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Decision 02-01-038 January 9, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for purposes of revising General Order 96-A regarding informal filings at the Commission.	Rulemaking 98-07-038 (Filed July 23, 1998)

SECOND INTERIM OPINION ADOPTING CERTAIN REQUIREMENTS FOR NOTIFYING TELECOMMUNICATIONS CUSTOMERS OF PROPOSED TRANSFER, WITHDRAWAL OF SERVICE, OR HIGHER RATES OR CHARGES

1. Summary

In today's decision, we adopt another part of the previously proposed revisions to General Order (GO) 96-A, which comprehensively governs utility tariffs (including their content, form, and publication, and the advice letters by which they are amended).[1] The rule revisions adopted today (which will eventually be codified in GO 96-B) are set forth in the Appendix; they concern the notice that a telecommunications utility must provide its affected customers when that utility proposes a rate increase, a withdrawal of service, or certain kinds of transfers. These rule revisions complement our efforts in Rulemaking (R.) 00-02-004 to develop consumer protection rules and procedures applicable to all telecommunications utilities.

[1] In a prior interim opinion (Decision (D.) 01-07-026) in this rulemaking, we adopted rules governing (1) use of the Internet to publish tariffs, and (2) representations by a utility regarding any of that utility's tariffed services.

We intend to adopt and implement these rules revisions now, without waiting for adoption of GO 96-B as a whole. As with our prior interim opinion (see footnote 1), we believe adoption of these rules revisions will benefit consumers, and should not be delayed. The notice requirements adopted today will also work in tandem with the final rules in R.00-02-004; we expect to be considering the latter rules shortly.[2]

2. Adopted Notice Requirements

The notice requirements adopted in today's decision derive in substance from General Rule 4.2, Telecommunications Industry Rules 3-3.3, and related definitions in the assigned Administrative Law Judge's Draft Decision (ALJ Draft) issued on February 14, 2001. Parties have had four opportunities to comment on the ALJ Draft, and we have modified the notice requirements in response to some of the comments.

Briefly, the notice requirements specify how, when, and in what circumstances a telecommunications utility (i.e., a public utility that is a telephone corporation under the Public Utilities Code) must give prior notice to those customers who would be affected by a change the utility proposes to make by advice letter.[3] Specifically, a utility must give prior notice whenever the

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[2] Until we take final action on GO 96-B, the notice requirements adopted today will be treated as an Appendix to GO 96-A, as we did with the rules adopted in D.01-07-026. Both sets of interim rules will be published at the Commission's Internet site together with the rest of GO 96-A.

[3] Today's decision does not address the scope of changes for which a utility may seek approval by advice letter. Depending on the kind of change and the nature of the service that would be affected, a utility may have to file a formal application to obtain Commission approval of the proposed change. Similarly, today's decision does not address customer notice and other procedural requirements pertaining to formal

Footnote continued on next page

utility proposes to (1) transfer some or all of its customers, (2) withdraw a service, or (3) raise rates or charges or impose more restrictive terms or conditions. In the case of a transfer, the utility must give this notice at least 30 days before the proposed transfer; otherwise, the utility must give this notice on (or before) a date that is at least 25 days before the requested effective date of the advice letter proposing the change, or the date when the utility submits the advice letter, whichever date is earlier.[4]

A utility may give notice by one or a combination of means. These include bill inserts, notices printed on bills, separate notices sent by first-class mail, and e-mail to those customers who receive bills from the utility by e-mail.

We have made non-substantive modifications to the notice requirements as set forth in the ALJ Draft so that they are complete in a stand-alone format. We have also made two substantive changes. The ALJ Draft does not expressly authorize e-mail notice; both utility and consumer commenters noted that many customers now receive their bills by e-mail, and these commenters suggest that e-mail notice is appropriate for such customers. We agree, and we have clarified the notice requirements accordingly.

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applications. These requirements go beyond the purview of this rulemaking to revise GO 96-A; however, we expect to deal with them, as appropriate, in R.00-02-004.

[4] In effect, submission of the advice letter will be the triggering event for notice purposes under current procedures. If and when GO 96-B is adopted as proposed in the ALJ Draft, utilities will have authority to implement some kinds of changes immediately upon submission of the advice letter. In that circumstance, a utility exercising that authority would have to notify its affected customers 25 days in advance of submitting its advice letter.

We also agree with comments that the ALJ Draft's requirement for notice of a proposed transfer is overbroad.[5] Not all transfers subject to our approval likely would affect the transferring utility's customers. The notice requirement we adopt today covers only those transfers that would have the effect of replacing the transferor with another service provider. A transfer that would not move customers but that would have the effect of withdrawing or reducing service or raising rates would have to be noticed to affected customers under the provisions governing withdrawals of service and rate increases.

3. Response to Comments on February 14 ALJ Draft

As noted above, we have received four rounds of comments since issuing the February 14 ALJ Draft. Opening Comments and Reply Comments on the entire ALJ Draft were filed on March 23 and April 6, 2001, respectively. In addition, the ALJ provided two opportunities for comment focusing on specific aspects of the Telecommunications Industry Rules. First, in comments due June 14 (later rescheduled to June 29), parties were requested to identify any existing telecommunications advice letter procedure that would change under the General Rules or Telecommunications Industry Rules, and (where applicable) to indicate why they prefer the existing procedure. Second, in comments due July 16, parties could make policy arguments regarding the Telecommunications Division's authority to suspend Tier 2 advice letters. We here respond to these comments to the extent they concern the notice requirements we are adopting.

Consumer advocates generally support the adopted notice requirements. For example, our Office of Ratepayer Advocates (ORA) agrees that customers should have advance notice of rate increases. (ORA, June 29 Comments, p. 5.)

[5] See, e.g., Pac-West Telecomm, Inc., Opening Comments, pp. 13-14.

The Utility Reform Network (TURN) also agrees, noting that the notice requirements "will better enable customers to make informed choices, thereby enhancing the ability of telecommunications markets to function as envisioned in economic theory." (TURN, Reply Comments, p. 5.)

TURN and ORA oppose a provision in General Rule 4.2 in the ALJ Draft. Under that provision, a utility could satisfy a customer notice requirement by publishing notice in a newspaper of general circulation, but only if newspaper publication were authorized by the appropriate Industry Rules. The Telecommunications Industry Rules do not authorize newspaper publication for this purpose, nor do the notice requirements we adopt today.

However, in another respect, we liberalize the notice requirements in the ALJ Draft, as suggested by both TURN and the California Telecommunications Coalition (Telco Coalition).[6] Specifically, we will permit customer notice by e-mail to customers who receive their bills via e-mail.

In addition to customer notice by e-mail, Telco Coalition (Opening Comments, p. 14) supports notice by newspaper publication. ORA (as we already mentioned) opposes newspaper notice, particularly if the utility does not use any other means to notify its customers of a given advice letter. In response,

[6] Telco Coalition is a group of "competitive" companies (as distinguished from "incumbent" local exchange companies). Regarding its Opening and Reply Comments on the ALJ Draft, the group consisted of AT&T Communications of California, Inc., California Cable Television Association, The California Association of Competitive Telecommunications Companies, ICG Telecom Group, Inc., WorldCom, Inc., Cox California Telcom, LLC, XO California, Inc., and Time Warner Telecom of California, LP. The composition of Telco Coalition shifted slightly for its June 29 Comments, in that Pac-West Telecomm, Inc. joined in those comments, while ICG filed separate comments. For purposes of our response to the various comments, the shift seems immaterial.

we note that the extent to which a utility may rely on newspaper publication for customer notice is still under consideration for the final order in this proceeding. In the ALJ Draft, the Energy and Telecommunications Industry Rules do not exercise the power conferred by General Rule 4.2 to allow customer notice through newspapers; only the Water Industry Rules allow such notice, and then only in limited circumstances. Undoubtedly, a notice via bill, bill insert, or direct mailing from the utility to its customers is much more likely to get the affected customers' attention than is an advertisement in a newspaper, especially if the advertisement is tucked away in the newspaper's "legal notices" section. Consequently, we are not convinced at this time to authorize any general reliance by telecommunications utilities on newspaper publication to satisfy customer notice requirements.

Verizon California Inc. and Verizon Select Services Inc. (collectively, Verizon), Citizens Telecommunications Company and various affiliates (collectively, Citizens), and Telco Coalition criticize various other aspects of the notice requirements as set forth in the ALJ Draft. We will address these criticisms in the above sequence.

Verizon objects to the notice requirements in principle. It believes, "Competitive market forces will adequately ensure that all carriers, on their own initiative, provide appropriate customer notice of service changes and other service-related information. . . . Commission-mandated notice requirements [are] unnecessary." (Verizon, Opening Comments, p. 19.) Accordingly, Verizon urges that we retain our current procedures wherever they provide for no customer notice or a shorter notice period, as compared to the notice requirements in the ALJ Draft. (See Verizon, June 29 Comments, p. 3.) In reply, TURN strongly supports the new notice requirements, citing "the sordid recent history of telecommunications industry marketing abuses and failure to provide

customers with accurate information on rates, terms, and conditions of service. . . ." (TURN, Reply Comments, p. 8.)

We are convinced that prior notice to customers is necessary and appropriate in the circumstances covered by the requirements we adopt today. Our experience in many complaint proceedings and investigations conducted since we last took a broad look at customer notice requirements in the telecommunications industry shows that inadequate information, misinformation, and customer confusion in this industry are far too prevalent. Prior notice to customers will not hamper legitimate competition; in fact, our new notice requirements will help ensure that customers get what they want and like what they get.

Verizon, among other parties, notes that we currently allow "minor" rate increases (5% or less) by non-dominant telecommunications carriers to become effective without prior notice to customers. (Verizon, Opening Comments, p. 13.) We now consider this minor/major distinction to be untenable. Figuring out whether an increase is or is not "minor" has often proved controversial. More important, the question of the significance of a particular rate increase is properly one for the customer to decide, not for the utility or the regulator. Depending on a given customer's choice of services and calling patterns, a small increase could have a major impact. Consequently, our notice requirement does not distinguish between major and minor rate increases.

