

Decision 10-07-024 July 29, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Rules Governing the Transfer of Customers from Competitive Local Carriers Exiting the Local Telecommunications Market.

Rulemaking 03-06-020
(Filed June 19, 2003)

DECISION ADOPTING GUIDELINES FOR COMPETITIVE LOCAL EXCHANGE CARRIERS (CLEC) INVOLUNTARY EXITS AND PRINCIPLES AND PROCEDURES FOR CLEC END-USER MIGRATIONS AND MODIFYING THE MASS MIGRATION GUIDELINES

1. Summary

This decision adopts guidelines and principles for customer migrations and revises the previously adopted Mass Migration Guidelines. Involuntary Exit Guidelines for Competitive Local Exchange Carrier involuntary exits from the Local Exchange Service market (applicable to wholesale provider disconnection of service for failure to pay) are adopted. This decision does not adopt a Default Carrier requirement comparable to that adopted in Decision 06-10-021's Mass Migration Guidelines (applicable to Competitive Local Exchange Carrier voluntary exits from the local exchange service market) for involuntary exits. To avoid inconsistent requirements, this decision defers consideration of Incumbent Local Exchange Carrier voluntary exit guidelines (applicable to exits from the local exchange service market) until the reverse auction process contemplated in Rulemaking 06-06-028 is resolved. This decision adopts Principles and Procedures for Competitive Local Exchange Carrier-to-Competitive Local

Exchange Carrier/Incumbent Local Exchange Carrier End-User Migrations.

These principles and procedures are intended to ensure that end-user customers can exercise their right to migrate from one local service provider to another local service provider without encountering undue delay or burdensome procedures.

Those principles and procedures do not include specific carrier-to-carrier intervals based on an end-user's request to change carriers. Finally, this decision modifies procedures contained in the Mass Migration Guidelines to clarify the process and make it more efficient for the assigned Administrative Law Judge and Commission staff to resolve problems with the underlying application and filed Exit Plan.

2. Background

The Commission opened this rulemaking to establish rules governing the transfer of customers from a Competitive Local Exchange Carrier (CLEC) exiting the local telecommunications market. Decision (D.) 06-10-021 resolved Phase 1 by adopting Mass Migration Guidelines that apply when a CLEC files an application to discontinue providing local exchange services to its customers. The Mass Migration Guidelines are limited to voluntary exits. The procedures contained in the Mass Migration Guidelines permit the CLEC's customers the opportunity to migrate to another Local Exchange Carrier (LEC) without interruption of service. The Commission deferred considering applying the Mass Migration Guidelines to CLEC-to-CLEC migrations, Incumbent Local Exchange Carrier (ILEC)-to-CLEC migrations, and involuntary exits, such as disconnection due to default in payments and Commission termination of a CLEC's certificate of public convenience and necessity, to this phase of the proceeding.

By a January 2, 2007 ruling, comments were requested on whether the Mass Migration Guidelines adopted for voluntary exits of CLECs in D.06-10-021 should apply to involuntary exits, CLEC-to-CLEC customer transfers, and/or ILEC-to-CLEC customer transfers. Parties filed comments on January 29, 2007, and reply comments on February 16, 2007 on those issues. By a September 11, 2008 ruling, comments were requested on modifications to the Mass Migration Guidelines that would improve the efficient resolution of CLEC applications to discontinue providing local exchange services. Specifically, comments were sought on modifications to the timing for resolving applications, the handling of incomplete applications, the review process for customer notification letters, the provision of customer lists, and compensation for default carriers. Parties also were permitted to file updates to their comments filed in response to the January 2, 2007 ruling. Parties filed comments on September 26, 2008.

A workshop was held on January 23, 2009 to address three issues:

1. Use of the advice letter process for CLEC involuntary exits from providing local exchange service;
2. Applying the Mass Migration Guidelines adopted in D.06-10-021 to ILEC voluntary exits; and
3. Adopting general principles and limited procedures for CLEC-to-CLEC/ILEC end-user transfers.

Parties served position statements in advance of the workshop. A January 27, 2009 post-workshop ruling summarized the parties' positions at the workshop and set a schedule for the workshop participants to file a consensus position on the issue of general principles for CLEC-to-CLEC/ILEC end-user transfers. The parties generally agreed at the workshop that Pacific Bell Telephone Company d/b/a AT&T California's (AT&T) Proposed Guidelines for

CLEC Involuntary Exits from Local Exchange Service Market should be adopted. The parties agreed that using the Mass Migration Guidelines as a starting point for ILEC voluntary exit guidelines should be deferred until the reverse auction process is resolved. Although it might be possible to address ILEC voluntary exit guidelines in the context of the reverse auction process, the parties agreed it is likely that the Commission would need to initiate a separate process to address those guidelines.

The parties generally agreed that proposals submitted by AT&T, California Association of Competitive Telecommunications Carriers (CALTEL), and Verizon California Inc. (Verizon) on end-user transfers in their position papers could be merged to create a consensus proposal. The parties requested the opportunity to reach and file a consensus position. Two extensions were sought, and by Administrative Law Judge (ALJ) e-mail rulings the date for filing consensus positions ultimately was extended to April 2, 2009.

The parties were unable to reach a single consensus position. Verizon filed a consensus position generally supported by The Utility Reform Network (TURN). Cox California Telcom, LLC (Cox), tw telecom of California lp (tw telecom), and Time Warner Cable Information Services (Time Warner) (Joint Providers) filed a separate consensus position. CALTEL filed a report on the negotiations.

The Phase 2 Scoping Memo was issued on April 20, 2009 and served both on the service list and all California CLECs, at the request of Joint Providers, because the issues had expanded beyond customer transfers occurring when carriers exit the local exchange market. Phase 2 is considering end-user transfers that occur when carriers remain California providers. Pursuant to the scoping memo, parties filed comments on June 1, 2009 and reply comments on

June 15, 2009. Joint Providers sought and received permission to file supplemental comments on June 19, 2009. Although notice was provided to all CLECs, no additional CLEC filed comments in response to the scoping memo.

A December 30, 2009 ruling requested comments on draft guidelines and principles and the revised Mass Migration Guidelines. Parties filed comments on January 15, 2010. A corrected version of the draft Guidelines for CLEC Involuntary Exits from Local Exchange Services Market was circulated for comment by a February 4, 2010 ruling. After an extension was granted, wholesale providers and TURN filed comments on February 25, 2010.

3. Issues before the Commission

Four issues are being considered in Phase 2 of this proceeding:

1. Use of the advice letter process for CLEC involuntary exits from providing local exchange service;
2. Applying the Mass Migration Guidelines adopted in D.06-10-021 to ILEC voluntary exits;
3. Adopting general principles and limited procedures for CLEC to CLEC/ILEC end-user transfers; and
4. Modifications to the Mass Migration Guidelines adopted in D.06-10-021.

Following the workshop, the first issue concerning involuntary exits was narrowed by general agreement among the parties that AT&T's Proposed Guidelines for CLEC Involuntary Exits from Local Exchange Service Market should be adopted in this proceeding.¹ The second issue, applying the Mass Migration Guidelines to ILEC voluntary exits, was narrowed by general

¹ AT&T's Proposed Guidelines for CLEC Involuntary Exits are attached to the January 27, 2009 ruling as Attachment A.

agreement among the parties to deferring consideration of ILEC voluntary exit guidelines to a subsequent proceeding after the reverse auction process is resolved. The third issue, adopting general principles and limited procedures for CLEC end-user transfers, was deferred to future discussions and proposals submitted in a consensus position. Modifications to the Mass Migration Guidelines were not discussed at the workshop.

