STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN APPLICATION 11-02-003

This is the proposed decision of Commissioner Catherine J.K. Sandoval. It will not appear on the Commission's agenda sooner than 30 days from 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 pursuant to Rule 1.13 either electronically or in hard copy. 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 Kelly A. Hymes at khy@cpuc.ca.gov and Commissioner Sandoval's advisor William Johnston at wej@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:ms6

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER SANDOVAL**
(Mailed 8/31/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California (U1024C), SureWest Telephone (U1015C), and Verizon California Inc. (U1002C) to Exempt Uniform Regulatory Framework ILECs From General Order 77-M.	Application 11-02-003 (Filed February 2, 2011)

DECISION DENYING APPLICANTS' REQUEST FOR EXEMPTION FROM GENERAL ORDER 77-M

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DECISION DENYING APPLICANTS' REQUEST FOR EXEMPTION FROM GENERAL ORDER 77-M

1. Summary

This decision denies the application of Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California, SureWest Telephone, and Verizon California Inc. requesting the exemption of Uniform Regulatory Framework incumbent local exchange carriers from General Order 77-M. While many of the services provided by these carriers are no longer regulated by the Commission, this decision concludes that the Commission continues to regulate other aspects of these carriers' services and, as such, the Uniform Regulatory Framework incumbent local exchange carriers should continue to provide the annual reports required by General Order 77-M. Furthermore, the Commission has a continuing duty to ensure that rates remain reasonable and affordable and General Order 77-M remains one tool to assist the Commission in fulfilling this duty. This proceeding is closed.

2. Procedural Background

On February 2, 2011, Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California, SureWest Telephone, and Verizon California, Inc. (jointly, the Applicants) filed Application (A.) 11-02-003 requesting the exemption of Uniform Regulatory Framework (URF) incumbent local exchange carriers (ILECs) from General Order (GO) 77-M. GO 77-M requires the disclosure of utility executive compensation, and payments to dues, donations, subscriptions, and contributions directly or indirectly paid by each

utility.[1]

On March 10, 2011, the Greenlining Institute and The Utility Reform Network (Joint Protestants) timely filed a protest and Pacific Bell Telephone Company d/b/a AT&T California (AT&T) filed a response. On April 19, 2011, the assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC) to determine parties, scope, schedules, and other procedural matters. During the PHC, the assigned ALJ granted an oral motion by the Division of Ratepayer Advocates (DRA) to become a party to this proceeding. On April 29, 2011, the assigned Commissioner and ALJ jointly issued a Ruling and Scoping Memo (Scoping Memo) that set the scope and schedule for the proceeding.

As a preliminary matter, the assigned Commissioner and ALJ requested parties to file comments to the following question: "If the Commission moves forward with a study to assess the level of competition in the telecommunications industry in California, what impact (if any) would proceeding with such a study have on the A.11-02-003 proceeding?"[2] Parties filed comments to this question on June 1, 2011. On June 27, 2011, the assigned ALJ sent all parties an e-mail informing them that A.11-02-003 would be held in abeyance until the Commission re-issued the rulemaking for the Telecommunications Competition Study,[3] and that the current briefing schedule

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[1] GO 77 was first established by the Commission in 1927 and amended over the years, most recently in 1986 (GO 77-K), 2003 (GO 77-L), and 2006 (GO 77-M).

[2] Scoping Memo at 5.

[3] An Order Instituting Rulemaking (OIR) to determine whether the Commission should review URF policies was on the Commission business meeting agenda for May 26, 2011, June 9, 2011, and June 23, 2011. In the September 15, 2011 ACR holding this proceeding

Footnote continued on next page

in A.11-02-003 would be suspended until further notice. The assigned ALJ explained that the assigned Commissioner would be issuing a future Assigned Commissioner Ruling (ACR) memorializing the directives from the e-mail. The assigned Commissioner issued an ACR on September 15, 2011, holding the proceeding in abeyance and suspending the briefing schedule.

On May 4, 2012, the assigned Commissioner issued an ACR reopening A.11-02-003,[4] and rescheduling briefs for the proceeding. Parties filed Opening Briefs on May 23, 2012, and reply briefs on June 6, 2012.

