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

May 11, 2010

TO: ALL PARTIES OF RECORD IN RULEMAKING 09-05-006

Decision 10-05-019 is being mailed without the Concurrence of Commissioner Timothy Alan Simon. The Concurrence will be mailed separately.

Very truly yours,

/s/ JANET A. ECONOME for
Karen V. Clopton, Chief
Administrative Law Judge

KVC/tcg

Attachment

Decision 10-05-019 May 6, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own Motion into the Exemption From Pub. Util. Code § 851 for Uniform Regulatory Framework and other Competitive Carriers.	Rulemaking 09-05-006 (Filed May 7, 2009)

PHASE I DECISION GRANTING EXEMPTION FOR CERTAIN TELECOMMUNICATIONS CARRIERS FROM COMPLIANCE WITH SECTION 851 OF THE PUBLIC UTILITIES CODE IN CONNECTION WITH THE DISPOSITION OF NONCONTROVERSIAL ASSETS

In this decision, we complete the first phase of this proceeding, as that phase was defined in the Scoping Memo issued on November 9, 2009.[1] Consistent with the intention stated in the Scoping Memo, we hereby grant an exemption from compliance with Pub. Util. Code § 851[2] with respect to the

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[1] *Assigned Commissioner's Ruling and Scoping Memo on Phase I of Proceeding*, issued November 9, 2009. Hereinafter, this ruling will be referred to as the "Scoping Memo."

[2] Section 851 concerns dispositions or encumbrances of utility property and provides in pertinent part:

> A public utility . . . shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its . . . line, plant, system, or other property necessary or useful in the performance of its duties to the public . . . without first either having secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars ($5,000,000), or for qualified transactions valued at five million dollars ($5,000,000) or less, filed an advice letter and obtained a resolution from the commission authorizing it to do so . . .

Footnote continued on next page

disposition of certain non-controversial assets (as defined below) by California telecommunications carriers subject to the Uniform Regulatory Framework set forth in Decision 06-08-030. The exemption we are granting today will not, however, apply to asset dispositions by incumbent local exchange carriers that must still file general rate cases. Such incumbent local exchange carriers will remain subject to § 851.

The exemption granted in this decision will last for four years, at the end of which time we will reexamine, at the request of any party to this proceeding, whether the exemption has served its purpose and should be continued, or has not achieved its purpose and should be terminated. In addition, we will require each carrier subject to the Uniform Regulatory Framework and relying on the § 851 exemption granted herein to file an annual report with the Director of our Communications Division setting forth a summary of the asset sales and dispositions for the prior year to which the § 851 exemption has applied. The Director will post this annual report on the Commission's website.

1. Background

1.1. The OIR and the Parties' Comments

The Commission issued the Order Instituting Rulemaking (OIR) in this proceeding on May 7, 2009. The OIR stated that the purpose of the rulemaking was to consider exemptions from the requirements of Pub. Util. Code § 851 for specific actions by California telecommunications carriers subject to the Uniform Regulatory Framework (URF). The OIR also stated, however, that the proposed

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On March 2, 2010, the Commission issued Resolution ALJ-244, which implements changes to the § 851 advice letter process made by Assembly Bill (AB) 698, which became effective on January 1, 2010.

exemptions would not apply to incumbent local exchange carriers (ILECs) still required to file general rate cases (GRCs). The OIR continued that as part of the inquiry into whether exemptions from § 851 were appropriate for certain dispositions of property by URF carriers, the rulemaking would also consider whether any conditions should be placed on such exemptions pursuant to Pub. Util. Code § 853(b).[3]

After setting forth a history of the various exemptions from § 851 that the Commission has granted to telecommunications carriers, the OIR set forth a list of eight specific issues, invited affected parties to submit comments and proposals on these issues, and proposed a preliminary schedule for the proceeding. (OIR at 7-10.)

Pursuant to the schedule outlined in the OIR (as modified by a ruling issued on May 22, 2009),[4] the parties filed their opening comments and proposals on June 26, 2009. The parties filing such comments and proposals

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[3] Pub. Util. Code § 853(b) provides in full:

> The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.

[4] The May 22, 2009 joint ruling issued by the assigned Commissioner and the assigned Administrative Law Judge (ALJ) revised the schedule set forth in the OIR to provide for the filing of opening comments and proposals on June 26, 2009, the issuance of a scoping memo on July 24, 2009, and the filing of reply comments and proposals on August 21, 2009.

consisted of Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Verizon California Inc. and its certificated California affiliates (Verizon), the Division of Ratepayer Advocates and The Utility Reform Network (DRA/TURN), the California Association of Competitive Telecommunications Companies (CALTEL), SureWest Telephone (Surewest), and the Consumer Federation of California (Consumer Federation).

In their comments, AT&T and Verizon argued that URF carriers (except ILECs still filing GRCs) should be granted a full and unconditional exemption from the requirements of § 851, and that many of the concerns raised in the OIR could be addressed through the special Telecommunications Industry Rules set forth in General Order (GO) 96-B. However, while AT&T sought a full § 851 exemption immediately, Verizon acknowledged that special issues might be raised by sales or other dispositions of assets that could be used to provide unbundled network elements (UNEs), collocation or related wholesale services. Verizon therefore proposed that the proceeding be bifurcated, with the first phase being devoted to sales or dispositions of assets unlikely to be controversial.

CALTEL's comments supported the idea of a bifurcated proceeding, although CALTEL took a narrower view than Verizon of what asset sales and dispositions might be viewed as noncontroversial. Like AT&T and Verizon, SureWest sought an unconditional exemption from the requirements of § 851. In their comments, DRA/TURN argued strongly against a wholesale § 851 exemption, and also urged the Commission to address alleged inconsistencies between the trial program for asset dispositions authorized in Resolution ALJ-202 and Decision (D.) 07-11-048, which extended the advice letter process used for non-dominant interexchange carriers and competitive local exchange carriers to URF ILECs. Consumer Federation argued that a broad exemption from the requirements of § 851 was against the public interest and that the Commission should continue to require URF ILECs to file § 851 applications, while considering waivers on a case-by-case basis.

On August 6, 2009, the assigned Commissioner and the assigned ALJ issued a joint ruling concerning the issues raised by the parties' initial comments.[5] The August 6, 2009 Ruling asked the parties to address these issues in reply comments, and noted that a scoping memo would not be issued until after the reply comments had been received and analyzed. Among other things, the August 6, 2009 Ruling asked the parties to address what refinements, if any, should be made to Verizon's proposal to divide the proceeding into two phases, whether CALTEL's alternative phasing proposal should be adopted instead, and whether § 851 requirements should be retained in situations where a change-of-control of a utility was contemplated, but the proposed change-of-control was not subject to Pub. Util. Code § 854. In addition, the ruling asked how, in formulating any § 851 exemption, the Commission could ensure that review of relevant projects under the California Environmental Quality Act (CEQA) could continue to be adequate, and whether the Commission should rely on the fact that some of the key obligations of URF carriers (such as withdrawals of basic service and carrier-of-last-resort obligations) are set forth in the Telecommunications Industry Rules in GO 96-B, and thus must be complied with

[5] *Joint Assigned Commissioner's and Administrative Law Judge's Ruling Concerning Reply Comments and Proposals*, issued August 6, 2009. Hereinafter, this ruling will be referred to as the "August 6, 2009 Ruling."

independently of any § 851 exemptions. The parties submitted their reply comments on these issues on September 4, 2009.

1.2. The Phase I Scoping Memo

On November 9, 2009, the assigned Commissioner issued the Scoping Memo. In that document, he concluded that, with some modifications, Verizon's proposal for a two-phase proceeding should be adopted, with the first phase devoted to the identification of asset dispositions unlikely to be controversial. However, the assigned Commissioner rejected the suggestion in the reply comments of DRA/TURN and CALTEL that workshops should be held to identify non-controversial assets with greater precision, concluding that "such workshops would most likely result in unnecessary delay," and noting that the parties had had a full opportunity to comment on Verizon's detailed bifurcation proposal in their reply comments. (Scoping Memo at 6-7.) He also concluded that, subject to certain exceptions set forth in the Scoping Memo, assets with the following account numbers in the Uniform System of Accounts of the Federal Communications Commission (FCC)[6] should, as Verizon had proposed, be considered in Phase I:

[6] The FCC's Uniform System of Accounts is set forth at 47 C.F.R. §§ 32.1-32.9000. These section numbers comprise Part 32 of 47 C.F.R.

Account No.	**Account Title**
2111	Land
2112	Motor vehicles
2113	Aircraft
2114	Tools & other work equipment
2121	Buildings [7]
2122	Furniture
2123	Office Equipment
2124	General purpose computers
2690	Intangibles

The Scoping Memo also pointed out that the list of FCC accounts to be considered in Phase I did not include Account 2681 (capital leases) and 2682 (leasehold improvements). These two accounts were omitted, the Scoping Memo explained, because the same issues that Verizon had identified with respect to buildings might also apply to capital leases and leasehold improvements. Since

[7] The assigned Commissioner adopted Verizon's suggestion in its June 26, 2009 Initial Comments that not all buildings covered by FCC Account 2121 be included in the first phase of this proceeding. (Scoping Memo at 7, n. 6.) As Verizon pointed out in these comments, Account 2121 "does *not* distinguish between buildings and portions of buildings with collocation space *versus* buildings without collocation space (like administrative buildings)." (Verizon Initial Comments at 4; emphasis in original.) Verizon noted that only the latter type of building should be included in Phase I under its proposal, and that "internal records should be readily available to identify those buildings including collocation space and space reserved for future collocation use." (*Id.*)

URF ILECs do not file rate cases and are not subject to rate-of-return regulation, there appeared to be no regulatory advantage to them in owning an asset rather than leasing it. Thus, it seemed possible the ILECs might be parties to leases covering assets used to provide UNEs, collocation, or other wholesale services, and that the assignment or other disposition of such leases might raise issues more appropriately considered in Phase II of the proceeding. (Scoping Memo at 8, n. 7.)[8]

The Scoping Memo also made clear that even with the exemption from § 851 requirements contemplated for assets covered by Phase I, URF carriers would continue to have reporting requirements. The Scoping Memo described these requirements as follows:

> Although I propose to grant an exemption from § 851 in Phase I for non-controversial asset transfers, I believe URF ILECs should still be required to report these dispositions in an annual report. The report would take the form of a Tier 1 advice letter, which would serve to give interested parties notice of the transfers and an opportunity to

[8] The Scoping Memo made clear that because Phase II of the proceeding would be significantly more complex than Phase I, no decision could yet be made on the precise scope or need for hearings in Phase II. (*Id.* at 10-11.) The general scope of Phase II was described as follows:

> In Phase II of this proceeding, the Commission will consider to what extent a § 851 exemption should be granted for assets used to provide telecommunications service directly, *i.e.*, switched network facilities, and if so, whether any conditions should be imposed on such an exemption. These assets include working telephone plant, collocation space, and vacant space reserved for future collocation use. In keeping with Verizon's suggestion, and subject to the caveats noted [above,] the specific asset types to be covered in Phase 2 will be those included within FCC Account Nos. 2211-2232 (Central Office assets), 2311-2362 (Information origination/termination assets), 2411-2441 (Cable and wire facilities assets), and 2681-2682 (capital leases and leasehold improvements). (*Id.* at 8-9.)

> protest one or more of them if the interested party believes that a particular transfer cannot legitimately be considered non-controversial. In its advice letter, the utility would be required to identify the type of asset, the sales price, and the nature of the purchaser. In the event the purchaser was an independent third party, no name would be required. In the event the purchaser was an affiliate of the utility, the utility would be required to name the affiliate. (*Id.* at 10, n. 8.)

Finally, the Scoping Memo concluded that while hearings would not be necessary in Phase I of the proceeding (owing to the non-controversial nature of the assets included in that phase), the parties should be given an additional opportunity to file comments on any remaining concerns they might have. On this question, the Scoping Memo said:

> . . . I also recognize that questions may remain after this Scoping Memo about the precise inventory of assets to be included in Phase I, as well as about specific issues the parties may have in connection with particular Phase I asset types. Accordingly, all parties are invited to file supplementary comments on December 18, 2009 setting forth any such issues. Based on what is received, reply supplementary comments may also be requested. (*Id.* at 9.)

2. The Parties' Supplemental Comments on the Scoping Memo

On the December 18, 2009 due date, all parties filed supplemental comments in response to the Scoping Memo.[9]

In their comments, DRA and TURN both criticized the Scoping Memo for relying on FCC account descriptions to determine which types of asset transfers are non-controversial and should be considered in Phase I. TURN argued that

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[9] Unlike the prior rounds of comments, DRA and TURN filed separate sets of supplemental comments.

the FCC's account descriptions are "overly broad and would improperly include assets that are used to directly offer basic service, and assets that are 'necessary' to maintain service quality." (TURN Supplemental Comments at 6.) DRA argued that instead of relying on FCC account descriptions, the Commission should ensure that asset transfers implicating any of five factors should be considered in Phase II of this proceeding:

> [W]e believe more assets belong in the "controversial" category than the Scoping Memo acknowledges. Assets whose removal from use will affect the "public interest" should be treated as controversial and addressed in Phase 2 of this rulemaking. Those assets are relevant to the following aspects telecommunications companies' operations: 1) competitor access to the telephone network, 2) service quality, 3) services to seniors and low income customers, 4) jobs in California and hence the California economy, and 5) safety, privacy and security . . . (DRA Supplemental Comments at 1.)

As a corollary of this position, DRA stated that it opposes treating sales or other dispositions of the following types of assets (and potentially others) as non-controversial:

- Call centers, which employ large numbers of California residents and whose transfer would put those employees out of work or hurt service quality;
- Payment centers, where seniors, disabled, low income and other customers pay their telephone bills either because they lack banking relationships or feel more comfortable paying in person;
- Headquarters buildings, because of their impacts on California jobs;
- Central offices or switching centers, which house telephone switches and competitors' facilities, giving them access to the public switched telephone network and its network elements;

- Critical infrastructure under state and federal regulation that has an impact on the safety, privacy and security of customers, customer data and the infrastructure itself . . . (*Id.* at 2.)

In its comments, Consumer Federation also opposed granting a § 851 exemption based on asset type. Relying on decisions such as D.01-05-041, it argued:

> [T]here should be a presumption that a utility's disposal or encumbrance of property is not in the public interest, and the telecommunications companies must be required, in this proceeding, to demonstrate that the disposal of property in exempted accounts will not have an effect on "the health, safety, comfort, and convenience of its patrons, employees, and the public." (Consumer Federation Supplemental Comments at 3.)

In their supplemental comments, AT&T, Verizon, and SureWest all endorsed the approach to defining non-controversial assets taken in the Scoping Memo, but argued that its decision not to include FCC Accounts 2681 and 2682 within the scope of Phase I should be reconsidered. Verizon, for example, offered the following justification for reconsidering the decision to exclude Accounts 2681 and 2682 from Phase I:

> [T]wo of the accounts that the Scoping Memo would defer to Phase 2, *i.e.*, accounts 2681–2682 (capital leases and leasehold improvements), in fact, contain assets that are not used to directly provide telephone service, and therefore should be exempted in Phase 1 under the policy framework advanced in the Scoping Memo. Although such accounts could theoretically include leased buildings containing active or reserved collocation space, the same is true of owned buildings (account 2121). The Scoping Memo accepts Verizon's proposal for addressing this minor issue, *i.e.*, to use internal records to differentiate between those buildings containing collocation space versus those buildings that do not. The same approach should be utilized for capital leases and leasehold

> improvements. Accordingly, the Commission should include accounts 2681–2682 in the list of assets exempted in Phase 1, subject to the discussed collocation exception. (Verizon Supplementary Comments at 2; footnote omitted.)[10]

For various reasons, all of the commenting parties except Consumer Federation were critical of the requirement in the Scoping Memo that URF carriers invoking the proposed § 851 exemption should be required to file an annual Tier 1 advice letter.[11] After pointing out that the Commission had not imposed such a reporting requirement in the past, AT&T said:

> [T]he Scoping Memo's suggested reporting requirement would create a cloud of uncertainty over exempted transactions similar to that which exists under the current Section 851 approval process. As noted above, under the suggested reporting requirement, transactions would be subject to protest if an interested party believes that a particular transfer cannot legitimately be considered non-controversial. This means exempted transactions, like non-exempted transactions, would face the prospect of a protest that could affect the transaction. Moreover, unlike the current Section 851 approval process where any protests are known <u>before</u> the transaction occurs, protests under the newly suggested reporting requirement would come <u>after</u> the transaction has taken place. Thus, the newly suggested reporting requirement would create a level of regulatory uncertainty for URF ILECs that is worse than under the current process. The prospect, and concomitant uncertainty, that a protest may affect exempted transactions long after they have been completed would impair the ILECs' ability to effectively negotiate transactions with third parties and to efficiently

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[10] *See also* AT&T Supplemental Comments at 2-4; SureWest Supplemental Comments at 1-2.

[11] Since Consumer Federation opposed granting a § 851 exemption based on asset type, it did not comment on the use of a Tier 1 advice letter as a vehicle for obtaining an annual report on the use of the proposed exemption.

> manage their assets, and it would place them at a disadvantage vis-à-vis competitors that have no reporting requirement. (AT&T Supplemental Comments at 5-6; footnotes omitted, emphasis in original.)[12]

Although differing with AT&T, Verizon, and SureWest on other issues, TURN and CALTEL agreed that the requirement of an annual report in the form of a Tier 1 advice letter was unworkable. In its comments, TURN stated:

> The proposal [for an annual advice letter report] also purports to provide a protest opportunity of the transactions listed in this annual report. However, in many cases, the protest would be several months after the fact and therefore almost useless. It would be extremely difficult to undo a transaction, especially those involving a third party unrelated to the carriers' telecommunications work . . . The party submitting the protest has an uphill battle to convince the Commission that any transaction would have to be reversed and further reviewed. An after-the-fact process would also be terribly unfair to the other party to the transaction who may find out perhaps a year later that their deal was void. While the [Scoping Memo's] proposal for an annual report has good intentions, and TURN agrees that there must be some type of notice to the public if exemptions are granted, this after-the-fact notice is not practical or effective. (TURN Supplemental Comments at 2; footnote omitted; CALTEL Supplemental Comments at 2-3.)[13]

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[12] *See also* Verizon Supplementary Comments at 2-3; SureWest Supplemental Comments at 2.

[13] In the Scoping Memo, the assigned Commissioner noted that any issues about the applicability of the California Environmental Quality Act (CEQA) to assets held by URF carriers are likely to be dealt with in R.06-10-006. He continued that to the extent the decision in R.06-10-006 "does not address the CEQA issues that have been raised in the comments here to the parties' satisfaction, objecting parties will be given a full opportunity in Phase II to develop their arguments that the need for CEQA review is a reason for limiting the scope of any exemption granted under § 851." (Scoping Memo at 11, n. 9.)

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3. Discussion

We have concluded that although the phased approach outlined in the Scoping Memo for determining § 851 exemptions is sound, some adjustments to that approach are appropriate.

Before discussing those adjustments, however, we think it is appropriate to address DRA's argument that any asset sale or transfer that would implicate any of what DRA refers to as the "five factors" (*i.e.*, competitor access to the telephone network, service quality, services to senior and low income customers, jobs in California, or safety, privacy or security) should be considered "controversial" and dealt with in Phase II of this proceeding.

For several reasons, we believe that such an approach would be unwieldy. First, it would make it more difficult to determine which types of assets the Commission considers non-controversial, and so subject to the § 851 exemption we are granting in today's decision. We note that TURN, in particular, has criticized as "too broad" the use of FCC account numbers for determining which asset types should be subject to a Phase I § 851 exemption. (TURN Supplemental Comments at 6.) But the five factors proposed by DRA are even less specific, and could leave URF carriers seeking to invoke the § 851 exemption uncertain about

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In the supplemental comments filed on December 18, 2009, no party took issue with the assertions in the Scoping Memo that (1) R.06-10-006 is the most appropriate vehicle for considering CEQA issues for URF carriers, and (2) to the extent the decision in R.06-10-006 does not deal with CEQA issues, the second phase of this proceeding is the appropriate venue for raising such issues insofar as they relate to an exemption from § 851. In view of the apparent consensus on these matters, we see no need to address CEQA issues here, as they are unlikely to arise in connection with the non-controversial assets being considered in Phase I.

We also note that on February 5, 2010, the Commission issued D.10-02-004, which extended until April 16, 2010 the time for resolving R.06-10-006.

whether an asset included within a relevant FCC account number might nonetheless not be exempt because it is to be considered in Phase II.[14]

Second, the use of DRA's five factor approach could thrust the Commission into consideration of issues as to which our jurisdiction is questionable. For example, while everyone is concerned about the current rate of unemployment in California, delaying or conditioning the sale or other

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[14] In the same vein, we disagree with Consumer Federation that the showings made thus far in the comments are inadequate, and that more proof is required from URF carriers that "the disposal or encumbrance of property in exempted accounts will not have an effect on 'the health, safety, comfort, and convenience'" of the utility's patrons. (Consumer Federation Supplemental Comments at 3.)

To support its argument, Consumer Federation relies largely on D.01-05-041, which denied an application by 360networks (USA) Inc. to exempt transfers of assets and interests between non-dominant interexchange carriers (NDIECs) and competitive local exchange carriers (CLCs) pursuant to § 853. Consumer Federation argues that the decision stands for the proposition that the Commission prefers the use of advice letters for routine transfers of assets under § 851. However, it is evident from discussion that Consumer Federation does not quote that the Commission's principal ground for denying the application was that the relief sought was too broad. The Commission stated:

> First, we note that it is not appropriate for 360networks to request relief for an entire class of carriers in an application by a single carrier. Rather, an exemption from § 851 for all NDIECs and CLCs is more appropriately the subject of a rulemaking so that all persons or entities who would be affected by the exemption would receive notice and an opportunity to comment. At this time, we are unwilling to dedicate the resources necessary to address this issue in a rulemaking proceeding, and it would not be appropriate, here, to grant exemptions to all carriers based on this single application that was not served on any other parties. (D.01-05-041 at 5.)

This proceeding, by contrast, *is* a rulemaking to which the Commission has already devoted considerable resources. The parties have already filed three sets of comments, and more comments can be expected. Fairly read, D.01-05-041 does not reject the use of § 851 exemptions for particular classes of assets.

disposition of non-controversial assets because of potential job losses, as DRA appears to propose, seems unjustified. (DRA Supplemental Comments at 5-6.) Section 851 states that Commission approval is required for the sale, transfer, or encumbrance of any utility asset that is "necessary or useful in the performance of [the utility's] duties to the public." Thus, the focus of the statute is on ensuring that asset dispositions do not compromise the utility's ability to serve.[15] The statute does not mention the preservation of employment as one of the factors the Commission should consider in weighing a proposed asset transfer.[16]

Third, we fail to see the basis for DRA's argument that any category of asset transfer that might affect safety, security, or privacy (DRA's fifth factor)

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[15] This purpose is made clear by the second paragraph of § 851, which provides, *inter alia*, that "this section does not prevent the sale, lease, encumbrance or other disposition by any public utility of property that is not necessary or useful in the performance of its duties to the public."

[16] As DRA points out in its opening comments on the Proposed Decision (PD) that was issued on March 19, 2010, other provisions of the Public Utilities Code require us to take effects on employment into account in making our decisions. Section 854(c), for example, instructs that in evaluating any proposed merger, acquisition, or change of control of a public utility that meets the $500 million threshold set forth in § 854(b), the Commission shall take into account whether the proposed transaction is "fair and reasonable to affected utility employees" and will be "beneficial on an overall basis to state and local economies, and to the communities in the area . . ." However, DRA has not cited any case in which employment effects were considered as a factor in an application filed solely under § 851.

DRA's comments also cite an October 29, 2009 letter from State Senator Padilla and Assemblymember Fuentes to the Commission expressing concern about job losses at AT&T and Verizon facilities in California. President Peevey responded to this letter on November 24, 2009. In the response, he pointed out that while both companies have experienced a decrease in the number of their California access lines between 2006 and 2009, both companies have also seen an increase in the number of jobs devoted to their video products, the development of which was encouraged by the Digital Infrastructure and Video Competition Act of 2006.

should be considered in Phase II. DRA cites no authority for this vague argument, nor does it give any examples. Deferring consideration of asset transfers that allegedly raise safety, security, or privacy concerns (apart from those clearly related to service quality) would simply be to invite endless debate over what matters might be covered.[17]

However, even though we believe DRA's five factors are too broad to furnish a useful analytical framework for what should be considered in Phase II of this proceeding, we agree that one of the asset types DRA has identified should not be exempted from § 851 review today, but should await consideration in Phase II. As noted above, DRA argues that the sale or other disposition of payment centers (which fall within Uniform Account No. 2121) should not be exempted from § 851 review under Phase I:

> Although the communications market has become increasingly accessible via the Internet, mobile devices, and telephone, the local payment center remains a preferred method for many customers to pay bills or inquire about services. This holds especially true for the elderly, poor, and those without access to the Internet. The closure of payment centers will require customers either to pay their bill online or by U.S. mail. (DRA Supplemental Comments at 4.)

DRA also notes that in locations without Internet access, payment by mail "is infeasible for those without access to traditional banking services." (*Id.* at 5.) We find DRA's reasoning persuasive, and so will exclude payment centers from

[17] It should be noted, however, that the final ordering paragraph of this decision provides that nothing herein relieves any carrier from having to file any reports that may be required by other Commission decisions concerning safety, service quality, or other matters.

the Account 2121 assets as to which we are granting an exemption from § 851 review by today's decision.

An important issue concerning assets in Account 2121 is precisely how we should phrase the exemption we are granting. In the PD issued on March 19, 2010, Ordering Paragraph 2 stated that a § 851 exemption should not be granted with respect to assets falling within "Account No. 2121 (buildings) . . . *to the extent* such buildings are currently being used to provide collocation services, or have space reserved in them to provide such services in the future." (Emphasis supplied.) In its opening comments on the PD, Verizon states that while this language may seem consistent with its original proposal, it is somewhat different, because Verizon proposed that the Phase I exemption "should extend to those '*portions* of buildings, including central offices, housing administrative and other general support assets.'" (Verizon PD Comments at 4; emphasis in original.) Verizon requests that the Commission confirm that its intent was to adopt Verizon's original proposal and explains:

> [A]n URF carrier may own an office building containing a central office in the basement but otherwise consisting of administrative space on the floors above. Carriers should be permitted to subdivide and sell the above floors – without the need for Section 851 approval – so long as the carrier retains the necessary space in the basement for central office and collocation purposes. Such apportionments are increasingly common as carriers require less space for traditional circuit switches. Accordingly, as Verizon noted in its Initial Comments, "carriers should be allowed to consolidate central office space without impacting collocation requirements." The Commission should clarify its intent to include such

> apportionments within the scope of the Phase I exemption. (*Id.* at 4; footnotes omitted.)[18]

We agree that such apportionments should be permitted, and have amended the ordering paragraphs in this decision accordingly.[19]

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[18] In a footnote to the quoted passage, Verizon points out that "the reference to 'subdivision' is only an example. Verizon understands that there are various legal instruments available to effectuate a transaction where the owner wishes to retain rights in a portion of a building while selling, leasing, or otherwise encumbering other portion(s) of the same building." (*Id.* at 4, n. 11.) The building apportionments we are authorizing in this decision do not preclude the use of other "legal instruments," provided that Verizon, AT&T or any other URF carrier invoking the § 851 exemption takes care to ensure that the portions of affected buildings that are currently being used to provide collocation services, or have space reserved in them to provide such services in the future, remain fully available.

[19] At page 5 of its reply comments on the PD, CALTEL notes that it is not opposed to the request by Verizon and AT&T for clarification that "space not reserved for collocation does not lose its [Phase I] exemption because it is located in a building that also contains space reserved for collocation," because the request is "consistent with the [PD's] intent."

As noted above, one of the issues on which all of the parties filing supplemental comments agreed (except DRA and Consumer Federation[20]) was the unworkability of the Scoping Memo's proposal to use a Tier 1 advice letter as a vehicle for an annual report on the use of the § 851 exemption. Among other things, the commenters pointed out that such a process would lead to meritless protests, would threaten to undo transactions that had been effectuated months before, and would make it difficult to attract buyers for unneeded utility assets because of the business uncertainties involved. (*See* AT&T Supplemental Comments at 5-6; Verizon Supplementary Comments at 2-3; SureWest Supplemental Comments at 2; TURN Supplemental Comments at 2; CALTEL Supplemental Comments at 2-3.)

We find this criticism persuasive, but still think an annual report on the use of the § 851 exemption is necessary. As an alternative to a Tier 1 advice letter, we think the proposal put forward by Verizon is a good starting point:

> If . . . reporting is intended as a safeguard to ensure compliance with the new rules, then the annual report should be narrowly tailored for that specific purpose. For example, the report should be submitted to the Communications Division, not filed as a Tier 1 advice letter. It should be limited to a listing of asset transfers that, absent exemption, would have necessitated a section 851 filing in the first place. Parties should not be permitted to "protest" the report. And finally, the reporting requirement should expire within a reasonable sunset period, *e.g.*, two (2) years, so that reporting

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[20] In its supplemental comments in response to the Scoping Memo, DRA argued that "the Commission should require annual reporting of 'five factor' transactions for at least five years from the effective date of the Phase 1 decision." (DRA Supplemental Comments at 7.) Neither DRA nor Consumer Federation commented directly upon the proposal to use a Tier 1 advice letter as the vehicle for an annual report.

obligations do not continue in perpetuity in the absence of demonstrated need. (Verizon Supplemental Comments at 3-4.)

We agree with Verizon that this alternative form of annual report should be filed with the Director of the Communications Division (or its successor) and posted on the Commission's website. We also agree that the only transactions that need to be included are those that, absent an exemption, would have necessitated a § 851 filing in the first place. As a report rather than an advice letter, the report will not be subject to protest. However, like the Tier 1 advice letter proposed in footnote 8 of the Scoping Memo, the report should identify the type of asset sold or disposed of, the price, and the nature of the purchaser or transferee. If the purchaser or transferee is an independent third party, no name will be required. However, if the purchaser or transferee is an affiliate of the utility, then the name of the affiliate must be reported.[21]

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[21] Although it did not comment on the form of a report, Consumer Federation seems to be advocating financial reporting to the extent it argues that URF carriers invoking the § 851 exemption granted in this decision "should be required to share with customers any profit made from the sale of utility property which is exempted from section 851 review." (Consumer Federation Supplemental Comments at 5.) Consumer Federation argues that under D.06-05-041 and D.06-12-043, ratepayers are entitled to 100% of the gain from sales of depreciable assets, and 67% of the gain from sales of non-depreciable assets. (*Id.*)

Consumer Federation's argument is without merit because the gain-on-sale rules set forth in the decisions it cites do not apply to URF carriers. In D.06-05-041, the Commission dismissed AT&T, Verizon, SureWest and Frontier Communications as parties, finding that "the URF proceeding seems to be the best forum to resolve gain on sale issues" for these companies, because "that proceeding is examining all aspects of telecommunications regulation." (D.06-05-041 at 6.)

In the URF decision, D.06-08-030, the Commission concluded that because "the link between costs and rates was broken nearly twenty years ago with the adoption of NRF," ILEC shareholders should be allocated 100% of any gains or losses from the sale of ILEC assets. The Commission said:

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We do not agree with Verizon that this reporting requirement should be allowed to sunset after a short period, such as two years. One of the reasons we think the report is necessary is to monitor the use of the § 851 exemption we are granting today, which will last for four years. At the end of that time, any party to this proceeding (or a successor to such party) may request a reexamination of whether the § 851 exemption should be continued.[22] If no party requests such a reexamination, then the exemption will continue.[23]

> Adopting a policy that allocates all gains or losses to shareholders will simplify the regulatory program and make it consistent with the economic principle that those who bear the risk should reap the rewards. We expect this reform will have a minimal impact on ratepayers. As Verizon's review of its records makes clear, under current rules, little gain is allocated to ratepayers despite complex calculations following a negotiated allocation rule, and elaborate record-keeping requirements.
>
> We further note that the companies with which the ILECs compete retain all gains or losses from the sale of their utility property. Thus, adopting a policy that allocates one hundred percent of all gains and/or losses from the sale of property by ILECs to their shareholders will place ILECs on an even footing with their competitors. This reform serves our interests in promoting fair competition between communications providers. (D.06-08-030 at 224.)

[22] In their opening comments on the PD, both Verizon and AT&T requested that we clarify what will happen in the event such a petition is filed. AT&T stated that it was concerned our statements

> . . . could be misconstrued by some parties to mean the § 851 exemption can be rendered ineffective after four years merely by filing a petition for modification and requesting a reexamination of the exemption, without any further action on the petition by the Commission. The Commission should avoid potential disputes about its intent and provide certainty in the process by making it clear that if a petition for modification requesting a reexamination of the § 851 exemption is filed, the exemption will remain in effect unless and until the Commission acts on the petition and determines otherwise. (AT&T PD Comments at 6.)

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Another issue requiring discussion is the argument of AT&T, Verizon, and SureWest that we should grant an exemption from § 851 for capital leases and leasehold improvements that are not concerned with facilities used to provide UNEs, collocation, or other wholesale services, such services having been reserved for Phase II in the Scoping Memo. In arguing that we should reconsider the Scoping Memo's determination on this question, AT&T states:

> Verizon noted [in its original proposal] that internal records could be used to identify those buildings with collocation space and space reserved for future collocation. Just as Account 2121 does not distinguish between buildings and portions of buildings with collocation space, Accounts 2681 and 2682 do not distinguish between those leases and leasehold improvements covering the type of property within the scope of Phase I and those covering the type of property within the scope of Phase II. However, just as in the case of buildings, internal records can be used to identify specific property within Accounts 2681 and 2682 and to determine whether specific leases or leasehold improvements cover the type of property in Phase I or the type of property in Phase II. (AT&T Supplemental Comments at 4; footnote omitted.)

In the PD issued on March 19, 2010, we declined to adopt this proposal, because we were "not satisfied that most URF carriers have internal records that can be used with confidence to determine whether a particular lease or leasehold

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The concern expressed by AT&T is reasonable. If a party (or successor thereto) files a petition for modification at the end of the four-year period requesting termination or modification of the § 851 exemption granted in this decision, the exemption will remain in effect unless and until the Commission acts on the petition.

[23] By providing for a reexamination after four years of the § 851 exemption we are granting today, we do not mean to suggest that any party will be foreclosed from seeking reexamination sooner if, in a petition for modification of this decision, the party can demonstrate that the exemption has been abused.

improvement is concerned with non-controversial assets being considered in Phase I, or with assets used to provide wholesale services or other controversial matters being considered in Phase II." We noted that while we believed the records maintained by the carriers were sufficiently detailed with respect to assets they owned, we did not have this same degree of confidence with respect to assets that were leased. However, we invited the carriers to address this issue by submitting, along with their comments on the PD, declarations concerning the documentation they maintained on leased assets. (PD at 21.)

In the opening comments it filed on April 8, 2010, Verizon included the declaration of James E. Tousignant, who is Director of Real Estate Services for the Western Region (which includes California) of Verizon Corporate Services Group Inc. In this capacity, Tousignant leads a team of 180 employees who are responsible for "the daily operation, maintenance, design and construction associated with a portfolio of approximately 20.5 million square feet." (Tousignant Declaration ¶ 1.) The employees Tousignant manages are divided into a number of groups, including Operations, Planning, Lease Administration, and Transactions. Tousignant says all of these groups use a centralized database that "contains a listing of properties owned or leased by Verizon, including Capital Leases and Leasehold Improvements booked to FCC Accounts 2681-2682. The database includes such information as the address, net book value, and use of each property as documented by a Primary Use Code ('PUSE')." (*Id.* ¶ 4.)

Tousignant asserts that the PUSE designations allow the assets leased by Verizon to be adequately differentiated between those being considered in Phase I and those being considered in a second phase of this proceeding:

> The Planning Group is primarily responsible for maintaining the PUSE designation in the system based on periodic property inspections and data verification. The PUSE code allows for identification of properties that should be exempted in Phase 1. For example, properties utilized for Administrative purposes (e.g., office space) are coded as "ADM." In addition, Warehouses, Garage Work Centers and Storage Facilities are coded as WAR, GWC, and STOR, respectively, and should also be exempted in Phase 1. On the other hand, facilities used for housing network equipment like Central Offices, Remote Switching Modules, Towers, Points-of-Presence, Super Head Ends, and Microwaves, are coded as CO, RSM, TWR, POP, SHE, and MW, respectively, and would not be exempted in Phase 1. (*Id.* ¶ 6.)

Based on the Tousignant declaration, we are satisfied that Verizon maintains records sufficient to differentiate between leased assets of the kind being considered in Phase I and leased assets that will be considered in a second phase. Accordingly, we will grant Verizon's request to include FCC Accounts 2681 and 2682 in the list of accounts eligible for Phase I treatment by Verizon.[24]

Although the declaration submitted by AT&T suggests that its process for determining the purpose of leased assets is somewhat more convoluted than Verizon's, its explanation is sufficient to justify including Accounts 2681 and 2682 in the list of accounts eligible for Phase I treatment by AT&T.[25]

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[24] At page 5 of its reply comments on the PD, CALTEL notes that it is not opposed to the request of Verizon and AT&T to include assets coming within Account Nos. 2681 and 2682 in the Phase I exemption, because the request is "consistent with the [PD's] intent."

[25] The declaration submitted by AT&T is from Thomas M. Koch, who is the Controller of AT&T California. With respect to Account 2681, Koch notes that the only AT&T California lease in that account is "a lease of land." (Koch Declaration ¶ 5.) With respect to Account 2682, Koch states:

> AT&T maintains detailed records associated with all assets in Account 2682 (leasehold improvements). First, the leasehold improvements in Account 2682

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SureWest did not submit a declaration concerning the records it keeps for leased assets, nor did any other URF carrier that might be affected by this decision. In view of the misgivings expressed in both the Scoping Memo and the PD about including Accounts 2681 and 2682 within the proposed § 851 exemption without more evidence about the carriers' record-keeping, we decline at this time to include these two account numbers within the scope of the exemption being granted to SureWest. If SureWest (or any other qualifying URF carrier) wishes to expand its exemption to include these two accounts, it should file a Tier 3 advice letter explaining the records that it keeps concerning leases. Upon approval of such an advice letter by Commission resolution, the carrier will be permitted to invoke the § 851 exemption granted herein with respect to assets included in Accounts 2681 and 2682.

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are recorded in the General Ledger by Field Reporting Code (FRC). The only FRC currently used by AT&T California in this account is 510C, which accounts for improvements to buildings and building grounds held under lease which are subject to amortization treatment. Second, AT&T's Oracle Fixed Assets (FA) system tracks the location, year-placed in service, and cost of each leasehold improvement. The FA system identifies the location of the leasehold improvement using the Common Language Location Identifier (CLLI), an alphanumeric code used to identify a geographic location. Third, we can determine whether the location contains a central office with collocation space based on the CLLI information identified in the FA system. Using the same CLLI code information used in FA, the Collocation Application Portal (CAP) system identifies every building with active or reserved collocation space. Based on the records AT&T maintains in these systems, we can determine with confidence whether a particular leasehold improvement is to a building with active or reserved collocation and, therefore, whether a leasehold improvement included in Account 2682 covers assets being considered in Phase I or in Phase II of R.09-05-006. (*Id.* ¶ 6.)

The final issue meriting discussion is the request of CALTEL that Phase II of this proceeding should be deferred for four years. In its opening comments on the PD, CALTEL argued:

> [T]he Proposed Decision should be revised to provide that Phase II of this proceeding will begin only, if at all, following the end of the four-year exemption granted in Phase I. This approach would allow the Commission and all parties to evaluate the efficacy of Phase I reporting before determining whether Phase II is even necessary, thus preserving Commission and party resources.
>
> Allowing the Phase I exemption to be concluded before considering Phase II will also allow the Commission and parties to determine, based on the reports filed during the exemption period, if there are "Phase I" assets that should be more properly addressed in Phase II. The reverse could also be true. That is, the parties could determine based on the experience of Phase I that some assets now scheduled for consideration in Phase II [] could be appropriately dealt with under the Phase I reporting plan.
>
> In sum, Phase II will be much more meaningful, create better policy and potentially be less contentious if the Commission and the parties have Phase I data in hand before beginning Phase II. (CALTEL PD Comments at 1-2.)

In its reply comments on the PD, AT&T stated that it was not opposed to CALTEL's suggestion, provided that the PD was modified to (1) allow buildings with current or future collocation space to be apportioned as described above, (2) permit AT&T to invoke the § 851 exemption granted herein with respect to assets included within FCC Account Nos. 2681 and 2682, and (3) provide that the Phase I exemption would continue in effect unless and until the Commission acted on any petition for modification seeking reexamination of the exemption. (AT&T PD Reply Comments at 4-5.) In its reply comments on the PD, Verizon stated that it would also not oppose a reasonable delay if the modifications it proposed were adopted, and added, "[i]ndeed, such a delay would allow the parties to explore informal resolution of Phase 2 without the need for further proceedings." (Verizon PD Reply Comments at 1.)

In view of the fact that the changes we have made in the PD satisfy the conditions that AT&T and Verizon set forth for supporting CALTEL's request, and because we are also supportive of reasonable proposals that conserve the scarce resources of the Commission and the parties, we have decided to grant CALTEL's request to delay Phase II of this proceeding. Accordingly, with the issuance of this decision, this proceeding will be closed. If any party (or a successor to such party) believes that a second phase of this proceeding as described in the Scoping Memo is necessary, it may include such a request in a petition for modification of this decision. Under ordinary circumstances, we would not expect such a petition to be filed until four years after issuance of this decision.[26]

4. Comments on Proposed Decision

The proposed decision of Commissioner Michael R. Peevey in this proceeding was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed on April 8, 2010, by AT&T, Verizon, CALTEL, TURN, and DRA. Reply comments were filed on April 13, 2010 by all of these parties except TURN.

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[26] As AT&T pointed out in its reply comments on the PD, "under the Commission's rules, the decision in Phase I (including the provision delaying Phase II) could be modified if a future petition for modification justifying such action were granted by the Commission." (AT&T PD Reply Comments at 5; footnote omitted.)

The points raised by these comments that merit discussion are considered at the appropriate places in this decision. With respect to TURN's comments, we note that they consisted largely of reargument of positions TURN had asserted in previous comments in this proceeding. We have not responded to these points (or others raised by other parties) because Pub. Util. Code § 1705 "does not require the Commission to make express legal and factual findings as to each and every issue or sub-issue raised by a party to a Commission proceeding. Rather, it only requires sufficient findings and conclusions to assist the court in ascertaining that the Commission acted properly and to assist parties in preparing for rehearing or court review." (D.03-08-072 at 12.) That test is satisfied here.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and A. Kirk McKenzie is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The OIR in this proceeding was issued in May 2009.

2. Pursuant to the schedule set forth in the OIR (as modified by joint rulings issued by the assigned Commissioner and the assigned ALJ on May 22, 2009 and August 6, 2009), the parties submitted initial comments and proposals on June 26, 2009, and reply comments on September 4, 2009.

3. A Scoping Memo for Phase I of this proceeding was issued by the assigned Commissioner on November 9, 2009.

4. In the aforesaid Scoping Memo, the assigned Commissioner accepted (with certain modifications) Verizon's proposal to divide this proceeding into two phases, with the first phase devoted to whether an exemption from the requirements of § 851 should be granted to URF carriers in connection with sales

or other dispositions of assets likely to be non-controversial, and the second phase devoted to whether (and to what extent) an exemption from the requirements of § 851 should be granted to URF carriers in connection with sales or other dispositions of assets likely to be controversial, such as assets used to provide collocation, UNEs, and other wholesale services.

5. Consistently with the approach described in the previous Finding of Fact (FOF), the Scoping Memo stated the assigned Commissioner's intent to propose to the Commission that in Phase I of this proceeding, URF carriers (except ILECs still filing GRCs) should, with certain exceptions, be granted an exemption from § 851 with respect to sales or other dispositions of assets falling within Account Nos. 2111 (land), 2112 (motor vehicles), 2113 (aircraft), 2114 (tools and other work equipment), 2121 (buildings), 2122 (furniture), 2123 (office equipment), 2124 (general purpose computers), and 2690 (intangibles) of the FCC's Uniform System of Accounts.

6. With respect to Account 2121 (buildings), the Scoping Memo proposed that an exemption from § 851 should not be granted with respect to buildings that are currently being used to provide collocation space, or in which collocation space has been reserved for the future. The Scoping Memo concluded that whether an exemption from § 851 is appropriate for such buildings is an issue that should be considered in Phase II of this proceeding.

7. The Scoping Memo concluded that it was not appropriate to include Account Nos. 2681 (capital leases) and 2682 (leasehold improvements) within the scope of Phase I, because URF carriers might well be parties to leases covering assets used to provide UNEs, collocation, or other wholesale services, and the issues surrounding such leases were more appropriate for consideration in Phase II.

8. In the Scoping Memo, the assigned Commissioner concluded that notwithstanding the exemption from § 851 he proposed to recommend in connection with the assets to be included in Phase I, URF ILECs relying on this exemption should be required to file an annual report, in the form of a Tier 1 advice letter, that would summarize information about the asset dispositions as to which the ILEC had invoked the § 851 exemption in the preceding year. As a Tier 1 advice letter, the proposed annual report would be subject to protest.

9. The Scoping Memo concluded that this proceeding should be categorized as quasi-legislative, and that hearings would not be necessary in Phase I.

10. The Scoping Memo stated that a separate scoping memo would be issued in connection with Phase II, and that it was not possible at this time to determine whether hearings might be necessary in Phase II, or what the schedule for that phase should be.

11. The Scoping Memo invited all parties to file supplementary comments concerning any remaining issues the parties might have in connection with the types of assets to be included in Phase I.

12. On December 18, 2009, all parties filed supplementary comments concerning various Phase I issues.

13. It its supplemental comments, DRA urged that instead of relying upon FCC accounts to define the assets subject to Phase I, the Commission should consider as controversial, and thus include in Phase II, any asset disposition involving any one or more of the following five factors: (a) competitor access to the telephone network, (b) service quality, (c) services to seniors and low income customers, (d) jobs in California, or (e) safety, privacy, or security.

14. The approach for phasing this proceeding suggested in DRA's supplemental comments would be less workable than the approach taken in the

Scoping Memo, because the use of DRA's five factors would make it more difficult to determine which assets the Commission considers within the scope of Phase I, and could thrust the Commission into areas where its jurisdiction is uncertain, among other reasons.

15. As DRA argues, payment centers should not be included within the scope of Phase I, because payment centers remain important resources for many customers seeking to pay or inquire about their bills, including the poor, the elderly, and those with limited or no access to the Internet or traditional banking services.

16. Instead of using a Tier 1 advice letter, URF carriers invoking the § 851 exemption granted in this decision should be required to file an annual report with the Director of the Communications Division, which the Director should post on the Commission's website. This report should not be subject to protest.

17. The Scoping Memo's decision to exclude assets included within Uniform System of Account Nos. 2681 (capital leases) and 2682 (leasehold improvements) should be reconsidered with respect to AT&T and Verizon, because both of these carriers submitted sworn declarations on April 8, 2010 demonstrating that the records they maintain are sufficient to determine whether assets they lease are non-controversial ones of the type being considered in Phase I of this proceeding, or concern UNEs, collocation, or other wholesale services that the Scoping Memo ruled would be considered in Phase II of this proceeding.

18. The Scoping Memo's decision to exclude assets in Uniform System of Account Nos. 2681 and 2682 should not be reconsidered with respect to SureWest, unless and until SureWest files a Tier 3 advice letter demonstrating that the records it keeps concerning leased assets are sufficient to determine whether a particular asset is a non-controversial one of the type being considered

in Phase I of this proceeding, or concerns UNEs, collocation, or other wholesale services that the Scoping Memo reserved for consideration in Phase II. Upon approval of such advice letter by Commission resolution, SureWest will be allowed to include Accounts 2681 and 2682 in its list of accounts eligible for the § 851 exemption granted by this decision.

19. The exemption from § 851 granted in this Phase I decision will not raise any issues under CEQA.

20. Phase II of this proceeding is likely to create better policy and to be less contentious if the Commission and the parties have in hand the data concerning use of the § 851 exemption described in FOF 16 before beginning Phase II.

21. Any issues pertaining to CEQA that are not addressed in R.06-10-006 and that relate to any exemption from § 851 that may be granted in the second phase of this proceeding will be addressed in the second phase of this proceeding.

Conclusions of Law

1. Subject to certain conditions, an exemption from the requirements of Pub. Util. Code § 851 should be granted with respect to sales or other dispositions of assets by URF carriers (except ILECs still filing GRCs) that fall within the following account numbers of the FCC's Uniform System of Accounts: 2111 (land), 2112 (motor vehicles), 2113 (aircraft), 2114 (tools and other work equipment), 2121 (buildings), 2122 (furniture), 2123 (office equipment), 2124 (general purpose computers), and 2690 (intangibles).

2. An exemption from the requirements of Pub. Util. Code § 851 should not be granted to URF carriers concerning sales or other dispositions of assets that fall within Account No. 2121 (buildings) of the FCC's Uniform System of Accounts with respect to portions of such buildings that are currently being used

to provide collocation services, or that have space reserved in them to provide collocation services in the future.

3. An exemption from the requirements of Pub. Util. Code § 851 should be granted to AT&T and Verizon with respect to sales or other dispositions of assets that fall within Account Nos. 2681 (capital leases) and 2682 (leasehold improvements) of the FCC's Uniform System of Accounts, to the extent such assets are not used to provide UNEs, collocation, or other wholesale services that may be considered in a second phase of this proceeding.

4. An exemption from the requirements of Pub. Util. Code § 851 should not be granted to SureWest or any other URF carrier with respect to assets coming within Account Nos. 2681 and 2682 of the FCC's Uniform System of Accounts unless and until such carrier files a Tier 3 advice letter demonstrating that the records it keeps concerning leased assets are sufficient to determine whether a particular asset is a non-controversial one of the type being considered in Phase I of this proceeding, or an asset used to provide UNEs, collocation, or other wholesale services that may be considered in a second phase of this proceeding. Upon approval of such advice letter by Commission resolution, the URF carrier filing the advice letter should be allowed to include assets coming within Accounts 2681 and 2682 in the list of assets as to which it may invoke the § 851 exemption granted by this decision.

5. Each URF carrier granted an exemption from Pub. Util. Code § 851 by this decision should be required to file an annual report setting forth the transactions for the preceding calendar year as to which the carrier is relying on the § 851 exemption granted herein as a justification for not filing a § 851 application. With respect to each such transaction, the report should state separately the type

of asset sold or disposed of, the price, and the nature of the purchaser or transferee. This annual report should not be subject to protest.

6. In the event the purchaser or transferee of an asset is an independent third party, no name need be given in the annual report referred to in the preceding Conclusion of Law (COL). In the event such purchaser or transferee is an affiliate of the utility, the name of the affiliate shall be included in the report of the transaction.

7. The annual report referred to in COL 5 should be filed by March 31 of each year for transactions taking place in the preceding calendar year. The first such report should be due no later than March 31, 2011. Such annual reports should also be due in 2012, 2013 and 2014, and possibly longer.

8. On or after June 1, 2014, any party to this proceeding (or a successor to such a party) should be permitted to file a petition for modification seeking termination of the exemption from § 851 granted in this decision on the ground that such exemption has not effectively served the purposes set out for the exemption in the OIR and in subsequent rulings and decisions in this proceeding.

9. The exemption from § 851 granted in this decision should continue in effect unless and until the Commission acts on any petition for modification filed pursuant to the preceding COL.

10. The second phase of this proceeding described in the Scoping Memo issued on November 9, 2009 should not be held until after the data described in COLs 5, 6, and 7 has been received and evaluated.

11. On or after June 1, 2014, any party to this proceeding (or a successor to such a party) should be permitted to file a petition for modification requesting that this proceeding should be reopened, and that a second phase of this

proceeding should be held to consider whether an exemption from the requirements of § 851 should be granted with respect to assets used to provide UNEs, collocation, or other wholesale services.

O R D E R

IT IS ORDERED that:

1. Pursuant to the powers set forth in subsection 853(b) of the Public Utilities Code, and subject to the conditions set forth in this Order, an exemption from the requirements of Pub. Util. Code § 851 is hereby granted to all carriers subject to the Uniform Regulatory Framework adopted in Decision 06-08-030 (except for incumbent local exchange carriers still required to file general rate cases) with respect to the sale or other disposition of assets that fall within the following account numbers of the Uniform System of Accounts promulgated by the Federal Communications Commission: 2111 (land), 2112 (motor vehicles), 2113 (aircraft), 2114 (tools and other work equipment), 2121 (buildings), 2122 (furniture), 2123 (office equipment), 2124 (general purpose computers), and 2690 (intangibles).

2. The exemption from Pub. Util. Code § 851 granted by this order shall not apply to sales or other dispositions of assets included within Account No. 2121 (buildings) of the Uniform System of Accounts promulgated by the Federal Communications Commission with respect to portions of such buildings that are currently being used to provide collocation services, or that have space reserved in them to provide such collocation services in the future.

3. Subject to the conditions set forth in this Order, including the conditions regarding the scope of the issues that may be considered in a second phase of this proceeding, Pacific Bell Telephone Company d/b/a AT&T California and

Verizon California Inc. and its certificated California affiliates (*viz.*, MCI Communications Services Inc., d/b/a Verizon Business Services, MCImetro Access Transmission Services, d/b/a Verizon Access Transmission Services, TTI National, Inc., d/b/a Verizon Business Services, Teleconnect Long Distance Services & Systems Company, d/b/a Telecom*USA, Verizon Enterprise Solutions LLC, Verizon Long Distance LLC, and Verizon Select Services Inc.) are hereby granted an exemption from the requirements of Pub. Util. Code § 851 with respect to the sale or other disposition of assets that fall within Account Nos. 2681 (capital leases) and 2682 (leasehold improvements) of the Uniform System of Accounts promulgated by the Federal Communications Commission.

4. Any other carrier subject to the Uniform Regulatory Framework adopted in Decision 06-08-030 (except for incumbent local exchange carriers still required to file general rate cases) that wishes to invoke the exemption from the requirements of Pub. Util. Code § 851 granted in this order with respect to the sale or other disposition of assets that fall within Account Nos. 2681 and 2682 of the Uniform System of Accounts promulgated by the Federal Communications Commission shall file a Tier 3 advice letter pursuant to General Order 96-B demonstrating that the records such carrier keeps concerning assets it leases are sufficient to determine whether a particular leased asset is of the type being considered in Phase I of this proceeding, or is used to provide unbundled network elements, collocation, or other wholesale services that may be considered in a second phase of this proceeding. Upon approval of such advice letter by Commission resolution, the carrier filing such advice letter shall be allowed to invoke the § 851 exemption granted by this order with respect to leased assets coming within the aforesaid Account Nos. 2681 and 2682.

5. Each carrier granted an exemption by this order shall file an annual report with the Director of the Communications Division setting forth each transaction for the preceding calendar year as to which such carrier is relying on the exemption from Pub. Util. Code § 851 granted by this order as a justification for not filing an application under Pub. Util. Code § 851 concerning such transaction. With respect to each such transaction, the report shall state separately the type of asset sold or disposed of, the price, and the nature of the purchaser or transferee. This annual report shall not be subject to protest.

6. In the event the purchaser or transferee of an asset covered by the annual report required by the previous ordering paragraph is an independent third party, no name for the purchaser or transferee need be given in the annual report. In the event the purchaser or transferee of an asset covered by the annual report required by the previous ordering paragraph is an affiliate of the utility filing the report, the name of the affiliate shall be included in the report of the transaction.

7. The annual report required by Ordering Paragraphs 5 and 6 herein shall be filed by March 31 of each year for transactions taking place in the preceding calendar year. The first such annual report shall be filed no later than March 31, 2011. Annual reports as required by Ordering Paragraphs 5 and 6 herein shall also be filed in 2012, 2013 and 2014.

8. Nothing in this order relieves any carrier granted an exemption from Pub. Util. Code § 851 herein from having to file reports concerning service quality, safety, or other issues that are required by other Commission decisions.

9. Rulemaking 09-05-006 is closed.

This order is effective today.

Dated May 6, 2010, at San Francisco, California.

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

I will file a concurrence.

/s/ TIMOTHY ALAN SIMON
Commissioner