STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN RULEMAKING 08-01-005

This is the revised proposed decision of Commissioner Rachelle Chong. It is scheduled to be considered at the November 6, 2008 Commission meeting In the interim, parties may file comments limited to the following discussion in the revised proposed decision. Comments are limited to 10 pages and shall be filed and served on October 14, 2008. No reply comments will be allowed.

Commissioner Chong's proposed decision was previously served on the service list on August 5, 2008. This additional opportunity to comment is limited to the revised proposed decision, specifically, the process for submitting notices of planned copper loop retirements to this Commission, and negotiation and possible arbitration between incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs), as set forth in Ordering Paragraph 2 of the revised proposed decision. In particular, parties should provide comment on the non-binding arbitration process that is proposed.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Thomas at srt@cpuc.ca.gov and Commissioner Chong's advisor Jane Whang at jjw@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Attachment

Decision **REVISED PROPOSED DECISION OF COMMISSIONER CHONG** (Mailed 10/3/2008)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services.	Rulemaking 08-01-005 (Filed January 10, 2008)

DECISION DECLINING TO ADOPT REGULATIONS GOVERNING RETIREMENT BY INCUMBENT LOCAL EXCHANGE CARRIERS OF COPPER LOOPS AND RELATED FACILITIES USED TO PROVIDE TELECOMMUNICATIONS SERVICES

1. Summary

The Commission declines, at this time, to adopt rules requiring California's incumbent local exchange carriers to seek this Commission's permission before permanently retiring copper wire local loops from the telephone network.[1] We find that the party requesting such rules, the California Association of Competitive Telecommunications Companies (CALTEL), has not demonstrated a current need for action by this Commission. We therefore decline to adopt the proposed CALTEL rules at this time.

[1] For the purposes of this proceeding, we define copper retirement as the replacement of copper loops or copper subloops with fiber to the home or fiber to the curb loops, as

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We find that CALTEL has not demonstrated any current harm that necessitates the issuance of its proposed rules. The record of this proceeding contains no evidence showing that the installation of facilities to replace the copper network has resulted in adverse impacts to consumers or competition. However, we will require the incumbent local exchange carriers (ILECs) to file *concurrently* with our Communications Division any notices of network changes that the carriers file with the Federal Communications Commission (FCC) for fiber to the home (FTTH) or fiber to the curb (FTTC) deployment that results in the retirement of copper plant. Filing such notices with our Communications Division staff will allow this Commission to monitor ILEC copper retirement practices. The FCC has found that such notices will ensure that incumbent and competitive carriers can work together to ensure the competitive LECs maintain access to loop facilities. We strongly encourage the carriers to coordinate in such instances to ensure that service to CLEC customers is not unduly disrupted.

Moreover, to facilitate negotiations to access the loop, we will require the ILEC to serve concurrently with its filing at the CPUC, notice of the copper retirement upon all CLECs that are interconnected with the ILEC, regardless of whether the CLEC is serving customers currently on the specific retiring loop.[2] Within 20 days of the date that the notice of network change has been filed with the FCC, the CLEC must request negotiations with the ILEC either to purchase the entire copper loop from the ILEC or to reach an agreement with the ILEC on

referred to in the Federal Communications Commission's *Triennial Review Order* and in 47 C.F.R. § 51.333(b)(2). *See also TRO* at para. 281.

[2] Effectively, the ILEC shall serve its notice on CLECs and Commission Communications Division staff at the same time that it files it with the FCC.

price and terms and conditions for continued access loop facilities. The CLEC shall include in its request for negotiations the following information:

a. Whether the CLEC seeks to purchase the copper loop, or whether the CLEC seeks only to maintain access to a loop;
b. the number of customers on the copper loop;
c. the services that the CLEC provides over the loop; and
d. the number of UNEs that the CLEC currently purchases.

We will require the ILEC to enter into negotiations with the CLEC for a period of 30 days either to sell the copper loop at issue; or to reach a fair and equitable agreement with the CLEC on price and terms to ensure access to loop facilities. Further, if negotiations fail, then either party may seek arbitration, either through a private party arbitrator, or at the Commission. If parties cannot agree on the forum for arbitration, then the parties shall file for arbitration with the Commission. If arbitration is sought at the Commission, the arbitrator will establish a schedule for the parties and will arbitrate the dispute between the parties within 40 days of the request for arbitration. No approval by the Commission is required of the decision by any arbitrator.

2. Background

Copper wiring has been used in telephone networks across the country for more than 100 years, but as fiber optic cable becomes more widely used, competitive local exchange carriers (CLECs) and consumer groups have raised questions about whether this Commission should impose rules to preserve the copper facilities in order to safeguard choices by consumers and protect competition by CLECs.

We therefore opened this rulemaking on CALTEL's petition (Petition (P.) 07-07-009) to examine: (1) whether we should establish procedural rules that

ILECs and others must follow when an ILEC intends to retire or permanently remove copper loop facilities, and if so, what the rules should be; (2) whether we should adopt substantive prohibitions or conditions on the removal of such facilities, and, if we require that the facilities be maintained, who shall pay for such maintenance; and (3) whether ILECs are permanently removing copper drops and, if so, what action we may take to ensure their replacement where a customer so requests.

In examining these issues, we specifically reviewed the extent to which ILECs that are installing fiber are removing the copper network, whether customers or ILEC competitors have been harmed by any such practice, and whether we should adopt rules to preserve the copper network for future generations.

In addition to the comments and data we received in response to P.07-07-009, we took comments in connection with this Rulemaking. CALTEL, Integra Telecom of California, Inc. (Integra), the United States Department of Defense/Federal Executive Agencies (DOD/FEA), the Commission's Division of Ratepayer Advocates (DRA), and The Utility Reform Network (TURN) filed comments generally supporting CALTEL's proposed rules, while the ILECs – Pacific Bell Telephone Company dba AT&T California (AT&T), Verizon California Inc. (Verizon), SureWest Telephone (SureWest) and the small California ILECs[3] (Small LECs) – each filed comments, data request responses, or

[3] Calaveras Telephone Company (U1004C), Cal-Ore Telephone Co. (U1006C), Ducor Telephone Company (U1007C), Foresthill Telephone Co. (U1009C), Global Valley Networks, Inc. (U1008C), Happy Valley Telephone Company (U1010C), Hornitos Telephone Company (U1011C), Kerman Telephone Company (U1012C), Pinnacles Telephone Co. (U1013C), The Ponderosa Telephone Co. (U1014C), Sierra Telephone

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both in P.07-07-009 (with comments filed on August 13, 2007, August 23, 2007, and October 16, 2007, and data request responses[4] filed on October 4, 2007) and in this proceeding (with comments filed on March 14, 2008 and May 28, 2008).

We sought information from the ILECs as to whether they were permanently removing or retiring copper facilities in the "local loop," located between the ILECs' central offices and customers' homes and businesses, including the "drop" line that attaches underground or overhead telephone facilities to individual customer premises.[5] Based on the record, it appears that Verizon is the only large ILEC whose new broadband-based network – called FiOS – consists entirely of fiber. Thus, Verizon is the ILEC most likely to remove copper plant, although its removal to date and plans for future removal are somewhat limited, as we discuss below.

AT&T's network, U-Verse, is a hybrid network of fiber and copper that will require AT&T to leave the copper portion of the network in its system.

Company, Inc. (U1016C), The Siskiyou Telephone Company (U1017C), Volcano Telephone Company (U1019C), Winterhaven Telephone Company (U1021C) ("Small LECs").

[4] The Administrative Law Judge (ALJ) issued a ruling on September 14, 2007 asking the ILECs to disclose the extent of their removal of copper facilities, how they defined retirement, the impact of such retirement, and related information. The ILECs' responses are the data request responses referred to in text above.

[5] *Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*, Rulemaking (R.) 08-01-005, *Order Granting Petition for Rulemaking and Instituting Rulemaking as to Whether to Adopt, Amend or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services* (OIR), Appendix A, at 2 (R.08-01-005).

Thus, AT&T asserts, it has no plans to remove the copper network in the foreseeable future.[6]

While SureWest is in the process of rebuilding its network to install fiber all the way to the home, it has no CLEC in its service territory that obtains unbundled network element (UNE) loops from SureWest using copper plant. Thus, SureWest claims, removing its copper network will not deprive any CLEC of its right to lease UNEs on the SureWest network.

Finally, the Small LECs are not building fiber optic networks to replace copper facilities, and have no CLECs leasing their lines, so they too claim the facts do not support action in this proceeding.

Verizon's actions to date consist of removal of approximately 40,000 copper drops, the short span between customers' premises and Verizon's poles or underground facilities.[7] Because Verizon will replace these facilities upon

[6] In two instances, CALTEL cited in comments on the proposed decision, AT&T noticed its intent to replace copper feeder cable with fiber in Downieville and Watsonville, California. However, these changes were necessitated when AT&T was required to 1) move existing facilities by Caltrans (Watsonville) and 2) install fiber because the feeder cable was over 50 years old, in an area with unsafe working conditions, and therefore replaced with a fiber-fed digital loop carrier system because the State of California would not issue permits to replace or augment the facilities along that route (Downieville). Neither replacement was a fiber to the home (FTTH) or fiber to the curb (FTTC) installation, or part of AT&T's U-Verse network, and neither is relevant here for purposes of our proceeding. CALTEL also refers to a fiber overbuild in the state of Georgia, but we note that fiber to the home system is not relevant to AT&T's U-Verse deployment in California. *Reply Comments of Pacific Bell Telephone Company … on Commissioner Chong's Proposed Decision Declining to Adopt etc.*, filed Sept. 2, 2008, at 2-3.

[7] P.07-07-009, *Additional Comments and Information Request Responses of Verizon California, Inc*, October 16, 2007, Attachment A, at A-2, Response to Question 3 and Question 4 (*Verizon Additional Comments and Information*); *see also Initial Comments of The Utility Reform Network to Order Granting Petition for Rulemaking*, R.08-01-005, filed March 14, 2008 (*TURN Opening Comments*) at 17; *Reply Comments of Verizon California Inc. and*

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customer request, Verizon contends that removal of copper drops does not constitute *permanent* removal of copper loops. We agree that as long as Verizon continues to replace drops upon request, such action does not constitute permanent removal of the copper loop.

We also asked CALTEL to identify any harm it had suffered as a result of the *status quo*.[8] Neither CALTEL nor the other parties favoring CALTEL's proposed rules were able to identify any harm, or pattern of harm relevant to copper retirement, that convinces us to adopt prescriptive rules at this time. CALTEL could point to no customer of its members that had lost service, no customers who had complained, and no member companies that had lost their ability to serve customers as a result of ILEC removal of copper facilities to date. This Commission believes that extensive rules on this issue could discourage the significant investment of carriers in advanced fiber communications systems in our State, contrary to Pub. Util. Code § 709.[9]

3. The Commission has Jurisdiction to Act

We find that we have jurisdiction to address the issues raised by the CALTEL petition and to establish the process we adopt here. As an initial

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Verizon West Coast Inc. on Order Instituting Rulemaking, R.08-01-005, filed May 28, 2008 (*Verizon Reply Comments*) at 19.

[8] Order Instituting Rulemaking, § 4.3 (Issues to be Considered) & Appendix A; P.07-07-009, *Administrative Law Judge's Requesting Additional Information and Noticing Prehearing Conference,* filed Sept. 14, 2007.

[9] Pub. Util. Code § 709 sets forth the Legislature's policies for telecommunications in California as, among other things, to encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.

matter, we note that in its *Triennial Review Order* (TRO) order,[10] the FCC declined to adopt any rules to prohibit the ILECs from retiring copper loops or subloops that they have replaced with FTTH loops.[11] The FCC explicitly left open for state commissions "to evaluate whether retirement of copper loops complies with state legal or regulatory requirements":

> …[W]e stress that we are not preempting the ability of any state commission to evaluate an incumbent LEC's retirement of its copper loops to ensure such retirement complies with any applicable state legal or regulatory requirements. We also stress that we are not establishing independent authority based on federal law for states to review incumbent LEC copper loop retirement policies. We understand that many states have their own requirements related to discontinuance of service, and our rules do not override these requirements.[12]

We find that in this passage the FCC granted this Commission express authority to consider whether state law, rules or procedures exist or should exist to govern ILEC retirement of copper facilities. Even if, as the ILECs contend, the state law had to pre-date the 2003 TRO decision by virtue of the FCC's use of the present tense in stating that "many states *have* their own requirements,"[13] at least one California statute qualifies.

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[10] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Development of Wireline Services Offering Advanced Telecommunications Capability,* 18 FCC Rcd 16978 (2003) (TRO).

[11] *Id*. at ¶ 281.

[12] *Id.* ¶ 284.

[13] We do not necessarily agree with the ILECs' interpretation of the FCC language as applying only to pre-existing state law, but assume that interpretation for purposes of argument.

Pub. Util. Code § 709, effective January 1, 2003, requires the Commission to facilitate the availability of broadband networks in California, as follows:

1) "continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians" (§ 709(a));
2) "encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services" (§ 709(c)); and
3) make efforts to "assist in bridging the `digital divide' by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income and disabled Californians" (§ 709(d)).

The record of this proceeding demonstrates that the copper network is increasingly useful to facilitate advanced services in this state. As Integra points out in material submitted with its comments,[14] DSL is but one use of copper plant to facilitate broadband. While ADSL started out with up to 1.5 megabits per second (Mbps) of capacity, ADSL2 can provide 25 Mbps/pair. VDSL2 can provide up to 100 Mbps/pair on short loops of less than 1,000 feet, enough bandwidth to support services such as high definition television and video-on-demand. Ethernet over copper is a relatively recent robust application (with speeds up to 20 Mbps) for California business, especially small business. Thus, use of copper wiring is one way of meeting our obligations to advance

[14] *Comments of Integra Telecom of California, Inc. on Order Instituting Rulemaking,* R.08-01-005, dated March 14, 2008, Exhibit 1, at 8-9.

broadband deployment under § 709. Thus, § 709 is a statute under which we have authority to act.

Pub. Util. Code § 851, enacted in 1951, requires utilities to apply for Commission approval to sell, lease, assign, mortgage, or otherwise dispose of or encumber facilities that are necessary or useful. CALTEL argues that the retirement of copper loops is removal of plant that is necessary or useful and that the ILECs must obtain Commission approval regarding such retirement.[15] AT&T argues on the other hand that Section 851 "by its own terms, does not apply to property that is no longer necessary or useful to the ILEC in the performance of the ILEC's duties to the public."[16]

Verizon argues that Pub. Util. Code § 851 does not apply to the "retirement" of copper loops, as it only applies to "transactions" such as the sale, lease, encumbrance or "disposition" of public utility property that is necessary or useful to its public service obligations.[17] We disagree, and find that the term "otherwise dispose of" is broad enough to encompass copper loop retirements, as CALTEL asserts.[18] *See Crum v. Mt. Shasta Power Corp.*, 220 Cal. 295, 308 (1934)

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[15] *Comments of CALTEL on Order Instituting Rulemaking, R.08-01-005,* dated March 14, 2008 (*CALTEL Opening Comments*), at 14-15. CALTEL's argument is that Section 851 applies to the retirement of copper facilities because the facilities are an integrated part of the network that is used by the ILECs and CLECs. CALTEL also asserts that the ILECs have a duty to serve the CLECs; and that copper facilities are used to provide wholesale services.

[16] *Comments of AT&T on Order Granting Petition for Rulemaking*, R.08-01-005, filed March 14, 2008 (*AT&T Opening Comments*) at 8.

[17] *Verizon Reply Comments*, at 29-30. Verizon further asserts that absent a "transaction," Section 851 does not apply on its face to copper loop retirement.

[18] *CALTEL opening comments*, filed Sept. 2, 2008, at 5.

(holding that a hydroelectric power company could not release excess water from a river to maintain the level of a pool without the prior approval of the Railroad Commission [this Commission's precursor] because the river water had been dedicated to a public purpose). The common dictionary definition of "dispose" includes "to get rid of, or to deal with conclusively," and therefore includes retirement.[19]

The Commission has previously stated that "[o]ne of the fundamental purposes of Section 851 approval of the sale or transfer of utility assets is to permit the Commission to make a determination that the assets transfer will not impair the ability of the utility to provide adequate service to its customers following the transaction."[20] As discussed, there is no evidence that the retirement of copper loops will impair the ILECs' ability to provide adequate service to its customers. Moreover, the FCC found that ILECs do not need to maintain copper facilities when they replace them with FTTH or FTTC loops, and adopted a policy of not interfering with ILEC copper retirements to promote the deployment of broadband networks. We thus decline to find that ILECs must seek Commission approval pursuant to Section 851 of the retirement of individual copper loops.

As discussed above, the Commission has jurisdiction to act to preserve the copper network. However, we do not believe that there is adequate evidence that the ILECs are unilaterally disrupting competitors' service over copper lines,

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[19] *Id.* at 3, citing Merriam Webster Online Dictionary, http://www.merriam-webster.com/dictionary/dispose.

or that consumers are being harmed. Therefore, although we decline to adopt the proposed CALTEL rules or to impose significant rules prohibiting the retirement of copper, as discussed further below, we adopt requirements for the ILEC to notify CLECs when they seek to retire copper with FTTH or FTTC loops and for negotiations to access to the loop in such an event.

4. CALTEL has not Provided Evidence to Justify its Proposed Rules

As discussed above, the FCC rejected proposals for "extensive rules that would require affirmative regulatory approval prior to the retirement of any copper loop facilities," and noted that such a requirement is not necessary because its existing rules "serve as adequate safeguards."[21] We agree with this approach. The FCC determined not to prevent copper retirement based on its policy to promote advanced services and the networks supporting such services. We believe that imposing a substantial process for approving copper retirements would delay fiber system deployment without providing major benefits to competition or consumers. The decision we make today represents a careful balance between policies of this Commission: encouraging the rapid deployment of high speed telecommunications services to all Californians consistent with Section 709 for economic development purposes against ensuring fair competition and uninterrupted service for retail consumers.

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[20] *See* D.07-03-008; D.05-09-008 (noting that "Our primary objective in reviewing the sale of utility property is to ensure that disposition or encumbrance of public utility property does not impair a utility's public service to customers").

[21] *TRO* at para. 281.

Neither CALTEL nor any other commenter in this proceeding has provided evidence of harm justifying rules such as those CALTEL proposes.[22] While TURN supports CALTEL's request that we adopt rules, it acknowledges a "lack of data" showing that problems currently exist.[23] We find that hypothetical problems do not provide a basis for new regulations in this highly competitive area of telecommunications service. Copper retirement rules could provide a disincentive for carriers to bring advanced communications systems to our state, as opposed to other states. This outcome would conflict with the desire of our state legislature and this Commission to ensure that California's communications systems be as advanced as possible.

CALTEL's rules would require that an entity seeking to retire copper facilities file an application with the Commission and make a showing that the copper removal would serve the public interest, convenience and necessity, among other requirements.[24] The rules would prohibit ILECs who could not meet this test from retiring the facilities, perhaps indefinitely.

Such rules would be contrary not only to the FCC's intent in the *TRO*, but to our own state's policy to advance the installation of high speed networks. As noted previously, no ILEC participating in this proceeding is currently retiring copper loops. Verizon's removal of copper drops does not constitute retirement so long as it replaces the drops upon request. (Were Verizon's practice to change

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[22] Indeed, by asking us to preserve the *status quo* pending the outcome of this rulemaking, CALTEL essentially concedes that the current situation poses no harm.

[23] *TURN Reply Comments* at 11 ('TURN submits that the lack of data is one reason that establishing copper retirement rules is important.").

[24] *Id.* at 2.

and there were evidence, for example, that consumers were not able to switch back to copper-based service if they desired it, the case for action might be stronger.)

Despite the absence of current harm, CALTEL asks us to act proactively to preserve the copper network. DRA, FEA/DOD and TURN concur. The ILECs, in contrast, assert that the proposed rules are unnecessary in light of the FCC's existing rules and CALTEL's failure to demonstrate harm.

As we discuss below, implementing rules governing the retirement of copper loops could require an extensive and complex examination of who will bear the cost of maintaining a network an ILEC no longer needs. CALTEL and the ILECs have vastly different opinions about how to calculate such costs and who should bear them. Moreover, CALTEL itself has noted that it is not interested in acquiring the copper network from the ILECs. The FCC has effectively declined to require ILECs to provide the copper loop as a UNE if ILECs are replacing the copper loop with FTTH or FTTC facilities. In the absence of a clear FCC requirement that the copper loop remain as a UNE under such circumstances, we are reluctant to adopt an extensive approval process for the ILEC to retire its copper facilities when it deploys FTTC or FTTH facilities.

Further, the record shows that copper is currently not being removed on a large scale and that the ILECs' deployment of all-fiber networks is limited to date.[25] While Verizon and AT&T have both announced plans to increase the

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[25] *See AT&T Opening Comments* at 27; *Response of The Division of Ratepayer Advocates on Order Instituting Rulemaking,* R.08-01-005, filed May 28, 2008 (DRA Reply Comments) at 2-3; *Response of Dr. William E. Taylor prepared for AT&T California on Order Instituting Rulemaking,* R.08-01-005, filed May 28, 2008 (*AT&T's Expert Reply Comments*) at 9. *See*

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pace of their fiber network build outs, all-fiber networks are still the exception rather than the rule in California.[26] Verizon's fiber-only FiOS network is far from ubiquitous and AT&T's fiber network is still copper dependent.[27]

CALTEL's proposed rules would place a heavy burden of proof on ILECs to prove that removal of copper facilities is in the public interest. We note that the FCC adopted these copper loop retirement policies in the *TRO* after weighing the costs and benefits of unbundling and intermodal competition, and in considering how to advance its goal of "swift and ubiquitous broadband deployment."[28] We support these policies and believe that existing FCC notice requirements provide an adequate mechanism for CLECs to transition during an ILEC's copper retirement.

The FCC specifically established notice requirements (as discussed below) that would "ensure that incumbent and competitive carriers can work together

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also Comments of Small LECs on Order Instituting Rulemaking, R.08-01-005, filed March 14, 2008 (*Small LECs' Opening Comments*) at 7.

[26] *CALTEL Opening Comments* at 19, *Response of AT&T California to Order Instituting Rulemaking,* R.08-01-005, filed May 28, 2008 (*AT&T Reply Comments*) at 32, *DRA Reply comments* at 2-3. *See also Response of Small LECs to on Order Instituting Rulemaking,* R.08-01-005, filed May 28, 2008 (*Small LECs' Reply Comments*) at 3; *AT&T's Expert Reply Comments* at 12.

[27] *See CALTEL Reply Comments* at 16-17. While CALTEL introduced evidence in comments on the proposed decision in this proceeding that AT&T is now installing fiber-only networks in two small California cities ("AT&T issued two Accessible Letters, and published two short term network changes notices on its public Internet site, in July describing plans to replace copper feeder cable with fiber-fed DLC (digital loop carrier) systems in the Downieville and Watsonville areas later this year"), these replacements of copper are not part of a FTTH or FTTC deployment and therefore, outside the scope of the FCC's TRO rules governing copper loop retirement. *See CALTEL opening comments*, filed August 25, 2008, at 11.

[28] *TRO* at ¶ 234.

to ensure the competitive LECs maintain access to loop facilities." The FCC thus anticipated that the carriers would work to maintain loop facilities access. We expect that the ILECs will work in good faith to provide such access to their wholesale CLEC customers.

The FCC also stressed that it was not eliminating the rights of competitive carriers "to obtain unbundled access to hybrid loops capable of providing DS1 and DS3 service to customers."[29] Balancing our policy goals to promote advanced broadband services in the state with the interests of competitors to have access to network facilities, we strongly encourage the affected ILECs to coordinate and work together to ensure that CLEC service is not disrupted if an ILEC seeks to retire a copper loop. We will look closely to ensure anticompetitive actions do not adversely affect CLEC services. On the other hand, if the CLEC has the opportunity to purchase or lease a copper loop and declines to take that opportunity in a timely manner, this Commission will not provide a forum for any later dispute. Therefore, we will not take the action CALTEL urges, given the complexities involved in determining the future costs of maintaining access to copper facilities; the lack of proof of harm; lack of actual removal of copper facilities or plans to do so; and the limited deployment of fiber networks to date.

We will instead as outlined below adopt a process for ILECs to file notices with the Commission and serve notices on CLECs; negotiations between the parties; and arbitration. We will also monitor advances in technology that may eliminate CLEC reliance on copper local loops.

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[29] *See TRO* at ¶ 294.

5. The FCC has Rules in Place

The FCC has rules in place that require ILECs to provide notice of proposed action to remove copper loops. Those rules are found at 47C.F.R. 51.333 *et seq*. We do not express an opinion on whether those rules are adequate for all potential future copper retirement, but do summarize them here.

The FCC rules give competitors that lease lines from an ILEC proposing to remove copper facilities the right to file objections to gain time to smoothly transition service. Under these rules, ILECs planning to retire copper loops that have been replaced with a Fiber to the Home (FTTH) or Fiber to the Curb (FTTC) loop must comply with the network disclosure requirements set forth in 47C.F.R. 51.325-51.335.[30] These rules provide that ILECs must provide public notice or planned changes at the "make/buy point."[31] The make/buy point, in this instance, is the time at which an ILEC decides to replace copper loops within its network with fiber facilities.[32] The notice requirement depends on when the planned change can be implemented after the make/buy point. The ILEC must give notice within 12 months of the make/buy point except:

(1) If the changes can be implemented within 12 months of the make/buy point, public notice must be given at the make/buy point but at least six months before implementation.

(2) If the changes can be implemented within six months of the make/buy point, public notice may be given pursuant to the short-term notice procedures provided in 51.333.[33]

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[30] 47 C.F.R. 51.325(a)(4).

[31] 47 C.F.R. 51.331(b).

[32] *Id*.

[33] 47 C.F. R. 51.331(a).

The short term notice requirements under 47C.F.R. 51.333 require public notice if the ILEC wishes to implement the planned network changes less than six months after public notice.[34] In this case, the ILEC must serve a copy of its public notice upon each telephone exchange service provider that directly interconnects with the ILEC's network at least five business days in advance of its filing with the FCC.[35] Under the FCC's rules for notice of replacement of copper loops or copper subloops with FTTH or FTTC loops, the FCC requires that notices shall be given **within a minimum of 90 days** of such change.[36] Notices of replacement of copper loops or subloops with FTTH or FTTC loops shall be deemed approved on the 90th day after release of the FCC's public notice of the filing, unless an objection is filed.[37]

An information service provider or telecommunications service provider that directly interconnects with the ILEC's network may file objections to an ILEC's notice.[38] These objections must be filed with the FCC and served on the ILEC no later than the ninth business day following the release of the FCC's public notice.[39] The objecting party must clearly set forth reasons why it cannot accommodate the ILEC's changes by the date stated in the public notice and must indicate any specific technical information required that would enable the

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[34] 47 C.F. R. 51.333(a).

[35] *Id.*

[36] 47 C.F.R. 51.333(b)(2).

[37] *Id.*

[38] 47 C.F.R. 51.333(c).

[39] *Id.*

objector to accommodate those changes.[40] Further, the objector must list steps that it is taking to accommodate the planned retirement and state the earliest possible date (**not to exceed six months** from the original date given in the public notice) by which the objector anticipates it can accommodate the proposed retirement.[41] It must also provide an affidavit stating that the objection is reasonable and not being submitted for purposes of delay.[42]

The ILEC shall have until no later than the 14th business day following the release of the public notice to file a response to the objection with the FCC and serve the response on all parties that filed objections.[43] If an objection is filed, the FCC will issue an order determining a reasonable public notice period.[44]

Under the FCC's rules, ILECs must provide a minimum of 90 days of notice to CLECs that will be directly affected by planned copper retirement.[45] Further, ILECs must notify affected CLECs directly if they plan to implement the retirement in fewer than six months. Thus, while the FCC rules do not allow a CLEC to prevent a proposed retirement, the rules do give affected CLECs notice and information regarding the planned retirements. Moreover, as discussed above, the FCC noted that it expected the carriers to work together to maintain access to the facilities.

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[40] *Id*. at (c)(1).

[41] *Id*. at (c)(2) and (3).

[42] *Id*. at (c)(5).

[43] *Id*. at (d).

[44] *Id*. at (e).

[45] *Id*. at (f).

The FCC's website also lists the number of copper retirement notices that have been filed with the FCC.[46] Since January 1, 2006 there have been over 250 notifications of proposed copper retirements by ILECs throughout the country, although the number in California is small. Despite these numerous notifications, filed pursuant to the FCC's rules, commenters in this proceeding failed to submit any evidence that CLECs or consumers have been harmed in any way as a result of these copper retirements. The Commission believes that there would be at least some evidence of harm if copper retirement posed the significant threat to competition, customers, and safety that CLECs claim, and if the FCC's rules were inadequate to protect against this threat.

6. Process for ILECs and CLECs to Negotiate Access to Loop Facilities

For the reasons discussed above – the lack of actual harm to competitors or customers, the limited build-out of fiber facilities, and the limited removal or plans for removal of copper facilities – we decline to adopt the proposed CALTEL rules. Instead, we have balanced the competing interests of the CLECs and the ILECs and the policy goals of our State and the FCC in the *TRO,* in establishing the following process below.

Specifically, we will require an ILEC that plans to retire a copper loop and replace it with FTTH or FTTC loops, to file concurrently with Communications Division a copy of the notice of network change that it files with the FCC pursuant to 47 C.F.R. 51.333. The ILEC shall also concurrently serve the notice on all CLECs that are interconnected with the ILEC, regardless of whether a

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[46] The FCC website may be found at http://www.fcc.gov/wcb/cpd/other_adjud/network.html.

CLEC is currently serving a customer on that loop or not.[47] If a CLEC files an objection to the copper retirement with the FCC pursuant to 47 C.F.R. 51.333(c), the CLEC shall file a copy of such objection with the Communications Division.

Any CLEC that seeks to use the relevant copper loop shall provide to the incumbent carrier within 20 days of the notice's filing with the FCC, a request for negotiations with the ILEC either to purchase the copper loop or to reach a fair and equitable agreement with the ILEC on price, terms and conditions to access loop facilities. The CLEC shall include in its request for negotiations the following information:

a. whether the CLEC seeks to purchase the copper loop, or whether the CLEC seeks only to maintain access to a loop;
b. the number of customers on the copper UNE;
c. the services that the CLEC provides over the loop; and
d. the number of UNEs that the CLEC currently purchases.

We will require the ILEC to enter into good faith negotiations with the CLEC for a period of 30 days either to sell the copper loop at issue; or to reach a fair and equitable agreement with the CLEC on price, terms and conditionsto ensure access to loop facilities. If negotiations fail at the end of the 30 days, either party may seek arbitration, either through a private party arbitrator, or at the Commission. If parties cannot agree on the forum for arbitration, then the parties shall file for arbitration with the Commission. If arbitration is sought at the Commission, the arbitrator will establish a schedule for the parties and will

[47] This means that the ILEC should at a minimum serve the Communications Division staff and all CLECs interconnected with the ILEC with the copies of the copper retirement notices at the same time as it files the notices with the FCC.

arbitrate the dispute between the parties within 40 days of the request for arbitration. No approval by the Commission is required of the decision by any arbitrator.

We reiterate that it is this Commission's policy under Pub. Util. Code § 709 to promote the development and deployment of new technologies and the ubiquitous availability of a wide choice of state-of-the-art services. We are reluctant to contravene the national policies set forth in the FCC's *TRO*, especially as to its policy to encourage the deployment of fiber and broadband services is consistent with our own state's policies to encourage broadband deployment. The California Legislature has also expressed its goal to "[c]omplement efforts to increase investment in broadband infrastructure and close the digital divide."[48] Given these express state and federal goals, we decline to impose additional detailed rules requiring affirmative approval before an ILEC may replace copper facilities with FTTC or FTTH facilities. The process we establish above promotes state and federal goals for broadband deployment; ensures competitive neutrality; is consistent with the FCC's *TRO*; and provides opportunities for the competitive carriers to negotiate access to loop facilities while not unduly delaying the ILECs' ability to retire copper facilities.

[48] Pub. Util. Code § 5810(a)(1)(E).

7. We are Addressing Emergency Preparedness in a Separate Proceeding

Several parties, including CALTEL, ask us to preserve the existing copper network because it is more reliable in a disaster. We are examining the issue of availability of backup power for telephone service over fiber, in R.07-04-015, our *Rulemaking on the Commission's Own Motion into Reliability Standards for Telecommunications Emergency Backup Power Systems and Emergency Notification Systems Pursuant to Assembly Bill 2393 (Backup Power Rulemaking)*. That proceeding is the appropriate forum to consider issues of reliability and emergency preparedness on fiber networks.

Moreover, to the extent that an ILEC has transferred a customer to its fiber-based service, the underlying copper loop cannot be easily used in the event of an emergency. Once Verizon switches a group of customers on a particular copper facility to FiOS, for example, it removes or disables the copper drop to make room for the fiber facility, subject to replacement on customer request. In the event of an emergency, therefore, the customer may not easily switch back to copper-based service for emergency purposes without a visit from a Verizon service technician. Further, electric outages often result from cable cuts that also affect telecommunications wiring, so power outages also sever the copper connection to the home.[49] In view of these facts, it is far from clear that redundancy in copper-fiber networks is the best way to ensure emergency

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[49] *Verizon opening comments* at 38, and accompanying declaration (App. B), ¶ 29; *AT&T opening comment* at 32.

preparedness. Access to wireless phones and computer phones via Wi-Fi already provides significant redundancy.[50]

Thus, we do not find that the emergency preparedness issues, standing alone, merit rules prohibiting copper removal absent evidence that ILECs are currently engaged in such removal.

8. Cost Issues are Complex

In seeking parties' input on CALTEL's proposed rules, we learned that the ILECs and CALTEL have disparate views on who should pay to maintain the network, the costs involved and how to calculate them, and whether we should have CLECs purchase portions of the network the ILECs no longer need. We are well aware of the disputes that arose over cost and pricing of UNEs, both at this Commission and around the country.[51]

Evidence the parties submitted in this record indicates that any effort to determine the cost to an ILEC of preserving aspects of the copper network that it no longer needs could be equally difficult. CALTEL asserts that UNE pricing or special access rates for loops approximates the ILEC costs of maintaining a retired copper loop.[52] While Total Element Long Run Incremental Cost – the

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[50] Since 2001, California's largest ILECs have lost 25% of their embedded wireline customer base to broadband DSL and cable, as well as substitution of VoIP and wireless for wireline voice services. Wireless subscribership was 30.2 million in June 2007, or 82.7 percent of the state's population. Further, it is estimated that there are currently between 900,000 and 1.2 mission VoIP subscribers in CA. *See Residential Telephone Subscribership and Universal Telephone Service Report to the Legislature,* California Public Utilities Commission (June 2008), pp. 8-15.

[51] *See The Echoes of Forgotten Footfalls: Telecommunications Mergers at the Dawn of the Digital Millennium*, 43 Hous. L. Rev. 1311, 1330 (2007) ("For its part, TELRIC [the price CLECs ultimately were required to pay ILECs for UNEs] has a storied history.").

[52] *CALTEL Opening Comments* at p.10, 28.

UNE standard – might be the appropriate cost basis according to the CLECs, the ILECs certainly would dispute this methodology and assert that many other costs should be included in any price to competitors of maintaining a network the ILECs no longer use. The ILECs, for example, argue that the existing UNE prices for copper loops are based on the total element long run incremental cost (TELRIC) model, which represents the costs of building the most efficient forward-looking network and not the cost of replacing copper networks with more copper plant.[53] Further, neither CALTEL nor the ILECs expressed interest in having the Commission broker a purchase by competitors of copper facilities that the ILECs no longer need.

Thus, any proceeding on this topic could require extensive litigation on how to compute costs. We are reluctant to expend the substantial resources and time that would be required to take on this task without a clear showing of need. Instead, we believe that the process we set forth here will encourage the parties to negotiate privately to reach an agreement. To the extent that the parties do not reach an agreement, we will require the parties to participate in an arbitration either through a third party arbitrator, or at the Commission. If the parties do not agree on the forum for arbitration, the parties shall seek arbitration at the Commission.

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[53] *Verizon Opening Comments*, Appendix A at paras. 97-98 (noting that any pricing methodology that would apply to preservation of copper plant would need to account for the long run costs of replacing copper plant with new copper). Additionally, the ILECs note that once they begin to migrate more existing customers off copper plant, the “fill factor” for ILEC plant will be substantially lower with retired copper plant than for plant providing service to both ILEC and CLEC customers; therefore, the cost of providing UNEs on retired copper plant must reflect actual CLEC-only usage. *See Id.* at Appendix A at para. 100.

9. Comments on Proposed Decision

CALTEL, AT&T, Verizon, SureWest, the Small LECs, DRA, TURN and Integra filed comments and reply comments. Their points, and our responses, appear below.

First, several parties claim[54] that "ripeness" is technically a concept only applicable to adjudicatory cases. While the Commission has applied the ripeness principle in other contexts than adjudications – *see* D.01-07-009, declining to adopt rules in a rulemaking[55] – we modify the proposed decision to state that we have made a policy decision not to act at this time in the absence of evidence of actual or threatened harm and consistent with our state policies and the FCC's goals of encouraging broadband deployment. Such a decision is within our discretion. While CALTEL would like us to act "proactively,"[56] we are not required to do so, especially if we are not faced with evidence of customer or competitor harm.

Second, several parties claim the evidence of harm is greater than the decision indicates, or introduce new evidence they claim should prompt us to act now. CALTEL notes that "in the past six weeks" AT&T has expressed plans to install a copper-only network in Downieville and Watsonville, California, rather than the hybrid copper-fiber network AT&T told the Commission about and on which the proposed decision relies. However, CALTEL notes that "it appears

[54] *DRA opening comments* at 3-4; *CALTEL opening comments* at 4; *Integra opening comments* at 2; *TURN opening comments* at 2.

[55] 2001 Cal. PUC LEXIS 548, at *12-13, cited in the original proposed decision, in which we declined to establish rules regarding eight digit dialing in telecommunications context on ripeness grounds.

[56] See *CALTEL opening comments* at 9.

that no competitive carriers are directly impacted by these planned changes…."[57] Further, as we note in footnote 6, above, these changes were not copper replacements with FTTH or FTTC installation or part of a coordinated campaign to change copper to fiber, but came about in special circumstances where there is no evidence of harm to competitors or customers.

We are not persuaded by this new evidence that a problem exists requiring comprehensive new rules. We have, however, decided to require the ILECs to file concurrently with Commission's Communications Division and all CLECs that are interconnected with the ILECs, a copy of their FTTH or FTTC related copper retirement notices that are filed with the FCC. We are also establishing a process as discussed above, for the parties to negotiate with each other over the loop facilities; and arbitration either through a third party arbitrator, or at this Commission.

In this regard, DRA erroneously asserts that we are "tacitly allowing the ILECs to retire copper loops without any state oversight."[58] As discussed above, the FCC established a clear policy in the *TRO* not to prevent the ILECs from retiring copper loop when they deploy FTTH or FTTC facilities. We are reluctant to impose rules on the retirement of copper loops in light of the FCC's clear policies and in the absence of evidence of substantial and actual harm to competition or customers. Further, TURN claims the decision ignores its evidence that Verizon's practice regarding reinstallation of copper drops on customer request is "confusing, time-consuming and burdensome to customers

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[57] *Id.* at 11. CALTEL also refers to a change AT&T is making in Georgia, which is irrelevant here. *Id.* at 12.

[58] *DRA opening comments* at 10.

and very likely discourages customers from having Verizon complete the process to reinstall cooper drops that should not have been disconnected in the first place."[59] The proposed decision does not ignore that there is potential for harm to consumers from the replacement of copper loop and therefore states: "Were Verizon's practice to change and there were evidence, for example, that consumers were not able to switch back to copper-based service if they desired it, the case for action might be stronger." However, we have no specific evidence – from the parties or in our informal complaints - that Verizon has used its rules to prohibit drop replacement.

Third, the parties supporting rules continue to assert that the FCC rules are inadequate because they do not allow the FCC to prohibit copper removal,[60] but only contain procedural notice requirements. We note that the FCC in the *TRO* rules effectively provided notice to competitive carriers that unbundled copper loops may not be available indefinitely. The FCC's rationale for this policy was in part to increase facilities-based investment. Similarly, in California, Pub. Util. Code § 709 encourages the deployment of new technologies and services to meet customer need and encourage the ubiquitous availability of state-of-the-art services. We are also charged with increasing competition for video and broadband services under Pub. Util. Code § 5800 *et seq.* Although we believe that we have jurisdiction to review issues where there may be substantial, actual harm to customers or competition, we decline to establish rules that may interfere with these pro-investment policies.

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[59] *TURN opening comments* at 4.

[60] *See, e.g., Integra opening comments* at 4; *DRA opening comments* at 8; *TURN opening comments* at 6.

Fourth, the ILECs dispute the conclusion that the Commission has jurisdiction to promulgate rules in this area.[61] This issue was fully briefed, and we are satisfied with our conclusion that the Commission has jurisdiction.

Fifth, Verizon asserts that the process the proposed decision sets forth for parties to return to the Commission with evidence of actual harm is overly vague. It asks us to consider reopening of this proceeding only if a party can make a showing of significant, actual harm to the public interest that applicable law does not already anticipate and address. We have established a process for the parties to negotiate access to loop facilities in the event of copper retirement plans. In light of this process, we are eliminating language in the decision that previously suggested that we would reopen the proceeding if a party were to return to the Commission with further evidence of harm. Instead, we believe that our established process balances competing interests, while staying consistent with our state policies and the spirit of the FCC's *TRO*.

Sixth, TURN and DRA raise issues regarding our emergency preparedness discussion. We clarify that section with citations to the record and other minor wording changes.

Finally, several parties dispute the proposed decision's conclusion that cost issues could be complex and time-consuming. CALTEL, for example, reiterates its position that the ILECs bear no cost from retaining copper.[62] However, the ILECs strongly dispute this claim, and contend CLECs or others wishing to use

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[61] *AT&T opening comments* at 1-2; *SureWest opening comments* at 2; S*mall LECs' opening comments* at 2.

[62] *See also DRA opening comments* at 11.

copper facilities should bear full responsibility for those facilities' maintenance.[63] We stand by our prior conclusion that the cost issues are complex and could require a great deal of litigation.

We retain our initial conclusion rejecting CALTEL's proposed rules at this time. We will, however, require the ILECs to file concurrently with Commission's Communications Division a copy of their FTTH or FTTC related copper retirement notices that are filed with the FCC. ILECs must also serve copies of those notices on all CLECs that are interconnected with the ILECs, regardless of whether a CLEC is currently serving a customer on the copper loop. We establish a process for the CLEC to request negotiations for either the purchase of the copper loop, or negotiation for continued access to loop facilities. As discussed above, we also require the ILEC to negotiate in good faith with the CLEC. If negotiations do not result in an agreement, either party may file a request for arbitration either with a third party arbitrator or at this Commission. If parties cannot agree on the forum for arbitration, then the parties shall file for arbitration with the Commission.

10. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge in this proceeding.

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[63] *See, e.g., AT&T opening comments,* filed March 14, 2008, at 27.

Findings of Fact

1. Verizon is installing an all fiber network.
2. AT&T's U-Verse broadband network is a hybrid of copper and fiber.
3. No CLEC in SureWest's service territory obtains UNE loops from SureWest using copper plant.
4. The Small LECs are not building fiber optic networks to replace copper facilities, and have no CLECs leasing their lines.
5. No ILEC is currently permanently retiring copper loops in California.
6. Verizon's removal of copper drops is not permanent removal of copper loop facilities so long as it replaces such drop(s) upon request.
7. AT&T's actions to replace copper with fiber in Downieville and Watsonville, California, were not part of AT&T's U-Verse network or replacements with FTTH or FTTC facilities, but individual retirements not indicative of a strategy to remove copper facilities.
8. AT&T's actions to replace copper with fiber in Georgia relate to a Fiber to the Home overbuild in Georgia that predates the AT&T/Bell South merger.
9. Verizon's FiOS network and AT&T's U-Verse network are far from ubiquitous.
10. No party has made a showing of harm justifying the rules CALTEL proposes.
11. The Commission is addressing emergency preparedness issues related to fiber optic networks in a separate proceeding.
12. Customers who have switched to fiber-based service may not easily switch back to copper in an emergency.
13. Redundancy for emergency preparedness purposes exists, in part, via wireless services such as cellular service and Wi-Fi.

14. Cost issues regarding the copper network are complex and may take years to litigate.

15. The FCC has existing rules providing notice to and an opportunity to object from interconnected CLECs that may be adversely affected by ILEC copper facility removal.

Conclusions of Law

1. We have jurisdiction to impose rules regarding copper retirement.

2. It is this Commission's policy under Pub. Util. Code § 709 to promote the development and deployment of new technologies and the ubiquitous availability of a wide choice of state-of-the-art services.

3. The FCC adopted unbundling policies in the TRO to encourage swift and ubiquitous broadband deployment.

4. The extensive copper retirement rules proposed by CALTEL are not necessary.

5. We will require the ILECs to file concurrently with Commission's Communications Division a copy of their FTTH or FTTC related copper retirement notices that are filed with the FCC. The ILECs shall also serve these notices on CLECs that are interconnected with them, regardless of whether the CLEC is currently serving customers on the copper loop or not.

6. The process that we adopt for the ILECs and CLECs to negotiate with each other is consistent with the FCC's and our state's broadband policies, and competitively neutral.

7. The term "dispose of" in § 851 is broad enough to encompass copper loop retirements.

O R D E R

IT IS ORDERED that:

1. We decline to adopt the rules proposed by California Association of Competitive Telecommunications Companies (CALTEL) in this proceeding on the ground that such rules are not necessary.

2. If an Incumbent Local Exchange Carrier (ILEC) seeks to retire a copper loop with fiber-to-the-home or fiber-to-the-curb facilities, the following process shall apply within the 90 days that follows the ILEC's decision to retire a copper loop:

   a. The ILEC shall file concurrently with Communications Division a copy of its notice of network change that it files with the FCC pursuant to 47 C.F.R. 51.333 when that copper loop is being used by a CLEC. The ILEC shall serve at the same time the notice on all CLECs that are interconnected with the ILEC, regardless of whether a CLEC is currently serving a customer on that loop or not.

   b. A CLEC that is interconnected with the ILEC shall file with Communications Division a copy of any objection that it files to a proposed copper retirement with the FCC under 47 C.F.R. 51.333(c).

   c. Any CLEC that seeks to use that copper loop shall provide to the incumbent carrier within 20 days of the FCC notice a request for negotiations either to purchase or lease the loop facilities and file a copy of its request with the Communications Division. The CLEC shall include in its request for negotiations the following information:

      i) Whether the CLEC seeks to purchase the copper loop, or whether the CLEC seeks only to maintain access to a loop;

      ii) the number of customers on the copper UNE;

      iii) the services that the CLEC provides over the loop;

iv) the number of UNEs that the CLEC currently purchases

d. Upon receipt of the CLEC's request for negotiations, the ILEC shall negotiate in good faith with the CLEC for a period of 30 days either to:

   i) sell the copper loop to the CLEC; or

   ii) reach a fair and equitable agreement with the CLEC on price and terms to ensure access to loop facilities.

e. If the parties are unable to reach an agreement by the end of 30 days, either party may seek arbitration either through a private third party arbitrator, or through arbitration with the CPUC, setting forth the facts surrounding the failed negotiations. If parties cannot agree on the forum for arbitration, then the parties shall file for arbitration with the Commission. If arbitration is sought at the CPUC, the arbitrator will establish a schedule for the parties and will arbitrate the dispute between the parties within 40 days of the request for arbitration. The Commission shall not issue any decision approving either the decision of the third party or Commission arbitrator.

3. Rulemaking 08-01-005 is closed.

This order is effective today.

Dated ____________________________, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a hard copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the hard copy of the filed document is current as of today's date.

Dated October 3, 2008, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo