

Decision 12-06-024 June 21, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Review Policies
Concerning Intrastate Carrier Access Charges.

Rulemaking 03-08-018
(Filed August 21, 2003)

**DECISION MODIFYING INTRASTATE ACCESS CHARGES CONSISTENT
WITH FEDERAL COMMUNICATIONS COMMISSION ACTIONS**

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DECISION MODIFYING INTRASTATE ACCESS CHARGES CONSISTENT WITH FEDERAL COMMUNICATIONS COMMISSION ACTIONS

1. Summary

On our own motion, after the requisite notice and opportunity to be heard, we modify two decisions issued by the Commission in this rulemaking, namely Decision (D.) 06-04-071 “Interim Opinion Modifying Intrastate Access Charges” and D.07-12-020, the Commission’s “Final Opinion Modifying Intrastate Access Charges.” The modifications to these two decisions are consistent with the Federal Communications Commission’s (FCC) recent Universal Service Fund and Intercarrier Compensation Transformation Order,¹ and modifications/clarifications thereto, regarding default non-access reciprocal compensation and default intrastate access rates for terminating switched access and certain transport elements. Pursuant to Pub. Util. Code § 1708, the assigned Commissioner issued a Ruling on April 24, 2012 that provided parties the opportunity to provide comments on the proposed implementation of the FCC’s actions.² We ratify the assigned Commissioner’s Ruling by this decision.

¹ *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, rel. Nov. 18, 2011 (Order).

² The Assigned Commissioner’s Ruling (ACR) was served on the service list to this Rulemaking and on Incumbent Local Exchange Carriers and Competitive Local Exchange Carriers operating in the State of California. (ACR at 14.)

2. Background

The Federal Communication Commission's (FCC) Universal Service Fund and Intercarrier Compensation Transformation Order (USF/ICC Transformation Order or simply "Order") was released on November 18, 2011. The Order "comprehensively reforms and modernizes the universal service and intercarrier compensation (ICC) systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation."³ The FCC's Order is quite technical, as is this decision. In Appendix D, we set forth the FCC's definitions of various terms used throughout this decision.

In the Order, the FCC adopted a uniform national "bill and keep" framework as the ultimate end state for all telecommunications traffic exchanged with a local exchange carrier (LEC).⁴ The term "bill and keep" refers to a pricing methodology where interconnecting carriers agree to terminate calls at no charge, i.e., each carrier covers its own costs for termination.⁵ In taking this approach, the FCC rejected "the notion that only the calling party benefits from a call and therefore should bear the entire cost of originating, transporting, and terminating a call."⁶ As a result, the FCC abandoned the "calling-party-network-pays" model that has dominated ICC regimes and adopted a multi-year transition process to phase out regulated per-minute ICC charges for terminating access.

³ Order at para. 1.

⁴ *Id.* at para. 34.

⁵ *Id.* at paras. 737 and 742.

⁶ *Id.*

The FCC states the rationale for adoption of these changes as follows:

The intercarrier compensation (ICC) system is ... outdated, designed for an era of separate long-distance companies and high per-minute charges, and established long before competition emerged among telephone companies, cable companies, and wireless providers for bundles of local and long distance phone service and other services. Over time, ICC has become riddled with inefficiencies and opportunities for wasteful arbitrage. And the system is eroding rapidly as consumers increasingly shift from traditional telephone service to substitutes including Voice over Internet Protocol (VoIP), wireless, texting, and email. As a result, companies' ICC revenues have become dangerously unstable, impeding investment, while costly disputes and arbitrage schemes have proliferated. The existing system, based on minutes rather than megabytes, is also fundamentally in tension with and a deterrent to deployment of IP networks. The system creates competitive distortions because traditional phone companies receive implicit subsidies from competitors for voice service, while wireless and other companies largely compete without the benefit of such subsidies. Most concerning, the current ICC system is unfair for consumers, with hundreds of millions of Americans paying more on their wireless and long distance bills than they should in the form of hidden, inefficient charges. We need a more incentive-based, market-driven approach that can reduce arbitrage and competitive distortions by phasing down byzantine per-minute and geography-based charges. And we need to provide more certainty and predictability regarding revenues to enable carriers to invest in modern, IP networks.⁷

The end goal of the FCC is to facilitate the transition to all Internet Protocol (IP) networks in order "to ensure that all Americans are served by networks that

⁷ *Id.* at para. 9.

support high-speed Internet access – in addition to basic voice service where they live, work, and travel.”⁸

The FCC’s Order requires all LECs to bring default non-access reciprocal compensation rates and intrastate terminating access rates into parity with interstate terminating access rates in a two-step process by July 1, 2013. During the first phase of the restructuring, the FCC’s formula does not focus on specific rates, but compares certain terminating intrastate revenues resulting from switched demand for FY 2011 to the same demand priced at corresponding interstate rates for the same period. If the intrastate revenues are higher, then the carrier is required to make a reduction in its intrastate switched access rates in 2012. Using the methodology adopted in the transition rules, the reduction in a carrier’s intrastate rates on July 3, 2012, is equal to one-half the difference between the compared revenue levels. Required reductions in terminating intrastate rates, as well as any necessary reductions in default non-access reciprocal compensation rates must be made by July 3, 2012,⁹ using one of the methodologies established by the FCC in the Code of Federal Regulations (CFR), Part 47, specifically, 47 CFR §§ 51.705, 51.711, 51.907, 51.909 and 51.911 and related sections.¹⁰ This requirement affects price cap carriers, rate-of-return carriers, and certain competitive local exchange carriers (CLECs) with intrastate

⁸ *Id.* at para. 4.

⁹ See In the Matter of July 3, 2012 Annual Access Charge Tariff Filings, UCB/Pricing File No. 12-07 (DA 12-482), Rel. March 28, 2012.

¹⁰ On June 5, 2012, under delegated authority, the FCC’s Wireline Competition Bureau (WCB) issued Order DA 12-870, in WC Docket No. 10-90 et al. In this Order, the Bureau clarifies that the required reductions to intrastate switched access rates may be made to the rate level for any intrastate switched access rate so long as the lowered rates produce a reduction in revenues equal to the total reduction required in 2012.

terminating switched end office and transport rates, originating and dedicated transport rates and non-access reciprocal compensation tariffed rates that are above the carrier's interstate access rates. Thereafter, LECs are required to reduce their termination and certain transport rates to bill-and-keep, within six years for price cap carriers and within nine years for rate-of-return carriers (as designated at the Federal level).¹¹ The FCC looks to the individual states to monitor the transition of reciprocal compensation and intrastate switched access rates pursuant to its Order, and to ensure that carriers are complying with the framework of the Order and not shifting costs or otherwise seeking to gain excess recovery.¹²

This Commission has supported the FCC's actions to reform the current ICC regime and to transition access charges and reciprocal compensation to bill and keep.¹³ Accordingly, on April 24, 2012 the assigned Commissioner issued an Assigned Commissioner's Ruling (ACR) that proposed several actions. First, the ACR proposed that the Commission lower access charge caps, thereby

¹¹ Within California, Pacific Bell Telephone Verizon California, Inc. and the three incumbent local exchange carrier (ILEC) affiliates of Frontier Communications Corporation are federal price cap carriers; the remaining ILECs are federal rate-of-return carriers.

¹² Order at para. 35.

¹³ See "Comments of the California Public Utilities Commission And The People Of The State Of California on The Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking," filed April 18, 2011 and February 24, 2012 in *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208.

modifying intrastate access charge rules originally adopted in Decision (D.) 06-04-071 and D.07-12-020. These actions would make the intrastate access charges consistent with the FCC's Order. Second, the ACR requested comment on the proposal that the Commission require LECs (both competitive and incumbent) to file advice letters with revised tariffs and certain required supporting data (set forth in Appendix A of the Ruling) for their intrastate access and non-access reciprocal compensation charges, within 10 days of the issuance of this decision. This action would allow for timely Commission staff review and approval of the advice letters amending these tariffs. Third, the ruling sought comment on a proposal to require LECs to provide supporting information, if requested by other carriers, under a Non-Disclosure Agreement.

Comments were filed by the following carriers: Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California, Frontier Communications West Coast, Inc., and Frontier Communications of the Southwest, Inc. (Frontier), Sprint Nextel (Sprint), Cox California Telcom, L.L.C. dba Cox Communications and Charter Fiberlink CA-CCO, LLC (Cox), jointly by Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company (jointly, Small LECs), Pacific Bell Telephone Company dba AT&T California, AT&T Communications of California, Inc., TCG San Francisco, TCG Los Angeles, Inc., and TCG San Diego (jointly, AT&T), the California Association of Competitive Telecommunications Companies (CALTEL), Verizon, and Comcast Phone of

California, LLC (Comcast). Comcast also filed a motion for party status. Comcast has a direct interest in this proceeding and, for good cause shown, we grant this motion.

**3. Proposed Modifications to
D.06-04-071 and D.07-12-020**

In D.06-04-071 and D.07-12-020, we reduced access charges for ILECs by requiring the removal of non-cost-based elements from intrastate access rates. In D.06-04-071, we eliminated the non-cost-based elements from the access charges assessed by AT&T and Verizon and permitted them to impose a surcharge on local telephone service to recover lost revenues.¹⁴ In D.07-12-020, we ordered all mid-size ILECs to remove the non-cost-based element or its equivalent effective January 1, 2009.¹⁵ We also ordered the expiration of the surcharges authorized by D.06-04-071 for AT&T and Verizon as of January 1, 2009, i.e., the date the rate freeze on basic residential telephone service was to be lifted. In addition, we determined that the small ILECs “shall include in their next regularly scheduled rate case filing a long-term plan for fully implementing our policy requiring intrastate access charges to be based on cost The long-term plan shall extend for no more than two rate case cycles”¹⁶

For CLECs, the Commission ruled that “[e]ffective January 1, 2009, competitive carrier’s intrastate access charges shall be capped at the higher of AT&T’s or Verizon’s intrastate access charges, plus 10%, with each rate element provided also capped at the higher of AT&T’s or Verizon’s comparable intrastate

¹⁴ D.06-04-071 at 1.

¹⁵ D.07-12-020 at 1.

¹⁶ *Id.* at 15.

access charge rate element, plus 10 percent.”¹⁷ Thus, in order to be consistent with the FCC’s objectives, the ACR stated that intrastate terminating access rate levels for all CLECs should now be reduced without any provision for a 10% markup as originally permitted in D.07-12-020.

Parties generally agree that it is appropriate to modify D.06-04-071 but differ on whether modification of D.07-12-020 is required. Cox, in particular, recommends that the Commission not modify the latter decision, because the FCC Order does not require the intrastate access rates of CLECs to match the intrastate access rates of ILECs. Instead, Cox explains that the FCC requires all intrastate switched access rates to reach interstate levels at the second step of the transition period and must reduce their intrastate rate by the 10% mark-up and then calculate the new intrastate terminating and transport charges using the lowered rate. We clarify that the CLECs are to use the intrastate rates in effect as of December 29, 2011 when calculating their new rates. In other words, we clarify that CLECs should implement the FCC Order and modifications thereto based on their existing intrastate and interstate rates in effect as of December 29, 2011.

The Small LECs explain that those Small LECS that receive funding through California High Cost Fund A have already implemented certain changes to their access charges that result in intrastate access rates that are lower than interstate rates. Specifically, the Small LECS note that some carriers are still in the process of implementing D.07-12-020 with full removal of those elements scheduled for completion on May 2014 and state that these companies plan to

¹⁷ *Id.*, at 16. See also Conclusion of Law 7 at 22, and Ordering Paragraph 4 at 24.

eliminate the terminating Network Interconnection Charge (NIC) and the Transport Interconnection Charge (TIC) as part of the first step in the access phase-down on July 1, 2012.¹⁸ However, the proposed modification of D.07-12-020 will not modify the requirement that carriers eliminate the NIC and TIC charges from their rates. Affected carriers must still comply with D.07-12-020.

Frontier states that the proposed modification of the decisions is too rushed and does not allow carriers sufficient time to review the full impact of the proposed modifications. We disagree. Carriers have been on notice since November 18, 2011 that these changes will occur. The chart below identifies the steps in the transition. As discussed in the ACR, we find that it is reasonable to follow the FCC's transition timeline for changes to terminating intrastate access rate elements, originating and terminating dedicated transport, and non-access reciprocal compensation charges, as well as the FCC's rules governing this transition (see Appendix A of the FCC Order and modifications thereto).

¹⁸ Small LECs Comments to ACR at 1-2.

Figure 9: Intercarrier Compensation Reform Timeline (Figure 9 in the FCC Order, footnotes omitted)		
Effective Date	For Price Cap Carriers and CLECs that benchmark access rates to price cap carriers	For Rate-of-Return Carriers and CLECs that benchmark access rates to rate-of-return carriers
Effective Date of the rules	All intercarrier switched access rate elements, including interstate and intrastate originating and terminating rates and reciprocal compensation rates are capped.	All interstate switched access rate elements, including all originating and terminating rates and reciprocal compensation rates are capped. Intrastate terminating rates are also capped.
July 3, 2012	Intrastate terminating switched end office and transport rates, originating and terminating dedicated transport, and reciprocal compensation rates, if above the carrier's interstate access rate, are reduced by 50% of the differential between the rate and the carrier's interstate access rate.	Intrastate terminating switched end office and transport rates, originating and terminating dedicated transport, and reciprocal compensation rates, if above the carrier's interstate access rate, are reduced by 50% of the differential between the rate and the carrier's interstate access rate.
July 1, 2013	Intrastate terminating switched end office and transport rates, originating and terminating dedicated transport rates, and reciprocal compensation, if above the carrier's interstate access rate, are reduced to parity with interstate access rate.	Intrastate terminating switched end office and transport rates, originating and terminating dedicated transport rates, and reciprocal compensation, if above the carrier's interstate access rate, are reduced to parity with interstate access rate.
July 1, 2014	Terminating switched end office and reciprocal compensation rates are reduced by one-third of the differential between end office rates and \$0.0007.*	Terminating switched end office and reciprocal compensation rates are reduced by one-third of the differential between end office rates and \$0.005. *
July 1, 2015	Terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the original differential to \$0.0007.*	Terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the original differential to \$0.005.*
July 1, 2016	Terminating switched end office and reciprocal compensation rates are reduced to \$0.0007.*	Terminating switched end office and reciprocal compensation rates are reduced to \$0.005.*
July 1, 2017	Terminating switched end office and reciprocal compensation rates are reduced to bill-and-keep. Terminating switched end office and transport are reduced to \$0.0007 for all terminating traffic within the tandem serving area when the terminating carrier owns the serving tandem switch.	Terminating end office and reciprocal compensation rates are reduced by one third of the differential between its end office rates (\$0.005) and \$0.0007.*
July 1, 2018	Terminating switched end office and transport are reduced to bill-and-keep for all terminating traffic within the tandem serving area when the terminating carrier owns the serving tandem switch.	Terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the differential between its end office rates as of July 1, 2016 and \$0.0007.*
July 1, 2019		Terminating switched end office and reciprocal compensation rates are reduced to \$0.0007.
July 1, 2020		Terminating switched end office and reciprocal compensation rates are reduced to bill-and-keep.*

Accordingly, after consideration of the FCC's Order, the timeline set forth in that Order, the April 24, 2012 ACR, and comments to the ACR, we now order all ILECs and CLECs operating in California to adopt changes to their intrastate access services and rates consistent with the FCC Order, any subsequent modifications, the relevant FCC rules, as adopted or modified or clarified therein, and the clarifications set forth in this decision.

4. Advice Letters and Supporting Data

In order to facilitate Commission staff monitoring of carrier compliance with the access charge modifications proposed in the ruling, parties provided comment on whether the Commission should require carriers to file Tier 1 Advice Letters and to submit data to the Communications Division on the demand and revenue for each relevant rate element, including such elements as switched access minutes of use (MOU), and the rates broken down into categories and subcategories corresponding to the relevant categories of rates being reduced. Specifically, the ruling proposed that all ILECs and CLECs file Tier 1 advice letters and certain supporting data within 10 days of Commission action on the proposals in this ruling. As envisioned in the ACR, each carrier would be required to submit as part of this advice letter the relevant data included in Appendix A of the ACR, with supporting calculations for the proposed transitional intrastate access charges required to be effective as of July 1, 2012 and for default non-access reciprocal compensation rates, where applicable.¹⁹

¹⁹ The filing of an electronic spreadsheet with the advice letter filing was required for CLECs in D.07-12-020 in order to demonstrate compliance with the MOU cap. (D.07-12-020, Ordering Paragraph 4, at 24.)