3. Issues before the Commission

Both the April 29, 2011, Scoping Memo and the May 4, 2012, ACR listed the following questions to be answered in this proceeding:

1. What is the historical purpose and intent of GO 77-M?
2. Is compliance with GO 77-M by the URF ILECs appropriate or necessary given the lifting of the basic rate caps on January 1, 2011?
3. Is compliance with GO 77-M appropriate or necessary by the URF ILECs in terms of the California LifeLine rates or California High Cost Fund-B (CHCF-B) subsidies?
4. Is compliance with GO 77-M by the URF ILECs appropriate or necessary in order to prevent or monitor cross-subsidization, including the cross-subsidization prohibited by the Digital Infrastructure and Video

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in abeyance, the assigned Commissioner noted that the proposed OIR had been temporarily withdrawn until the Commission could refocus its resources on this effort.

[4] The ACR stated that a study regarding the status of telecommunications competition in California had been anticipated but no OIR on competition had been issued. The ACR explained that a competition study may have proven valuable to resolving the issues in this proceeding.

Competition Act of 2006 (DIVCA), or are there other adequate safeguards in place?

5. Should the Commission continue to require compliance with GO 77-M to promote transparency? Are other sources adequate and readily available for public and regulatory review?
6. Is the continued required compliance with GO 77-M by the URF ILECs consistent with the call "for regulators to adopt…competitively neutral policies" as discussed in the decision approving the URF?
7. Are there any other regulatory reasons the Commission should continue to require compliance with GO 77-M by the URF ILECs?
8. Is the maintenance or elimination of the GO 77-M reporting by the URF ILECs in the public interest?
9. Should the current requirements of GO 77-M be refined?

4. Party Positions

4.1. Applicants' Position

The Applicants request that the Commission exempt URF ILECs from the provisions of GO 77-M on the basis that the information required in the reports is no longer needed by the Commission in its regulation of these carriers. The Applicants explain that with the adoption of URF in 2006 and the subsequent removal in 2011 of all local telephone service rate caps, URF ILECs no longer require Commission approval to change the vast majority of prices for retail services. Further, the Applicants contend that the Commission has exempted other classes of utilities from GO 77-M on the grounds that the Commission no longer exercised rate-regulation responsibilities over them. Thus, the Applicants conclude that the Commission should also exempt the URF ILECs from GO 77-M.

4.2. AT&T's Position

In its filed response, AT&T fully supports the Applicants' position that the Commission should exempt URF ILECs from GO 77-M contending that the information required by that order is no longer needed by the Commission in its regulation of URF ILECs. AT&T argues that the Commission intended to use GO 77-M in the rate-setting process and because the Commission no longer regulates the rates of URF ILECs, "requiring URF ILECs to continue to file G.O. 77-M data is unnecessary and serves no useful regulatory purpose."[5]

4.3. Joint Protestants' Position

In its protest, the Joint Protestants oppose the application to exempt URF ILECs from GO 77-M on the basis of three arguments. First, the Joint Protestants contend that the Commission deregulation of rates does not mean that the Commission has eliminated all regulation of these carriers. Secondly, in order for the Commission to monitor and prevent cross-subsidization prohibited by DIVCA, the Joint Protestants urge that the Commission must continue to require compliance with GO 77-M. Finally, aside from its rate-setting functions, the Joint Protestants argue that GO 77-M has other uses such as establishing transparency of utility-funded entities.

4.4. DRA's Position

DRA opposes the application to exempt URF ILECs from GO 77-M, explaining that the Commission retains regulatory jurisdiction over URF ILEC rates and has a duty and obligation to ensure they are "just and reasonable." DRA referenced the aforementioned proposed rulemaking on

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[5] AT&T Response at 2.

telecommunications competition stating that until the Commission examines the state of telecommunications competition in California, it should not grant the requested exemption. DRA noted that the information contained in GO 77-M reports is useful to the Commission in carrying out other statutory obligations.

5. Discussion

5.1. Historical Purpose and Intent of GO 77-M

Parties were asked to provide the Commission with the historical purpose and intent of GO 77-M. While the Commission agrees with all parties that the "primary" purpose of GO 77-M is to assist the Commission in setting utilities' rates, we also agree with DRA and the Joint Parties that the Commission has never said this is the sole purpose of GO 77-M and that, indeed, its purposes go beyond that of cost-of-service or rate-of-return ratemaking.

The Applicants and AT&T both state that in Decision (D.) 96-07-052[6] the Commission depicts a "clear and direct relationship between the expenses claimed by a regulated utility and the rates which are allowed to be charged for the provision of utility service."[7] Furthermore, the Applicants point out that D.96-07-052 concludes that the reporting requirements of GO 77 have "historically been grounded in the rate-setting process with the purpose of

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[6] D.96-07-052 granted then the Greenlining Institute/Latino Issues Forum's petition for rulemaking to amend GO 77-K to increase the compensation levels that trigger reporting under GO 77-K for utilities with operating revenues of $ 1 billion. Additionally, that rulemaking considered exempting Competitive Local Exchange Carriers (CLECs) and Non-dominant Interexchange Carriers (NDIECs) from the provisions of GO 77-K.

[7] Joint Parties Opening Brief at 5; AT&T Opening brief at 5.

evaluating whether the expenses claimed by a cost of service regulated utility should be recovered from ratepayers through Commission-authorized rates."[8]

Neither DRA nor the Joint Protestants dispute the above statements. However, DRA argues that the purpose and intent of the GO 77-M "remains embedded in the Commission's duties to ensure rates are just and reasonable pursuant to Public Utilities Code Section 451."[9] The Joint Protestants agree, citing D.99-12-006 where the Commission, arguing against exemption of then GO 77-K for privacy concerns, stated that ratepayers have a right to know the costs and salaries of utility officers and employees and whether they are comparable to others in the industry.[10] In that same decision, the Commission also stated that ratepayers "have a right to know whether the utility is engaging in "cross-subsidization." [11, 12]

We agree with the deduction of DRA and the Joint Protestants that the information in GO 77-M can provide information leading to resolution of the

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[8] Joint Parties Opening Brief at 5.

[9] DRA Opening Brief at 3.

[10] Joint Protestants Opening Brief at 2 citing D.99-12-006, at 26-27, which cites D.99-02-007.

[11] *Ibid*.

[12] In its Reply Brief, the Applicants question the validity of this citation given that it has been superseded by two decisions that reversed D.94-02-007. The Commission initially ruled in D.94-02-007, that the names of the officers should be public but in D.04-08-055 and D.05-04-030 concluded that the names did not need to be made public. However, that reversal did not change the fact that the focus of the statement in question was that ratepayers have the right to know salary and expense amounts, whether those amounts are aligned with similar industries, and whether there was any potential cross-subsidization. The statement in question was not reversed by the Commission.

questions of salary comparability and cross-subsidization, which can, in turn, assist the Commission in ensuring reasonable rates.

5.2. Present Appropriateness and Necessity of GO 77-M

5.2.1. Relationship of GO 77-M and Rate Deregulation

Parties were asked whether continued compliance with GO 77-M is necessary given that the Commission authorized the elimination of the basic rate cap as of January 1, 2011. We agree with DRA and the Joint Protestants that despite the elimination of the basic rate caps, continued compliance with GO 77-M is necessary because of the Commission's continued duty, pursuant to the Public Utilities Code, to ensure just and reasonable rates.[13]

Calling the GO 77-M reports a "relic of the rate-of-return paradigm," [14] the Applicants contend that the URF ILECs should be exempted from GO 77-M given that the Commission "no longer exercise[s] rate-regulation responsibilities over the [URF ILECs]."[15] AT&T goes a step further and contends that GO 77-M "was obsolete long before the basic service rate caps were lifted."[16] AT&T states that the lifting of the basic rate caps "was the final step in the discontinuation of rate-regulation for virtually all of the URF ILEC's retail services."[17] In its reply brief, AT&T explains that the Commission has authorized the URF ILECs full

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[13] DRA Opening brief at 7; Joint Protestants Opening Brief at 4-6.

