Decision 06-12-044 December 14, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities.	Rulemaking 05-04-005 (Filed on April 7, 2005)

ORDER MODIFYING AND GRANTING LIMITED REHEARING OF DECISION (D.) 06-08-030, AND DENYING REHEARING OF DECISION, AS MODIFIED, IN ALL OTHER RESPECTS

I. INTRODUCTION

On August 30, 2006, we issued Decision (D.) 06-08-030 (Decision) in Order Instituting Rulemaking (R.) 05-04-005 (OIR).[1] We instituted the rulemaking to assess and revise the rate regulation of large and mid-sized incumbent local exchange carriers (ILECs) in California. (D.06-08-030, p. 13.) The primary purpose of the proceeding was to develop a "uniform regulatory framework" (URF) to the extent that such a framework would be feasible and in the public interest. (D.06-08-030, p. 13; R.05-04-005, pp. 2-3.) The OIR listed, described, and appended, along with the elements of a hypothetical Uniform Regulatory Framework (URF), specific issues to be considered within the proceeding.[2]

Parties to the proceeding filed comments pursuant to the OIR in 2005. On May 31, 2005, sixteen parties filed opening comments in the rulemaking.[3] The

[1] *Order Instituting Rulemaking For The Purpose Of Assessing And Revising The Regulation Of Telecommunications Utilities* (OIR), Rulemaking (R.) 05-04-005, dated April 7, 2005.

[2] See OIR 05-04-005.

[3] DRA, TURN, SBC California, Verizon California, SureWest Telephone, Frontier, Cox California Telcom, LLC DBA Cox Communications (Cox); Department of Defense and all other Federal Agencies (collectively, DOD), Disability Rights Advocates (DisabRA), XO Communications (XO), Nextel of

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two largest ILECs, AT&T[4] and Verizon California, filed newly proposed "frameworks;" the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) assessed and proposed specific changes to the existing framework; and Frontier and SureWest proposed frameworks similar to the one set forth in the OIR's Appendix A, Issue 10. The other parties' comments offered more limited evaluations and suggestions. On September 2, 2005, twelve parties filed reply comments.[5]

Two workshops were held during this phase of the URF proceeding. A June 3, 2005, workshop addressed procedural issues. In addition to addressing scheduling and other procedural matters, parties requested a more definite scoping memo. (See D.06-08-030, p. 13.) On June 8, several parties submitted statements in which they put forth specific questions concerning the scope of the proceeding for the Commission to address.[6] On May 13, 2005, several parties also filed a Joint Motion for Change of Schedule.[7] The motion noted "the lack of clarity in the OIR" and asked for further clarification as to the scope of the proceeding. (D.06-08-030, p. 8.) A Final Scoping Memo addressing the scoping ambiguities identified by the parties was issued August 4, 2005.

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California (Nextel), California Cable and Telecommunications Association (CCTA), Pac-West Telecom (Pac-West), Level 3 Communications, MCI, Inc. and California Small Business Roundtable and California Small Business Association (collectively, CSBRT/CSBA).

[4] AT&T was known as Pacific Bell Telephone Company and SBC California in prior phases of this proceeding. Company filings are referenced in accordance with the company's name as it is listed on the title page of the filing.

[5] DRA, TURN, SBC California, Verizon California, SureWest, Frontier, CCTA, DOD, Time Warner Telecom of California, LP (Time Warner), Cox Communications, The Greenlining Institute (8/12/05) (Greenlining), DisabRA, and MCI.

[6] Cox Communications, DRA/TURN, SBC, XO Communications, Verizon, Pac-West, Nextel, and Caltel.

[7] Filed by DRA on behalf of Arrival Communications, Inc., CALTEL, California Payphone Association (CPA), Navigator Telecommunications, LLC, Pac-West, TURN, Utility Consumers Action Network (UCAN), XO Communications, and DRA.

A second workshop was held from September 20-22, 2005, which included presentations of the parties' proposals. The parties' presentations are summarized in the Decision at pages 15-21.

On December 16, 2005, the Commission President, the Assigned Commissioner, and ALJ issued a joint ruling setting three days of evidentiary hearings for the end of January 2006. The purpose of the evidentiary hearings was to allow the parties an opportunity to go beyond their workshop discussion regarding the existing level of competition in the statewide voice communications market. (See D.06-08-030, p. 26.) Evidentiary hearings took place from January 30 through February 2, 2006.[8] AT&T, Verizon, SureWest, Frontier, DRA, TURN, and DOD/FEA presented witnesses for cross-examination, and most of the active parties in the proceeding participated in the evidentiary hearings.[9] (D.06-08-030, pp. 26-27.)

Parties filed briefs on the proceeding in 2006. On March 6, 2006, thirteen parties submitted opening briefs on topics addressed in this phase of the proceeding, including the issue of the level of competition.[10] On March 24, 2006, eleven parties filed reply briefs.[11]

In D.06-08-030, we evaluated statutory guidance and market conditions in order to determine whether competitive forces may be more heavily relied on to produce "just and reasonable" rates for California's telephone consumers. We granted carriers broad pricing freedoms concerning almost all telecommunications services, new telecommunications products, bundles of services, promotion, and contracts. However, we found that continued pricing regulation was warranted in a few specific circumstances relating to public policy programs, such as the California LifeLine program and

[8] An additional day was added during the hearings.

[9] The participants included AT&T, Verizon, SureWest, Frontier, DRA, TURN, DisabRA, and DOD/FEA.

[10] These parties included the following: DRA, TURN, SBC California, Verizon California, SureWest Telephone, Frontier, Cox Communications, CCTA, DOD, Time Warner, Greenlining, CPA, and DisabRA.

[11] Neither CCTA nor CPA filed reply briefs.

California High Cost Fund-B subsidies. We also reduced or eliminated many rate-of-return regulations, such as "accounting adjustments" and other rules that might cause regulatory accounts to diverge from financial accounts, and instead based requirements on Generally Accepted Accounting Principles (GAAP) accounting standards and Federal Communications Commission (FCC) accounting rules.

On September 29, 2006, TURN and DRA filed a Joint Application for Rehearing of D.06-08-030. Disability Rights Advocates (DisabRA) also filed an Application for Rehearing on September 29, 2006. TURN and DRA raise the following allegations of legal error in their rehearing application: (1) the Decision's elimination of the geographic averaging requirement violates Commission Rules and Due Process in that the Commission failed to provide proper notice and opportunity to be heard, is unsupported by the record, and is contrary to the Telecommunications Act of 1996 and Public Utilities Code sections 739.3(c),[12] 495.7, and 454; (2) the determination to detariff all telecommunications services is unsupported by the record and contrary to section 495.7; (3) the Commission acted contrary to section 1708 by failing to notice its intent to alter its decisions in the AT&T and Verizon merger proceedings regarding what constitutes the relevant markets; (4) the elimination of NRF-specific monitoring reports conflicts with the Commission's regulatory duties as well as its stated intent to remain "vigilant" in monitoring the telecommunications marketplace; (5) the elimination of "asymmetric" marketing, disclosure, or administrative processes in Ordering Paragraph 21 is unlawfully vague, fails to provide notice and opportunity to be heard pursuant to section 1708, and constitutes unlawful delegation of the Commission's regulatory duties; (6) the Decision inconsistently caps some, but not all, rate elements for basic residential subsidized services; (7) the Decision does not protect rates for ULTS and CHCF-B subsidized service included in bundles; and (8) the Decision adopts an inconsistent revenue neutrality principle.

[12] All code section references are to the California Public Utilities Code, unless otherwise noted.

DisabRA concurs with the issues raised by TURN and DRA, and also raises the following allegations of legal error in its rehearing application: (1) the Decision fails to make sufficient findings of fact and conclusions on law on the issues raised by DisabRA in the proceeding, in violation of section 1705; and (2) the Decision fails to clearly refer the issues raised by DisabRA to R.06-05-028.

Three responses in opposition to the rehearing applications were filed by Verizon and MCI (jointly), Pacific Bell, and Citizens, Frontier, and Surewest (jointly). Cox Communications filed a response in support of the following issues raised in TURN and DRA's Application for Rehearing: (1) the challenge to the Decision allowing carriers to include CHCF-B subsidized services in retail bundles; (2) the findings on geographic deaveraging; (3) the plan to detariff all services other than basic exchange services; and (4) vagueness of the language in the Decision on the elimination of asymmetric regulations.

After careful review of the allegations contained in the applications for rehearing, we have decided to grant limited rehearing on the issues regarding Ordering Paragraph 21 and the elimination of asymmetric marketing, disclosure and administrative requirements, as set forth below. We also modify D.06-08-030 for purposes of clarification, as discussed below. Except as noted, rehearing of D.06-08-030 as modified, is denied.

II. DISCUSSION

A. TURN & DRA's Application for Rehearing

We first address the allegations raised by TURN and DRA in their application for rehearing.

1. Geographic Deaveraging

a) Notice and Opportunity to Be Heard

In D.06-08-030, we decided to "remove the geographic averaging requirement for all services other than [California High Cost Fund-B (CHCF-B)] subsidized basic residential service." (D.06-08-030, pp. 142-43; see also p. 275

[Conclusion of Law 27], p. 280 [Ordering Paragraph 1].) TURN and DRA argue that the Commission failed to follow its own rules and did not provide proper notice to the parties that geographic deaveraging was an issue in the proceeding, as the Commission failed to include elimination of the geographic averaging requirement in the OIR or Scoping Memo.[13] In particular, TURN and DRA argue that the Commission did not raise, and no party proposed the possibility of allowing geographically deaveraged rate *increases*. (TURN/DRA Rhg. App., p. 2 (emphasis in original).) Accordingly, TURN and DRA contend that parties did not have the proper opportunity to be heard on this matter, in violation of parties' due process rights.

In support of their position, TURN and DRA cite the California Court of Appeal for the Second Appellate District's recent decision in *Southern California Edison Co. v. Public Utilities Com.* (2006) 140 Cal.App.4th 1085 (*Edison*). According to TURN and DRA, the *Edison* case addressed the Commission's ability to decide an issue absent from the Scoping Memo but raised in a party's comments and found that the Commission violated its own procedural rules by doing so. (TURN/DRA Rhg. App., p. 4.)

TURN and DRA point out that in the instant case, the preliminary Scoping Memo set out in the OIR in this proceeding states: "The scope of this proceeding consists of those issues identified below…Any issue not identified in this Appendix or a subsequent ruling by the assigned Commissioner is outside the scope of this proceeding." (OIR, p. A-1.) TURN and DRA argue that neither Appendix A of the OIR nor the August 4, 2005 Scoping Memo included geographic deaveraging as an issue or sub-issue. TURN and DRA further argue that, under *Edison*, the fact that certain parties may have raised the geographic deaveraging issue in their comments does not necessarily mean it is within the scope of the proceeding, absent affirmative indication from the Commission that it is included.

[13] See section 1701.2(a), which provides that the "assigned commissioner or the assigned administrative law judge shall hear the case in the manner described in the scoping memo." See also, Commission Rules of Practice and Procedure, Rule 5(m) (effective March 2005, at the time of the proceeding), which defines scoping memo as "an order or ruling describing the issues to be considered in a proceeding and the

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We do not agree with TURN and DRA. Although the Commission must fairly appraise interested parties of the subjects and issues under consideration in a proceeding,[14] the *Edison* case does not stand for the proposition that the Commission can consider only an issue expressly and specifically identified in the scoping memo for a proceeding. We find that the instant OIR gave sufficient notice to the parties that the issue of geographic deaveraging could be considered in this proceeding.

The OIR provided broad notice that all pricing regulations were under consideration for revision, and that the adopted framework should be "competitively neutral" and achieve uniformity across firms. The language of the OIR demonstrates that retail pricing flexibility was the central issue in URF:

> The scope of this proceeding is to review and, if appropriate, revise the Commission's regulation of telecommunications services provided to end users. The ultimate goal of this proceeding is to develop a uniform regulatory framework that applies to all providers of regulated telecommunications services, except small ILECs, to the extent that it is feasible and in the public interest to do so. [Footnote omitted.] Any regulatory framework adopted by the Commission should achieve several objectives. Most importantly, the adopted framework should ensure, to the extent practical, that every person and business in California has access to modern, affordable, and high quality telecommunications services. The adopted framework should also be competitively and technologically neutral. In addition, the adopted framework should encourage technological innovation, economic development, and employment in California. The specific issues comprising the scope of this proceeding are listed in Appendix A.

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timetable for resolving the proceeding."

[14] See, e.g., *Ass'n of Am. Railroads v. Dep't of Transp.* (D.C. Cir. 1994) 38 F.3d 582, 589; *United Steelworkers of America, etc. v. Schuylkill Metals Corp.* (5th Cir. 1987) 828 F.2d 314, 317-18.

(R.05-04-005, pp. 2-3.)[15] The OIR's Appendix provided further details concerning the issues under consideration. Parties were asked to submit comments addressing the following:

> Is there a uniform regulatory framework that can be applied to all providers of regulated intrastate telecommunications services? If so, every element of the uniform regulatory framework should be identified and described in detail. Any party that recommends a specific framework should provide adequate information for the Commission to implement the framework.

(R.05-04-005, Appendix A, Issue 1, p. A-1.) Appendix A, Issue 10 sets out one possible uniform regulatory framework, and includes some of the following elements:

- "No price regulation except for basic local exchange services provided by the large and medium-sized ILECs to residential and business customers."
- "Use advice letter filings to revise prices for all services provided by the large and medium-sized ILECs, except basic local exchange services."
- "No limitations on promotions."
- "Refrain from price regulation of new services and new technologies."

A requirement to geographically average prices is a form of price regulation. As the OIR specifically suggested "no price regulation except for basic local exchange services," there was reasonable notice that the issue of elimination of geographic averaging was properly within the scope of this proceeding.[16]

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[15] We further noted that the rates for most services offered by small ILECs are set on cost-of-service basis, and there will be no change to the regulatory structure of small ILECs. This provides further indication that we would be considering broad changes to the rate regulation of mid-sized and large ILECs.

[16] TURN and DRA raise a similar claim that the issue of detariffing was outside the scope of this proceeding. As with geographic deaveraging, we find that detariffing is sufficiently related to pricing regulation and pricing flexibility, so that the OIR provided reasonable notice that this issue could be

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TURN and DRA also argue that they requested further clarification of the Scoping Memo both in a joint Motion for Change of Schedule (filed May 13, 2005), and in its June 8, 2005 Clarification Statement. However, neither of these documents specifically mention geographic deaveraging. The August 4, 2005, Scoping Memo provided clarification of certain issues as requested by parties. As no party requested clarification on this issue, the Scoping Memo is silent on the matter. Moreover, we find that because geographic deaveraging was already within the scope of the issues to be considered in this proceeding, there was no reason to "clarify" or "add" the issue in the August 4, 2005, Scoping Memo. In addition, we note that downward geographic deaveraging was part of DRA's proposal. (See DRA Reply Comments, p. 12 (Sept. 2, 2005).) If DRA had any concern as to whether geographic deaveraging (whether upward or downward) was properly within the scope of the proceeding, it could have asked for specific clarification on that point.[17]

b) Record Support

TURN and DRA next argue that the Decision's elimination of geographic averaging is not supported by the record. According to TURN and DRA, although the Decision finds that "neither statutory directives nor market conditions warrants continuation of our geographically averaged pricing policy for services that are not subsidized by CHCF-B" (see D.06-08-030, p. 275 [Conclusion of Law 27].), the Decision

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considered by the Commission. In addition, we did not make a determination to detariff in the Decision. Rather, we provided parties an additional round of comments in Phase II of the proceeding on the legal and implementation issues we should consider before ordering detariffing of telecommunications services. (See D.06-08-030, pp. 185-186; p. 269 [Findings of Fact 84, 85]; p. 281 [Ordering Paragraph 10].) Therefore, parties will have received more than adequate notice and an opportunity to be heard on the detariffing issue prior to a Commission determination on the matter.

[17] TURN/DRA seem to make a distinction on the notice issue between upward and downward deaveraging, arguing that there was specifically no notice about upward deaveraging because no party proposed upward deaveraging. However, TURN/DRA proposed downward geographic deaveraging as part of their proposal, and noted that Cox Communications proposed no change to geographic averaging in its proposal. TURN/DRA fail to explain why its downward geographic deaveraging component would fall within the scope of the proceeding, while upward geographic deaveraging would not.

fails to cite to any evidence in the record to support *upward* geographic deaveraging. TURN and DRA contend that the Commission resorted to citing almost exclusively to the parties' briefs when laying out the positions of the parties, rather than evidence in the record.

Although TURN and DRA are correct that in the initial comment period no party proposed upward or unfettered geographic deaveraging, we find that the record supports our findings allowing geographic deaveraging. For example, in its Reply Comments, AT&T presented testimony from Dr. Harris rebutting Cox's proposal to leave geographic averaging unchanged:

> Cox proposes to maintain geographically averaged rates as part of its proposal for a uniform regulatory framework. Dr. Harris points out that Cox's proposal is contrary to sound economics. Price averaging distorts the relationship between costs and retail prices, preventing efficient facilities-based competition. Again, Cox's position appears to be self-serving, as the basis for its proposal is to preclude competition from ILECs in the areas served by Cox.

(Pacific Bell's Reply Comments (filed Sept. 2, 2005), p. 41 [footnotes omitted].) Specifically, in support of AT&T's Reply Comments, Dr. Harris stated:

> While SBC California is not proposing geographic deaveraging in Phase I of this proceeding, I am responding to Cox's argument against deaveraging because it is contrary to sound economics. Cox implores the Commission to resist price deaveraging….Price averaging prevents efficient facilities-based competition by distorting the relationship between costs and retail prices. In urban centers, the cost of providing service can be well below the average price, while in more rural areas, the cost of providing service can be well above the average price. This disparity in the cost-price relationship has fostered facilities-based entry in urban areas and inhibited facilities-based entry in rural areas. Price deaveraging would more closely align costs and prices, creating opportunities for competitors to offer service over their own facilities in more rural areas.

(Harris Reply Decl. filed on behalf of SBC (filed Sept. 2, 2005), p. 37.)

Verizon witness Dr. Aron also testified that Verizon's proposal for statewide rate uniformity "may prevent some pro-competitive price adjustments" and "impede the full realization of the benefits of competition in the state." (Aron Opening Decl. (filed May 31, 2005), at ¶¶ 15, 210.)

In addition, during TURN's cross examination of Dr. Harris, the following testimony was elicited:

> Q: If all that's true, then SBC isn't going to be harmed if the Commission doesn't grant deaveraging authority because it couldn't exercise it anyway; isn't that right?
>
> A: There's an effect of a regulated price on a market price that's unhealthy in and of itself. It tells people, This is the price you're competing against. One of the reason[s] competition works is because I don't know what price my competitors are going to charge. It is the uncertainty of that price that if I reduce my price, they might reduce their price. That generates the best form, the healthiest kind of competition. That's why I'd like to see the Commission only regulate where the rewards exceed the cost.
>
> Q: That was not the question, Dr. Harris. I'm talking about deaveraging, not –
>
> A: This –and that's my answer to your question about deaveraging. That kind of rule that says, well, you have to charge the same price everywhere. That casts a pall upon competition on a competitive dynamic. And I strongly urge the Commission not to do that, not because I expect there to see –become a high degree or substantial degree of geographic deaveraging, although there may be some. I'm not saying there won't be any. [***]
>
> Q: I'm just talking about deaveraging, not about –
>
> A: If they can't deaverage, if they have to charge the same price everywhere, then that just removes the degree of competitive uncertainty.

