**Date Of Issuance**
**October 20, 2014**

Decision 14-10-050 October 16, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Order Instituting Rulemaking to establish rules governing the transfer of customers from competitive local carriers exiting the local telecommunications market. | Rulemaking 03-06-020 (Filed June 19, 2003) |

# ORDER DENYING REHEARING OF DECISION 13-07-002

## I. INTRODUCTION

In this decision, we deny rehearing of Decision (D.)13-07-002 (or "Decision").[1] In D.13-07-002, we modified D.10-07-024,[2] in which we established rules to ensure a smooth transition for customers of telecommunications carriers that must exit the market and set forth guidelines for situations in which a wholesale service provider (either an Incumbent Local Exchange Carrier ("ILEC") or Competitive Local Exchange Carrier ("CLEC")) terminates service to a customer CLEC. In D.13-07-002, we concluded that forced disconnections would conflict with Public Utilities Code section 558,[3] and modified the involuntary exit rules to clarify that a wholesale provider shall not cease providing telecommunications service during an ongoing dispute with a customer carrier over intercarrier compensation.

[1] All citations to Commission decisions after 2000 are to the official pdf versions available on the Commission's website at http://docs.ca.gov/DecisionsSearchForm.aspx unless otherwise specified.

[2] *Order Instituting Rulemaking to Establish Rules Governing the Transfer of Customers from Competitive Local Carriers Exiting the Local Telecommunications Market, Decision Adopting Guidelines for CLEC Involuntary Exits and Principles and Procedures for CLEC End-User Migrations and Modifying the Mass Migration Guidelines* [D.10-07-024] (2010) 2010 Cal. PUC LEXIS 288.

[3] Subsequent section references are to the Public Utilities Code, unless otherwise specified.

We have reviewed each and every allegation raised in AT&T's application for rehearing, and we are of the opinion that the application for rehearing fails to demonstrate any legal error. Accordingly, rehearing of D.13-07-002 is denied.

## II. FACTUAL BACKGROUND

In D.10-07-024, we established rules to ensure a smooth transition for customers of telecommunications carriers that experience serious operational or financial difficulties and must exit the market. In Attachment 1 to D.10-07-024, we set forth guidelines for involuntary market exits, *i.e.*, situations in which a wholesale service provider (either an ILEC or a CLEC) terminates service to a customer CLEC.

Following an interconnection charge billing dispute with an ILEC, O1 Communications, Inc. ("01," a CLEC) filed a petition for modification of D.10-07-024 ("Petition"). O1 asked the Commission to clarify that the involuntary exit guidelines set forth in D.10-07-024 were not intended to override existing law – specifically section 558 -- that precludes carriers from disconnecting one another for nonpayment of disputed intercarrier compensation. In D.13-07-002, we agreed that such forced disconnections would conflict with section 558, and modified the involuntary exit rules to clarify that a wholesale provider shall not cease providing telecommunications service during an ongoing dispute with a customer carrier over intercarrier compensation.

AT&T filed a timely rehearing application of the Decision. The rehearing application alleges that the Decision is unlawful and erroneous because the changes to the involuntary exit guidelines are likely to cause disputes, create the risk of conflict with carriers' interconnection agreements ("ICAs"), need clarification, and/or are duplicative. O1, Level 3 Communications LLC, Cbeyond Communications LLC, and Integra jointly filed a response opposing the rehearing application. Verizon California Inc. filed a response supporting the rehearing application.

## III. DISCUSSION

In its rehearing application, AT&T contends that the Commission erred in granting 01's petition for modification because the rule clarifications (1) are "unnecessary," "likely to cause disputes," or "will lead to unnecessary delays"; (2)

include an "unnecessary" discussion of section 558; (3) are duplicative; (4) create the risk of unlawful conflict with ICAs by (a) impeding disconnection of a customer carrier if the ICA provides for disconnection and (b) requiring the customer carrier to notify its customers of possible termination only when Commission staff determines disconnection is not based on disputed charges, if that requirement is not in the ICA; and (5) could be read to mean that the involuntary exit process applies when no retail end users are affected. Arguments 1-3 do nothing more than suggest that the Decision could be written differently (or more "clearly" in AT&T's opinion) and thus fail to assert legal error. As described below, none of the remaining allegations demonstrates legal error.