Many carriers contend that these requirements are burdensome and unnecessary. The FCC recently endorsed certain forms to transmit tariff review information, and AT&T, Sprint, and CALTEL recommend that these forms be used to provide the data for ILECs, rather than the form included in Appendix A of the ACR. We agree that it is reasonable and administratively less burdensome to allow use of the FCC Tariff Review Plan (TRP) worksheets to be used to transmit data with the Information Only or Tier 1 Advice Letters for price cap and rate-of-return carriers. We do not agree that carriers be allowed to develop their own formats for transmitting data, as the Small LECs recommend; however we do agree that no comparison of functionally equivalent elements is required. Staff must be able to review and compare data in a uniform format.

Communications Division Staff have developed a modified version of the data needed from CLECs, attached to this decision as Appendix A and Appendix B.

Staff has modified the CLEC supporting data worksheets shown in Appendices A and B, in part to conform to the FCC June 5 Clarification Order, and in part to respond to CALTEL's comments. A new Grand Total has been added to aggregate the revenue data generated by the spreadsheet in columns (c), (e), (f), and (j). Filers are reminded not to modify the worksheet formulas that calculate the revenue for each rate and generate the sums in the subtotal and grand total rows, but filers can otherwise add rows or modify cell formats as needed to document FY 2011 demand, current rates and proposed rates. Staff further clarifies that columns (g) and (h) are mutually exclusive in conformance to the FCC Order - in other words a CLEC may elect to establish rates using its

intrastate rate structure²⁰ which would be shown in column (g), or alternatively apply its interstate rate structure to its an intrastate service²¹ which would be shown in column (h). A CLEC that adopts its interstate rate structure for its intrastate service may also assess a transitional per-minute charge on end office switching,²² which would then be shown in column (i). As the worksheet is designed to add the values in columns (g), (h) and (i), a zero in one or more of these columns will not affect the resulting revenue in column (j).

CLECs that have tariffed a single intrastate composite rate for switched access service (and not tariffed separate tandem switching and end office rate elements) shall show the composite rate in the new section “4) Composite Rates.”

5. Exceptions to Tariff and Data Filing Interstate Rates

5.1. Carriers with Intrastate Rates Below Interstate Rates

Some carriers will not have to change their intrastate access rates because the rates are already below interstate rates and these carriers maintain that an informational filing should be sufficient. For example, the Small LECS state that “[t]he FCC has adopted a methodology for comparing interstate and intrastate composite rates that neutralizes any structural differences and avoids any consideration of individual element-by-element juxtapositions.”²³ We concur that carriers whose relevant Transitional Intrastate Access service rates are already below their corresponding interstate rates must file an Information

²⁰ Per § 51.911(b)(4).

²¹ Per § 51.911(b)(5).

²² Per § 51.911(b)(5).

²³ Comments of Small LECs to ACR at 3.

Only Advice Letter. It is also reasonable to require these carriers to include 1) a copy of the current intrastate tariffs containing the rates and elements impacted and the functionally equivalent interstate tariffs; and 2) a copy of the appropriate data spreadsheet (FCC TRP form or Appendices A and B) containing the total revenue from Transitional Intrastate Access Service at the carrier's interstate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element and the total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.²⁴

5.2. Carriers with Intrastate Rates Equal to Interstate Rates

Similarly, Cox notes that a CLEC's intrastate access rates may already mirror its interstate access rates. In these cases, Cox argues a carrier should not be required to provide any of the supporting data described in the ACR where the carrier is not assessing a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes as permitted by 47 CFR § 51.911(b)(5). The FCC Order allows carriers to make a choice of 1) applying the required revenue reduction to the rates in its intrastate rate structure, or 2) applying the interstate rate structure and rates to its intrastate access service, plus the assessment of a transitional per-minute charge on end office switching minutes equal to its revenue reduction.²⁵ Cox states that it will revise its rates for

²⁴ See 47 CFR §§ 51.907(b)(2)(i) and (ii); 51.909(b)(2)(i) and (ii); and 51.911(b)(1) and (2).

²⁵ See § 51.907(b)(iv) and (v) for Price Cap Carriers, and § 51.909(b)(iv) and (v) for rate-of-return carriers.

terminating switched access rates applicable to traffic that is not defined as Voice over Internet Protocol – Public Switched Telephone Network (VoIP-PSTN) traffic (as permitted by the FCC Order) and will not include an additional transitional per-minute charge. Cox explains that it can implement this approach via a “straight-forward formula that (a) captures the difference between its interstate rate and its intrastate rate and then (b) subtract 50% of that amount from Cox’s existing intrastate rate.”²⁶ Cox contends that it should not be required to provide the supporting data described in the ACR because it is not necessary for Cox to use its intrastate demand data or its interstate or intrastate revenue data to calculate the required reductions in intrastate access rates. Comcast also states that the requirements for supporting data should not apply to carriers that already have reduced their intrastate access rates to the same level as their intrastate access rates.

We concur. If a carrier has already reduced its intrastate access rates to parity with its interstate access rates, and if a carrier’s Transitional Intrastate Access Service rates already reflect the functionally equivalent interstate rates, and the carrier is not assessing a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes, the carrier must file an Information Only Advice Letter and must attach copies of the relevant interstate and intrastate tariff sheets. Such carriers will not have to submit cost studies or revenue data in support of such rates.

²⁶ Cox’s Comments on ACR at 3.

5.3. Reciprocal Compensation Requirements

5.3.1. Access Reciprocal Compensation

CALTEL states that CLECs are not required to revise Access Reciprocal Compensation rates until July 1, 2013 and no further action is necessary here because we have already required the Access Reciprocal Compensation rates be in compliance with the FCC requirements. We concur. The July 3, 2012 intrastate tariff changes ordered by the FCC's Order must set forth the rates applicable to "Transitional Intrastate Access Service."²⁷ For this purpose, the term "Transitional Intrastate Access Service" is defined in 47 CFR § 51.903(j) as follows:

(j) *Transitional Intrastate Access Service* means terminating End Office Access Service that was subject to intrastate access rates as of December 31, 2011; terminating Tandem-Switched Transport Access Service that was subject to intrastate access rates as of December 31, 2011; and originating and terminating Dedicated Transport Access Service that was subject to intrastate access rates as of December 31, 2011.

Accordingly, we agree that CLECs do not need to file Access Reciprocal Compensation demand or rates in the worksheets filed with their advice letter filings this July.

5.3.2. Non-Access Reciprocal Compensation

The Small LECs explain that certain information is unnecessary for these carriers as well, because none of the Small LECs have reciprocal compensation rates that exceed interstate access rates. We agree that Small LECs need not include this information in their filings. However, where applicable

²⁷ 47 CFR §§ 51.907(b); 51.909(b); and 51.911(b).

LECs must file Information Only Advice Letters with copies of relevant intrastate and interstate tariff sheets attached. ILECs are required to file the FCC TRP Reciprocal Compensation Spreadsheet.

Sprint states that carriers must provide a worksheet with calculations that demonstrate the “reciprocal compensation rates, if above the carrier’s interstate access rates, are reduced by 50% of the differential between the carrier’s intrastate rate and the carrier’s interstate rate.”²⁸ Again, we concur. Pursuant to the FCC Order,²⁹ effective July 1, 2012, if the LEC’s default transitional Non-Access Reciprocal Compensation rates in effect on December 29, 2011, or established pursuant to the FCC Order, subsequent to December 29, 2011, exceed that carrier’s interstate access rate for functionally equivalent service in effect in the same state on December 29, 2011, that carrier must reduce its non-access reciprocal compensation rate by one half of the difference between the Non-Access Reciprocal Compensation rate and the corresponding functionally equivalent interstate access rate. Carriers required to lower their default Non-Access Reciprocal Compensation rates must show the appropriate information on the relevant data worksheet.

5.3.3. Worksheets

CALTEL also suggests that the worksheet be modified to include operating territory breakouts if applicable, because some CLECs have tariffed interstate and intrastate access rates by ILEC operating territory. This is a reasonable suggestion and we have modified Appendix A, attached to this decision. We have added a line at the top of the data sheet where the CLEC can

²⁸ Sprint Comments on ACR at 4.

²⁹ 47 CFR 51.705(c)(2).

indicate the relevant ILEC operating territory. If a CLEC offers service in more than one ILEC operating territory in California, the CLEC must submit separate data spreadsheets for each territory.

5.4. VoIP-PSTN Rates

Cox and Comcast raise concerns regarding tariff filings reflecting the FCC Order's rules on intrastate toll VoIP-PSTN traffic. Several parties point out that some carriers have already filed tariffs to transition interstate and intrastate originating and terminating access rates for "toll VoIP-PSTN" traffic, and did so on December 29, 2011, consistent with the requirements of the FCC Order.³⁰ Here, we clarify that this decision will not apply to tariffs filed consistent with the FCC's rules on access rates applicable to toll VoIP-PSTN traffic.

6. Timelines for Rate Reductions

In order to comply with the timeline to reduce intrastate access rates consistent with the FCC Order, we find it is reasonable to require LECs to file Tier 1 or Information Only Advice Letters within seven days of the effective date of this decision. We require ILECs to attach the appropriate FCC TRP worksheets. CLECs must attach the supporting data in Appendices A and B. All filers must attach the Supplemental Advice Letter Transmittal Form in Appendix C and indicate the appropriate filing information. We require the 7-day timeframe because the Tier 1 Advice Letters must be filed no later than June 28, 2012 and will be effective on July 3, 2012. While this is a slightly shorter period than contemplated in the ACR, we note that we have significantly modified and reduced the required data to be provided. We agree with AT&T that it is reasonable to provide a 45-day protest period for the advice letters

³⁰ Comcast Comments to ACR at 4; Cox Comments to ACR at 3.

because of the anticipated volume of advice letters that will be filed in compliance with this decision. AT&T also requests that we require a true-up of the intrastate access rates, to the extent necessary. Staff will review the compliance advice letters and has the authority to require true-ups, if appropriate. Although implied by allowing a 45-day protest period, we explicitly find that Staff has the usual 10-day period to review and dispose of the advice letters, if necessary, after the end of the protest period. In other words, Staff may dispose of the advice letters by the 55th day after the advice letters are filed.

AT&T recommends that the Commission deem the tariff switched access rates unjust, unreasonable, and not in effect for any carrier that does not submit the required Tier 1 or Informational Advice Letter.³¹ All ILECs and CLECs operating in the State of California must comply with the FCC Order and this decision, without exception. As stated above, the advice letters will be filed in compliance with this decision. If true-ups are required, this is a ministerial action that Staff is authorized to order. We see no reason to take further action at this time.

The new FCC rules require that once the intrastate rates are equal to their functionally equivalent interstate rates on July 1, 2013, the intrastate rates will be subject to the same rate structure and rate modification as found in interstate tariffs. As noted in the ACR, this congruence should eliminate any differences between a carrier's FCC and Commission-approved access service tariffs.

³¹ AT&T Comments to ACR at 4.

Thereafter, carriers are required to file tariff changes in subsequent years consistent with the FCC Order, including any FCC modifications to the Order.

7. Carrier Access to Underlying Data

The ACR proposed that all LECs and CLECs be required to provide their underlying data supporting the required tariff changes to another carrier, if requested, subject to a non-disclosure agreement that carriers must develop. The ACR proposed this approach as a vehicle for allowing carriers access to information in order to determine if they should, indeed, file protests to the advice letters filed in compliance with this decision. Sprint, CALTEL, Verizon, and Cox generally support this requirement. CALTEL and Verizon recommend that we develop a standard non-disclosure agreement. Because Comcast recommends that it is not necessary for LECs that have filed tariffs to make intrastate access rates equivalent to interstate access rates to include the supporting data described in the ACR, Comcast also opposes the requirement to provide such data to carriers who so request, contending that such information is proprietary and will serve no purpose. Frontier also opposes this requirement, stating that allowing “access” to other parties (despite a non disclosure agreement) opens the door for competitors to seek access to sensitive cost and demand information. In addition, such review will make the approval process much more complicated and time-consuming.³² After careful consideration, we agree with Comcast and Frontier. We conclude that requiring carriers to provide the proprietary data, even under a Non-Disclosure Agreement, is likely to be controversial and could well delay the filings. We encourage carriers to work

³² Frontier Comments to ACR at 4.

together to resolve issues and concerns. We decline to adopt a uniform non-disclosure agreement. We do not have the record here to develop such a non-disclosure agreement and, it is likely that such a requirement will lead to multiple discovery disputes.

8. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Section 311(g)(2) of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. The ACR issued on April 24, 2012 asked parties to comment on whether they objected to a shortened comment period. Frontier objected to a shortened comment period; therefore, we issue this proposed decision for the usual 30-day comment and review period. AT&T, Verizon, Frontier, CALTEL, the Small LECs, and Comcast timely filed opening comments. Reply comments were filed by AT&T, Verizon, Cox, and CALTEL. We have considered the factual, technical, and legal concerns delineated in the comments and have made changes as appropriate in the decision. We have given little weight to comments that merely reiterate or re-argue positions.

As CALTEL suggests, we have clarified its position regarding use of the FCC TRP forms. We have clarified that LECs that provide switched access services must file the appropriate advice letters. CALTEL, Frontier, Verizon, and AT&T urge that we refer to the FCC clarification order issued on June 5, 2012, and we have done so. However, we remind carriers that it is likely that the FCC and its Staff will continue to issue technical clarification orders and that all carriers must comply with our requirement to modify terminating access charges and reciprocal compensation rates based on subsequent FCC modifications or

clarifications. Our Staff follow the relevant FCC dockets closely and are well-apprieved of relevant changes.

Frontier urges that we eliminate the expanded 45-day protest period. We decline to do so. Given the expected volume of filings, it is reasonable to grant an expanded protest period up-front and General Order 96-B provides the latitude to do so.³³

AT&T and Verizon recommend that we clarify the decision to ensure that carriers and interested parties so requesting may have access to confidential data that supports the documentation and calculations underlying the rate changes, subject to a mutually-agreeable non-disclosure agreement. Verizon continues to advocate that we adopt a uniform non-disclosure agreement. We considered these issues and rejected these approaches, because we concluded that such procedures were likely to be controversial and could well delay the filings. We decline to adopt these recommendations, particularly given the short timeline for carriers to file the relevant advice letters.

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Issued on November 18, 2011, the FCC's USF/ICC Transformation Order systematically changes the universal service and ICC systems.
2. Among other things, the FCC's Order adopted a multi-year transition process to phase out regulated per-minute ICC charges for terminating access for telecommunications traffic.

3. The FCC's Order, as modified, requires all LECs to begin a process to bring default reciprocal compensation rates and intrastate terminating access rates into parity with interstate terminating access rates, with the first phase being achieved by July 3, 2012.

4. On April 24, 2012, the assigned Commissioner issued an ACR that requested comments on the following proposals: lowering access charge caps to make them consistent with the FCC's Order, requiring competitive and incumbent LECs to file Tier 1 advice letters with revised tariffs and certain supporting data within 10 days of the effective date of this decision, and to provide their underlying data supporting the required tariff changes to other carriers, if requested subject to a non-disclosure agreement.

5. In D.06-04-071, we eliminated non-cost-based elements from the intrastate access charges of Verizon and AT&T and permitted them to impose a surcharge on local telephone service to recover lost revenues.

6. D.07-12-020 ordered all mid-size ILECs to remove the non-cost-based element or its equivalent, effective January 1, 2009.

7. D.07-12-020 ordered the expiration of the surcharges authorized by D.06-04-071 for AT&T and Verizon on January 1, 2009, the date that the rate freeze on basic residential telephone service was to be lifted.

8. D.07-12-020 ordered small ILECs to file a long-term plan, not to extend for more than two rate case cycles, to implement the policy requiring intrastate access charges to be based on cost.

³³ General Order 96-B, § 1.3.

9. D.07-12-020 ordered competitive local exchange carriers' intrastate access charges to be capped at the higher of AT&T or Verizon's intrastate access charges, plus 10%, with each rate element capped at the same rate.

10. The FCC Order requires certain terminating intrastate switched access rates and reciprocal compensation rates be reduced to parity with interstate access rates at the second step of the transition period by July 1, 2013.

11. The modification of D.07-12-020 does not modify the requirement that carriers eliminate the NIC and TIC charges from their rates.

12. It is reasonable to require that carriers provide data in a uniform format, so that Staff can more efficiently review and compare data.

13. In order to comply with the FCC's timeline and allow for timely Staff review, price cap and rate-of-return LECs should file Tier 1 Advice Letters and attach the relevant FCC TRP worksheets within seven days of the effective date of this decision.

14. In order to comply with the FCC's timeline and allow for timely Staff review, CLECS should file Tier 1 Advice Letters and provide the data in Appendices A and B, as appropriate.

15. In order to allow for sufficient Staff review, carriers that meet the exceptions outlined in this decision and in Ordering Paragraphs 2, 3, 5, and 7, should be required to submit Information Only Advice Letters within seven days of the effective date of this decision, and should include the data set forth in this decision.

16. Consistent with the FCC's Order, it is reasonable to permit a carrier the choice of either: a) applying the required revenue reduction to the rates in its intrastate rate structure, or b) applying the interstate rate structure and rates to its intrastate access service, plus the assessment of a transitional per-minute

charge on end office switching minutes equal to its revenue reduction. It is reasonable to require carriers to notify the Commission of their selection, and to demonstrate how the adjustment of the intrastate tariff was accomplished, unless the carrier meets the exception set forth in Ordering Paragraph 6.

17. A carrier may file an Information Only Advice letters, with relevant tariff sheets attached, if a carrier's Transitional Intrastate Access Service rates already reflect the functionally equivalent interstate rates and the carrier is not assessing a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes. ILECs are still required to attaché the FCC TRP forms to their Advice Letters.

18. CLECs are not required to make changes to Access Reciprocal Compensation rates until July 1, 2013; therefore, these carriers do not need to include Access Reciprocal Compensation demand or rates in the data provided to Staff.

19. Carriers required to lower their default Non-Access Reciprocal Compensation rates should show the appropriate information on the relevant data worksheet.

20. Certain CLECs and ILECs have already filed tariffs to transition interstate and intrastate originating and terminating access rates for toll VoIP-PSTN traffic.

Conclusions of Law

1. Consistent with Pub. Util. Code § 1708, the April 24, 2012 ACR provided the requisite notice and opportunity to be heard regarding the proposed modifications to D.06-04-071 and D.07-12-020 necessary to implement the FCC's Order, and it is reasonable to ratify the ACR at this time.

2. It is reasonable to modify D.06-04-071 and D.07-12-020 to ensure that intrastate access charges are consistent with the FCC's objectives.

3. The new FCC rules require that once the intrastate rates are equal to their functionally equivalent interstate rates on July 1, 2013, the intrastate rates will be subject to the same rate structure and rate modification as found in interstate tariffs.

4. Once differences between a carrier's FCC and Commission-approved access service tariffs are eliminated, it is reasonable to require carriers to file tariff changes in subsequent years consistent with the FCC Order, including any FCC modifications and clarifications to the Order.

5. It is reasonable to provide a 45-day protest period for the Tier 1 Advice Letters that will be filed in compliance with this decision.

6. Although implied by allowing a 45-day protest period, it is reasonable to determine that Staff has the usual 10-day period to review and dispose of the advice letters, if necessary, after the end of the protest period, i.e., Staff may dispose of the advice letters by the 55th day after the advice letters are filed.

7. Review of the compliance advice letters is a ministerial action and, if required, Staff has the authority to order true-ups of the implementation of the tariff filings.

8. Good cause being shown, it is reasonable to grant Comcast's motion to become a party to this proceeding.

9. In order to comply with the FCC's timeline, this decision should be effective immediately.

10. R.03-08-018 should be closed.

O R D E R

IT IS ORDERED that:

1. Decision (D.) 06-04-071 and D.07-12-020 are modified as set forth in this decision to implement the changes to intrastate access charges, required by the Federal Communications Commission's Universal Service Fund and Intercarrier Compensation Transformation Order.

2. Within seven days of the effective date of this decision, Incumbent Local Exchange Carriers and Competitive Local Exchange Carriers (CLECs) operating in the State of California that provide switched access services shall file Tier 1 Advice Letters or Information Only Advice Letters that include all relevant supporting documentation and calculations, in compliance with this decision and shall attach Tariff Review Plan (TRP) worksheets filed with the Federal Communications Commission or the data required in Appendices A and B of this decision as follows:

- **a. For federal Price Cap carriers:** The calculations and filings of the July 3, 2012 required intrastate tariff changes shall be filed in compliance with 47 CFR § 51.907 and any modifications thereto, with TRP worksheets attached.
- **b. For federal Rate-of-Return carriers:** The calculations and filings of the July 3, 2012 required intrastate tariff changes shall be filed in compliance with 47 CFR § 51.909 and any modifications thereto, with TRP worksheets attached.
- **c. For CLECs:** The calculations and filings of the July 3, 2012 required intrastate tariff changes shall be filed in compliance with 47 CFR § 51.911 and any modifications thereto, Appendices A and B attached.

3. Carriers shall also file the Supplemental Advice Letter Transmittal Form in Appendix C.

4. Carriers that have transitioned to intrastate access rates that are lower than their corresponding interstate access rates shall file Information Only Advice Letters and shall attach: a) a copy of the current intrastate tariff sheets containing the rates and elements impacted and the functionally equivalent interstate tariffs and; b) a copy of the appropriate data spreadsheet containing the total revenue from the relevant interstate and intrastate tariffs Transitional Intrastate Access Service at the carrier's interstate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element and the total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

5. Competitive Local Exchange Carriers are exempt from filing Access Reciprocal Compensation demand or rates in the worksheets filed with their Advice Letter filings.

6. If a carrier has reduced its intrastate access rates to parity with its interstate access rates, and the carrier's Transitional Intrastate Access Service rates already reflect the functionally equivalent interstate rates, and the carrier is not assessing a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes, such carriers must file an Information Only Advice Letter and must attach copies of the relevant interstate and intrastate tariffs. Such carriers are not required to submit cost studies or revenue data in support of such rates.

7. If the Local Exchange Carrier's default Non-Access Reciprocal Compensation rates in effect on December 29, 2011, or established pursuant to the Federal Communications Commission Order subsequent to that date, exceed that carrier's interstate access rates for functionally equivalent service in effect in

the same state on December 29, 2011, that carrier must reduce its reciprocal compensation rate by one-half of the difference between the Non-Access Reciprocal Compensation rate and the corresponding functionally equivalent interstate access rate.

8. This decision does not apply to tariffs filed consistent with the Federal Communications Commission's rules on access rates applicable to toll Voice over Internet Protocol-Public Switched Telephone Network traffic.

9. The Tier 1 Advice Letters filed in compliance with this decision shall be effective pending disposition on July 3, 2012 and a 45-day protest period shall apply for these Advice Letters. Staff may dispose of the advice letters, if necessary, by the 55th day after the Tier 1 Advice Letters are filed.

10. The motion of Comcast Phone of California, LLC for party status is granted.

11. The Assigned Commissioner Ruling issued on April 24, 2012 is ratified.

12. Rulemaking 03-08-018 is closed.

This order is effective today.

Dated June 21, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

APPENDIX A

CLEC California Intrastate Transitional Access Service Charges Supporting Data Worksheet

<http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/R0308018Worksheets.htm>

APPENDIX B
CLEC Non-Access Reciprocal Compensation Supporting Data Worksheet

<http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/R0308018Worksheets.htm>

APPENDIX C

Supplemental Advice Letter Transmittal Form

Appendix C
Supplemental Advice Letter Transmittal Form

Instructions: LECs shall select one of the two options: Information Only or Tier 1. Within each option, LECs shall mark the selections(s) which apply to its filing.

LECs may add more detailed narrative in the "Other" section as needed to more accurately describe its filing.

Information Only A.L. - exempt from required rate reduction

Intrastate access rates below comparable interstate rates
(Exemption 5.1)

Intrastate access rates equal to comparable interstate rates
(Exemption 5.2)

Non-Access Reciprocal Compensation equal or below comparable interstate rates
(Exemption 5.3.2)

Tier 1 A.L. - required rate reduction

Adopts Access Interstate Rate Structure for Intrastate access service without assessment of transitional per minute charge on end office MOU

Adopts Access Interstate Rate Structure for Intrastate access service with assessment of transitional per minute charge on end office MOU

Does not adopt Access Interstate Rate Structure for Intrastate service and modifies one or more transitional intrastate access rates

Does not adopt Access Interstate Rate Structure for Intrastate service and modifies one or more transitional intrastate Non-Access Reciprocal Compensation rates

ILECs only, CLECs are exempt

Does not adopt Access Interstate Rate Structure for Intrastate service and reduces one or more transitional intrastate Reciprocal Compensation rates

Other:

(END OF APPENDIX C)

APPENDIX D

47 CFR § 51.903 (h) Definitions.

For the purposes of this subpart:

(a) *Competitive Local Exchange Carrier*. A *Competitive Local Exchange Carrier* is any local exchange carrier, as defined in §51.5, that is not an incumbent local exchange carrier .

(b) *Composite Terminating End Office Access Rate* means terminating End Office Access Service revenue, calculated using demand for a given time period, divided by end office switching minutes for the same time period.

(c) *Dedicated Transport Access Service* means originating and terminating transport on circuits dedicated to the use of a single carrier or other customer provided by an incumbent local exchange carrier or any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. *Dedicated Transport Access Service* rate elements for an incumbent local exchange carrier include the entrance facility rate elements specified in §69.110 of this chapter, the dedicated transport rate elements specified in §69.111 of this chapter, the direct-trunked transport rate elements specified in §69.112 of this chapter, and the intrastate rate elements for functionally equivalent access services. *Dedicated Transport Access Service* rate elements for a non-incumbent local exchange carrier include any functionally equivalent access services.

(d) *End Office Access Service* means:

(1) The switching of access traffic at the carrier's end office switch and the delivery to or from of such traffic to the called party's premises;

(2) The routing of interexchange telecommunications traffic to or from the called party's premises, either directly or via contractual or other arrangements with an affiliated or unaffiliated entity, regardless of the specific functions provided or facilities used; or

(3) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. *End Office Access Service* rate elements for an incumbent local exchange carrier include the local switching rate elements specified in §69.106 of this chapter, the carrier common line rate elements specified in §69.154 of this chapter, and the intrastate rate elements for functionally equivalent access services. *End Office Access Service* rate elements for an incumbent local exchange carrier also include any rate elements assessed on local switching access minutes, including the information surcharge and residual rate elements. *End office Access Service* rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

Note to paragraph (d): For incumbent local exchange carriers, residual rate elements may include, for example, state Transport Interconnection Charges, Residual Interconnection Charges, and PICCs. For non-incumbent local exchange carriers, residual rate elements may include any functionally equivalent access service.

(e) *Fiscal Year 2011* means October 1, 2010 through September 30, 2011.

(f) *Price Cap Carrier* has the same meaning as that term is defined in §61.3(aa) of this chapter.

(g) *Rate-of-Return Carrier* is any incumbent local exchange carrier not subject to price cap regulation as that term is defined in §61.3(aa) of this chapter, but only with respect to the territory in which it operates as an incumbent local exchange carrier.

(h) *Access Reciprocal Compensation* means telecommunications traffic exchanged between telecommunications service providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

(i) *Tandem-Switched Transport Access Service* means:

(1) Tandem switching and common transport between the tandem switch and end office; or

(2) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier via other facilities. *Tandem-Switched Transport* rate elements for an incumbent local exchange carrier include the rate elements specified in §69.111 of this chapter, except for the dedicated transport rate elements specified in that section, and intrastate rate elements for functionally equivalent service. Tandem Switched Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

(j) *Transitional Intrastate Access Service* means terminating End Office Access Service that was subject to intrastate access rates as of December 31, 2011; terminating Tandem-Switched Transport Access Service that was subject to intrastate access rates as of December 31, 2011; and originating and terminating Dedicated Transport Access Service that was subject to intrastate access rates as of December 31, 2011.

(END OF APPENDIX D)