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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the  
State of Competition Among  
Telecommunications Providers in  
California, and to Consider and Resolve  
Questions raised in the Limited  
Rehearing of Decision 08-09-042.

**FILED**  
**PUBLIC UTILITIES COMMISSION**  
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**I.15-11-007**

**ORDER INSTITUTING INVESTIGATION TO ASSESS THE STATE  
OF COMPETITION AMONG TELECOMMUNICATIONS  
PROVIDERS IN CALIFORNIA, AND TO CONSIDER AND  
RESOLVE LIMITED REHEARING OF DECISION (D.) 08-09-042**

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**ORDER**

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## 1. INTRODUCTION

Almost ten years ago, in 2006, the California Public Utilities Commission (CPUC) issued its first decision in the Uniform Regulatory Framework docket with the purpose of providing consumers the benefits of a competitive marketplace for telecommunications services, including increased flexibility regarding terms, products, and pricing. We sought to foster an effectively competitive marketplace, one that would create good outcomes for consumers in terms of price, choice, coverage, quality and reliability. We anticipated that competition among telecommunications carriers would drive increased innovation and improved customer service, while at the same time keeping prices just and reasonable. We noted at the time an ongoing need and statutory mandate for vigilant Commission oversight of the competitive marketplace to ensure that the market serves consumers well.<sup>1</sup>

The time seems ripe for us to ask whether competition is delivering the dependable, high-quality telecommunications services that are vital to California's people and economy. We find this investigation particularly timely as the Commission sharpens its focus on the safety and reliability of the State's essential infrastructure. We note that New York has recently embarked on a similar review of its telecommunications markets.<sup>2</sup>

## 2. SUMMARY

We open this proceeding to gather information about the state of the telecommunications marketplace in California. To conduct this inquiry, we seek: (1) data related to competition in the retail and wholesale telecommunications markets in

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<sup>1</sup> See, e.g., D.06-08-030, Slip Op. at 156 ("we will remain vigilant in monitoring the voice communications marketplace").

<sup>2</sup> See, e.g., N.Y. Department of Public Service Case 14-C-0370, *In the Matter of a Study on the State of Telecommunications in New York State*; see particularly June 23, 2015 Staff Assessment of Telecommunications Services, at 4 ("The last time the Commission embarked on a broad review of the telecommunications market in New York was in 2006 with its Competition III proceeding"). Documents available at <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/0766D31ED8DF519185257D08004F2B09?OpenDocument>.

California; and (2) comment on existing reports and studies (including by the Commission's Communications Division) related to the price and availability of competing telecommunications services across California's diverse population, and its large and diverse geography. We undertake this investigation mindful of our obligation, pursuant to Public Utilities Code § 451, to ensure just and reasonable rates, terms and conditions of service. Accordingly, we request data and comment on these issues as an exercise in good government, and in light of our promise to monitor and inform ourselves about the State's telecommunications infrastructure. This data-driven approach does not reflect an intent to regulate where the Commission lacks regulatory authority.

In considering the data and comments, we will concomitantly resolve the limited rehearing of D.08-09-042 (*URF II*), consistent with our Order Granting Limited Rehearing adopted concurrently today (D.15-11-023) (hereinafter Rehearing Order), which raises issues related to the state of competition and affordability of telecommunications service in California.

### **3. THE URF LINE OF DECISIONS<sup>3</sup>**

#### **3.1 URF I**

##### **3.1.1 Deregulation**

On August 24, 2006, we issued D.06-08-030 (*URF I*) in a Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities (R.05-04-005, sometimes referred to as the "the URF Phase I proceeding"). This decision removed many of the rules that had governed the prices and operations of the largest incumbent telecommunications carriers (ILECs),<sup>4</sup> and

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<sup>3</sup> The Uniform Regulatory Framework (URF) found expression in a number of decisions – beginning with R.05-04-005, including D.06-12-044, D.07-09-018, D.07-09-019 and other decisions, and running through R.09-06-019 and the decisions in that docket – of which D.06-08-030 (*URF I*) and D.08-09-042 (*URF II*) may be considered the cornerstones.

<sup>4</sup> ILEC is the acronym for incumbent local exchange carrier.

adopted a new Uniform Regulatory Framework (URF) for California's four largest ILECs.<sup>5</sup>

*URF I* relied on our finding that the incumbent carriers lacked significant market power in the voice services market because of the effect of intermodal competition from Voice over Internet Protocol (VoIP), wireless, and cable telephone providers.<sup>6</sup> The *URF I* decision found that this competition would protect the interests of consumers and that “price regulation is no longer needed to ensure that prices are just and reasonable.”<sup>7</sup>

Accordingly, in *URF I*, we eliminated price restrictions for all but residential services, and granted the large ILECs (sometimes referred to as “URF carriers”) broad pricing freedoms across almost all telecommunications services, including new telecommunications products, bundles of services, promotions and contracts.<sup>8</sup> We also permitted carriers to add services to “bundles” and to target services and prices to specific geographic markets, thus permitting geographically de-averaged pricing, which the Commission had previously not allowed. *URF I* also eliminated previously applicable New Regulatory Framework-specific monitoring reports.<sup>9</sup>

*URF I* acknowledged how competitive access to incumbent networks, particularly in the form of unbundled network elements (“UNEs”), enables competitors to reach consumers through a “last mile” connection, thus stimulating efficient

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<sup>5</sup> The URF ILECs are: Pacific Bell Telephone Company dba AT&T California (AT&T), Verizon California Inc. (Verizon), SureWest Telephone (SureWest, dba Consolidated Communications), and Citizens Telecommunications Company of California Inc., dba Frontier Communications Company of California (Frontier). Any subsequent reference to ILECs, as used in this decision is intended to apply exclusively to the URF ILECs. Unless expressly indicated otherwise, references to ILECs are not intended to refer to any small independent local exchange carriers.

<sup>6</sup> D.06-08-030, pp. 263-264, Findings of Fact 26-40, *passim*.

<sup>7</sup> D.06-08-030, pp. 132; see also, p. 275, Conclusion of Law 24.

<sup>8</sup> D.06-08-030, at (for example) Ordering Paragraphs 5, 8, 11-12, 14, and 21.

<sup>9</sup> The eliminated monitoring reports included those on universal service, advanced technologies, and cross-subsidization issues. See D.89-10-031 (NRF), 1989 Cal. PUC LEXIS 576, at \*5, \*19 *ff.* *URF I* also made rate changes effective on one day's notice after the filing of advice letters, eliminated all “asymmetric” requirements that applied to some carriers and not to others (e.g., to ILECs and not to CLECs or wireless carriers).

competition.<sup>10</sup> Unbundled networks were a key component of the move to competitive telecommunications markets contemplated in the Federal Telecommunications Act, which President Clinton signed into law in 1996 and the FCC implemented through a series of decisions. *URFI* identified as a central question “whether California can rely on the revised national unbundling scheme . . . to check the market power of ILECs, or whether California should continue to impose additional regulations to protect California consumers from the market power of the carriers.”<sup>11</sup> *URFI* found that there was adequate access to the network and/or network elements to enable intermodal competition.

*URFI* did not address another wholesale component of an efficiently-competitive network: special access lines used in many middle-mile connections between carriers, such as backhaul from wireless cell sites into the network, as well as last-mile connections to large network users. While *URFI* acknowledged that “[s]pecial access lines are commonly used by wireless and VoIP competitors in their networks,” and recognized “the importance of this network interconnection service,” it deferred the

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<sup>10</sup> D.06-08-030, pp. 80-81 (footnotes omitted, unless otherwise noted):

[A]ccess at cost to these bottleneck network elements [UNEs] would enable competitors to offer telecommunications services and would limit the market power of the ILECs. Two specific UNEs, UNE-L and UNE-P, deserve special mention because of their market impact and importance to this proceeding. UNE-L, also known as “UNE Loop,” consists of the loop from the central office to the customer’s premise. [*URFI* adds in a footnote “Historically, the major bottleneck to local telephone competition was seen as the ILEC’s control of ‘the last mile’ between the central office to the customer’s home.”] The purchase of a UNE-L by a competitive carrier enables the competitive carrier to reach a customer and serve the customer on its network. UNE-P, also known as “UNE-Platform,” consists of a combination of the loop, port, and switching services of the ILEC. The purchase of the UNE-P enabled the competitive carrier to serve the customer with minimal network investment.

See also *id.* at fn. 124, and discussion of the “larger context” in section 5 below.

<sup>11</sup> *Id.* at 84.

“pricing of special access services” until “the next phase of this proceeding.”<sup>12</sup> A further phase of the *URF* proceeding to examine special access was not undertaken.

TURN and ORA applied jointly for rehearing of *URF I*; the Commission rejected their application.<sup>13</sup> Then, on July 29, 2008, ORA also filed a Petition for Modification of the *URF I* Decision “Relating to Price Controls on Residential Rates and Monitoring of Competition” (ORA Petition to Modify URF). In its Petition to Modify URF, ORA asked the Commission to extend price controls on basic residential rates for three years to January 1, 2012 “so that consumers have a reasonable low cost alternative to maintain access to the telephone network.”<sup>14</sup>

Concurrent with its Petition to Modify *URF I*, ORA issued a Staff Report showing that “rates on uncapped services have skyrocketed, proving that market forces have not led to stable or reduced prices.” ORA’s 2008 Report predicted that “basic residential rates would also increase when the price controls were lifted, which would adversely impact high-cost area and low-income ratepayers, and frustrate the legislative mandate Public Utilities (P.U.) Code section 739.3 specifically, and more generally P.U. Code section 709.”<sup>15</sup> The Commission did not rule on ORA’s Petition to Modify *URF I* prior to closing the original URF proceeding in 2009.<sup>16</sup>

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<sup>12</sup> *Id.* at p. 244 & p. 274, Conclusion of Law 12. *See also Id.* at p. 258 (providing: “We decline to adopt a specific and detailed schedule until commencement of that proceeding”); and see further discussion in section 5, *infra*.

<sup>13</sup> D.06-12-044, which modified and granted limited rehearing of D.06-08-030, and denied rehearing as modified, in all other respects.

<sup>14</sup> ORA Petition to Modify URF at 1-2.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *See* <http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/?p=401:57:17361945861854::NO>, the online docket for R.05-04-005; see also, D.09-11-015 (closing docket, no mention of ORA Petition for Modification). The Petition was referenced in an Assigned Commissioner’s Ruling (“ACR”) issued by Commissioner Bohn on December 31, 2010 in R.09-06-019, the successor High Cost Fund-B (CHCF-B) proceeding. *See* December 31, 2010 ACR, at 14.

### **3.2 URF II**

The Commission issued D.08-09-042 (*URF II*) two years after *URF I*, in a separate but related docket.<sup>17</sup> Having determined in *URF I* “that the voice market in California is competitive,” in the *URF II* decision the Commission granted the ILECs full pricing flexibility, effective January 1, 2011.<sup>18</sup> *URF II* allowed the transition to market-based pricing, consistent with our belief that competition would discipline prices and preserve affordability.<sup>19</sup> While we relied in *URF II* on the findings of *URF I*, we did not address the availability of wholesale inputs (like special access and UNE loops).

#### **3.2.1. Application for Rehearing and Petition for Modification of URF II**

On October 24, 2008, ORA and TURN (collectively, “rehearing applicants”) filed a timely joint application for rehearing of *URF II* (D.08-09-042) in which they alleged that the record of the proceeding did not provide any basis to conclude that competition would produce just and reasonable costs, and that the findings in the decision did not support the complete lifting of rate caps and deregulation authorized in *URF II*. They argued that the Commission had deprived consumers of due process by leaving the “intended scope of the Commission’s review of the regulatory structure for telecommunications ... confusing even to parties familiar with Commission proceedings,” and by using a record consisting only of “one round of comments, and no evidentiary hearings” as the basis on which to modify or reverse at least seven prior decisions that themselves were the result of evidentiary hearings.<sup>20</sup>

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<sup>17</sup> R.06-06-028 (regarding CHCF-B reform).

<sup>18</sup> D.08-09-042 (*URF II*), p. 4.

<sup>19</sup> D.08-09-042, p. 51, Finding of Fact 19. This assumption was based on the rationale in D.06-08-030 that “a reasonably competitive market will, over the long term, yield a system of rates that approximates the costs of providing goods or services because of the inherent political, bureaucratic and procedural factors that influence and slow regulatory decision making.” D.06-08-030, p. 262, Finding of Fact 15.

<sup>20</sup> Rehearing Application at p. 4, and fn. 5. Rehearing applicants also challenged D.08-09-042 on more technical grounds not relevant here. SureWest Telephone, Pacific Bell Telephone Company dba AT&T California, and Verizon California Inc. all filed responses to the rehearing application on November 10, 2008.



The Rehearing Order that we issue today as a companion to the instant Order Instituting Investigation disposes of the Application for Rehearing jointly filed by ORA and TURN. The Rehearing Order grants a limited rehearing of D.08-09-042 on certain issues related to competition and the condition of the telecommunications market, as well as affordability, so that an adequate record on which to rest necessary findings and conclusions can be made.<sup>21</sup> The Rehearing Order notes that the rehearing issues have to be considered and resolved within the context of a broader industry-wide examination of competition, as set forth in this Order Instituting Investigation.

Before the Commission's disposition of the application for rehearing of D.08-09-042, the Commission closed the underlying proceeding (R.06-06-026) through issuance of D.11-10-033. The Commission noted in D.11-10-033 that the application for rehearing of D.08-09-042 would be separately addressed in a future Commission order. (D.11-10-033, p. 2.) Today we follow through on that undertaking.<sup>22</sup>

### **3.3. Developments in Telecommunications Services and Regulation Since the *URF* Decisions.**

Since the Commission adopted pro-competitive policies in the *URF* decisions, the telecommunications landscape has changed dramatically. As a consequence, the telecommunications sector today bears little resemblance to what we reviewed in the *URF* proceedings. These changes include the following:

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<sup>21</sup> In today's companion Rehearing Order, the Commission denied rehearing regarding due process allegations related to Public Utilities Code section 454 and Rule 3.2 of the Commission's Rules of Practice and Procedures, and retroactive ratemaking claims.

<sup>22</sup> On October 25, 2010, ORA filed a Petition for Modification of URF II (D.08-09-042) Relating to Price Controls on Basic Residential Rates (Petition to Modify URF II). ORA Petition to Modify D.08-09-042, at 1-2, cited July 16, 2010 report of the California Senate Office of Oversight and Outcomes (see Appendix A to this OII), at Findings 1 and 2 (finding that deregulated rates were not being sufficiently scrutinized). On December 21, 2010, Commissioner Bohn dismissed ORA's Petition to Modify URF II on largely procedural grounds in an Assigned Commissioner's Ruling Dismissing Petition for Modification and Granting Motion to Dismiss in R.06-06-28. *See also* Commissioner Bohn's December 31, 2010 ACR at 16 ("On December 21, 2010, Commissioner Bohn issued an ACR dismissing DRA's 2010 Petition for Modification on procedural grounds. The ACR did not address the substantive merits of DRA's arguments"). The December 31, 2010 ACR noted that the substantive issues raised in the petition for modification were to be addressed in the new phase of R.09-06-019. ACR, pp. 14, 21.

- Evolution of the public switched telephone network (PSTN) into a multi-service platform for the provision of a variety of voice, video, and data services to end users and businesses;<sup>23</sup>
- Technological migration (in many, but not all, locations) from TDM standards and copper loops to IP standards and copper, fiber, coaxial cable, and radio frequency (wireless) transmission media;<sup>24</sup>
- Growth of wireless telephone market share and wireless' increasing ability to provide both voice and broadband data transmission;
- The pending sale in California of the second largest ILEC's wireline network to a substantially smaller company;<sup>25</sup>
- Gradual (but uneven) replacement of basic telephone service offered by the incumbent local exchange carriers with telephone voice service bundled with broadband, increasingly offered by cable television companies; and
- Significant regulatory changes at the federal level, including:
  - The recent reclassification of broadband as a telecommunications service by the FCC;<sup>26</sup>
  - The FCC's recent update of its broadband benchmark speed to 25 Mbps down and 3 Mbps up;<sup>27</sup> and

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<sup>23</sup> In addition to declaring broadband access to these services to be a telecommunications service (see below), the FCC has also expanded its definition of the "public switched network" to reflect, at least in part, the unitary nature of this converged, multi-service platform. See Report and Order on Remand, Declaratory Ruling, and Order, *In the Matter of Protecting and Promoting the Open Internet*, FCC 15-24, Issued February 26, 2015, Released March 12, 2015 (*Open Internet Order*), at ¶ 391 (defining "public switched network" as "the network that includes any common carrier switched network, *whether by wire or radio*, including local exchange carriers, interexchange carriers, and mobile service providers, that use[s] the North American Numbering Plan, or *Public IP addresses*") (emphasis added).

<sup>24</sup> TDM stands for Time-Division Multiplexing. TDM is a communications process that transmits two or more streaming digital signals over a common channel for the duration of the transmission. IP (Internet Protocol) is defined as "[p]art of the TCP/IP family of protocols" ... that ... tracks the Internet address of nodes, routes outgoing messages, and recognizes incoming messages." See Newton's Telecom Dictionary, at 907 (24<sup>th</sup> Ed., 2008) (TCP for "Transmission Control Protocol"); see generally definitions for TCP/IP, Time Division Multiplex, frames and packets in 24<sup>th</sup> and 27<sup>th</sup> Editions of Newton's Telecom Dictionary. Communications networks have been evolving from TDM-based technologies to IP-based technologies for many years.

<sup>25</sup> A.15-03-005 (*In re Joint Application of Frontier and Verizon for Approval of Transfer*).

<sup>26</sup> *Open Internet Order*, FCC 15-24, 30 FCCR 5601 (March 12, 2015), at ¶¶ 29, 47.

- The FCC’s expansion of the definition of the public switched telephone network and the FCC’s preemption of “inconsistent” regulation by the states, among its ongoing attempts to oversee a network in transition.<sup>28</sup>

Today, the services available to consumers and businesses are evolving, and how those services are delivered also continues to change. Collectively, these technological, economic, and regulatory developments spur us to undertake this review of the competition analysis in *URF I*, *URF II*, and related decisions.

#### 4. GRANT OF REHEARING, AND OPENING OF INVESTIGATION

In the companion Rehearing Order issued today, we grant a limited rehearing of D.08-09-042 (*URF II*) on issues related to competition and the telecommunication market. We agree with the basic objection of the rehearing applicants ORA and TURN – that *URF II* was adopted without a legally adequate record. As discussed above, and in the Rehearing Order, the communications landscape as it existed at the time *URF II* (D.08-09-042) issued has changed greatly since then, but the underlying question remains the same: to what extent has competition been sufficient to deliver reliable communications service at just and reasonable prices, while assuring public safety and achievement of our universal service obligations.

We ask this question consistent with the Commission’s constitutional and statutory duties to ensure safe, just, reasonable, and affordable utility services to all Californians.<sup>29</sup> Our regulatory responsibility includes the need to periodically reassess

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<sup>27</sup> Report and Notice of Inquiry, *In re Deployment of Advanced Telecom*, 30 FCCR 1375 (Jan/Feb, 2015); see also Press Release, <https://www.fcc.gov/document/fcc-finds-us-broadband-deployment-not-keeping-pace>.

<sup>28</sup> *Open Internet Order* at ¶¶ 391, 433; see also FCC May 10, 2013 Public Notice DA 13-1016, captioned “Technology Transitions Policy Task Force Seeks Comment on Potential Trials,” GN Docket No. 13-5 (*In re TDM-to-IP Transition*), and July 8, 2013 CPUC Comments.

<sup>29</sup> See, e.g., D.09-08-029, at p. 8 (“in furtherance of our constitutional and statutory duties to regulate and oversee public utilities operating in California”); cf. D.09-07-019, at p. 13 (“reliance on competition in the service quality context must be tempered with an acknowledgment of our statutory duty to ensure telephone corporations provide reasonable service quality ... We do not believe competitive environments completely obviate the need for any service quality measures”).

our prior assumptions against changes in the market environment, and to reassess and replenish the record on which they were based.<sup>30</sup> These changes add new dimensions to the questions that our concurrent grant of limited rehearing of *URF II* (D.08-09-042) requires us to consider today. This Investigation will provide parties notice and an opportunity to be heard on all issues within its scope.<sup>31</sup> The parties can provide us with a full and up-to-date record on which to resolve the issues in this Investigation. We incorporate the record in R.05-04-005, R.06-06-028 and R.09-06-019 in the record for this Investigation, thus preserving the factual record of the *URF I* and *II* proceedings referenced above. We will seek to refresh that record with fuller and more contemporaneous data.

To this end, we have set forth a series of questions and requests for data in Appendix B, below, for which we seek initial responses within ninety (90) days of the issuance date of this Order Instituting Investigation. A list of the market analyses, competition studies, and other resources of potential relevance to this inquiry is found as Appendix A.

## 5. THE LARGER CONTEXT

Regulation of telecommunications in California exists within a federal framework.<sup>32</sup> The FCC has found that “efficient competition” requires incumbent

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<sup>30</sup> See, e.g., December 31, 2010 ACR at 20 (“Examining the level of competition in the telecommunications industry is critical in the Commission’s discharging of its duty to ensure the telecommunications service prices remain just and reasonable”); cf. *Younger v. Jensen*, 26 Cal. 3d 398, 405 (1980) (a department’s investigation may be “undertaken to inquire not only into the existence of violations but also into questions of California’s jurisdiction over them”).

<sup>31</sup> The new phase of R.09-06-019 on marketplace competition, as contemplated in the December 31, 2010 ACR, has not been opened, and R.09-06-019 has been closed.

<sup>32</sup> *In re Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996), at ¶¶ 1-2 (“cooperative federalism”) (footnotes omitted, emphasis added). The FCC further explained:

The 1996 Act also recasts the relationship between the FCC and state commissions responsible for regulating telecommunications services. Until now, we and our state counterparts generally have regulated the jurisdictional segments of this industry assigned to each of us by the Communications Act of 1934. The 1996 Act forges a new partnership between state and federal regulators. This arrangement is far better suited to the coming world of competition in which historical regulatory distinctions are supplanted by

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providers to make essential elements of their networks available to new market entrants and competitive carriers at cost-based rates,<sup>33</sup> creating a wholesale marketplace. The FCC has also framed the question of network competition – and the question of whether wholesale inputs adequately enable network competition – in terms of whether competition has adequately provided emergency response capabilities.<sup>34</sup>

We have not conducted an analysis of the availability of wholesale inputs since we issued *URF I* in 2006.<sup>35</sup> Here we intend to gather data to address whether last-mile and middle-mile bottlenecks – in the local loops as well as on utility poles and in underground ducts – limit network competition and stifle new facility deployment.

In *URF I* we recognized that first among these wholesale inputs are the local (“last mile”) loops on which CLECs directly rely, and on which VoIP and data traffic also travel and rely.<sup>36</sup>

Another wholesale component – special access, or dedicated, high-capacity services, offered over various facilities (copper, fiber, microwave) – can be used for many purposes, from last-mile facilities for enterprise customers to middle-mile

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competitive forces. As this Order demonstrates, we have benefitted enormously from the expertise and experience that the state commissioners and their staffs have contributed to these discussions. We look forward to the continuation of that cooperative working relationship in the coming months as each of us carries out the role assigned by the 1996 Act.

<sup>33</sup> *Cf.* at ¶ 706 (“increasing the [incumbents’] rates for interconnection and unbundled elements offered to competitors would interfere with the development of efficient competition”).

<sup>34</sup> *In the Matter of Ensuring Customer Premises Equipment Backup Power*, 29 FCCR 14968, ¶¶ 17, 20, 31 (2014).

<sup>35</sup> None of the post-URF CD, TURN, or ORA/DRA studies cited herein address such wholesale inputs.

<sup>36</sup> *URF I* acknowledged that a primary vehicle by which CLECs gained access to the loop, the UNE-P (unbundled network element platform), had essentially been ruled illegal by the D.C. Circuit’s 2004 *USTA II* decision. The Commission rejected claims by DRA that this failure of UNE-P would allow an ILEC to sustain above-market wholesale prices. D.06-08-030, pp. 79-84, *citing United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*). The Commission concluded that “UNE-P never provided real incentives for true facilities-based competition, so its demise will not have a negative impact on the level of competition in the voice communications market.” D.06-08-030, pp. 124-125.

connections between carriers.<sup>37</sup> Wireless, cable and VoIP providers all rely on special access facilities. We note here the FCC's recent observation that "competitive carriers today continue to rely on incumbent LEC .... special access services to serve a large number of utility, residential, and enterprise customer locations throughout the United States."<sup>38</sup> Accordingly, we intend to seek information pertaining to competition in the special access market.

A third component, on which wireless competitors in particular rely, is electromagnetic spectrum. While we are aware that spectrum issues are the province of the FCC, a comprehensive examination of the wholesale marketplace necessarily includes a review of spectrum in California.<sup>39</sup> To determine the availability and

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<sup>37</sup> In Release 12-153, the FCC stated that special access services "encompass all services that do not use local switches; these include services that employ dedicated facilities that run directly between the end user and an interexchange carrier's (IXC) point of presence, where an IXC connects its network with the local exchange carrier's (LEC) network, or between two discrete end user locations." *In re Special Access for Price Cap Carriers*, 27 FCC Rcd 16318, fn. 1 (2012), *citing inter alia AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5677, para. 28 (2007) ("[S]pecial access is a dedicated transmission link between two locations, most often provisioned via high-capacity circuits."). Special access is offered both at retail and at wholesale, by tariff or contract. *Compare* D.09-04-005, at fn. 14 and accompanying text (special access defined as "service offering of non-switched lines dedicated to a customer's use between two points (whether offered to a retail or wholesale customer and whether offered by an ILEC or non-ILEC)").

<sup>38</sup> *Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, In the Matter of Technology Transition, Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for interstate Special Access Services*; GN Docket No. 13-5; RM-11358, WC Docket No. 05-25; RM-10593. Released August 7, 2015, ¶ 10 ("Commenters assert that many areas across the country have few viable alternatives to currently-available incumbent LEC copper loop or TDM-cased wholesale inputs").

<sup>39</sup> Wireless carriers cannot transmit wireless signals over the same frequencies in the same markets at the same time. The frequencies usable for wireless telecommunications are commonly known as wireless spectrum. The FCC has auctioned off spectrum in the mobile phone market, generating billions of dollars in revenue for the government. The FCC also decides which spectrum frequencies can be used for what purposes. Most of the spectrum in the FCC's allocated range for wireless carriers has already been allocated for use. Wireless spectrum is of significance to the Commission's review here because, with the proliferation of smartphones and tablets which consume much more data than traditional wireless phones, many carriers allege that there is a shortage of spectrum compared to that needed to serve growing consumer demands. Spectrum limits have an impact on market entry and on the services and coverages available from those few providers commanding significant spectrum holdings across geographically

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sufficiency of spectrum, this proceeding will seek data on who controls what spectrum in California, and how wireless spectrum shortages and acquisitions affect competition in the telecommunications marketplace.<sup>40</sup>

This Commission has expended considerable resources resolving interconnection disputes between ILECs and their intermodal competitors, underscoring our perception that intermodal competition depends on wholesale inputs, often those purchased from the ILECs.<sup>41</sup> We will also look at the small and large (enterprise) business markets from this perspective, and the level of competition in those markets.

Our review will examine how market changes have affected the choice of providers and services available to consumers and other end-users.

## 6. PRELIMINARY SCOPING MEMO

To facilitate this Investigation and the Limited Rehearing of D.08-09-042, we include a Preliminary Scoping Memo, in which we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding.

### 6.1. General Scope

In this proceeding, we will look at the state of competition today in the California telecommunications market, or markets, and assess whether it has produced just and reasonable prices. We will ask whether and to what extent wireless and wireline services are substitutes in the data and/or voice markets.<sup>42</sup> Is the wholesale market

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*(footnote continued from the previous page)*

discrete areas. *See, e.g.*, I.11-06-009 (AT&T/T-Mobile merger), at Appendices A and B (questions relating to spectrum).

<sup>40</sup> Related topics include the competitiveness of business models using licensed and unlicensed spectrum, the place of satellite transmission in the telecommunications market, and the use of white spaces.

<sup>41</sup> I.11-06-009, at 2 (re “backhaul”); *see also* July 8, 2011 public hearing in I.11-06-009, transcript at pp. 87 (Sprint assertion that “90-plus percent of our special access [backhaul] is with the ILECs”); *see also id.* at 93-94.

<sup>42</sup> An included question is whether there are barriers to such substitution, and what the limits of such substitution might be. A majority of Americans subscribe to wireless phone service, although many may subscribe to another broadband or telephone service for increased reliability, accessibility in the home, and/or the increased bandwidth available through fiber and coaxial cable. It has been said that more spectrum is available on one strand of fiber than on all spectrum deployed today for wireless communication in the United States. *See, e.g.*, Department of Transportation’s *Telecommunications*

*(footnote continued on next page)*

operating efficiently enough to allow new competitors to enter these markets, and to provide the inputs required by CLEC, VoIP, and wireless competitors? To what extent do would-be retail competitors have access to the wholesale network elements necessary to promote competition and drive entry into the retail market – specifically last-mile local loops, middle mile transport, and radio spectrum? Has the number of competing carriers (CLECs) serving the residential market, (including CLECs offering VoIP service) increased or decreased since we issued the *URF* decisions? Is the competitive picture in the business market different than in the residential market, and how have both markets changed over the last decade? How have these changes affected customer choice of providers and services? Is competition in rural areas less robust than in urban areas? How much competition is there for advanced telecommunications services at the present national standard of 25 Mbps down (and 3 Mbps up)?<sup>43</sup> Has competition produced a safe and reliable network?

## 6.2 Initial Information Requests

In order to gather information on these issues, we invite all interested parties to review the market studies identified in Appendix A, and to identify any further market studies the Commission should consider. Respondents must respond in writing to the questions contained in Appendix B, and other Parties may respond to those questions, within ninety days of the issuance date of this Investigation. Parties are asked to provide the data and/or documents on which their Responses are based. If Parties do not have precise data, they should provide their best estimates, and identify what data would allow

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*(footnote continued from the previous page)*

*Handbook*, re fiber optic transmission, available at [http://www.ops.fhwa.dot.gov/publications/telecomm\\_handbook/chapter2\\_01.htm](http://www.ops.fhwa.dot.gov/publications/telecomm_handbook/chapter2_01.htm) (fiber has “virtually unlimited bandwidth”). While some wired broadband providers, particularly those using cable or fiber, may offer broadband speeds for 50, 100, 500 Mbps symmetrical or more, few wireless broadband services offer speeds of more than 25 Mbps down, and fewer offer 25 Mbps up. These differences in speed, capability, and availability may influence telecommunications and broadband competition, particularly as high-bandwidth applications and uses (tele-education and tele-medicine, for instance) become more prevalent. The impact of data usage caps on some services and not others will also be examined.

<sup>43</sup> Report and Notice of Inquiry, *In re Deployment of Advanced Telecom*, *supra*. Federal statute defines “advanced telecommunications capability” to include “broadband telecommunications capability.” *Verizon v. FCC*, 740 F.3d 623, 635 (D.C. Cir. 2014), *citing* 47 U.S.C. § 1302(d)(1).



you to make a more precise estimate, and where that data might be found. Parties should present their Responses to the Information Requests in the form of prepared testimony, with accompanying exhibits as appropriate (see Rule 13.8).

We intend for the scope of this Investigation to include not only the issues related to limited rehearing granted by today's Rehearing Order, but also to encompass any and all matters that are reasonably related to the presence, absence, and/or efficiency of competition in California telecommunications markets. Accordingly we grant the Assigned Commissioner and Assigned Administrative Law Judge ("ALJ") discretion to identify and include relevant issues that may arise in the scope of the proceeding, and to propound additional information requests, beyond the questions listed in Appendix B.

## **7. COORDINATION BETWEEN THIS INVESTIGATION AND OTHER RELATED PROCEEDINGS**

There are issues in the scope of this competition inquiry related to several other ongoing proceedings: Service Quality (R.11-12-001) (and TURN Emergency Motion therein regarding Copper Retirement); LifeLine and the definition of Basic Service (*see, e.g.*, R.11-03-013); pole attachment and rights-of-way proceeding (R.14-05-001); Google's Petition for Modification of D.07-03-014 (a previous rights-of-way decision in R.06-10-005); the rural call completion rulemaking (I.14-05-012); the CHCF-A proceeding and the issue of competition in rural service territories (R.11-11-007); and such merger or transfer proceedings as may be pending during this Investigation (*e.g.*, A.15-03-005, A.15-07-009). The Commission may coordinate with these other proceedings to avoid duplicate efforts.

## **8. REPORTS AND RESOURCES**

The Commission's Communications Division, public interest groups including ORA and TURN, and the California Legislature have prepared reports that approach the issue of competition from different angles, and often with different results. These and other resources are listed, in reverse chronological order, in Appendix A.

Although some of the earlier reports lag behind current market developments, all of the referenced reports provide background information on topics

germane to our present inquiry, and are hereby entered by reference into the record of this proceeding. Parties may comment on the accuracy and relevance of these reports in Comments or Responses, or in their Information Request responses, as described further below.

## **9. CATEGORY AND NEED FOR HEARING**

This Investigation is preliminarily categorized as ratesetting, as that term is defined in Rule 1.3(d) of the Commission's Rules of Practice & Procedure, given that we will examine whether market competition has produced just and reasonable rates and terms of service. This preliminary determination is not appealable, but shall be confirmed or changed by an Assigned Commissioner Ruling. The Assigned Commissioner's determination as to category is subject to appeal pursuant to Rule 7.6.

The *ex parte* rules applicable to ratesetting proceedings in Rules 8.1 through 8.4 shall apply, including all notice and reporting requirements.

We anticipate that the issues in this proceeding may be resolved through a combination of filed comments, workshops, and testimony, and that evidentiary hearings may be necessary. Any person who objects to the preliminary hearing determination shall state that objection in their Comments on this Investigation, described below. The Assigned Commissioner will make a final determination on the need for evidentiary hearings after a Prehearing Conference is held.

## **10. PRELIMINARY SCHEDULE**

The preliminary schedule for this proceeding is set forth below. The Assigned Commissioner or ALJ may change the schedule as necessary to provide full and fair development of the record, consistent with the statutory time limitation set forth below, the Commission's need for current data on the marketplace, and the scope of the proceeding described in Ordering Paragraph 1 below.

| Item  | Date                                      |
|---|---|
| Comments on the OII's Scope & Classification, and Initial Responses to OII Information Requests     | 90 days from issuance of the OIR/OII      |
| Reply Comments on the OII's Scope & Classification, and final Responses to OII Information Requests | 120 days from issuance of the OIR/OII     |
| PHC   | 130 days from issuance of the OIR/OII     |
| Scoping memo  | 150 days from the issuance of the OIR/OII |
| Additional activities   | To be determined.                         |

The Assigned Commissioner or Assigned ALJ will schedule a Prehearing Conference to discuss further refinements to the scope, schedule, and procedural issues in this proceeding. To facilitate these discussions, Parties may file opening Comments on the scope and schedule of this proceeding, as well as on the categorization, need for evidentiary hearing, and other procedural issues, no later than 90 days from the issuance of this order. Parties may file replies to those comments no later than 120 days from the issuance of this Investigation.

Consistent with Public Utilities Code section 1701.5, we expect this proceeding to be concluded within 18 months of the date of the Scoping Memo.

## **11. RESPONDENTS**

Named as Respondents in this proceeding are the four URF ILECs, AT&T California, Verizon, Frontier, and SureWest (dba Consolidated Communications), as well as the major certificated wireless and cable telephone providers, and their affiliates, as set forth in Ordering Paragraph 3 below.

## **12. SERVICE OF ORDER INSTITUTING INVESTIGATION (OII)**

This OII shall be served on all Respondents listed in Ordering Paragraph 3 below. Because this OII is initiated following rehearing of D.08-09-042, it will be served on all parties to R.06-06-028 in which that decision was issued. In addition, in the interest of broad notice, this Investigation will be served on the official service lists for

the service quality OIR (R.11-12-001), the *TURN v. AT&T* Complaint (C.13-12-005), the Lifeline proceeding (R.11-03-013), pole attachment and rights-of-way proceeding (R.14-05-001), Google's Petition for modification of a previous rights-of way decision (R.06-10-005), the rural call completion investigation (I.14-05-012), the CHCF-A proceeding addressing the issue of competition in rural service territories (R.11-11-007), and such merger or transfer proceedings as may be pending during this Investigation (e.g., A.15-03-005, A.15-07-009). *Service of the OIR does not confer party status or place a person who has received such service on the Official Service List for this proceeding.*

### **13. FILING AND SERVICE OF COMMENTS AND OTHER DOCUMENTS**

Filing and service of comments and other documents in the proceeding are governed by the rules contained in Article 1 of the Commission's Rules of Practice and Procedure. (See particularly Rules 1.1, 1.5 through 1.10, and 1.13.) Comments must be filed; Information Request Responses should not be filed (unless otherwise directed), but should be served on the Assigned Commissioner, Assigned ALJ, and on the Communications and Legal Divisions, as set forth below. Comments are limited to 25 pages, unless leave to exceed that limit is granted for good cause.

The Commission encourages electronic filing and e-mail service in this Investigation. You may find information about electronic filing at <http://www.cpuc.ca.gov/PUC/efiling>. E-mail service is governed by Rule 1.10. If you use e-mail service, you must also provide a paper copy to the Assigned Commissioner and ALJ. The electronic copy should be in Microsoft Word or Excel formats to the extent possible. E-mail service of documents should occur no later than 5:00 p.m. on the date that service is scheduled to occur.

All paper copies of filings that are served should be printed double-sided. To save paper, hard copies of the complete service list need not be provided to the Assigned Commissioner and ALJ, but a paper copy of the certificate of service is required. If you have questions about the Commission's filing and service procedures, please contact our Docket Office.

**14. ADDITION TO OFFICIAL SERVICE LIST**

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Respondents are Parties to the proceeding (see Rule 1.4(d)) and will be immediately placed on the official service list. Respondents must confirm their primary representative with the Commission's docket office within seven days of the date of issuance of this Investigation.

ORA and TURN are Parties because the Investigation is to consider the limited rehearing of D.08-09-042, as granted by today's Rehearing Order.

Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so within 30 days of the issuance (mailing) of this Investigation in order to ensure timely service of comments and other documents and correspondence in the proceeding (*see* Rule 1.9(f)). The request must be sent to the Commission's Process Office by e-mail ([process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the Docket Number of this Investigation in the request.

Persons who file responsive comments thereby become Parties to the proceeding (see Rule 1.4(a)(2)) and will be added to the "Parties" category of the official service list upon such filing. In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the "Information Only" category as described above; they will be removed from that category upon obtaining Party status. Persons wishing to obtain party status after the due date for the reply comments on this Investigation must either appear at the PHC for this proceeding and make an oral motion to become a party as provided in Rule 1.4(a)(3), or file a written motion for party status as provided in Rule 1.4(a)(4).

**15. SUBSCRIPTION SERVICE**

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission's website.

There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

## 16. PUBLIC ADVISOR

Any person or entity interested in participating in this Investigation who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov); or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail [public.advisor.la@cpuc.ca.gov](mailto:public.advisor.la@cpuc.ca.gov). The TYY number is (866) 836-7825.

## 17. INTERVENOR COMPENSATION

In accordance with Rule 17.1, notices of intent to claim intervenor compensation in this investigation proceeding shall be filed and served no later than 30 days after the date of the PHC or as otherwise directed by the Assigned Commissioner or the Assigned ALJ. As always, intervenor compensation will be based on non-duplicative contributions to the record in this case.

## O R D E R

### IT IS ORDERED that:

1. An Investigation is instituted into whether competition in the telecommunications marketplace is sufficiently robust and efficient to ensure just and reasonable rates, as we posited in Decision (D.) 08-09-042 (and by extension D.06-08-030), and to consider and resolve the related questions raised in the limited rehearing of D.08-09-042, as granted in D.15-11-023, today's companion Rehearing Order. As part of this grant of limited rehearing, and in view of the technical, economic and regulatory changes in the telecommunications marketplace and network since 2008, this Investigation will examine issues of competition including but not limited to the following:

- a. Whether competition been a sufficient tool to keep rates just and reasonable for California consumers;

- b. Whether and to what extent intermodal competition exists; what marketplace choices are available for Californians purchasing telecommunications services today; and whether there are barriers that inhibit new market entrants, and thus competition.
  - c. The extent to which wireless and wireline services are substitutes for one another in the voice and/or data markets;
  - d. Whether wholesale markets operate efficiently enough to allow new competitors to enter these markets (i.e., whether would-be retail competitors have access to the wholesale network elements necessary to promote competition and drive entry into the retail market), and whether new wholesale providers are appearing and deploying their services in a just and reasonable way;
  - e. Whether competition in the provision of advanced telecommunications services has been sufficient to discipline prices and provide competitive options;
  - f. The extent to which competition exists for advanced telecommunications services at the new national standard of 25 Megabits per second (Mbps) down (and 3 Mbps up);
  - g. How and to what extent do competition and consumer choices vary by geographic market and census demographic in California;
  - h. How and to what extent is the competitive outlook in the business market different from that in the residential market; and
  - i. In what ways can the Commission determine whether the prices of telecommunications services are just and reasonable.
2. The question of the “affordability” of telecommunications services in

California will be considered in the Lifeline proceeding (R.11-03-013).

3. The following telecommunications carriers are named as Respondents in this OIR/OII: AT&T California (U#1001); Verizon California Inc. (U#1002); Frontier Communications of America, Inc. (U#5429); SureWest Telephone (U#1015); Citizens Telecommunications Co. of California (U#1024); New Cingular Wireless Pcs, LLC (AT&T Wireless, U# 3060); Cellco Partnership (Verizon Wireless U# 3001) and California RSA #3 Ltd Pship (U# 3028); Sprint Telephony PCS, LP (U# 3064/3066); T-Mobile West LLC (U#3056); Comcast Phone of California LLC (U#5698); Time Warner Cable Information Services (California), LLC (U# 6874); Cox California

Telecom LLC (U# 5684); and Charter Fiberlink CA-CCO, LLC (U# 6878); and any affiliate of these utilities providing Voice over Internet Protocol (VoIP), wireless, or broadband transmission service in California. All Respondents will be Parties to this proceeding.

4. Respondents are ordered to respond to the Initial Information Requests set forth in Appendix B, within the time period specified above. Other interested entities are encouraged to become Parties and respond to the Information Requests as fully as possible. The Assigned Commissioner and Assigned Administrative Law Judge (ALJ) may make modifications to the Information Requests consistent with the goals of this Investigation, as set forth above. Respondents and other Parties shall serve one copy of their complete, unredacted Responses each on the Assigned Commissioner, Assigned ALJ, Director of the Commission's Communications Division, and the Assistant General Counsel for Telecommunications, or their designees, in hard copy and electronically. Parties should present their Responses to the Information Requests in the form of prepared testimony, with accompanying exhibits as appropriate (see Rule 13.8). Respondents and responding Parties shall serve all Parties with a public copy of such Responses. Respondents and other Parties are urged not to withhold information that is anywhere in the public record, or not demonstratively and competitively sensitive. As to non-public and sensitive data, the Parties are directed to enter into confidentiality agreements that facilitate the greatest possible sharing of information.

5. The Executive Director will cause this Order Instituting Investigation to be served on all Respondents and on the service lists for Rulemaking (R.) 06-06-028, and for the following additional Commission proceedings: R.05-04-005; R.06-10-005; R.11-03-013; R.11-12-001; C.13-12-005; I.14-05-012; A.15-03-005; and A.15-07-009.

6. The Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) are made Parties to this proceeding, because D.15-11-023 grants limited rehearing of their application for rehearing of D.08-09-042 (URF II).



7. Interested persons must follow the directions in Section 14 (above) of this Order Instituting Investigation to become a Party or to be placed on the official service list as a non-party.

8. The Commission's Process Office will publish the official service list on the Commission's website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) as soon as practicable.

9. Parties may file comments on this Order Instituting Investigation (OII) as provided in Part 13, above. Filing and service of comments and other documents in the proceeding are governed by the rules contained in Article 1 of the Commission's Rules of Practice and Procedure. (See particularly Rules 1.5 through 1.10 and 1.13.)

10. The Assigned Commissioner or the Assigned ALJ may modify the activities and schedule established in this Order Instituting Investigation as necessary for the efficient conduct of this proceeding, consistent with the scope of this proceeding set forth above.

This order is effective today.

Dated November 5, 2015, at San Francisco, California.

MICHAEL PICKER  
President  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
CARLA J. PETERMAN  
Commissioners

I dissent.

/s/ LIANE M. RANDOLPH  
Commissioners

## APPENDIX A

### Reports

Reports related to the subject of this proceeding, listed in reverse chronological order:

1. CPUC Communications Division Report, Market Share Analysis of Retail Communications in California June 2001 through June 2013 (January 5, 2015),

[http://www.cpuc.ca.gov/NR/rdonlyres/57DED05C-AE4A-4DEF-87CB-27AAF2FFA0C5/0/CommunicationsMarketShareReport\\_CA\\_Jan52015.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/57DED05C-AE4A-4DEF-87CB-27AAF2FFA0C5/0/CommunicationsMarketShareReport_CA_Jan52015.pdf)

2. CPUC Communications Division Report, Market Pricing Survey of Retail Communications Services in California (December 2, 2014),

<http://www.cpuc.ca.gov/NR/rdonlyres/8B59ACD5-10AA-47CA-919D-B1B205FADEC1/0/MarketPricingSurveyStaffReport2014.pdf>

3. CPUC Communications Division Report, Sixth Annual DIVCA Report for the Year Ending December 31, 2012 (July 31, 2014),

4. CPUC Communications Division Report, Market Share Analysis of Retail Communications in California (January 5, 2011)

5. Division of Ratepayer Advocates, CPUC, Failure of Consumer Protection (Oct. 2010), available at: <http://www.dra.ca.gov/DRA/Telecom/consumers/urf.htm>

6. September 30, 2010 CPUC Staff Report to the California Legislature, “Affordability of Basic Telephone Service (September 30, 2010),

[http://www.cpuc.ca.gov/NR/rdonlyres/383BBEA3-45F8-42E4-8582-70413539AC45/0/2010\\_Affordability\\_Report\\_Final\\_Sep\\_29\\_2010.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/383BBEA3-45F8-42E4-8582-70413539AC45/0/2010_Affordability_Report_Final_Sep_29_2010.pdf)

7. California Senate Office of Oversight and Outcomes Report issued on July 16, 2010, titled “California Public Utilities Commission: Gaps Emerge in Telephone Consumer Protections” (“Senate Report”), available at

[http://sooo.senate.ca.gov/sites/sooo.senate.ca.gov/files/ca\\_public\\_utilities\\_commis\\_report\\_for\\_web.pdf](http://sooo.senate.ca.gov/sites/sooo.senate.ca.gov/files/ca_public_utilities_commis_report_for_web.pdf);

8. TURN report issued on March 25, 2009 titled “Why ‘Competition’ is Failing to Protect Consumers” (“TURN Report”), available at [http://www.issueLab.org/resource/why\\_competition\\_is\\_failing\\_to\\_protect\\_consumers](http://www.issueLab.org/resource/why_competition_is_failing_to_protect_consumers);

9. DRA report issued on July 29, 2008 titled “Report on Rate Increases of Verizon, AT&T, SureWest, and Frontier California Following Adoption of the Uniform Regulatory Framework Decision 06-06-030” (“DRA Report”), available at [http://www.dra.ca.gov/uploadedFiles/Content/Hot\\_Topics/2008\\_Report\\_on\\_Rate\\_Increases.pdf](http://www.dra.ca.gov/uploadedFiles/Content/Hot_Topics/2008_Report_on_Rate_Increases.pdf);

10. 2003 CPUC Report to the Legislature on the Status of Telecommunications Competition in California (Third Report), available at <http://docs.cpuc.ca.gov/published//REPORT/31223.htm>;

11. 2003 CPUC Report to the Legislature on the Status of Telecommunications Competition in California (Second Report), available at <http://docs.cpuc.ca.gov/published//REPORT/25311.htm>; and

12. 2002 CPUC Report to the Legislature on the Status of Telecommunications Competition in California, available at <http://docs.cpuc.ca.gov/published//REPORT/16454.htm>.

In addition, to the California-specific reports listed above, we are aware of the following further report(s), resources, and inquiries:

- CPUC Broadband Availability Map, at <http://www.broadbandmap.ca.gov/map/>;
- CPUC Communications Division Report, “California Wireline Telephone Service Quality, Pursuant to General Order 133-C, Calendar Years 2010 through 2013, available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M111/K579/11579788.PDF>;
- CPUC Communications Division Report, “Broadband Services as a Component of Basic Telephone Service” (August 2002 Report To The Legislature, Per SB 1712), at <http://docs.cpuc.ca.gov/published/report/18279.htm>;
- CPUC Communications Division Report, “Comparative Analysis of Small ILEC CHCF-A Carriers to Non-CHCF-A Carriers,”

- (2010 and 2011), available at <http://www.cpuc.ca.gov/PUC/Telco/generalInfo/Comparative+Analysis+of+Small+ILEC+CHCF-A+Carriers+to+Non-CHCF-A+Carriers.htm>;
- FCC Local Competition Reports 1994-2014  
<https://www.fcc.gov/encyclopedia/local-telephone-competition-reports>;
  - FCC Broadband (Internet Access Services Reports 2009-2014  
<https://www.fcc.gov/reports/internet-access-services-reports>;
  - FCC Mobile Wireless Competition Reports  
<http://wireless.fcc.gov/competition-reports/mobile-wireless/mw-17/>;
  - Wireless Substitution: State-level Estimates From the National Health Interview Survey, January 2007–June 2010 (April 2011), available at: <http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf>;
  - The Berkman Center at Harvard, “Next Generation Connectivity, a review of broadband Internet transitions and policy from around the world” (2010), at <https://cyber.law.harvard.edu/pubrelease/broadband/>;
  - OECD Reports;
  - Akamai Reports;
  - Internet Access Services Reports; and
  - Ofcom Strategic Review of Digital Communications  
<http://stakeholders.ofcom.org.uk/consultations/dcr-discussion/>;

## APPENDIX B

### Initial Information Requests

Please provide the best information available to you in response to the following questions. If you do not have sufficient information to respond to these questions, please indicate where you think such information might be found. For each of your responses, please provide all documents, studies, data, analysis, or other documentation, which you believe materially supports or explains your response. Supporting and explanatory materials may be provided by URL reference. To the extent you provide “hard copies,” please Bates-stamp or otherwise number these materials, and provide an index of the materials you are submitting. For each request below, please identify the Bates (or other) number(s) or range of any documents being produced. Where submitting information previously produced to the Commission, please so indicate. Respondents must provide full, unredacted responses to staff.

#### Appendix A Reports

1. Please comment on the relative accuracy, completeness, and relevance of the reports listed in Appendix A above, with particular attention to the most recent (2014-15) reports issued by the Commission’s Communications Division and by the Federal Communications Commission. To what extent are they useful in determining whether adequate competition exists in the California telecommunications market today, or in any part of it?

#### Basic Service, Other Voice Services

2. Respondents providing Basic Service in California: please identify all counties within the State in which you offer voice service, whether stand-alone residential Basic Service or other voice options.<sup>1</sup>
  - a. URF ILEC/Respondents and their affiliates: please state how many total residential (consumer) voice customers you serve in California, either directly or through VoIP, wireless, and/or other affiliates, in each of these four categories: Basic Service; other TDM wireline; VoIP; and wireless. Please state such customer numbers both in terms of households or billing addresses, and in terms of lines or total numbers assigned to voice service. What percentage of the voice customers in

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<sup>1</sup> As used herein, Basic Service means the service specified in in D.12-12-038, while “consumer voice service” or “basic service” or other lower case equivalents refer to any telephone service, even if they do not meet all the specifications of D.12-12-038.

each of these categories obtain their voice telephone service in a bundle with broadband Internet access service (BIAS)?

- b. URF ILEC/Respondents: please state how many total business customers you serve in California, either directly or through VoIP, wireless, and/or other affiliates, in each of these three categories: TDM wireline; VoIP; and wireless. Please state such customer numbers both in terms of billing addresses, and in terms of lines or total numbers assigned to voice service. What percentage of the voice customers in each of these categories obtain their voice telephone service in a bundle with broadband Internet access service?
3. All other Respondents and competing carriers providing any form of consumer or business voice service in California, please identify all counties within the state where you offer such services.
    - a. Please state how many total residential (consumer) customers you serve in California, either directly or through VoIP, wireless, and/or other affiliates, in each of these three categories: TDM wireline; VoIP; and wireless. Please state such customer numbers both in terms of households or billing addresses, and in terms of total numbers assigned to voice service. What percentage of your current voice customers obtain their voice telephone service in a bundle with broadband Internet access service (BIAS)?
    - b. Please state how many total business customers you serve in California, either directly or through VoIP, wireless, and/or other affiliates, in each of these three categories: TDM wireline; VoIP; and wireless. Please state such customer numbers both in terms of billing address, and in terms of lines or total numbers assigned to voice service. What percentage of the voice customers in each of these categories obtain their voice telephone service in a bundle with broadband Internet access service?

#### General Basic Service Questions

4. In more general terms, please break out existing mass market options for basic phone service in California – whether or not such phone service is sold as part of a bundle including broadband -- and analyze changes in the availability and price of such service since the expiration of rate caps on January 1, 2011.

#### Voice and Broadband, Fixed and Mobile

5. All Respondent voice providers that file Form 477 reports with the FCC are directed to provide to the Commission a copy of all such reports filed during the last year. In addition, Respondent voice providers are required

to provide this information, and the following additional information, on the template attached hereto as Appendix B.1:

- a. Census Block (breaking out the Census Tract information already provided)
  - b. To the extent that Respondent entities provide voice service over their own facilities, please provide the total number of households passed with access to voice services (VGE<sup>2</sup> or VoIP) (e.g., and hereafter, households able to subscribe to such services); and
  - c. To the extent that Respondent entities provide voice service over their own facilities, please provide the total number of businesses passed with access to voice services (VGE or VoIP) (e.g., and hereafter, businesses able to subscribe to such services).
6. All California broadband provider Respondents that file Form 477 fixed broadband deployment and subscription data with the FCC, and all Respondents with broadband affiliates that file such data, are ordered to provide to the Commission a copy of all such reports filed with the FCC during the last year. In addition, such broadband providers are ordered to provide the 477 data, and the following additional information, on the template attached hereto as Appendix B.2:
- a. To the extent that the Respondent entities provide broadband access service over their own facilities, please provide the total number of households passed;
  - b. Total number of households subscribed (by census block);
  - c. To the extent that Respondent entities provide broadband access service over their own facilities, please provide the total number of businesses passed;
  - d. Total number of businesses subscribed to broadband access service; and
  - e. Distribution of customers by speed tier, as shown in Appendix B.2.

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<sup>2</sup> Voice Grade Equivalent. See FCC instructions for Form 477 filers, at <https://transition.fcc.gov/form477/477inst.pdf>.

7. All Respondents offering mobile voice and/or broadband services in California, or whose affiliates are offering such service, are ordered to provide to the Commission a copy of all mobile voice deployment data, mobile broadband service availability data, mobile broadband deployment data, and mobile broadband subscription data filed with the FCC during the last year. In addition, such mobile providers are ordered to provide the 477 data, and the following additional data elements as of the date of your last Form 477 filing (with subscription and deployment data), as shown more fully on the attached spreadsheet template (Attachment B.3):
  - a. Census Block (breaking out the Census Tract information already provided);
  - b. Number of Subscribers;
  - c. Actual [average] speeds offered;<sup>3</sup> and
  - d. The number of subscribers by speed tier.

#### Price

8. URF Carriers: In a spreadsheet format, please list your tariffed Basic Service voice products/services, and all tariffed Basic Service elements, and track the price for such product or element over the last five years (as of December 31, 2010, as of December 31, 2011, as of December 31, 2012, as of December 31, 2013, and as of December 31, 2014).

#### Market Definition

9. Please describe the extent to which wireless and wireline services are substitutes for one another, or separate markets, based on your experience and on such evidence and documentation that you can supply.
  - a. Are there barriers to such substitution, and what are the limits of such substitution?
10. How and to what extent do competition and consumer choices vary by geographic market in California?
11. How and to what extent is competition in the business market different from that in the residential market?
12. How much competition is there for advanced telecommunications services at the new national standard of 25 Mbps down (and 3 Mbps up)?

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<sup>3</sup> See Fixed Broadband Consumer Disclosure Instructions, at [https://apps.fcc.gov/edocs\\_public/index.do?document=336142](https://apps.fcc.gov/edocs_public/index.do?document=336142).



## Wholesale Inputs

13. How and to what extent are current “intermodal” competitors, i.e., VoIP, cable and wireless companies dependent on wholesale inputs from incumbent carriers or their affiliates? How should we measure such dependencies? How may such dependencies be attenuated? Need they be attenuated?
14. Do competing carriers have sufficient access to wholesale inputs (last mile loops, transit, special access, interconnection, pole attachment, duct access, and other) to sustain robust retail competition? If not, why not?
  - a. All responding CLECs (and other competitive carriers that provide voice or broadband service to end-user customers): of the total customer numbers you reported in response to Information Request 3 above, please report the total customers (and line counts) you provision over ILEC last-mile facilities, breaking out such totals into categories for resold UNE-P (or its equivalent, e.g., UNE-P replacement per commercial agreement), UNE-L (copper loops at the DSO, DS1, and DS3 levels), special access, or other last-mile access. Please also distinguish between business and residential/consumer (if any) customers and lines.
  - b. All responding CLECs (and other competing carriers): of the total customer numbers you reported in response to Information Request 3 above, please report the total customers (and line counts) you provision over your own facilities.
  - c. All ILEC Respondents: please report the total access lines and other last-mile facilities which you provide to competitive carriers in California, breaking out such totals into categories for resale, loop-and-port combination (UNE-P, UNE-P replacement), UNE loop, special access lines, or other last-mile facilities).
  - d. All ILEC Respondents: please report the total number of access lines and other last mile facilities provided by the ILEC or any of its affiliate to the ILEC or any of its affiliates.
  - e. Do Parties have evidence of what they contend is an abuse of market power? Have competing carriers been refused service or interconnection? Have carriers or service providers been forced to sign agreements that remove arbitration/mediation options under sections 251 and 252 of Title 47?
15. What segments of the wholesale market are (or are not) competitive: local loops (including copper, hybrid, fiber, and coaxial, DS1, DS3 and dark

fiber loops);<sup>4</sup> subloops; dedicated access or transport, other forms of access, transport or middle-mile lines including special access;<sup>5</sup> and/or other network elements necessary for market entry and competition?

- a. Expressed differently, and as to last-mile facilities specifically, what last-mile facilities and alternatives are available to competitive carriers, and at what prices?
16. Will competitive carriers have adequate access to such network elements after the network is fully transitioned to IP-enabled technologies? If not, why not?
  17. Respondents: please provide the total number of special access or other transport facilities which you or your affiliates provide to wireless carriers for backhaul from cell or antenna sites to upstream network nodes (e.g., mobile telephone switching offices). Please distinguish between facilities provided to unaffiliated carriers and facilities provided to your affiliate wireless provider(s).
  18. Respondent wireless carriers: please provide the total number of antenna or cell sites which you operate in California, and identify the top ten providers of backhaul services to these antenna or cell sites, and the number of antenna or cell sites serviced by each backhaul operator.
  19. Respondent wireless carriers: please identify the radio frequency (RF) spectrum which you own or control in the major statistical areas (MSAs) in California. Please identify what portion of that frequency is currently in use.
    - a. To what extent does the availability of radio frequency (RF) spectrum as a last-mile technology affect wireless carriers' ability to compete with wireline carriers?
    - b. In answering this question, parties may also discuss the relative competitiveness of business models using licensed and unlicensed spectrum, the place of satellite transmission in the telecommunications market, and the use of white spaces.

### Metrics

20. Identify the metrics and sources of data that you believe would be most useful and useable by the Commission to measure competition in both the

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<sup>4</sup> Compare 47 C.F.R. §51.319 (unbundled network elements).

<sup>5</sup> See footnotes 37-38, *supra*.

retail and wholesale markets, whether identified in Appendix A or found elsewhere.

21. How should the Commission determine whether the prices of telephone services are just and reasonable? Parties should identify the specific factors or metrics they propose the Commission use to determine whether prices are just and reasonable.
22. What information does the Commission need to collect going forward, in order to timely monitor whether (a) the telecommunications market is operating efficiently, and (b) the rates for telephone services are just and reasonable? How should the Commission collect and use that information, and report on it to the Legislature and ratepayers? Please provide specific data and analysis to support your conclusion.
23. If you have identified any market failures, inefficiencies or bottlenecks in your answers to the questions above, please suggest rules, regulations or policies that would ameliorate those market problems.
  - a. What initiatives can this Commission take to enhance competition within California, and what measures are uniquely within the province and jurisdiction of federal regulatory authorities?