Verizon (Opening Comments, p. 18) objects to our treatment of "customer base" as an asset for purposes of notice to affected customers of a proposed transfer. Verizon notes that the phrase "customer base" is not used in the Public Utilities Code sections (§§ 851-854) addressing transfers of assets or control, or in Rules 35 and 36 of our Rules of Practice and Procedure (concerning applications for approval of such transfers). However, as Pac-West notes (Opening

Comments, p. 13), Public Utilities Code Section 2889.3 and the rules we adopted in our "slamming" rulemaking and investigation (R.97-08-001/I.97-08-002) have different notice requirements for transfers of customers than for other kinds of transfers. As discussed further in today's decision (see Section 5.1 below), the notice requirement we adopt today to protect customers affected by proposed transfers complements the statute and our slamming rules. It is also timely, considering the many withdrawals of telecommunications service we are observing.

Citizens suggests a uniform 30-day prior notice requirement in preference to the alternate provisions in the adopted rule. (Citizens, Opening Comments, pp. 3-4.) Verizon apparently agrees with this suggestion in the event we reject Verizon's primary recommendation and instead require prior notice to customers. (Verizon, Opening Comments, p. 19.)

We reject Citizens' suggestion and adopt the notice rule as proposed in the ALJ Draft. The adopted rule better accommodates the planned structure of GO 96-B, which allows certain kinds of changes to become effective immediately upon filing of the advice letter. In such instances, and in general, we anticipate that utilities will want to use bill inserts (in preference to special mailings) to give prior notice; the minimum 25-day advance notice provision gives utilities with customers on different billing cycles more leeway to avoid special mailings, while ensuring all customers have adequate time to consider the impact of pending service changes.

Telco Coalition (June 29 Comments, pp. 12-14, 39-41) objects to the notice requirements as they pertain to higher rates or more restrictive conditions. Telco Coalition notes that the notice requirements modify those set in D.90-08-032 (for interexchange carriers) and D.95-07-054 (for competitive local carriers). D.90-08-032 requires prior customer notice of rate increases, but allows the notice

to occur by bill insert following the advice letter filing of the increased rate, as long as the notice precedes the effective date of the increase. D.95-07-054 has similar notice provisions, but (as discussed earlier) it distinguishes between "major" and "minor" rate increases; for the latter, no prior notice to customers is required.[7]

Telco Coalition prefers the existing notice requirements to those we adopt today. Telco Coalition claims the new requirements force interexchange carriers to signal rate increases well in advance of submitting their advice letters, to the detriment of competition. Moreover, per Telco Coalition, specific details of a change to a rate or condition are often not finalized until just before the new tariff is submitted. Requiring customer notice to occur well before tariff submittal is impractical because last-minute changes are common in competitive industries; thus, the notices could become inaccurate and confusing, and the costliness to carriers of the notice process would increase. Finally, regarding minor rate increases, Telco Coalition says they "are presumed to impact customers less," and particular customers may in fact see no overall increase if a tariff change raises one element of a service's rate but reduces another element.

[7] A "minor" rate increase is one which is both "less than 1% of the [carrier's] total California intrastate revenues and less than 5% of the affected service's rates" when viewed cumulatively with other "rate increases that took effect during the preceding 12-month period" for that service. (D.95-07-054, Appendix A, Rule 3.C.) Another difference between the rules adopted today and those in D.95-07-054 is that the new rules require the notice to include the current rate being increased, while D.95-07-054 does not require such inclusion. Telco Coalition notes this difference but does not indicate whether it objects to the modifications to D.95-07-054 in this respect. Juxtaposing the current and increased rates makes the notice more meaningful, so we think the modification is appropriate.

Telco Coalition asks for a hearing before the Commission changes the notice requirements of D.90-08-032 or D.95-07-054. Telco Coalition contends that the existing requirements adequately protect customers, that the new requirements will not necessarily provide better protection, and that the negative impacts of the new requirements (in terms of increased costs, delays, and customer confusion) would outweigh any customer benefit.

We affirm that affected customers should receive prior notice of increased rates or charges (whether "major" or "minor"), or more restrictive terms or conditions, as prescribed in the rules adopted today. We will not hold a hearing as requested by Telco Coalition; as discussed below, Public Utilities Code Section 1708.5(f) specifically authorizes the Commission to adopt or amend regulations through the notice-and-comment process used here, without an evidentiary hearing.[8] Further, we find there are no disputed facts that are material to our decision to adopt these rules. Consequently, holding an evidentiary hearing is not necessary and would not be productive.

In adopting the new notice requirements, we act in our quasi-legislative capacity through a process of notice-and-comment rulemaking. We acted in the same capacity, using the same process, in D.90-08-032 and D.95-07-054. Those decisions, like today's, were not preceded by evidentiary hearings. Thus, Public

[8] Pub. Util. Code § 1708.5(f) reads as follows:

> Notwithstanding Section 1708, the commission may conduct any proceeding to adopt, amend, or repeal a regulation using notice and comment rulemaking procedures, without an evidentiary hearing, except with respect to a regulation being amended or repealed that was adopted after an evidentiary hearing, in which case the parties to the original proceeding shall retain any right to an evidentiary hearing accorded by Section 1708.

Utilities Code Section 1708.5(f) authorizes us to amend, again without evidentiary hearing, the notice requirements we originally adopted in D.90-08-032 and D.95-07-054. In both of those decisions, we emphasized that conditions in the telecommunications market were changing rapidly; in that context, we stated, regarding interexchange competition, that we intended to "foster competition while still providing consumer safeguards." (D.90-08-032, 37 CPUC2d 130, 154 "Policy Considerations.") In announcing our "Initial Rules for Local Exchange Service Competition in California" (emphasis added), we set a "public policy principle and objective" to create an environment in which "telecommunications users shall receive adequate ongoing disclosure of the rates, terms and conditions of service and shall benefit from a clear and comprehensive set of consumer protection rules." (D.95-07-054, 60 CPUC2d 611, 640, Appendix A, Rule 1.B.) Today's decision is fully consistent with these policies.

Fundamentally, we consider prior notice of rate increases to affected customers to be even more important than prior notice to regulators, especially considering the generally relaxed regulatory scrutiny of rates in the telecommunications market. Unfortunately, the existing notice requirements set in D.90-08-032 and D.95-07-054 get this relationship backwards. Advice letters submitted to the Commission provide it, and the utility's competitors, 30 days' notice of rate increases, while the days of prior notice to affected customers depend fortuitously on the utility's billing cycle.[9] Providing affected customers

[9] Except for "minor" increases under D.95-07-054, for which the Commission gets five days' advance notice, while affected customers get no advance notice at all. We have already explained our rejection of the major/minor distinction. (See our earlier response to Verizon's comments.)

assurance that they will receive reasonable prior notice of rate increases is one of the primary purposes of the rules adopted today.

Granting Telco Coalition's assertion that the new notice requirements will entail some increased costs, we think those costs are appropriate to better inform customers. We also concede the new requirements may affect competition, but only because they help competition function as we intend. Stated differently, the competitive advantage to be derived from surprising one's customers with rate increases is not an advantage we want to protect.

To sum up, our existing notice requirements were expressly the product of policy judgments made near the start of competition in the local and long-distance markets. We made clear that we intended to revise those judgments, as might be appropriate, based on our observation of those markets.[10] In modifying D.90-08-032 and D.95-07-054 regarding prior notice of rate increases to affected customers, we move in the direction of putting more (and more timely) information, and consequently more control, in the hands of consumers. That is what competition is all about.

4. Status of GO 96-B

This Commission remains committed to completing the work on GO 96-B, which will be a total revision and updating of the procedures for tariff filing and advice letter review. The last major hurdle is the Telecommunications Industry Rules, on which we have received four rounds of comments since issuing the ALJ Draft last February. In a nutshell, those Industry Rules pull together a vast

[10] E.g., "It is the policy of the Commission to monitor, on a periodic basis, the market conditions of the local exchange telecommunications market and reevaluate its policies on local exchange competition accordingly." (D.95-07-054, 60 CPUC2d at 641, Appendix A, Rule 1.J.)

number of procedures developed serially by the Commission (but not reflected in GO 96-A) as competition in the telecommunications industry expanded since the mid-1980s. In many cases, GO 96-B would simply codify those procedures, but in many other cases, the procedures would be modified.

The record shows that some of the proposed modifications are controversial, and that some confusion exists over which existing procedures would, in fact, be modified. At a minimum, we will need to clarify some of the Telecommunications Industry Rules, and may need to make related clarifications to some of the General Rules.[11]

In a project of this size, and an industry as divergent as telecommunications, we cannot realistically hope to achieve total consensus. Some honest differences in principle are likely to persist. Nevertheless, those differences that exist because of misunderstandings should be resolved. To that end, we expect to make several substantial changes to the ALJ's February 2001 version of GO 96-B, drawing on the four rounds of comments that version elicited. Our changes will be subject to a further comment cycle before final adoption, and the implementation schedule for GO 96-B will be adjusted as appropriate.

5. Comments on "Second Interim Opinion"

Today's decision, the Second Interim Opinion in this proceeding, was mailed as a draft decision to the parties on October 19, 2001. We received opening comments from five parties, namely, Telco Coalition, TURN, Roseville

[11] In considering the need for these clarifications, we have been greatly assisted by comments submitted on June 29, 2001, by various parties in response to an ALJ request for rule-by-rule analysis of the proposed telecommunications procedures. At a time when all parties' resources are stretched, we acknowledge and appreciate their efforts.

Telephone Company, a group of small incumbent local exchange company (collectively, the "Small LECs"), and VarTec Telcom, Inc.[12] We received reply comments from four of these parties (Telco Coalition, TURN, Roseville, and VarTec) and from two other parties, namely, ORA and Pacific Bell Telephone Company.

In general, the consumer commenters (ORA and TURN) strongly support the notice requirements, while industry commenters are more divided, especially regarding the new requirements for advance customer notice of rate increases. However, all of the commenters provide useful suggestions for improvement or clarification, and our rules as adopted today incorporate many of these suggestions. Discussion of their comments follows.

5.1 Limitations and Exceptions

We have been asked by VarTec and Telco Coalition to clarify two points about what today's decision does not do. First, in adopting rules requiring advance notice to customers of rate increases, we make no change to our current rules that do not require such notice of rate decreases. Second, in rejecting requests for evidentiary hearings regarding the rule changes adopted in today's decision, we reserve judgment on additional requests made in prior comments

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[12] The Telco Coalition, for these two rounds of comments, consists of AT&T Communications of California, Inc., Cox California Telcom, LLC, ICG Telecom Group, Inc., Pac-West Telecomm, Inc., Time Warner Telecom of California, LP, WorldCom, Inc., and XO California, Inc.

The Small LECs consist of Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Evans Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, The Volcano Telephone Company, and Winterhaven Telephone Company.

(especially those submitted on June 29, 2001) regarding the other GO 96-B proposed rules not yet adopted and still under consideration in this proceeding.

Roseville and the Small LECs ask us to confirm their understanding that utilities are not required under these rules to give notice every time we increase one of the public poling program surcharges. Their understanding is correct, and we have modified the rules to state this exception expressly.[13]

TURN assumes, correctly, that current notice requirements for formal applications will remain in place while we implement these new notice requirements for advice letters. We have modified Sections 1 and 2 of the Opinion to clarify this point. We remind the parties that the scope of this rulemaking is limited to advice letters, but that we are concurrently addressing telecommunications consumer protection issues (including notice requirements for various types of formal applications) in R.00-02-004.

VarTec notes that certain interexchange carriers (VarTec refers to them as "dial around/casual access providers") do not have billing name and address information regarding their customers; consequently, these carriers cannot give customer notice by first-class mail or e-mail as contemplated by our rules. Such carriers do not have customer "subscribers;" instead, customers place a call via the carrier by dialing a code (e.g., 10-10-XXX). Aside from lacking address information, the dial-around service provider cannot be certain who is a current customer, since a particular caller may use that provider frequently, seldom, or once only. VarTec is willing to give notice by newspaper publication of rate

[13] Cf. Resolution T-16585 (October 10, 2001), Ordering Paragraph 4, in which the Commission waived customer notice of revised tariffs to reflect the change there authorized to the California High Cost Fund-B surcharge.

increases. However, both Telco Coalition and ORA believe that our customer notice requirements need not cover dial-around service providers at all.

We will not apply specific customer notice requirements to dial-around service providers at this time. While there may be consumer protection issues in connection with dial-around service, we are satisfied that the customer notice requirements we adopt today are suited to "subscribers" and not to users of dial-around service.[14] Thus, a utility that does not have a postal or e-mail address at which to contact its customers about bills, accounts, service agreements, or the like, need not provide customer notice under the rules adopted today.

5.2 Timing and Contents of Notices Generally

Many of the comments debate the start date from which to calculate the requisite notice period. Roseville and the Small LECs suggest that the notice period run from the day a mailing is postmarked or, in the case of e-mail, the day it is transmitted. VarTec, Pacific Bell, and Telco Coalition basically agree, although with the qualification that, since bulk first class mail does not have a postmark, the start date should be the day the notice is deposited with the U.S. Mail. ORA and TURN argue that five days should be added if the notice is mailed.

Our Rules of Practice and Procedure settle this debate for purposes of our formal proceedings. Specifically, Rules 2.3(a) and (b) say that service by mail is complete when the document is deposited in the mail, and that service by

[14] We note that VarTec and several other dial-around service providers we checked maintain an Internet site and a toll-free number for inquiries about their current rates. Also, the Internet tariff publication requirements we adopted in our prior interim opinion (D.01-07-026) apply to all telephone utilities with reported gross intrastate revenues of $10 million.

electronic means (including modem) is complete upon successful transmission. The February 14 ALJ Draft incorporated these rules by reference in its proposed General Rule 3.14. We see no reason to differentiate in this procedural respect between advice letters and formal proceedings; to do so invites confusion and uncertainty. Accordingly, for the rules adopted today, we have added a provision that is identical in substance to Rule 2.3(a) and (b).

However, we will differentiate between the customer notice periods required for transfers and for other types of utility requests subject to the rules adopted today. Public Utilities Code Section 2889.3(a)(1) requires that:

> "Before a telephone corporation exits the business of providing interexchange services to all of its customers or to an entire class of its customer, the telephone corporation or any person, firm, or corporation representing the telephone corporation, shall provide those affected customers with a written notice at least 30 days prior to the proposed transfer of those customers to another telephone corporation."

We have modified our 25-day notice provision so that 30 days' notice will be required for transfers, consistent with the statute. Likewise, consistent with Section 2889.3(a)(1)(D), we require the customer transfer notice to include "a toll-free customer service telephone number for the purpose of responding to customers' questions."

Also regarding the 25-day notice provision, Telco Coalition points out an ambiguity that did not exist in the version proposed in the February 14 ALJ Draft. Telco Coalition suggests specific language to eliminate the ambiguity; TURN agrees with the suggestion, although ORA is not convinced that the purported ambiguity exists. We find that the language proposed by Telco Coalition more clearly expresses our intent than either of our versions, so we will adopt the 25-day notice provision as set forth in Telco Coalition's comments.

TURN suggests the customer notice should include information about how to protest the advice letter that is the subject of the notice. We reject this suggestion at this time. We note that the February 14 ALJ Draft (in Telecommunications Industry Rule 3) would require protest information, but only for those advice letters ("Tier 3" in the proposed GO 96-B) that are expected to need approval or rejection by Commission order.[15] Unless and until we adopt the GO 96-B tier structure, it would be premature to require inclusion of the protest information, especially considering that in many instances, the only condition to our approval of a utility request is the giving of timely notice of the request to the utility's customers. Moreover, the main purpose of today's decision is to better enable customers to make informed choices. Enabling customer participation through protests is also an important regulatory consideration but one that we may appropriately defer to our adoption of the complete package of GO 96-B reforms.

The Small LECs note they are unique among telecommunications utilities in that they may file general rate cases through the advice letter process, and that these cases take much more time than typical advice letters. Thus, the Small LECs ask that they be allowed to give customer notice of a general rate case advice letter in the first billing cycle after filing of that advice letter. They also question the need for describing in the notice the reason for the proposed change in rates and the impact of the change in dollar and percentage terms. ORA and TURN disagree with the Small LECs. ORA notes that GO 96-A already requires

[15] In contrast to formal proceedings, advice letters generally concern utility requests whose disposition would be ministerial, and thus their approval or rejection normally would be done by the reviewing Commission staff.

the utility to describe the reason for rate changes and their impact, and that the rules under consideration merely continue the existing requirement. TURN argues that if a utility's billing cycle cannot accomplish timely notice through bill inserts, the utility can do a separate mailing. For the reasons stated by ORA and TURN, we will not modify our customer notice requirements as requested by the Small LECs.

5.3 Transfer of Customers

Comments on the draft of today's decision noted that the transfer rule contained two undefined terms: "telecommunications service provider" and "customer base." We find that neither term is necessary, and that the clarity of the rule is enhanced by replacing these terms with "transferee" and "customers," respectively.

VarTec urges that we not require customer notice of a transfer that is "merely a corporate-level transaction [in which] the customer does not experience any change in rates or conditions." VarTec gives as an example a stock or asset acquisition that does not otherwise result in a change to the service or even to the name of the service provider. TURN appears to agree; in fact, as TURN reads the transfer rule, it does not require notice of a transfer that affects only the "holding or parent company level."

We agree with TURN's reading of the transfer rule. That is not to say customers have no concern with changes that occur strictly at the holding or parent company level; the issue, rather, is to implement Public Utilities Code Section 2889.3 consistent with the legislative intent. Taking our notice rules as a whole, we see that we have required prior notice to affected customers whenever a telephone utility withdraws a service, raises rates (or adopts more restrictive terms), or transfers all or some of its customers. The mere substitution of a

different holding or parent company, without other impact on the underlying utility providing service or the service provided, does not appear to be the sort of change for which prior notice to the utility's customers is contemplated under Section 2889.3. Those customers would receive prior notice under our rules should the transferee later propose to make any of the specified changes.

VarTec also is concerned that our rules may be construed to impose a "dual" notice requirement. This concern is based on a misunderstanding, not of the rules themselves, but of the last sentence in Section 2 of the draft of today's decision issued for public review and comment. We have revised the sentence to make clear that we are not requiring duplicate notices of a single transfer.

5.4 Withdrawal of Service

Comments on the withdrawal of service rule raise concerns about its scope, the conceptual distinction between transfer and withdrawal, and the withdrawing utility's obligation to provide for continuity of service. We address these concerns in sequence.

The concern regarding scope arises because the rule as set forth in the draft of today's decision contained certain ambiguities. We now clarify the rule such that it applies whenever a utility is discontinuing a service's availability to at least some customers receiving the service as of the date it is withdrawn. In other words, a utility withdrawing a service only in a particular location would still have to notify affected customers in that location. On the other hand, no notice requirement is triggered under the rules adopted today if the utility is

only discontinuing availability of a service to customers who are not currently receiving the service.[16]

Telco Coalition believes notice of withdrawal should be required "only when a carrier is withdrawing from the market and requiring its customers to change providers," as distinguished from a carrier's "decision . . . that a current product or service should no longer be available to its customers." Telco Coalition therefore proposes to combine the provisions for transfer and withdrawal by, among other things, deleting the definition of "withdrawal of service" and modifying the definition of "transfer" to read:

> "[T]ransfer" means a transfer in which another telecommunications service provider would replace the transferring utility for part or all of the transferor's customer base following the transferring utility's decision to withdraw the service(s) subscribed to by the segment of the customer base being transferred or to exit the California telecommunications market altogether.

TURN disagrees with Telco Coalition in this regard, and urges the retention of "transfer" and "withdrawal" as separate concepts. In particular, TURN argues that notice should be given regardless of whether the proposed withdrawal is of all of a utility's service offerings or just a part of them. TURN also notes that under Telco Coalition's approach, a paradoxical situation ensues in which a utility must notify its customers of a withdrawal where a replacement

[16] In GO 96-B, as proposed in the February 14 ALJ Draft, discontinuing a service's availability to customers not currently receiving the service, but "grandfathering" customers already receiving it, is referred to as "freezing" the service. We think our withdrawal rule, as modified in today's decision, is clear without importing the definition of freezing at this time; adoption of that definition is better considered when we deal with GO 96-B as a whole.

is available but the utility escapes the notice requirement where a replacement is not available.

We will retain both the "transfer" and "withdrawal" provisions. We certainly need to address customers' needs in the situation where a withdrawal occurs without an associated transfer. We also intend to cover all withdrawals of service, whether the withdrawal affects some or all of the utility's customers and some or all of the utility's services.[17]

TURN asks that we include a provision from the February 14 ALJ Draft requiring a utility that provides basic service over its own facilities to arrange for transfer of affected customers if it proposes to withdraw that service. We will adopt that provision (with slight modifications), and we will also clarify that the term "basic service" applies to such service whether the customer is business or residential.

Pacific Bell and Roseville have objections and concerns about requiring a facilities-based utility to arrange for transfer of customers affected by the utility's proposed withdrawal of basic service. Pacific Bell asserts that utilities have no such obligation today, and notes that in some geographic areas, no other utility may be providing basic service. Roseville hypothesizes that an affected customer may object to the designated default transferee; Roseville is also uncertain how this requirement for noticing withdrawal of basic service interacts with the requirement in today's decision for noticing customer transfer.

[17] We note that under Telco Coalition's approach, a utility that proposed to withdraw its bundled local and long distance service, but to continue to offer local and long distance service separately, would apparently not have to notify affected customers of the proposed withdrawal of bundled service. Cf. D.01-06-036 (concerning the application of Verizon Select Services Inc. to withdraw provision of local bundled service).

In response, we consider that the withdrawing utility's responsibilities arise directly from the Universal Service Rules we adopted in D.96-10-066. We find unacceptable, and inconsistent with the Universal Service Principles and Objectives (see D.96-10-066, Appendix B, 68 CPUC2d 524, 671-82), any possibility that a customer who has paid the bills and who is otherwise in good standing could lose his or her basic telephone service when a utility withdraws that service.

Even now, we do not permit withdrawal of a utility service prior to our authorization. (GO 96-A, Section XIV.) Further, under the Universal Service Rules, a "Carrier of Last Resort" (COLR) that is also the only utility serving a designated geographic area must continue to act as COLR until the Commission has granted its application or a new COLR has been designated. (See generally D.96-10-066, Appendix B, Section 6.D, 68 CPUC2d at 676.) Less clear under the Universal Service Rules is how continuity of service is ensured when there are other utilities providing basic service in the geographic area from which a COLR proposes to withdraw that service. The rules we adopt today provide clarification.

Specifically, the utility proposing to withdraw basic service that it has provided using its own facilities must make arrangements to ensure its customers do not lose basic service, even where a customer has not chosen another utility. There may be several ways to accomplish this; for example, in geographic areas where several utilities will continue to provide basic service, the withdrawing utility may make arrangements with several "default" carriers. The informational requirements of our notice rule are not intended to prescribe the arrangements, but only to tell affected customers what arrangements the withdrawing utility has made.

In sum, these informational requirements pertaining to withdrawal of basic service consist of: (1) prior notice; (2) designation of the default carrier(s); (3) description of arrangements made with the default carrier(s); (4) explanation that the affected customer may choose another utility in lieu of the default carrier(s); and (5) a toll-free number for more information. If no other utility provides basic service in the relevant geographic area, the "arrangements" described in the notice need only state that the withdrawing utility will continue to provide basic service until and unless the Commission relieves it of that obligation.

Lastly, TURN asks us to consider extending continuity of service requirements beyond basic service to (specifically) digital subscriber line (DSL) service and other forms of Internet access. Roseville, Pacific Bell, and Telco Coalition oppose this extension.

In response, we note that the notice requirements in today's decision apply to withdrawal of telephone services, including those that provide access to the Internet. The issue is whether the carrier withdrawing such a service must make arrangements for continuity of access to the Internet by or for its customers (who probably include Internet service providers).

The Internet has become too important in today's society for loss of access to be treated lightly, and we are dismayed by recent events that have disrupted service to Internet service providers and end-users. Nevertheless, given the goal of uninterrupted access, we question whether the best way to achieve that goal is to give the withdrawing carrier the obligation (and the opportunity) to transfer its customers in bulk. Before venturing an answer, we should hear more from affected customers, including Internet service providers. To have withdrawing carriers and their customers (potentially) working at cross-purposes or making conflicting arrangements would be unlikely to minimize disruption. Thus, we

will solicit further comment on whether the notice requirements in today's decision appropriately address the problems discussed above, and what requirements, if any, should be imposed on a withdrawing carrier to make specific arrangements regarding continuity of Internet access.

Findings of Fact

1. It is timely and appropriate to adopt new or amended requirements for notice by a telecommunications utility to its affected customers of a proposal by the utility to make certain kinds of changes. Changes for which such prior notice is appropriate include: a transfer in which the transferee would replace the transferring utility for some or all of the transferor's customers; a withdrawal of service; and a higher rate or charge or more restrictive term or condition. Prior notice to customers will promote fairness and efficiency in the competitive market for telecommunications services.

2. For purposes of the rules adopted today, it is appropriate to allow utilities to give notice by one or a combination of means, including by e-mail to those customers who receive their bills by e-mail.

3. For purposes of the rules adopted today, customer notice by newspaper publication is inadequate.

4. Today's decision should take effect immediately so that telecommunications utilities can begin implementing the customer notice requirements as soon as possible.

Conclusions of Law

1. The Commission should ensure that affected customers receive notice of certain kinds of proposed changes to their telecommunications service.

2. The Commission should adopt the rules set forth in the Appendix to today's decision.

3. Today's decision amends certain notice requirements that we originally adopted without evidentiary hearing. Moreover, there are no disputed facts that are material to our consideration of the notice requirements adopted in today's decision. Consequently, we need not hold an evidentiary hearing before adopting these amended notice requirements.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. The rules set forth in the Appendix to this Second Interim Opinion are adopted.

2. The rules set forth in the Appendix shall apply to all advice letters whose proposed effective date is at least 60 days after the effective date of this Second Interim Opinion.

3. This proceeding remains open to deliberate upon final adoption of General Order 96-B, apart from those rules adopted today and in Decision 01-07-026.

This order is effective today.

Dated January 9, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

APPENDIX

1. Applicability and Definitions

As used in the following rules:

(1) "utility" means a public utility that is a telephone corporation, as defined in the California Public Utilities Code;

(2) "transfer of customers" means a transfer in which the transferee would replace the transferring utility for some or all of the transferor's customers; and

(3) "withdrawal of service" means discontinuing a service's availability to some or all of the withdrawing utility's customers receiving the service as of the date it is withdrawn.

For purposes of these rules, an increase to a public policy program surcharge does not constitute a higher rate or charge or more restrictive term or condition. Unless otherwise required by context, use of the singular includes the plural.

2. Means of Giving Customer Notice

A utility may satisfy a notice requirement in these rules by one or a combination of the following means: bill inserts; notices printed on bills; or separate notices sent by first-class mail (or by e-mail to a customer who receives bills from the utility by e-mail). Notice by first-class mail is complete when the document is deposited in the mail, and notice by e-mail is complete upon successful transmission.

3. Notice to Affected Customers

A utility must notify each affected customer of the utility's advice letter requesting approval of (1) a transfer of customers, (2) a withdrawal of service, or (3) a higher rate or charge or more restrictive term or condition. In the case of a transfer of customers, the utility must give this notice at least 30 days before the proposed transfer; otherwise, the utility must give this notice on a date that is at least 25 days before the requested effective date of the advice letter, or on the

date when the utility submits the advice letter to the Telecommunications Division's Advice Letter Coordinator, whichever date is earlier.

If the utility requests approval of a transfer of customers, the notice must identify the transferee, describe the changes (if any) in rates, charges, terms, or conditions of service, state that customers have the right to select another utility, and provide a toll-free customer service telephone number for the purpose of responding to customers' questions.

If the utility requests approval of a withdrawal of service, the notice must describe the proposed withdrawal, state that customers have the right to choose another utility, and provide a toll-free customer service telephone number for the purpose of responding to customers' questions. If the service to be withdrawn is basic service (as specified in Part 4 of Appendix B of Decision 96-10-066 and as modified from time to time by the Commission) that the utility provides to residential or business customers by use of the utility's own facilities, the utility must arrange with the default carrier(s) for continuity of service to affected customers who fail to choose another utility, and the notice must describe the arrangements the utility has made to ensure continuity of service to affected customers. If the utility resells basic service, the notice must state that customers may choose another utility or (if no other utility is chosen) receive basic service from the underlying carrier or carrier of last resort.

If the utility requests approval of higher rates or charges or more restrictive terms or conditions, the notice must describe the current and proposed rates, charges, terms, or conditions (as appropriate). If the utility is a local exchange carrier regulated through periodic general rate cases, the notice must also describe the reason for the proposed change to a rate or charge and state the impact of the change on the rate or charge in dollar and percentage terms.

(END OF APPENDIX)