

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of the California Association of
Competitive Telecommunications Companies
Pursuant to Public Utilities Code Section 1708.5
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.

Petition 07-07-009
(Filed July 12, 2007)

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 _____

TABLE OF CONTENTS

Title	Page
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 SERVICES	2
1. Summary	2
2. Procedural Background	3
3. Parties' Positions	5
A. CALTEL	5
B. ILECs	7
C. Other Parties	8
4. Discussion	9
A. We Are Not Preempted From Acting	10
B. Commission Rule 6.3(F) Does Not Bar This Rulemaking	12
C. Issues to Be Considered	13
5. Preliminary Scoping Memo	14
A. Service List for the Proceeding	15
B. Requirements for the Filing and Service of Documents	16
6. Ex Parte Communications	17
7. Waiver of Comment Period	17
8. Assignment of Proceeding	17
Findings of Fact	17
Conclusions of Law	18
Appendix A - Preliminary Scope of Issues to be Addressed in this Rulemaking	
Appendix B – CALTEL’s Proposed Rules Governing the Retirement of Copper Facilities	
Appendix C – List of Incumbent Local Exchange Carriers and Competitive Local Exchange Carriers	

**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 SERVICES**

1. Summary

By this order, we grant the California Association of Competitive Telecommunications Companies (CALTEL) petition, captioned above, subject to the scope and schedule outlined herein. CALTEL asks the Commission to open a proceeding to consider whether we should adopt substantive or procedural rules related to local telephone carriers' retirement of copper telephone wiring.

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 companies (CLECs) and consumer groups raise questions about whether this Commission should impose rules to preserve those facilities in the interests of facilitating competition. We are concerned here with examining incumbent local exchange companies' (ILECs') permanent removal or retirement of copper facilities in the "local loop," located between the ILECs' central offices and customers' homes and businesses.¹

Our goal in this proceeding is first to determine whether this Commission can or should impose rules governing such permanent removal or retirement of copper facilities in the local loop. If we determine such rules are appropriate, we will examine whether they should be procedural or substantive or both. Procedural rules might require ILECs to give notice of removal via an

¹ As noted below, we include in our definition of the local loop the "drop" line that attaches underground or overhead telephone facilities to individual customer premises.

informational filing with the Commission, and afford those receiving notice the opportunity to take certain action in response by a certain time period. Such rules would not, however, prohibit ILECs from permanently removing or retiring copper plant altogether.

We may, on the other hand, decide that maintenance of the current copper network is essential to ensure adequate access to emergency services particularly during an electrical power outage as well as to ensure adequate access to and competition in the market for high speed communications services. If such a path was taken, our rules might prohibit, in some circumstances, permanent removal of copper loops. In such a scenario however, we may also need to determine who would bear the costs of maintaining the copper plant if ILECs no longer need it to serve their own customers due to replacement by fiber.

This rulemaking is not intended to second guess the Federal Communications Commission's (FCC) decision that ILECs need not share fiber optic local loops and related facilities with CLECs. The FCC has determined that ILECs need not provide CLECs unbundled access to any portion of their fiber optic facilities, because CLECs are not impaired in their access to such facilities² except with respect to narrowband, voice-grade services.³

2. Procedural Background

On July 12, 2007, CALTEL filed its petition pursuant to Pub. Util. Code § 1708.5 to institute a rulemaking on whether the Commission should adopt,

² A CLEC is "impaired" in its access to parts of the ILEC network when lack of access to that part of the network poses a barrier or barriers to entry, including operational and economic barriers, which are likely to make entry into a market uneconomic.

³ ILECs do sell special access services out of their tariffs to CLECs. This rulemaking does not involve such services.

amend, or repeal regulations governing the retirement by incumbent local exchange carriers of copper loops and related facilities used to provide telecommunications services. Section 1708.5 authorizes “interested persons to petition the commission to adopt, amend, or repeal a regulation.” Pursuant to § 1708.5, the Commission considers the petition and, within six months, either denies the petition or institutes a proceeding to adopt, repeal or amend the regulation.

Several parties filed responses to the petition on August 13, 2007, and filed replies on August 22, 2007. Parties indicating support for the petition are the Commission's Division of Ratepayer Advocates (DRA),⁴ The Utility Reform Network (TURN), and the United States Department of Defense/ All Other Federal Executive Agencies (DOD/FEA). Parties in opposition are AT&T/Pacific Bell Telephone Company (AT&T), Verizon California Inc. (Verizon), SureWest Telephone Company (SureWest), and a group of small incumbent local exchange carriers (Small LECs). We describe the parties’ positions below.

By ruling dated September 14, 2007, the assigned Administrative Law Judge (ALJ) sought additional information about copper loop retirements. The parties responded on October 4, 2007. The ALJ held a Prehearing Conference on October 5, 2007, during which time she sought additional factual information and gave the parties an opportunity to respond to the October 4, 2007 responses. The parties filed responsive information and argument October 16, 2007 and replies on October 19, 2007.

⁴ DRA filed in support of the petition on October 16, 2007. The other referenced parties filed in support or opposition during the initial comment round in August 2007.

We have reviewed parties' comments and responses noted above and take them into account in preparing this order. We have considered the merits of arguments both in favor and against the petition. We provide further procedural direction in the scoping and scheduling section of this order.

3. Parties' Positions

3.1. CALTEL

CALTEL asserts that copper telecommunications facilities (including loops, subloops, feeder facilities and "drops," as defined below) are or will soon be used for an array of advanced, high-speed communications services including Digital Subscriber Line (DSL), high-definition video, video on demand, voice over Internet protocol, and "Ethernet over copper." CALTEL argues that if the ILECs that own the copper decide to remove or retire copper facilities, competitors will be unable to use the facilities to offer high-speed services that compete with ILECs' services. CALTEL points out that competitors will not have access to substitute fiber facilities that the ILECs install in place of copper, because the Federal Communications Commission (FCC) has ruled that when ILECs replace copper with fiber optic cable, ILECs are not required to give competitors access to fiber to provide high speed services. The only portion of fiber that ILECs must share is the narrowband portion that facilitates voice-grade telephone service.

CALTEL therefore asks that we develop two types of rules governing ILEC retirement of copper facilities. First, it asks for procedural rules that would set forth a process which the ILECs must follow before removing copper plant. Second, CALTEL seeks substantive rules that would restrict ILECs from retiring or permanently removing copper facilities under certain circumstances.

CALTEL asserts that in its TRO order,⁵ the FCC explicitly left open for state commission consideration the adoption of rules governing the retirement of copper facilities:

We 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.⁶

Thus, CALTEL asserts, 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. CALTEL asks us to act on its petition at the earliest possible time.

CALTEL also asserts that leaving copper in the network provides redundancy necessary during natural and man-made disasters and other outages. The copper-based network has its own source of electricity emanating from the central office, they maintain, and therefore provides security in an era where disasters seem to be ever more prevalent.

⁵ *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).

⁶ *Id.* ¶ 284.

3.2. ILECs

The ILECs oppose the petition on several grounds. First, they⁷ claim the FCC has already adopted adequate procedural rules for giving notice of copper plant retirement and, further, that additional rules would run counter to FCC precedent. The ILECs note that the FCC is already considering a similar petition and that comity dictates that we wait for the FCC to act. Concurrent with these arguments, they assert that the FCC has precluded states from granting competitive carriers access to fiber optic facilities, and that by considering rules to prohibit removal of copper facilities, we would be making an end run around those FCC restrictions.

Second, the ILECs question the need for rules governing permanent removal or retirement of copper facilities, stating that both the FCC and this Commission have expressed a preference for facilities-based competition. They argue that requiring ILECs to retain all copper loops so that competitive carriers have access to them will forestall installation of competitive facilities.

Third, the ILECs maintain that they are not removing copper loops, and therefore assert that rules are unnecessary. While Verizon removes “drops” leading from its outside plant (poles or underground conduit) to the network interface device (NID) on the side of the home to facilitate installation of its new fiber optic network named FiOS, it will replace the drop if the customer so requests.⁸ The “drop” is not part of the local loop, Verizon asserts. It is not

⁷ Each of the positions stated here is raised by one or more ILECs, but not all ILECs raise the same issues.

⁸ Certain parties dispute Verizon’s claim that it always replaces the drops, and we have included this factual issue within the scope of this rulemaking.

retiring any part of the local loop except in “rare circumstances” that do not warrant our intervention, and has no current plans for mass retirement of facilities.

AT&T, SureWest and the Small LECs also assert that CALTEL’s petition is a solution in search of a problem, as they are not retiring copper loops, and have no current plans to do so.

Fourth, the ILECs question the mechanics of any rule that requires that they leave copper facilities in the network. If they migrate away from such facilities and no longer need them, they question who will pay the substantial sum necessary to maintain such the facilities.

Fifth, the ILECs disagree fundamentally with CALTEL’s claim that the copper network enhances security in the event of disaster or other outage. Most fiber and copper facilities occupy the same space underground or on poles, and therefore an outage affecting the fiber network would also take copper facilities out of service. Thus, they maintain, even if they were removing the copper network, it would have no discernable effect on safety or security.

Finally, the ILECs maintain that our rules governing Petitions for Rulemaking prohibit us from opening a rulemaking if we have acted on the same issues within a year of the petition’s filing. We address this issue below, but disagree that we are barred from taking the present action.

3.3. Other Parties

TURN, DRA and DOD/FEA all support CALTEL’s petition. TURN states that the current FCC process for ILEC retirement of copper facilities merely requires notice, with little opportunity for meaningful protest. TURN asserts that removal of copper to the home by ILECs has the practical effect of depriving consumers of competitive alternatives. TURN also agrees with CALTEL that

copper facilities provide important redundancy and a reliable telecommunications option for consumers in the event of power disruptions.

DRA states that even if the ILECs claim they are generally not retiring copper facilities for fiber replacement in California now, and state they intend no retirement in the future, the Commission should act proactively to address future ILEC retirement, abandonment and/or removal of copper now. DRA points out that answers provided by ILECs to questions by the ALJ at the Prehearing Conference blur the difference between “retirement” and “removal” of copper facilities, and that we should inquire into both activities in this proceeding. DRA also notes that because Verizon does not consider removal of copper “drops” (as described above) to be retirement of copper loops, we should explicitly include those facilities in our definition of retirement/removal of copper loops.

The DOD/FEA state that a rulemaking as CALTEL proposes should enhance competition for advanced services and that as a large customer in California, the DOD/FEA will benefit from such competition. DOD/FEA also asserts that most of the ILECs’ opposition to CALTEL’s petition is premature, as they are in large part arguing against the substance of CALTEL’s proposals rather than the propriety of exploring those proposals by rulemaking. The DOD/FEA urge us not to deny CALTEL’s petition merely because a similar petition is pending before the FCC, especially since, according to DOD/FEA, it is this Commission that can best protect the interests of California’s customers.

4. Discussion

For the reasons set forth below, we conclude that the petition for Rulemaking should be granted. We intend to examine three principal issues in this rulemaking: 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.

We agree with DOD/FEA's point that our decision to open a rulemaking does not decide its outcome. We believe CALTEL's petition raises important issues for our consideration, but we cannot predict the outcome of this examination, or whether we will adopt rules binding the parties.

4.1. We Are Not Preempted From Acting

The FCC did not preempt state commissions from adopting rules governing ILEC retirement of copper plant. Instead, the FCC anticipated that states might take action: "We expect that the state review process, working in combination with the Commission's network disclosure rules noted above, will address the concerns ... regarding the potential impact of an incumbent LEC retiring its copper loops."⁹

⁹ TRO ¶ 284.

Nor does the pendency of a petition before the FCC preclude us from acting. The FCC petition has been pending since January 2007 and the comment cycle concluded in April 2007,¹⁰ and there is no indication of when – or if – it will act. Further, the FCC already has rules on the subject – despite the fact that CALTEL believes them inadequate – so there is little indication that it will act to change those rules in the near term.

The current FCC rules require the ILEC to provide notice of any copper retirement. Among other things, the notice must include the planned date for retiring a copper loop and a description of the reasonably foreseeable impact of the planned changes. The FCC found that “[s]uch notifications will ensure that incumbent and competitive carriers can work together to ensure the competitive LECs maintain access to loop facilities.”¹¹ CLECs are allowed to file objections to the ILEC’s notice of copper loop retirement, but the FCC cautioned that unless the copper retirement scenario suggests that competitors will be denied access to the loop facilities required under its rules, the objection will be denied, unless the FCC rules otherwise based on the specific facts and circumstances of the case.

We are not countermanding the FCC’s determination that the ILECs have no obligation to provide competitors access to unbundled network elements

¹⁰ See *Petition for Rulemaking and Clarification of BridgeCom International, Inc., Broadview Networks, Inc., Cavalier Telephone LLC, et al.*, RM-11358 (filed Jan. 18, 2007); *Petition of XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom Inc.*, RM-11358 (filed Jan. 19, 2007).

¹¹ *In the Matter of Review of the Section 251 Unbundling Requirements of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147, *Report and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 19,020, FCC 03-36 (rel. Aug. 21, 2003), *modified on recon.*, *In the Matter of Unbundled Local Exchange Carriers, Order on Remand*, 20 FCC Rcd 2533, FCC 04-290 (rel. Feb. 4, 2005) (“TRRO”), ¶ 282.

(UNEs) on their fiber facilities (other than the 64 kilobits per second narrowband portion necessary for voice grade service). We acknowledge that the FCC has determined that ILECs need not offer unbundled access to Fiber to the Home (FTTH) loops in new deployments (referred to as “greenfield” construction projects), for either narrowband or broadband services, and that in overbuild situations, where the ILEC constructs fiber transmission facilities parallel to or in replacement of existing copper plant, CLECs are not impaired in their ability to provide broadband services without access to ILEC FTTH loops.¹²

4.2. Commission Rule 6.3(F) Does Not Bar This Rulemaking

Verizon and AT&T assert that the Commission is barred from opening this rulemaking by Rule 6.3(f) of the Commission’s Rules of Practice and Procedure (Rules), which states that “The Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months.” Verizon and AT&T assert that because we stated in Decision (D.) 06-01-043 that we would not create a rule regarding the retirement of copper loops, we cannot address the issue here. However, we issued D.06-01-043 in January 2006, more than 12 months ago. While we addressed the extent of Verizon's obligation to share *fiber* loops on rehearing in D.07-02-034 (in February 2007), we have not, in the past 12 months, examined whether to adopt substantive or procedural rules relating to ILEC removal of *copper* loops or related plant.

Even if we had addressed the issue comprehensively in the last 12 months, Rule 6.3(f) does not bar the Commission from opening the present rulemaking.

¹² *Id.*, ¶¶ 275-76.

Pub. Util. Code § 1708.5, on which Rule 6.3(f) is based, states that we are entitled to open a notice and comment rulemaking at any time.

In opening this rulemaking, we do not prejudge whether we should develop substantive or procedural rules governing copper plant replacement or retirement. We recognize, however, that the questions the petition raises warrant careful consideration, given the ubiquity of copper facilities and their continued usage to provide today's – and potentially tomorrow's – telecommunications services.

4.3. Issues to Be Considered

We seek the parties' input on several issues, as set forth in Appendix A to this decision. Generally, we ask the parties to indicate what independent state authority we have to implement substantive or procedural rules; to comment specifically on CALTEL's proposed rules (included with this order as Appendix B), even if they oppose adoption of any rules; to propose their own rules if they disagree with CALTEL's proposal; to address how copper facilities should be maintained if ILECs no longer need them for their own service; and to address the redundancy and safety issues CALTEL raises and the ILECs refute.

Parties have already provided us some information on the amount, type and usage of copper telecommunications facilities in the field; the extent of removals or retirement; the extent to which facilities that are removed may be replaced; the cost to maintain existing facilities; who should bear such cost; and

related matters.¹³ Parties may simply reproduce those responses if they are germane to any of the comments they provide on this OIR.

5. Preliminary Scoping Memo

This proceeding will be conducted in accordance with Article 7 of the Commission's Rules of Practice and Procedure. Pursuant to Rule 7.3, this order includes a preliminary scoping memo as set forth below. Pursuant to Rule 7.1(d), we preliminarily determine the category of this proceeding to be quasi-legislative as the term is defined in Rule 1.3(d).

Hearings may be required to examine factual issues regarding the amount, type and usage of copper telecommunications facilities in the field; the extent of removals or retirement; the extent to which facilities that are removed may be replaced; the cost to maintain existing facilities; who should bear such cost; and related matters. In Appendix A of this order, we provide a more abbreviated summary of the issues to be addressed. In Appendix B we include the CALTEL proposal. In commenting on the issues, parties should organize their comments in the order of questions presented in Appendix A. Any party who believes that a hearing is required in this rulemaking should, in its comments, identify and describe (1) material issues of fact and (2) the evidence the party proposes to introduce at the requested hearing.

Other parties will have the opportunity to comment on the necessity of hearings, and we may re-evaluate both the categorization and need for hearings after review of the comments.

¹³ Parties filed responses on October 4, 2007, October 16, 2007 and October 19, 2007, which are available on the electronic docket card for this proceeding at <http://www.cpuc.ca.gov/proceedings/P0707009.htm>.

Comments on the matters raised in this OIR and Appendix A will be due on or before 60 calendar days after the date of issuance of this OIR. Reply comments will be due on or before 30 calendar days after the date for filing initial comments. Any party filing comments shall also indicate any objections regarding (1) the determination that there may be a need for hearings, and (2) the preliminary scope and timetable for this proceeding as described in this order. Parties should also include any proposed adjustments to the schedule and scope we propose here. We anticipate that the assigned Commissioner and ALJ will set other dates, with the goal of concluding this proceeding within 18 months.

5.1. Service List for the Proceeding

This order shall be served on the service lists that received the original Petition 07-07-009. A new service list will thereafter be created for the proceeding pursuant to the following process. CALTEL and other parties that filed responses and/or replies to the petition shall be added to the service list as parties.

Any additional person or entity not on the service list but who is interested in becoming a party should send a request to the Commission in accordance with the procedure set forth in the Ordering Paragraphs below.

Individuals or entities seeking only to monitor the proceeding, but not to participate as active parties, should contact the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California, 94102 either by letter or by e-mail to: process_office@cpuc.ca.gov, asking to be placed on the "Information Only" section of the service list. The official service list will be posted on the Commission's web site, www.cpus.ca.gov, as soon as possible.

Persons on the service list should notify the Process Office of any subsequent address changes or if they wish to be removed from the list. Any

other problems or questions about the service list after it is posted on the Commission's web site should be brought to the attention of the assigned ALJ. The service list will be updated in accordance with the described procedures, consistent with Rule 2.3.

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor's Office in Los Angeles at (213) 576-7055, (866) 849-8390 (toll free) or in San Francisco at (415) 703-2074, (866) 849-8390 (toll free), or (866) 836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

5.2. Requirements for the Filing and Service of Documents

There are different types of documents participants may prepare in this proceeding. Each type of document involves different obligations with respect to filing and service. Parties must file certain documents as required by the Rules or in response to rulings by the assigned Commissioner and/or the ALJ. All formally filed documents must be filed with the Commission's Docket Office and served on the service list for the proceeding. Article 1 of the Rules contains the Commission's filing requirements. Resolution ALJ-188 sets forth the interim rules for electronic filing, which replaces only the filing requirements, not the service requirements. Parties are encouraged to file electronically whenever possible as it speeds processing of the filings and allows them to be posted on the Commission's website. More information about electronic filing is available at <http://www.cpsc.ca.gov/efile/static.htm>.

Other documents, including prepared testimony, if any, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules for all documents, whether formally filed or just served. This Rule

provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, e-mail service shall be made concurrently on ALL persons on the service list for whom an e-mail address is available, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

Any e-mail communications about this proceeding should include the docket number and a brief description of the topic of the communication in the subject line. Paper format copies, in addition to electronic copies, shall be served on the Assigned Commissioner and the ALJ.

6. Ex Parte Communications

Ex parte communications are governed by Rule 8.2(a).

7. Waiver of Comment Period

Pursuant to Rule 14.7(a)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

8. Assignment of Proceeding

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

Findings of Fact

1. On July 12, 2007, CALTEL filed its petition pursuant to Pub. Util. Code § 1708.5 to institute a rulemaking on whether the Commission should adopt, amend, or repeal regulations governing the retirement by incumbent local exchange carriers of copper loops and related facilities used to provide telecommunications services

2. It is reasonable to institute a rulemaking regarding rules governing retirement or other removal of copper telecommunications facilities.

Conclusions of Law

1. Pursuant to Pub. Util. Code § 1708.5, the Commission has authority to consider a petition requesting the initiation of a rulemaking into whether the Commission should adopt rules governing the retirement or other removal of copper telecommunications facilities.

2. The petition which is the subject of this order should be granted to the extent set forth herein.

3. A rulemaking should be initiated to consider whether the Commission should adopt, amend, or repeal regulations governing the retirement or other removal by incumbent local exchange carriers of copper loops (including copper “drops” as defined above) and related facilities used to provide telecommunications services.

O R D E R

IT IS ORDERED that:

1. The California Association of Competitive Telecommunications Companies (CALTEL) petition for the Commission to institute a rulemaking to consider whether the Commission should adopt, amend, or repeal regulations governing the retirement or other removal by incumbent local exchange carriers of copper loops (including copper “drops” as defined above) and related facilities used to provide telecommunications services is granted to the extent set forth in this order.

2. A rulemaking on the Commission's own motion into considering substantive and procedural rules governing retirement and removal from service of copper telecommunications plant, as set forth in this order, is hereby initiated.

3. The issues to be considered in this proceeding are set forth in the Preliminary Scoping Memo and summarized in Appendix A of this OIR.

4. An initial service list for this proceeding shall be created by the Process Office and posted on the Commission's website (www.cpuc.ca.gov) as soon as it is practicable. We direct the Process Office to add all parties that responded or replied to the petition as appearances.

5. After the initial service list is established, other additional persons or entities who wish to be placed on the new service list shall follow the directions below.

- (a) Party category. Those who wish to participate in this proceeding as a party must contact the assigned administrative law judge in writing, by email (srt@cpuc.ca.gov) or at CPUC, 505 Van Ness Avenue, San Francisco, CA 94102 and describe their interest in the proceeding, indicate how the person or entity intends to participate, and list all relevant contact information (name; person or entity represented; mailing address; telephone number; and email address).
- (b) Information-only category or state-service category. Those who intend only to monitor this proceeding, must contact the Commission's Process Office in writing, by email at (Process_Office@cpuc.ca.gov) or at CPUC, Process Office, 505 Van Ness Avenue, San Francisco, CA, 94102), specify the service category desired and list all relevant contact information (name; person or entity represented; mailing address; telephone number; and email address).

6. The category of this rulemaking is preliminarily determined to be "quasi-legislative" as defined in Rule 1(d) of the Commission's Rules of Practice

and Procedure. Pursuant to Rule 7.6, any party may file and serve an appeal of categorization no later than 10 days from the date of issuance of this OIR.

7. All parties shall abide by the Commission's electronic service rules contained in Rule 2.3.1 of the Commission's Rules of Practice and Procedure.

8. It is preliminarily determined that hearings are necessary.

9. Comments are hereby solicited regarding issues identified for the proceeding as set forth in the Scoping Memo section of this order and summarized in Appendix A. Comments shall be due on or before 60 calendar days after the date of issuance of this OIR. Reply comments shall be due 30 calendar days after initial comments are filed.

10. The due dates for subsequent comments, if any, shall be set by assigned Commissioner and/or assigned Administrative Law Judge (ALJ) ruling at a later date.

11. The schedule for this proceeding is preliminarily approved and adopted, but may be changed, if necessary, by an assigned Commissioner Ruling or an ALJ Ruling.

12. This order shall be served on the service lists that were served with Petition 07-07-009 and shall also be served on all Incumbent Local Exchange Carriers and Competitive Local Exchange Carriers under the jurisdiction of this Commission as shown on Appendix C.

13. Petition 07-07-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

Preliminary Scope of Issues to be Addressed in this Rulemaking

A. Applicable State Law, Rules or Procedure

- 1) Assuming we decide that in certain cases we should, as the FCC noted, “evaluate an incumbent LEC’s retirement of its copper loops to ensure such retirement complies with any applicable state legal or regulatory requirements,” what applicable state legal or regulatory requirements govern such evaluation?

In its petition, CALTEL cites Public Utilities Code §§ 709 and 709.5.

Section 709 sets forth the California Legislature's policies for telecommunications. Those policies promote the development, deployment, and wide-spread availability of high-quality telecommunications services. Section 709.5 expresses the Legislature's intent to open telecommunications markets to competition by January 1, 1997 and to ensure that competition in the telecommunications markets is fair and that the state's universal service policy is observed. CALTEL also cites Section 851, which requires a public utility to receive Commission approval before disposing of any of its property, and Section 701, which gives the Commission authority to “do all things . . . which are necessary and convenient in the exercise of [its] power and jurisdiction.”¹⁴

- 2) What does the following quoted FCC passage allow us, as a state commission, to do?:

We 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

¹⁴ AT&T, among other ILECs, asserts that none of these provisions gives us state authority to impose rules that are broader than those already imposed by the FCC.

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.

B. Procedural Rules

- 1.) Comment on the procedural rules CALTEL proposes, attached hereto as Appendix B, even if you disagree that we should adopt any such rules. CALTEL should file comments explaining each provision of its proposed rules, and why such provisions are necessary. Other parties may respond to CALTEL's explanation in reply comments.
- 2.) If you propose a different set of rules from those CALTEL proposes, furnish those proposed rules. Explain each provision of such rules and why such provisions are necessary.

C. Substantive Rules

- 1.) Under what circumstances should ILECs be precluded from permanently removing or retiring copper loops (including copper drops) and related facilities, and why?
- 2.) If ILECs are precluded from retiring any such facilities, who will maintain the facilities, and who will bear the cost of such maintenance?
- 3.) Are there any circumstances under which the Commission could allow third parties (*i.e.*, parties other than ILECs) to purchase, lease or otherwise take responsibility for copper loops and related facilities? How should the cost of retired copper loops be determined?
- 4.) What factors should we consider in differentiating between facilities that may be removed, if any, and facilities that must be maintained, if any?
- 5.) How many drops have been removed in California? Of those, how many have been replaced on request? If any drops have not been replaced on request, describe the circumstances.

D. Safety and Redundancy

- 1.) Does removal of copper loops pose any safety concerns? Note that the Commission is currently examining portions of this issue in another rulemaking, R.07-04-015. Should we develop rules in this proceeding, or rely on any part of the R.07-04-015 record in resolving the issues posed here?

(END OF APPENDIX A)

APPENDIX B
CALTEL's Proposed Rules Governing the Retirement of Copper Facilities

- (a) Prior to retiring¹ any copper facility² in connection with the installation of a fiber-to-the-home loop, a fiber-to-the-curb loop, or fiber feeder plant serving the customer premises served by the copper facility, an incumbent local exchange carrier (ILEC) shall file an Application with the Commission seeking approval of the planned retirement.
- (b) In addition to complying with Rules 2.1-2.7, the application shall contain the following:
 - (1) A description of the service area, including geographic area, population and general character (*i.e.* whether a business or residential community) currently served by the copper facilities that the ILEC intends to retire;
 - (2) The date that the ILEC intends to retire the copper facilities and the physical location of the copper facilities the ILEC intends to retire;
 - (3) The name of any other carrier or carriers providing telephone service to the service area described in subparagraph (1);
 - (4) A description of any previous retirement of copper facilities serving the service area are affected by the application, which the applicant has requested during the 12 months preceding the date of filing the application, and whether such application was approved by the Commission;

¹ The term "retiring" as used herein includes, without limitation, both physical removal of the copper facility at issue as well as network modifications or lack of maintenance which make copper facilities unable to be used to provide telecommunications services.

² Copper facility as used in these rules is defined as the copper loop, copper subloop, copper feeder plant, or related copper facilities.

- (5) A statement of any present plans for future retirement (*i.e.* retirement other than that for which authority is sought in the present application) of copper facilities in the community affected by the application; and
 - (6) Any other information that the Commission may require.
- (c) The Application shall be verified by a corporate officer of the applicant.
- (d) Each application for retirement of copper facilities shall be accompanied by a statement showing:
 - (1) how the grant of the application will serve the public interest, convenience and necessity, and
 - (2) how the grant of the application will affect the ability of other service providers to compete with the applicant; and
 - (3) what affect, if any, the grant of the application, will have on consumers located in the geographic area described in (b)(1).
- (e) In its review of the application, the Commission shall presume that retirement of copper facilities does not serve the public interest, convenience and necessity. The applicant may rebut such presumption by a showing that retirement of the subject copper facilities:
 - (1) Serves the public interest, convenience and necessity; and
 - (2) Is necessary to deploy fiber-to-the-home or fiber-to-the-curb loops or fiber feeder plant to the end user customer premises that currently is served by the existing copper facilities; such that deployment of fiber-to-the-home and fiber-to-the-curb loops, or fiber feeder plant to such customer premises would not be possible if the subject copper facilities were maintained.
- (f) As set forth in Rule 2.6, any interested party may protest an application filed pursuant to this rule within 30 days following the first appearance of the Application in the Commission's Daily Calendar. Such protest shall contain specific allegations to show that a grant of the application would be inconsistent with the public interest, convenience and necessity or is not necessary to permit deployment of the fiber facilities described in the application. Such allegations of fact shall, except for those of which official notice may be taken, be supported by an affidavit of a person or persons with

personal knowledge thereof. The applicant may file a response to any protest within 15 days of the filing of the protest. By leave of the Presiding Officer, the protestant may file a reply to such response within 15 days of the filing of the applicant's response.

(END OF APPENDIX B)

APPENDIX C
List of Incumbent Local Exchange Carriers and
Competitive Local Exchange Carriers

[P0707009/R_____ Thomas Agenda Dec Attach C1](#)

[P0707009/R_____ Thomas Agenda Dec Att C2](#)