

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Rulemaking on the Commission's own
Motion into the Exemption from Pub.
Util. Code § 851 for Uniform
Regulatory Framework and other
Competitive Carriers.

R.09-05-006
(Filed May 7, 2009)

**OPENING COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES
ON SCOPING MEMO**

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) hereby submits these Opening Comments in response to the Assigned Commissioner's Ruling and Scoping Memo on Phase I of Proceeding (Scoping Memo) issued on November 9, 2009. The Scoping Memo invited these comments. As detailed in previous comments, DRA supports the bifurcation of this proceeding, with the first phase devoted to the identification of asset dispositions unlikely to be controversial, and the second phased devoted to assets that are necessary and useful to the telecommunications companies and/or their customers.

However, we believe more assets belong in the "controversial" category than the Scoping Memo acknowledges. Assets whose removal from use will affect the "public interest" should be treated as controversial and addressed in Phase 2 of this rulemaking. Those assets are relevant to the following aspects telecommunications companies' operations: 1) competitor access to the telephone network, 2) service quality, 3) services to seniors and low income customers, 4) jobs in California and hence the California economy, and 5) safety, privacy and security. DRA refers to these public interest criteria herein as the "five factors."

Thus, DRA opposes Commission treatment as "noncontroversial assets" of the following types of asset transfers, although there may be others:

- Call centers, which employ large numbers of California residents and whose transfer would put those employees out of work or hurt service quality;
- Payment centers, where seniors, disabled, low income and other customers pay their telephone bills either because they lack banking relationships or feel more comfortable paying in person;
- Headquarters buildings, because of their impacts on California jobs;
- Central offices or switching centers, which house telephone switches and competitors' facilities, giving them access to the public switched telephone network and its network elements;
- Critical infrastructure under state and federal regulation that has an impact on the safety, privacy and security of customers, customer data and the infrastructure itself; and
- Other assets that affect the five factors listed above.

The URF ILECs have argued that Section 851 impedes routine commercial transactions contrary to California's statutory telecommunications policy.¹ However, the ILECs' desire to consummate transactions quickly must be weighed against the public interests at stake in these transactions. In situations on which we elaborate below, the public interest favors review of the transactions under Section 851.

II. DISCUSSION

A. The Commission Retains Jurisdiction to Enforce the Five Factors

DRA agrees with the Scoping Memo's determination that noncontroversial transfers should be exempt from Commission approval under Pub. Util. Code Section 851. The rub lies in the disagreement among the parties as to what assets truly are controversial. In DRA's view, even in an era of rate deregulation for URF ILECs, the Commission and the ILECs retain important public interest obligations to ratepayers and to California in general. ILEC movements of large numbers of employees out of state or offshore, transactions that harm ILEC service quality, impacts on the most vulnerable

¹ Verizon Reply Comments (10/4/2009) at 7.

members of society, and reductions in network access for competitors and safety, privacy and security implicate the public interest and should be reviewed under Section 851.

While it is true that Pub. Util. Code Section 853(b)² grants the Commission the authority to exempt the URF ILECs from Section 851, those exemptions must be limited to transactions that truly present no controversy. As Decision (D.) 02-06-015 correctly concluded:

If the Commission relied regularly on Section 853, it would effectively amend the clear requirements of the other 853 series sections out of the Public Utilities Code. This Commission is not empowered to take such legislative action.³

Section 853(b) gives the Commission the power to grant limited and narrowly tailored exemptions “from time to time” when doing so would serve the public interest.

The URF ILECs have failed to meet their burden of proof to establish that exemptions for “five factor” transactions would be beneficial to the State and to the public. Indeed, the URF ILECs seek to reverse the burden of proof under Section 851. However, neither the Commission nor the ratepayers are required to prove that Section 851 should be applied to further the public interest; rather, the carriers must prove Section 851 is not necessary to protect the public and justify an exemption under Section 853(b). The carriers’ need for smooth commercial transactions may not always outweigh the five factors we enumerate here.

Further, the Scoping Memo reads the statute too narrowly by focusing on the exception to Section 851 (Section 853(b)) rather than on the requirement in Section 851 that the Commission “establish rules or impose requirements deemed necessary to protect

² Pub. Util. Code Section 853(b) provides in full:

The Commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.

³ D.04-08-048, at 7, *citing* D.02-06-015, *mimeo*, at 4 (emphasis added).

the interest of the customers or subscribers of the public utility of class of public utility exempted under this subdivision.”⁴

B. Numerous Assets Remain Are Necessary and Useful and Require Section 851 Review

Section 851 exists to ensure that asset transactions do not conflict with the carriers’ mandate to retain assets necessary or useful to the public. The Scoping Memo rests on a faulty conclusion, *i.e.*, that assets related to competitive access – such as collocation space and other facilities that give competitors access to the telephone network – are the only controversial assets in this proceeding. Other asset transfers also have an impact on the public interest, and should be examined by the Commission before an URF ILEC may dispose of them. The following is a list of some of those assets.

1. Low-income, elderly and disabled customers benefit from local payment centers.

The Scoping Memo’s Phase I erroneously indicates that payment centers fall under the category of assets that are noncontroversial.⁵ Although the communications market has become increasingly accessible via the Internet, mobile devices, and telephone, the local payment center remains a preferred method for many customers to pay bills or inquire about services. This holds especially true for the elderly, poor, and those without access to the Internet. The closure of payment centers will require customers either to pay their bill online or by U.S. mail. These are not viable options for a sizeable portion of the population who rely on payment centers to resolve issues or assist with their payments.

Payment centers also can offer aid to elderly customers who need assistance in deciphering and paying bills. The facilities offer support for customers speaking a language other than English and provide disabled people options that are not accessible through telephone or mobile device services. Finally, the closure of payment centers disadvantages those customers who are unable or reluctant to make payments

⁴ Pub. Util. Code Section 853(b).

⁵ Assigned Commissioner’s Ruling and Scoping Memo on Phase I of Proceeding (11/09/2009) at 7 and 8, fn 6

electronically or through the mail. For those individuals residing in locations that lack Internet access, a decision to allow the closure of payment centers would leave them with no alternative but to pay bills through the mail. This option, however, is infeasible for those without access to traditional banking services.

Thus, asset transfers that involve payment center closures belong in the “controversial” category and should not be exempt from Section 851 review. The Commission should review any proposal by an URF ILEC to close one or more of these vital public resources.

2. Section 851 exemptions may have an adverse affect on California jobs.

The URF ILECs assert that “[a]bsent a showing that an advice letter process is ‘necessary in the public interest,’ the Commission should unconditionally exempt support assets from section 851 in Phase 1 of this proceeding and eliminate the advice letter filing requirement.”⁶ This assertion fails to consider a fundamental question: what will happen to employees located at any facility sold? The federal and California governments have indicated job retention and creation as top priorities of the states. According to the United States Bureau of Labor Statistics, California’s current unemployment rate is at 12.5%.⁷ With an unemployment rate ranking fourth worst in the nation, California cannot afford the uncertainty of job loss due to “routine commercial transactions.”

The issue of unemployment in the telecommunications industry has become so prevalent that State Senator Alex Padilla and State Assembly member Felipe Fuentes have sent a letter to the Commission requesting that “[the CPUC] commence an inquiry into job cuts, out-of-state job transfers, and layoffs by Verizon and AT&T.”⁸ The Legislature noted that between August of 2008 and August of 2009 these companies cut more than 2,000 jobs.⁹

⁶ *Id.* at 3.

⁷ US Bureau of Labor Statistics at <http://www.bls.gov/web/laumstrk.htm>, visited on 12/10/2009.

⁸ See *October 29, 2009 Letter* from Alex Padilla, State Senator, and Felipe Fuentes, State Assembly member, to California Public Utilities Commission President Michael Peevey.

⁹ *Id.* at 1.

Automatic Section 851 exemptions for transactions that cause large job losses do not serve the public interest. These transactions may hurt the economy and may lower ILEC service quality. DRA is not suggesting that the Commission should deny all such transactions. Rather, the Commission should prevent carriers from consummating such transactions without review, and instead, should scrutinize asset sales that might create serious jobs impacts in California. One purpose of the Section 851 process is to determine if a transaction adversely affects the viability of the companies involved in the transaction (including labor reductions) and possible consequences to the region directly connected to the transaction. The Commission's proposition to exempt URF ILECs from Section 851 requirements would remove an important safeguard to ensure employment stability at these important public utilities.

3. Underserved areas may suffer from poor service quality and public safety standards

In 2009, the Commission undertook measures to develop more progressive service quality standards and to ensure California's exterior communications infrastructure was subject to more reliable safety regulations.¹⁰ In particular, the Commission examined rural regions that do not receive the same attention as urban and suburban communities. The Commission imposed these safety and service quality requirements at the request of DRA and the Consumer Protection and Safety Division (CPSD), as each noted disproportionate service between densely populated and scarcely populated regions.

The Commission should examine transactions including call center closures, headquarter sales, and payment office closures for potential harm to service quality. Again, DRA is not recommending that such transactions always be denied. It simply seeks to secure Commission oversight of such transactions.

¹⁰ R.02-12-004, Order Instituting Rulemaking on the Commission's Own Motion into the Service Quality Standards of All Telecommunications Carriers and Revisions to General Order 133-B; and R.08-11-005, Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities.

C. At a Minimum, the Commission Should Require Reporting of all Section 851 Transactions

If the assigned Commissioner does not narrow the scope of “noncontroversial” transactions, at a minimum the Commission should require annual reporting of “five factor” transactions for at least five years from the effective date of the Phase 1 decision in this proceeding. The report should incorporate the following;

- Transactions that would have fallen under Section 851 review if not exempted;
- Service quality standards by exchange as ordered in R.02-12-004, D.09-07-019; and¹¹
- Inspection and maintenance records as ordered in R.08-11-005, D.09-08-029¹²

This annual report is not overly burdensome since the required service quality and inspection and maintenance records must be produced anyway. Moreover, the five-year sunset date corresponds to the record retention mandates in General Order 133-C and R.08-11-005.¹³ As the URF ILECs have reported, very few Section 851 applications were filed over the past 10 years.¹⁴ Thus, this reporting will not be burdensome for the carriers.

¹¹ D.09-07-019, Attachment 1 at 7 and 8.

¹² D.09-08-029 at 15

¹³ R.08-11-005, Interim Ordering Paragraph:

CIP [Communications Infrastructure Providers] shall maintain documentation, which would allow Commission staff to verify that such inspections and corrective actions were completed, including the location of the pole/equipment inspected, the date of inspection, and the personnel that performed the inspection and corrective action. Such documentation shall be retained for five years.

General Order 133-C, Governing Telecommunications Service Quality (Service Quality):

1.5 Location of Records. All reports required by these rules shall be kept and made available to representatives, agents, or employees of the Commission upon reasonable notice.

¹⁴ In its reply comments filed on 9/4/09, from 1999 to present, the total number of Section 851 applications reported were AT&T ten (10), Verizon ten (10) and SureWest reported one (1). Citizens Telecommunications Company dba Frontier Communications of California did not respond.

D. Conclusion

For the reasons cited above, DRA supports continued protection of competition, safety, security, privacy, vulnerable customers and California's economy through enforcement of the requirements of Section 851 for URF ILECs.

Respectfully submitted,

/s/ SARAH R. THOMAS

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December 18, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON SCOPING MEMO”** to each party of record on the official service list in **R.09-05-006** via electronic mail.

Parties who did not provide an electronic mail address, were served by U.S. mail with postage prepaid listed on the official service list.

Executed on **December 18, 2009** at San Francisco, California.

/s/ Imelda Eusebio
Imelda Eusebio

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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R. 09-05-006**

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