³

These sections of the Pub. Util. Code cited above and in the URF decision that set California policy for communications markets remain unchanged ~~since the adoption of URF decision in 2006.~~

~~Since~~Moreover, since the adoption of the URF decision, California enacted the Digital Infrastructure and Video Competition Act of 2006, which ~~states that~~ also supports a policy supporting competition:

(1) Increasing competition for video and broadband services is a matter of statewide concern ...

(B) Increased competition in the cable and video service sector provides consumers with more choice, lowers prices, speeds the deployment of new communication and broadband technologies, creates jobs, and benefits the California economy.⁵⁴

Thus, California law again endorsed a reliance on competition to enlist market forces to spur investment in broadband and to produce lower prices.

The URF decision conducted an analysis of the presence of competitors in geographic markets throughout the state and reached two major conclusions: 1) that voice communications constituted a single market but that market power analysis must address geography;⁵⁵ and 2) that Verizon and AT&T did not

⁵³ D.06-08-030 at 32-33, citing § 709.5(a).

⁵⁴ § 5810(a).

⁵⁵ D.02-08-030 at 74.

possess market power that warrants the continuation of current price control regulations [for most retail services](#).⁵⁶

This new rulemaking is opened to determine whether the passage of time and the changes in technology and markets that characterize telecommunications warrant revision to the Commission's URF regulatory program to ensure that regulation in California continues to produce just and reasonable rates. More specifically, the central questions of this investigation are:

1. In conducting an analysis of the telecommunications market, should voice, video, text, data, and broadband be considered a single market, or should the Commission continue to use voice or some other service to define the relevant market for regulatory analysis?
2. Do the developments in telecommunications markets provide evidence that the URF regulatory program should continue unchanged or are specific changes warranted?⁵⁷ Do developments in wireless markets require a change in Commission policies towards wireless firms?⁵⁸ Do the developments in communications markets require further changes in how the Commission monitors service quality and reports to California consumers?⁵⁹

~~We intend~~[The Commission intends](#) for the scope of this rulemaking to be broad, and accordingly grant the assigned Commissioner and assigned Administrative Law Judge (ALJ) discretion to revise the scope to include other relevant issues that may arise, particularly those relating to the two major questions listed above.

⁵⁶ *Id.* at 117.

⁵⁷ These policies were set in D.06-08-030.

⁵⁸ These policies were set in D.95-10-032.

⁵⁹ These policies are embodied in G. O. 133-C and were last revised in D.09-07-019.

In answering these questions, this order invites parties to provide relevant information on market and technological developments that bear on these questions, as well as comments on the work done by the Communications Division. To guide filings, this order repeats and refines questions that were contained in the discussions above.

1. The CD Report demonstrates decreasing concentration in broad segments of the communications market, but that the level of market concentration depends on how markets are defined. How should the Commission measure concentration in telecommunications markets? Is there a single best methodology for doing so?
2. Is it possible to measure market concentration in different geographic locales throughout the state? How should we define these geographic locales, and what data on market concentration is available? Are there locales where customer choice is lacking?
3. Has wireless telecommunications become a close substitute for wireline service?
4. Who in California has “cut the cord”? How does the purchase of a ~~landline~~wireline connection vary across California, across income levels, across social groups, and across age groups?
5. The FCC identifies a transition to a data-centric wireless market. Is this transition real? What are the implications of this transition for the Commission’s regulation of wireline and wireless services, if any?
6. Should the Commission re-examine the policy set in D.95-10-032 pertaining to wireless mergers at this time?
7. Are the conclusions contained in the DIVCA Report, Attachment B to this order, concerning the success of the DIVCA program warranted? If so, what are their implications for the success of competition in promoting broadband for the regulation of URF companies?

8. Is there better data available comparing California's broadband infrastructure with that of other states? What does this data indicate?
9. Is their data available concerning whether California's growth in broadband services affects the disparate internet usage across income and social groups, which is sometimes called the digital divide? What does this data indicate?
10. Exactly how fast is VoIP growing in California? Do the growth of VoIP and the availability of voice services over broadband connections have implications for the regulation of wireline telephony?
11. The Communication Division's Affordability Report, Attachment C to this order, documents a decrease in the average monthly bill [for wireline telecommunications service](#) since the adoption of URF of 20% [on an inflation adjusted basis](#). Does this indicate that URF's reliance on market forces to produce reasonable rates remains warranted?
12. Does the decline in [wireline](#) telecommunications bills identified in the Affordability Report hold across income levels? Does it hold across geographic regions? Does it hold across social groups?
13. Both the Communications Division and DRA have identified certain rates [for wireline service](#) that have risen since the adoption of URF. Do these rate changes warrant Commission action at this time? If so, what action?
- [14. Concerning wireline telecommunications service, are rates of "standalone" services a good measure of what consumers actually buy, or would a "representative bundle" or "average bill" offer a better means for the Commission to monitor rates for wireline services.](#)
- [15.](#) ~~14.~~ Now that the average wireless bill is lower than the average ~~landline~~[wireline](#) bill, does wireless provide a market "price cap" on wireline rates? How should this fact affect URF regulation?