Q: Oh.

A: Competitive uncertainty is good for competition.

(RT, p. 437:17- p. 439:1 (Evidentiary Hearing, Jan. 31, 2006, Vol. 3); see also RT Vol. 2, p. 290:18-26 (Evidentiary Hearing, Jan. 30, 2006) (cross examination of Dr. Harris by DRA, in which Dr. Harris testifies that SBC's existing basic exchange service prices may decrease in some urban areas if there was geographic deaveraging).)

We concluded that neither statutory directives nor market conditions warrants continuation of the geographically averaged pricing policy for services not subsidized by the CHCF-B fund. (D.06-08-030, pp. 138-43; p. 275 [Conclusion of Law 27]; see also, p. 267 [Finding of Fact 66].) We further found that geographically averaged prices were inconsistent with a competitive telecommunications marketplace and that the continuation of such prices could harm competition in the market. (D.06-08--030, pp. 138-140.) As discussed above, there is adequate record support for our findings and conclusions on this issue.

c) Telecommunications Act of 1996 Section 254(b)(3) and Public Utilities Code Section 739.3(c)

TURN and DRA next argue that permitting "unfettered" geographic deaveraging for all services but basic residential services receiving a CHCF-B subsidy will allow incumbent LECs to introduce massive disparities between rural and urban rates for all retail telecommunications services (with the temporary exception until January 1, 2009 of basic residential rates). (TURN/DRA Rhg. App., pp. 12-13.) TURN and DRA argue that by doing so, the Decision conflicts with section 254(b)(3) of the 1996 Telecommunications Act regarding universal service and is also inconsistent with section 739.3(c) of the Public Utilities Code.[18]

[18] Section 254(b)(3) of the 1996 Act provides that consumers in all regions of the country should have access to basic and advanced telecommunications and information services "that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." (47 U.S.C. § 254(b)(3).) Public Utilities
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TURN and DRA argue that by removing the geographic averaging requirement for all services other than CHCF-B subsidized basic residential service, the Commission has given "carte blanche" to carriers to raise their rates immediately for all services but basic residential service. According to TURN and DRA, this in turn conflicts with section 254(b)(3)'s mandate that rates for consumers in all regions of the United States for *all* services –not just basic residential service –should be reasonably comparable to rates charged for similar services in urban areas. TURN and DRA also argue that the likely resultant rate disparities would be inconsistent with the state policy in section 739.3(c) to "reduce any disparity in rates" in high cost areas.

We find that TURN and DRA's arguments are without merit. The argument that geographic deaveraging may lead to unreasonably disparate prices is speculative. Moreover, the claim that geographic deaveraging is contrary to section 739.3(c) and 47 U.S.C. § 254(b)(3) is not consistent with the plain language of these statutes. Neither section 739.3(c) nor 47 U.S.C. § 254(b)(3) require geographic averaging of rates. Section 254(b)(3), for example, merely requires rural and urban prices to be "reasonably comparable." The Act does not define the term "reasonably comparable" nor does it specify the means to achieve this goal. The FCC has stated that:

> [W]e adopt the Joint Board's interpretation of the reasonable comparability standard to refer to "a fair range of urban/rural rates both within a state's borders, and among states nationwide." This does not mean, of course, that rate levels in all states, or in every area of every state, must be the same. In particular, as the local exchange market becomes more competitive, it would be unreasonable to expect rate levels not to vary to reflect the varying costs of serving different areas.[19]

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Code section 739.3(c) creates the California High Cost Fund B program, intended to "reduce any disparity in rates" charged by "telephone corporations serving areas where the cost of providing services exceeds rates charged by providers." (Pub. Util. Code, §739.3, subd. (c).)

[19] *In the Matter of Federal-State Joint Board on Universal Service; Access Charge Reform, Seventh*

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As Pacific Bell points out in its Response to the Applications for Rehearing, in the years since the Act was enacted, this Commission has set basic residential access line prices that were not geographically uniform throughout the state. For example, Pacific Bell points out that Verizon charges $17.25 for basic flat-rate residential service, Sure West charges $18.90, while AT&T California charges $10.69. Therefore the federal statute does not require geographic price uniformity.[20]

Similarly, the terms of section 739.3 do not require geographic price uniformity; rather its purpose is to "reduce" –not eliminate –any disparity between urban and rural rates. The statute authorizes the Commission to establish a universal service program to support telephone corporations in California serving areas where the cost of providing service exceeds the rate charged by providers. We note that two months prior to the issuance of this Decision, we issued an OIR to review the California High Cost Fund B Program. (*Order Instituting Rulemaking into the Review of the California High Cost Fund B Program*, R.06-06-028 [2006 Cal. PUC LEXIS 235] June 30, 2006.) In that OIR, we recognized the developments in the federal universal service program at the FCC, and declared our intent to consider mechanisms to ensure that universal service goals are being met. Any concerns TURN and DRA may have about meeting universal service goals are better addressed in R.06-06-028.

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Report & Order and Thirteenth Order On Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, 14 F.C.C. Rcd 8078, *8092 at ¶ 30 (rel. May 28, 1999). See also, *Qwest Communications v. FCC* (10th Cir. 2005) 398 F.3d 1222, 1237.

[20] We note that the FCC is working on mechanism to ensure that services are provided at reasonably comparable rates. The 1996 Act states that there should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service. (See 47 U.S.C.S. § 254(b)(5); see also, *Qwest Communs. Int'l, Inc. v. FCC* (10th Cir. 2005) 398 F.3d 1222.) In response, the FCC has drafted a requirement into its support mechanism for non-rural carriers requiring states to regularly certify that rural rates within their boundaries are reasonably comparable. If they are not, the states must develop and present an action plan to the FCC indicating the state's response. If the state fails to do so, federal funds will be withheld. (*Ninth Report and Order on Remand*, F.C.C. 03-249, CC Docket No. 96-45 (October 27, 2003) ("Order on Remand").)

d) Public Utilities Code Sections 495.7 and 454

Finally, TURN and DRA contend that the elimination of geographic averaging contravenes sections 495.7 and 454. Section 495.7 states that the Commission may "establish procedures to allow telephone or telegraph corporations to apply for the exemption of certain telecommunications services from the tariffing requirements in sections 454, 489, 491, and 495." Section 454 requires that "no public utility shall change any rate…except upon a showing before the commission and a finding by the commission that the new rate is justified."

TURN and DRA argue that in permitting unfettered geographic deaveraging, the Decision granted carriers absolute freedom to modify rates currently in effect, yet no specific rates have been submitted for review. According to TURN and DRA, the Commission has not issued any findings regarding specific geographically deaveraged rates, in conflict with section 454. Nor has the Commission made findings pursuant to section 495.7 that are based on an analysis of market power in the geographic area to which rate increases would apply. TURN and DRA allege that this failure constitutes legal error.

We find TURN and DRA's arguments are without merit. Neither of these code sections prohibit geographically deaveraged prices. Moreover, TURN and DRA's argument that the Commission has failed to make findings under section 495.7 is premature, as discussed in below. In addition, we have accumulated a substantial record in this proceeding to support our conclusion that price regulation is not required to ensure that prices are just and reasonable under the law.[21]

[21] Moreover, carriers and ratepayers may file a complaint in court or with the Commission to demonstrate that a carrier's rates are not just and reasonable because of that carrier's pricing practices.

2. Detariffing

a) Record Basis for Concluding that PU Code Section 495.7 Authorizes Detariffing of All Services

According to TURN and DRA, the Commission concluded that it has the statutory authority and sufficient evidentiary record to order detariffing of all services but basic residential rates. TURN and DRA argue that there is inadequate record support for the Commission's conclusion that section 495.7 "authorizes the Commission to eliminate tariffing of all services with the exception of basic service, as long as certain criteria are met." (TURN/DRA Rhg. App., p. 16, citing D.06-08-030, p. 277 [Conclusion of Law 36].) As TURN and DRA note, the Commission acknowledged that the basis for its consideration of detariffing is MCI's Opening Comments.[22] (See D.06-08-030, p. 185.) TURN and DRA also point out that MCI ceased participating in the proceeding, and that the Commission itself recognized that the record concerning the detariffing proposal is limited. (D.06-08-030, p. 185, fn. 702.)

TURN and DRA also claim that the Decision's reliance on MCI's comments is further undermined by the substance of those comments, as MCI itself asserted that legislative change could be required for the Commission to order detariffing. (TURN/DRA Rhg. App., p. 17, fn. 39, citing MCI Opening Comments, p. 15, fn. 10.) According to TURN and DRA, since MCI itself stated that legislation might be necessary to effectuate detariffing, the Commission cannot reasonably rely on MCI's showing. TURN and DRA also point out that no other party proposed detariffing during the evidentiary phase of the proceeding.

[22] TURN/DRA claim that Verizon's counsel stated off the record at the September 20-22, 2005, workshop that he would withdraw MCI's comments from the record, and therefore TURN/DRA argue that parties had a reasonable basis to conclude that MCI's comments would no longer be part of the record. However, there is nothing in the record to support this contention, and the fact remains that MCI's Comments were not withdrawn, no party filed a motion to strike MCI's Comments or testimony, and the Comments remained part of the record. Even if Verizon's counsel did state he would withdraw MCI's comments, this conversation would have taken place after parties had filed Reply Comments on the proposals on September 2, 2005.

We find that TURN and DRA's arguments lack merit for several reasons. First, we did not adopt MCI's proposal in this phase of the proceeding. (See D.06-08-030, pp. 185-86; p. 269 [Findings of Fact 84, 85]; p. 281 [Ordering Paragraph 10].) Instead, we stated that: "As we further review the record in this proceeding, we find that MCI's proposal to detariff telecommunications service deserves serious consideration." (D.06-08-030, p. 185.) We further noted that Public Utilities Code section 495.7 "indicates that the Commission has the ability to order detariffing of all services other than basic exchange service," and that "on first impression, it appears that §§ 495.7(e)-(h) do not impose any implementation requirements that prevent us from ordering detariffing." (D.06-08-030, p. 185.) We acknowledged that "since parties did not address the detariffing issue in their briefs, we will permit parties, in a separate briefing cycle, to address legal and implementation issues that the Commission should consider *before ordering detariffing of telecommunications services*….It is our intention to decide *whether to order detariffing* before the end of the year."[23] (D.06-08-030, p. 186 (emphasis added).)

Clearly, we did not make the determination to detariff in this Decision, nor did we make any findings pursuant to section 495.7. We merely articulated our intention to further consider the issue and allow parties the opportunity to further comment on the detariffing proposal prior to making any determination. TURN and DRA's argument, therefore, that there is little record support on whether detariffing is a good public policy is premature. We recognized in the Decision that there was limited discussion on detariffing in the parties' proposals, and allowed parties to provide further comment on "legal and implementation issues" that we should consider prior to ordering detariffing. This did not foreclose parties from discussing policy ramifications of detariffing. The parties still had the opportunity to raise any legal or factual obstacles the Commission should consider prior to ordering detariffing.

[23] Opening and Reply Comments on detariffing have been filed in Phase II, but the Commission has not yet issued a proposed decision on the detariffing issue.

Second, the Decision's finding that section 495.7 authorizes detariffing as long as certain criteria are met (see Conclusion of Law 36) is a straightforward legal conclusion. The fact that MCI stated that further legislation may be required does not undermine the Decision's conclusion describing the authorization that section 495.7 provides.

Third, contrary to TURN and DRA's allegations, we find that there is record evidence to support the underlying policy consideration of including detariffing as an element to URF. For example, MCI's proposal recommending the elimination of tariffing requirements included discussion from a policy perspective:

> Traditional wireline carriers should not be required to create and file tariffs that describe the terms and conditions of their services. [Footnote omitted.] Rather, provider-customer relationships should be governed by contracts as they are in all other areas of commerce. Tariffs are an example of practices that were used in the monopoly telephone marketplace that have outlived their usefulness. It is doubtful that customers today read and rely on tariffs to choose between service providers and set their service expectations. Non-traditional and intermodal providers that compete with traditional wireline carriers are not subject to tariffing requirements. Consistent with "Real Deregulation" and the goal of "uniform" regulation, these requirements should be eliminated for wireline carriers. Where the marketplace and consumer choice have been functioning more freely, tariffing is not practiced. Rather, wireless telecommunications, cable and internet access service providers enter into contracts with their customers. Instead of continuing to impose the burdensome tariffing process only on wireline carriers, the Commission should allow wireline competitors to transition to the contract practices used by their non-traditional competitors to dictate the terms and conditions of service. In addition, to the extent tariff notice requirements have been criticized on competitive grounds, since they signal to competitors one firm's marketing and pricing plans, removal of this legacy requirement will overcome that objection.

(MCI Opening Comments (filed May 31, 2005), pp. 15-16.) In its Reply Comments, MCI reiterated its recommendation that the Commission eliminate tariffing requirements, emphasizing that tariffing requirements are no longer necessary in today's competitive marketplace and that non-traditional and intermodal providers that compete with traditional wireline carriers are not subject to such requirements. (See MCI Reply Comments (filed Sept. 2, 2005), pp. 3-6.)

In addition, Frontier's Reply Comments (filed Sept. 2, 2005), supported detariffing. Specifically, Frontier stated:

> Having reviewed the various proposals regarding advice letters and tariffing requirements in the opening comments, and having considered the competitive forces at play in the current market, Frontier believes that tariffs are no longer necessary and, in particular, no reason to tariff price deregulated services. With the removal of pricing restrictions for ILEC-provided services, and the removal of constraints on promotions, bundling, grandfathering and the initiation of new services, there will no longer be a need for the Commission to approve rate modifications. Rather it should be sufficient for carriers to provide notice of rate changes to customers and to the Commission, and to maintain a schedule of rates, terms and conditions on their web sites. This is the approach that the FCC has adopted for interexchange carriers, and in a non-price regulated environment, it should be equally applicable to other carriers, including ILECs.

(Reply Comments of Citizens Telecommunications Co. of Calif., Inc. (filed Sept. 2, 2005), p. 25.)

Moreover, contrary to TURN and DRA's claim that no party had the opportunity to comment on whether detariffing was a good idea, TURN, in the reply declaration of Dr. Roycroft, specifically opposed MCI's recommendation to eliminate tariffing, claiming that market conditions did not support it:

> MCI's ultimate recommendation for the Commission is to institute "Real Deregulation." This would include elimination of all regulation regarding "certification, tariffing,

> quality of service, reporting and retail prices, when such regulation is not required of non-traditional providers." [Footnote omitted.] Market evidence simply does not support such a proposition. Adoption of such an approach would unleash firms which have substantial monopoly power, leading to outcomes which MCI itself recently warned of in the special access market [footnote omitted]….Thus, MCI's Comments in this proceeding ignore economic facts and market evidence which MCI considered vital a few months ago. MCI's advocacy of "Real Deregulation" in the face of the substantial evidence of monopoly power in the Respondent ILECs' service areas should be rejected.

(Roycroft Reply Decl. filed on behalf of TURN (filed Sept. 2, 2005), pp. 87-88.)

In light of the above discussion, there is no merit to TURN and DRA's claim that there was an inadequate record to support our determination to further consider the detariffing proposal, and our conclusion that "section 495.7 authorizes the Commission to eliminate tariffing for all services, with the exception of basic service, as long as certain criteria are met."

b) Augmenting the Record

TURN and DRA next claim that the Commission improperly relied on parties' post-hearing briefs to augment the evidentiary record in this proceeding. In Ordering Paragraph 10, the Decision states:

> We shall permit parties, in a separate briefing cycle, to address legal and implementation issues that the Commission should consider before ordering detariffing of telecommunications services. Opening briefs are due thirty days from the effective date of this decision, with reply briefs to follow in fourteen days.

According to TURN and DRA, briefs are post-evidentiary filings that cannot introduce new evidence in the record.[24] TURN and DRA suggest that the Commission revise the use of the term "briefing" in order to avoid legal error.

[24] TURN/DRA Rhg. App., p. 19, citing to Rules of Practice and Procedure, Rules 13.11, 13.14, indicating that briefs are post-evidentiary filings.

Although we find that TURN and DRA's argument does not demonstrate legal error in the Decision, we agree that the Decision appears to use the terms "briefs" and "comments" interchangeably. Although the discussion section of the Decision and Ordering Paragraph 10 use the term "briefs" (see D.06-08-030, pp. 186 and 281), Finding of Fact 85 states "It is reasonable to explore all legal issues associated with detariffing in an expedited comment cycle." Our use of the term "briefing" was not meant to restrict the parties' ability to address the legal and implementation issues on detariffing. In fact, we note that several parties that responded to Ordering Paragraph 10 labeled their filings as "comments" rather than "briefs." We further note that at the Phase II prehearing conference held on November 7, 2006, the ALJ clarified that the "briefs" or "comments" already filed by the parties on the detariffing issue would be treated as comments and are part of the evidentiary record. (Nov. 7, 2005, Prehearing Conference (PHC) Tr., p. 5.) We will accordingly modify the Decision to change the terms "briefs" to "comments."

c) Detariffing Authorization Under Public Utilities Code Section 495.7

In their application for rehearing, TURN and DRA raise a number of arguments supporting their contention that section 495.7 does not authorize the Commission to detariff all telecommunications services on its own motion. TURN and DRA also argue that the Commission's reliance on the FCC's efforts to detariff long distance service is misplaced. We find that TURN and DRA's arguments are not ripe for review at this time, as we have deferred final determination of the detariffing issue pending consideration of parties' comments on the legal and implementation issues associated with detariffing. The arguments TURN and DRA raise here track the arguments raised in their September 29, 2006, comments on detariffing filed in Phase II, and would more appropriately be addressed in the Phase II decision concerning detariffing. If TURN and DRA conclude that the Commission has made a legal error in its ultimate decision concerning detariffing, they may challenge the alleged error in an application for rehearing of that decision.

d) Use of the Terms "Basic Exchange Service" and "Basic Residential Service"

TURN and DRA next allege that the Decision errs because it treats "basic residential service" as synonymous with "basic exchange service." The Decision states that should the Commission decide to detariff, it "would affect all services *other than basic residential service*." (D.06-08-030, p. 186 (emphasis added).) However, as TURN/DRA point out, the statute provides for detariffing of telecommunications services "*except basic exchange service*." (Pub. Util. Code § 495.7, subd. (b) (emphasis added).) TURN and DRA argue that the statute does not exclude basic business service from "basic exchange service," and the Decision points to no authority to support its reading that "basic exchange service" refers only to basic residential service. TURN and DRA also point to various inconsistencies in the language used throughout the Decision to describe the types of service that will or will not be subject to detariffing. For example, language on page 185 of the Decision states that detariffing would affect all services other than "basic residential service." Language in Conclusion of Law 36, however, proposes to eliminate tariffing for all services, "with the exception of basic service." Ordering Paragraph 10 states that the Commission will take briefing on "detariffing of telecommunications services." Thus, TURN and DRA argue that the Decision is unclear as to whether the Commission intends to maintain tariffs only for basic residential service, or basic business service as well.

We agree with TURN and DRA that there is inconsistency in the Decision. We accordingly will modify the language in the text of the Decision at page 185, Conclusion of Law 36, and Ordering Paragraph 10, to use the phrase "basic exchange service." This reflects the language used in the statute and provides consistency in the Decision. However, we have not yet made a final determination with regard to detariffing, we find that TURN and DRA's claim that the exclusion of basic business services from "basic exchange service" constitutes legal error is not yet ripe for review.

3. Relevant Markets

TURN and DRA contend that the Decision errs because: (a) the Decision allegedly rescinds or modifies the definition of relevant markets adopted in the November 2005 SBC/AT&T and Verizon/MCI Merger Decisions[25] (the *Merger Decisions*) in violation of section 1708; and (b) the April 2005 OIR did not mention the market concept, and thus, the parties had no opportunity to comment regarding the issue of relevant markets. (TURN/DRA Rhg. App., pp. 27-29.)

a) Section 1708

TURN and DRA argue that the Decision abandons or modifies the definition of relevant markets adopted in the *Merger Decisions* without explanation or notice. Accordingly, they argue that the Decision violates the requirements of section 1708. We find no merit in this argument.

Section 1708 provides in relevant part:

> The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. (Pub. Util. Code, § 1708 (emphasis added).)

TURN and DRA argue that *Motor Vehicle Mfrs. Assn. v. State Farm* (1983) 463 U.S. 29, 42, 1983 U.S.LEXIS 84 controls, to provide that although agencies have flexibility to adapt rules and policies to changing circumstances, they are nonetheless required to supply a "reasoned analysis" when rescinding a rule or regulation.

TURN and DRA are wrong that the *Merger Decisions* created a general rule regarding the definition of relevant markets. Our conclusions in those decisions were

[25] *In the Matter of the Joint Application of SBC Communications, Inc. (SBC) and AT&T Corp. Inc. (AT&T) for Authorization to Transfer Control of AT&T's Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation* (*SBC/AT&T Merger Decision*) [D.05-11-028] (2005) __ Cal.P.U.C. __, 2005 Cal.PUCLEXIS 516; and *In the Matter of the Joint Application of Verizon Communications, Inc. (Verizon) and MCI, Inc. (MCI) to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI* (*Verizon/MCI Merger Decision*) [D.05-11-029] (2005) __ Cal.P.U.C. __, 2005 Cal.PUCLEXIS 517.

specific to the unique transactions under review. Nothing in D.06-08-030 rescinds or modifies the *Merger Decisions,* and the definition of relevant markets used in those decisions remains intact and unchanged. Because the *Merger Decisions* did not adopt a general rule, there was nothing that the Commission could have rescinded or amended by D.06-08-030. Accordingly, the requirements of section 1708 regarding notice and opportunity to be heard were not triggered, and the principles in *Motor Vehicles Mfrs. Assn. v. State Farm* regarding when an administrative agency can change a rule or regulation have no applicability here.

We also disagree that our Decision fails to explain the basis of our conclusion to use a different market definition. Our conclusion took into account that certain individual service concepts such as long distance and basic local exchange service "make little sense in an era of dominated by telecommunications sold through bundled services." (D.06-08-030, p. 75), and that "our market definition should take into account technological developments [such as VoIP] in the dynamic marketplace. Additionally, a service need not be identical to provide a competitive substitute." (D.06-08-030, p. 76.) Our conclusion recognizes that it is both reasonable and necessary to adjust the definition of relevant markets depending upon the circumstances in question and the ultimate goal of the proceeding.

b) Opportunity to Comment

TURN and DRA suggest that they had no opportunity to comment on the issue of defining the relevant markets because the April 2005 OIR did not mention the market concept. (TURN/DRA Rhg. App., pp. 28-29.)

As discussed above, the Merger Decisions could not and did not adopt a general rule defining the relevant markets. Thus, it was not incumbent upon the Commission to discuss the Merger Decisions in this proceeding. That TURN and DRA mistakenly assumed an identical definition would apply, does not constitute legal error by the Commission. Further, the record demonstrates that parties had ample notice and opportunity to comment on the issue of relevant markets.

It is true that the April 2005 OIR was broadly stated, however it did indicate that any new regulatory framework to be adopted as a result of the proceeding must be "competitively neutral."[26] Defining the relevant markets is an integral aspect of any competitive/market analysis, therefore, the parties had reasonable notice that defining the relevant markets would be considered in this proceeding. As for the opportunity to comment, the OIR sought input on relevant issues, asking parties to comment on, among other things: "What criteria and procedures should be used to: (A) determine which services should remain subject to price regulation; (B) set and revise prices for services that remain subject to price regulation; and (C) remove a particular service from price regulation in the future?"[27] In response, virtually every party, including TURN and DRA, submitted comments and proposals identifying market power and the relevant markets as issues which must be addressed.[28] Thus, the parties took advantage of the opportunity to be heard on the issue of relevant market definitions, with parties taking differing positions regarding the proper definition of the relevant markets.[29] Throughout the proceeding, parties had ongoing opportunity to comment at the workshops (June 3, and September 20 - 22, 2005), during the evidentiary hearings (January 30 - February 2, 2006), and finally by submitting their positions in briefs and reply briefs submitted March 6, and March 24, 2006, respectively.

4. Monitoring Reports

In D.06-08-030, we determined it was reasonable to eliminate all vestiges of the "outdated" NRF regulatory framework and rate or return regulation. (D.06-08-030, p. 279 [Conclusion of Law 61].) In connection with that determination, we eliminated all

[26] See OIR, R.05-04-005, dated April 7, 2005, p. 3, Appendix A, p. A-1, Issue 7(B).

[27] See OIR, dated April 7, 2005, Appendix A – Scope of Proceeding, Phase I Issue Number 8, p. 1.

[28] See Comments of The Office of Ratepayer Advocates (dated March 31, 2005, pp. 22-32.); Comments of The Utility Reform Network (dated March 31, 2005, pp. 21-23.); Declaration of Trevor R. Roycroft/TURN (dated March 31, 2005, pp. 13-37.).

[29] See, ante, fn. 28, also Reply Comments of Verizon California Inc. (dated September 2, 2005, pp. 12-15.); Reply Comments of Pacific Bell Telephone Company (dated September 2, 2005, pp. 30-31.).

NRF-specific monitoring report requirements for the affected ILECs. In its place, we adopted standardized reporting requirements to conform with the FCC ARMIS data.[30] (D.06-08-030, pp. 3, 279 [Conclusion of Law 57].)

TURN and DRA contend that the Decision errs because the elimination of state-specific NRF monitoring reports will: (a) prevent the Commission from fulfilling various statutory duties under the Public Utilities Code; and (b) prevent the Commission from remaining "vigilant" as the Decision itself requires. (TURN/DRA Rhg. App., pp. 29-34.)

a) Commission Statutory Responsibilities

According to TURN and DRA, without state-specific reporting data, we will not be able to meet our obligations and mandates under the following statutes: sections 451; 453(c); 709; 797; 798; 871.5; 882; 314.5; and 2896.[31] They assert that we failed to proceed in a manner required by law because the Decision does not make specific findings that the new ARMIS data will provide the information necessary to make the analyses these statutes require. (TURN/DRA Rhg. App., pp.29-32.)

We believe that the steps taken in the Decision are both reasonable and lawful. TURN and DRA cite to statutes which merely set forth general Commission regulatory obligations. The statutes do not set forth any corresponding utility reporting requirements, nor do TURN and DRA identify any NRF-specific reports that are linked to the referenced statutes. For example, TURN and DRA argue that without NRF-

[30] We note that while D.06-08-030 contains findings and conclusions to eliminate NRF-specific monitoring reports in lieu of ARMIS data, it does not contain an ordering paragraph to effectuate this intent. We will therefore, modify the Decision to add appropriate ordering paragraphs.

[31] See section 451 (concerning duty to ensure rates charged by public utilities are "just and reasonable"); section 453(c) (concerning duty to ensure public utilities do not maintain "unreasonable differences" in rates and services as between localities or classes of service); section 709 (concerning duty to ensure public utilities meet state policies regarding economic growth, job creation and social benefits associated with advanced information and communication technologies and long-term investment in infrastructure); section 797 (concerning duty to audit affiliate transactions); section 798 (concerning duty to ensure no imprudent payments involving subsidiaries and affiliates); section 871.5 (concerning duty to ensure lifeline service); section 882 (concerning duty to ensure availability of advanced telecommunications services to California citizens, businesses and institutions); section 314.5 (concerning duty to audit utility book and records for regulatory and tax purposes); and section 2896 regarding duty to ensure utilities meet reasonable service quality standards).

specific reports we will not be able to comply with sections 314.5 and 797.[32] We agree these statutes impose audit requirements on this Commission, however, that is different from a requirement that utilities submit any particular reports. Our Decision does not negate the fact that the utilities are obligated to maintain adequate books and records necessary for the Commission to conduct the contemplated audits.

TURN and DRA also ignore that D.06-08-030 is only the first step in determining the ultimate range of monitoring reports which we may require under the new Uniform Regulatory Framework. We specifically directed that Phase II of this proceeding will determine what information and reports will best meet the Commission's needs and statutory obligations in the new competitive environment. (D.06-08-030, pp. 218, 279 [Conclusion of Law 58].) The Decision states that in Phase II, parties will have the opportunity to propose additional monitoring reports that may be required to address any particular issue or concern (such as TURN and DRA's concern regarding the collection of adequate intrastate data). (D.06-08-030, p. 218.) Our further consideration of reporting issues ensures that we have properly proceeded in a manner required by law.

Nevertheless, we do agree with TURN and DRA that the Decision would benefit from clarification of our intent regarding service quality related monitoring reports. Accordingly, we will modify the Decision as set forth below in the ordering paragraphs.

b) Ability to Remain Vigilant

TURN and DRA contend the Decision errs because eliminating state-specific monitoring reports will prevent the Commission from fulfilling our own stated intent to "remain vigilant in monitoring the voice communications market." They argue that despite our acknowledged duty to pursue certain policy objectives, the Decision fails to

[32] See section 314.5 requiring the Commission to inspect and audit utility books and records for regulatory and tax purposes every three or five year depending upon the number of customers served. Section 314.5 provides that this requirement can be fulfilled in connection with a rate proceeding. Also see section 797 requiring the Commission to periodically audit all significant transactions between a utility and its affiliates and/or subsidiaries.

establish a monitoring program to determine whether the objectives are being met. (TURN/DRA Rhg. App., pp. 32-34.)

To illustrate the alleged problem, TURN and DRA point to the following statement: "[W]e will ensure that basic residential service remains affordable and does not trend above the current highest basic residential rate in the state, no matter the technology employed to offer such service." (D.06-08-030, pp. 156-157, 276 [Conclusion of Law 31].).[33] They maintain it will be impossible for the Commission to actually determine if such increases are occurring, without requiring the utilities to submit baseline information regarding current service volumes and average revenue provided by existing basic customers. (TURN/DRA Rhg. App., p. 33.)

We do not believe it is clear at this juncture what additional information could ultimately prove to be useful. Our Decision notes that experience over the last several years has shown that NRF-specific reports have come to be of little value. (D.06-08-030, pp. 217-218.) We do not believe the elimination of such reports will confound our ability to ensure adequate monitoring under the new Uniform Regulatory Framework and we have additionally provided an opportunity in Phase II for parties to address any additional reporting information that may be required, We encourage DRA and TURN to submit their concerns in that forum. Nevertheless, as set forth below in the ordering paragraphs, we do wish to clarify that our rationale regarding why NRF-specific monitoring reports are no longer useful or relevant for our regulation of the ILECs affected by D.06-08-030.

5. Elimination of "Asymmetric" Marketing, Disclosure, or Administrative Process Requirements in Ordering Paragraph 21

D.06-08-030 eliminated "all asymmetric requirements concerning marketing, disclosure, or administrative processes," with the exception of conditions relating to basic

[33] Also stating: "[T]here is a need for the Commission to remain vigilant in monitoring the voice communications marketplace in order to ensure that the market continues to serve California consumers well." (D.06-08-030, p. 268 [Finding of Fact 73].)

residential rates. (D.06-08-030, p. 282 [Ordering Paragraph 21]; see also, pp. 210, 251-252, 269 [Finding of Fact 83], 271 [Finding of Fact 110], 278 [Conclusion of Law 53].) The Decision further ordered that AT&T, Verizon, SureWest, and Frontier "shall be authorized to allow all tariffs to go into effect on a one-day filing," with the exception that any tariffs that impose price increases or service restrictions shall require a thirty-day advance notice to all affected customers. (D.06-08-030, p. 281 [Ordering Paragraph 9].)

TURN and DRA argue that that the language in the ordering paragraph eliminating asymmetric regulations is unlawfully vague; that the Commission failed to provide sufficient notice and prior opportunity to be heard to parties pursuant to section 1708 that it was considering changing prior orders implementing marketing, disclosure and administrative requirements; that the Decision unlawfully delegates the Commission's regulatory duties to staff; and that the Commission should provide further clarification as to which asymmetric requirements it is eliminating. (TURN/DRA Rhg. App., pp. 35-40.)

While we do not agree with all of TURN and DRA's allegations of legal error,[34] we do have concerns with Ordering Paragraph 21. We grant limited rehearing as to Ordering Paragraph 21, and the elimination of asymmetric marketing, disclosure, and administrative requirements. Rather than holding a separate proceeding, we note that many of the issues raised by TURN and DRA are already in Phase II. At the November 7, 2006, prehearing conference held in Phase II of this proceeding, the following issues were included for consideration:

[34] For example, we do not find that Ordering Paragraph 21 is impermissibly vague on its face with respect to the term "asymmetric." Although the Decision does not specifically define "asymmetric," it does provide guidance as to the meaning of this term: "If a more restrictive marketing, disclosure, or administrative requirement applies to an ILEC, then the ILEC can modify its tariffs to conform to those of a CLEC. Similarly, if a more restrictive marketing, disclosure, or administrative requirement applies to a CLEC, then the CLEC can modify its tariffs to conform to those of an ILEC." (D.06-08-030, p. 210.) In addition, Finding of Fact 110 provides: "There is no longer a need for company-specific or sector-specific regulation of marketing practices, disclosure rules or administrative procedures associated with the sale of voice communications services." (D.06-08-030, p. 271.) Thus the term "asymmetric" may reasonably be understood in the context of these passages as referring to regulations imposed on one class of communications providers (e.g., ILECs) but not their competitors (e.g., CLECs), or regulations that are imposed on one company but not other companies.

- Whether there is a need for uniform customer disclosure rules that apply to all carriers on a going-forward basis in the competitive marketplace;
- Whether there are specific customer disclosures that the Commission should require all voice carriers to make and why;
- Whether company-specific marketing requirements imposed as a result of past behavior, that is, remedies imposed in a complaint or enforcement case, may be lifted by the filing of an advice letter or whether further Commission action is warranted;
- Any specific issues raised in the protest to AT&T's advice letter filings, Nos. 28800 and 28982, that parties wish to add to this proceeding;
- Clarifying the relationship between the one-day effectiveness of advice letters authorized in Phase I and the notice and protest requirements of General Order 96-A, including whether the protest process relating to a one-day effective advice letter requires more specificity for the staff to implement it without ambiguity.

(R.05-04-005, PHC Tr., pp. 3-5 (Nov. 7, 2006); see also Assigned Commissioner's Ruling and Scoping Memo in R.05-04-005, issued Dec. 11, 2006 (Phase II scoping memo.) As these issues are already being considered in Phase II, it makes sense to have the limited rehearing take place in Phase II, as provided in the Phase II scoping memo. However, we note that AT&T has already filed two advice letters (Nos. 28800 and 28982) in reliance on Ordering Paragraph 21. As noted above, we will be handling the issues raised in the protests to these advice letters in Phase II. We further note that on November 30, 2006, we issued Resolution L-339, which notified parties that we would be handling the protests to Advice Letters 28800 and 28982 in Phase II, and directed that AT&T's Advice Letters shall remain in effect pending the resolution of the issues raised in the protests in Phase II. We will accordingly suspend the effectiveness of Ordering Paragraph 21 on a prospective basis from the effective date of this Order, pending the outcome of rehearing in Phase II.

We also find that TURN and DRA correctly point out that the Decision does not provide any procedure for the suspension or handling protests of advice letters authorized to go into effect on one-day's notice.[35] We note that General Order 96-A, as recently revised by D.05-01-032, does not provide procedures for suspension and effectiveness of advice letters authorized to go into effect less than 30 days after they are filed. Instead, the procedures for suspension, if any, and effectiveness are those contained in the Commission order authorizing the shorter period. (See, D.05-01-032, Appendix § 4.7.) In Phase II, we are considering clarification of the relationship between one-day-effective advice letters, the notice and protest requirements of General Order 96-A and the Public Utilities Code, and specific provisions of prior Commission decisions. (See R.05-04-005, PHC Tr., p. 3 (Nov. 7, 2006); see also Phase II scoping memo, p. 3.) In the meantime, however, we shall modify D.06-08-030 in order to provide that the protests to advice letters to go into effect on a one-day filing may be filed within 20 days of the filing of the protest letter, as provided by General Order 96-A, as revised by D.05-01-032 (Appendix A, § 4, "Advice Letter Review and Disposition"). However, advice letters will remain in effect pending further action of the Commission.

6. Miscellaneous Errors

The Decision adopts a rate cap on basic residential rates (including measured and flat-rate residential service) that are subsidized by the CHCF-B and LifeLine (hereafter ULTS) programs. The rate cap is imposed until issues related to those programs are determined in the Public Purpose Program (PPP) OIR. (D.06-08-030, pp. 153, 255, 280 [Ordering Paragraphs 2, 6].).

With respect to non-subsidized basic residential service, we found that market conditions generally support pricing flexibility. However, we adopted a temporary price cap until January 1, 2009. (D.06-08-030, pp. 153-154, 280 [Ordering

[35] Ordering Paragraph 9 provides: "AT&T, Verizon, SureWest, and Frontier shall be authorized to allow all tariffs to go into effect on a one-day filing, but any tariffs that impose price increases or service restrictions shall require a thirty-day advance notice to all affected customers."

Paragraph 3].) In connection with this price cap, we approved the principle of revenue neutrality to allow carriers to offset rates in response to rate price changes mandated by the FCC for services still subject to its price controls. (D.06-08-030, pp. 155-156.)

According to TURN and DRA, the Decision contains three technical errors and inconsistencies which must be remedied. These relate to: (a) the price caps for services "associated" with ULTS subsidized residential basic service; (b) protection for CHCF-B and ULTS residential basic service offered in bundles; and (c) revenue neutrality. (TURN/DRA Rhg. App., pp. 41- 45.)

a) Price Caps for Services Associated with ULTS Subsidized Basic Residential Service

TURN and DRA contend the Decision errs because we denied extending the rate cap to certain services "associated" with ULTS subsidized basic residential service. They assert this contravenes other Commission decisions which afford the subsidy to local usage, ZUM, EAS, toll blocking, and non-recurring installation charges as part of the ULTS basic residential service package.[36] (TURN/DRA Rhg. App., pp. 41- 43.)

As currently stated, our Decision extends the rate cap to non-recurring installation charges, but excludes the following "associated" services: measured local usage; ZUM; EAS; recurring and non-recurring charges; Caller ID; call trace; 976 service; 900/976 call blocking; non-published and unlisted telephone numbers; white pages listings; busy line verification and interrupt services; and inside wire maintenance plans. (D.06-08-030, pp. 156, 255.)

Upon further review, we agree that it is consistent with current ULTS program parameters to also extend the rate cap to the following "associated" services that are also within the subsidized basic residential service package. These are: flat and measured local usage; ZUM Zone 1 & 2 local calls; EAS; non-recurring installation; toll

[36] Citing to *Re Alternative Regulatory Frameworks for Local Exchange Carriers* [D.94-09-065] (1994) 56 Cal.P.U.C.2d 117, 149; and *Modifications to the Universal Lifeline Telephone Service Program and General Order 153* [D.00-10-028] (2000) 8 Cal.P.U.C.3d 563, 670 [Ordering Paragraphs 16, 17, 18].).

blocking; and conversion.[37] We will modify the Decision accordingly, as set forth below in the ordering paragraphs.

b) Bundling of ULTS and CHCF-B Basic Residential Service

TURN and DRA assert the Decision errs because allowing the ILECS to bundle ULTS and CHCF-B subsidized basic residential services encourages predatory pricing and avoidance of the rate cap/floor. They advocate adoption of some interim mechanism or safeguard to ensure preservation of the basic service rate freeze for new service bundles which include subsidized residential lines. (TURN/DRA Rhg. App., pp. 43-44.)

During the proceeding we considered predatory pricing arguments, and rejected the notion that pricing flexibility for bundled services will enable ILECs to set prices below the subsidized rate to undercut the competition. We see no basis to overturn our conclusion that the price cap on subsidized service will effectively restrict carriers from under-cutting the competition because they can only offer that service at the authorized rate. (D.06-08-030, p. 141, and fn. 554.)

Moreover, our Decision does include protective mechanisms and safeguards as TURN and DRA advocate. While we will allow pricing flexibility for bundles *not including* subsidized basic residential service (D.06-08-030, p. 192.), we do require safeguards with respect to bundles which do include those services. (D.06-08-030, pp. 193-194.) For ULTS customers who choose bundled service, our Decision requires that they continue to receive the ULTS discount for the subsidized basic residential service. (D.06-08-030, p. 193.) For CHCF-B customers, the Decision adopts a safeguard such that if customers find it is not economically advantageous to take bundled service, carriers must continue to offer basic residential service on a stand-alone basis in high-cost

[37] See D.94-09-065, *supra,* 56 Cal.P.U.C.2d at pp. 149, 153-154; and D.00-10-028, *supra,* 8 Cal.P.U.C.3d at p. 670 [Ordering Paragraphs 16, 17, 18].

areas. These safeguards merely ensure that we maintain existing protective practices and requirements.

c) Revenue Neutrality

TURN and DRA contend that the Decision errs because revenue neutrality does not appear to apply equally to allow decreases as well as increases in basic service rates. Additionally, they assert that the "implicit decision to increase basic residential exchange rates" will adversely affect universal service contrary to State policy as embodied in section 709.[38] (TURN/DRA Rhg. App., pp. 44-45.)

It is correct that our Decision does not explicitly mention potential rate decreases in connection with revenue neutrality. However, our rationale for adopting the policy does not preclude decreases, if circumstances so warrant. Our adopted policy provides that until the price cap on non-subsidized basic residential service is lifted, the affected ILECs should be allowed to adjust rates "to offset any FCC mandated price changes in services still subject to price controls." (D.06-08-030, p. 155.) To illustrate how the principle would apply, we stated as an example: "[I]n deed, application of the revenue neutrality principle may be necessary if the FCC or this Commission orders reductions in basic switched access rates." (D.06-08-030, p. 155, fn. 599.)

Flowing from that example, we stated that price changes may be offset either with revenue-neutral price increases in basic service, or revenue-neutral surcharges. (D.06-08-030, p. 155.) However, our statement is linked to the specific example, rather than to the policy as a whole. We continue to believe that in no case should the basic residential rate fall below the set price floors. However, our policy supports either rate increases or decreases, if warranted, in response to FCC action. To clarify, we will modify the Decision as set forth below in the ordering paragraphs.

[38] TURN and DRA also allege that the Decision is contrary to the State policies embodied in section 739. However, section 739 of the Public Utilities Code deals with baseline quantities of gas and electricity and is inapplicable for purposes of this proceeding.

TURN and DRA are wrong, however, that the Decision contains an implicit determination to increase basic residential exchange rates. Nothing in our Decision operates to authorize an immediate increase in basic residential exchange rates. The reference to such an increase is clearly for illustrative purposes, and we used it in the context of noting that related issues are currently being considered by the FCC. Any ILEC exercise of revenue neutrality must flow from an FCC order which acts as a triggering event. (D.06-08-030, p. 155, fn. 599.)

We further find the section 709 allegation raised by TURN and DRA is overly broad and poorly defined. The statute sets forth several broad policy objectives for the provision of telecommunications services in California.[39] TURN and DRA do not specify how they believe our Decision is unlawful with respect to any particular provision of section 709 or any other requirement under the law. Thus, we find no merit to the argument.

Finally, we modify Finding of Fact 78 to correct a typographical error. The Finding of Fact currently reads: "Because ILECs like market power in voice communications markets, it is reasonable to permit all tariffs to go into effect on a one-day filing, but it is also reasonable to require that any tariffs that impose price increases or service restrictions provide a thirty-day advance notice to all affected customers." The word "like" shall be changed to "lack."

B. DisabRA's Application for Rehearing

We next turn to the issues raised in DisabRA's application for rehearing. DisabRA contends that the Decision errs because: (1) it violates section 1705 by failing to state findings of fact and conclusions of law on material issues raised by DisabRA; and (2) even if issues regarding the disabled community are best addressed in R.06-05-028

[39] Policies embodied in section 709 include: assuring affordability and availability of telecommunications services; encouraging the development of new technologies; promoting lower prices and consumer choice; and removing barriers to open and competitive markets. (See Pub. Util. Code, § 709, subdivs. (a) through (h).)

(the Commission's PPP OIR), the Decision fails to adequately refer those issues to that proceeding. (DisabRA Rhg. App., pp. 2-10.)

Additionally, DisabRA agrees with the allegations of legal error raised by TURN and DRA, particularly as to reporting and monitoring requirements.[40] (DisabRA Rhg. App., pp. 11-12.)

1. Findings of Fact and Conclusions of Law on Material Issues

DisabRA contends the Decision errs because it does not contain findings of fact and conclusions of law on all material issues as required by section 1705. (DisabRA Rhg. App., pp. 2-7.)

Section 1705 provides in pertinent part that a Commission decision:

> shall contain, separately stated, findings of fact and conclusions of law on all issues material to the order or decision. (Pub. Util. Code, § 1705.)

In support of its argument, DisabRA asserts that in reaching a determination the Commission must "weigh the opposing evidence and arguments in order to determine whether the rights and interests of the general public will be advanced," and "consider *sua sponte* every element of public interest affected" by its approval. (DisabRA Rhg. App., p. 1, citing to *Industrial Communications Systems v. Public Utilities Commission* (1978) 22 Cal.3d 572, 582, 1978 Ca.l.LEXIS 304, * 11; and *United States Steel Corp. v. Public Utilities Commission* (1981) 29 Cal.3d 603, 609, 1981 Cal.LEXIS 156, * 7.)

Generally, there is merit to the principles DisabRA proffers. However, neither of the cited cases establish that we were obligated to weigh, or make findings regarding any or all issues raised by DisabRA for purposes of our Decision. The stated principles only apply as to issues that are material to the goal of the decision in question. Unlike the situation in the cited cases, there is no evidence that the information presented

[40] Although DisabRA expresses its support and agreement with the arguments raised in the application for rehearing filed by TURN and DRA, it presents no independent legal argument, analysis or authority. It is simply a statement of its endorsement. Thus, the relevant issues are addressed separately in response to TURN and DRA's specific contentions.

by DisabRA was material to the goal or determination in the particular proceeding leading to D.06-08-030.

The goal of this proceeding was to determine whether we can rely on competitive market forces to produce "just and reasonable rates" for California's telephone consumers, and therefore, allow increased pricing flexibility for voice communication services. (D.06-08-030, pp. 1, 41- 42; also see OIR, R.05-04-005, dated April 7, 2005.) Material information and issues include those related to our "central" inquiry, e.g., whether new policies, technologies, and developments in the voice communications market over the last eighteen years have limited the ability of incumbent carriers to exercise market power. (D.06-08-030, p. 52.)

From the outset, it was clear that certain issues were *not material* for purposes of reaching a determination in the instant proceeding. The OIR and Scoping Memo explicitly advised parties that issues including those impacting public purpose programs were outside the scope of this proceeding and hence, would not be considered in depth.[41] The specific issues raised by DisabRA regarding telecommunication service needs of the disabled community fall under the public purpose programs umbrella.[42]

DisabRA suggests that because we recognized the general relevance of issues related to the disabled community, we were therefore, bound to make associated findings here. We disagree. General relevance does not mean an issue is material for

[41] See OIR, R.05-04-005 (dated April 7, 2005, p. Appendix A, p. A-3, Number 11.C.); and *Scoping Memo and Ruling Of Assigned Commissioner And Administrative Law Judge*, R.05-04-005 (dated August 4, 2005, p. 5.). Other issues deemed outside the scope of D.06-08-030 include special access, and service quality.

[42] DisabRA does not identify the specific issues it considers material for purposes of D.06-08-030, stating only that it submitted evidence responsive to the broad goals of the proceeding. Generally, DisabRA recommended that a new regulatory framework not compromise telecommunications programs and services for disabled and low income customers, and allow price regulations for those customers to remain in place. (See Comments of Disability Rights Advocates, dated May 31, 2005, p. 2.) More specific recommendations involved the particularized needs of the disabled community such as: ensuring accessibility of PPP programs and services; affordability; the provision of necessary equipment and high quality service quality and customer support; and encouraging customer awareness. (See Reply Comments of Disability Rights Advocates, dated September 2, 2005, pp. 11-12.)

purposes of reaching a reasoned determination. We noted that DisabRA's concerns are relevant and valid to the extent a new regulatory framework must be in accord with the social policies (and associated PPPs) embodied in statutes. (D.06-08-030, pp. 38-41.) We also agreed that services used by the disabled community differ from mass market communication services. Yet the issues in question were not deemed material here because it was not established that there is a "compelling economic or legal reason to segment the market by user characteristics, such as income or usage patterns, or to partition different groups of customers into separate markets." (D.06-08-030, pp. 131, 274 [Conclusion of Law 15].) The service and community specific issues raised by DisabRA are material to a determination in the PPP rulemaking (R.06-05-028), thus, the Decision directs that those issues be addressed in that forum. (D.06-08-030, pp. 153, 156.)

Furthermore, we properly recognized that if issues related to the disabled community are to be deferred, then any economic ramifications of the instant decision on that community should also be deferred. Consistent with DisabRA's recommendations, the Decision includes findings and conclusions requiring that price changes which might follow from the Decision leave in place programs and rates for PPP programs and the disabled communities in California. (D.06-08-030, pp. 156, 267 [Findings of Fact 70, 71, 72], 276 [Conclusion of Law 30], 280 [Ordering Paragraphs 2, 6, 7].)

2. Appropriate Venue for DisabRA Issues

DisabRA asserts that even if issues regarding the disabled community are best addressed in the Commission's PPP rulemaking (R.06-05-028), the Decision errs because it does not adequately refer those issues to that proceeding. Additionally, DisabRA contends the scope of R.06-05-028 must be expanded to include certain issues it raised in this proceeding. (DisabRA Rhg. App., pp. 7-11.)

Our Decision repeatedly states that issues related to the disabled community are appropriate to, and should be addressed in R.06-05-028. However, DisabRA is correct that there are no associated findings of fact, conclusions of law, or ordering paragraphs to effectively refer those issues to R.06-05-028. Accordingly, we will modify

the Decision to specifically refer the issues to the PPP OIR as set forth below in the ordering paragraphs.

DisabRA is wrong, however, that some of the issues it raised in this proceeding are not currently within the scope of R.06-05-028. According to DisabRA, R.06-05-028 does not encompass the issue of: the availability of telecommunications technologies other than wireline telephony in the disabled community market; whether those other technologies provide necessary accessibility features and customer services; and bundling or pricing bundles. (DisabRA Rhg. App., pp. 10-11.)

A review of the PPP OIR and staff report identifying issues in R.06-05-028 evidence that those issues have already been raised as within its scope.[43] Moreover, DisabRA is an active party in R.06-05-028 and states that it has already made a formal request to the ALJ to revise the scope of that proceeding. (DisabRA Rhg. App., p. 11, fn. 25.) While the relationship between the policies adopted in D.06-08-030 and those to be considered in the PPP OIR should be carefully conformed, any further expansion of R.06-05-028 does not appear to be necessary or required here.

III. CONCLUSION

After careful consideration of the applications for rehearing, we shall grant limited rehearing on the issues regarding Ordering Paragraph 21 and asymmetric disclosure, marketing, and administrative processes, as discussed above. We shall also modify the Decision for clarification purposes in accordance with the discussion above. In all other respects, the rehearing applications shall be denied.

[43] See *Order Instituting Rulemaking On Telecommunications Public Policy Programs*, R.06-05-028 (dated May 25, 2006, pp. 12-13, 17-19, 20-22.). Also see Staff Report on Public Policy Programs, R.06-05-028 (dated April 14, 2006, pp. 27-36.).

Therefore **IT IS ORDERED** that:

1. D.06-08-030 shall be modified as follows:

   a. Add a new ordering paragraph to state:

   The Commission shall eliminate all NRF-specific monitoring reports for the affected ILECS and instead require FCC ARMIS data.

   b. Add a new ordering paragraph to state:

   In Phase II of this proceeding (R.05-04-005) the Commission shall determine what additional information and reports are necessary to meet the Commission's needs in the new competitive environment.

   c. Page 209, second to last sentence shall be modified to state:

   Consistent with our conclusion in Section XIV of this Decision, we eliminate all NRF-specific monitoring reports including those related to service quality. We otherwise defer all service quality issues to the Service Quality OIR, including consideration of any proposals by parties for service quality related information and reports that can best meet Commission needs in the new competitive environment.

   d. Page 218, shall be modified to add the following sentence to the end of the first full paragraph:

   As previously indicated, proposals regarding service quality-related monitoring report requirements should be addressed and considered in the Service Quality OIR, R.02-12-004, along with other service quality issues.

   e. Page 278, conclusion of law number 50 shall be modified to state:

   Service quality issues, including any related monitoring report requirements, should be reviewed in the proceeding already opened to consider this issue, R.02-12-004.

f. Page 278, conclusion of law number 52 shall be modified to state:

The Commission should defer all service quality issues, including consideration of proposals for related monitoring report requirements, to the Service Quality OIR, R.02-12-004.

g. Page 217, first two sentences of last paragraph shall be modified to state:

Consistent with the policy we adopt today to eliminate the NRF regulatory regime for the affected carriers, we eliminate all NRF-specific monitoring reports and choose to rely on and require reporting of FCC ARMIS data. Our experience over the last several years indicates that in the ever growing competitive marketplace related to the services and carriers subject to our Decision today, the NRF-specific detailed reports have had diminishing value.

h. Page 156, second full paragraph shall be modified to state:

With respect to the regulation of prices for any of the services "associated" with basic residential service, we find it is consistent with current ULTS program parameters to extend the rate cap to those "associated" services which are included in the subsidized basic residential service package. These include: flat and measured local usage; Zum Zone 1 & 2 local calls; EAS; non-recurring installation; toll blocking; and conversion. However, our discussion of the statutes and market conditions makes it clear that it is not necessary to continue price regulation for "associated" services if they are not included in a subsidized basic residential service package. The rate cap will thus not apply to non-subsidized: local usage; ZUM; EAS; recurring and non-recurring charges; Caller ID; call trace; 976 service; 900/976 call blocking; non-published and unlisted telephone numbers; white pages listings; busy line verification and interrupt services; and inside wire maintenance plans.

i. Page 255, shall be modified to delete the following paragraph:

Concerning DRA's request for clarification of which particular rates we cap, we clarify that we cap the residential flat rate and residential measured service offered by the different ILECs, as well as the LifeLine residential service (including the LifeLine installation rate). No other rates are capped. Similarly, since we now cap all residential basic rates for two years and reject marketing restrictions on bundles offered in areas receiving CHCF-B funds, we believe that the scope of our decision is now clear, and no further clarification is warranted. We add that the Commission has existing processes, such as the petition process, that can provide any further clarification that DRA or any other parties require.

h. Page 155, first paragraph, second full sentence shall be modified to state:

These price changes in regulated services may be offset either with revenue-neutral price increases in basic service, revenue-neutral price decreases (not to fall below the established price floor), or revenue-neutral surcharges applying to all services.

i. Add a new finding of fact to state:

Issues relating to telecommunications services and the disabled community, including LifeLine and the DDTP, are currently being reviewed in the public purpose program rulemaking, R.06-05-028.

j. Add a new conclusion of law to state:

The Commission should defer all issues relating to telecommunications services and the disabled community, including LifeLine and the DDTP, to the public purpose program rulemaking, R.06-05-028.

k. Add a new ordering paragraph to state:

Issues relating to telecommunications services and the disabled community, including LifeLine and the DDTP raised in this proceeding, shall be addressed, as appropriate, in R.06-05-028.

l. Page 268, finding of fact 78 shall be modified to state:

Because ILECs lack market power in voice communications markets, it is reasonable to permit all tariffs to go into effect on a one-day filing, but it is also reasonable to require that any tariffs that impose price increases or service restrictions provide a thirty-day advance notice to all affected customers.

m. Page 186, first full paragraph shall be modified to state:

Since parties did not address the detariffing issue in their briefs, we will permit parties, in a separate comment cycle, to address the legal and implementation issues that the Commission should consider before ordering detariffing of telecommunications services. Opening comments are due thirty days from the effective date of this decision, with reply comments to follow in fourteen days. It is our intention to decide whether to order detariffing before the end of the year. We note that should we order detariffing, all the tariffing filing requirements, including the one-day filing provisions adopted herein, would end. Detariffing would affect all services other than basic exchange service.

n. Page 277, conclusion of law 36 shall be modified to state:

Public Utilities Code § 495.7 authorizes the Commission to eliminate tariffing for all services, with the exception of basic exchange service, as long as certain criteria are met.

o. Page 281, ordering paragraph 10 shall be modified to state:

We shall permit parties, in a separate comment cycle, to address legal and implementation issues that the Commission should consider before ordering detariffing of telecommunications services. Opening comments are due

thirty days from the effective date of this decision, with reply comments to follow in fourteen days.

p. Page 281, add a new sentence at the end of ordering paragraph 9 to state:

Protests to advice letters authorized to go into effect on a one-day filing may be filed within 20 days of the filing of the advice letter, as provided in General Order 96-A, as revised by D.05-01-032, Appendix § 4 ("Advice Letter Review and Disposition"). However, advice letters that properly fall within the category of advice letters authorized by this Decision to go into effect on a one-day filing shall remain in effect pending further action of the Commission.

2. The effectiveness of Ordering Paragraph 21, as well as associated language in the Decision (including page 210, first full paragraph (beginning with the sentence "Finally, we eliminate all asymmetric requirements concerning marketing, disclosure, or administrative processes."); page 251, last paragraph, second sentence stating "We clarify that pricing freedoms that we grant today extend to marketing rules and scripts, disclosure requirements, and administrative practices"; page 203, second full paragraph which states: "Marketing rules are unrelated to service quality. These rules are squarely before us in this proceeding"; page 269, finding of fact 83; page 271, finding of fact 110; and page 278, conclusion of law 53) shall be suspended prospectively from the effective date of this Order, pending the outcome of rehearing of these issues in Phase II of this proceeding.

This order is effective today.

Dated December 14, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners