

**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 (U 1024 C), SureWest Telephone (U 1015 C), and Verizon California Inc. (U 1002 C) to Exempt Uniform Regulatory Framework ILECs From General Order 77-M.

Application 11-02-003
(filed February 2, 2011)

REPLY BRIEF

**OF JOINT APPLICANTS
CITIZENS TELECOMMUNICATIONS COMPANY OF CALIFORNIA, INC. (U 1024 C)
SUREWEST TELEPHONE (U 1015 C)
VERIZON CALIFORNIA INC. (U 1002 C)**

**IN RESPONSE TO MAY 4, 2012
ASSIGNED COMMISSIONER'S RULING
REOPENING PROCEEDING AND REVISING THE SCHEDULE**

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Joint Applicants reply to the brief filed by the Division of Ratepayer Advocates (DRA) and the joint brief by The Utility Reform Network and The Greenlining Institute (Intervenors). As discussed below, both briefs fail to establish a legal reason to deny Joint Applicants' waiver from filing General Order (G.O.) 77 reports. Elimination of the G.O. 77 reporting by URF ILECs is in the public interest because it fosters competitive neutrality and promotes efficiency by reducing unnecessary regulatory burdens. As such, the Commission should grant the application.

DISCUSSION

I. G.O. 77 INFORMATION CANNOT MATERIALLY ASSIST IN EXAMINING CROSS-SUBSIDIZATION, LIFELINE, HIGH COST OR BASIC SERVICE RATES

DRA and Intervenors strenuously argue that G.O. 77 is an essential and indispensable tool in protecting against cross-subsidization, and ensuring just and reasonable rates, including rates for Lifeline and high cost areas.¹ The importance they give G.O. 77 reports should surprise the Commission. In the history of CPUC regulatory oversight of utilities, G.O. 77 is a relatively inconsequential minor report that never has been used in the extensive manner that DRA and Intervenors suggest. Indeed, the merits of the arguments suffer for that very reason.²

¹ Intervenors' Opening Brief at 5 ("G.O. 77-M is just one check available to the Commission to assess whether the prices charged for LifeLine and basic service provided in high-cost areas are just and reasonable.").

² The credibility of DRA's brief suffers even more than Intervenors' because DRA twice cites to decisions that have been suspended, superseded or modified as to the points DRA raises. First, at page 11, DRA cites D.04-05-057, which was suspended in its entirety in D.05-01-058 and superseded in D.06-03-013. Second, DRA cites to D.94-02-007 for the purported proposition that the right to privacy yields to the ratepayers' right to know and therefore utilities cannot redact the names of employees in their G.O. 77 reports. But that proposition was rejected in D.04-08-055 and D.05-04-030, both of which uphold the right to privacy and allow utilities to redact the names of employees: "Decision (D.) 04-08-055 adopted G.O. 77-L, superseding G.O. 77-K with revised rules in the three scoped areas. . . . [Based on privacy concerns, see Finding of Fact 12], [t]he decision states that utilities may redact the individual names of all employees required to report compensation, but not the names of executive officers or attorneys. [¶] . . .

There is simply no credibility to the proposition that the information reported in compliance with G.O. 77 can materially assist the Commission in protecting against cross-subsidization or ensuring just and reasonable rates. The amounts reported in G.O. 77 are but a minute fraction of any individual carrier's costs and therefore materially irrelevant to a serious analysis of whether rates are in line with costs, cross-subsidization exists or the sustainability of universal service funds. For example, Verizon reported employee and attorney compensation of about \$31.3 million in its report filed in 2012. This expense category represents 1.45% of Verizon's \$2.16 billion in operating expenses. There is simply no good faith inference the Commission can make in connection with rates, cross-subsidization or universal service funds from knowing that Verizon allocated 1.45% of expenses to employee and attorney compensation.

Moreover, even if the Commission were to assert individual service price re-regulation (as DRA and Intervenors suggest could occur), the information required by G.O. 77-M would not assist the Commission in understanding the relationship of costs to rates, because it deals with just a tiny sliver of a general category of shared and common costs and says nothing about the overall costs for an individual service. The Commission would have to perform a cost study to reach an informed conclusion and cost studies are massive undertakings. If the Commission were ever to do this, it would have to request, from each carrier, extremely detailed cost information.³ G.O. 77 data is

In D.05-04-030, we . . . modified D.04-08-055 to allow utilities to redact . . . the names of all individuals, including executives and attorneys, from their G.O. 77 reports." D.05-09-021, 2005 Cal. PUC LEXIS 346, 3-4 (Cal. PUC 2005).

³ Joint Applicants raised a similar point in their Opening Brief at 12-13 ("It is not surprising that the Commission has not mentioned G.O. 77-M as one of the safeguards against cross-subsidization with regard to DIVCA because if a cross-subsidization investigation were necessary, a detailed cost study

so minor in comparison to the data required to perform such an examination it would be lost in rounding-up numbers.

There is no need to continue reports until such a day, as such a day may never come. In the event the Commission decided to perform a cost study, it could, and would have to, request cost data from carriers.

II. OFFICER AND ATTORNEY COMPENSATION FROM URF CARRIERS IN NO WAY INFLUENCES SMALL LEC COMPENSATION

DRA claims that "[t]he information in the URF ILEC reports is a valuable tool to Commission staff in evaluating Small ILEC compensation claims and determining whether their overall rates are just and reasonable."⁴ DRA's suggests that the Communications Division may use the information in the GO 77-M reports to compare URF ILEC executive compensation data to that of the Small LECs in their general rate cases, that the information could be useful in evaluating what the compensation rates are in relation to the size of the company, and that this data somehow gives the Commission a better understanding of how the Small LECs operate in comparison to the larger carriers in California.⁵

DRA's position that GO 77 data could be used in the Small LEC rate cases to compare executive compensation is belied by the fact that it does not cite to a single instance in which such a comparison was used in a Small LEC rate case, a single

would be required and would focus on an analysis of incremental and/or stand-alone costs. [See Faulhaber, Gerald R., "Cross-Subsidization: Pricing In Public Enterprises," American Economic Review, Vol. 65, No. 5 (Dec., 1975), at 966-77.] Historical compensation paid to particular groups of executives and employees and donations to outside groups would not be a material component of this kind of cost study, since these costs represent book costs rather than economic costs and provide no information about the incremental or stand-alone costs associated with services or groups of services. [For example, a G.O. 77-M report does not say which part of employee expenses is for common overhead expenses and which part of expenses is for individual services or groups of services.].

⁴ DRA Opening Brief at 2-3.

⁵ Id. at 13.

instance in which such a comparison was presented in any other regulatory proceeding, or a single instance in which a Commission decision cited such a comparison. There appear to be no instances in which the GO 77-M data have been used in this way. The obvious operational differences between the state's largest LECs and the state's smallest LECs negate the potential value of any such comparisons. Therefore, continued GO 77-K reporting by the URF ILECs can simply not be justified by their potential use in regulating Small LECs.

III. G.O. 77 IS IRRELEVANT TO DRA AND INTERVENORS' CONJECTURE THAT ORGANIZATIONS THAT RECEIVE DONATIONS FROM JOINT APPLICANTS TAKE POSITIONS ON THE BASIS OF THOSE DONATIONS

DRA and Intervenors support expanding the use of G.O. 77 for the purpose of shedding light on the motives of non-profit organizations that (a) take positions in Commission proceedings and the legislature and (b) receive charitable donations from carriers. Pursuant to Public Utilities Code Section 1708, the Commission procedurally cannot expand the purpose of G.O. 77 to accomplish this new goal in this proceeding, as other utilities have due process rights to notice and to be heard on the proposal.

Moreover, DRA and Intervenors' proposals make little sense. First, Joint Applicants or a subset of Joint Applicants provide donations to a number of organizations that often take positions contrary to those espoused by Joint Applicants or a subset of them. This very proceeding is a powerful example of that point. The Greenlining Institute has received significant donations from certain Joint Applicants, yet it opposes the relief Joint Applicants here request as well as many other forward looking proposals.

Second, DRA and Intervenor's briefs imply that any time a non-profit supports a position favorable to an URF carrier, that nonprofit does so based on a *quid pro quo* for donations received. But knowing that a nonprofit has received donations and making the assumption that their positions are based on receipt of that money would be pure speculation and thus ultimately not useful to the Commission. It certainly would be improper for the Commission to make policy decisions based on speculation as to the motives of an organization's advocacy. Such speculation is in any event unnecessary because, as Joint Applicants argued before, the Commission is fully capable of assessing the strength of arguments without reference to an organization's sources of funding.

Third, Verizon California Inc. does not provide donations to nonprofit organizations; the Verizon Foundation, which is not subject to G.O. 77, does this function. As such, Verizon California's G.O. 77 filings do not report any donations. Thus G.O. 77 does not provide the purported transparency benefits DRA and Intervenor's claim. Nevertheless, expanding G.O. 77 for the purpose of purportedly shedding light on the motives of engaged nonprofit organizations is unnecessary, because other sources already promote transparency of charitable donations. Donations, contributions and payments made to non-profits or other community groups are reported in tax returns filed annually by company foundations in IRS Form 990 and/or CA Form 199 and these forms can be found on the websites of some of the Joint Applicants.⁶

⁶ See, for example, Verizon's Form 990s for 2005-2010 at <http://www.verizonfoundation.org/about/financial-statements/>.

Finally, the G.O. 77 report is filed annually and there is simply no way to connect the annual donations reported by some utilities on G.O. 77, Form 990 or Form 199 with positions taken on any particular piece of legislation or CPUC proceeding.

IV. G.O. 77 NEVER SERVED A FUNCTION IN SETTING INTERVENOR COMPENSATION RATES BECAUSE THEY WERE BASED ON DATA SETS UTILITIES PROVIDED ON REQUEST AND ARE NOW BASED ON COLAS

DRA claims that G.O. 77 helped in deciding the rates attorneys and experts would receive in connection with intervenor compensation. But that is simply not the case. The very first paragraph of Decision 05-11-031 belies DRA's claim by stating that the rates were based on data sets from utilities and information provided by intervenors:

In today's decision, we approve principles to govern hourly rates for intervenors' representatives. We base these rates on (1) compensation data provided by utilities regarding the in-house and outside representatives who appear on their behalf before this Commission, and (2) the information provided by intervenors regarding the training and experience of their representatives.⁷

Moreover, D.07-01-009 did not rely on G.O. 77 as DRA states. The only mention of G.O. 77 was in relation to the fact that the data sets utilities provided were submitted around the same time G.O. 77 reports were due. But the decision never stated that the data sets were based on or relied upon data in G.O. 77. Instead, the data was much more detailed, based on disaggregation by years of experience and on an hourly basis, whereas G.O. 77 compensation is reported on an annualized basis per individual with no categorization for years of experience.⁸ Indeed, the references to G.O. 77 were in

⁷ D.05-11-036 at 2.

⁸ G.O. 77 compensation is reported on annual basis. The information the Commission required was hourly rates based on a set of ranges as required in D.05-11-036 at page 19: "Beginning in 2006, the state's six largest utilities shall annually serve on all parties to this proceeding, by April 30, data sets showing, for the two preceding calendar years, the hourly rates paid to all outside and in-house representatives (attorneys and experts) who participate in our proceedings, using the spreadsheet format and type of data developed in this proceeding. [* * *] For attorneys, the data shall be disaggregated into

relation to the Commission rejecting the idea of setting rates based on the date G.O. 77 reports were due:

We currently update hourly rates annually on a calendar year basis. We solicited comments in this proceeding on whether to change to a fiscal year basis since the affected utilities annually report compensation data (pursuant to General Order 77-M) at the end of April. Considering we have most recently used Social Security Administration COLA data which is annually released at the end of the calendar year, and in view of comments, we will continue to update hourly rates on a calendar year basis.⁹

Intervenor compensation rates are now based on cost of living adjustments and have no relationship to G.O. 77. If the intervenor compensation cases DRA cited stand for any proposition, it is that the Commission will ask for detailed data—as it did in regards to the data sets discussed above—when it wants or needs data. Therefore, continued URF ILECs G.O. 77 filings are unnecessary, as the Commission can ask for the G.O. 77 data when and if it needs that data.

V. DRA AND INTERVENORS' RECOMMENDATIONS TO EXPAND THE SCOPE OF G.O. 77 IN THIS PROCEEDING ARE PROCEDURALLY IMPROPER AS JOINT APPLICANTS AND AT&T ARE NOT THE ONLY UTILITIES SUBJECT TO THE G.O.

DRA and Intervenors propose expanding G.O. 77 to wireless companies, to require affiliates and/or parent companies to disclose information and to disaggregate payments to lobbyists by each legislative bill.¹⁰ These proposals must be rejected out of hand because they are procedurally improper. Any expansion of G.O. 77 must be made with notice to all potentially impacted utilities, as required by Public Utilities Code

the same levels of experience (years since completion of law school) described earlier; 0-2 years; 3-4 years; 5-7 years; 8-12 years; and 13 and over years. [¶] For experts, the data shall be disaggregated by job classification and by levels of experience relevant to the classification: 0-2 years (entry); 3-9 years (journey); and 10 and over years (senior).”

⁹ D.07-01-009 at 9.

¹⁰ The request to expand reporting to wireless companies is especially dubious given the specific exemption from G.O. 77 they have been provided in D.98-09-024.

Section 1708. This proceeding is limited in scope to considering Joint Applicants' application for a waiver of the G.O. 77 reporting requirement. G.O. 77, on the other hand, applies to several categories of utilities, including electric utilities. The companies not party to this proceeding are entitled to due process, including notice and an opportunity to be heard.

CONCLUSION

With regard to companies that are not rate-of-return regulated, the Commission no longer needs G.O. 77 information to perform the ratemaking functions for which the requirement was initiated. For all the reasons provided by Joint Applicants and AT&T in this proceeding, the Commission should grant the Application and exempt URF ILECs from G.O. 77 requirements.

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Respectfully submitted,

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