

Decision 09-09-014 September 10, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Raw Bandwidth Communications, Inc.,

Complainant,

vs.

SBC California, Inc. (U 1001 C) and SBC  
Advanced Solutions, Inc., (U 6346),

Defendants.

Case 03-05-023  
(Filed May 15, 2003;  
reopened June 13, 2005)

**MODIFIED PRESIDING OFFICER'S  
DECISION ADOPTING THIRD PARTY NOTICE**

**1. Summary**

This reopened proceeding addresses one issue: Raw Bandwidth Communications, Inc.'s (Raw Bandwidth) allegation that the lack of advance notice before disconnection of its Digital Subscriber Line (DSL) Transport Service purchased from AT&T Advanced Solutions, Inc. (ASI), resulting from the disconnection of Raw Bandwidth's customer's basic (voice) service for nonpayment, is contrary to the requirement that Pacific Bell Telephone Company (AT&T California) provide just and reasonable service under Pub. Util. Code

§ 451.<sup>1</sup> We decline to make that finding; instead, we affirm our earlier conclusion that public policy considerations support reasonable advance notice of the disconnection of DSL Transport Service.<sup>2</sup> We find AT&T California's proposal to modify its Third Party Notice, a customer-selected designation of an additional individual to receive notice of a late payment and the possibility of disconnection of basic service, is the most reasonable proposal before us.<sup>3</sup> Of the advance notice proposals before us, Third Party Notice is most easily implemented. It will provide Raw Bandwidth with advance notice of the disconnection of DSL Transport Service and the information necessary to work with its customers to ensure their DSL service continues. Raw Bandwidth's two proposals, the first requiring an extended period of notice of the disconnection of DSL Transport Service and the second requiring notice when basic service is suspended, both forwarded to Raw Bandwidth, necessitate modifications to Defendants' procedures and programming changes when few customers experience a problem with disconnection for nonpayment.

We decline to address AT&T California and ASI's assertion that we lack jurisdiction to resolve the advance notice issue. Although the Federal

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<sup>1</sup> Section 451 provides: "Every public utility shall furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

<sup>2</sup> Decision (D.) 04-05-006, *mimeo.*, pp. 7-8.

<sup>3</sup> Third Party Notice is sent at the same time as the disconnect notice for nonpayment is sent to the voice customer. These notices are sent prior to suspension of basic service for nonpayment.

Communications Commission (FCC) reduced the regulation of wireline broadband access services, including DSL Transport Service, the relief adopted herein, Third Party Notice is a component of basic service, a telecommunications service.

## **2. Procedural Background**

In Decision (D.) 05-05-049, the Commission reopened this proceeding to clarify the earlier decision on the advance notice issue. In that decision, D.04-05-006, the Commission concluded public policy considerations favored reasonable advance notice to Raw Bandwidth of disconnection of the voice line for nonpayment and directed Raw Bandwidth and Defendants to continue negotiations on the advance notice issue.<sup>4</sup> The Commission also concluded there was no statute or Commission order that required a lengthy notice to the Internet Service Provider (ISP) in advance of basic service disconnection. (*Id.* at p. 6.)

D.05-05-049 limits this phase of the proceeding to the issue of advance notice of disconnection of DSL Transport Service for nonpayment of the voice subscriber's basic service. The first prehearing conference (PHC) was held on July 6, 2005. Following the PHC, the parties participated in Commission-sponsored mediation. Defendants offered the use of AT&T California's Third Party Notice to resolve the advance notice issue. Raw Bandwidth did not favor the use of Third Party Notice and offered two different advance notice proposals.<sup>5</sup> A second PHC was held on December 20, 2005. Hearings were held on May 18, 2006 and August 10, 2006. Opening and reply briefs were filed on

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<sup>4</sup> D.05-01-034 affirmed D.04-05-006 on the advance notice issue.

<sup>5</sup> Raw Bandwidth proposed three types of advance notice at hearings but stated in its briefs it only was moving forward with two.

January 5 and 25, 2007, respectively. Defendants requested and were granted the opportunity to clarify an error in their opening and reply briefs concerning the FCC's characterization of DSL Transport Service. Defendants filed amended briefs on February 5, 2007. Raw Bandwidth was given leave to file a response to Defendants' amended briefs, which it did on February 13, 2007.

### **3. Discussion**

The Commission reopened this proceeding to clarify its position on advance notice to Raw Bandwidth of disconnection of its DSL Transport Service when a voice subscriber's basic service is disconnected for nonpayment. In the reopened proceeding, Raw Bandwidth renews its contention that disconnection of DSL Transport Service without advance notice is unjust and unreasonable, and Defendants assert the Commission no longer has jurisdiction over DSL Transport Service. We find Raw Bandwidth's assertions unpersuasive and decline to address jurisdictional issues in this proceeding.

#### **3.1. Reasonable Advance Notice**

The Commission earlier addressed and we reaffirm the determination that no statute or Commission order requires a prescribed period of advance notice to the ISP of the disconnection of DSL Transport when basic service is disconnected for nonpayment. ASI's failure to provide advance notice of the disconnection of DSL Transport Service, which applies to both AT&T California's affiliated ISP and unaffiliated ISPs, such as Raw Bandwidth, is not unjust or unreasonable in violation of Pub. Util. Code § 451.

Customers are warned that their DSL service will be disconnected for nonpayment of basic service, and very few customers actually lose their DSL service for nonpayment of their basic service. Approximately one customer per month (Raw Bandwidth's estimate) or fewer (Raw Bandwidth's actual records)

loses DSL service for nonpayment.<sup>6</sup> The final notice provided to voice customers who have not paid their bill states, "If you have DSL service, it will be disconnected when your telephone service is permanently disconnected, requiring a new order for DSL service. Standard due dates will apply to each order for new service."<sup>7</sup>

Raw Bandwidth does not receive notice of the disconnection of DSL Transport in advance of the disconnection of its DSL customer's basic line for nonpayment of basic service.<sup>8</sup> The failure to provide advance notice is a function of AT&T California's procedures for disconnecting service, which are the same for affiliated and unaffiliated ISPs.<sup>9</sup> Raw Bandwidth is notified of the disconnection of DSL Transport Service by ASI after ASI receives a line loss notice from AT&T California. Disconnection of the voice line results in the disconnection of DSL provided over the high frequency portion of the line.<sup>10</sup>

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<sup>6</sup> The record indicates no discrimination in the notice provided to ISPs. AT&T's ISP customers face the same problems in getting DSL restored. (Durkin Testimony, Exhibit 1-1, 10275-10276.)

<sup>7</sup> Exhibit 1-1, SBCCal-RB 1103.

<sup>8</sup> Raw Bandwidth purchases DSL Transport in a line sharing arrangement from ASI, the CLEC affiliate of AT&T California. AT&T California provides basic service to customers who purchase DSL from unaffiliated Internet service providers, including Raw Bandwidth, and from AT&T California's affiliated ISP. ASI offers DSL Transport on a generally available basis in which terms, conditions are posted on its website. (See AT&T's Amended Opening Brief, p. 4.)

<sup>9</sup> Dunmire Testimony, Exhibit 12, p. 6.

<sup>10</sup> Whether AT&T California is in compliance with Pub. Util. Code § 2883(b)'s requirement to provide access to 911 emergency services for residential subscribers, if technology or facilities permit, when an account is delinquent or the subscriber is indebted to AT&T California was addressed in a separate complaint action and is not addressed here. (See Case 05-11-011 and D.08-08-017.)

Although disconnection of DSL for nonpayment of basic service when a customer potentially has paid all DSL charges is undesirable, it is a consequence of three factors – the process for disconnections of basic service, providing DSL on the same line as basic service, and incomplete information received by ASI. ASI currently does not know the reason for the line loss, so it does not act on the line loss notice for eight days in case service is restored. However, the eight-day delay has no impact on disconnections for nonpayment, since line loss in the nonpayment context means the line already has been disconnected. ASI would prefer to avoid unnecessary disconnections in nonpayment scenarios, but no change in the process is anticipated for the foreseeable future.<sup>11</sup>

Although the disconnection of DSL Transport resulting from the disconnection of basic service for nonpayment is not a violation of Commission rules and regulations, we find the provision of advance notice to ISPs of disconnection of DSL Transport in advance of basic service disconnection is sound public policy in light of the unintended consequence of a cumbersome reconnection process: restoration of DSL service takes far longer than restoration of the basic service whose discontinuance was the basis for the DSL disconnection. The lengthy process to restore DSL service leads Raw Bandwidth's previously affected customers who have had their service disconnected to support advance notice to Raw Bandwidth of disconnection of

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<sup>11</sup> To achieve that goal, ASI has requested a unique notifier for voice disconnects due to nonpayment to prevent unnecessary disconnects of the CLEC/ISP line share as part of the AT&T 13-State CLEC Change Request for operations support systems electronic interface and associated business rules/processes. (Exhibit 18.) This request must receive CLEC approval, and there had been no action on the request when briefs were filed.

their basic service for nonpayment.<sup>12</sup> We discuss the parties' advance notice proposals below.

### **3.2. Advance Notice Proposals**

Raw Bandwidth offers two forms of advance notice of disconnection of DSL Transport service resulting from the disconnection of basic service for nonpayment. Defendants recommend modifying an existing procedure to provide advance notice. The parties' critiques of each other's proposals illustrate that there is no ideal means of providing reasonable advance notice.

#### **3.2.1. Raw Bandwidth's Proposals**

Raw Bandwidth favors two forms of advance notice. The first would maintain the status quo but require no disconnection of DSL Transport for seven calendar days following notice to the ISP of disconnection of the voice line, and the second would require notice during the suspension period.<sup>13</sup>

Raw Bandwidth's first proposal is to adapt the CLEC loss notification process to get advance notice of disconnection. AT&T California is required to notify CLECs of disconnection of basic service, so CLECs have the opportunity to

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<sup>12</sup> Restoration of DSL service can take between one and twenty-six days, depending on the process used and the problems encountered. (Exhibit 1-4.) Raw Bandwidth's customers report that some disconnections are made in error when bills are mailed to the wrong address or payments are not properly recorded. AT&T California has a DSL disconnect in error restoral process that applies when DSL service has been disconnected for nonpayment even though the customer made the payment by the due date. (Exhibit C.3-30, SBCCal-RB001336.) Restoration of service is expedited under those circumstances.

<sup>13</sup> AT&T California suspends dial tone for nonpayment of basic service charges. If payment is not received during the suspension period, AT&T California notifies ASI of the line loss and disconnects the line. ASI notifies the ISP, either its affiliated ISP or an unaffiliated ISP, that DSL Transport is being disconnected.

convert CLEC-provided DSL through a line share to a standalone DSL loop when such a conversion is permitted under a separate agreement or by tariff.<sup>14</sup> Raw Bandwidth wants that procedure to be modified to provide advance notice of DSL Transport Service disconnection to ASI. The three business day notice the CLEC would get to convert the line would be extended to seven calendar days to permit restoration of basic service.<sup>15</sup> ASI promptly would notify Raw Bandwidth once it received notice of disconnection.<sup>16</sup> Raw Bandwidth assumes the seven day notice would permit sufficient time for Raw Bandwidth to contact its customer and have the customer pay its bill, thereby permitting AT&T California to restore basic service and avoid ASI's disconnection of DSL Transport Service.<sup>17</sup>

This proposal presents a number of problems. Raw Bandwidth is not a CLEC, so the basis for receiving direct notice of disconnection, the opportunity to convert the line to a standalone loop, does not apply. ASI does not want this form of notice. It is unclear how modifying the CLEC procedure, notice to permit the opportunity to convert the disconnected line to a standalone loop, to what Raw Bandwidth seeks, advance notice to avoid DSL Transport Service disconnection and permit restoration of basic service, would work in practice. In the CLEC scenario, basic service has been disconnected for any number of reasons, including nonpayment. The assumption underlying the CLEC process is that basic service will not be restored. Restoring the line to basic service should payment be received during the seven calendar days, what Raw

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<sup>14</sup> Exhibit 1-11, p. 4; Exhibit C.3-26, SBCCal-RB001324.

<sup>15</sup> Durkin Supplemental Testimony, Exhibit 3, p. 8.

<sup>16</sup> Durkin Testimony, Exhibit 1, pp. 37, 46-47.

<sup>17</sup> Exhibit 1, p. 47; Exhibit 38, p. 5.

Bandwidth is requesting, has not been done. In addition, CLEC requests for conversion to a standalone loop rarely, if ever, occur. Timing is also an issue. If a CLEC were to elect this option to convert the line to a loop, the CLEC would have three business days in which to make the decision to convert the line before disconnection of CLEC-provided DSL occurred. Raw Bandwidth's proposal is to leave DSL Transport Service connected for up to eight days, the interval ASI has in place before it acts on the line loss notice. However, ASI does not know when it receives the notice of disconnection whether the disconnection is for nonpayment or another reason so earlier notice to Raw Bandwidth would be over inclusive.

The major drawback to adapting the CLEC conversion procedure for use by an ISP is that adaptation would require modification of the procedure in fundamental ways, including programming changes for both AT&T California and ASI. Programming changes necessary to adopt this proposal would be time-consuming, and the parties dispute the cost involved. This proposal takes a procedure used in one context and attempts to use it as a basis for the advance notice of disconnection of DSL Transport Service that Raw Bandwidth seeks. The CLEC notice to permit conversion to a standalone loop is too dissimilar to what Raw Bandwidth seeks to justify Raw Bandwidth's assertion that the advance notice of DSL Transport Service is simple to implement. The number of system changes required to implement this form of advance notice of DSL Transport Service disconnection compared to the number of customers actually impacted by losing DSL for nonpayment of basic service weighs against adopting this proposal.

Raw Bandwidth's second proposal is for AT&T California to give notice of the disconnection of DSL Transport Service to ASI at the time the basic service is

suspended for nonpayment in addition to the line loss notice.<sup>18</sup> ASI would forward this notice to Raw Bandwidth. Privacy concerns arise with providing notice at that time. For example, Pub. Util. Code § 2891(a)(2) precludes AT&T California from providing a residential subscriber's credit or other personal financial information without the subscriber's written consent.<sup>19</sup> However, Raw Bandwidth asserts it does not want notice of suspension, only notice at the time of suspension. ASI would not alert Raw Bandwidth that the line had been suspended.<sup>20</sup> AT&T California disagrees – giving advance notice at the time of suspension would signal that the subscriber has not paid his or her bill. Although Raw Bandwidth and its customers encourage the Commission to override these privacy concerns and order AT&T California to provide notice of suspension to ASI, thereby obviating the requirements of § 2891(a)(2), AT&T California opposes giving that notice. Raw Bandwidth also asserts there is no practical difference between a disconnect notice on a suspended line and on a disconnected line.<sup>21</sup> Since privacy concerns do not apply to permanent disconnections, they should not apply during the comparable suspension period.<sup>22</sup> AT&T California asserts there is a difference between a generic

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<sup>18</sup> Exhibit 1, p. 50. In its testimony, Raw Bandwidth refers to this proposal as its third proposal. It will be referred to here as Raw Bandwidth's second proposal, since Raw Bandwidth no longer supports adoption of the second proposal in its testimony. Currently, ASI receives notice when basic service is disconnected. (Dunmire Testimony, Exhibit 12, p. 3.)