[14] Applicants Opening Brief at 7.

[15] Applicants Opening Brief at 2.

[16] AT&T Opening Brief at 6.

[17] *Ibid*.

pricing flexibility with the lifting of the basic rate cap and thus "GO 77-M is not needed to ensure just and reasonable rates."[18]

While AT&T concludes that "there is no nexus between GO 77-M reports and ensuring just and reasonable rates for URF ILECs,"[19] both DRA and the Joint Protestants disagree. Pointing to the URF Decision, DRA states that despite the Commission choosing to rely on competition instead of rate-regulation rules, the Commission understood that it simultaneously had the duty to ensure that rates remain affordable.[20] Joint Protestants assert that the elimination of rate-regulation does not mean that the Commission cannot require that URF ILECs provide information "the Commission may deem necessary to meet its statutory responsibilities."[21]

We agree with DRA and the Joint Protestants that despite the lifting of basic rate caps or the elimination of rate-regulation, GO 77-M remains valuable in its ability to assist the Commission in its duty to ensure reasonable rates. We point to the aforementioned URF decision that set the URF ILECs on the path to rate-deregulation. In that decision, the Commission concludes that "the basic residential service in California should remain affordable."[22] Further, "the Commission retains the authority and firm resolve, should it see evidence of market power abuses, to reopen this proceeding and promptly investigate any

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[18] AT&T Reply Brief at 3.

[19] *Ibid.*

[20] DRA Opening Brief at 5-6.

[21] Joint Protestants Reply Brief at 4.

[22] D.06-08-030 at Conclusion of Law 31.

such abuses."[23] Trends in the data provided by GO 77-M, such as increases in salaries, could provide such evidence and prompt an investigation. Thus, we find that the nexus between GO 77-M and ensuring reasonable rates is the relation of compensation and corporate contributions to prices in a competitive environment; and tracking compensation and corporate contributions is one tool the Commission may use to assess the relation of competition to just and reasonable rates for consumers.

5.2.2. Relationship of GO 77-M and Public Purpose Programs

Parties were asked whether continued compliance with GO 77-M is necessary given that URF ILECs receive subsidies for the California LifeLine, and California High Cost Fund B (CHCF-B) programs. We find that carriers receiving subsidies from any public purpose program should be held to a different level of scrutiny from those carriers that do not receive such subsidies.

We reiterate our disagreement with the Joint Applicants and AT&T that GO 77-M is only relevant in a rate-of-return environment. While we agree with the Applicants and AT&T that GO 77-M does not directly contribute to the actual setting of the LifeLine rate or the CHCF-B rates,[24] we also agree with DRA and the Joint Protestants that because the URF ILECs are also Carriers of Last Resort that benefit from LifeLine and CHCF-B subsidies, they should be held to a different level of regulation.[25] The Commission similarly sets a different level of

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[23] *Id.* at Conclusion of Law 32.

[24] Applicants Opening Brief at 7-9, AT&T Opening Brief at 8-10.

[25] DRA Opening Brief at 7, Joint Protestants Opening Brief at 4-6.

regulation for the URF ILECs in its requirement to participate in the LifeLine[26] and CHCF-B[27] programs.

We find that compliance by URF ILECs with GO 77-M is necessary given the continuing draw by URF ILECs on LifeLine and CHCF-B subsidies.

5.2.3. Relationship of GO 77-M and Cross-Subsidization

Parties were asked whether continued compliance with GO 77-M is necessary to prevent cross-subsidization. We agree with the Applicants and AT&T that for the most part cross-subsidization is no longer an issue of concern because the Commission authorized detariffing for the URF ILECs. As noted by AT&T, prior to authorizing detariffing for any carrier, Public Utilities Code Section 495.7(d) requires the Commission to ensure that the carrier is not participating in improper cross-subsidization in connection with the services for which detariffing is requested.[28]

However, as pointed out by the Joint Protestants, the Commission's 2010 DIVCA report noted that the "rate freeze on basis service imposed by DIVCA until December 31, 2009 and then extended by Commission order until December 31, 2010 'has served to protect against cross-subsidization.'"[29] With

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[26] Pursuant to GO 153, effective December 31, 2011, Rule 1.3 requires that participation in LifeLine by Non-Traditional Providers (wireless, VoIP, etc.) is optional.

[27] In D.07-09-020, the Interim Decision on CHCF-B, the Commission required that as a basis to receive B-Fund support after full pricing flexibility takes effect, a Carrier of Last Resort must certify annually that it is not charging rates for basic service in excess of the benchmark levels that were established therein.

[28] AT&T Opening Brief at 11.

[29] Joint Protestants Opening Brief at 7 quoting the CPUC Communications Division Fourth Annual Report for the Year Ending December 31, 2010 to the Governor and the Legislature, published May 4, 2012 at 39.

the lifting of the rate freeze on January 1, 2011, Joint Protestants plead that "it is incumbent upon the Commission to utilize every tool in its toolkit to assure that increases in the basic service rates are not being used by carriers to cross-subsidize their video deployment and service offering."[30] As we have previously found that the monitoring of cross-subsidization is one of the intents of GO 77-M, we agree with Joint Protestants that there is a necessity for continued reliance on GO 77-M to monitor for cross-subsidization as it relates to video services.

5.2.4. Relationship of GO 77-M and Transparency

Parties were asked whether continued compliance with GO 77-M is necessary to promote transparency. We did not find the arguments provided by either side to be convincing.

The Applicants contend the purpose for which GO 77-M requires information about utility donations and contributions is not to promote transparency, but rather to prevent ratepayers from paying for these contributions through rates or fees.[31] AT&T reiterates that the (seemingly, sole) "purpose of GO 77-M is to provide information useful to the Commission in setting the rates of public utilities."[32] DRA disagrees with the Applicants, stating that "[T]ransparency is a critical component to ratemaking."[33] Joint Protestants argue that GO 77-M provides transparency for other matters, including whether rates are just and reasonable.

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[30] *Id* at 7.

[31] Applicant Opening Brief at 13.

[32] AT&T Opening Brief at 13.

The Applicants and AT&T focus their arguments on whether transparency is the intent of GO 77-M. In fact, the question asked in this proceeding is whether compliance is necessary to promote transparency, as transparency is generally promoted by the Commission, and valued in and of itself. However, none of the parties provide any convincing facts that lead the Commission to a determination of whether GO 77-M is necessary to promote transparency.

5.2.5. Relationship of GO 77-M and Competitive Neutrality

Parties were asked whether continued compliance with GO 77-M is consistent with the Commission's policy of competitive neutrality. We disagree with the Applicants' and AT&T's view that the continued required compliance with GO 77-M is at odds with the Commission's policy of competitive neutrality. We agree with DRA and Joint Protestants that the Commission has at times acted to promote consumer protection despite its competitive neutrality policy.

Both the Applicants and AT&T argue that continued requirement of compliance with GO 77-M is inconsistent with the Commission's policy on competitive neutrality.[34] AT&T states that in the URF Decision, the Commission applied its policy of competitive neutrality by eliminating "outdated and unnecessary regulatory rules and regulations."[35] AT&T, citing D.06-08-030 at Conclusion of Law 61, indicated that the Commission announced its determination to end all vestiges of rate-of-return regulation.[36] Furthermore, the Applicants state that not only is this a vestige of rate-of-return regulation, but

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[33] DRA Opening Brief at 8.

[34] Applicants Opening Brief at 16, AT&T Opening Brief at 13.

[35] AT&T Opening Brief at 14.

that the requirement to comply with GO 77-M is asymmetric in that only URF ILECs must file these reports in the telecommunications industry.[37]

Neither DRA nor the Joint Protestants dispute that the Commission has instituted a policy of competitive neutrality. However, DRA points out that the Commission recognized in the URF Decision that a competitive neutrality policy must also meet the societal policies embodied in Public Utilities Code §709 where the Legislature found, in part, that telecommunications policies promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct, and encourage fair treatment of consumers through sufficient information and reasonable service quality standards.[38]

As an example of this balance between competitive neutrality and these societal policies, DRA notes that URF ILECs, but not wireless companies, must still comply with GO 168.[39] In the decision adopting GO 168, the Commission found that "some laws and regulations are applicable only to providers of basic service"[40] and that "regulations applicable to providers of basic service are not necessarily applicable to providers of wireless service."[41] As another example of asymmetric regulations, Joint Protestants cite the regulation of the LifeLine

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[36] *Ibid*.

[37] Applicants Opening Brief at 16.

[38] DRA Opening Brief at 10-11 citing D.06-08-040 at 31-32.

[39] DRA Opening Brief at 11.

[40] D.06-03-013 at Finding of Fact 20.

[41] *Id.* at Finding of Fact 21.

program whereby URF Carriers of Last Resort must annually file their basic service rates.[42]

5.2.6. Relationship of GO 77-M and Other Regulatory Issues

Parties were asked whether there are any other regulatory reasons the Commission should continue to require compliance with GO 77-M. We find no other regulatory policies that require or negate continued compliance with GO 77-M.

DRA, with the support of Joint Protestants, recommends two other regulatory issues where the information in GO 77-M could be used. First, DRA suggests that the information could be used to compare URF ILEC executive compensation data to that of the Small LECs in their General Rate Cases. DRA also suggests that the information could be used in setting intervenor compensation rates. We find insufficient information in the record to either agree or disagree with DRA's recommendation.

5.2.7. Relationship of GO 77-M and Public Interest

Parties were asked whether continued compliance with GO 77-M is in the public interest. We find that continued compliance with GO 77-M is in the public interest.

While we agree with the Applicants that elimination of unnecessary regulations should promote efficiency and prevent waste,[43] we refer to our previous discussion on balancing policies. Commission policies should not be

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[42] Joint Protestants Opening Brief at 5

[43] Applicants Opening Brief at 18.

viewed or reviewed in a vacuum but rather balanced alongside each other to provide benefits for all. In this case, the policy of competitive neutrality and the elimination of unnecessary regulation should be balanced with the societal policies listed in Public Utilities Code Section 709.

5.3. GO 77-M Refinements

Parties were asked whether the current requirements of GO 77-M should be refined and what those refinements should be. We see value in updating GO 77-M in a very narrow manner. Given that the last revision to GO 77-M occurred approximately 10 years ago, the reporting thresholds may not be appropriate for 2012. We also find a need for a more precise definition of the term "compensation." Because GO 77-M is applicable to many other utilities, we direct staff to develop an OIR to review GO 77-M on a narrow basis, specifically, the reporting thresholds for salaries and a definition of compensation.

5.4. Comparison of this Exemption Request with Past Exemptions

The Applicants and AT&T reference several instances where the Commission has exempted a utility from the requirements of GO 77-M: D.96-07-052, where the Commission granted Class I railroads an exemption because the intrastate carriage rate making function, formerly performed by the Commission, has been transferred to the federal government;[44] D.98-09-024, where the Commission exempted Commercial Mobile Radio Service (CMRS) providers because its authority to regulate CMRS rates had been preempted by

[44] AT&T Opening Brief at 3-4.

the Omnibus Budget Reconciliation Act of 1993;[45] D.00-12-030, where the Commission exempted Wild Goose Storage Inc. because it "operates under a regime of market-based rates, rather than traditional cost-based rates;"[46] and D.04-08-055, where the Commission exempted CLECs and NDIECs because both are not rate regulated by the Commission.[47] AT&T, with agreement by the Applicants, argues that these four instances prove that the Commission should exempt the URF ILECs from compliance with GO 77-M.

We agree that in all four examples of exemption from GO 77-M, to which AT&T cites, the Commission granted exemption based on the fact that either the Commission was preempted from setting rates or chose to no longer regulate the rates of the utility being exempted. However, in D. 98-09-024, the Commission stated that "unless there is some other justification for requiring CMRS providers to comply with GO 77-K, we should exempt CMRS providers from having to comply."[48] As detailed throughout this decision, we have found such justification to continue to require URF ILEC compliance with GO 77-M. We further note D.98-09-024 also states that the order does not imply that "CMRS providers shall never have to submit the information required by these General Orders. We may still require CMRS providers to report some or all of the information required by these General Orders if the need arises."[49]

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[45] AT&T Opening Brief at 4.

[46] *Ibid*.

[47] AT&T Opening Brief at 5.

[48] D.98-09-024 at 4.

[49] *Id.* at 5.

6. Conclusion

For the reasons stated above, we deny the Applicants' request to be exempt from GO 77-M. All URF ILECs should continue to provide the required information in the annual report. Commission Staff is directed to develop an OIR to review the reporting requirements threshold for GO 77-M, and to establish a definition of compensation. This proceeding is closed.

7. Comments on Proposed Decision

The proposed decision of the ALJ 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 _____.

8. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Commission has never said that setting utilities' rates is the sole purpose of GO 77-M.
2. The purpose of GO 77-M goes beyond that of cost-of-service or rate-of-return ratemaking.
3. The information provided by utilities in GO 77-M can provide information leading to the resolution of questions regarding utility salary comparability and cross-subsidization, which can assist the Commission in assuring reasonable rates.
4. Continued compliance with GO 77-M by the URF ILECS is necessary for the Commission to ensure just and reasonable rates.

5. GO 77-M remains valuable in its ability to assist the Commission in its statutory duty to ensure reasonable rates.

6. The nexus between GO 77-M and ensuring reasonable rates is the relation of compensation and corporate contributions to prices in a competitive environment.

7. Tracking compensation and corporate contributions is one tool the Commission may use to assess the relation of competition to just and reasonable rates for consumers.

8. GO 77-M does not directly contribute to the actual setting of the LifeLine or the CHCF-B program rates.

9. Carriers of Last Resort benefit from LifeLine and CHCF-B subsidies and should be held to a different level of regulation.

10. Continued reliance on GO 77-M is necessary to monitor for cross-subsidization as it relates to video services.

11. The continued required compliance with GO 77-M is not at odds with the Commission's policy of competitive neutrality.

12. The Commission has acted, at times, to promote consumer protection despite its competitive neutrality policy.

13. There is insufficient information in the record of this proceeding to recommend that the data in GO 77-M be used in Small LECs general rate cases or in the setting of intervenor compensation rates.

14. Continued compliance with GO 77-M is in the public interest.

15. Commission policies should not be viewed or reviewed in a vacuum, but rather balanced alongside each other.

16. There is value in reviewing the requirements of GO 77-M in a narrow manner.

17. The last revision to GO 77-M occurred approximately ten years ago.

18. The reporting thresholds listed in GO 77-M may not be appropriate for 2012.

19. There is a need for a more precise definition of the term, "compensation."

20. There are several examples of justification to require URF ILEC compliance with GO 77-M.

Conclusions of Law

1. Applicants should not be exempt from the requirements of GO 77-M.

2. All URF ILECs should continue to comply with the requirements of GO 77-M.

3. Commission staff should develop an OIR to review the reporting requirements threshold for GO 77-M and to establish a definition of compensation.

O R D E R

IT IS ORDERED that:

1. The request by Citizens Telecommunications Company of California Inc. doing business as Frontier Communications of California, SureWest Telephone, and Verizon California Inc. for the exemption of Uniform Regulatory Framework incumbent local exchange carriers from General Order 77-M is denied.

2. All Uniform Regulatory Framework Incumbent Local Exchange Service Providers (namely, Pacific Bell Telephone Company doing business as AT&T California, Citizens Telecommunications Company of California Inc. doing business as Frontier Communications of California, SureWest Telephone, and

Verizon California Inc.) shall continue to comply with the annual reporting as required in General Order 77-M.

3. Commission Staff are directed to develop an Order Instituting Rulemaking to review two narrow aspects of General Order 77-M: the reporting requirements threshold and the definition of compensation.

4. Application 11-02-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.