16. ~~15.~~ Concerning service quality, how should the Commission measure service quality? Do the G.O. 133-C metrics remain relevant, or should they be replaced with other measures? How should the Commission report service quality to the public?

3.2. Preliminary Schedule

The assigned Commissioner or assigned ALJ will schedule a Prehearing Conference as soon as practicable. The scope, schedule, and other procedural issues will be discussed at the first Prehearing Conference. To facilitate these discussions, parties may file Prehearing Conference Statements addressing the scope and schedule of this proceeding, category, need for hearing, and other procedural issues no later than June ~~10~~17, 2011, and Replies to Prehearing Conference Statements no later than June ~~17~~24, 2011. These statements need not address the substance of the questions asked above; later rulings will schedule the submission of comments and/or testimony.

We leave it to the assigned Commissioner and/or assigned ALJ to establish a schedule that sequences the issues most appropriately. The assigned Commissioner or assigned ALJ may adjust the schedule and refine the scope of the proceeding as needed, consistent with the broad scope as set forth in the Preliminary Scoping Memo and with the requirements of the Rules of Practice and Procedure.

Consistent with Public Utilities Code Section 1701.5, we expect this proceeding to be concluded within 18 months of the date of the Scoping Memo.

4. Category of Proceeding and Need for Hearing

Rule 7.1(d) of the Commission's Rules of Practice and Procedure provides that the Order Instituting Rulemaking "shall preliminarily determine the category and need for hearing..." This rulemaking is preliminarily determined

to be ~~ratesetting~~quasi-legislative, as that term is defined in Rule 1.3(ed). We anticipate that the issues in this proceeding may be resolved through a combination of workshops and filed comments, and that evidentiary hearings will be necessary. Any person who objects to the preliminary categorization of this rulemaking as “~~ratesetting~~quasi-legislative” or to the preliminary hearing determination, shall state the objections in their Prehearing Conference Statements.

The assigned Commissioner will make the final determination of the need for hearing and will make a final category determination in the Scoping Memo; this final determination as to category is subject to appeal as specified in Rule 7.6(a).

5. Service of OIR, Creation of Service List, and Subscription Service

The Commission will serve this OIR on the service lists (appearances, state service list, and information-only category) in the following proceedings:

- R.05-04-005, the Uniform Regulatory Framework rulemaking;
- R.09-06-019, the California High Cost Fund B rulemaking;
- I.93-12-007, the Commission’s Investigation into mobile telephone service and wireless communications; and
- All telephone corporations holding a CPCN or registered with the Commission, as listed in Attachment D

Such service of the OIR does not confer party status in this proceeding upon any person or entity, and does not result in that person or entity being placed on the service list for this proceeding.

The Commission will create an official service list for this proceeding, which will be available at http://docs.cpuc.ca.gov/published/service_lists/sl_index.htm. We anticipate

that the official service list will be posted before the first filing deadline in this proceeding. Before serving documents at any time during this proceeding, parties shall ensure they are using the most up-to-date official service list by checking the Commission's website prior to each service date.

While all telephone corporations may be bound by the outcome of this proceeding, only those who notify us that they wish to be on the service list will be accorded service by others until a final decision is issued.

If you want to participate in the Rulemaking or simply to monitor it, follow the procedures set forth below. To ensure you receive all documents, send your request within 20 days after the OIR is published. The Commission's Process Office will update the official service list on the Commission's website as necessary.

5.1. During the First 20 Days

Within 20 days of the publication of this OIR, any person may ask to be added to the official service list. Send your request to the Process Office. You may use e-mail (Process_Office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102). Include the following information:

- Docket Number of this Rulemaking;
- Name (and party represented, if applicable);
- Postal Address;
- Telephone Number;
- E-mail Address; and
- Desired Status (Party, State Service, or Information Only).⁶⁰

⁶⁰ If you want to file comments or otherwise actively participate, choose "Party" status. If you do not want to actively participate but want to follow events and filings as they

Footnote continued on next page

5.2. After the First 20 Days

If you want to become a party after the first 20 days, you may do so by filing and serving timely comments (including a Prehearing Conference Statement or Reply to Prehearing Conference Statements in the Rulemaking (Rule 1.4(a)(2)), or by making an oral motion at the Prehearing Conference (Rule 1.4(a)(3)), or by filing a motion (Rule 1.4(a)(4)). If you make an oral motion or file a motion, you must also comply with Rule 1.4(b). These rules are in the Commission's Rules of Practice and Procedure, which you can read at the Commission's website.

If you want to be added to the official service list as a non-party (that is, as State Service or Information Only), follow the instructions in Section 5.1 above at any time.

5.3. Updating Information

Once you are on the official service list, you must ensure that the information you have provided is up-to-date. To change your postal address, telephone number, e-mail address, or the name of your representative, send the change to the Process Office by letter or e-mail, and send a copy to everyone on the official service list.

5.4. Serving and Filing Documents

When you serve a document, use the official service list published at the Commission's website as of the date of service. You must comply with Rules 1.9 and 1.10 when you serve a document to be filed with the Commission's Docket Office.

occur, choose "State Service" status if you are an employee of the State of California; otherwise, choose "Information Only" status.

The Commission encourages electronic filing and e-mail service in this Rulemaking. You may find information about electronic filing at <http://www.cpuc.ca.gov/PUC/efiling>. E-mail service is governed by Rule 1.10. If you use e-mail service, you must also provide a paper copy to the assigned Commissioner and ALJ. The electronic copy should be in Microsoft Word or Excel formats to the extent possible. The paper copy should be double-sided. E-mail service of documents must occur no later than 5:00 p.m. on the date that service is scheduled to occur.

If you have questions about the Commission's filing and service procedures, contact the Docket Office.

5.5. Subscription Service

This proceeding can also be monitored by subscribing in order to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

6. Public Advisor

Any person or entity interested in participating in this Rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074, (866) 849-8390, or e-mail public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055, (866) 849-8391, or e-mail public.advisor.la@cpuc.ca.gov. The TYY number is (866) 836-7825.

7. Intervenor Compensation

Any party that expects to claim intervenor compensation for its participation in this Rulemaking shall file its notice of intent to claim intervenor compensation no later than 30 days after the first prehearing conference or

pursuant to a date set forth in a later ruling which may be issued by the assigned Commissioner or assigned ALJ.

8. ***Ex parte* Communications**

Pursuant to Rule 8.2(c), *ex parte* communications will be allowed in this ~~ratesetting~~quasi-legislative proceeding subject to the restrictions in Rule 8.2(~~ca~~) and the reporting requirements in Rule 8.3.

O R D E R

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to evaluate the status of telecommunications competition in California and its implications for regulatory policies.
2. The issues to be considered in this proceeding are set forth in the Preliminary Scoping Memo.
3. The assigned Commissioner or Administrative Law Judge shall schedule a prehearing conference in this rulemaking as soon as practicable.
4. The assigned Commissioner or assigned Administrative Law Judge may adjust the schedule and refine the scope of the proceeding as needed consistent with the broad scope as set forth in the Preliminary Scoping Memo and with the requirements of the Rules of Practice and Procedure.
5. This rulemaking is preliminarily determined to be ~~ratesetting~~quasi-legislative, as that term is defined in Rule 1.3(d). It is preliminarily determined that evidentiary hearings are needed in this proceeding. Any persons objecting to the preliminary categorization of this rulemaking as "~~ratesetting~~quasi-legislative" or to the preliminary determination that evidentiary hearings are ~~not~~

necessary shall state their objections in their Prehearing Comment Statement to be filed no later than June ~~10~~,17, 2011.

6. The Executive Director shall cause this Order Instituting Rulemaking to be served on all telephone corporations, as identified in Attachment D, and on the service lists in Rulemaking (R.) 09-06-019 (the California High Cost Fund B rulemaking) and R.05-04-005 (the Uniform Regulatory Framework rulemaking), and Investigation 93-12-007, the Commission's Investigation into mobile telephone service and wireless communications.

7. Interested persons shall follow the directions in Section 5 of this Order Instituting Rulemaking to become a party or be placed on the official service list.

8. Any party that expects to request intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, no later than 30 days after the first prehearing conference or pursuant to a date set forth in a later ruling which may be issued by the assigned Commissioner or assigned Administrative Law Judge.

This order is effective today.

Dated _____, at San Francisco, California.

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