<sup>19</sup> These privacy protections do not affect advance notice of disconnection of a business voice line and written consent would not be required.

<sup>20</sup> Durkin Reply Testimony, Exhibit 2, p. 12.

<sup>21</sup> Exhibit 1, p. 53.

<sup>22</sup> *Id.* at p. 54.

disconnect notice on a suspended line and relaying information to Raw Bandwidth so Raw Bandwidth can get its customer to pay its voice bill if the customer desires to continue DSL service.<sup>23</sup>

In addition to privacy concerns, the required process for instituting this change, a formal assessment by ASI and adherence to industry standard processes and the Change Management Process required by CLEC interconnection agreements by AT&T California, is cumbersome.<sup>24</sup> Defendants also raise credit collection issues as problematic for advance notice during the suspension period. Since specific procedures apply to credit collection, Defendants assert there would be no means of knowing whether Raw Bandwidth would properly apply those procedures. Finally, Defendants note that there are complex programming changes that would be necessary to make this change, since the process that initiates suspension is not the same as the process that initiates disconnection.<sup>25</sup>

Any process adopted for advance notice must be consistent with customers' right to privacy for their financial information. Since advance notice of the disconnection of DSL Transport Service would be linked to notice of the suspension of basic service for nonpayment, this form of notice indirectly would impact the privacy of financial information. Obtaining written consent prior to notifying Raw Bandwidth of the suspension for nonpayment and possible disconnection likely would obviate "advance" notice in many circumstances. Although Raw Bandwidth and its customers who testified in this proceeding

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<sup>23</sup> Lay Corrected Reply Testimony, Exhibit 9, p. 10.

<sup>24</sup> Exhibit 12, pp. 10-11.

<sup>25</sup> Read Testimony, Exhibit 10, pp. 9-10.

support advance notice without written consent, there must be a compelling reason for the Commission to require providing financial information, even if it is provided indirectly. In this instance, privacy concerns are only one drawback to this proposal.

Despite Raw Bandwidth's claims, AT&T California would have to provide notice of the disconnection of DSL Transport Service when basic service is suspended in a different manner than the line loss notice, even if ASI's notice to Raw Bandwidth could remain the same. Implementation of notice during the suspension period would involve processes outside the scope of this proceeding and programming changes. If this procedure were less complicated to implement than reconnecting DSL Transport Service, a second notice might be preferable to ASI's current practice, waiting eight days before disconnection of DSL Transport Service after it receives the line loss notice from AT&T California. However, privacy concerns, the need for external approvals, and the number of system changes involved balanced against the number of DSL subscribers impacted by disconnection for nonpayment of their basic service make this proposal an unsatisfactory solution.

Both of Raw Bandwidth's proposals have major drawbacks arising from the complex interaction between AT&T California, ASI and Raw Bandwidth in the circumstance where the AT&T California customer has not paid its basic service bill, resulting in disconnection of DSL Transport Service. We find that Raw Bandwidth's proposals do not meet our standard of reasonable advance notice due to the numerous obstacles to implementation of both of the proposals in contrast with the small number of customers whose DSL Transport Service is disconnected for nonpayment of basic service.

### **3.2.2. Third Party Notice**

Defendants' advance notice proposal has the benefit of being an existing procedure, which is currently available to Raw Bandwidth or any other ISP's customers, so implementation issues are limited to modifications of the procedure. Under current procedures, the customer and/or its attorney must sign a letter which also must be signed by the third-party designee to activate notice.<sup>26</sup> Third party notice is sent to the designee at the same time as the disconnect notice is sent to the voice customer. AT&T California has agreed to modify the procedure to permit requests for Third Party Notice to be made by e-mail, to accept notices from Raw Bandwidth that it no longer supplies DSL on a particular phone number so Raw Bandwidth should be removed as the third-party designee on that number, and to permit Raw Bandwidth to provide any new address to AT&T so AT&T will update all Third Party Notice records that have Raw Bandwidth as the third party designee.<sup>27</sup>

Although Third Party Notice has benefits, it also presents several problems. AT&T California has no relationship with Raw Bandwidth or any other ISP. The manual entry of a voice customer's ISP provider for Third Party Notice of voice disconnection cannot be updated without the customer remembering to change the recipient of the Third Party Notice when the customer changes ISPs. Advance notice was designed to permit the customer to elect a second notice be sent to a designated individual, presumably one with whom the customer has an ongoing relationship. There is no ongoing relationship in this instance, since the customer can change ISPs. Only ASI

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<sup>26</sup> Exhibit 37, p. 5.

<sup>27</sup> Reporter's Transcript 52:12-53:03.

remains constant as the CLEC wholesale provider, and the ISP's customer has no direct relationship with ASI.

Despite its drawbacks, we find Third Party Notice to provide advance notice of disconnection of DSL Transport Service for the nonpayment of basic service is the most reasonable proposal and is consistent with our public policy position favoring advance notice. Because Third Party Notice currently is available to Raw Bandwidth and other ISPs, we need issue no order requiring it be provided. Its availability also has the benefit of requiring no changes to Defendants' programming should other options more desirable to Raw Bandwidth become available in the future. If Raw Bandwidth elects to use Third Party Notice, we accept AT&T California's commitment to modify its Third Party Notice procedures to let its customers request Raw Bandwidth as the designee by e-mail, to accept notices from Raw Bandwidth that it no longer supplies DSL on a particular phone number so Raw Bandwidth should be removed as the third-party designee on that number, and to permit Raw Bandwidth to provide any new address to AT&T so AT&T will update all Third Party Notice records that have Raw Bandwidth as the third party designee. The process for designating a third party to receive notice does not apply to business customers, since privacy considerations and written authorization do not apply. Thus, AT&T California shall work with Raw Bandwidth to provide Raw Bandwidth with a process to request and revoke Third Party Notice on behalf of its business customers. With AT&T California's commitment to modify Third Party Notice, as requested by Raw Bandwidth, Raw Bandwidth's complaint concerning advance notice of the disconnection of DSL Transport is resolved.

We decline to order AT&T California to provide these modifications to all ISPs. Should other ISPs elect to use Third Party Notice, they should have the

flexibility to work with AT&T California to modify the procedure to suit their needs, including but not limited to the modifications requested by Raw Bandwidth.

### **3.3. Jurisdiction**

We have consistently asserted our jurisdiction over DSL Transport Service in proceedings before us. (*See CISPA v. Pacific Bell Telephone Co. and SBC ASI*, D.03-07-032; D.05-05-049.) Subsequent to those decisions, the FCC adopted its Wireline Broadband Access order. (Report and Order, *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services et al.*, CC Docket No. 02-33; CC Docket No. 01-337; CC Docket Nos. 95-20, 98-10; WC Docket No. 04-242; WC Docket No. 05-271, 20 FCC Rcd. 14853 (2005).) The Wireline Broadband Access order is not relevant to the adoption of Third Party Notice for advance notice of the disconnection of DSL Transport Service. Third Party Notice is a component of basic service, a telecommunications service. Thus, the jurisdictional issues raised by Defendants are not relevant to the relief accorded to Raw Bandwidth in this decision, and we need not address them.

### **4. Pending Motions**

Raw Bandwidth filed two motions on February 13, 2007. Raw Bandwidth moved to strike portions of Defendants' amended opening brief. As Raw Bandwidth notes, Defendants requested the opportunity to amend their opening and reply briefs after Raw Bandwidth's reply brief pointed out errors in their jurisdictional argument. Raw Bandwidth alleges Defendants impermissibly modified their argument in their amended opening brief and sought to introduce a new exhibit, a March 31, 2006 letter to the FCC, by providing the link to it in

their brief. Raw Bandwidth asserts the letter has not been authenticated, is not a proper subject of official notice, and is hearsay. Defendants did not file a response to the motion.

Defendants' jurisdictional discussion is argument to which Raw Bandwidth has had the opportunity to respond. Thus, we will not strike it. We disagree that we cannot take official notice of Defendants' letter to the FCC. The letter has been filed at the FCC, as indicated on its first page, and we can take official notice of such filings. (*See* D.99-04-071, *In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers*, 86 CPUC 2d. 183, 186.) We deny Raw Bandwidth's motion to strike.

Raw Bandwidth filed a motion to file the transcript of Michael Durkin under seal. The transcript was attached to Raw Bandwidth's publicly filed response. Raw Bandwidth's motion is granted and the transcript will be moved from the public record and filed under seal.

ASI requested official notice of supplemental authority, specifically the United States Court of Appeals for the Third Circuit's opinion (*Time Warner Telecom, et al., v. Federal Communications Commission*, Nos. 05-4769, 05-5153, 06-1466 and 06-1467, October 16, 2007) upholding the FCC's Wireline Broadband Access Order. Although we decline to address jurisdictional issues in this proceeding, we will grant the request for official notice, to the extent the FCC's order was referenced in the parties' appeals and responses.

## **5. Future Disputes**

Raw Bandwidth has stated it intends to raise other issues concerning DSL Transport Service before us at the conclusion of this complaint. We seek to avoid another resource-intensive highly contentious proceeding such as this one. We caution Raw Bandwidth to pursue diligently informal means of resolving its

concerns prior to filing another complaint in light of the lessened regulation of DSL Transport Service. We similarly caution Defendants to continue to respond to Raw Bandwidth's needs and concerns with outcomes such as the one achieved through Commission-sponsored mediation and ultimately adopted in this proceeding.

## **6. Appeals of Presiding Officer's Decision**

Raw Bandwidth and ASI filed timely appeals of the Presiding Officer's Decision (POD).<sup>28</sup> Raw Bandwidth alleges numerous errors in characterizing its complaint, its position, and the record. AT&T California responds that Raw Bandwidth is merely repeating its arguments. Where allegations of factual error have merit, this decision has corrected those errors. Raw Bandwidth alleges the POD does not properly analyze reasonableness under § 451 and reargues its position on advance notice of the disconnection of DSL Transport Service. The POD properly concluded that ASI's failure to provide advance notice of the disconnection of DSL Transport Service is not unjust or unreasonable, reaffirmed the Commission's earlier determination that public policy favors provision of advance notice of the disconnection of DSL Transport Service, and adopted Third Party Notice as the most reasonable option. Raw Bandwidth's allegations of legal error lack merit, and we affirm the decision.

ASI asserts the POD improperly concluded the Commission retains jurisdiction to regulate the provision of DSL Transport Service. Because the relief awarded Raw Bandwidth in this proceeding, modifications to Third Party Notice, is a component of a telecommunications service, it is not necessary to

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<sup>28</sup> The POD was filed on September 7, 2007, and the appeals were filed on October 9, 2007.

address jurisdictional issues in order to resolve Raw Bandwidth's complaint concerning advance notice of the disconnection of DSL Service, the sole issue in this reopened proceeding. The decision has been modified accordingly. Thus, ASI's allegations of legal error are moot.

## **7. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Janice Grau is the assigned Administrative Law Judge and Presiding Officer in this proceeding.

### **Findings of Fact**

1. D.04-05-006 concluded public policy considerations favored reasonable advance notice to Raw Bandwidth of disconnection of DSL Transport Service due to disconnection of the voice line for nonpayment.
2. ASI offers DSL Transport Service on generally available terms and conditions, not under tariffs, and has elected not to offer DSL Transport Service as a common carrier service to new customers and to existing customers at new locations.
3. Raw Bandwidth does not receive notice in advance of the disconnection of its DSL customer's basic line for nonpayment of its basic service. Raw Bandwidth is notified of the disconnection of DSL Transport Service by ASI days after ASI receives a line loss notice from AT&T California. When ASI receives the line loss notice it does not receive information on why basic service has been disconnected. Disconnection of the voice line results in the disconnection of DSL provided over the high frequency portion of the line.
4. AT&T California's basic service customers are warned that their DSL service will be disconnected for nonpayment of basic service. Very few of Raw Bandwidth's 660 customers actually lose their DSL service for nonpayment of their basic service. Approximately one customer per month (Raw Bandwidth's

estimate) or fewer (Raw Bandwidth's actual records) loses DSL service for nonpayment of basic service.

5. Raw Bandwidth proposes two forms of advance notice: (1) requiring no disconnection of DSL Transport Service for seven calendar days following notice to ASI of disconnection of the voice line and the prompt forwarding of that notice to Raw Bandwidth; and (2) requiring notice to ASI, forwarded to Raw Bandwidth, during the suspension period for basic service.

6. Pub. Util. Code § 2891(a)(2) precludes AT&T California from providing a residential subscriber's credit or other personal financial information without the subscriber's written consent but does not apply to business subscribers. Raw Bandwidth's second proposal indirectly would provide personal financial information.

7. Raw Bandwidth's proposals require modifications of Defendants' procedures and programming changes. Raw Bandwidth's second proposal requires external approvals beyond the scope of this proceeding.

8. Defendants' Third Party Notice is an existing procedure, currently available to Raw Bandwidth's customers, which permits a basic service customer to designate a third party to receive notice of impending disconnection of basic service for nonpayment. AT&T California has agreed to modify the procedure to permit requests for Third Party Notice to be made by e-mail and to accept notice from Raw Bandwidth that it no longer supplies DSL on a particular number and that its address has changed.

9. Raw Bandwidth and ASI filed appeals of the POD.

### **Conclusions of Law**

1. The failure to provide advance notice of the disconnection of DSL Transport Service, which applies to both AT&T California's affiliated ISP and

unaffiliated ISPs, is not unjust or unreasonable in violation of Pub. Util. Code § 451.

2. Public policy considerations support reasonable advance notice of the disconnection of DSL Transport Service for nonpayment of the customer's basic service.

3. Reasonable advance notice of the disconnection of DSL Transport Service would most effectively be provided by Third Party Notice, as modified to permit customers to request Third Party Notice by e-mail and Raw Bandwidth to make changes to its designation to receive Third Party Notice. Raw Bandwidth's proposals would not provide reasonable advance notice of the disconnection of DSL Transport Service, because they are more difficult to implement than justified by the number of customers impacted by disconnection of DSL Transport Service for nonpayment of basic service.

4. After modification of the POD, Raw Bandwidth's and ASI's appeals of the POD should be denied.

5. It is reasonable to make this order effective today in order to resolve this longstanding complaint.

## **O R D E R**

**IT IS ORDERED** that:

1. The complaint of Raw Bandwidth Communications, Inc. on the issue of advance notice of disconnection of DSL Transport Service is granted through adoption of Pacific Bell Telephone Company (AT&T California) and AT&T Advanced Solutions, Inc.'s proposal to modify AT&T California's Third Party Notice to permit e-mail requests by customers to designate Raw Bandwidth to

receive notice and procedures to update information provided by Raw Bandwidth.

2. Raw Bandwidth Communications, Inc.'s and AT&T Advanced Solutions, Inc.'s appeals of the Presiding Officer's Decision are denied after modification of the Presiding Officer's Decision.

3. Case 03-05-023 is closed.

This order is effective today.

Dated September 10, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners