

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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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)

**OPENING BRIEF  
OF THE DIVISION OF RATEPAYER ADVOCATES  
ON THE ASSIGNED COMMISSIONER AND  
ADMINISTRATIVE LAW JUDGE'S RULING  
AND SCOPING MEMO**

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**I. INTRODUCTION**

In accordance with the Joint Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo ("Scoping Memo") issued on April 29, 2011, and the Assigned Commissioner's Ruling Reopening Proceeding and Revising the Schedule ("ACR") issued on May 4, 2012, the Division of Ratepayer Advocates ("DRA") respectfully submits these comments on the issues raised by the Joint Application to exempt Uniform Regulatory Framework ILECs from General Order 77-M. On February 2, 2011, Frontier Communications of California, SureWest Telephone, and Verizon California Inc. (collectively, "Joint Applicants") filed a Joint Application seeking to exempt the class of incumbent local exchange carriers ("ILECs") subject to the Uniform Regulatory Framework ("URF") from the requirements of General Order ("GO") 77-M. GO 77-M requires specific public utilities to file data on executive compensation, and payments of dues, donations, subscriptions, contributions and legal fees. In their Joint

Applications, the Joint Applicants allege that the information required by GO 77-M is no longer needed by the Commission in its regulation of the URF ILECs.<sup>1</sup>

The Scoping Memo and ACR set forth nine issues to be addressed in this proceeding.<sup>2</sup> In general, DRA opposes the Joint Application. This Commission still retains regulatory jurisdiction over URF ILEC rates and has a duty and obligation to ensure they are “just and reasonable.” There is a pending Commission rulemaking with an open, unresolved question to examine the URF regulatory framework and the impact of deregulation on the prices of basic service and common ancillary services to “...examine whether competition is working to keep prices just and reasonable.”<sup>3</sup> In that Rulemaking, the Commission also stated an intent to explore a method for evaluating on an on-going basis the level of telecommunications competition in California. Although the schedule in that rulemaking has been deferred, the Assigned Commissioner in that proceeding “supports such a review on the level of competition”, and expressed an intention to issue a follow up ACR or present a new rulemaking to examine these questions.<sup>4</sup> In any investigation on the reasonableness of rates and the state of competition, the Commission would need as much cost information as possible to evaluate the reasonableness of basic ILEC rates, including information from GO 77-M. Until the Commission examines the state of telecommunications competition in California, it should not grant an exemption from GO 77-M to the URF ILECs.

In addition, these reports are useful for the Commission in carrying out other statutory obligations, as they are used to compare executive compensation rates of rate-of-return carriers to larger carriers in California. The information in the URF ILEC reports is a valuable tool to Commission staff in evaluating Small ILEC compensation

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<sup>1</sup> Joint Application, at 1.

<sup>2</sup> Scoping Memo, at 3-4; ACR at 2-3.

<sup>3</sup> OIR 09-06-019, *Regarding Revisions to the California High Cost Fund-B Program*, ACR Adopting Amended Scoping Memo and Schedule, issued December 31, 2010, at p. 7.

<sup>4</sup> OIR 09-06-019, *Regarding Revisions to the California High Cost Fund-B Program*, ACR Temporarily Deferring Comment Schedule, issued January 20, 2011, at pp. 1-2.

claims and determining whether their overall rates are just and reasonable. Moreover, the information contained in GO 77-M reports provides transparency to the public into the executive compensation and lobbying efforts of these utilities. Indeed, exempting URF ILECs will not promote public policy but rather eliminate a regulatory mechanism conceived, by this Commission, to monitor and safeguard the public's interests.

## **II. DISCUSSION**

### **1. What is the Historical Purpose and Intent of GO 77-M?**

The historical purpose and intent of GO 77-M, in short, was to assist in establishing a clear and direct relationship between the expenses claimed by a utility regulated by the Commission and the rates which are allowed to be charged for the provision of utility services.<sup>5</sup> Although the URF ILECs are not subject to traditional cost-of-service rate regulations, DRA asserts that GO 77-M's purpose and intent remains embedded in the Commission's duties to ensure rates are just and reasonable pursuant to the California Public Utilities Code.<sup>6</sup> The Joint Applicants' claim that the Uniformed Regulatory Framework (set forth in D.06-08-030) allows for exemption from nearly all regulation is erroneous. It is necessary for the Commission to retain oversight to examine whether salaries and compensation were excessive or represented cross-subsidization where ratepayers are burdened with costs unrelated to the services for which they are charged. Indeed, eliminating GO 77-M will remove one of the last mechanisms the Commission preserves to inspect URF ILEC expenses; a decision to do so is ill-advised. GO 77-M continues to provide the Commission and interested parties an invaluable examination into the URF ILECs' expenses, most notably attorney compensations, donations, contributions and lobbying.

In addition, GO 77-M reports provide the Commission and the public with executive compensation transparency. The posting of all current GO 77-M data is a

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<sup>5</sup> *Application of Southern Pacific Transportation Company, The Atchison Atchison, Topeka and Santa Fe Railway Company, Union Pacific Railroad Company, and Burlington Northern Railroad Company to Modify General Order 77-K*, 67 CPUC2d 79, 80-81 (1996) [D.96-07-052].

<sup>6</sup> *See*, Pub. Util. Code § 451.

strong disincentive for awarding excessive executive compensation. DRA also believes it is important to retain information on payments to dues, donations, subscriptions, and contributions paid so the Commission can assess whether these expenditures are in line with just and reasonable rates. The public has a right to this information and it is useful in questioning the credibility of recipient community based organizations that support the positions of these ILECs, and determining the influence these companies have over governmental or community organizations.

**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?**

In the Joint Application, the Joint Applicants state that the Commission exempted Competitive Local Exchange Carriers (“CLECs”) and Non-Dominant Interexchange Carriers (“NDIECs”), gas storage providers, commercial mobile radio providers, and railroads from GO 77-M because, in those cases, the Commission relied “upon the fact that GO 77-M reports are not necessary where a utility is not subject to rate regulation.”<sup>7</sup> The Joint Applicants contend that just as those utilities were exempted from GO 77, the URF ILECs should also be exempted from the requirements of GO 77-M. However, the URF ILECs are *not* in the same regulatory position as these other classes of utilities. In most of the cases where the Commission exempted a class of utilities from the requirements of GO 77, it was because the Commission lacked jurisdiction over rates.<sup>8</sup>

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<sup>7</sup> Joint Application, at 2-3.

<sup>8</sup> See, e.g., D.96-07-052 (exempting railroads because Congress transferred regulatory authority over rates from the states to the federal government; railroads no longer file intrastate tariffs with this Commission); D.00-12-030 (exempting Wild Goose Storage Inc., a gas storage facility. Although the decision to exempt Wild Goose Storage was based in part on the fact that it charges market based rates, the Commission also noted that it has no market power and a negligible ability to engage in predatory pricing. As discussed herein, DRA believes that the Commission should not exempt URF ILECs from GO 77 reporting until the Commission has examined the state of communications competition in California. In addition, the Wild Goose application was uncontested and the Commission stated that the decision to exempt Wild Goose was not to be deemed as precedent for any other entity.); D.98-09-024 (exempting commercial mobile radio service (“CMRS”) providers as state authority to regulate CMRS rates was preempted by the Omnibus Budget Reconciliation Act of 1993); and D.04-08-055 (exempting NDIECs/CLECs because they are not rate-regulated by the Commission).

Conversely, the Commission still retains the regulatory authority and responsibility to ensure that the URF ILECs' rates are "just and reasonable."<sup>9</sup> In fact, in the proceeding leading up to the decision exempting CLECs and NDIECs (R.03-08-019), the Commission explicitly rejected a proposal by SBC California ("SBC") requesting that the rulemaking consider whether utilities, in addition to CLECs/NDIECs, that are no longer subject to rate-of-return regulation should be exempt from the reporting requirements of GO 77-K. In that OIR, the Commission found that where some services were regulated others were not, this information would help identify cross-subsidization or would be useful for other regulatory purposes. The Commission rejected the proposal of AT&T (then SBC) to exempt utilities not subject to rate-of-return regulation, finding "[t]he information in GO 77 is of assistance to the Commission in its regulation of those companies."<sup>10</sup> This same rationale applies today. Although some URF carrier services are subject to market based rates, others are not. For example, URF carriers cannot change some rates such as LifeLine without Commission approval. Accordingly, the fact that basic rate caps have been lifted should not dictate whether URF ILECs should be exempt from GO 77 requirements.

Moreover, though the URF Decision adopted a competitive market model to replace traditional cost-of-service regulations, the Commission did not abdicate its authority over rates or "remove" the URF ILECs from its jurisdiction over rates, as the Joint Applicants claim. In fact, under statute, the Commission continues to have a duty to ensure that rates are just and reasonable, and to protect against prejudicial rate practices.<sup>11</sup> The Commission recognized throughout the URF Decision that although it was relying on market forces, rather than command and control rules, it had the duty to ensure that

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<sup>9</sup> Cal. Pub. Util. Code § 451. ("All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service.")

<sup>10</sup> 2002 CalPUC LEXIS 999, \*21-22 (2002) [OIR 03-08-019].

<sup>11</sup> Pub. Util. Code §§ 451 and 453.

prices were just and reasonable.<sup>12</sup> GO 77-M exists to monitor components of those rates previously identified in cost-of-service ratemaking and should not be eliminated due to the adoption of an alternative regulatory approach. DRA avers that compliance with GO 77-M by the URF ILECs remains appropriate and necessary even though the Commission lifted the caps on basic rates. The lack of GO 77-M data would make it difficult to determine if rates were appropriate with regard to executive compensation and the other GO 77-M components. For example, excessive executive compensation would make it difficult to cut costs and lower rates. The URF carriers acknowledged that prices for telephone services have risen, and will continue to rise, as a result of the policies adopted by the Commission.<sup>13</sup> In addition, without GO 77-M reporting, URF carriers may be incented to change rates independent of the policies that the Commission adopts. Thus, it is important for the Commission to require these reports to assure that excessive executive compensation is not driving URF rate increases.

Moreover, as discussed above, there is an open question as to whether rates are reasonable given the status of competition in California.<sup>14</sup> This is evidence that the Commission may consider re-imposing rate regulation. In any investigation on the reasonableness of rates, the Commission would need as much cost information as possible to evaluate the reasonableness of basic ILEC rates, including information from GO 77-M. The Commission could find that the promise of lower rates and improved service quality has not been realized by the URF carriers, and re-examine its decisions granting them relaxed regulatory treatment. During this period the Commission should

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<sup>12</sup> D.06-08-030, 2006 Cal.PUC LEXIS 367, at \*\* 1, 5, 49, 78, 176, 197, Conclusion of Law No. 24.

<sup>13</sup> In the carriers' view, prices should and will continue to increase until they reach a "market level" – and (they argue) the Commission should not interfere with what the companies characterize as the normal operation of a competitive market. (See, Responses to DRA's Petition to Modify Decision 06-06-028 Relating to Price Controls on Basic Residential Rates and to Monitoring of Competition: AT&T Response, p.6; Sprint Nextel Response, p.2; Verizon Response, pp.3 and 81.)

<sup>14</sup> See R.09-06-019, *Regarding Revisions to the California High Cost Fund-B Program*, Assigned Commissioner's Ruling Adopting Amended Scoping Memo and Schedule, issued December 31, 2010, at 1.

demand more, not less cost information. Thus, it is inappropriate to rescind GO 77-M reporting requirements for URF ILECs.

**3. Is Compliance with GO 77-M Appropriate or Necessary by the URF ILECs in Terms of the California LifeLine Rates and California High Cost Fund -B Subsidies?**

In D.96-07-052, the Commission clearly noted that compliance with GO 77 was necessary in order to determine whether there is some form of cross-subsidization occurring in which ratepayers are burdened with costs unrelated to the services for which they are charged. As the LifeLine rates and rates in CHCF-B areas are based on basic rates, it is important to maintain GO 77-M costing information to assure that those basic rates are reasonable, and correspondingly, that LifeLine and CHCF-B rates are appropriate. To that end, compliance with GO 77-M should be required by the URF ILECs seeking public program subsidies. The Commission should require URF ILECs to: (a) demonstrate a nexus between state subsidies and their ability to meet universal service goals in terms of keeping basic service and LifeLine rates affordable; and (b) demonstrate that they do not cross-subsidize to pay higher compensation or otherwise offset operating expenses or augment revenues, which would inappropriately increase LifeLine and CHCF- B Fund rates. Thus, these reports are necessary as a measure of carrier transparency towards ensuring that ratepayers (from all income brackets) are not subsidizing companies for anything except maintaining affordable basic telephone service for all Californians.

**4. Is Compliance with GO 77-M by the URF ILECs Appropriate or Necessary in Order to Prevent/Monitor Cross-Subsidization, Including Cross-Subsidization Prohibited by Digital Infrastructure and Video Competition Act, or Are There Other Adequate Safeguards in Place?**

DRA will address this issue in its reply comments if necessary.

**5. Should the Commission Continue to Require Compliance with GO 77-M by the URF ILECs to Promote Transparency? Are Other Sources of the Information Required to be Disclosed by GO 77-M Adequate and Readily Available for Public and Regulatory Review?**

A fundamental reason to require compliance with GO 77-M by the URF ILECs is transparency. The public's right to germane information supersedes the utilities' privileges to complete confidentiality. In the Joint Application's Reply to Protest of the Greenlining and TURN, Joint Applicants allege that GO 77-M was not constructed to advance transparency. "GO 77-M's purpose is to assist the Commission in its rate-setting functions, not to promote transparency."<sup>15</sup> DRA disagrees with this statement. Transparency is a critical component to ratemaking. In general, the Commission requires the rate-setting process be transparent to the public. Since the information garnered by GO 77-M is used in the ratemaking process and made available to the public, DRA contends that GO-77's purpose has always been to promote transparency.

The Commission's discussion of GO-77 in D.92-04-007, 53 CPUC2d 177, illustrates this point. In that decision, the Commission was deciding whether to eliminate from GO-77 reports the names of employees making over a certain amount. In rejecting this request, the Commission discusses the importance of transparency and the ratepayers' right to know certain information about the utilities over which the Commission exercises ratemaking regulation:

The so-called 'Right of Privacy' by which applicants seek to shield from disclosure the identity of employees earning above a certain specified amount is not an absolute right, but at best is a qualified privilege. No party challenges, indeed there is no doubt that the Commission, in the execution of its Constitutionally mandated duties, may lawfully collect otherwise privileged information for internal distribution and use in connection with the planning, design, and implementation of programs furthering its official mission....The real issue to be decided in this proceeding is

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<sup>15</sup> Joint Applicants' Reply to Protest of Greenlining and TURN, at 2.

simply whether honoring the qualified privilege so as to protect the identity of employees earning above the specified levels is outweighed by the public's right to know the identity of such employees. We believe that it is.

A utility's ratepayers are directly affected by the utility's cost of doing business. Ratepayers, as a group, generally have no relationship with a utility other than as purchasers of a commodity or service, whether it be gas, electricity, communications or water. . . . In a competitive environment, the cost to the consumers of such goods, the ratepayers, is kept down by competition from other producers of the same or similar goods which are available to the consumer. In a monopoly on the other hand, the cost of such goods is regulated by the body having regulatory authority. In either case, however, the cost at which the goods or services are delivered is directly related to the cost of producing those goods or services. As the cost of providing those goods or services goes up, the selling price must ultimately increase. If it does not, profit will vanish, and without that incentive, the provider of the goods or services has no reason for continuing either the production/delivery of the goods or the relationship. While this may seem to be an over-simplified lesson in the fundamentals of marketing, it is often forgotten by those most closely involved, and bears repeating periodically.

Since their interests are best served by prices for utility services being kept at the lowest possible level, the ratepayers have a very real interest in seeing that costs of producing the goods and services used by them are kept at a minimum. This includes the salaries and compensation of utility officers and employees. The ratepayers have a right to know what costs, including salaries and expenses, they as ratepayers are, in effect, reimbursing to the utility, and whether those salaries and expenses are comparable to or in line with those of others performing similar services in like industries. They further have a right to know whether the utility is engaging in "cross-subsidization" whereby they, as ratepayers, are burdened with costs unrelated to the services for which the ratepayers are being charged.<sup>16</sup>

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<sup>16</sup> 53 CPUC2d 177, 1994 Cal.PUC LEXIS 16, at \*\* 16-18 [D.92-04-007].

As this discussion indicates, the information provided in GO-77 reports is not simply boiled down to a number plugged into some rate-making formula. It ensures that the public has adequate information about the costs of services provided them by utilities, whether in a competitive environment or in a monopoly. DRA again notes that even though the Commission, at this time, no longer subjects the URF ILECs to cost-of-service treatment, the Commission still retains the statutory authority ensure that rates are just and reasonable. DRA is concerned about eliminating yet another source of information that may be used by the public to keep tabs on the utilities and hold the Commission accountable in carrying out its statutory duties.

**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 Uniformed Regulatory Framework?**

The continued required compliance with GO 77-M by the URF ILECs is consistent with the call “for regulators to adopt . . . competitively neutral policies.” As discussed in the URF Decision, California and federal statutes call for regulators to adopt technologically and competitively neutral policies that encourage increased access to and usage of advanced telecommunication services.<sup>17</sup> However, the Commission also recognized that its competitive neutrality goal also must meet social policies such as those embodied in Pub. Util. Code Section 709, which provides, in part:

- (f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.
- (g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.

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<sup>17</sup> D.06-08-030, 2006 Cal.PUC LEXIS 367, at \*\*54-57, discussing Cal. Pub. Util. Code §§ 7099, 882, and 871 and § 706(a) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996), reproduced in the notes under 47 U.S.C. § 157(a).

- (h) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

The URF Decision, D.06-08-030, observed that “[t]his detailed list of state policy objectives sets the goals for a telecommunications regulatory reform proceeding.”<sup>18</sup> DRA asserts that, although the Commission opted for a competition based regulatory framework, reliance on competition is not absolute and will not accomplish all of the Commission’s objectives. The Commission’s competitively neutral policies were not intended to suppress the broader public interests, as evident by the above.

The Commission has continuously acted to promote consumer protection and awareness despite its “competitively neutral policies.” For instance, notwithstanding the URF Decision’s removal of requirements concerning “marketing, disclosure, or administrative processes,”<sup>19</sup> URF ILECs must still comply with GO 168, Market Rules to Empower Telecommunications Consumers and to Prevent Fraud. In the GO 168 Decision, D.04-05-057, the Commission recognized:

Regulatory policies have likewise been evolving in ways aimed at enabling and promoting competition and all the benefits competition has promised to provide. At the same time, legislators and regulators have not been blind to the potential for abuse that may exist in any market, regulated or fully competitive.<sup>20</sup>

The Commission further noted in that decision that the following reflected its view:

In a perfect world, all telecommunications carriers would operate honorably and never seek unfair advantages at the expense of their residential and business customers. Unfortunately, perfection in competition and conduct remains only an ideal. In the meantime, it is the Commission’s

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<sup>18</sup> D.06-08-030 (Uniform Regulatory Framework Decision), at 32.

<sup>19</sup> D.06-08-030, OP 21.

<sup>20</sup> D. 04-05-057, at 3.

responsibility to enact clear and concise rules to guide industry conduct. In the long run, such rules will benefit consumers, carriers and the general public alike.<sup>21</sup>

The Joint Applicants' suggestion that retaining GO 77-M presents a barrier to competition or challenges the Commission's own policies is without merit. Instead, DRA argues that standards, such as GO 77-M, bolster competition rather than hinder it by inducing a system of checks and balances whereas the utilities' interests are equitable to those of the public. The fact that the Commission looked at the communications industry as a whole in determining that market forces would keep rates just and reasonable, does not mean that Commission should use "competitive neutrality" to eliminate all regulatory requirements of those entities. Indeed, it would be imprudent and counter to statute for regulated utilities, such as the Joint Applicants, to operate completely outside the oversight of the Commission. GO 77-M provides a non-intrusive and non-burdensome insight into a narrow facet of the URF ILECs' business operations, which is in the public's interest.

Finally, DRA notes that the Commission left the door open to requiring GO 77 data, as well as data from GO 104-A, from CMRS carriers in the future. The Commission specifically noted that "[w]e may still require CMRS providers to report some or all of the information required in these General Orders if the need arises in a complaint case, an investigation, or other circumstances."<sup>22</sup> DRA recommends that rather than eliminate GO 77 reporting for URF ILECs, it should be continued and the reporting should be extended to the four major wireless carriers as well (Verizon, AT&T, Sprint, and T-Mobile). The wireless market has devolved from a competitive market to one that is concentrated in the hands of four major carriers. Given that customers increasingly depend on wireless as their primary telecommunications service, this concentrated market requires closer scrutiny by the Commission. Accordingly, the

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<sup>21</sup> Ibid, at 139.

<sup>22</sup> 82 CPUC2d 45 at p. 48 [D.98-09-024].

Commission should require GO 77-M disclosure from the four major wireless carriers, in addition to the URF ILECs. The Commission has a history of regulating terms and conditions for wireless providers, so the imposition of this requirement is reasonable and not unprecedented.

**7. Are There Any Regulatory Reasons the Commission Should Continue to Require Compliance with GO 77-M by the URF ILECs?**

In addition to the role GO 77 serves in determining whether rates are excessive, there are other reasons related to the exercise of the Commission's regulatory functions that warrant continued compliance with GO 77-M. It is DRA's understanding that the Commission's Communications Division uses the information in GO 77-M reports to compare URF ILEC executive compensation data to that of the Small LECs in their general rate cases. Although not an "apples to apples" comparison, the information is useful in evaluating what the compensation rates are in relation to the size of the company, and gives the Commission a better understanding of how the Small LECs operate in comparison to the larger carriers in California. This is a valuable tool for Commission staff to monitor potential abuses in awarding excessive compensation.

Moreover, as the Consumer Groups note in their protest to the application, GO 77-M requires utilities such as the URF ILECs to report contributions made to outside organizations, including lobbyists and community organizations. Transparency in this type of funding is useful to assist the Commission, and other interested parties, in understanding the perspectives, and perhaps motives, of organizations that advocate on the utility's behalf.

The information gathered in GO 77-M reports also has served a regulatory function of assisting the Commission in developing intervenor compensation rates. In Rulemaking 04-10-010, the Commission attempted to create compensation data sets appropriate to carrying out its duties in setting intervenors' hourly rates under Pub. Util.

Code § 1806.<sup>23</sup> These data sets were based on the compensation data provided by the state’s largest utilities, including Verizon California and SBC California.<sup>24</sup> The utilities were ordered to serve annual reports on compensation paid to in-house attorneys and in-house and outside expert representatives as part of an ongoing process to update intervenor compensation rates.<sup>25</sup> The due date for the reports coincided with the filing date of GO 77-M reports.

The Commission continued the process of updating intervenor compensation rates in Rulemaking 06-08-019, where the Commission issued D.07-01-009 updating hourly rates for work performed in 2006 and 2007. The Commission decided to adopt a general cost of living adjustment (“COLA”) to rates previously adopted for 2005. The record in that proceeding consisted of party comments and utility compensation data sets that the utilities reported in GO 77-M.<sup>26</sup> The Commission subsequently issued another decision in that proceeding, D.08-04-010, adopting another COLA increase for hourly rates for work done in 2008. The Commission also concluded that, in light of the recent COLA increases, the six large utilities should be allowed to discontinue service of the annual data reports as directed in D.05-11-031. However, the Commission did acknowledge that COLA increases alone may not satisfy the statutory obligation to “take into consideration market rates” and recognized that “data input from the utilities will be part of any meaningful analysis of market rates for the purposes of setting intervenor rates in the future.”<sup>27</sup> Although the Commission was not certain that it would need the type of

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<sup>23</sup> Section 1806 requires the Commission, in setting intervenor compensation rates, to “take into consideration the market rates paid to persons of comparable training and experience who offer similar services.”

<sup>24</sup> See, D.05-11-031, *mimeo*, at 2. The decision also notes that the state’s six largest investor-owned utilities, including Verizon California and AT&T’s predecessor SBC California, paid 85-95% of all intervenors’ compensation awards for which the Commission has put the payment responsibility on individual utilities. *Ibid.*, at 2 fn. 2.

<sup>25</sup> D.05-11-031, Ordering Paragraph 3.

<sup>26</sup> D.07-01-009, *mimeo*, at 2, Finding of Fact No. 12.

<sup>27</sup> D.08-04-010, *mimeo*, at 14.

information previously gathered, it is clear that the compensation rates reported in GO 77 reports played an important role in the Commission's development of intervenor rates.

The URF ILECs, particularly AT&T and Verizon, should be given extensive regulatory scrutiny for other reasons, as well. These carriers provide service to the overwhelming majority of Californians.<sup>28</sup> So Verizon and AT&T are not merely competitors, but "super" competitors. Because of their embedded customer base, they have a huge marketing advantage over any competitors. More importantly, AT&T and Verizon control the networks that competitors depend upon. Excessive executive compensation and other expenditures captured by GO 77-M reports could have a negative effect on AT&T and Verizon's ability to keep rates low and maintain network responsibilities. Therefore, the Commission should give little weight to complaints from URF ILECs that they are not receiving "competitively neutral treatment" as a rationale for relaxing these requirements because of their dominant market share and their control of the telecommunications infrastructure.

**8. Is the Maintenance or Elimination of the GO 77-M Reporting by the URF ILECs in the Public Interest?**

Retaining elements of GO 77-M reporting for the URF ILECs continues to serve the public interest. Principally, GO 77-M remains functional in identifying compensated representatives acting on behalf of the public utilities before this Commission and other decision-making bodies. In particular, GO 77-M provides:

- (b) the total payments to attorney, including all attorneys who are on the payroll of the reporting public utility or who are on the payroll of or receiving payment from any corporation affiliated with the reporting public utility; the name of each attorney or legal firm receiving such payment; and the amount of, and account charged, for the total amount paid to each of said attorneys or legal firms; and
- (c) utilities conducting more than one type of utility or nonutility operation shall report the information relating to dues, donations, subscriptions,

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<sup>28</sup> According to FCC Form 477, CA\_Part2a Data as of June, 30, 2010, AT&T and Verizon provide service to over 80% of California access lines.

contributions, and payments to attorneys and legal firms on a total company basis, segregated by type of operations.

GO 77-M provides the public information necessary and useful in distinguishing parties appearing before the Commission. The need for disclosure of attorneys employed by, or associated with a utility is of particular importance since the administrative practices of the Commission invite litigation and lobbying. It is the public's right to review and identify all parties acting for and/or against its interests. The public should be able to turn to the Commission to verify lobbying, donations, fees and political contributions efforts of a particular regulated corporation. The Commission should provide the public access to reports outlining payments that may directly or indirectly contribute to the formation of public policy; GO 77-M provides this capability. The onus should not be placed elsewhere. As discussed above, GO 77-M is an instrument for greater public transparency and information. Thus, DRA asserts that the public right to material and transparency far outweighs the utilities' request for anonymity or less burdensome reporting.

Moreover, while the Commission forbears from imposing general rate cases on the URF ILECS, it still has a continuing obligation (and jurisdiction) to regulate these entities in the public interest: thus we continue to "review and monitor" ILEC behavior, the state of competition, and other items reportable in case the level of forbearance does not work, or another alternative should be considered, such as the re-imposition of rate regulation. Simply because the Commission does not engage in rate regulation for these entities does not mean it must, or even can, also abandon its responsibility altogether.

**9. Should the Current Requirement of GO 77-M be Refined? What are those Refinements?**

DRA believes that all utilities should publish GO 77-M information on their websites. Additionally, the Commission should post the reports on its website. Today Verizon offers the following web address for federal form 10-K, 10-Q, and Proxy Statement as a component of their GO 77-M filing, per D.05-09-021:

<http://22.verizon.com/investor/secfiling.gov>. AT&T offers a similarly inadequate web

address to this same information for their company, as its merely directs parties to the SEC's general website and not to any specific information provided by AT&T. AT&T's directions for this web address are: "Internet link to publicly available executive compensation documents is [www.sec.gov](http://www.sec.gov)." Both of these utilities fail to publish GO 77-M information anywhere on their websites.

In addition, DRA does not believe that Verizon and AT&T provide all of the information required by GO 77-M in the reports they submit to the Commission. For example, in reporting executive compensation, AT&T only provides information on "Dividends on restricted stock that were earned or awarded in a given calendar year regardless of whether an individual officer elected to defer actual cash payments." This does not include all types of items that would be typically be included in executive compensation packages. Information on stock and stock options, not just dividends received from a particular class of restricted stock, can comprise a huge portion of executive compensation and should be included as part of GO 77 reporting. In other words, consistent with Generally Accepted Accounting Principles ("GAAP") terms, URF ILECs should be reporting the "fully loaded" compensation for each and every employee for which reporting of executive compensation is specified. This is particularly important given that these reports are still used to compare URF ILEC compensation rates with those of Small LECs in their general rate cases.

### **III. CONCLUSION**

DRA recommends that the Commission reject the Joint Application. DRA urges that the Commission recognize that oversight and transparency are critical to the Commission's public interest function, and GO 77-M reflects these important public issues. The onus falls upon the Joint Applicants to show that the need for GO 77-M exemptions outweighs the public's right to disclosure and the Commission's statutory duty to regulate public utilities; thus far, the Joint Applicants have failed to do so.

Respectfully submitted,

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