4. Discussion and Analysis

The guidelines and principles adopted in this decision result from the efforts of the parties to reach concurrence on most aspects of those guidelines and principles. We appreciate the efforts of the parties to provide proposals for our consideration and we generally adhere to the proposals submitted to us. We adopt Involuntary Exit Guidelines with AT&T's proposed guidelines for CLEC involuntary exits from the local exchange service market as a starting point. We defer consideration of ILEC voluntary exit guidelines until the reverse auction process underway in Rulemaking (R.) 06-06-028 in order to avoid inconsistent requirements. We adopt Principles and Procedures for CLEC-to-CLEC/ILEC End-User Migrations based on Verizon's consensus proposal. Where necessary, we modify the proposals as requested by other parties to the proceeding and incorporate additional provisions to conform the guidelines and principles to existing Commission policies and procedures, including the Mass Migration Guidelines. Finally, we modify the Mass Migration Guidelines to reflect experience with these Guidelines and to clarify the process and make it more efficient.

4.1. Guidelines for CLEC Involuntary Exits

The parties concurred in filed comments and at the workshop that the Mass Migration Guidelines adopted for voluntary CLEC exits could not be

modified to apply to involuntary CLEC exits, because involuntary exits usually occur more rapidly than voluntary exits. At the workshop, the parties generally supported AT&T's proposal for involuntary CLEC exits. The parties discussed the distinction between voluntary and involuntary exits and generally agreed that voluntary exits occur when the CLEC initiates the process under the Mass Migration Guidelines to withdraw from providing local exchange service. Involuntary exits occur when the wholesale provider, either an underlying ILEC or a CLEC, initiates the process under the proposed involuntary exit guidelines. The parties disagreed on whether the default carrier requirement adopted in the Mass Migration Guidelines could be applied to involuntary exits. TURN supported a default carrier requirement and the carriers opposed that requirement.

4.1.1. AT&T's Proposed Guidelines and Draft Guidelines for CLEC Involuntary Exits

AT&T's proposed guidelines for CLEC involuntary exits address timing limitations, recognize CLECs' obligations to their customers, and create reasonable expectations for wholesale providers. The proposed guidelines recommend flexible carrier-specific procedures for wholesale providers to notify Commission staff when service interruption is imminent, including providing termination notices, and for staff to contact CLECs to ensure customer notice is provided sufficiently in advance of the wholesale provider's termination of service. These provisions are consistent with the Mass Migration Guidelines' request for involuntary exits that the underlying carrier notify Commission staff of any planned suspension or termination of service to a CLEC as soon as possible that would permit staff to take necessary steps, which could include the

preparation of a resolution, to ensure the underlying carrier arranges customer notification and continues essential voice services to affected customers.

AT&T's proposal recommends that Commission staff initiate an appropriate process to address an involuntary exit if necessary and that an ALJ be permitted to resolve the matter on an expedited basis. AT&T also recommends that if the wholesale provider timely notifies Commission staff of early termination, the wholesale provider would not be obligated to provide service to the CLEC's end-user customers. AT&T further recommends if a CLEC or ILEC agrees to migrate some or all of the exiting CLEC's end-user lines, the acquiring carrier will file a Tier 1 advice letter and migrate the customers in conformance with the wholesale provider's rules, unless another agreement is reached. Finally, AT&T recommends that slamming requirements be waived, consistent with the Mass Migration Guidelines.

The post-workshop ruling noted that parties had agreed that voluntary exits occur when the CLEC initiates the process under the Mass Migration Guidelines to withdraw from providing local exchange service. The parties also agreed that involuntary exits occur when the wholesale provider, either an underlying ILEC or competitive carrier, initiates the process under the proposed guidelines.

The Draft Involuntary Exit Guidelines, circulated to the parties for comment, require the wholesale provider to notify the Director of the Communications Division 30 days in advance of an action that will result in interruption of service to a CLEC's retail end-user. The wholesale provider's termination notice must inform the CLEC of a 15-day advance customer notice obligation. If staff believes the Commission should expeditiously address issues related to termination of CLEC service, staff will prepare a resolution or an order

instituting investigation. If a CLEC files an application to exit the local exchange market, an involuntary exit might change to a voluntary exit. Compliance with the guidelines will relieve the CLEC or acquiring LEC from compliance with General Order 133-C service quality measures and standards in the applicable reporting period and third-party verification requirements. Failure to follow the guidelines may result in enforcement proceedings against the CLEC.

4.1.2. Parties' Positions on Proposed Guidelines and Default Carrier Requirement

AT&T supports these proposed guidelines for CLEC involuntary exits from local exchange markets and opposes a default carrier requirement. AT&T asserts a default carrier process is unworkable in the context of involuntary exits, because there is no 90-day exit plan that permits the designation of a default carrier. The process that must be followed to designate a default carrier-soliciting carriers, appointing a carrier if there are no volunteers, and ordering exiting carriers to meet and confer to establish terms and conditions, could not happen in the faster moving involuntary withdrawal. AT&T supports the post-workshop ruling's definitions of voluntary and involuntary exits. AT&T recommends that if the Commission adopts the proposed guidelines for involuntary exits, an involuntary exit may appropriately be defined as occurring when the wholesale provider initiates that process. AT&T supports Verizon's position concerning empowering consumers by ensuring CLECs comply with all end-user notification obligations before exiting the market.

Verizon supported new guidelines, because an exit plan or an arranged carrier is not feasible. Verizon recommends that a CLEC involuntary exit occurs when a CLEC orders services from an ILEC or other wholesale provider and fails to pay for those services. Verizon supports adoption of AT&T's guidelines with

one addition – the ALJ’s discretion to rule on wholesale provider-initiated matters on an emergency and expedited basis should be given a ten business-day timeframe. Verizon opposes a default carrier requirement in the involuntary exit scenario. Most households have an alternative means of communication (wireless) and do not need a default carrier to ensure service availability. The expedited nature of involuntary exits exacerbates implementation problems that arise in the absence of a relationship between the default carrier and the end-user customer. In the least complicated exit, that of a resale provider, the wholesale provider lacks the end-user’s billing name and address. Where the exiting carrier owes substantial amounts to the wholesale provider, the wholesale provider must act quickly to avoid incurring additional losses.

CALTEL also supports adoption of AT&T’s proposed guidelines when definitions of voluntary and involuntary exits are adopted. The following definitions should apply to distinguish voluntary from involuntary exits. Voluntary exits occur when a CLEC initiates the voluntary exit guidelines process in order to withdraw from providing local service to its end-user customers. Involuntary exits occur when a wholesale provider or providers, which can be either ILECs or competitive carriers, are the first to contact the Commission about the need to initiate a mass migration process. CALTEL also opposes a default carrier requirement for involuntary exits. CALTEL asserts a CLEC in an involuntary exit is either unavailable or uncooperative so the potential default carrier lacks the necessary information to transfer the customers’ services and feature choices.

Verizon, AT&T and CALTEL oppose certain provisions of the Draft Involuntary Exit Guidelines. If those provisions remain in place, they propose that staff should only use its authority to seek expedited relief to halt wholesale

disconnections of specific lines in extraordinary circumstances involving public health or safety. In addition, expedited relief should only be used where end-user service to critical telephone numbers, such as hospitals, nursing homes, fire stations, and police stations, is involved. Staff should work with parties to find an acquiring carrier in such circumstances. Verizon, AT&T and CALTEL also propose that an involuntary exit can only convert to a voluntary exit if there is an acquiring carrier and the acquiring carrier negotiates acceptable payment arrangements with the wholesale provider. Wholesale providers should notify staff of wholesale disconnection no later than 20 days before the disconnection is to occur. Following the wholesale providers regulatory notification, the CLEC should advise staff within five days if payment arrangements have been made and staff should contact the CLEC at any time to ensure that end-user customers are notified sufficiently in advance of when disconnection will occur.

The Division of Ratepayer Advocates (DRA) recommends the Commission first decide on whether there should be a default carrier before considering AT&T's guidelines. DRA supports a default carrier requirement and earlier notification by the ILEC of a potential CLEC service disruption. TURN supports applying only one provision of the Mass Migration Guidelines to involuntary exits – the default carrier requirement. TURN asserts customers do not know whether a carrier is leaving the market on a voluntary or involuntary basis. TURN proposes an imminent service termination notice be submitted to the Commission by the wholesale provider with a requirement that the CLEC be required to file a statement of intent to continue service with the Commission. Reliance on the wholesale provider's experience would permit very different outcomes, depending on the wholesale provider's experience with CLECs and potential service interruptions. TURN opposes the 15-day notice period for

CLEC notification to its customers of service termination. Although TURN recognizes the time constraints imposed by involuntary exits, TURN recommends that the Commission require the 30-day customer notification required for voluntary exits.

4.1.3. Discussion

AT&T's proposed guidelines for involuntary exits present a framework for addressing a scenario over which Commission staff and the parties have less control, given the time constraints involved with involuntary exits. No party opposes the general provisions of the guidelines. Thus, AT&T's proposed guidelines are the foundation for the guidelines we adopt, although some of AT&T's proposed guidelines should be modified to conform to Commission procedures and give Staff flexibility in addressing involuntary exits. The format for the Involuntary Exit Guidelines generally should be consistent with the format used for the Mass Migration Guidelines, although the specific sections will be limited to objective, regulatory notification, customer notification, the involuntary exit process, and applicability of Commission requirements during involuntary exits. As requested by the parties, involuntary exits are defined. The "objective" section notes that involuntary exits occur when the wholesale provider contacts the Commission, as recommended by CALTEL. The Draft Involuntary Exit Guidelines' provisions concerning regulatory notification, end-user customer notice and staff flexibility in addressing involuntary exits should be adopted with certain modifications requested by the parties.

The proposed guidelines do not include any requirement that the CLEC or acquiring carrier notify the exiting CLEC's end-user customers of service termination or migration. The lack of a notice requirement is inconsistent with the Mass Migration Guidelines, which impose notification requirements on both

the exiting CLEC and, when appropriate, the arranged carrier. The advance customer notification requirements found in the Mass Migration Guidelines would not be possible in involuntary exits with greater time constraints, but notice should be provided to the exiting CLECs' end-user customers 15 days in advance of the date on which the wholesale provider will terminate service to the CLEC in the same manner as customer bills are rendered. This requirement places the responsibility on the CLEC to manage an involuntary exit in a manner that provides its end-user customers with notice of the need to find another local exchange service provider. A longer CLEC notice, as recommended by TURN, is not possible in involuntary exits, which by definition involve wholesale provider notification of the Commission 30 days in advance of service disconnection. If there is a carrier that will acquire some or all of the CLECs' end-user customers, that acquiring LEC shall comply with the Federal Communications Commission's (FCC) required 30-day customer notice, if feasible. These notification requirements will be incorporated in the Involuntary Exit Guidelines.

The Draft Involuntary Exit Guidelines are modified to confirm that the wholesale provider has no obligation to a CLEC's end-user customers unless there is a finding of extraordinary circumstances. In addition, the conversion of an involuntary exit generally will occur only when there is an acquiring LEC, in response to the comments submitted by Verizon, AT&T and CALTEL. The 30-day advance notice of an action that will result in interruption of service to a CLEC's retail end-user will remain in place but the CLEC notification to the Director of the Communications Division on the status of payment or breach of contract will be shortened to five days. In addition, the wholesale provider will update Staff on the potential termination within ten days of the original notice.

Compliance with the guidelines will relieve the CLEC or acquiring LEC from compliance with General Order 133-C service quality measures and standards in the applicable reporting period and third-party verification requirements.

We concur with the ILECs' and CLECs' position that the Mass Migration Guideline's default carrier requirements cannot apply to the involuntary exit scenario. This lack of an obligation for the wholesale provider to provide service to the exiting CLEC's end-user customers is inconsistent with TURN's and DRA's recommendation for a default carrier requirement comparable with the Mass Migration Guideline's default carrier requirement. TURN would require the wholesale provider to provide termination notices and would add a procedure, the CLEC statement of intent, in order to assist the Commission in adopting a default carrier requirement. In the best-case CLEC involuntary exit, there might be sufficient time for an acquiring LEC to provide service to the exiting CLEC's customers. However, even in the best-case scenario the process adopted in the Mass Migration Guidelines, which prefers default carrier volunteers and negotiated compensation arrangements and requires appointing a carrier if there are no volunteers and ordering compensation if no arrangement is reached, could not be followed due to the time constraints inherent in involuntary exits. To impose a default requirement under these circumstances would place a greater financial burden on the wholesale provider to provision service than is required of underlying network providers and carriers of last resort in voluntary exits. For these reasons, the arguments of DRA and TURN in support of a default carrier requirement are not sufficiently compelling to require a default carrier. The lack of a default carrier requirement would not prevent Commission staff from initiating proceedings to obtain an acquiring LEC, to order a CLEC to continue to provide service to critical end-user

customers, such as hospitals, nursing homes, fire stations and police stations or to order a carrier of last resort to migrate critical service customers. Although these end-user customer safeguards are not as strong as a full default carrier requirement, they would continue critical local exchange service in involuntary exits. Thus, these provisions will be incorporated in the Involuntary Exit Guidelines.

The procedural recommendation, that Commission staff file a pleading to expeditiously consider aspects of an involuntary exit, does not comport with Commission practice in initiating proceedings. As noted in the Mass Migration Guidelines, one vehicle Commission staff can use to address involuntary exits is a resolution. Commission staff also can prepare an order instituting investigation for consideration by the Commission. Both of these options permit Commission action on a CLEC involuntary exit and will be incorporated in to the Involuntary Exit Guidelines. Staff also will have the option to recommend an enforcement action be brought against the CLEC for failure to adhere to these guidelines. The Involuntary Exit Guidelines adopted herein are attached to this decision as Attachment 1. To ensure wholesale carriers have sufficient time to modify processes to comply with regulatory notifications and updates, the Involuntary Exit Guidelines will become effective 90 days after the issuance of this decision.

4.2. ILEC-to-CLEC Voluntary Migrations

We defer consideration of ILEC-to-CLEC voluntary migrations to the conclusion of the reverse auction process being considered in R.09-06-019.

4.2.1. Parties' Positions on Deferral of ILEC Voluntary Migration Guidelines

CALTEL, DRA, TURN and Verizon support deferring consideration of ILEC voluntary exit guidelines to the completion of the reverse auction process contemplated in R.06-06-028. Those parties concur that there are a number of threshold issues that the Commission must resolve before various reverse auction options can be fully developed and evaluated. If guidelines are adopted in this proceeding prior to resolution of those issues, the guidelines might be inconsistent with actions taken in R.06-06-028. AT&T has a different position on the coordination of the two proceedings and does not support a deferral. AT&T asserts that if the Commission orders reverse auctions in geographic areas deemed high cost in R.06-06-028, there must be some provision for how an ILEC that loses a reverse auction may voluntarily exit the market. AT&T recommends this proceeding should focus now on the procedural steps an ILEC must take when exiting the market, while R.06-06-028 should determine circumstances and timing. CALTEL notes that the Commission no longer is considering the reverse auction process in R.06-06-028. Instead, the Commission opened R.09-06-019 to consider reforms to the California High Cost Fund B program, including whether a reverse auction process should be implemented.

4.2.2. Discussion

AT&T's proposal to promptly consider guidelines was made in comments filed after the workshop participants generally had agreed that deferring consideration of guidelines for ILEC voluntary exits was appropriate in light of the pending reverse auction process. Even if it would be preferable to address ILEC voluntary exits at this time, there is no record on specific guidelines that would apply to ILEC voluntary migrations. In light of the uncertainties in the

timing and specifics of the reverse auction procedures being considered in R.09-06-019, it would be prudent to consider guidelines in this or another proceeding once the reverse auction procedures have been adopted. AT&T or any other party may file a petition for modification of the Phase 2 decision in this proceeding and propose guidelines for ILEC involuntary exits, once the reverse auction procedures are known. Consensus positions on ILEC voluntary exit guidelines, where it is feasible for parties to reach them, would expedite adoption of guidelines tailored to the circumstances that apply to ILEC voluntary exits after adoption of the reverse auction process. If consensus positions are not possible and a more extensive record would need to be developed, opening a new proceeding to consider ILEC-to-CLEC voluntary migrations is the preferred option.

4.3. CLEC-to-CLEC/ILEC End-User Migrations

The consensus positions on CLEC-to-CLEC/ILEC end-user migrations are the foundation for the principles and procedures adopted in this decision. The procedures are intended to ensure that end-user customers can exercise their right to migrate from one local service provider to another without encountering undue delay or burdensome procedures. Parties' suggested revisions to the consensus positions are considered and support modifications to and combinations of those proposals.²

Verizon provides the following overview of the end-user transfer process, which is useful in considering consensus position and parties' comments on them: 1) the end-user customer contacts the new local service provider to

² See AT&T's June 1, 2009 Opening Comments, Attachment 1, Proposed CLEC-to-CLEC/ILEC End-User Migration Principles.

request a transfer; 2) the new provider negotiates the order, performs third-party verification and requests the customer service record from the old provider if necessary; 3) the new provider then sends a local service request to the old provider to port the telephone number; 4) the old provider responds with a firm order confirmation (FOC); and 5) when the new provider receives the FOC, the order is processed and completed.

4.3.1. Consensus Positions on End-User Migration Principles and Limited Procedures

Consensus positions on CLEC-to-CLEC/ILEC end-user migrations were filed by Verizon and Joint Providers.³ CALTEL filed a report on all-party negotiations.⁴

Verizon's proposed CLEC-to-CLEC/ILEC end-user migration proposal incorporates the following principles: 1) end-user customers have the right to migrate their local service from one provider to another in a timely manner without losing their existing telephone number; 2) FCC rules prohibit providers from unreasonably obstructing or delaying the end-user customer migration process through imposition of non-porting related restrictions on the porting-out process; 3) both the existing and new provider retain the right to enforce obligations and impose requirements on an end-user that are permissible under applicable rules and regulations; 4) a variety of industry guidelines apply to end-user customer migrations, including but not limited to those developed by the Order and Billing Forum, North American Numbering Council (NANC),

³ Verizon's April 2, 2009 Consensus Position; Joint Providers' April 2, 2009 Consensus Position.

⁴ CALTEL's April 2, 2009 Report on All-Party Negotiations.

Local Number Portability (LNP) Administration Working Group and the Industry Numbering Committee; 5) LNP shall be provided in accordance with applicable regulations; 6) the end-user's privacy is respected by all providers; 7) providers shall abide by the FCC/Federal Trade Commission (FTC) statement on deceptive advertising and all applicable California laws and regulations; 8) providers shall work together to minimize, avoid and, if necessary, correct any problems relating to migration of the end-user; and 9) providers shall maintain an accurate, complete and current company escalation contact list. Verizon also recommends the following procedures: 1) FOC for wireline ports involving 1-19 lines shall be returned within 24 hours, excluding weekends and holidays, and the port shall be completed within three business days after return of the FOC; 2) the porting intervals exclude Unbundled Network Elements, complex switch translations, and resold lines; and 3) migration disputes that are not successfully resolved may upon mutual agreement, be taken to Commission staff for assistance in dispute resolution. TURN generally supports the principles contained in Verizon's proposal but does not support every provision of Verizon's consensus position.

Joint Providers' consensus position includes the following principles: 1) customers have the right to take advantage of new services and make changes to existing services, without losing their telephone numbers and providers are prohibited from unreasonably obstructing or delaying the customer transfer process; 2) a variety of industry guidelines address the transfer of a customer's telephone number; 3) providers acknowledge they are subject to a number of existing federal and state rules governing customer migrations and they may not submit a customer's transfer order without authorization or participate in slamming activities; 4) providers are subject to the FCC/FTC statement on

deceptive advertising; and 5) nothing in these principles is intended to or will supersede existing obligations under federal law. The following procedures are incorporated in Joint Providers' consensus position: 1) providers will respond to customer service inquiries and complaints, including requests to transfer to another service provider, within the prescribed federal industry guidelines and will work in good faith to resolve customer concerns to the customer's satisfaction; 2) providers should work together in good faith to minimize and/or avoid any problems for the migrating customer and shall make available the current company escalation contact list; and 3) when a dispute arises concerning a customer migration, providers must first make a good faith attempt to resolve the dispute. If they are unable to resolve the dispute, it may be submitted to the FCC or to the Commission through the Commission's alternative dispute resolution (ADR) program.

CALTEL reports that the parties were unable to develop a set of consensus principles that all parties could support. CALTEL believes that a voluntary effort to develop CLEC migration principles is productive only if all parties agree, but it was unable to reach a consensus position with the ILECs.

The Draft Principles and Procedures for CLEC-to-CLEC/ILEC End-User Migrations, circulated to the parties for comment, require local service providers to comply with industry guidelines.

4.3.2. Parties' Comments on Consensus Positions and Draft Principles

AT&T recommends the Commission adopt the CLEC-to-CLEC/ILEC end-user migration principles attached to its comments. AT&T's recommended principles are consistent with Verizon's consensus position, minus provisions concerning parity for porting intervals.

AT&T argues California's CLEC-to-CLEC/ILEC end-user migration principles must remain consistent with FCC rules and NANC standards. To comply with the FCC rules all California service providers will be required to upgrade their systems to implement a shorter porting interval. AT&T asserts California should adhere to those standards. Consistent porting treatment throughout providers' operations will improve customer service and choice. AT&T recommends the Commission not adopt porting intervals that vary from NANC, since the operational burdens of a different standard ultimately will be borne by the consumer. By contrast, implementation costs will be substantially lower if standards are consistent. AT&T also recommends the Commission defer to the FCC's proceeding for porting interval requirements involving non-simple ports.

AT&T asserts it is subject to industry standards for porting intervals unless the CLEC instructs otherwise. These performance requirements are part of the California operations support systems order instituting investigation Performance Measurements plan under which AT&T must report its performance to the Commission and to the CLECs. The requirements are based on the framework for porting activities set by the industry. The processes for pre-ordering, ordering and provisioning must meet performance criteria based on the service request submitted by the CLEC. Where AT&T does not meet standards, financial penalties payable to the CLEC can result. AT&T asserts CLECs do not have the same standards to respond to requests from competitors in a timely manner. AT&T has witnessed many instances of CLECs' failure to comply with FCC porting interval rules.

AT&T has found the Texas CLEC-to-CLEC/ILEC migration guidelines effective in encouraging CLEC compliance with porting numbers. However,

AT&T posits its effectiveness is more likely due to the Texas Commission's responsiveness towards service providers' requests for assistance with migration disputes.

CALTEL recommends the Commission suspend issuance of a decision on this issue until December while NANC develops new local number provisioning process flows resulting from the FCC's order to reduce the overall porting interval for simple wireline and simple intermodal port requests to one business day.

CALTEL also recommends that the Commission decline to adopt principles for end-user migrations. CALTEL opposes the end-user transfer intervals proposed by Verizon. CALTEL asserts there is no parity issue, because Verizon must comply with the FCC's rules and most carriers must comply within 9 months of the FCC's order. To support its position opposing parity, CALTEL notes its members that need to operate with shorter migration intervals in other states expended substantial resources to do so. CALTEL's members mostly provide multi-line customer service records (CSR) that are created manually and are delivered between 24 and 48 hours. Significant resources would need to be expended to deliver all manual multi-line CSRs within 24 hours. Most CALTEL members return FOCs or rejection notices for orders with less than 20 lines within 24-48 hours. Since there is no consensus at the national forum on FOCs, CALTEL cannot recommend California-specific intervals and the Commission should not adopt intervals. CALTEL agrees with Verizon's position that intervals for both single line and multi-line ports should exclude: 1) requests involving a unbundled network elements (UNE); 2) a request involving complex switch translations such as Central Exchange/Integrated Services Digital Network/Advanced Intelligent Network

services, Remote Call Forwarding numbers, or multiple services on a single loop, and 3) a request involving a result line.

TURN supports policies such as the FCC's recent requirement that all carriers subject to LNP rules complete simple wireline-to-wireline and intermodal port requests within one business day. TURN clarifies that its general support of Verizon's consensus position is not an endorsement of that specific proposal. DRA supports TURN's position that any adopted proposal minimize customer disruption and inconvenience.

Verizon asserts the policy goal of guidelines is to achieve parity in the deadlines and processes involved in an end-user migration from carrier to carrier. Verizon argues CLEC-to-ILEC transfers can take up to twice as long or longer to complete than comparable ILEC-to-CLEC transfers.

Verizon asserts many California CLECs do not comply with the FCC's four-business day requirements, 24 hours to return the FOC plus three business days to complete the port, and notes that recently the FCC has reduced the interval for completion of a simple wireline port to one day. However, the FCC's recent order will require at least a year to implement. Verizon also asserts there is a lack of regulatory parity, because the Commission requires ILECs to adhere to specified processes and intervals for transferring an end-user to a CLEC consistent with FCC standards, generally returning FOCs within 24 hours and completing the transfer within three business days.⁵ There is no comparable

⁵ The Joint Proposed Settlement Agreement (JPSA) has at least three measures that relate to local number portability: 1) customer service record intervals; 2) FOC intervals; and 3) local number portability provisioning intervals. See D.07-09-009, Appendix II. Verizon is measured on the timeliness of providing CSRs; 95% of Verizon's manually generated CSRs must be provided in eight business hours and

Footnote continued on next page

requirement for CLECs. Verizon's survey of California CLECs shows that some CLECs take as long as 72 hours to return the FOC and up to 10 business days or longer to complete the transfer. Although the FCC has no rules on CSR, some states have established a 24-hour interval to provide the CSR.⁶ Verizon asserts its proposal of a 24-hour interval for return of CSRs and FOCs and three business days for completion of end-user transfers involving 1-19 lines would promote compliance with existing FCC requirements while implementation of the new rules is underway. Verizon asserts the Commission can adopt migration intervals consistent with federal rules. Verizon supports migration intervals that require that a migration be completed within three business days of the return of the FOC.

CALTEL asserts Verizon's position on CLEC violation of porting intervals is misleading. There is no four-day porting interval for multi-line end-user

95% of Verizon's electronically generated CSRs must be provided in 20 seconds. Ninety-five percent of Verizon's electronically generated FOCs must be returned within 2 system hours and 95% of Verizon's manually generated FOCs for orders of fewer than 10 lines must be returned within 24 clock hours. Verizon's performance in meeting the FCC's standard local number portability interval, three business days following the return of the FOC, is not directly measured. Instead, troubles reported during the provisioning process are measured during three business days and there can be no more than 5% provisioning failures in provisioning local number portability within the standard interval.

⁶ In New York, 80% of CSRs on orders of five lines or less are to be issued the same day if requested by noon. *See* Case 00-C-0188, Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers, *Order Adopting Phase II Guidelines* (June 14, 2002). In Texas, 80% of CSRs are to be returned within 24 hours. *See* Rulemaking Regarding CLEC-to-CLEC and CLEC-to-ILEC Migration Guidelines, *Order Adopting New § 26.131 as Approved at the July 25, 2003 Open Meeting*. Pennsylvania's CSR requirement is the same as New York's. *See* Rulemaking Re Changing Local Service Providers, Case No. L-00030163, *Final Rulemaking Order, Order on Reconsideration*, codified in 52 Pa. Code § 63.203(f)(3).

porting requests, the type that Verizon identifies in its survey of CLEC porting intervals. CALTEL asserts Verizon applies the FCC's porting interval for simple ports to complex, multi-line end-user porting requests. CALTEL disagrees with Verizon's characterization of a JPSA requirement that ILEC-to-CLEC porting requests be completed within three days. The JPSA provisions cited by Verizon are designed to measure installation quality, not installation interval, by measuring the percent of network customer trouble reports that occur during the provisioning track interval. Trouble reports are tracked during the three-day period regardless of how long the port takes to complete. CALTEL recommends that the Draft Principles and Procedures be modified to require that local service providers provide LNP in accordance with federal requirements and rules and orders of the FCC. Most of CALTEL's members do not participate in the working group and are not immediately able to comply with new processes.⁷

The Joint Providers oppose adopting any rules governing end-user transfers. They note the FCC already has adopted rules, and assert there is no record demonstrating a problem that justifies the Commission adopting rules. It is not necessary for the Commission to restate FCC rules as Commission requirements. They emphasize that other states that have adopted guidelines concerning end-user migrations have not adopted rules governing porting intervals, and the record in this proceeding is silent on operational and technical considerations that would need to be considered if the Commission were to adopt Verizon's principles. In addition, Joint Providers argue the demand for

⁷ The NANC has submitted a consensus recommendation to the FCC as well as five separate minority reports on various process and technical porting issues on which there was no consensus.

parity is made when California performance measures do not include a porting interval, Verizon's proposal also applies only to CLEC-to-CLEC and CLEC-to-ILEC migrations, not ILEC-to-CLEC migrations, and relief is already available under interconnection agreements or filed complaints. They also argue the FCC has issued numerous decisions on number portability and recognized the importance of national, uniform rules and recently adopted new rules shortening its previously adopted porting intervals. The FCC concluded the NANC should develop the process for these new LNP intervals and solicited comments on 1) improving the process of changing providers; 2) improving processes or efficiencies for simple and non-simple ports; 3) modifying the definition of simple ports; 4) standardizing local service request forms; and 4) a single standard time interval for returning customer service record requests. The Commission should not adopt principles or rules that conflict with these federal rules. In addition, the Commission should not create an obligation to comply with industry groups' guidelines. The NANC advises the FCC, and the Ordering and Billing Forum does not have the authority to issue binding requirements.

Joint Providers disagree with CALTEL's proposal that the Commission reconsider these issues in six months. Joint Providers support using Commission and FCC dispute resolution procedures to resolve disputes concerning voluntary customer transfers. Finally, if the Commission finds the record supports adoption of principles governing end-user transfers it should adopt the Joint Providers' consensus proposal. By contrast, Verizon's proposed principles are inconsistent with applicable law since they appear to apply to simple ports and requests for any number of lines. Verizon's proposal also advances a new porting interval rule that requires CLECs and only CLECs to complete wireline

ports involving 1-19 lines within four business days. By FCC definition simple ports do not involve UNEs, involve an account only for a single line, do not include complex switch translations, and do not include a reseller. Joint Providers propose that principles and procedures for end user-migrations also apply to ILECs.

4.3.3. Discussion

Verizon and Joint Providers' consensus positions, and AT&T's recommendations based on those positions, have similar statements of principles. The principles focus on the right of end-users to migrate their local service and on adherence to existing industry standards and federal and state rules and regulations. They differ significantly on whether parity requirements for wireline porting, including intervals for FOCs and providing CSRs, should be required. Verizon's proposal recommends porting intervals; Joint Providers and AT&T's proposals do not. All proposals include dispute resolution procedures.⁸

The parties generally concur on most principles contained in the proposals. The parties concur on the right of end-user customers to change their service without losing their phone numbers. The parties also concur that industry guidelines govern end-user customer migrations and that carriers are subject to the FCC/FTC statement on deceptive advertising and regulations prohibiting slamming. The parties acknowledge that end-user customers have

⁸ We declined to delay this decision to await the outcome of implementing the FCC's reduced porting interval through industry group efforts to develop provisioning flows. Other parties recommended adopting principles and limited procedures that are consistent with efforts underway at the federal level. We concurred that course of action was preferable. However, the FCC issued its implementation order on May 20, 2010, prior to the issuance of this decision.

privacy protections and that carriers must maintain escalation lists for inter-carrier problems. The parties also concur that carriers must work to avoid problems for the end-user customer during migration, including service interruptions and billing problems. The parties also concur that dispute resolution procedures should be adopted.

We will adopt these principles supported by the parties. While we generally use the specific language for these principles proposed by Verizon and supported by AT&T, we find Joint Providers' proposal focuses more on the end-user customer perspective in many instances and we will use that language. Specifically, Joint Providers focus the good faith effort to avoid problems on the customer's perspective and we adopt that focus to require carriers to work together in good faith to minimize, avoid, and (if necessary) correct any problems experienced by the migrating end-user customer (including service interruptions, billing problems, etc.). Similarly, the Joint Providers' proposal requires carriers to respond to customer service inquiries and complaints and work to resolve them to the customer's satisfaction, and we include that provision in the adopted principles.

We also adopt principles only included in Verizon's proposal. Verizon's proposal contains a specific principle that focuses on FCC rules prohibiting carriers from obstructing or delaying the migration process through the imposition of non-porting related restrictions and prohibiting the existing carrier from refusing to migrate the telephone number of an active account for reasons such as unpaid amounts. This principle supports customer choice and is adopted. Verizon's proposal also contains a principle that acknowledges carriers retain the right to enforce obligations and impose permissible requirements under Commission rules and state or federal law. We concur that carriers' rights

under applicable rules and laws are not abrogated under the migration process, but we clarify that the right to migrate includes the guidelines and requirements supporting that right. As modified, this principle is adopted.

The dispute resolution process is a procedure, rather than a principle, and is included in the procedure section of the adopted end-user migration principles. We incorporate portions of both Verizon's and the Joint Providers' dispute resolution proposals. Joint Providers focus on a good faith effort to resolve the dispute as a first step, including resolving the dispute under dispute resolution conditions contained in interconnection or other contractual agreements between the carriers. Using the provisions of existing dispute resolution conditions and making a good faith effort to resolve the dispute could be sufficient to resolve a dispute. Thus, they are reasonable first steps and are adopted. Both Verizon and Joint Providers next focus on bringing disputes to the Commission. Verizon recommends bringing disputes to Commission staff, and Joint Providers recommend submitting disputes to the Commission's ADR program. Although Commission staff is available to assist carriers with any technical issues, disputes that need to be submitted to the Commission for resolution under the adopted principles should be submitted to the established ADR program. Joint Providers also recommend that the adopted principles include a provision that disputes can be submitted to the FCC. Although nothing in the adopted dispute resolution procedures precludes carriers from submitting disputes to the FCC, the procedures adopted herein are limited to Commission processes. Thus, we adopt the procedure of submitting disputes to the Commission's ADR program.

Joint Providers propose that the principles apply to ILECs. The Commission currently imposes performance measures on ILECs that address

provisioning. Although the parties have addressed distinctions between the FCC's porting requirements for CLECs and the performance measures required for the ILECs, the record does not establish that additional requirements should be imposed on the ILECs. We find the performance measure requirements sufficient at this time and decline to apply the principles to ILEC-to-CLEC end-user transfers. We agree with the parties that compliance with industry guidelines, including those adopted for porting intervals should occur when the parties have notice of those guidelines after they are adopted by the FCC. The Draft Principles and Procedures are modified to make that clarification.

We will not adopt Verizon's recommendation for specific intervals for CSRs, FOCs and completion of ports. Several states have adopted CSR and FOC intervals, and Verizon recommends the Commission follow their lead. No states have adopted porting intervals. No other party supports adoption of specific intervals; TURN's general support of Verizon's consensus position was not an endorsement of the specific porting intervals. The FCC recently adopted a reduced porting requirement, the provisioning of that requirement was addressed by industry groups, and the FCC has implemented that requirement.⁹ The FCC set porting intervals in connection with its regulation of LNP. Verizon's proposal is inconsistent with the FCC's adopted requirements for simple ports. Adopting a porting interval in this proceeding that is inconsistent with the FCC's latest requirements would be inefficient and confusing. Although there is a stronger case for adopting CSR and FOC intervals, the

⁹ See *In the Matters of Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability*, WC Docket No. 07-244, CC Docket

Footnote continued on next page

reduced porting interval, when implemented by the FCC, should necessitate prompt returns of CSRs and FOCs for simple ports. The FCC also is addressing porting intervals for complex ports, and any CSR or FOC requirement adopted by the Commission could be inconsistent with the outcome of that process¹⁰. We similarly decline to adopt migration intervals, as proposed by Verizon.

Verizon's migration interval proposal contains the same intervals as its porting interval proposal and is similarly inconsistent with FCC requirements.

Although we decline to adopt specific intervals for CSRs, FOCs and ports, we are concerned by Verizon's and AT&T's allegations that some CLECs are not conforming to the FCC's existing porting intervals. When the reduced porting interval is in place, problems with compliance may increase. It is our hope that establishment of these guidelines and increased Commission involvement in resolving disputes will increase compliance with applicable procedures. If these guidelines prove insufficient once the FCC's new porting intervals are in place, Verizon can renew its request for the Commission to establish migration intervals that are consistent with the FCC's porting intervals. The Principles and Procedures for CLEC-to-CLEC End-User Migrations discussed herein are adopted and attached to this decision as Attachment 2.

No. 95-116, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 09-41 (released May 13, 2009); and *Report and Order*, FCC 10-85 (released May 20, 2010).

¹⁰ The FCC's order 10-85 confirmed the four-day porting interval applies to non-simple ports and established a 24-hour interval for CSRs. *See Report and Order*, 2010 FCC LEXIS 3185 at ¶¶ 19, 24.

4.4. Modifications to the Mass Migration Guidelines

Certain procedures in the Mass Migration Guidelines need to be changed to permit efficient processing of CLEC applications to exit the local exchange market. Experience with procedures incorporated in the Mass Migration Guidelines prompts these revisions. By a January 2, 2007 ruling, modifications to the Mass Migration Guidelines are proposed to 1) the timing for resolving applications; 2) the handling of incomplete applications; 3) the review process for customer notification letters; 4) the provision of customer lists; and 5) compensation for default carriers. The parties support the specific proposals, discussed below. These modifications will be adopted to clarify and update the procedures contained in the Mass Migration Guidelines.

Additional modifications were proposed by the parties in comments. Modifications to procedures in the Mass Migration Guidelines are adopted, when they are consistent with the modifications proposed in the ALJ's January 2, 2007 ruling. Where modifications are proposed to eliminate portions of the Default Carrier requirement, those modifications are denied.

4.4.1. Modifications Proposed by ALJ Ruling

The first modification would require the CLEC to provide a declaration as part of the Exit Plan if resolving the application within 90 days is urgent. Applications can involve the transfer of large numbers of customers; realistically, these applications cannot be approved within the 90-day goal incorporated in the Mass Migration Guidelines. The second modification would permit the procedures set forth in the Mass Migration Guidelines to apply only to complete applications. When applications are incomplete, a ruling would issue notifying the exiting CLEC of the information needed to process the application. The

ruling might require that the exiting CLEC notify customers of the delay in terminating service and might suspend consideration of the application pending receipt of the required information. The third modification would require that exiting CLECs and/or arranged carriers and/or default carriers provide the draft customer notification letters to the Director of the Communications Division. There has been some confusion over Commission review of customer notification letters and clarification of the process will permit Communications Division staff to coordinate review of the customer notification letters with the Public Advisor's office. The fourth modification would permit staff to inform the exiting CLEC that it is either not necessary to provide the CLEC's customer list or that the list should be furnished on a data disc. The fifth modification would permit the assigned ALJ and/or assigned Commissioner to order compensation for default carriers by ruling subject to being affirmed by the Commission. Currently, the Mass Migration Guidelines provide that the Commission can order the exiting CLEC to compensate the default carrier, but if there is no agreement between the exiting and default carriers on compensation delays in processing applications can occur. Broadening the ability to order the CLEC to provide compensation, subject to being affirmed in the decision, will avoid these delays in processing applications.

Parties generally support the proposed modifications to the Mass Migration Guidelines. TURN states it has not been sufficiently involved in the process to provide comment on the specific modifications. It notes that customers contacted TURN during the Comcast and Time Warner migrations and that TURN's experience is that it took much longer than the carriers anticipated to accomplish customer notification and transfers. The proposed changes to the 90-day deadline for resolving applications should mitigate some

problems. TURN states that changes should reflect TURN's concern that end-user customers are provided with clear, early and frequent communications about the transfer process and are never left without service.

CALTEL supports the modifications which it asserts are likely to make the process more efficient and effective for exiting CLECs and default carriers. AT&T supports the proposed modifications. Verizon generally supports the proposed modifications. The modifications contained in the January 2, 2007 ruling are supported by the parties and will make the Mass Migration Guidelines more efficient. Thus, we adopt them.

4.4.2. Parties' Proposed Modifications

AT&T and Verizon propose additional modifications to the Mass Migration Guidelines. AT&T recommends the Commission augment the Mass Migration Guidelines to take into account the following milestones:

1) 15-day deadline for submitting requests to be designated a default carrier; 2) ALJ approves designation of default carrier(s); and 3) 40-day comment cycle pursuant to Rule 2 of the Commissions Rules of Practice and Procedure governing applications. AT&T also recommends two modifications to existing customer notice procedures when there is a default carrier: 1) exiting CLEC notifies customers at Day 60 that they will be transferred to the default carrier; and 2) exiting CLEC distributes a joint notification on behalf of itself and the default carrier at Day 30 informing customers of their status and date of pending migration.

AT&T recommends the ALJ have the same authority as the Director of the Communications Division to waive deadlines. AT&T requests that the Mass Migration Guidelines address additional steps that must be taken when an ALJ must designate a default carrier. AT&T recommends that the CLEC 1) review its

application and exit plan with Commission staff to identify patent deficiencies; and 2) Commission staff informs the exiting CLEC of any other industry parties that should be served. The Commission also should augment the Mass Migration Guidelines to acknowledge that migrations involving facilities-based CLECs cannot be handled in the same manner as migrations involving resellers or UNE-loop CLECs and to provide the ALJ discretion to depart from the Mass Migration Guidelines in order to coordinate the migration.

Verizon supports elimination of the default carrier requirement when the exiting CLEC uses its own loop and/or switch facilities to provide service. Verizon points to the Time Warner case where the Commission determined that the only feasible migration solution was to require the exiting carrier to step up its customer notice efforts to ensure that customers were fully aware that the underlying carrier of last resort would serve customers on request. The Commission declined to require the forced migration of customers to the default carrier.¹¹

Although AT&T's proposed modifications to the Mass Migration Guidelines were not the subject of comments, several suggested revisions are consistent with the adopted modifications to the Mass Migration Guidelines. Specifically, permitting the ALJ and/or the assigned Commissioner to extend deadlines and to depart from the Mass Migration Guidelines as necessary is consistent with the increased authority in the default carrier selection process. Clarifying the authority of the ALJ and the assigned Commissioner to alter the procedures contained in the Mass Migration Guidelines, if needed, will permit

¹¹ D.08-02-006 slip op. at 27, Finding of Fact 23.

tailoring the procedures to individual applications. Similarly, AT&T's suggestion that CLECs obtain prior review of its application and exit plan is included in the milestones and it is reasonable to add that provision to the Mass Migration Guidelines. These recommendations will be incorporated in the revised Mass Migration Guidelines adopted herein.

AT&T's recommendation that staff direct CLECs to serve additional industry parties, however, is duplicative of the existing directive that provides staff may require additional parties be served. AT&T's specific suggestions on customer notice requirements when there is a default carrier should assist Commission staff in reviewing customer notification letters but should not be mandatory. These recommendations will not be included in the revised Mass Migration Guidelines.

Verizon's recommendations on eliminating the default carrier requirement for facilities-based CLECs are beyond the scope of the proposed modifications to the Mass Migration Guidelines. Although we concur with Verizon and AT&T that additional complications occur when facilities-based CLECs exit the local exchange market, modifications to the procedures contained in the Mass Migration Guidelines should be made on a case-by-case basis, as was done in the Time Warner application. The Mass Migration Guidelines are sufficiently flexible to permit deviations when the exiting carrier is facilities-based, and the modifications adopted in this decision grant the ALJ and assigned Commissioner increased flexibility to modify procedures. We decline to otherwise modify the Mass Migration Guidelines' default carrier requirement. The revised Mass Migration Guidelines adopted herein are attached to this decision as Attachment 3.

5. Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on July 12, 2010, and reply comments were filed on July 19, 2010 by AT&T, CALTEL (opening only), Joint Commenters, TURN (opening only), and Verizon.

6. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Janice Grau is the assigned ALJ in this proceeding.

Findings of Fact

1. Mass Migration Guidelines for CLEC voluntary exits from the local exchange service market were adopted in D.06-10-021.
2. Phase 2 of this proceeding considers CLEC involuntary exits from providing local exchange service, ILEC involuntary exits, CLEC-to-CLEC/ILEC end-user transfers, and modifications to the Mass Migration Guidelines adopted in D.06-10-021.
3. A workshop was held on January 23, 2009.
4. At the workshop, parties agreed that ILEC voluntary exit guidelines should be deferred until the reverse auction process in R.06-06-028 was concluded. In June 2009, the Commission opened a successor proceeding to R.06-08-028, R.09-06-019, to consider subsequent California High Cost Fund B program reforms, including whether or not a reverse auction process should be implemented.
5. The parties generally agreed that AT&T's Proposed Guidelines for CLEC Involuntary Exits from Local Exchange Service Market should be adopted.

6. Parties proposed definitions for involuntary and voluntary exits.
7. Voluntary exits occur when the CLEC initiates the process under the Mass Migration Guidelines to withdraw from providing local exchange service.
8. Involuntary exits occur when the wholesale provider, either an underlying ILEC or competitive carrier, initiates the process under the proposed guidelines.
9. The parties generally agreed that proposals submitted by AT&T, CALTEL, and Verizon on end-user transfers could be merged to create a consensus proposal.
10. The parties did not reach one consensus proposal on end-user transfers. Verizon filed one consensus position, generally supported by TURN. Cox, tw telecom and Time Warner filed a separate consensus position. CALTEL filed a report on the negotiations.
11. Draft Involuntary Exit Guidelines, circulated to the parties for comment, required the wholesale provider to notify the Director of the Communications Division 30 days in advance of an action that would result in interruption of service to a CLEC's retail end-user.
12. The wholesale provider's termination notice must inform the CLEC of a 15-day advance customer notice obligation.
13. If a CLEC files an application to exit the local exchange market, an involuntary exit might change to a voluntary exit.
14. Compliance with the guidelines will relieve the CLEC or acquiring LEC from compliance with General Order 133-C service quality measures and standards in the applicable reporting period and third-party verification requirements.
15. Failure to follow the guidelines may result in enforcement proceedings against the CLEC.

16. Verizon, AT&T, and CALTEL opposed certain provisions of the Draft Involuntary Exit Guidelines.

17. If those provisions remained in place, they proposed that staff should only use its authority to seek expedited relief to halt wholesale disconnections of specific lines in extraordinary circumstances involving public health or safety.

18. In addition, expedited relief should only be used where end-user service to critical telephone numbers, such as hospitals, nursing homes, fire stations, and police stations, is involved.

19. Verizon, AT&T and CALTEL also proposed that an involuntary exit can only convert to a voluntary exit if there is an acquiring carrier and the acquiring carrier negotiates acceptable payment arrangements with the wholesale provider.

20. It was proposed that wholesale providers notify staff of wholesale disconnection no later than 20 days before the disconnection is to occur.

21. It was proposed that following the wholesale providers regulatory notification, the CLEC should advise staff within five days if payment arrangements have been made and staff should contact the CLEC at any time to ensure that end-user customers are notified sufficiently in advance of when disconnection will occur.

22. DRA and TURN supported a default carrier requirement for CLEC involuntary exits comparable to the default carrier requirement adopted in the Mass Migration Guidelines.

23. The ILECs and CLECs oppose a default carrier requirement.

24. In the best-case scenario for involuntary exits, the process adopted in the Mass Migration Guidelines, which prefers default carrier volunteers and negotiated compensation arrangements and requires appointing a carrier if there

are no volunteers and ordering compensation if no arrangement is reached, could not be followed due to the time constraints inherent in involuntary exits.

25. To impose a default carrier requirement in involuntary exits would place a greater financial burden on the wholesale provider to provision service than is required of underlying network providers and carriers of last resort in voluntary exits.

26. Wholesale carriers will require 90 days to modify processes in order to comply with the regulatory notifications and updates required for involuntary exits.

27. TURN opposes the CLEC 15-day end-user customer notice for involuntary exits and recommends that the Mass Migration Guidelines 30-day notice be adopted.

28. By definition, wholesale provider 30-day notification to the Commission of disconnection of service to the CLEC does not permit end-user customer notification comparable to that adopted in the Mass Migration Guidelines.

29. The consensus positions on CLEC-to-CLEC/ILEC end-user migrations and comments filed on those positions support principles focused on the right of end-users to migrate their local service and on adherence to existing industry standards and federal and state rules and regulations.

30. The Draft Principles and Procedures for CLEC-to-CLEC/ILEC End-User Migrations required local service providers to comply with industry guidelines.

31. Local service providers have notice of industry guidelines when they are adopted by the FCC.

32. Verizon proposes a principle for end-user migrations that endorses FCC rules prohibiting carriers from obstructing or delaying the migration process through the imposition of non-porting related restrictions and prohibiting the

existing carrier from refusing to migrate the telephone number of an active account for reasons such as unpaid amounts.

33. Verizon also proposes a principle that acknowledges carriers retain the right to enforce obligations and impose permissible requirements under Commission rules and state or federal law.

34. Verizon and the Joint Providers propose dispute resolution procedures for end-user migrations.

35. Joint Providers focus on a good faith effort to resolve the dispute as a first step, and both Verizon and Joint Providers recommend procedures for bringing disputes to the Commission or Commission staff for resolution.

36. Joint Providers propose that carriers respond to customer service inquiries and complaints and work to resolve them to the customer's satisfaction.

37. Joint Providers recommend that end-user migration principles and procedures should apply to ILECs.

38. ILECs must comply with performance measure requirements for the transfer of end-user customers.

39. Verizon recommends that end-user migration procedures include specific intervals for CSRs, FOCs and completion of ports.

40. Verizon recommends adoption of a procedure for three business days for completion of end-user transfers for 1-19 lines.

41. Verizon also supports migration intervals that require a migration be completed with three business days of return of the FOC.

42. Verizon and AT&T note ILECs must meet certain requirements for transferring an end-user customer to a CLEC.

43. AT&T and the CLECs oppose adoption of porting intervals for end-user transfers, and CALTEL proposes the Commission suspend issuance of a decision

on this issue pending the outcome of implementing the FCC's reduced porting interval.

44. On May 20, 2010, the FCC issued Report and Order 10-85, which adopts intervals and provisioning process flows for both simple and non-simple ports.

45. The FCC regulates LNP.

46. The parties support the revised Mass Migration Guidelines.

Conclusions of Law

1. It is premature to adopt ILEC voluntary migration guidelines.

2. It is reasonable to decline to adopt a default carrier requirement for CLEC involuntary exit guidelines.

3. It is reasonable to defer to the FCC's regulation of simple and complex porting intervals as part of its regulation of LNP.

4. The Guidelines for CLEC Involuntary Exits from Local Exchange Services Market, attached to this decision as Attachment 1, are a reasonable response to the record and should be adopted. They should be effective 90 days after the issuance of this decision.

5. The Principles and Procedures for CLEC-to-CLEC/ILEC End-User Migrations, attached to this decision as Attachment 2, are a reasonable response to the record and should be adopted.

6. The Mass Migration Guidelines, Revised 2010, attached to this decision as Attachment 3, should be adopted.

7. This order should be effective today to provide guidance to carriers on the adopted guidelines and principles.

O R D E R

IT IS ORDERED that:

1. The Guidelines for Competitive Local Exchange Carrier Involuntary Exits from Local Exchange Services Market are hereby adopted. These Guidelines will be effective 90 days after the issuance of this decision. A copy of the Guidelines for Competitive Local Exchange Carrier Involuntary Exits from Local Exchange Services Market is attached to this decision as Attachment 1. The public utility telephone corporations that are Competitive Local Exchange Carriers (as maintained in the Communications Division “Competitive Local Carrier” and “Competitive Local Reseller” data base) are subject to these guidelines.

2. The Principles and Procedures for Competitive Local Exchange Carrier-to-Competitive Local Exchange Carrier/Incumbent Local Exchange Carrier End-User Migrations are hereby adopted. A copy of the Principles and Procedures for Competitive Local Exchange Carrier-to-Competitive Local Exchange Carrier/Incumbent Local Exchange Carrier End-User Migrations is attached to this decision as Attachment 2. The public utility telephone corporations that are Competitive Local Exchange Carriers (as maintained in the Communications Division “Competitive Local Carrier” and “Competitive Local Reseller” data base) are subject to these principles and procedures.

3. The Mass Migration Guidelines, Revised 2010, are hereby adopted and shall replace the Mass Migration Guidelines adopted in Decision 06-10-021. A copy of the Mass Migration Guidelines, Revised 2010, is attached to this decision as Attachment 3. The public utility telephone corporations that are Competitive Local Exchange Carriers (as maintained in the Communications Division

“Competitive Local Carrier” and “Competitive Local Reseller” data base) are subject to these guidelines.

4. All public utility telephone corporations are subject to the applicable Default Carrier and Arranged Carrier provisions of the Mass Migration Guidelines, Revised 2010.

5. Rulemaking 03-06-020 is closed.

This order is effective today.

Dated July 29, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners