Decision **PROPOSED DECISION OF COMMISSIONER CHONG**
(Mailed 7/23/2007)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities.	Rulemaking 05-04-005 (Filed April 7, 2005)
Rulemaking for the Purposes of Revising General Order 96-A Regarding Informal Filings at the Commission.	Rulemaking 98-07-038 (Filed July 23, 1998)

OPINION ADOPTING TELECOMMUNICATIONS INDUSTRY RULES

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OPINION ADOPTING TELECOMMUNICATIONS INDUSTRY RULES

1. Overview

In today's decision, we adopt Telecommunications Industry Rules for General Order (GO) 96-B. This decision accompanies and reflects the changes that we have made to rules governing telecommunications carriers in our Uniform Regulatory Framework (URF) rulemaking (R.05-04-005), in both Phase I and today in Phase II. As we discuss in the accompanying URF Phase II decision that we adopt today, we have made changes and adopted rules governing URF advice letters and detariffing of services. The Telecommunications Industry Rules incorporate these URF rules. The new Telecommunications Industry Rules will apply to all telecommunications advice letters submitted 30 days from the effective date of today's order or thereafter.

We note in the accompanying URF Phase II decision that we have consolidated our GO 96-B rulemaking (R.98-07-038) with the URF proceeding, so that we may coordinate overlapping issues and rely on the combined record. R.98-07-038 concerns GO 96 and procedures for the handling of advice letter filings at the Commission. Advice letters are subject to review and approval or rejection.[1] Advice letters are also the mechanism by which utilities submit tariff

[1] Other informal filings, such as financial or accident reports, are submitted solely on an informational basis. Advice letters are distinguished from formal filings, notably applications. In general, any matter that may go to evidentiary hearing should be filed by application. Utilities where rate regulation prevails, such as gas, electric, and water companies, must apply for changes in rates, but may use advice letters for implementation of rate changes previously authorized by the Commission. As competition displaces rate regulation within a utility industry, the scope of potential subject matter for advice letters expands. We will discuss this point at greater length later in today's decision when we deal with the Telecommunications Industry Rules.

revisions to the Commission; consequently, in updating GO 96, we have comprehensively revised the rules for advice letter review and disposition for all utilities that file tariffs. *See* Decision (D.) 07-01-024. In January of this year, we adopted General Rules that apply to all utilities and Industry Rules that apply to specific utility industries (Energy and Water Industry Rules) in D.07-01-024. We also noted that we planned to adopt Telecommunications Industry Rules later that would reflect changes made in the URF proceeding. *Id.*, Ordering Paragraph 6.

In today's decision, we take the last step in completing GO 96-B by adopting Telecommunications Industry Rules. *See* Appendix A. These rules govern the filing, review, and disposition of advice letters and information-only filings submitted by regulated carriers. These rules also incorporate requirements for URF carriers seeking to detariff their services and modifications to the URF advice letter filing procedures, as discussed in the URF Phase II decision adopted today.

2. Background and Summary

The Telecommunications Industry Rules that we adopt today in this decision can be traced to the February 2001 draft decision of the administrative law judge (ALJ) assigned to the GO 96-B rulemaking (the "2001 draft rules"). The 2001 draft rules were published for comment in that 2001 draft decision by the assigned ALJ. At that time, the 2001 draft rules reflected the "New Regulatory Framework" then in effect for the telecommunications industry. The stated intent of the 2001 draft rules was not to change that framework, but to propose some procedural reforms where existing procedures appeared to make

distinctions resulting from piecemeal regulatory development rather than consistent policy considerations.[2]

The 2001 draft rules set forth the broad structure that the Commission ultimately adopted in GO 96-B, including the proposed tiers; what has since changed is our regulatory framework for telecommunications. Much of the subject matter in the 2001 draft rules concerned our New Regulatory Framework. URF has since supplanted the New Regulatory Framework, but the GO 96-B tier structure can accommodate either framework, as discussed in today's decision.

Between the February 2001 draft ALJ decision and today, the Commission adopted four interim decisions in the GO 96-B rulemaking. The second of these decisions (D.02-01-038) was entirely concerned with telecommunications. In that decision, we adopted customer notice requirements regarding proposed transfers, withdrawal of service, and higher rates or charges. In the other three interim decisions, we adopted parts of the February 2001 draft ALJ decision that applied broadly to all stationary utilities (water and energy as well as telecommunications). But as it became clear that we were about to reform the New Regulatory Framework to reflect significant changes in the

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[2] As competition developed in the telecommunications industry in the past 25 years, the Commission addressed many carriers and many services individually, often through resolutions adopted in response to advice letters filed by individual carriers. One could say that we thus preferred responsiveness to uniformity. The unintended consequence was that it became increasingly hard to determine what procedures were in effect, what exceptions to them had been granted, and whether the procedures and exceptions made for coherent Commission policy. We believe that this type of piecemeal policymaking does not serve the public interest, and makes it harder for our staff to know what our policies are, and to enforce our policies fairly and reasonably. Further, given the increased competitiveness of the telecommunications marketplace,

Footnote continued on next page

telecommunications marketplace, we determined to set aside the 2001 draft rules to await the outcome of that reform effort.

Nonetheless, we received many comments on the 2001 draft rules that were not linked to the New Regulatory Framework.[3] To that extent, these comments remain relevant to today's decision. Incumbent and competitive carriers differed sharply on the reforms, and on whether they might be undertaken without hearings.[4]

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we believe policymaking in such a piecemeal manner does not serve the interests of competitors or consumers.

[3] The comments were voluminous. In all, we received four rounds of comments on the February 2001 ALJ draft decision. Opening Comments and Reply Comments on the entire ALJ draft decision were filed on March 23 and April 6, 2001, respectively. In addition, the assigned ALJ provided two opportunities for comment focusing on specific aspects of the Telecommunications Industry Rules. First, in comments due June 14, 2001 (later rescheduled to June 29), parties were requested to identify any existing telecommunications advice letter procedure that would change under the General Rules or Telecommunications Industry Rules, and (where applicable) to indicate why they preferred the existing procedure. Second, in comments due July 16, 2001, parties could make policy arguments regarding the Communications Division's authority to suspend Tier 2 advice letters.

A complete list of parties submitting comments on the 2001 draft rules is attached as Appendix C. The list also shows the abbreviation by which the party is identified in our response to comments. All segments of the telecommunications industry and consumer representatives took advantage of these opportunities, often through jointly-submitted comments. We identify some of the groupings in the appendix, but we note that in some instances the membership varied from comment to comment. Also, we identify the commenters by the name under which they submitted their comments; many of them now do business under different names.

[4] The 2001 draft rules were part of a complete proposed GO 96-B. The Commission has since adopted GO 96-B in its entirety, with the sole exception of the Telecommunications Industry Rules, here coordinated with the outcome of the URF rulemaking, R.05-04-005. For earlier GO 96-B adoption orders, see D.01-07-026, D.02-01-038, D.05-01-032, and D.07-01-024.

This debate over telecommunications reforms was not limited to the GO 96-B rulemaking. The debate there and in many other forums ultimately gave rise to R.05-04-005 and the adoption of URF, in light of which the 2001 draft rules and the comments filed on the draft rules in 2001 are moot to the extent they deal only with the New Regulatory Framework. Given the changes to the regulatory framework made in the URF Phase I decision and the issues regarding URF advice letters, we asked parties in January of this year when we issued D.07-01-024 to comment in URF Phase II on what changes should be made to the Telecommunications Industry Rules in GO 96-B.[5]

In their March 2007 filings, parties in URF Phase II have referred both to the adopted parts of GO 96-B and to the 2001 draft rules in commenting on how to coordinate URF with the GO 96-B advice letter procedures already adopted or contemplated. The parties referred to the 2001 draft rules as providing a possible procedural template for advice letters under URF, irrespective of the fact that, when published in 2001, the rules embodied a different and now superseded regulatory framework for telecommunications.

A set of procedures, if robust, should be readily adaptable to changes in substantive regulation. From this standpoint, we are heartened to see that the structure of the 2001 draft rules appears to require no change for purposes of URF. Further, the Telecommunications Industry Rules we adopt today are more streamlined than the 2001 draft rules, as a result of the elimination of many regulatory distinctions that have become unnecessary or counter-productive

[5] D.07-01-024, Ordering Paragraph 6.

with the growth of competition and technological advances in the telecommunications industry.

We acknowledge that the response to comments in today's decision is based on our judgment about what comments remain relevant. To list every comment that is now moot or was responded to elsewhere would likely have doubled the length of the opinion for the sole purpose of explaining matters no longer of concern.

We summarize below the major changes to the 2001 draft rules. We have also made various corrections and stylistic changes intended to improve the rules' clarity and consistency. Persons wishing to track all changes to the 2001 draft rules may review the redlined version of the adopted Telecommunications Industry Rules in Appendix B to today's decision.

2.1. Shift to Uniform Regulatory Framework

The change in regulatory framework for the telecommunications industry has the greatest impact on the rules. Concepts peculiar to the New Regulatory Framework are deleted from the definitions; a definition for "URF Carrier" is added. (Industry Rule 1.14.)

The rules on detariffed service have been revised and expanded, in part to address URF Carriers. *See* Industry Rules 5-5.5. In keeping with the Uniform Regulatory Framework, URF Carriers are no longer required to cost-justify their contracts (under the 2001 draft rules, cost justification was required to show that contracts for tariffed services were above cost).

The advice letter tiers and rules on specific types of advice letters have been modified to delete provisions relating to "NRF-LECs." Tier 1 now includes

changes by an URF Carrier to a "rate, charge, term, or condition of a regulated service other than Basic Service."[6] Industry Rule 7.1(5). Tier 1 also includes changes to an URF Carrier's Resale Service if the changes are related to a corresponding approved rate, charge, term, or condition of the URF Carrier's tariffed service. *See* Industry Rule 7.1(6).

Our intent in these Tier 1 procedures is to comprehensively allow changes to tariffed services covered under URF to be made by Tier 1 advice letter. Also, consistent with the URF Phase I decision, an URF Carrier may introduce a New Service by Tier 1 advice letter. Under the URF Phase I decision, an URF Carrier may enter into a contract effective upon signing, and we provide for the contract to be submitted by Tier 1 advice letter.

2.2. Resale Service

The 2001 draft rules defined Wholesale Service. Many commenters objected to this definition at the time as imprecise, and upon further consideration, we believe that Resale Service more closely describes the concept. In fact, we had used the term "resale" to define "Wholesale Service." Accordingly, Industry Rule 1.10 now defines Resale Service as a tariffed service that a carrier offers another carrier for resale.

2.3. Date of Filing and Filing Procedures

In the 2001 draft rules, an advice letter's date of filing was defined as the date the advice letter was reported in the Commission's Daily Calendar.

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[6] Although Basic Service rates are capped until January 1, 2009, they may be increased to reflect inflation. The Commission will address Basic Service rates in R.06-06-028, and in that rulemaking may also consider advice letter tiers appropriate for review of a request to increase a Basic Service rate.

Subsequent decisions in the GO 96-B rulemaking have completely revised this practice. Now, an advice letter is filed on the day it is received by the Industry Division reviewing the advice letter; the utility submitting the advice letter must at the same time serve it on the utility's advice letter service list.[7] This change is reflected in Industry Rules 3 and 6. The date of filing is critical, because it is the date from which the protest period runs.

In the 2001 draft rules, filing was still envisioned as a paper process. The Commission is now in a successful transition to electronic filing. The transition will continue for some time, and during this period we believe the best accommodation is to publish current filing instructions at the Communications Division's area of our Internet site (www.cpuc.ca.gov). We have modified Industry Rule 2 accordingly. We expect that we will continue to expand our ability to file documents in electronic formats but will make appropriate provision for paper filings for the foreseeable future.

Consistent with the Energy and Water Industry Rules already adopted, we have determined not to include sample forms in the adopted Telecommunications Industry Rules. Instead, staff will publish illustrative materials at the Communications Division's area of our Internet site.

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[7] *See* D.07-01-024, GO 96-B, General Rules 3.2 (defining "Date of Filing"), 4.3, 4.4 (rules regarding advice letter service lists and service by Internet). Under General Rule 4.4, the utility must serve its advice letter by e-mail on anyone that provides the utility an e-mail address for this purpose. The utility must serve the advice letter no later than the date of filing. (General Rule 4.3.)

2.4. Notice to Affected Customers

The 2001 draft rules required 25 days notice to each affected customer before the requested effective date of an advice letter requesting approval of a transfer, withdrawal of service, higher rates or charges, or more restrictive terms or conditions. The Commission has already increased this minimum notice period to 30 days under both GO 96-B and URF. *See* D.07-01-024, General Rule 4.2; D.06-08-030, Ordering Paragraphs 9, 12. Industry Rule 3.0 has been modified accordingly.

2.5. Detariffed and Non-tariffed Service

We have modified Industry Rules 4 and 5 to clarify the use of contracts and, in general, the provision of service under arrangements other than tariffed service. Industry Rule 5 now provides that URF Carriers may file an advice letter to detariff their services, with the exception of certain services as specified in the rule. Most of the specified exceptions, such as Basic Service, are not subject to detariffing at all. However, a tariff condition imposed by the Commission in an enforcement, complaint, or merger proceeding, is subject to modification or cancellation, but the URF Carrier must file an application or a petition to modify the decision in which the Commission imposed the condition that the URF Carrier seeks to cancel.

We have also added to Industry Rule 5 the concept of services never offered under tariff ("non-tariffed"). For a carrier that has detariffed, we require only an information-only filing when this carrier provides a New Service offering eligible to be offered on a detariffed basis.

We have also adopted Industry Rules 5.2 and 5.3 that satisfy the requirements of Pub. Util. Code § 495.7(c)(1) and (2) regarding information

available to consumers from their carrier after it detariffs. *See also* the discussion of detariffing in today's accompanying URF Phase II decision.

2.6. Revisions to Advice Letter Tiers

We have already noted the revisions needed to remove references to supplanted regulations and to implement URF within the GO 96-B procedures. The remaining issue for tier revision concerns those carriers not within URF but still subject to our regulation, namely, the incumbent local exchange carriers we refer to as GRC-LECs because they continue to operate under cost-of-service regulation. The GRC-LECs tend to be small utilities serving rural areas.

Regarding the GRC-LECs, we see no reason to alter the distribution of subject matter among the tiers from the 2001 draft rules. There has been no fundamental shift in policy regarding this group of utilities; thus, the revisions we have made are intended to allow the GRC-LECs roughly the same use of Tier 1 and Tier 2 advice letters they would have had under the 2001 draft rules. For the same reason, we will continue to require a Tier 3 advice letter for purposes of these small utilities' requests to change rates or withdraw service. Such an advice letter may not be deemed approved and becomes effective only after review and approval via Commission resolution.

Besides the description of types of advice letters within the respective tiers, each tier rule begins with a paragraph setting forth the applicable customer notice requirements. The 2001 draft rules say that "if an advice letter accepted for filing is found not to have been noticed in compliance with these requirements, Staff will reject the advice letter." We have clarified this statement to indicate that the rejection will be without prejudice. *See* Industry Rules 7.1, 7.2, 7.3.

2.7. Service During Emergencies

In D.07-01-024, the Commission adopted General Rule 8.2.3, which in relevant part allows a Utility that is a telephone corporation, under emergency conditions and without prior Commission approval, to provide free or reduced cost service to the public or to a government agency. However, the Utility must "promptly" file an advice letter describing its provision of service under these conditions, and the advice letter is subject to disposition by resolution (that is, by the Commission itself, not by Staff).[8]

In discussing General Rule 8.2.3, we indicated that we might modify it in light of "superseding Commission decisions concerning the telecommunications industry." D.07-01-024, *mimeo.*, p. 56. Based on URF, we conclude that a Tier 1 advice letter, which is subject to Staff disposition, is appropriate for purposes of review of tariffed services provided by URF Carriers in natural disasters and similar emergency circumstances. Although GRC-LECs continue to be under cost-of-service regulation, we find that a Tier 1 advice letter would also be

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[8] The relevant part of General Rule 8.2.3 is the first paragraph which reads in full as follows:

> Under emergency conditions, such as war, terrorist attack, and natural disasters, a utility that is a telephone corporation as defined in the Public Utilities Code may provide service to a government agency or to the public for free, or at reduced rates and charges, or under terms and conditions otherwise deviating from its tariffs then in effect. The utility may begin such service without prior Commission approval, but the utility shall promptly submit an advice letter to the Telecommunications Division to notify the Commission of the utility's provision of emergency service and of the rates, charges, terms, and conditions under which the service is provided. Although the advice letter may be effective pending disposition, it shall be subject to disposition under General Rule 7.6.2. The Commission may determine, in an appropriate proceeding, the reasonableness of such service.

appropriate for them under these circumstances.[9] We modify General Rule 8.2.3 accordingly.

3. Response to Comments on Telecommunications Industry Rules

We have had many rounds of comments on draft rules pending since 2001. We here respond to comments as recent as March 2007 and as far back as the initial issuance of the draft rules. However, in the process of adopting four interim decisions in the GO 96 rulemaking, we have already responded to many of these comments; many other comments concern the New Regulatory Framework and are now moot.

We now address the remaining older comments, as well as the recent comments elicited in light of URF.

Industry Rule 1 Additional Definitions

Industry Rule 1 now contains 16 definitions, most of which did not receive any comments. We have deleted from the 2001 draft rules several definitions pertaining to supplanted regulations. Of the remaining definitions, the three definitions that did receive comment are "New Service" (Industry Rule 1.8), "Transfer" (Industry Rule 1.13), and "Resale Service" (Industry Rule 1.10).

Industry Rule 1.8 New Service

One comment was that the definition of "New Service" must conform to the definition previously provided by the Commission in D.91-12-013, 42 CPUC

[9] We certainly encourage all utilities to assist disaster recovery efforts. A concern during those efforts is that price caps for Basic Service be observed. Our review of these advice letters will ensure such observance, and will keep us informed of the success of telecommunications utilities in disaster recovery efforts generally.

2d 220, 225. [PacWest (3/23/01) at p. 12 and *passim*.] *See also* D.88-12-091, 30 CPUC 2d 384, 411-12. We believe the definition closely follows these earlier Commission holdings.[10] We have not changed the rule.

Industry Rule 1.10 Resale Service

This rule was formerly titled "Wholesale Service." One comment indicated that the Commission had eliminated the "wholesale" and "retail" distinction, and another comment suggested that "regulated service" be substituted for "tariffed service." [CTC (7/03/01) at pp. 38-39; Verizon (3/23/01) at p. 19.] The Commission continues to describe certain services as "retail" services for purposes of URF, so the wholesale/retail distinction has not disappeared. Nevertheless, we think "resale" better describes the nature of this service than "wholesale." However, we reject the suggestion regarding "regulated service." We have determined in the accompanying URF Phase II decision that Resale Service should continue to be a tariffed service. *See also* Industry Rule 5.

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[10] In our rulemaking to develop procedures for certain rate filings by nondominant interexchange carriers, the participants agreed to the following definition: "A new service is an offering which customers perceive as a new service and which has a combination of technology, access, features or functions that distinguishes it from any existing service." D.91-12-013, 42 CPUC2d 220, 225. *Compare* Industry Rule 1.8, which says in relevant part that New Service "is distinguished from any existing service offered by the Utility by virtue of the technology employed and/or features, functions, and means of access provided." Industry Rule 1.8 eliminates the subjective element (customer perception) of the older definition. We believe this change improves the clarity and administrability of the definition. In other respects, the two definitions are substantially the same.

Industry Rule 1.13 Transfer

Several comments asserted the definition includes certain transactions that were not formerly subject to the notice provisions of GO 96-A, such as transactions that do not increase rates or result in Transfer of customers. *See also* Industry Rules 3, 3.1, and 8.6. The comments also argue that certain telecommunications carriers are exempt from certain notice requirements of GO 96-A, and that Pub. Util. Code §§ 851 and 2889.3 do not require Commission approval of Transfer of customers. [PacWest (3/23/01) at pp. 1-2 and *passim*; Verizon (3/23/01) at p. 2; CTC (7/03/01) at pp. 35-38.]

The Transfer rules have nothing to do with rate changes. The Transfer rules require notice of transfers of customer base consistent with the law. Section 851 requires Commission authorization of the Transfer of "the whole or any part" of a telephone system. The Transfer of the entire customer base or an entire class of customers qualifies as a § 851 Transfer.[11] We have, however, clarified the parenthetical in the definition referring to Transfers of customer base. As clarified, only Transfer of a company's entire customer base or an entire customer class of the company is covered by this rule.

Industry Rule 3 Notice to Affected Customers

The rule specifies that a utility shall notify affected customers of an advice letter that requests approval of a transfer, withdrawal of service, higher rates or charges, or more restrictive terms or conditions. The notice must be provided on the earlier of (a) 30 days before the effective date, or (b) the date the advice letter

[11] *See* D.97-06-096.

is submitted to the Communications Division. The proposed rule also includes information that must be contained in the notice to customers.

The comments in opposition are that the proposed rule (1) competitively disadvantages some carriers; (2) requires notice of certain transactions that presently do not require customer notice; and (3) requires utilities to make separate costly mailings to customers. [Citizens (3/23/01) at pp. 3-4; Roseville (3/23/01) at p. 11; PacWest (3/23/01) at pp. 13-14; Verizon (3/23/01 at p. 19, 6/29/01 at pp. 3-4); Pacific Bell (4/06/01 at pp. 4-5); CTC (7/03/01 at pp. 39-40).] ORA (6/29/01 at p. 5) supports the proposed rule.

This rule conforms to directions contained in two of the interim decisions in the GO 96 rulemaking (*see* D.02-01-038 and D.07-01-024) and in the Phase I decision in the URF rulemaking (*see* D.06-08-030, Ordering Paragraphs 9 and 12) on when customers must be notified. Thus, the rule is not new; its major provisions have been in place since 2002. Contrary to some of the comments, the rule does not require notice of rate decreases. The rule applies to all carriers, and is thus competitively neutral. Timely notice also provides customers with useful information in a competitive market. The Commission has already determined that these customer benefits outweigh the burdens on carriers. The Commission decisions allow customer notice by various means, including e-mail, which should enable carriers to minimize their costs, for example, by including notice with regular billings.

Industry Rule 3.1 Customer Notice of Transfer

Previously discussed comments regarding Industry Rule 1.13 were also addressed to this rule. One comment [CTC (7/03/01) at pp. 35-36] directed solely to Industry Rule 3.1 alleged that it would require proposed transferees to hold a certificate of public convenience and necessity (CPCN). Industry Rule 3.1

does not address CPCNs and does not change existing requirements.[12] We have not changed the rule.

Industry Rule 3.3 Customer Notice of Higher Rates, More Restrictive Terms

Industry Rule 3.3 requires a utility to state current and proposed rates or charges when giving notice of higher rates or charges, and to describe existing and proposed terms and conditions when giving notice of more restrictive terms and conditions.

One commenter opposed the rule as unduly burdensome, at least in the case of "minor" or "off-setting" rate changes. This commenter also suggested various means of customer notice, including e-mail [CTC (3/23/01 at p. 14, 7/03/01 at pp. 39-40)]. Another commenter [TURN (4/09/01 at p. 8)] supported the rule as proposed.

No changes are made to the rule as proposed. We adopted most of the suggested methods for sending notice in D.07-01-024 and earlier decisions, and with more customers receiving bills by e-mail, the utility's burden will become progressively less.

Industry Rule 4 Contracts and Other Deviations

As originally proposed, this rule would have required certain utilities to include in their tariffs a list of their contracts and other deviations from tariffed service. Many commenters objected to this requirement as outdated. [Calaveras (3/23/01 at p. 9, 6/29/01 at pp. 4-5); Verizon (3/23/01 at p. 19, 6/29/01 at p. 4);

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[12] Currently, transferees are required to hold a CPCN. *See e.g.*, D.04-10-038.

Roseville (3/23/01 at p. 11); Citizens (3/23/01 at p. 8).] We agree and have deleted the requirement from the rule.

Industry Rule 5 Detariffed and Non-tariffed Service

In response to comments [Citizens (3/23/01 at p. 9); Roseville (3/23/01 at p. 11); Verizon (3/23/01 at p. 20)], Industry Rule 5 has been revised and expanded. The rule now states the statutory ban on detariffing of Basic Service, and lists several other types of tariff provisions not subject to detariffing by advice letter. The rule now includes the concept of services never offered under tariff ("non-tariffed").

TURN (3/30/07 at pp. 35-37) notes that in a competitive market, carriers are likely to make frequent changes in service terms and conditions. Under these circumstances, TURN argues, customers need to have ready access to their carrier's canceled as well as current terms and conditions. TURN makes these comments in the context of tariffed service, but the comments have equal merit regarding detariffed service. Industry Rule 5.2 requires a carrier who detariffs a service to publish at a site on the Internet both the current and the no longer effective terms applicable to the detariffed service.[13]

Industry Rule 5.4 Market Trial, Technical Trial

Industry Rule 5.4 concerns Market and Technical Trials, which are conducted according to Commission guidelines and reported to the Commission by information-only filings. A comment noted an additional resolution

[13] All California utilities are already required to provide, on request, copies of no longer effective tariffs. *See* General Rule 8.1.3.

containing relevant guidelines (Res. T-16099), and we have added a reference to this resolution. [Verizon (3/23/01 at p. 20, 6/29/01 at p. 5).]

Industry Rule 7.1 Matters Appropriate to Tier 1 Advice Letter (Effective Pending Disposition)

A comment [ICG (6/29/01) at pp. 24-26] requested analysis of the competitive impact of Tier 1, a request that was repeated with respect to Tier 2 (Industry Rule 7.2) and Tier 3 (Industry Rule 7.3). Specifically, the comment asserts that the Commission must undertake competitive analysis to determine any impact of this and other provisions on non-dominant carriers. ICG's comments were made in 2001 and are outdated, given that the Commission has in fact conducted an analysis of competitive conditions in the URF Phase I decision, and has determined that competitive providers now offer alternatives to the major incumbent local exchange carriers.

DRA and TURN both propose to process URF advice letters under Tier 1 and Tier 2, but only after modifications to those tiers as adopted in D.07-01-024. For example, DRA proposes that all tariff changes be filed as Tier 1 advice letters except those that would increase prices, make service changes, or raise public safety issues. (DRA, 3/02/07, pp. 46-47.) Tariff changes falling within the exceptions would be filed as Tier 2 advice letters, and under DRA's proposal would be filed at the Commission on the <u>same</u> day that the utility gives notice to its customers (in the case of a rate increase), namely, 30 days in advance of the increase. (*Id*., p. 50.) Moreover, both Tier 1 and Tier 2 advice letters would be subject to suspension under DRA's proposal. (*Id*.)

DRA's proposal would modify Tier 1 by making those advice letters subject to suspension. We were careful in D.07-01-024 to explain that Tier 1 advice letters would <u>not</u> be subject to suspension; we are not persuaded to adopt

a suspension procedure for Tier 1 now. DRA's proposal would modify Tier 2 by requiring advice letter filing concurrent with customer notice. As a practical matter, a utility may use bill inserts to give notice; DRA's proposal is unclear as to when in the billing cycle the utility must file its advice letter. More fundamental, DRA's premise for requiring price increases to be filed as Tier 2 advice letters seemingly is that the Commission must continue to review these increases to determine whether they are just and reasonable. (DRA, 3/02/07, p. 47.) We disagree. The Commission in D.06-08-030 granted URF Carriers full pricing flexibility for a broad array of services. Where the Commission has granted such flexibility, General Rule 7.4.2 of GO 96-B bars protests to an advice letter increasing a rate on the ground that the increase would be unreasonable. For these reasons, we reject DRA's proposed modifications for URF advice letters.

TURN's proposal is somewhat more detailed than DRA's. Under TURN's proposal, an URF utility could file as a Tier 1 advice letter one that did <u>not</u> impose a price increase or have the effect of increasing a rate or charge, impose a more restrictive term or condition or material change in service, involve matters of public safety, or withdraw or grandfather a service. (TURN, 3/02/07, p. 19.) As with DRA, an advice letter ineligible for Tier 1 could be filed in Tier 2, but TURN proposes to modify Tier 2 such that these advice letters would become effective the day after filing, similar to one-day filing under D.06-08-030. (*Id.*) TURN also proposes that any required customer notices be concurrently served on Commission staff. (*Id.*, p. 20.)

Though differing in detail from DRA, TURN offers proposals with the same fundamental flaws. TURN seemingly prefers the advice letter review process created for rate-regulated utilities, where all advice letters were subject

to suspension and all rate increases were subject to protest as unreasonable or discriminatory. TURN's proposed adaptations to the advice letter process in light of URF mostly preserve the outmoded process at the expense of URF policies. For these reasons, we reject TURN's proposals regarding URF advice letters.

Calaveras (3/02/07 at pp. 2-3, 3/30/07 at pp. 1-2) proposes that GRC-LEC advice letters be allocated to Tier 1, except for general rate case filings, annual draws from the California High Cost Fund, and Withdrawal of Service (25 or more customers); the exceptions would be Tier 3 advice letters. Calaveras argues that advice letters of GRC-LECs (mostly small rural utilities) are rarely protested, and that when the GRC-LEC expects a particular Tier 1 advice letter to be controversial, the GRC-LEC could exercise its option under GO 96-B procedures to instead file that advice letter in Tier 2 rather than implement the change during the controversy. (3/02/07 at p. 2.)

DRA (3/30/07 at p. 30) and TURN (3/30/07 at pp. 33-34) oppose Calaveras' proposal. TURN observes that the GRC-LECs "were not part of the URF process precisely because they require a different level of oversight, the competitive landscape is very different in each of their territories than those of the URF-LECs, and their reliance on high cost subsidies makes the analysis of their needs very different." (*Id*. at p. 33.)

We find that Tier 1 is not the appropriate tier for many kinds of GRC-LEC advice letters. Unlike URF Carriers, GRC-LECs continue to be subject to cost-of-service regulation. Moreover, many GRC-LECs receive government subsidies due to their service in high-cost areas. Thus, GRC-LEC advice letters, in many instances, need more scrutiny than do the advice letters of URF Carriers.

Nevertheless, pursuant to the Industry Rules, a GRC-LEC may file five types of advice letter under Tier 1 and two types under Tier 2.[14]

Calaveras also urges that "long distance affiliates" of incumbent local exchange carriers be allowed to file their URF advice letters in Tier 1. (3/02/07 at pp. 3-4.) Calaveras indicates that other non-dominant interexchange carriers previously had the option to detariff under D.97-06-107, and believes that many of these carriers no longer submit tariffs at all. (*Id*. p. 3.) Calaveras concludes that affiliated carriers would be competitively disadvantaged if they are not permitted to file their advice letters under Tier 1. (*Id*.) We are treating all URF Carriers, including affiliated carriers, alike for purposes of filing URF advice letters under Tier 1.

Besides Calaveras, three parties offer suggestions in greater or lesser detail for allocating subject matter among the advice letter tiers: Cox/Time Warner/XO (3/02/07 at pp. 1-3); DRA (3/30/07 at pp. 28-30); and Pacific Bell (3/02/07 at pp. 50-51).

Cox/Time Warner/XO (3/02/07 at pp. 1-2) manages to anticipate, almost exactly, the entire range of URF advice letters in Tier 1.[15] Regarding other tiers, Cox/Time Warner/XO would put certain compliance filings in Tier 2 (we put all

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[14] Under Tier 1: an editorial change not affecting a rate, charge, term, or condition (7.1(1)); a change to the name of a product or service (7.1(2)); a Compliance Advice Letter (7.1(3)); an exchange area boundary realignment that does not result in an increase to a rate or charge or in a more restrictive term or condition (7.1(4)); and a new Promotional Offering or continuation of a Promotional Offering (7.1(11)).

Under Tier (2): a New Service (7.2(1)); and a contract for a tariffed service (7.2(2)).

[15] Cox/Time Warner/XO fails to mention one Tier 1 matter, namely, contracts. These are specifically authorized to go into effect upon execution pursuant to our URF Phase I decision, D.06-08-030.

such filings in Tier 1 unless the order to which they respond requires a different tier). Also, Cox/Time Warner/XO would put in Tier 3 a "complete withdrawal of service in a particular geographic area," for which we require an application per our Mass Migration decision, D.06-10-021. Thus, with very minor adjustments, Cox/Time Warner/XO's comments seem consistent with the Telecommunications Industry Rules as they apply to URF Carriers.

DRA and Pacific Bell are at polar opposites in their primary recommendations regarding the application of GO 96-B procedures to URF advice letters: DRA supports such application, and Pacific Bell opposes it. Nevertheless, both DRA (3/30/07 at pp. 23-24) and Pacific Bell (3/02/07 at p. 50) recognize that there are carriers, services, or transactions that may fall outside URF, and for advice letters related to these matters both DRA and Pacific Bell suggest GO 96-B procedures be used.

DRA observes that the 2001 draft rules will have to be updated for the URF "environment"; beyond that observation, however, DRA generally supports the 2001 draft rules with a few changes. Regarding Compliance Advice Letters, DRA would retain the Tier 1 provision but would add a Tier 3 provision for those instances where "Commission authorization is required." (3/30/07 at pp. 29-30.) We reject this suggestion as we believe that compliance, in general, should be subject to Tier 1 review. There may be the occasional compliance matter that should return to the full Commission for review, but we do not

consider those occasions so frequent as to require making a special rule for them.[16]

DRA also proposes to modify the rules regarding exchange area boundary realignments. It would move from Tier 1 to Tier 2 a change that does not result in an increase in a rate or charge or a more restrictive term or condition; and it would move from Tier 2 to Tier 3 a change that does have such a result. (3/30/07 at p. 29.) We reject the proposal to modify the Tier 1 rule regarding realignments that do not have rate or service impacts. However, based on our experience with realignments that do have impacts on rate or service quality, we believe the review of these advice letters fairly regularly raises issues that requires determination by the full Commission. It is therefore reasonable to require these advice letters to be filed in Tier 3.

Pacific Bell's proposal for allocating subject matter among the advice letter tiers also follows the 2001 draft rules fairly closely. (3/02/07 at p. 51.) We find most of Pacific Bell's proposal consistent with our own approach; we differ in two major respects. First, we require an application, rather than a Tier 3 advice letter, for Withdrawal of Basic Service.[17] Second, we treat GRC-LEC advice letters differently than would Pacific Bell. The differences concern New Service, changes to existing rates, and boundary realignments that result in increased rates.

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[16] A typical Compliance Advice Letter requires simply a ministerial review to ensure that the utility has followed the direction given to it in the Commission's prior decision. No further "authorization" is required or appropriate.

[17] *See* our recent Mass Migration decision, D.06-10-021.

We put New Service offerings of a GRC-LEC in Tier 2 (rather than in Tier 1 per Pacific Bell's proposal) because of the increased scrutiny appropriate to such offerings from rate-regulated utilities.

We put a GRC-LEC's rate changes and boundary realignments in Tier 3, in recognition of the complexity and controversy these matters may involve. Pacific Bell has boundary realignments only in Tier 2. (3/02/07 at p. 51.) As for rate changes, Pacific Bell refers to "rate changes within floor/ceiling" (which Pacific Bell (*id*.) would put in Tier 1) and "price floor/ceiling changes" (which it would put in Tier 3 (*id*.)). It is true that price floors and ceilings still exist with respect to some aspects of Basic Service, which is essentially residential service. However, a GRC-LEC's rates consist of more than Basic Service, and thus rate-setting for a GRC-LEC cannot be confined to "floor/ceiling changes." Moreover, the use of "floor/ceiling" is confusing at this point, since part of our current effort in the Industry Rules is to remove terms that harken back to the New Regulatory Framework. We believe the rule will be more clear and accurate if it refers simply to rate changes, and because GRC-LECs are rate-regulated and are commonly subsidized, all of their rate changes should be submitted for review via Tier 3 advice letters.

7.1(2) A change to the name of a product or service

When we originally proposed Industry Rule 7.1(2), whereby a product or service name change might become effective upon filing, the proposal was controversial. At that time, under the New Regulatory Framework, pricing flexibility depended on a product's "category," and some commenters saw the potential for market abuse in a product name change by a NRF-LEC or GRC-LEC. [CTC 3/23/01 at pp. 20-25, 7/03/01 at pp. 40-42); TURN (04/09/01

at p. 9.)] With the adoption of URF, we will now adopt Industry Rule 7.1(2) as originally proposed.

7.1(9) A Withdrawal or Freezing of Service by an URF Carrier (not Including a Withdrawal or Freezing subject to Industry Rule 7.4(1)), where the Withdrawal has been noticed in compliance with Industry Rules 3 and 3.2

One comment requests analysis of the competitive impact of this rule. [ICG (6/29/01) at pp. 24-26.] We refer to our response regarding the same request for Industry Rule 7.1 above.

7.1(11) A new Promotional Offering, or continuation of a Promotional Offering, by a GRC-LEC for which there is Commission-approved Promotional Platform

Several commenters assert that Tier 1 treatment of Promotional Offerings is more onerous than now exists under resolutions. [CTC (3/23/01 at pp. 20-21; Roseville (3/23/01 at pp. 11-12, 4/06/01 at p. 8, 6/29/01 at pp. 2-3); Verizon (6/29/01 at p. 5).] Tier 1 treatment allows these Promotional Offerings to be immediately effective. The uniform procedure set forth in this rule, and in Industry Rule 7.1(10) for URF Carriers, avoids the complexity of a regulatory scheme based on individual decisions and resolutions.

Industry Rule 7.2 Matters Appropriate to a Tier 2 Advice Letter (Effective After Staff Approval)

Several commenters assert that, for matters reviewed under Tier 2, GO 96-B is more cumbersome than past procedure (*e.g.*, D.97-06-107). [ICG (6/29/01 at pp. 24-26); CTC (7/03/01 at p. 37).] It is true that under D.97-06-017, competitive local exchange and interexchange carriers are not required to serve their advice letters on interested persons. However, D.05-01-032, which was the third interim decision in our GO 96 rulemaking, included the rule, now General

Rule 4.3 of GO 96-B, requiring that all utilities maintain advice letter service lists. Any person could be included on a utility's advice letter service list on request, and the utility would have to serve its advice letter on the person, at the postal or e-mail address provided, on or before the date that the utility files the advice letter. We expressly adopted the General Rules to apply to all utility industries. This specific General Rule, which has actually been in effect since the start of 2005, superseded D.97-06-107. Although the General Rule may impose more stringent service requirements than the earlier decision, the General Rule constitutes the existing requirement under GO 96-B and treats all carriers equally.

7.2(1) A New Service of a GRC-LEC where the New Service complies with Industry Rule 8.3

Pursuant to the URF Phase I decision, all URF Carriers (including the larger incumbent local exchange carriers as well as the competitive local exchange carriers and interexchange carriers) may now introduce a New Service by Tier 1 advice letter. (*See* Rule 7.1(7).) This Tier 1 treatment of New Service responds to the objection raised in comment by competitive carriers to Industry Rule 7.2(1) under which, as originally proposed, advice letters introducing a New Service would be accorded Tier 2 treatment. [CTC (3/23/01 at pp. 23-24, 7/03/01 at pp. 41-42); ICG (6/29/01 at pp. 26-27).] The GRC-LECs, however, continue to be rate-regulated, and as such, their introduction of a New Service should be accorded a higher degree of regulatory scrutiny. We will require a Tier 2 advice letter to be filed by a GRC-LEC proposing to introduce a New Service.

7.2(4) Request to Transfer by carrier other than a GRC-LEC or an URF Carrier that is an incumbent local exchange carrier

One comment was that the classification of this type of Transfer as a Tier 2 item, requiring staff approval, contravenes D.94-05-051, where the Commission indicated that transactions subject to Pub. Util. Code §§ 851-854 would be effective in 40 days absent Commission action. [PacWest (3/23/01) at pp. 14-16.] The Tier 2 procedures are at least as streamlined as the advice letter process under D.94-05-051, if not more so. If unprotested, Tier 2 advice letters may be deemed approved within 30 days, not 40 days; no Commission action is required, and the grounds for protest under GO 96-B are narrow.[18] The Industry Rules are an effort to standardize practice so that advice letter procedures are not set forth in an array of individual resolutions and decisions. We do not change the rule, which now supersedes the earlier decision.

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[18] We note that Pub. Util. Code § 851 has recently been amended so that it now requires a Commission *resolution* for § 851 transactions valued at less than $5 million and a Commission order for transactions valued at greater than $5 million. However, in prior decisions, the Commission established the streamlined advice letter process that allows for the advice letters to become effective without a resolution pursuant to the authority it has under § 853 to exempt carriers from the requirements of §§ 851-854. We believe that addressing § 851 transactions under Tier 2 (where a resolution may or may not issue, depending on the circumstances and whether there is a protest) is consistent with the Commission's prior decisions granting competitive local exchange carriers and nondominant interexchange carriers relief from the requirements of § 851. *See* D.94-05-051 and D.97-06-096 (creating a streamlined advice letter process for nondominant interexchange carriers) and D.98-07-094 (extending those same procedures to competitive local exchange carriers).

Industry Rule 7.3 Matters Appropriate to a Tier 3 Advice Letter (Effective After Commission Approval)

A comment was that the treatment of these topics as Tier 3 items marks a substantial departure from existing practice, citing D.90-08-032, D.95-12-056, and D.96-02-072. [ICG (6/29/01) at pp. 24-26.]

In response, the GO 96 rulemaking was from the beginning intended to comprehensively revise and update the Commission's advice letter procedures, including the division between advice letters and formal proceedings. We intended to modify prior decisions where necessary or appropriate, and we gave notice of this intent when we initiated the rulemaking.

However, regarding Tier 3 (Industry Rule 7.3) and matters requiring review in a formal proceeding (Industry Rule 7.4), we find that the "departures" from practice in the decisions cited by ICG are few, and had already been adopted by the Commission prior to today's decision.[19] For example, Industry Rule 7.3(2) concerns Commission review of interconnection agreements under the federal Telecommunications Act of 1996. The review procedure was adopted in Resolution ALJ-181 (Oct. 5, 2000). Our application procedure for Withdrawal of Basic Service (Industry Rule 7.4(1)) follows the Mass Migration Guidelines adopted in D.06-10-021.

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[19] The cited decisions come from our proceedings where we adopted rules for non-dominant interexchange carriers (D.90-08-032) and for local exchange service competition (D.95-12-056 and D.96-02-072). These rules, in many cases, provided a "fast track" for the tariff filings of competitive carriers. The URF Phase I decision now treats competitive carriers like incumbent local exchange carriers (except for GRC-LECs) for tariff filing purposes.

Most of Tier 3 consists of subject matter appropriate to GRC-LECs, which is consistent with historic practice. ICG, as a competitive carrier, would now be an URF Carrier, and as such, ICG would now make virtually all of its tariff filings as Tier 1 advice letters, which constitute the procedural "fast track" under GO 96-B. Tier 1 is a procedural innovation, but it is an innovation developed expressly to meet the needs of the competitive telecommunications marketplace.

To the extent that the tier rules adopted herein depart from the decisions ICG cites, we find that the tier rules are consistent with the URF Phase I decision, with the URF Phase II decision adopted today, with D.07-01-024 adopting GO 96-B, and with the other decisions and orders we have discussed in the foregoing response to ICG.

7.3(2) A Negotiated Interconnection Agreement pursuant to Section 252 of the Telecommunications Act of 1996 (47 USC § 252)

One comment was that Tier 3 treatment, which imposes no deadline for Commission approval, violates federal law (47 U.S.C. § 252(e)(4)) that requires state approval in 90 days or the submission is deemed approved. [CTC (7/03/01) at pp. 44-45.] The Commission processes these interconnection agreements under Res. ALJ-181, which contemplates that staff normally will prepare a draft resolution for the Commission's consideration within 60 days of the filing of an interconnection agreement. This timeline is reasonable for purposes of enabling the Commission to approve or disapprove an interconnection agreement by the deadline imposed by federal law.

Industry Rule 7.4 Matters Requiring Review in a Formal Proceeding

A comment was that the tier structure marks a substantial departure from existing practice, citing D.90-08-032, D.95-12-056, and D.96-02-072. [ICG (6/29/01) at pp. 24-26.] We refer to our response at Industry Rule 7.3 above.

7.4(1) Withdrawal or Freezing of Basic Service

The Commission's most recent decision on the issue of Withdrawal of Basic Service is D.06-10-021. The Commission there adopted "Mass Migration Guidelines" to govern transfer of customers when a competitive local carrier leaves the local telecommunications market. Examination of this decision makes clear that any Withdrawal of Basic Service has the potential for profound disruption and requires careful planning and coordination. Therefore, we have decided to treat this subject consistently, that is, to require an application by any carrier seeking authority to withdraw Basic Service. [Response to comments by CTC (3/23/01) at p. 21; TURN (04/09/01) at pp. 10-11.]

Industry Rule 8.1 Negotiated Interconnection Agreements

Several comments suggest that Tier 3 treatment, which states no deadline for Commission approval, is inconsistent with federal law (47 U.S.C. § 252(e)(4)) that requires state approval in 90 days or the interconnection agreement is deemed approved. [Pacific Bell (3/23/01) at p. 11; CTC (7/03/01) at pp. 44-45.] We address substantially the same comments under Industry Rule 7.3(2), above. For clarity, we have added a reference to the Res. ALJ-181 timeframes to Industry Rule 8.1; these timeframes expressly set forth 90 days for all the steps needed for Commission approval.

Industry Rule 8.2 Contracts for Tariffed Services

One comment suggests that this rule and the other contract rules would prevent carriers from contracting for non-tariffed services below the tariff price floors. [Pacific Bell (3/23/01 at p. 11, 6/29/01 at pp. 3-4).] As originally drafted, the contract rules referred to price floors and ceilings and contained other terms from the New Regulatory Framework. All such terms and compliance conditions have been deleted, and the price flexibility granted to URF Carriers should eliminate the concern expressed in this comment. The intent of Industry Rule 8.2 is to require the submission of advice letters when a carrier deviates from current *tariff* terms. Except for negotiated interconnection agreements, advice letters are not required when a carrier contracts only for services not offered under tariff.

Other comments suggest the substitution of "regulated services" for "tariffed services." [Verizon (3/23/01) at p. 22; Citizens (3/23/01) at p. 11.] We do not accept this suggestion, precisely because the rule only concerns contract deviations from tariff terms.

Industry Rule 8.2.1 Deadline for Submittal; Effective Date

This rule requires that within 15 business days after the execution of a contract for a tariffed service, the contract must be submitted to the Commission by advice letter. A carrier that violates the deadline could incur penalties, although violation of the deadline does not invalidate the contract. An URF Carrier, consistent with the URF Phase I decision, may sign contracts effective upon execution. The filing deadline is also consistent with the URF Phase I decision. As with other URF advice letters, a contract for a tariffed service by an URF Carrier may be filed in Tier 1.

Numerous comments were submitted on this rule. Some comments questioned why a 15-day deadline is used rather than a 45-day period. [CTC (3/23/01 at pp. 22-23, 4/06/01 at p. 8, 7/03/01 at pp. 45-49).] Other comments suggested a longer deadline for government contracts. [Calaveras (4/06/01 at p. 7, 6/29/01 at p. 4); Citizens (3/23/01 at pp. 11-12, 6/29/01 at p. 6); Roseville (4/06/01 at p. 12, 6/29/01 at p. 6).] Other comments indicated that the rule should require a summary only and should apply only to competitive carriers, while incumbent local exchange carriers would be subject to more stringent contract filing requirements. [CTC (3/23/01 at pp. 22-23, 4/06/01 at p. 8, 7/03/01 at pp. 45-49).] The same comments requested the ability to keep a customer's name confidential. *(Id.)*

The 15-day submittal deadline serves the purpose of promptly making public those terms that are currently being made available in the marketplace. This transparency benefits competition. Contracts are executed only when all parties sign; so even if the approval of a government contract takes time, 15 days are still available after execution for it to be submitted to the Commission. This rule is intended to eliminate the distinction among different types of carriers in the deadline for submitting contracts for a tariffed service. We have also clarified and liberalized the deadline by specifying that it is measured in business days. The procedures and grounds upon which confidentiality may be claimed for information submitted to the Commission are set forth in General Rule 9.

Industry Rule 8.2.2 Availability of Contract Rates

This rule requires that the rate or charge under a contract currently in effect must be made available to any similarly situated customer that is willing to enter into a contract with the same terms and conditions of service. Several comments suggest that this rule is unnecessary because it duplicates the

provisions of Pub. Util. Code § 453, proscribing discriminatory rates. [CTC (3/23/01) at p. 23; Pacific Bell (04/06/01) at p. 6.] We believe this rule is helpful since it clarifies that the anti-discriminatory concept behind § 453 also applies to contracts. We adopt the rule as proposed.

Industry Rule 8.2.3 Required Clauses

Some comments assert that the required contract clauses set forth in this rule are unnecessary and will lead to customer confusion. [Calaveras (3/23/01 at pp. 6-7); Citizens (3/23/01 at pp. 12-13, 6/29/01 at p. 6); Roseville (3/23/01 at p. 12, 6/29/01 at p. 6); ICG (6/29/01 at pp. 29-32).] We agree that the required clauses are inappropriate for contracts for tariffed services of URF Carriers; their tariffed services are no longer rate-regulated, and the clauses' suggestion of continued Commission oversight is indeed misleading in that context. But as to contracts for tariffed services of a GRC-LEC, the clauses to be incorporated in the contracts will assist customers in understanding how substantive contract terms may be affected by Commission action. We have modified the proposed rule to make it specific to GRC-LECs.

The scope of Industry Rule 8.2.3 is expressly limited to contracts for tariffed services. Two comments appear to concern contracts for services that are either detariffed or non-tariffed. [Verizon (3/23/01) at p. 22; Pacific Bell (6/29/01) at p. 6.] These comments misconstrue Industry Rule 8.2.3; moreover, as discussed in the accompanying decision adopted today on detariffing, we decline to prescribe clauses for inclusion in contracts for detariffed or non-tariffed services.

Industry Rule 8.3 New Service

8.3(1) Comply with all applicable public utilities code provisions and applicable consumer protection rules

Several comments assert it is burdensome for a carrier to demonstrate that a New Service will comply with all applicable Public Utilities Code provisions and Commission consumer protection rules. [PacWest (3/23/01 at pp. 16-17); CTC (3/23/01 at pp. 23-24, 7/03/01 at pp. 41-42); ICG (6/29/01) at pp. 26-27.] Another comment was that the rule should not apply to competitive local exchange or non-dominant interexchange carriers because it would create a disincentive to offer New Service. [CTC (3/23/01) at pp. 23-24.] We disagree with these comments. This rule provides an opportunity for a carrier to facilitate review of an advice letter for New Service. However, we have modified the rule because we believe that the proposed rule's requirement that a carrier "demonstrate" that its New Service would comply with all applicable law is unnecessary and infeasible within the context of advice letter preparation and review. We require, instead, that the carrier attest that its New Service complies with all applicable provisions of the Public Utilities Code, including without limitation §§ 2891 to 2894.10, and with applicable consumer protection rules adopted by the Commission.

As originally proposed, Industry Rule 8.3 contained a cost justification component linked to the New Regulatory Framework. Cost justification is no longer necessary with respect to New Service offerings of an URF Carrier, but GRC-LECs are still subject to cost-of-service regulation, so they must be required to submit appropriate cost justification.

8.3(2) Not result in degradation of other services

This rule requires that a carrier demonstrates its New Service would "not result in degradation in the quality of other service" provided by the carrier. One comment was that proving compliance with this rule would be burdensome. [ICG (6/29/01) at pp. 26-27.] This rule is important to the Commission as it protects the consumer. The carrier, in most cases, should have performed relevant analysis internally in planning the New Service. However, we again replace "demonstrate" with "attest." The verb "demonstrate" suggests an evidentiary process, which is inappropriate in the advice letter context. Our purpose, both there and in the preceding rule, is to remind the carrier of its on-going obligations in connection with its introduction of a New Service. The attestation requirement is more in line with that purpose than the heavy-handed "demonstration" that these rules originally proposed.

Industry Rule 8.7 Promotional Offering

One comment objected that "promotional offering" was not defined. [Pacific Bell (3/23/01) at p. 15.] The term is defined in Industry Rule 1.9.

Industry Rule 9 Notification of DBAs

The proposed rule requires that utilities, by advice letter, and detariffed carriers, by information-only filing, maintain current lists at the Commission of any changes in the names under which they do business. One commenter opposes this rule as unnecessary. [CTC (3/23/01 at pp. 18-20, 7/03/01 at p. 50).] We believe the proposed rule reduces confusion, both at the Commission and in the public's mind, as to whether certain business entities are subject to Commission jurisdiction.

4. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Steven Kotz is the assigned ALJ.

5. Comments on Proposed Decision

The proposed decision of Commissioner Chong in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 13, and reply comments were filed on August 20, 2007. Parties filing comments are AT&T, California Association of Competitive Telecommunications Companies (CALTEL), Cox/Time Warner/XO, DRA, Small LECs, Sprint Nextel, SureWest, TURN, and Verizon. Parties filing reply comments are all of the foregoing except CALTEL, Small LECs, and TURN. We note, however, that in TURN's reply comments on today's companion decision, TURN touches upon several of the Industry Rules, and we have taken TURN's reply comments into consideration in our responses.

In general, commenters support the rules overall, but ask for clarifications to some rules and suggest that several rules should be updated. Some proposals are controversial; for example, the principles governing protests to advice letters (discussed here and in the accompanying URF Phase II decision) generate concerns among some consumer and utility representatives. In the following discussion, we respond to all of the comments and reply comments, organizing our response by rule number.

Industry Rule 1.8 New Service

Industry Rule 1.8 broadly defines a service as a New Service if it is distinguished from any of the carrier's existing services in any of several ways listed in the rule (technology, features, functions, and/or means of access).

Cox/Time Warner/XO criticize the way that the definition is currently expressed; as they read the proposed rule, it could require a carrier to file a feature as a New Service in some circumstances. They also find "means of access" unclear, and they suggest a revised definition of New Service as follows:

> "New service" means a service that (i) is distinguished from any existing service offered by the Utility by virtue of the technology employed; or (ii) includes features or functions not previously offered in any service configuration by the Utility."

Upon careful consideration, we adopt Cox/Time Warner/XO's revised definition because it is more clear than the proposed rule.

Industry Rule 1.13 Transfer

Industry Rule 1.13 defines "Transfer" as a "Transfer of assets (including the entire customer base or an entire class of customers) and/or Transfer of control." Small LECs are concerned that this definition may be over-broad; for example, if a parcel of land is considered an asset, then a utility proposing the sale of a parcel of land might be required to give notice to its customers pursuant to Industry Rule 3.1, a requirement that does not exist today.

We agree with Small LECs regarding the application of current Commission rules to their example. We do not agree that a different outcome would occur under Industry Rule 1.13. "Transfer" under this definition, taken as a whole, concerns transactions that, in one way or another, fall under the requirements of Pub. Util. Code §§ 851-854. A transaction such as the sale of a small parcel of land is not a "Transfer" for these purposes to the extent that the Transfer is not of "necessary or useful property" under § 851. We adopt Industry Rule 1.13 as proposed.

Industry Rule 1.14 URF Carrier

Industry Rule 1.15 Utility

Several commenters (CALTEL, Cox/Time Warner/XO, Sprint Nextel) ask for clarification of this rule, which currently defines "URF Carrier" as a "public utility that is regulated through the Commission's uniform regulatory framework, as established in D.06-08-030, and as modified from time to time by the Commission. Cox/Time Warner/XO in particular also seek clarification on the definition of URF Carrier, and recommend that the Commission modify its advice letter procedures to retain, where appropriate, the distinctions between the four major ILECs (AT&T, Verizon, SureWest, and Frontier), the CLECs, and the IXCs.[20]

The URF rulemaking was intended generally to modify and revise the regulatory framework for telecommunications carriers in the state, but specifically to revisit the framework for the ILECs regulated under NRF. The URF Phase I decision established tariffing rules for the four large ILECs (AT&T, Verizon, SureWest and Frontier) and Ordering Paragraph 13 provided "[a]ll CLECs shall be permitted to follow the same flexible tariffing procedures adopted for AT&T, Verizon, SureWest, and Frontier and need not follow more restrictive rules." Because of the equal treatment that the URF Phase I decision intended for the four largest ILECs and CLECs, we have determined that for

[20] Sprint Nextel also sought clarification of the definition to mean "an ILEC, CLEC, or IXC that is regulated through the Commission's uniform regulatory framework…" Sprint Nextel Comments at p. 8. CALTEL notes that it does not object to the definition as applying to ILECs, CLECs, and IXCs, but seeks clarification of the specific carriers or types of carriers intended to be included in the carrier class. CALTEL Comments at p. 3.

purposes of GO 96-B, it would simplify matters to categorize these carriers as "URF Carriers." We also determine that the Commission intended to include IXCs (to the extent that they file tariffs) in the flexible tariffing procedures adopted in D.06-08-030. Accordingly, we believe that it is useful to refer to AT&T, Verizon, SureWest, Frontier, CLCs, and IXCs as URF Carriers.[21]

Although we retain the term "URF Carrier" to refer broadly to the four largest ILECs, in addition to CLECs and IXCs, we will modify the definition slightly as follows:

> "URF Carrier" means a Utility that is a wireline carrier that has full pricing flexibility over all or substantially all of its rates and charges. "URF Carrier" includes any incumbent local exchange carrier that is regulated through the Commission's uniform regulatory framework, as established in Decision 06-08-030, and as modified from time to time by the Commission; competitive local exchange carriers; and interexchange carriers.

Following CALTEL's suggestion, we also revise our definition of "Utility" (Industry Rule 1.15) to explicitly state that the term includes wireline carriers (GRC-LECs, URF Carriers) and wireless carriers (commercial mobile radio service providers), but that only GRC-LECs and URF Carriers are to file advice letters under the Telecommunications Industry Rules. It is more consistent with the Pub. Util. Code not to exclude commercial mobile radio service providers under the definition of "Utility," but we acknowledge that the focus of the Industry Rules is almost entirely on the wireline carriers, namely, URF Carriers

[21] We decline Time Warner et al.'s suggested term "Competitive Market Carrier" to encompass the four major ILECs, CLECs, and IXCs.

and GRC-LECs, who fall squarely under our jurisdiction as to intrastate services.[22]

We also agree with Cox/Time Warner/XO that there may be reasons to retain the distinctions among the different types of carriers.[23] We will add a definition of "URF ILEC" to refer to the ILECs currently granted pricing flexibility through D.06-08-030, and as may be modified from time to time.[24] Where there are distinctions in regulatory treatment among these different carriers, we will use these terms.

Industry Rule 2 Submitting Documents for Filing; Telephone Directories

In relevant part, Industry Rule 2 requires GRC-LECs and URF Carriers to provide without charge copies of their current directories to public libraries in California. AT&T and Small LECs ask that they be required to provide copies without charge to California public libraries only on request. Small LECs also ask that the requirement be limited to a single copy per library. We find these requests reasonable and will revise the last sentence of Industry Rule 2 to read as follows: "A local exchange company must notify public libraries that they will provide without charge copies of its current telephone directory to any public

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[22] We are federally preempted from regulating the rates of wireless services, and wireless carriers have not filed tariffs (or even advice letters) since 1993.

[23] The Phase I decision granted regulatory flexibility, including full pricing flexibility for most retail services, to the four largest incumbent local exchange companies. Competitive local exchange carriers and interexchange carriers already had such flexibility.

[24] CLEC will continue to refer to "competitive local exchange carrier" and IXC will refer to "interexchange carrier."

library in California that so requests. GRC-LECs may provide only one copy per library."

Industry Rule 3 Notice to Affected Customers

TURN raises several issues regarding Industry Rule 3. We discuss each issue separately.

"Affected Customer"

Industry Rule 3 provides, in relevant part, that a utility must give at least 30 days' notice before the requested effective date of any higher rates or charges or more restrictive terms or conditions to "each affected customer." TURN recommends we clarify who is an "affected customer" for purposes of pay-per-use services such as Call Trace or for non-recurring charges such as those for returned checks, late payments, or certain kinds of service change orders. TURN's position (Opening Comments at p. 5) is as follows:

> [I]f a customer has the option or possibility of paying for a certain service or paying a certain fee, regardless of the services that customer subscribes to, then that customer is "affected." Any one of the carriers' customers, regardless of the other services to which that customer has subscribed, can elect to use a pay-per-use service. Therefore a rate change or a change in terms of that service would affect all customers and therefore all customers should be notified. Likewise, [all customers] may be subject to a return check charge or a late payment fee during their relationship with the carrier, therefore a change in those fees would affect those customers and all of the [carrier's] customers should be notified.

AT&T opposes TURN's recommendation. AT&T believes TURN's definition is overly broad, would impose unreasonable costs on carriers, and would confuse customers. According to AT&T,

> The term "affected customer" is sufficiently clear. As Rule 3 is currently drafted, all customers who do not have an opportunity to avoid a charge or change in a term and condition for a service to which they currently subscribe will be given notice because they are being "affected." Customers who do not currently subscribe to a service and do not receive the notice will be informed of all charges, terms and conditions when they subscribe to the service and will have the opportunity to decide at that time if they wish to incur the associated charges.

Reply Comments at p. 3 (emphasis added, note omitted).

We agree with TURN that a customer may be "affected" by many kinds of increased rates or charges or more restrictive terms or conditions, independent of the services to which the customer subscribes. For example, there is no returned check or late payment "service" to which a customer may subscribe, but there is a charge for a returned check or a late payment that any customer may incur. Although most customers likely do not intend to dishonor a check or pay late, a utility should give current information about late payment charges to all its customers so that they are informed.

We do not know on what basis AT&T reads into Industry Rule 3 a condition that the customer notice requirement depends on whether the customer can "avoid a charge." Nothing in the language of the rule suggests such a condition. More to the point, the purpose of Industry Rule 3 is, in large part, to give customers current information about their carrier's charges, so that they can make knowledgeable choices about their utilization of services, and hence the charges they choose to incur or "avoid."

TURN has accurately characterized the term "affected customer." We reject AT&T's objection regarding purported customer confusion; we think there is far greater danger under AT&T's approach that customers will not receive full and timely information about their carrier's services. We reject AT&T's objection

regarding the burden on carriers; we already have provided for customer notice to be distributed by bill insert and by e-mail (where the customer has consented to receive bills or notices by e-mail).

In short, if a carrier requests an increase to a rate or charge, or a more restrictive term or condition, and that rate, charge, term, or condition is one that any of the carrier's customers might incur or be affected by, then the carrier must give customer notice of the request to all of its customers pursuant to Industry Rule 3.

Industry Rule 3.1 Customer Notice of Transfer

Consistent with the requirements set forth in D.02-01-038, we are revising the requirements in this rule to track the requirements of that decision. In particular, in response to CALTEL's question as to whether customer notice was required for transfers, we are clarifying that the notice requirement in this rule relates to transfers of customer base.

Concurrent Notice to Commission Staff, Others

TURN suggests that carriers be required to serve notices on Commission staff and on their advice letter service list at the same time as the carriers serve their customers. TURN justifies this requirement on the grounds that it would enable the Commission and organizations like TURN to answer questions from the public about the substance of the notice, and would help those groups "monitoring the marketplace." TURN emphasizes that it does not propose any substantive rights come along with the notice. Opening Comments at pp. 2-3.

We reject this suggestion, in which we see little benefit. Carriers should answer their customers' questions about their services, including questions about notices of increased rates or more restrictive terms. TURN and other organizations may "monitor the marketplace" by obtaining carriers' advice

letters by e-mail[25] and by reviewing carriers' rates, and other terms and conditions of service, on the Internet. Both of these information sources are far more comprehensive than the customer notices. We do not believe the nominal benefit from broadening the service of customer notices outweighs the costs of service on the Commission staff and the advice letter service lists.

Customer Notice of "Rate Changes"

TURN says customer notice must be clear, and gives as an example of unclarity a carrier's 50% increase in the per-use charge for Local Directory Assistance that was listed under the general heading "news you can use" and then under the sub-heading "rate change." We agree with TURN that this notice does not clearly notify the customer of the rate increase. We note that under Industry Rule 3, a carrier is not required to give customer of all rate changes but only of rate increases.

The customer notice requirement in Industry Rule 3 pertains to increased rates or charges or more restrictive terms or conditions. Carriers must label their notices so as to communicate this information clearly. If they are increasing a rate or charge, they must state so in the text and the heading of the notice. The purpose of a clear notice is to enable the customer to quickly understand how a service will change; from this information, the customer can determine the impact of the change for that customer.

TURN's other suggestions for improvement of notice clarity relate to format. TURN urges that we establish a 10 point font minimum and require

[25] The organization first must request that it be placed on the advice letter service list(s) maintained by the carrier and provide the organization's current e-mail address. See General Rule 4.3.

customer notices to be in a "clear and conspicuous part of the phone bill." We reject these suggestions. The Commission declined to impose a font minimum when it adopted GO 168 (*see* D.06-03-013, *mimeo*., at pp. 34-36). We expect the carrier to use comparable font to the rest of the notice's text to promote clear communication to a reader. As for the "clear and conspicuous" recommendation, we find it vague and subjective.

Exception for Compliance Advice Letter

The second paragraph of Industry Rule 3 provides that no customer notice is required under Industry Rule 3 or General Rule 4.2 of a carrier's Compliance Advice Letter that implements a prior Commission order approving the carrier's request for authorization of a Transfer, Withdrawal of Service, or higher rates or charges or more restrictive terms or conditions. The purpose of this exception to the customer notice rule is to prevent customer confusion because the change to which the Compliance Advice Letter relates must necessarily have been the subject of a previous carrier request to the Commission, preceded by customer notice of the request. If the carrier also gave customer notice in advance of the Compliance Advice Letter, customers would receive duplicate notice of the same request by the carrier.

TURN seems to read this exception as broader than we intend. In order to emphasize that the exception applies only to certain requests for which the carrier has already given customer notice, we will amend the exception to state that "no further customer notice" is required under the specified circumstances, unless so ordered by the Commission in the previous decision.

Industry Rule 5.1 URF Carrier

Industry Rule 5.1 is part of our set of rules on detariffed service. Industry Rule 5.1 contains procedures specific to detariffing by an URF Carrier. The rule

provides in part that when the Commission has authorized an URF Carrier to detariff in whole or part, "the URF Carrier may make available to the public New Service offerings on a detariffed basis to the extent consistent with the Commission's authorization." The draft Rule 5.1 would not require a Tier 2 advice letter, but the URF Carrier must file an information-only filing describing the New Service and attesting that it is not one of the services excepted from detariffing under Industry Rule 5. We are revising our draft rule for detariffing New Services in this section and requiring instead that URF Carriers must file a Tier 2 advice letter for New Services similar to the detariffing letters they must file for existing services. We explain our treatment below.

As an initial matter, we respond to comments from Verizon and Sprint Nextel regarding whether we intended under Industry Rule 5.1 that, if an URF Carrier has not detariffed in whole or part, the URF Carrier may not introduce a New Service on a detariffed basis by information-only filing. Verizon believes this result is unintended; both Verizon and Sprint Nextel urge the Commission to revise Industry Rule 5.1 to allow an URF Carrier to offer a New Service on a detariffed basis by information-only filing even if the URF Carrier has not previously detariffed any existing service.

We fully intend that an URF Carrier first detariff in whole or part before it can introduce a New Service on a detariffed basis by information-only filing. We seek to encourage URF Carriers to detariff the existing services that they desire to detariff, before they can introduce New Services as detariffed. Therefore, an URF Carrier should detariff as much of its existing services as it wishes during the 18-month implementation period. Our rationale in part for requiring detariffing of existing services before New Services may be detariffed is that we believe carriers will consider carefully whether detariffing makes sense for its

business during the initial 18-month period. To the extent that a carrier does not detariff any services, we do not believe that the carrier should be permitted to take advantage of our detariffing scheme as to New Services.

Moreover, we seek to prevent opportunistic detariffing. Under Sprint Nextel's and Verizon's proposed revisions, an URF Carrier could try (impermissibly) to characterize as a "New Service" changes to terms and conditions, and thereby avoid filing advice letters opportunistically.[26] Although by definition, a "New Service" should not encompass mere changes to terms and conditions, a New Service could fall into a category of services. We do not intend to permit a carrier to offer existing services under tariff, while introducing as detariffed "New Services" that fall into similar categories to existing tariffed services. Such tariffed and detariffed service offerings may create confusion. For these reasons, Industry Rule 5.1 gives URF Carriers a strong incentive to broadly detariff their existing services within the 18-month period, within the limits that we have established. If a carrier does not detariff during that 18-month period, we assume that the carrier does not believe detariffing services is useful for its business and thus that carrier should not have the ability to detariff New Services.

On further consideration of the law, we are also revising our rule governing the introduction of New Services as detariffed offerings. Consistent with Pub. Util. Code § 495.7 and our detariffing process, we find that we should establish an advice letter process for detariffing of New Services. If a carrier has

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[26] The definition of "New Service" means a service that is "distinguished from any existing service offered by the Utility by virtue of the technology employed and/or features, functions, and means of access provided."

not already obtained detariffing approval for a category of service similar to the New Service, the URF Carrier shall introduce and detariff the New Service by a Tier 2 advice letter. The Tier 2 advice letter shall describe the New Service with sufficient detail for the Commission to determine whether that New Service may be detariffed. We believe that this treatment is consistent with the detariffing framework we established for existing services and with Section 495.7.

Industry Rule 5.2 Publication of Rates, Charges, Terms, and Conditions (URF Carriers)

Three-Year Archiving Requirement

AT&T and Verizon oppose the proposed requirement to archive rates, terms, and conditions for detariffed services on their website.[27] They contend that publishing of expired or canceled rates, terms, and conditions would potentially confuse customers, and propose instead that the requirement be modified to require carriers to maintain records for three years and provide information to customers at no charge "upon request." DRA responds that carriers' tariff revision procedures have "always provided a record of service changes, albeit one that is manual and hard for consumers to access and use." DRA Reply Comments at p. 2. DRA further refutes carriers' assertion that it will be confusing for consumers to have online access to past service rates and terms and conditions; "[c]arriers can easily keep historical information behind a 'no longer available' or similar heading and have relevant pages clearly labeled." *Id*. at pp. 2-3. TURN similarly observes that Verizon has a tariff archive on its

[27] *See* AT&T Opening Comments at p. 8-9; Verizon Opening Comments at p. 3.

website and that a website may be designed to delineate between current and archived material. TURN Reply Comments at p.2.

We agree with TURN and DRA that publishing rates, terms and conditions for detariffed services and archiving this information for a period of three years should not require substantially more complicated technology than is currently involved for carriers to publish their tariffs online. Requiring such information to be readily available on websites for three years will aid consumers who need to obtain such information if they have a complaint or inquiry about a past rate or bill.[28] Thus, carriers that have detariffed services shall publish their rates, terms and conditions for those detariffed services for three years (beyond the date when the rate, term, or condition expires or is canceled). To prevent customer confusion, the carrier may place rates, terms, and conditions that are no longer effective on a page with a link that conspicuously identifies the page as providing "expired" rates, terms, and conditions, and should further identify on that page the exact time periods for when the rates, terms, and conditions were in effect.

Additional Internet Publishing Requirements

TURN and DRA further seek clarification on the Internet publication requirements for detariffed services. TURN proposes detailed requirements, including a requirement that the information be posted in a "clear and conspicuous" manner with direct access links from the home page of the carrier's site; that the page be free of marketing or sales tactics; that the pages be freely

[28] Such information may also aid prospective consumers who may wish to monitor a carrier's prices over time.

accessible without requiring personally identifying information except for area code, NXX, or zip code; and that there be a direct link from the Commission's website to the carrier's rate page.[29] On consideration of these comments, we amend our draft Industry Rule 5.2 to ensure that information regarding detariffed services is made available in an accessible and simple format for consumers. Industry Rule 5.2 shall be amended to add the following requirements:

i) the webpage containing rates, terms, and conditions for detariffed services shall be free of marketing and sales information or ads;

ii) the webpages for rates, terms, and conditions shall be accessible without requiring personally identifying information except for area code, NXX, or zip code; and

iii) the URF carrier shall provide the Commission with a current link to the carrier's webpage for accessing tariffed and detariffed rates.

These requirements for webposting will further satisfy requirements of Pub. Util. Code § 495.7(c)(1) and ensure availability of information about rates, terms, and conditions of detariffed services; promote the Commission's goals for increasing consumer access to information about the choices in the marketplace; and prevent customer confusion.

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[29] TURN Opening Comments at p. 11. DRA similarly asserts that a carrier offering a detariffed service must post the rates, terms, and conditions to provide easy access to rates and terms and conditions; allow comparison of alternatives by an end-user; ensure that information obtained from the end-user will be discarded/not made available to carriers or third party marketers; and is free from marketing content. DRA Opening Comments at pp. 8-9.

Detariffing Voluntarily Tariffed Non-Regulated Services

CALTEL also seeks modification to Industry Rule 5.2 so that they are not required to publish on websites those services that are currently voluntarily tariffed but not "*regulated intrastate services*" – and asserts that it should be allowed to detariff these without incurring additional website publishing or notice requirements.[30] We clarify Industry Rule 5.2.

If a carrier has voluntarily tariffed a service that is not regulated by the Commission and seeks to offer that service on a stand-alone basis as detariffed, the carrier is not required to file formally to detariff that unregulated service.[31] However, if the unregulated service is bundled with other services that are (or were required) to be tariffed at the Commission, the URF Carrier must file to detariff that *bundled offering* and shall post on its website the rates, terms, and conditions for any bundled offering that includes a combination of regulated and unregulated services.

We also revise draft Industry Rule 5.2 to eliminate confusion as to when a carrier must comply with the Internet publication rules. URF Carriers may apply to detariff those retail services that are regulated by, and were required to be tariffed by, this Commission. We delete certain language in the draft Industry Rule 5.2 that may have been confusing and clarify that, if a carrier has detariffed

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[30] CALTEL argues that it should not be required to publish rates, terms and conditions on their websites for all services available to the public – whether intrastate or interstate or unregulated – particularly if the carrier had "ever tariffed the service in the past." CALTEL Opening Comments at pp.5-6.

[31] CALTEL did not identify specific services that it envisioned as falling into this category, and therefore, we will not conjecture as to the services to which CALTEL is referring.

a service or bundled offering (including detariffed interexchange services prior to the date of this order), that carrier must comply with the Internet-publishing requirements in Industry Rule 5.2.

Industry Rule 5.3 Notice to Customers (URF Carrier)

Industry Rule 5.3 requires an URF Carrier that has detariffed to give 30 days' notice to affected customers before the effective date of a higher rate or charge, or more restrictive term or condition, or Withdrawal of Service, or Transfer. The rule allows notice by e-mail to customers who receive their bills by e-mail. CALTEL comments that some customers consent to receive their notices but not their bills by e-mail, and CALTEL asks that Industry Rule 5.3 be revised to allow e-mail notice to such customers. We agree to this revision, which also is consistent with General Rule 4.2 (regarding customer notice by e-mail for changes to tariffed services.)

Industry Rule 5.4 Market Trial; Technical Trial

Industry Rule 5.4 requires that a Market Trial or Technical Trial be submitted by information-only filing but following the guidelines of specified resolutions. AT&T points out that the specified resolutions contain various requirements dating back to the New Regulatory Framework; requirements such as cost support are out-of-date, and we therefore delete reference to these resolutions. Moreover, Industry Rule 5.4, like Industry Rules 5.1 to 5.3, specifically governs URF Carriers. We amend the heading and the text of Industry Rule 5.4 accordingly.

Industry Rule 5.5 Commercial Mobile Radio Service Provider

Industry Rule 5.5 is part of our set of rules on detariffed and non-tariffed service. The detariffing of commercial radio mobile service (that is, wireless) providers occurred pursuant to federal law over a decade ago. AT&T and Sprint Nextel oppose proposed Industry Rule 5.5, which says that commercial mobile radio service providers do not file advice letters but must "make available to the public schedules showing [their] rates, charges, terms, and conditions." Sprint Nextel says these providers publish such information anyway; both commenters prefer the quoted language be deleted. Sprint Nextel, however, proposes a reasonable compromise. First, Sprint Nextel would use "information" in place of "schedules" because the latter term suggests tariffs, which these providers have not filed for over a decade. Second, Sprint Nextel would make available information about its generally available services, *i.e.*, those available on a mass market basis as opposed to an individualized contract.

We will revise Industry Rule 5.5 consistent with the changes suggested by Sprint Nextel. As revised, Industry Rule 5.5 reads as follows: "A commercial mobile radio service provider may not file tariffs with the Commission but shall make available information showing rates, charges, terms, and conditions of its generally available services."

Industry Rule 7 Advice Letter Review

Industry Rule 7.1 Matters Appropriate to a Tier 1 Advice Letter (Effective Pending Disposition)

Industry Rule 7 provides that the carrier submitting an advice letter must designate the appropriate tier (based on the content of the advice letter), but that this tier designation does not bind Commission staff. Table 1 of D.07-01-024 (the

decision in which the Commission adopted GO 96-B) is a comprehensive summary of what happens if an error appears in an advice letter, and what remedies are available to the carrier and to Commission staff. We reproduce Table 1 below:

TABLE 1: DISPOSITION OF ADVICE LETTERS

In general, the reviewing Industry Division, by letter, will approve or reject an advice letter (AL) submitted in Tiers 1 or 2. The Commission, by resolution, will approve or reject ALs submitted in Tier 3. Exceptions will occur, however, due to utility error or issues arising during review. This table shows how exceptions will be handled and what remedial actions a utility may take.

1. Utility Designates Wrong Tier*

Designated Tier	Proper Tier	Staff Action
1	2 or 3	Reject w/o prejudice
2	3	Reject w/o prejudice
3	1 or 2	Approve/reject under Tier 2 **
Any	None***	Reject w/o prejudice

2. Utility Designates Correct Tier But…

Any tier: AL is clearly erroneous	Reject
Any tier: matter in AL requires hearing	Reject w/o prejudice
Any tier: issue requires exercise of discretion	Prepare resolution

3. Remedial Action by Utility if AL is Rejected w/o Prejudice

The utility may modify and resubmit an advice letter (with an explanation) if the utility believes the modification will moot the reason for rejection. Other possibilities:

Wrong Tier	Utility may submit new AL in proper tier Utility must stop implementation (Tier 1)
Hearing Required	Utility may file formal proceeding
Matter Inappropriate for AL	Utility may file formal prodeeding

* Note that a utility may designate for Tier 2 an advice letter that would qualify for Tier 1. The Tier 2 designation therefore is not "wrong" in this situation.

** However, by the utility's wrongly designating Tier 3, the advice letter may not be deemed approved.

*** This situation arises where the subject matter of the advice letter requires a formal proceeding (typically, an application or petition for modification).

DRA urges that corrective action for an advice letter submitted in the wrong tier include a significant penalty. DRA gives the example of a merger condition imposed by Commission decision. Industry Rule 7.4 requires an URF Carrier to file a petition if the URF Carrier seeks to modify the merger condition, but DRA argues that if there is no risk of a penalty, the URF Carrier might file an advice letter to cancel the condition, because at the worst, the URF Carrier would face rejection of its advice letter and the necessity of some remedial action. DRA concludes that without a potential penalty, carriers actually have an incentive to make improper tier designations, hoping to escape detection.

In rebuttal, AT&T asserts that remedial action should be based on the facts and circumstances giving rise to such action, and that it would be inappropriate for the Commission to prejudge the need for a penalty.

We are aware of the possibility that a carrier may inadvertently or deliberately designate the wrong tier or otherwise misuse the advice letter process. Because there are many permutations, we need to preserve our flexibility to address the particular circumstances of a given advice letter. We have already indicated, however, that a knowingly and deliberately erroneous submittal, particularly of a Tier 1 advice letter, might trigger sanctions as well as the requirement to undo the actions taken under the improper advice letter. *See* D.07-01-024, *mimeo*. at p. 16. No further elaboration is needed at this time.

7.1(5) A change by an URF Carrier to a Rate, Charge, Term, or Condition of a Regulated Service Other than Basic Service or Resale Service

Both AT&T and Verizon seek clarification as to the proper tier to file changes to basic service rates after January 1, 2009. TURN notes that the rules for

advice letters should clarify that Tier 3 treatment for changes to basic service tariffs should be required.

Although the Commission has indicated that price caps for basic service not subsidized by the CHCF-B will no longer remain in effect on January 1, 2009,[32] we are considering fully the schedule and process for granting pricing flexibility for basic service rates in the High Cost Fund-B rulemaking R.06-06-028. Therefore, we defer to R.06-06-028 the determination as to the proper treatment/tier for basic service tariff filings. Any determinations made there will then be reflected in the Industry Rules.

We reiterate that an URF Carrier may not change *terms and conditions* of its basic service tariff to the extent that the terms and conditions are required by statute, or Commission rule or order. Imposition of more restrictive terms and conditions to the basic service tariff shall be filed in Tier 3. Otherwise, less restrictive and other changes to terms and conditions of basic service that do not conflict with law or Commission requirements shall be filed in Tier 1.

7.1(10) A new Promotional Offering, or continuation of a Promotional Offering, by an URF Carrier

We have provided for an URF Carrier to introduce its Promotional Offerings by Tier 1 advice letter. Verizon recommends that tariffing of Promotional Offerings be required only of services that remain tariffed.

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[32] In D.06-08-030, the Commission froze the rate for basic service and ordered that: "[p]rice caps on basic residential services that are not subsidized by CHCF-B shall be automatically lifted on January 1, 2009."

We agree with Verizon's proposal to limit Industry Rule 7.1(10) to a new Promotional Offering for a tariffed service, or a continuation of a tariffed Promotional Offering, by an URF Carrier. We note, in regard to Promotional Offerings for detariffed service, that these are subject to the publication and customer notice requirements of Industry Rules 5.2 and 5.3.

7.1(12) Emergency Service pursuant to General Rule 8.2.3

Industry Rule 7.1(12), as originally proposed, would authorize an URF Carrier to submit under Tier 1 an advice letter regarding the URF Carrier's provision of service to a government agency or to the public, for free or at reduced rates and charges, under emergency conditions. We had originally proposed, under Industry Rule 7.3(8), that a GRC-LEC be required to submit a Tier 3 advice letter regarding its provision of emergency service if it did so for free or at reduced rates or charges. AT&T suggests that the Tier 1 advice letter be used only when a tariffed service is involved, and that any discount applied to a detariffed service be reported by information-only filing. Small LECs suggest that a GRC-LEC also be allowed to submit a Tier 1 advice letter. (The Small LECs are all GRC-LECs, and their services are entirely tariffed services.)

We find the suggestions of AT&T and Small LECs are reasonable. We amend Industry Rule 7.1(12) and delete Industry Rule 7.3(8) accordingly. We amend Industry Rule 5.1 to add the information-only filing requirement.

Industry Rule 7.2 Matters Appropriate to a Tier 2 Advice Letter (Effective After Staff Approval)

Industry Rule 7.2 sets forth the matters that must be filed by Tier 2 advice letter. Tier 2 advice letters are subject to review and disposition by Communications Division staff under General Rule 7.6.1 of GO 96-B;

consequently, a Tier 2 advice letter may be "deemed approved" in certain circumstances, although even a deemed approval is to be memorialized by staff through a "written disposition." *Id.*, 7th para.

Small LECs note that there is sometimes a delay in receiving confirmation of approval by staff [the "written disposition"] of an advice letter. Small LECs ask that the parenthetical from the heading of Industry Rule 7.2 be deleted, because affirmative approval does not appear necessary in the case of an advice letter deemed approved although the parenthetical seems to suggest otherwise.

We will retain the parenthetical. Industry Rules 7.1, 7.2, and 7.3 each has a distinguishing parenthetical in its heading [effective pending disposition, effective after staff approval, effective after Commission approval, respectively]. Each parenthetical states the distinctive feature of the tier to which the parenthetical corresponds. Removing the parenthetical risks creating more confusion than any clarity we might gain.

We agree with Small LECs, however, that the effect of a deemed approval is automatic. The "staff approval" in that situation occurs whenever a Tier 2 advice letter has not been suspended by staff by the end of the initial [30-day] review period. *See* General Rule 7.6.1, 7th para. A delay in the receipt of the confirming "written disposition" does not affect the status of an advice letter that has been deemed approved.

Industry Rule 7.4 Matters Requiring Review in a Formal Proceeding

Industry Rule 7.4 indicates that staff will reject without prejudice an advice letter that "requests relief or raises issues requiring an evidentiary hearing or otherwise requiring review" in a formal proceeding. The rule gives examples of matters requiring review in a formal proceeding. AT&T argues that Industry

Rule 7.4 is an unlawful delegation of authority to staff to reject a Tier 1 advice letter without due process. In support of this argument, AT&T asserts, first, that staff's rejection without prejudice is essentially a final decision (by compelling the utility to halt the effectiveness of its Tier 1 advice letter) and is inconsistent with the Commission's determination that an already effective advice letter may not be suspended. Second, AT&T asserts that the rejection without prejudice in these circumstances is inherently an exercise of discretion that only the Commission itself can perform. We disagree; we believe AT&T misunderstands both Tier 1 and Industry Rule 7.4, as we discuss below.

We carefully and comprehensively addressed the operation of Tier 1 for all industries when we adopted GO 96-B. *See* D.07-01-024, *mimeo.*, pp. 12-17. We also discuss Tier 1 extensively in today's accompanying URF Phase II decision, where we approve the use of Tier 1 for the review and disposition of URF advice letters. Inherent in the streamlined character of Tier 1 is that those advice letters are subject to review and disposition by the relevant industry division at the Commission, in this case, the Communications Division. We have carefully assigned subject matter to Tier 1, and described that subject matter, such that the review and disposition of Tier 1 advice letters will typically involve ministerial authority, which under settled law we may to delegate to our staff.

Tier 1 is for those matters for which we have allowed carriers maximum flexibility, and we permit those advice letters to be effective pending disposition. A carrier putting an advice letter into effect before it is approved, in fact as early as the same day that it is filed, gains competitive advantages from such early effectiveness. Thus, the Commission must ensure that consumers and competitors are not disadvantaged by any use of Tier 1 advice letters to make changes except as authorized by the Commission. Thus, the key question staff

must address, for present purposes, is whether an advice letter submitted in Tier 1 is properly so submitted.

For example, suppose one of the four large incumbent local exchange companies submits a Tier 1 advice letter, prior to January 1, 2009, raising Basic Service rates. These rates are currently frozen pursuant to D.06-08-030, Ordering Paragraph 2, and may not be increased by Tier 1 advice letter. *See* Industry Rule 7.1(5). The advice letter is clearly erroneous, and rejecting it does not exceed staff's ministerial function. Staff would reject the advice letter without prejudice under Industry Rule 7.1, which states in relevant part, "By submitting an advice letter in Tier 1, a Utility represents that the advice letter is properly filed in Tier 1." As the example illustrates, Industry Rule 7.4 does not enter staff's analysis at all: If an advice letter's subject matter is proper to Tier 1, it necessarily is a proper advice letter, and if its subject matter is not proper to Tier 1, staff has authority to reject it under Industry Rule 7.1.

Industry Rule 7.4 is unlikely to come under consideration except regarding Tier 3, which concerns informal matters where the Commission will make the ultimate disposition by resolution, and the issue for staff is whether the utility should submit a Tier 3 advice letter or some formal request (typically, an application or petition). A Tier 3 advice letter would never involve an already effective advice letter; by definition, Tier 3, advice letters can become effective only upon Commission approval. Thus, we do not see how the problem that AT&T hypothesizes under Industry Rule 7.4 could ever arise.

Finally, we consider the possibility that despite our efforts to clearly define the subject matter of Tier 1, a utility submits in Tier 1 an advice letter whose ineligibility is not as easily resolved as in our example above. Where a substantial question of interpretation is raised, even for Tier 1 or Tier 2, in which

the advice letters are normally subject to staff disposition, staff will nevertheless prepare a proposed resolution for the Commission's consideration.

In short, AT&T has not shown any improper delegation of authority to staff in our advice letter review process under GO 96-B, whether under Industry Rule 7.4 or otherwise.

Industry Rule 7.4(1) Matters Requiring Review in a Formal Proceeding -- Withdrawal or Freezing of Resale Service or of Basic Service

We will revise Industry Rule 7.4(1) to delete reference to "resale service" in the "Withdrawal or freezing of Resale Service or of Basic Service…" consistent with Verizon's recommendations. Because the URF ILECs are required to offer certain retail services at resale and at a mandated discount from the retail service rate, the URF ILECs will not be able, as a matter of law, to withdraw "resale service" alone. As we note in our accompanying URF Phase II decision, if an URF ILEC detariffs a retail service, it must continue to file resale tariffs for that retail service at this time as we have not yet undertaken the analysis required by Pub. Util. Code § 495.7 to detariff resale services.

Industry Rule 8.1 Negotiated Interconnection Agreements

Industry Rule 8.1 provides that a negotiated interconnection agreement under the federal Telecommunications Act of 1996 must be submitted by Tier 3 advice letter for Commission approval. Verizon argues that Tier 2 would be more appropriate for the review of these interconnection agreements. In rebuttal, Cox/Time Warner/XO support the use of Tier 3 advice letters, as proposed in Industry Rule 8.1. Cox/Time Warner/XO also suggest that the Commission allow amendment of an interconnection agreement by Tier 1 advice letter, noting that under Rule 6.2 of Res. ALJ-181 (where we set forth our

procedures for these interconnection agreements), amendments may be deemed approved 30 days after filing.

For reasons explained earlier in today's decision, we affirm the use of Tier 3 for review of negotiated interconnection agreements. We modify Industry Rule 8.1 to provide that an amendment to a negotiated interconnection agreement may be filed, and will be reviewed and take effect, under the terms of Res. ALJ-181.

Industry Rule 8.2.1 Deadline for Submittal; Effective Date

Under Industry Rule 8.2.1, any contract for a tariffed service must be submitted by advice letter within 15 business days after execution. Cox/Time Warner/XO recommend the filing time be increased to 30 days, arguing that there is a "normal lag time between the execution of a tariffed service contract and its forwarding to the regulatory offices of the carrier for filing with the Commission. Requiring filing within 15 days will, in some cases, require carriers to modify their processes and add additional expense." Opening Comments at pp. 3-4.

The 15-business day filing deadline comes from the URF Phase I decision. *See* D.06-08-030, Ordering Paragraph 11. We make no change to Industry Rule 8.2.1.

Industry Rule 8.2.2 Availability of Contract Rates

Industry Rule 8.2.2 requires a rate or charge under a contract "then in effect" be made available to any similarly situated customer that is willing to enter into a contract with the same terms and conditions of service. SureWest recognizes that this rule is rooted in the non-discrimination standard of Pub.

Util. Code § 453 but is concerned that the phrase "then in effect" could force a carrier to give promotional contract rates to customers after those promotional rates were no longer offered. SureWest recommends that if Industry Rule 8.2.2 is retained, the phrase "then available" replace "then in effect."

After careful consideration, we adopt Industry Rule 8.2.2 as proposed. We disagree that the rule could compel a carrier to give promotional contract rates after the promotional offer has expired. To be eligible for those rates, a customer would have to accept them within the time stated in the promotional offer; customers requesting those rates after expiration of the offer are not "similarly situated" for purposes of Industry Rule 8.2.2.

Industry Rule 8.2.4 Cost Justification (GRC-LEC)

Industry Rule 8.2.4 provides, in relevant part, that a GRC-LEC must show each rate or charge in a contract for a tariffed service is at or above cost. This provision is unchanged from the 2001 draft rules, although there was much language from the version in the 2001 draft rules that we deleted because the language was specific to the New Regulatory Framework. We also added a substantially identical provision to Industry Rule 8.3 (New Service), requiring a GRC-LEC to show that the rate or charge set for a New Service is at or above cost.

Small LECs (who are all GRC-LECs) object that the provision added to the New Service rule had not been previously vetted, and that as small utilities with limited resources, they rarely do formal cost studies nor could such a study be justified in relation to the revenue a New Service would likely produce. Small LECs assert that their rates are set residually, and that the reasonableness of their

rate levels is often established by reliance on rates charged by other carriers for similar services.

In response, we intend Industry Rules 8.2.4 and 8.3 to continue our current practices regarding supervision of these GRC-LECs, which are still subject to cost-of-service regulation and which in many cases receive subsidies. We need some cost justification to prevent cross-subsidization. For example, Small LECs may submit AT&T or Verizon pricing support as a proxy for internal cost studies on the assumption that the Small LECs' costs would not be less than those of larger incumbent local exchange companies. In short, there is flexibility under Industry Rules 8.2.4 and 8.3 for a GRC-LEC to work with staff on its cost showing.

Industry Rule 8.3 New Service

Industry Rule 8.3 provides, in relevant part, that an advice letter requesting approval of a New Service must "attest" that the proposed service would:

> (1) comply with all applicable provisions of the Public Utilities Code, including without limitation Sections 2891 to 2894.10, and with the applicable consumer protection rules adopted by the Commission;
>
> (2) not result in a degradation in quality of other service provided by the Utility submitting the advice letter; and
>
> (3) not be activated for a particular customer unless affirmatively requested by the customer.

TURN argues that the attestation requirement is too lax; Cox/Time Warner/XO and Sprint Nextel argue that the attestation requirement is too stringent. We retain the requirement as set forth in the proposed rule. We will respond to TURN first, and then to Cox/Time Warner/XO and Sprint Nextel.

TURN prefers the version of Industry Rule 8.3 published in the 2001 draft rules. In that version, the advice letter would have been required to demonstrate, rather than attest, the same things (compliance with applicable law, non-degradation in quality of service, no activation unless affirmatively requested). TURN argues the "burden of proof" should be on the carrier introducing a New Service to "explain, show, or demonstrate compliance." Opening Comments at p. 7.

We state earlier in today's decision that we believe requiring a carrier to "demonstrate" compliance, within the context of an advice letter, would be infeasible. TURN's argument illustrates the infeasibility of such a "demonstration." Logically, demonstration connotes both fact-finding and legal analysis. We can undertake these activities in the advice letter process only to a limited extent. What TURN describes is more appropriate to evidentiary hearings, and we only hold evidentiary hearings as part of formal proceedings. In contrast, our staff can readily determine whether the advice letter includes an attestation, if required, and whether the attestation is complete.

We also state earlier in today's decision that we believe requiring a carrier to "demonstrate" compliance would be unnecessary. Our purpose is not to cause a carrier to put on a showing at the Commission in support of each New Service the carrier introduces. Our purpose, rather, is to ensure that the carrier takes reasonable steps to investigate the possible impacts that a New Service may have, recognizing that introducing a New Service, owing to the very uniqueness distinguishing it from "any existing service" offered by the carrier, needs special forethought. For that purpose, attestation is sufficient.

For Cox/Time Warner/XO and Sprint Nextel, the attestation requirement is excessive, at least as to compliance with applicable provisions of the Public

Utilities Code and applicable consumer protection rules adopted by the Commission. Cox/Time Warner/XO would revise Industry Rule 8.3 by changing "attest" to "indicate" and by striking the provision regarding compliance with applicable law; the provisions regarding non-degradation in quality of service and no activation without affirmative consent would be retained. Sprint Nextel would delete everything in Industry Rule 8.3 except the cost justification provisions relating to GRC-LECs. (The latter provisions are irrelevant to this discussion.)

Neither Cox/Time Warner/XO nor Sprint Nextel give persuasive reasons for changing the attestation requirement. According to Cox/Time Warner/XO, "introduction of an attestation requirement … would constitute an unnecessary sideshow…." Opening Comments at p. 5. We fail to see how that result would follow. Sprint Nextel claims the rule would require a carrier to attest a proposed New Service would comply "with *every* provision in the Public Utilities Code" and with "*every* 'consumer protection rule' ever adopted by the Commission." Opening Comments at p. 13, emphasis in original. In fact, Industry Rule 8.3 requires attestation of compliance with <u>applicable</u> code provisions and with <u>applicable</u> protection rules.

We find the attestation requirement reasonably well-suited to our regulatory purposes, and we adopt it.

Findings of Fact

1. The Commission adopted the General Rules of GO 96-B, applicable to the handling of advice letters in all utility industries including telecommunications, in D.07-01-024.

2. Four rounds of comments were received on the 2001 draft rules, which were based on the New Regulatory Framework. Two further rounds of

comments were received in March 2007, following the Commission's adoption of D.07-01-024 and D.06-08-030 (the Phase I decision in the URF rulemaking).

3. The Phase II scoping memo in the URF rulemaking and Ordering Paragraph 6 of D.07-01-024 both invited the parties to comment on how GO 96-B should be coordinated with URF.

4. The chief task in coordinating GO 96-B with URF is revising the allocation of subject matter to the three advice letter tiers so as to reflect the change from incentive regulation under the New Regulatory Framework to full pricing flexibility for most services under the Uniform Regulatory Framework.

5. Although the 2001 draft rules were based on the New Regulatory Framework, they provide a procedural template for advice letters under URF.

6. The structure of the 2001 draft rules requires no change for purposes of URF.

7. Many regulatory distinctions can be deleted from the 2001 draft rules because the distinctions have become unnecessary or counter-productive with the growth of competition and technological advances in the telecommunications industry.

8. No showing of cost justification need accompany an URF Carrier's advice letter submitting a contract for tariffed service.

9. The date of filing is the day an advice letter is received by the Commission's Communications Division. During the transition period to electronic filing, current filing instructions will be published at the Communications Division's area of the Commission's Internet site (www.cpuc.ca.gov).

10. With the exceptions listed in Industry Rule 5, it is appropriate to allow an URF Carrier to request authority to detariff the carrier's services, in whole or part, by Tier 2 advice letter. An URF Carrier shall introduce and detariff a New

Service by Tier 2 advice letter if the New Service does not fall into a category of services that the carrier previously detariffed.

11. The replacement of the New Regulatory Framework with URF does not cause any fundamental shift in Commission policy regarding GRC-LECs.

12. It is appropriate that Resale Service continue to be tariffed.

13. The customer notice rule set forth in Industry Rule 3 applies to all carriers and is competitively neutral.

14. Where a duly-noticed rate increase has already been approved by the Commission, customer notice of a Compliance Advice Letter regarding the increase would be confusing and inappropriate.

15. There is no longer a need to have any carriers include in their tariff books a list of their contracts and other deviations from tariffed service.

16. DRA's proposals for the handling of URF advice letters would require significant modifications to Tier 1 and Tier 2 procedures under GO 96-B, and would also be inconsistent with the GO 96-B protest rule. TURN's proposals are similar to DRA's.

17. Both DRA and TURN recommend that URF advice letters should be subject to suspension by the Commission and that the rate changes proposed in URF advice letters should be subject to protest on grounds of unreasonableness. These recommendations are inconsistent with the full pricing flexibility that the Commission granted to URF Carriers in D.06-08-030.

18. The advice letter service requirements of GO 96-B, which have now been in effect for several years, may be more stringent for some carriers than the requirements that previously applied to those carriers. However, the existing requirements have been in place since D.05-01-032 and treat all carriers equally.

19. A uniform deadline of 15 business days after contract execution is appropriate for submittal to the Commission of a contract for a tariffed service. The submittal deadline serves the purpose of making public those terms that are currently being made available in the marketplace.

20. It is reasonable that carriers be required to attest to the compliance of their New Service offerings with applicable law.

21. It is reasonable that carriers be required to attest that their New Service offerings will not result in degradation in the quality of other service provided by the carriers.

22. In light of the rate flexibility granted URF Carriers by the Commission in D.06-08-030, it is reasonable to allow an URF Carrier to submit under Tier 1 an advice letter regarding the URF Carrier's provision of tariffed service to a government agency or to the public, for free or at reduced rates and charges, under emergency conditions (natural disasters, etc.) A Tier 1 advice letter would also be appropriate for GRC-LECs under such circumstances.

Conclusions of Law

1. The Telecommunications Industry Rules set forth in Appendix A should be adopted. These rules govern the filing, review, and disposition of advice letters and information-only filings by regulated carriers. These rules also include requirements regarding the detariffing of services.

2. Most URF Carrier advice letters are suitable for processing under Tier 1 (effective pending disposition).

3. All URF Carriers, included affiliated carriers, should be treated alike for purposes of filing URF advice letters under Tier 1.

4. Because GRC-LECs continue to be rate-regulated, and in many cases receive rate subsidies, their advice letters generally require regulatory review

before going into effect. Thus, most GRC-LEC advice letters should be processed in Tier 2 and Tier 3.

5. Consistent with the Commission's procedures for Mass Migration of customers (D.06-10-021), a Withdrawal of Basic Service should be handled in a formal application.

6. A request by an URF Carrier to modify or cancel a provision, condition, or requirement imposed by the Commission in an enforcement, complaint, or merger proceeding should be made to the Commission in a formal application or petition.

7. Industry Rules 5.2 and 5.3 satisfy the requirements of Pub. Util. Code § 495.7(c)(1) and (2) regarding information that must be made available to consumers by their carrier after it detariffs.

8. A carrier's erroneous designation of advice letter tier is not binding on Staff.

9. It is not necessary to respond to those comments on the 2001 draft rules to the extent that the comments are cumulative, refer solely to the New Regulatory Framework or are otherwise moot, or have been responded to already in any of the interim decisions in the GO 96-B rulemaking.

10. For purposes of Industry Rules 1.13, 3, 3.1, and 8.6, a Transfer of customers means a Transfer of the entire customer base or an entire customer class of the carrier.

11. "Transfer" under Industry Rule 1.13, taken as a whole, concerns only those transactions that fall under Pub. Util. Code §§ 851-54. For example, a sale of a parcel of land is a Transfer only if the land is "necessary or useful" under § 851.

12. The customer notice rule set forth in Industry Rule 3 conforms to directions contained in two decisions in the GO 96-B rulemaking and the Phase I decision of the URF rulemaking.

13. If a carrier requests an increase to a rate or charge, or a more restrictive term or condition, and that rate, charge, term, or condition is one that any of the carrier's customers might incur or be affected by, then the carrier must give customer notice of the request pursuant to Industry Rule 3.

14. A knowingly and deliberately erroneous submittal, particularly of a Tier 1 advice letter, may trigger sanctions as well as the requirement to undo the actions taken under the improper advice letter.

15. If an advice letter's subject matter is proper to Tier 1, it necessarily is a proper advice letter, and if its subject matter is not proper to Tier 1, staff has authority to reject it under Industry Rule 7.1.

16. General Rule 8.2.3 of GO 96-B should be modified, consistent with Finding of Fact 22, so that an advice letter submitted for provision of service under emergency conditions may be subject to disposition under General Rule 7.6.1, as specified in the Telecommunications Industry Rules.

17. General Rule 1.1 of GO 96-B should be modified by adding a reference to the Telecommunications Industry Rules. General Rule 3.5 should be corrected by replacing the reference to "General Rule 5.4" with "General Rule 5.3." General Rule 7.5.3 should be corrected by replacing the reference to "General Rule 5.4" with "General Rule 5.3." General Rule 7.6.2 should be corrected by replacing the references to General Rules 5.4 and 5.5 with a reference to General Rule 5.3.

18. The Telecommunications Industry Rules set forth in Appendix A should be codified with GO 96-B, as adopted in D.07-01-024 and as modified by today's decision.

19. Today's order should be made effective immediately, and the Telecommunications Industry Rules set forth in Appendix A should be made applicable to all telecommunications advice letters or information-only filings submitted 30 days from the effective date of today's order or thereafter.

20. R.98-07-038 should be closed.

O R D E R

IT IS ORDERED that:

1. The Telecommunications Industry Rules set forth in Appendix A are adopted and are incorporated into General Order (GO) 96-B.

2. The Telecommunications Industry Rules shall become effective 30 days from the effective date of today's order, and shall apply to all telecommunications advice letters or information-only filings submitted 30 days from the effective date of today's order or thereafter.

3. The first two paragraphs of General Rule 1.1 are amended to reflect the addition of the Telecommunications Industry Rules to GO 96-B. The amendments are shown below; new language is underlined, and deleted language is stricken through:

> This General Order contains General Rules, ~~and~~ Energy Industry Rules, Telecommunications Industry Rules, and Water Industry Rules. ~~Telecommunications Industry Rules may be added later.~~ The General Rules govern ~~all informal matters (~~advice letters and information-only filings~~)~~ submitted to the Commission by public utilities that are gas, electrical, telephone, water, sewer system, pipeline, or heat corporations, as defined in the Public Utilities

> Code. The General Rules also govern certain ~~informal~~ matters submitted to the Commission by certain non-utilities subject to limited regulation by the Commission.
>
> The Industry Rules have limited applicability. The Energy Industry Rules apply to gas, electrical, pipeline, and heat corporations and to load-serving entities as defined in Public Utilities Code Section 380. The Telecommunications Industry Rules apply to telephone corporations. The Water Industry Rules apply to water and sewer system corporations. Within their respective industries, the Industry Rules may create rules specific to a particular type of utility or advice letter. Also, for purposes of advice letter review, the Industry Rules will contain three tiers that will distinguish, for the respective Industry Divisions, between those kinds of advice letters subject to disposition under General Rule 7.6.1 (Industry Division disposition) and those subject to disposition under General Rule 7.6.2 (disposition by resolution). The Industry Rules may contain additional tiers as needed for efficient advice letter review or implementation of a statute or Commission order.

4. In the second sentence of General Rule 3.5 of GO 96-B, the reference to "General Rule 5.4" is amended so that the reference is to "General Rule 5.3."

5. In the last sentence of General Rule 7.5.3 of GO 96-B, the reference to "General Rule 5.4" is amended so that the reference is to "General Rule 5.3."

6. In the first sentence of General Rule 7.6.2 of GO 96-B, the reference to "General Rules 5.4, 5.5, 7.5.1, or 7.6.1" is amended so that the reference is to "General Rules 5.3, 7.5.1, or 7.6.1."

7. The first paragraph of General Rule 8.2.3 of GO 96-B is amended consistent with Finding of Fact 22 and Conclusion of Law 12. The amendment is shown below; new language is underlined, and deleted language is stricken through:

> Under emergency conditions, such as war, terrorist attack, and natural disasters, a utility that is a telephone corporation as defined in the Public Utilities Code may provide service to a

government agency or to the public for free, or at reduced rates and charges, or under terms and conditions otherwise deviating from its tariffs then in effect. The utility may begin such service without prior Commission approval, but the utility shall promptly submit an advice letter to the Telecommunications Division to notify the Commission of the utility's provision of emergency service and of the rates, charges, terms, and conditions under which the service is provided. ~~Although t~~The advice letter may be effective pending disposition, ~~it~~ and shall be subject to disposition under General Rule 7.6.1. The Commission may determine, as ~~in an~~ appropriate ~~proceeding~~, the reasonableness of such service.

8. The Executive Director will publish GO 96-B at the Commission's Internet site and otherwise make it readily available to utilities and interested persons.

9. Rulemaking 98-07-038 is closed.

This order is effective today.

Dated _____, at San Francisco, California.