### A. All telephone corporations in California must comply with Public Utilities Code section 558.

AT&T contends that our modification of the involuntary exit guidelines could hinder or delay disconnection of customer carriers and thus potentially conflict with ICAs providing for such disconnection. AT&T further asserts that the modified rule requiring the customer carrier to notify its customers of possible termination only when Commission staff determines disconnection is not based on disputed charges could potentially conflict with ICAs that do not contain that requirement. AT&T already made these arguments in its opposition to the Petition, and they fail again here. (D.13-07-002 at p. 6.)

In the Decision, we correctly recognized that the guidelines at that time conflicted with section 558. Section 558 states that "[e]very telephone corporation operating in this State shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other such corporation with whose line a physical connection has been made." Thus, section 558 sets out the fundamental principle of interconnection: each carrier operating in California must transmit and route the calls of all other carriers connected to its network. (D.13-07-002 at pp. 7-8.) Without interconnection, the telephone system cannot function. As we have previously stated, "[i]n Section 558. . . the California Legislature codified a vital public policy to assure the

telecommunications network of the State is not hindered or obstructed." (D.98-02-043, 78 Cal.P.U.C.2d 492, 495.)[4]

Accepting AT&T's argument would have the effect of impeding interconnection and thus nullifying section 558. As a matter of public policy, carriers cannot contract around the duty of interconnection. If carriers could do so, then they would "be allowed to disconnect from or disrupt the telephone network at will, whenever and for whatever period of time each desires. . . ." (*Id.* at 494. See also D.13-07-002 at pp. 7-8.) In other words, AT&T in essence contends that wholesale providers "have the right to contravene public policy and still remain part of the network as public utilities certificated to provide telecommunications services to the people of the State." (D.98-02-043, 78 Cal.P.U.C.2d at 495.) We have called this an "absurd" argument, and it remains so here. (*Id.* at 494.)[5]

In addition, we recognized in D.13-07-002 that the wholesale service provider/customer CLEC ICAs contained processes for disconnection due to nonpayment of charges. We noted that "[t]he involuntary exit rules require that carriers follow the contractual process to which they agreed for addressing non-payment of charges…." (D.13-07-002 at p. 9.) The new language added to the guidelines states that the rules "do not provide an independent process for a telecommunications carrier to discontinue service to another carrier. . . ." (D.13-07-002, Appendix at p. 1.).

### B. The Decision properly recognized that section 558 applies to all instances of interconnection, regardless of who is affected by service disconnection.

According to AT&T, the Commission should further change the rules to clarify that the involuntary exit process applies only when retail end users are affected.

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[4] *Re Competition for Local Exchange Service* [D.98-02-043] (1998) 78 Cal.P.U.C.2d 492.

[5] Similarly, under the federal regime, section 251(a)(1) of the Telecommunications Act of 1996 ("the 1996 Act") imposes the duty on all carriers to interconnect with the facilities and equipment of other carriers. (47 U.S.C. §§ 251(a)(1).) While section 252(a) of the 1996 Act states that parties to ICAs may

*(footnote continued on next page)*

AT&T believes that the rules, as modified, could be read to mean that the involuntary exit process applies when no retail end users are affected, and that this constitutes legal error.

The Commission has the discretion to craft the guidelines as it sees fit, consistent with existing law. The original rules contained a notification requirement pursuant to which the wholesale provider must notify the Communications Division of the service termination, but only where the CLEC's end users' service would be interrupted. Although the rules do not explicitly say so, there could be situations where non-end users are affected and they are notified of the disconnection via a different notification requirement in the tariff or ICA. In either situation, D.10-07-024 and the original rules therein failed to take into account section 558. Section 558 applies to all instances of interconnection, regardless of who might be affected by disconnection. In D.13-07-002, we properly modified the rules to make them consistent with section 558.

## IV. CONCLUSION

For the reasons stated above, we deny AT&T's application for rehearing of D.13-07-002.

Therefore, **IT IS ORDERED** that:

1. Rehearing of D.13-07-002 is denied.

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*(footnote continued from previous page)*

contract around the requirements of sections 251(b) and (c), it does not allow carriers to contract around their vital and fundamental section 251(a) duty of interconnection.

2. Rulemaking (R.) 03-06-020 is hereby closed.

This order is effective today.

Dated October 16, 2014, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
MICHAEL PICKER
Commissioners