



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

08-13-12

04:59 PM

Order Instituting Rulemaking Regarding
Revisions to the California High Cost
Fund B Program

R.09-06-019
(Filed June 18, 2009)

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE ALTERNATE
PROPOSED DECISION OF COMMISSIONER FLORIO ADOPTING BASIC TELEPHONE
SERVICE DEFINITION**

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Dated: August 13, 2012

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I. INTRODUCTION

Pursuant to Rule of Practice and Procedure 14, The Utility Reform Network (“TURN”) files these Reply Comments on the *Alternate Proposed Decision of Commissioner Florio* (“Alternate” or “AD”). TURN also endorses the Reply Comments filed today by the Center for Accessible Technology, Greenlining Institute, and National Consumer Law Center.

At the most fundamental level, the disagreements over the Alternate stem from a philosophical difference over the meaning of “technology and competitive neutrality.” The carriers appear to define these terms as requiring the Commission to refrain from imposing any regulations, rules or requirements whatsoever. The carriers’ arguments essentially boil down to the premise that the only appropriate requirements are those that are dictated by the marketplace where the majority rules. In comparison, TURN and other consumer groups view technology and competitive neutrality as requiring that all market participants be held to a similar standard such that regulations or requirements be similarly applied to all carriers regardless of technology or competitive advantage. From the customer’s perspective, these terms also mean that a customer will be treated fairly and can have similar expectations for basic service regardless of the technology used to provide the service. This is precisely what the Alternate provides.

Unfortunately, neither the California Legislature nor the Commission has ever defined the terms “technological neutrality” and “competitive neutrality.”¹ The Commission, principally in the Uniform Regulatory Framework (“URF”) decision, began using these terms, along with the concept of “asymmetric regulation” to justify the elimination of regulatory requirements “imposed on one class of communications providers (e.g., ILECs) but not their competitors (e.g., CLECs), or regulations that are imposed on one company but not other companies.”² However, technological and competitive neutrality can also be interpreted as imposing the same requirements on one class of providers or on all telecommunications companies. And, this is precisely what the AD does. In fact, it can be argued that the AD represents the pinnacle of technological and competitive neutrality. Under the AD, all carriers offering basic service, as defined, are held to the same standard while still providing flexibility to meet that standard. What the carriers really object to is that the AD has the temerity of imposing any requirements although the application of such requirements is the same for all carriers.

¹ See, for example, Public Utilities (“P.U.”) Code § 871.7(d).

² D.06-12-044. fn 34.

Furthermore, the carriers consistently ignore the fact that the Commission has other statutory responsibilities and goals that it must balance. Thus, the Commission must ensure that rates are reasonable, that universal service is assured, that telecommunications services are of high-quality, etc. The carriers appear to believe that the Commission's only goal is technological and competitive neutrality, as they define it. This is just wrong and the Commission should resist succumbing to such a narrow view of the Commission's responsibilities.

II. DISCUSSION

A. Signal Strength

With few exceptions, the carriers are apoplectic about the requirement proposed by the AD that “a wireless carrier that offers residential basic telephone service must provide sufficient signal strength and coverage to maintain a voice-grade connection in at least one room of the customer's residence.” (AD at p. 22). CTIA, Cricket and Nexus, for example, all argue that it will be “impossible” for wireless carriers to meet this requirement and even if technically feasible would be “exorbitantly” expensive to implement.³ These assertions are belied by the fact that CTIA proposes that the AD be modified to only require adequate signal strength “if a wireless carrier seeks to become a carrier of last resort (“COLR”) in a high-cost area in which the COLR may be a customer's sole telecommunications option.”⁴ This concession certainly calls into question the assertions relating to technical impossibility and cost.⁵ Moreover, none of the carriers have provided a scintilla of evidence to support their cost arguments. Furthermore, arguments that this or any of the other proposals in the AD are inconsistent with the wireless business model should be accorded little weight. The wireless industry has made deliberate choices regarding their business model to maximize subscribership and profitability. The Commission's responsibility is to protect consumers not to be held hostage to business models. Finally, it is striking that wireless carriers admit that the value proposition associated with mobility does not include any

³ See, Comments of CTIA-The Wireless Association on Alternate Proposed Decision Adopting Basic Telephone Service Revisions (“CTIA Comments”) at p. 5; Comments of Cricket Communications, Inc. on Alternate Proposed Decision of Commissioner Florio Adopting Basic Telephone Service Revisions (“Cricket Comments”) at p. 5; and Comments of Nexus Communications, Inc. on Alternate Proposed Decision of Commissioner Florio Adopting Basic Telephone Service Revisions (“Nexus Comments”) at p. 3.

⁴ CTIA Comments at p. 7.

⁵ Many wireless carriers are offering devices to boost signal strength within buildings. For example, AT&T offers a microcell signal booster at an additional cost. Furthermore, AT&T among other carriers is offering a home phone service using its wireless network and an adapter device into which end users can plug a traditional landline phone, enabling it to place and receive calls from the AT&T wireless network (see <http://www.telecompetitor.com/att-quietly-launches-wireless-based-landline-replacement-service>).

assurance that the customer can use the mobile phone in his/her home. This is particularly glaring when the same carriers tout that their service is a substitute for wireline basic telephone service.

B. CTIA and AT&T Misrepresent “Cord Cutting” Data

Both CTIA and AT&T raise the issue of the prevalence of wireless-only households among lower-income populations, as measured by the National Health Interview Survey (“NHIS”).⁶ There are general and specific problems with the arguments of these parties as they relate to the NHIS data. At the general level, the NHIS data reflects national statistics, a point that is conceded by CTIA, but ignored by AT&T.⁷ Data specific to California is not provided by either party. What is clear from the most recent state-level data available from the NHIS is that Californians cut the cord at a much lower rate than the rest of the nation.⁸ Thus, the national-level data presented by AT&T and CTIA has little value to this Commission.

There are other problems with AT&T and CTIA’s arguments regarding the relationship between low-income cord cutting and consumer preferences. AT&T states that low-income consumers “no longer require outdated wireline services.”⁹ However, AT&T goes on to note that “when faced with the prospect of having to pay for two telecommunications solutions, these customers typically opt for the convenience afforded by wireless, notwithstanding the loss of wireline service attributes.”¹⁰ Thus, the “choice” that low-income consumers are forced to make—cut the cord and lose wireline service attributes—has the same “majestic equality” as the “choices” that result in some who “choose” to sleep under bridges—both rich and poor are free to choose, its just somehow the poor who wind up under the bridge. The same tortured logic applies to CTIA and AT&T’s argument, which essentially is that the poor should be forced to lose vital wireline service attributes. TURN does not believe that such an

⁶ Both CTIA at p. 4 and Opening Comments of Pacific Bell Telephone Company D/B/A AT&T California...to Alternate Proposed Decision Adopting Basic Telephone Service Revisions (“AT&T Comments”) at p. 3 reference the data contained in Blumberg, Stephen J. & Luke, Julian V., “Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July – December 2011,” p. 3 (June 2012), available at: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201206.pdf>.

⁷ “recent data from the Center for Disease Control show that on a nationwide basis 51.4 % of adults in poor households (defined as households that meet the U.S. Census Bureau poverty thresholds) are wireless only....” CTIA Comments at p. 4.

⁸ The most recent NHIS-based study of the matter showed 18.2 percent of California adults residing in wireless-only households, while the national average was 26.6 percent. See, Stephen J. Blumberg, Julian V. Luke, Nadarajasundaram Ganesh, Michael E. Davern, Michel H. Boudreaux, and Karen Soderberg. “Wireless Substitution: State-level Estimates From the National Health Interview Survey, January 2007–June 2010.” April, 2011, page 1 and Table 1. <http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf>

⁹ AT&T Comments, p. 3.

¹⁰ AT&T Comments, p. 3.

outcome is good policy, and the modest requirements regarding the ability of consumers to utilize wireless services in their homes are entirely reasonable.

AT&T also points to an alleged and “remarkable 23,000%” increase in the number of Californians who have been approved for federal Lifeline benefits with wireless ETCs during the period May 2011 to May 2012. The data cited by AT&T from Solix shows that in May of 2011 there were 1,845 federal wireless Lifeline customers. The Solix data shows 115,130 in May 2012. Thus, as would be expected with regard to “remarkable” percentage increases, when starting from close to zero, any increase will be large in percentage terms. However, AT&T also fails to provide the Commission with a proper percentage change calculation. The percentage change is not the 23,000 percent claimed by AT&T.¹¹

C. Service Quality

Most of the carriers object to the AD’s provisions regarding service quality. First, many carriers assert that the AD acts to “pre-judge” the issues identified in R.11-12-001. In particular, CTIA and others assert that the AD “makes the broad unsubstantiated conclusion that competitive forces cannot be relied on to ensure...service quality.”¹² Cox goes so far as to claim that the AD is inconsistent with Commission’s decision in R.02-12-004 (D.09-07-019) “that competitive environments apply a natural pressure for carriers to ensure adequate service quality.”¹³ While that statement was made in D.09-07-019, Cox conveniently leaves out the key point in the decision that “We do not believe competitive environments completely obviate the need for any service quality measures.”¹⁴ Thus, while service quality issues are being reviewed in R.11-12-001, the Commission’s current policy is that service quality standards are critical for consumers.

The other major complaint of the carriers is that the AD applies the existing standards of GO 133-C for URF carriers to basic service providers that utilize a technology other than exchange-based wireline technology until there is a decision in R.11-12-001. The carriers lament that it is unreasonable to apply “legacy wireline service quality metrics” to wireless carriers or VoIP carriers, citing the fact that wireless carriers do not “roll trucks to respond to an individual’s service problems.”¹⁵ While, it is

¹¹ The correct calculation is as follows: $(115,130 - 1,850)/1,850 = 61.40$, or a 6,140 percentage increase.

¹² CTIA Comments at pp. 10-11.

¹³ Comments of Cox California Telecom, LLC, DBA Cox Communications, on the Alternate Proposed Decision of Commissioner Florio (“Cox Comments”) at p. 10.

¹⁴ D.09-07-019 at p. 13. See also, COL 4 “GO 133-C is consistent with the Commission’s statutory duty to ensure that telephone corporations provide customer service that includes reasonable statewide service quality standards...).

¹⁵ AT&T Comments at p. 12; CTIA Comments at p. 12.

correct that not every service quality standard that the URF carriers must comply with directly translates to wireless or VoIP services, generally speaking those “non-traditional” carriers utilize some of the same business processes as URF carriers as it relates to the standards in GO133-B. For example, wireless carriers have to deal with service interruptions, customer complaints and providing reasonable answer time when customers call the business office. TURN submits that these minimum standards are reasonable, customer-friendly and relatively easy to implement. It is noteworthy that the carriers in complaining about the AD use examples of service quality standards that even the URF carriers do not have to meet. For example, CTIA focuses on installation intervals and commitments.¹⁶ *GO 133-C does not require the URF carries to meet any standards for these elements – only the GRC LECS must meet these particular requirements.*

III. CONCLUSION

TURN supports the Alternate and urges the Commission to adopt the Alternate with the minor changes proposed in opening comments.

Dated: August 13, 2012

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¹⁶ CTIA Comments at p. 12.