Decision 07-09-018 September 6, 2007

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 April 7, 2005)
Order Instituting Rulemaking for the Purposes of Revising General Order 96-A Regarding Informal Filings at the Commission.	Rulemaking 98-07-038 (Filed July 23, 1998)

OPINION CONSOLIDATING PROCEEDINGS, CLARIFYING RULES FOR ADVICE LETTERS UNDER THE UNIFORM REGULATORY FRAMEWORK, AND ADOPTING PROCEDURES FOR DETARIFFING

TABLE OF CONTENTS

Title **Page**

TABLE OF CONTENTS
(Cont'd)

Title **Page**

OPINION CONSOLIDATING PROCEEDINGS, CLARIFYING RULES FOR ADVICE LETTERS UNDER THE UNIFORM REGULATORY FRAMEWORK, AND ADOPTING PROCEDURES FOR DETARIFFING

1. Overview

We consolidate the two rulemaking proceedings docketed above to coordinate issues that overlap between the Uniform Regulatory Framework proceeding ("URF") (R.05-04-005) and the General Order ("GO") 96-B proceeding (R.98-07-038). This decision clarifies advice letter procedures and establishes detariffing requirements for carriers subject to the URF rules (URF Carriers).[1] We are adopting a companion decision establishing the Telecommunications Industry Rules as part of GO 96-B, which relies on the URF record[2] and incorporates the new advice letter and detariffing requirements that we adopt here.

In this decision, we address a portion of the issues that were raised in our URF proceeding's Decision D.06-08-030 (URF Phase I decision), as modified by D.06-12-044, and in subsequent scoping memo, and deferred to this Phase II of the URF proceeding.[3]

1. Whether to detariff telephone service other than basic exchange service.
2. Implementation of URF Phase I decision and issues pertaining to rehearing in D.06-12-044:

---

[1] *See* Appendix A for a summary of the filing requirements we establish in this decision.

[2] R.98-07-038 concerns the procedures for the handling of informal filings at the Commission. Some informal filings, namely, advice letters, are subject to review and approval or rejection.

[3] *See, e.g.,* Assigned Commissioner's Ruling and Revised Scoping Memo (Dec. 21, 2006).

a. Clarifying the relationship between one-day-effective advice letters and the notice and protest requirements of General Order 96(a) and the Public Utilities Code, as well as prior Commission decisions, and determination of which subjects should fall under the tiers of GO 96 draft 2001 Telecommunications Industry Rules.
b. Clarifying the scope of the asymmetric administrative processes language of Ordering Para. 21 of the URF Phase I decision.
c. Assessing whether company-specific marketing and disclosure requirements imposed as a condition or requirement resulting from an enforcement or complaint case should be continued, or whether, in light of changed market conditions, they may be lifted through the filing of an advice letter.

There remain other issues that we will address in the next decision in Phase II.

We will address below first the procedures and guidelines for advice letter filings for tariffed services by URF Carriers. We have considered parties' comments and the existing rules under GO 96. We hereby modify our one-day effective filing rule for the following types of advice letter filings so that they may instead be *effective on the day of filing* (or another day that the URF Carrier chooses), pending disposition pursuant to GO 96-B, General Rule 7.3.3:[4]

- All tariff changes to retail service offerings other than basic service;
- promotional offerings, bundles, new services; and

[4] As discussed further below and in the companion decision we adopt today establishing the Telecommunications Industry Rules, such filings would fall under Tier 1 of the industry rules.

- withdrawal of services other than basic residential (1MR and 1FR) and basic business (1MB) services where withdrawal of service would raise public safety issues.[5]

These advice letter filings by URF Carriers ("URF advice letters") may be protested within 20 days of filing, but the grounds for protest are narrow, as provided in General Rule 7.4.2. If such a filing under General Rule 7.3.3 is protested, the advice letter *is not suspended;* if the staff or the Commission subsequently determines that the URF advice letter was incorrectly filed, the carrier will be required to take remedial actions regarding the filing. *See* General Rules 7.3.3 and 7.5.3.[6] We believe that Tier 1 procedures are consistent with, and promote, URF policies. To the extent that a carrier seeks to increase or reduce rates for basic service, the issue will be addressed in R.06-06-028, and the Commission will direct parties in that proceeding as to the appropriate method for filing any such changes.

We next explain below our decision to establish voluntary detariffing procedures for URF Carriers in this decision pursuant to Pub. Util. Code Section 495.7. We find that the elements of Section 495.7 have been met and that we have the legal authority to establish detariffing procedures. The URF Phase 1 record established that, as required by Section 495.7(b)(1), the telephone corporations operating in the territories of Verizon, AT&T, Frontier, and SureWest lack significant market power. There are also existing sufficient

---

[5] *See* D.06-08-030 at Ordering Para. 9. The withdrawal of basic service and/or withdrawal of service as a carrier of last resort requires an application, pursuant to D.06-10-021 and D.96-10-066 respectively.

[6] In our companion decision, we revise our 2001 draft Telecommunications Industry Rules so that these types of URF advice letters may be filed under "Tier 1" treatment in GO 96-B.

safeguards and Commission consumer protection rules in place to satisfy the requirements of Section 495.7(c); however, we adopt in this decision new rules governing availability of rates, terms, and conditions and notices to customers for URF Carriers that detariff their services in further satisfaction of Section 495.7(c).

Because we have deregulated pricing of telecommunications services other than basic residential service (which rates are capped until January 2009), the issue of improper cross-subsidization under Section 495.7(d) does not exist. The Commission found that price floors are unnecessary in URF Phase I,[7] and thus, anti-competitive pricing behavior under Section 495.7(d) is unlikely to occur. Because pricing of wholesale or resale services remains subject to regulation[8] and we will require all carriers, at all times and without charge, to webpublish and also provide without charge via request to a tollfree number the applicable retail rates, charges, terms and conditions for any service available to the public on a detariffed basis, URF carriers will not be able to engage in anti-competitive or discriminatory pricing without detection.

For the reasons set out in Section 6 below, we decline to order mandatory detariffing. We also reject comments that urge us to impose specific disclosures or contract terms on carriers that choose to detariff a service. We establish permissive detariffing procedures in this decision for URF carriers to seek to detariff via advice letter within the next 18 months from the effective date of this decision any presently filed retail tariff except for:

---

[7] D.06-08-030 at 183-84.

[8] We noted in D.06-08-030 that wholesale services are not within the scope of this proceeding. *See* D.06-08-030 at 132.

(a) a tariff for basic service;

(b) a tariff that includes requirements, provisions, or conditions imposed in an enforcement, complaint, or merger proceeding;

(c) a tariff for 9-1-1 or other emergency services;

(d) a tariff relating to customer direct access to an interexchange carrier or customer choice of an interexchange carrier;

(e) a tariff for a service that was not granted full pricing flexibility in Decision 06-08-030 (e.g., resale services); or

(f) a tariff containing obligations as a Carrier of Last Resort, and other obligations under state and federal law, or Commission orders and decisions.

Advice letters filed to detariff in compliance with this decision shall be treated as "Tier 2" advice letters under the Telecommunications Industry Rules that we adopt today in our companion decision, and shall be effective following staff review and approval, as provided for in General Order 96-B. *See* GO 96-B, General Rule 7.3.4. We intend for these detariffing procedures to apply for all URF Carriers, including the four major ILECs, competitive local exchange carriers ("CLECs"), and interexchange carriers ("IXCs").

In submitting the advice letter to detariff, the carrier must list the tariff pages and describe services that it is detariffing so that the Commission may understand the categories or types of services that the carrier is seeking to detariff. Furthermore, if an URF Carrier seeks to offer on a detariffed basis a "new service,"[9] the carrier may offer the new service as detariffed through a

[9] We define "new service" as a service that is distinguished from any existing service offered by a telecommunications carrier by virtue of the technology employed and/or features, functions, and means of access provided. *See also* Rule 1.8 of the

Footnote continued on next page

Tier 2 advice letter, if the new service does not fall into the categories of services for which we prohibit detariffing and does not fall into categories of services that the carrier has already detariffed. We will not apply the 18-month implementation period to "new services," as technological innovations will continue to result in new services that we cannot anticipate at this time and which should not be subject to traditional forms of regulation. If the carrier seeks to offer the "new service" on a tariffed basis under Tier 1, the carrier may do so.

Parties have been given full notice and opportunity to be heard on all issues surrounding detariffing. However, as discussed below, to the extent that they have not already done so, we gave parties an additional opportunity to comment on policy issues relating to detariffing and waived the page and content limitations under Rule 14.3 of the Rules of Practice and Procedure. We also waived the page and content limitation to allow parties to comment on whether the detariffing procedures that we establish here should apply to IXCs, in addition to CLECs and the four major ILECs.

We clarify Ordering Paragraph 21 of D.06-08-030, and find that the paragraph was intended to permit carriers to file advice letters removing certain asymmetrical marketing, disclosure, and administrative requirements, as long as such requirements did not, among other things, pertain to basic service, or were not requirements imposed on a carrier as a result of an enforcement, complaint, or merger proceeding. Accordingly, we conclude that on a prospective basis, carriers may not remove such asymmetric requirements through an advice letter

---

Telecommunications Industry Rules (Appendix B to companion General Order 96-B decision).

filing and must file a petition to modify the underlying decision that imposed such condition or requirement.

We will resolve the issues raised by protests to AT&T advice letters 28800 and 28982 in the next decision in this Phase II of the URF proceeding. TURN asserts that evidentiary hearings are required on issues that it alleges are material to the disposition[10] of the issues and we have issued a ruling on that issue separately.

2. Procedural History

The URF Rulemaking (R.) 05-04-005 is the latest of a series of proceedings in which the Commission has overhauled its regulation of the telecommunications industry. The goal of the current rulemaking is, to the highest degree possible, to establish a Uniform Regulatory Framework compatible with today's richly competitive marketplace for advanced telecommunications services.

In D.06-08-030, which concluded Phase I of the URF Rulemaking (the URF Phase I decision), we granted carriers broad pricing freedoms concerning many telecommunications services, new telecommunications products, bundles of services, promotion, and contracts. We made contracts effective when executed, and ended the necessity of post-signing reviews by this Commission. With few restrictions, we permitted carriers to add services to "bundles" and target services to specific geographic markets.

We also capped the price of basic residential service until January 1, 2009 and froze rates of basic residential services receiving a California High Cost

[10] *See* TURN Comments on Phase 2 (March 7, 2007) at 31.

Fund-B (CHCF-B) subsidy at a level equal to the current rate pending the outcome of R. 06-06-028.

We reduced and eliminated many of the vestiges of rate-of-return regulation, such as "accounting adjustments" and other rules that cause regulatory accounts to diverge from financial accounts, electing to base our requirements on Generally Accepted Accounting Principles (GAAP) accounting standards and FCC accounting rules. We eliminated the price cap index, price cap filings, earnings "sharing," and gain-on-sale distributions.

With the exception of conditions relating to basic residential rates, pursuant to Ordering Paragraph 21 we eliminated all asymmetric requirements concerning marketing, disclosure, or administrative procedures.[11]

Although we required all carriers to provide a thirty-day notice to customers of any price increase or more restrictive term or condition, we simplified all tariff procedures and made tariffs effective one day after filing.[12] We eliminated all monitoring reports tied to the supplanted New Regulatory Framework (NRF) and standardized our reporting requirements to make them consistent with comprehensive reports provided by all carriers to the FCC.

We set Phase II for determining what reports we should require carriers to file under URF and we asked parties to recommend reports that will assist us in carrying out our statutory duties and exercising regulatory oversight.[13]

---

[11] D.06-08-030, at Ordering Para. 21.

[12] However, we modify below in this decision the one-day effective filing for URF Carriers' advice letters that we adopted in D.06-08-030.

[13] *See* Assigned Commissioner's Ruling and Revised Scoping Memo (dated December 21, 2006) at 3-5.

We also ordered a separate briefing cycle to consider whether we should altogether detariff telecommunications services other than basic residential service and left the decision of that question to this Phase.[14] We referred all service quality issues to R.02-12-004, the Service Quality rulemaking, and issues relating to the Deaf and Disabled Telecommunications Program to R.06-05-028, our Universal Service rulemaking on public policy programs. We deferred the consideration of special access pricing to Phase II.

On September 25, 2006, nine parties filed opening briefs limited to detariffing issues.[15] On October 13, 2006, eight parties filed reply briefs.[16]

On September 11, 2006, soon after the issuance of the URF Phase I decision and relying on Ordering Paragraph 21 of D.06-08-030, AT&T filed Advice Letter 28800 that eliminated many of the disclosure requirements that we had imposed

---

[14] D.06-08-030, Ordering Para. 10 Assigned Commissioner Ruling and Revised Scoping Memo (Dec. 21, 2006) at 3.

[15] AT&T, Verizon, SureWest, Frontier, Cox, DRA, TURN, Sprint/Nextel, and Time Warner filed opening comments. Some parties like Verizon submitted "briefs" while others like Pacific Bell submitted "comments." TURN (*see* "Positions of the Parties," below) argues that the evidentiary record lacks the findings necessary to support detariffing under Section 495.7 and this insufficiency is worsened by requesting briefs instead of comments on the issue of detariffing in the Phase I decision. As we stated in D.06-12-044, the URF Phase 1 decision uses the terms "briefs" and "comments" interchangeably, but our use of the term "brief" did not mean that we would not consider the filings as part of the entire record. We clarified in D.06-12-044 that the briefs would be treated as comments. D.06-12-044 at Ordering Para. 1.m. We further noted in the Phase I decision that we would consider "whether we should altogether detariff telecommunications services other than basic residential service" and a separate cycle was established precisely to give parties the opportunity to comment on this issue. D.06-08-030 at 3. Accordingly, we reject parties' arguments that the "briefing cycle" was insufficient.

[16] These parties were AT&T, Verizon, SureWest, Frontier, Cox, DRA, TURN, and Department of Defense.

on it through a 2001 decision[17] in an enforcement case in C.98-04-004 as corrective actions and as remedy for certain marketing abuses.[18] Protests were filed to this advice letter by DRA, TURN, the Utility Consumers' Action Network ("UCAN"), Latino Issues Forum ("LIF"), and Centro La Familia**,** and subsequently on October 23, 2006, AT&T filed Advice Letter 28982, which added back some but not all of the preexisting disclosure language to Rule 12 of its tariffs. The basis for AT&T's filing of these advice letters was the company's determination that such corrective actions were "asymmetric requirements" of the type eliminated by Ordering Paragraph 21 of the URF Phase I decision. Protests were also filed to AT&T's Advice Letter 28982. In response to protests to those advice letters, we issued Resolution No. L-339 in November 2006, which ordered that AT&T's tariff changes in these advice letters shall remain in effect, pending resolution of the issues raised in the protests.[19] We also stated in Resolution No. L-339 that we would address issues raised by the protests to AT&T's advice letters in Phase II of the URF proceeding and served this resolution on all parties in the URF proceeding and parties in the consolidated complaint case (C.98-04-004).

On September 29, 2006, TURN and DRA had filed a Joint Application for Rehearing of D.06-08-030, alleging multiple instances of legal error. After careful consideration of the TURN/DRA application, we issued D.06-12-044, which granted limited rehearing on the issues regarding Ordering Paragraph 21 and its

---

[17] D.01-09-058.

[18] *See* Resolution No. L-339 (discussing AT&T's Advice Letters 28800 and 28982). The Commission was not informed that AT&T's Advice Letter 28800 removed language from AT&T's Tariff Rule 12 resulting from an enforcement case when Advice Letter 28800 was filed.

[19] *See* Resolution L-399 Ordering Paras. 1 and 2.

elimination of asymmetric marketing, disclosure, and administrative requirements. In D.06-12-044, we prospectively suspended the effectiveness of Ordering Paragraph 21 pending resolution of those issues in Phase II of this proceeding. We noted that we would include in this phase an examination of whether company-specific disclosure and marketing requirements imposed as a penalty or corrective action in a complaint or investigation should be continued, or whether, in light of changed market conditions, they may be lifted in response to the filing of an advice letter.[20] We also noted that we had included in this phase resolution of those issues raised by the protests to AT&T's advice letters 28800 and 28892.[21]

Furthermore, at our November 2006 prehearing conference in Phase II of the URF rulemaking, a key issue raised for consideration was the appropriate timeframe (and rules) for protests to and suspension of advice letters authorized in URF Phase I. TURN and DRA specifically questioned whether the protest process relating to one-day effective advice letter requires more specificity for the staff to implement.[22] We acknowledged that parties may need further guidance on the issue.[23] We sought comment on the relationship between one-day effective advice letters and the notice and protest requirements of GO 96-A and the Public Utilities Code and prior Commission decisions.[24]

---

[20] D.06-12-044 at Ordering Para. 2.

[21] D.06-12-044 at 30.

[22] TURN Opening Brief at 2, and DRA Reply Brief at 9.

[23] D.06-12-044, at 31.

[24] Assigned Commissioner's Ruling and Revised Scoping Memo (December 21, 2006) at 4.

On December 21, 2006, the Assigned Commissioner issued a revised Scoping Memo seeking comment on among other things, the issues highlighted above, and a proposed schedule for this phase of the proceeding. Pursuant to the Scoping Memo, the assigned ALJ held a Workshop on February 16, 2007 to discuss whether the Commission should require any new or reinstated reports in place of the NRF-specific reports eliminated in Phase I or whether we could rely entirely on the FCC ARMIS reports. On March 2, 2007, parties submitted opening comments on Phase II issues other than detariffing, and on March 30, 2007, they submitted reply comments.

We have bifurcated this Phase II decision into the present decision, addressing advice letter procedures, detariffing, and asymmetric obligations, and will address the remainder of the Phase II issues identified in the Scoping Memo in a decision to be issued later this year.

3. Discussion

3.1. Modifying and Clarifying Rules for URF Advice Letters

After having considered the record, we modify in this section our existing one-day effective advice letter filing requirement and apply instead the Commission's existing protest timeframe set forth in GO 96(a), now subsumed into GO 96-B. *See* General Rule 7.4 of GO 96-B.[25] Specifically, we modify our requirement that URF advice letters are effective on one day after filing to "effective pending disposition" under GO 96-B's General Rule 7.3.3. Therefore,

[25] In General Rule 7.4, GO 96-B states that any person (including individuals, groups, or organizations) may protest or respond to an advice letter within 20 days of the date of filing of the advice letter. The grounds for protest are set forth in General Rule 7.4.2, and are narrow, as discussed further below.

the following URF Carriers' advice letters shall be effective on the day of filing (or other requested date by carrier): [26]

- Changes to services other than basic service;[27]
- promotional offerings, bundles,[28] new services; and
- withdrawal of services other than basic residential (1MR and 1FR) and basic business (1MB) services where withdrawal of service would raise public safety issues.[29]

We will reflect this treatment as Tier 1 in the Telecommunications Industry Rules that we are adopting today in our companion decision. On or after October 1, 2007, URF Carriers shall file these types of advice letters under Tier 1. As for tariff changes to basic service, we are addressing basic service rates in R.06-06-028 and in that decision will address how such changes shall be filed with the Commission. As also discussed in our accompanying GO 96-B decision, we find that changes to terms and conditions for *basic service* shall be filed in Tier 1, to the extent that such changes are not inconsistent with law, or Commission orders or decisions, and to the extent that such changes are not

---

[26] We will allow URF Carriers to file their advice letters under Tier 1 of the Telecommunications Industry Rules (adopted today in R.98-07-038), but if the carrier chooses to file its advice letter under Tier 2, it may do so at its discretion, in order to obtain prior Commission staff authorization before taking a particular action other than one mandated by statute or Commission order.

[27] D.06-08-030 requires 30-day notice to customers for rate increases, or more restrictive terms and conditions.

[28] Bundling generally refers to a combination of services that are packaged together for a single price. In our URF Phase I decision, we noted that "bundling" often refers to the "'triple play' sale of voice, data, and video in one package for a single price by major communications market participants, including telephone companies, cable providers, satellite service providers, wireless companies, BPL providers, and others." D.06-08-030 at 75, n.298.

more restrictive. Such treatment is consistent with findings in URF Phase I. Imposition of more restrictive *basic service* terms and conditions, however, shall be filed in Tier 3.

Protests may be filed to these advice letters during a 20–day protest timeframe under GO 96. Because in URF Phase I, we granted URF Carriers pricing flexibility for most services other than basic service, the grounds for protest of URF advice letters are more limited than for advice letters filed by traditionally regulated utilities. URF Carriers' advice letter filings are effective on the date of filing and are not suspended if protested, consistent with the language of General Rule 7.3.3 and 7.5.3. *See also* D.07-01-024. However, if the Commission or staff finds that the advice letters should not have been filed in Tier 1 or pursuant to General Rule 7.3.3, the carrier may be required to withdraw the filing and make refunds or other adjustments as the Commission may require. General Rule 7.3.3.

3.1.1. Rationale for One Day Effective Filing

Before we explain our basis for applying GO 96-B to URF advice letter filings, we consider the reasons for why we adopted one-day effective filings in D.06-08-030. The most extensive discussion of our basis for the one-day effective filing is the following (from D.06-08-030 at *mimeo*., pp. 182-83):

> In a fast-moving technology space like telecommunications, there is no public interest in maintaining an outmoded tariffing procedure that requires the burdensome regulatory review of cost data and delays the provision of services (particularly new or less expensive ones) to customers. This system only made sense in a world where there was a single dominant ILEC, and active regulatory

[29] *See* D.06-08-030, at 202.

> intervention was required to protect consumers. Thus, it is reasonable that all advice letters for tariffed services should go into effect on a one-day filing.
>
> We ordered in Ordering Paragraph 9 of the URF Phase I decision:
>
> 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.

We granted similar flexible tariff filing procedures for CLECs in Ordering Paragraph 13.[30] What the above text reveals are the policies we hoped to advance by means of the one-day filing procedure. Among other things, we wanted to provide URF Carriers with the ability to innovate and offer new services or rates, terms, and conditions without regulatory delay. Furthermore, before we issued our URF Phase I decision, there were differing filing procedures for different carriers. Incumbent LECs were subject generally to a 30-day approval period, while CLECs were subject to expedited five-day approvals for minor rate increases and 30-day approval periods for major rate increases.[31] Accordingly, we attempted to create a more uniform filing procedure for URF Carriers but conditioned the increased flexibility granted to URF Carriers with customer notification requirements.

We acknowledge that there could have been more guidance in D.06-08-030 about the implementation and procedural requirements for "one-day filing." We discuss in greater detail below our reasons for modifying our one-day effective

---

[30] There are other fleeting mentions of "one-day filing," notably Conclusions of Law 35, 40, 44, and 48, and Ordering Paragraph 12.

[31] *See, e.g.*, D.95-07-054, Appendix A.

filings for URF advice letters in this decision, and provide additional guidance on how the new rules will work.

3.1.2. Applying Existing Procedures to URF Advice Letters

Although the Commission has previously established one-day effective advice letters in resolutions for specific carriers, reference to those individual decisions is not useful in the URF context as such precedent was adopted years ago by the Commission in the New Regulatory Framework (NRF) context and thus is outdated.[32] However, we do have established guidance on notice, suspension, and review of advice letters for telephone corporations in GO 96-A. These rules are to some extent now found in the Commission's recently adopted GO 96-B, but GO 96-B also contains other revisions incorporating requirements adopted in different decisions over the years. We find that GO 96-B provides an adequate framework for URF advice letter filings. We also establish a few additional rules for treatment under Tier 1 for URF Carriers, which we discuss below and will incorporate in our companion decision today adopting Telecommunications Industry Rules for GO 96-B.

GO 96-B provides an appropriate framework because it recognizes the emergence of alternative regulatory approaches at this Commission, and the greater flexibility we have accorded utility management in all the regulated industries. As we discussed in the URF Phase I decision, high levels of

[32] Commission precedent for "advice letter filings effective in one day without prior Commission approval" exists in Resolution (Res.) T-15139 (March 24, 1993). That resolution, the earliest of its type, authorized Pacific Bell to use this advice letter procedure for changes to certain Category III Services under the New Regulatory Framework.

telecommunications competition compels us to relax outdated "command and control" style regulation in many areas. GO 96-B meets the changing needs of today's regulatory environment. Under GO 96-B, there are three tiers of filings for advice letters, with different treatment:[33]

- Tier 1 advice letters are effective upon filing and are approved automatically within 30 days ("deemed approved") if not protested. General Rule 7.3.3 of GO 96-B.
- Tier 2 advice letters are effective only after approval by staff, but if there is no protest and no action by the staff within 30 days, they are deemed approved, as in the case of Tier 1 advice letters. General Rule 7.3.4 of GO 96-B.
- Tier 3 advice letters are effective only after approval by Commission resolution (and cannot be deemed approved). General Rule 7.3.5 of GO 96-B.

Advice letters filed by URF Carriers qualify for inclusion in Tier 1 or Tier 2 because they concern matters over which the utility already has broad authority to take the proposed actions under applicable statutes or Commission orders. The job for the industry division staff in reviewing a Tier 1 or Tier 2 advice letter is ministerial: So long as the proposed action is squarely within the applicable statutes or Commission orders, it must be approved.[34] Accordingly, Tier 1

[33] As discussed in our companion decision, our draft Telecommunications Industry Rules issued in 2001 also established three tiers of advice letter filings. We have revised the subjects falling under each of those tiers pursuant to D.06-08-030 and those are reflected in the Telecommunications Industry Rules we adopt today.

[34] Our later discussion of the grounds for protest regarding URF advice letters includes practical examples of how ministerial review works.

advice letters are especially suitable for partly or fully deregulated industries. In competitive conditions, market participants must be able to act quickly.[35]

When we approved the Tier 1 concept, we expressly endorsed its use in contexts similar to URF:

> The main reason to allow many advice letters to go into effect pending disposition . . . is to better accommodate innovation and competition in the marketplace. According to some commenters, a utility that must publicly announce and then wait regulatory approval for a new product or service will often find that competitors are able to copy the program before the utility has had any significant chance to benefit from its initiative. As a result, the incentive to innovate is reduced, nominal competitors tend to "me too" each other so that prices move in lockstep, and any genuinely innovative advice letter is correspondingly more likely to elicit protests from competitors who hope to gain time to catch up with similar proposals of their own. By allowing certain types of advice letters to take effect before regulatory approval, we can fulfill our responsibilities while giving greater scope to market forces.

D.07-01-024, *mimeo.*, p. 13 (emphasis in original). For the foregoing reasons, we believe that the existing rules under GO 96-B (e.g., General Rule 7.3.3 governing Tier 1 filings) are appropriate for the URF advice letters at issue.[36]

In addition, we note that there is no real benefit to have a one-day delay between filing and effectiveness. For example, in the absence of applying the general rules under GO 96-B, it is unclear whether, if a party files a protest to the

---

[35] Tier 1 procedures provide carriers flexibility because Tier 1 advice letters are effective upon filing, and because they are already in effect, they may not be suspended. (*See* D.07-01-024, *mimeo*. at 15.)

[36] The customer notice requirements that we adopted in URF Phase I shall continue to apply to these URF advice letters.

one-day effective filing on the day of filing, the advice letter would then be suspended.

We find that there should be some safeguard (consistent with our review of GO 96 procedures and the precedents for advice letters becoming effective one day after filing) against filing of an advice letter that the Commission finds to be unlawful. Under GO 96-B, an advice letter that was not lawfully filed under the "effective pending disposition" Tier 1 category may be rejected and the carrier required to take remedial actions. The Tier 1 procedures also enable a utility to wholly mitigate any risk of rejection and consequent rescission by permitting the utility to submit an advice letter that would qualify for Tier 1 treatment to submit it nevertheless under Tier 2 (effective upon staff approval) so that the utility can obtain approval before implementing the advice letter.[37]

3.1.3. Protesting URF Advice Letters Under GO 96-B

We noted in the foregoing discussion of Tier 1 that GO 96-B states the grounds on which an advice letter may be protested. The specific grounds are as follows:

(1) The utility did not properly serve or give notice of the advice letter;

(2) The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;

[37] D.07-01-024, *mimeo*. at 14. In all likelihood, a utility will choose immediate effectiveness whenever possible. But there may be circumstances where the assurance of prior approval is desired. For example, if the utility is responding to a new statute, good faith questions of interpretation may arise. It seems consistent with URF policy to leave with utility management the choice between immediate effectiveness and prior approval.

> (3) The analysis, calculations, or data in the advice letter contain material errors or omissions;
>
> (4) The relief requested in the advice letter is pending before the Commission in a formal proceeding;
>
> (5) The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; or
>
> (6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory, provided that such a protest may not be made where it would require relitigating a prior order of the Commission.

Id., General Rule 7.4.2.

The grounds for protest are even more narrow, where the Commission has determined, for example, not to regulate rates. General Rule 7.4.2 sets forth that protests may not object on policy grounds to an advice letter where the relief requested is consistent with rules or directions established by a Commission order. For example, GO 96-B sets forth in Example 2 that:

> Where the Commission does not regulate the rates of specific type of utility, an advice letter submitting a rate change by a utility of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.

Id., General Rule 7.4.2 (emphasis added). Accordingly, a protest could not challenge an URF Carrier's filed increased rates pursuant to Example 2 above.[38] We believe that the general rules of GO 96-B appropriately limit the grounds for

[38] Basic service or residential rates are still regulated by statute and Commission order; thus, advice letters changing residential rates may be protested for violating a cap or other limitation set by applicable law.

baseless protests to advice letters and that staff's review of such protests should be relatively ministerial.[39]

Another ground for protest is that the advice letter would violate applicable law. The following list illustrates potential grounds for protest with regard to URF advice letters:

- An advice letter tendered under URF may be protested on the ground that it concerns subject matter expressly excluded or deferred from URF, such as service quality. (See D.06-08-030, Ordering Paragraph 17.)
- An advice letter tendered under URF may be protested on the ground that it unlawfully increases a rate for basic telephone service subject to pricing controls. (See Pub. Util. Code § 5950.)
- An advice letter tendered under URF may be protested on the ground that it would increase a rate for basic telephone service in order to finance the cost of deploying a network to provide video service. (See Pub. Util. Code § 5940.)

These grounds are fairly narrow and result from the Commission's decisions and/or law. The first example reflects D.06-08-030 while the latter two examples reflect the requirements of the Digital Infrastructure and Video Competition Act of 2006, Assembly 2987 (Ch. 700, Stats. 2006).[40] Therefore, with the light-handed

[39] As for the other grounds for protest, the first ground for protest concerns proper notice and service. Notice and service of advice letters are both covered under GO 96-B. (See General Rules 4.1 - 4.4.) Notice to customers under certain conditions such as rate increases or more restrictive terms and conditions is a major concern of URF; failure to follow the rules is an appropriate ground of protest to an URF advice letter. Defective notice may be cured, however, and an improperly noticed or served advice letter will be rejected without prejudice, as we discuss later in today's decision where we deal with the Telecommunications Industry Rules.

[40] Any increase to basic service will be addressed in R.06-06-028.

regulatory policies we established in URF Phase I, protests of advice letters based on the purported lack of authority by the utility to take the proposed action should be far less frequent under URF than under the prior "New Regulatory Framework," not to mention traditional ratemaking. Further, staff should be able to discern whether a protest should be rejected easily or whether it merits further consideration.

However, in anticipation of cases where a protest of a Tier 1 URF advice letter raises issues that cannot be easily resolved by staff, we direct staff to notify the Director of the Communications Division within the initial 30-day period of review that the protest may require longer than 30 days to resolve, and thereafter, the staff shall report back on the status of the review of the protest every 30 days. The staff's goal should be to resolve the issue within 60 days. In certain cases, if staff cannot resolve the issue, the Commission shall issue a resolution to decide the matter no later than 150 days after the date of filing of the advice letter.

With the above modifications that we adopt for the Telecommunications Industry Rules today in our companion decision, we find that GO 96-B procedures are well-suited to URF, and that the one-day filing procedure adopted for advice letters in D.06-08-030 should be replaced by Tier 1 as set forth in D.07-01-024 (see General Rule 7.3.3) and adopted in our concurrent industry rules. Our consideration of the parties' comments on this issue, to which we now turn, confirms our view that Tier 1 treatment under GO 96-B should supplant one-day filing.

3.1.4. Response to Comments by Carriers

Cox/Time Warner's comments support the approach that we have taken above of applying the GO 96-B rules and the different tiers of treatment for

specific types of advice letters filed by URF Carriers. Specifically, Cox/Time Warner supports using Tier 1 for the range of URF advice letters that we considered initially for one-day effective advice letter filing.[41] As discussed, we believe that this approach best accommodates the policies of URF while providing guidelines for the advice letters.

The large local exchange carriers reject with little analysis the tier structure in GO 96-B. *See, e.g.*, Opening Comments of Pacific Bell Telephone Company on Phase 2 Issues (March 2, 2007) at p. 50 ("In fact, the tiers discussed in Rules 7.3.3, 7.3.4, and 7.3.5 are inconsistent with the URF Decision…."); Opening Comments of SureWest Telephone on Phase 2 Issues (March 2, 2007) at p. 21 (interpreting GO 96-B as deferring to the "supremacy" of D.06-08-030);[42] Reply Comments of Verizon California Inc. and Its Certificated California Affiliates on All Phase 2 Issues Other than Detariffing (March 30, 2007) at pp. 8-10 (preferring the "streamlined advice letter process adopted in Phase 1" to the tiered structure of GO 96-B). Among other things, Verizon asserts advice letter tiers "would also undermine another key URF goal"—namely, "competitive neutrality"—because

---

[41] *See* Cox/Time Warner Comments (March 2, 2007) at 1-2.

[42] GO 96-B does make provision for Commission orders authorizing "an advice letter to go into effect on a date different from that otherwise provided by these General Rules." See General Rule 7.3.1. GO 96-B accommodates one-day filing within its procedures for review and disposition of advice letters, even though its tier system does not include one-day filing. GO 96-B also accommodates unique statutory provisions, such as those regarding the effective date for advice letters that pertain to recycled water service (see Pub. Util. Code § 455.1) or oil pipeline rate changes (see Pub. Util. Code § 455.3). The need to encompass this great variety of effective dates was a prime motivation when we created a comprehensive manual for advice letter practice in GO 96-B. However, in light of our need to address other aspects of advice letters, including protest and disposition issues, we believe that the Tier 1 treatment is most consistent with URF policies and goals.

Voice-over-Internet Protocol (VoIP) and wireless carriers do not have to file advice letters to make tariff changes, in contrast to local and interexchange carriers. *Id.*, p. 9.

These carriers correctly identify streamlined process and competitive neutrality as among the goals of URF. However, they assume with virtually no analysis that one-day filing furthers those goals, while arguing that the tiered process of GO 96-B is inconsistent with URF. These arguments do not recognize that Tier 1 under GO 96-B would promote streamlined regulation, and in fact would permit advice letters to become effective upon filing. In general, these parties also offer no alternative guidelines for processing advice letters. Verizon only concedes that one-day effective advice letters may be protested for procedural reasons, but as we discuss above, there may be substantive reasons for protesting an URF advice letter under Tier 1 at this time (e.g., an URF Carrier may not submit an advice letter to increase basic service rates).[43]

Verizon's argument regarding competitive neutrality is unpersuasive. Verizon's concern does not pertain specifically to one-day filing versus Tier 1 procedures but rather pertains to advice letters in general. Many carriers, including Verizon, must file advice letters, while VoIP and wireless carriers do not file advice letters due to federal jurisdictional issues, and to that extent, they have a competitive advantage, regardless of GO 96-B.[44] Due to jurisdictional issues, the Commission cannot achieve perfect competitive neutrality with

---

[43] *See* Verizon Comments on Phase 2 at 16.

[44] This competitive disparity, however, results from federal preemption over certain aspects of VoIP and wireless service. The disparity does not result from any action taken in the URF or GO 96 rulemakings.

today's decision; that is not a realistic goal. But in URF and in other proceedings, such as the Consumer Protection Initiative, Universal Service, and California High Cost Fund B, the Commission is taking important steps toward competitive neutrality. First, under Tier 1, we allow URF advice letters to take effect immediately upon filing; there will be no time lag between filing and effectiveness and no possibility of suspension. This will allow URF carriers to respond to offerings of competitive local exchange carriers, wireless and VOIP carriers. Second, as discussed above, we have established procedures for detariffing of telecommunications services by advice letter via Tier 2 treatment.[45]

The small local exchange carriers continue to be subject to rate regulation.

3.1.5. Response to Comments by Consumer Advocates

The Division of Ratepayer Advocates (DRA) argues:

> Even a streamlined tariff regime would have to include some basic processes and details in order to be implemented in a coherent manner. Rather than attempting to craft unique tariff rules for telephone companies based on the sole principle established in the Phase 1 decision that all tariffs must be effective upon one day's notice, it makes more sense to adapt the [GO 96-B] framework to the regulatory needs of the telecommunications industry.

Comments of DRA on Phase 2 Issues (March 2, 2007) at p. 48. DRA's recommended adaptations to GO 96-B, however, would be inconsistent with our adopted URF policies.

[45] "If the Commission does decide to approve detariffing of most services, the question of the effectiveness of most advice letters will become moot." Opening Comments of Cox California Telcom LLC on Phase 2 Issues (March 2, 2007) at 15. Cox supports Tier 1 treatment for most advice letter filings. *Id*.

DRA begins by recommending that URF tariffs be filed as Tier 1 advice letters (*id*. at p. 46). Then, however, DRA states that tariff changes that "impose price increases or service changes, or raise public safety issues, should be filed as Tier 2 advice letters…." (*Id*. at p. 47, emphasis in original). This "exception" seems so broad as to swallow the rule. Moreover, and in apparent contradiction to GO 96-B, DRA emphasizes that Tier 1 advice letters would be subject to suspension until the end of the 30-day initial review period (*Id.* at pp. 47-48).

We believe that GO 96-B's treatment of suspension for Tier 1 is consistent with our URF policies. Under GO 96-B, Tier 1 advice letters are not suspended (since they are effective pending disposition). We *retain* the power to reject an advice letter that is shown to be improperly designated at Tier 1 and to require appropriate remedial action by the carrier (see General Rule 7.5.3); what we have declined to do under Tier 1 is to suspend an already effective advice letter while we decide whether or not to reject it.[46] Without directly criticizing this aspect of GO 96-B, DRA cites to federal law and GO 96-A (soon to be superseded entirely by GO 96-B) as authority for DRA's preferred process for handling advice letter protests, suspensions, and revocations.

The reason the Commission must be able to suspend a tariff filing, according to DRA, is that "[r]egardless of the pricing flexibility granted to the four largest carriers in California, the Commission must still ensure that rates are just and reasonable."[47] This assertion by DRA suggests that DRA rejects or misunderstands the findings of our Phase 1 decision regarding the competitive

[46] D.07-01-024 at 16.

[47] DRA Comments on Phase 2, at 47, footnote omitted.

telecommunications marketplace in California. In a competitive marketplace, the rates of the market participants are disciplined by each other's offerings. Moreover, even if there were a suspension procedure available, it could not be invoked to force the Commission to review rates that the Commission no longer regulates:

> Where the Commission does not regulate the rates of a specific type of utility, an advice letter submitting a rate change by a utility of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.

GO 96-B, General Rule 7.4.2, Example 2. Thus, while DRA has recognized the need for URF advice letter procedures and the desirability of consistency with GO 96-B, DRA's recommendations are at odds with URF and GO 96-B on several important points.

The Utility Reform Network (TURN), like DRA, supports use of GO 96-B but would impose more restrictive review procedures on URF advice letters, which are inconsistent with our URF Phase I decision. TURN would make Tier 1 available to URF advice letters that "do not impose price increases or have the effect of increasing a rate or charge, impose a more restrictive term or condition or material change in service, involve matters of public safety or withdraw or grandfather a service…." Comments of The Utility Reform Network (March 2, 2007) at p. 19. For other advice letters, TURN proposes a "modified" Tier 2, under which the advice letter becomes effective one day after filing per

the Phase 1 decision but is otherwise subject to protest and suspension per the Tier 2 procedures.[48]

Because TURN's recommendations are very similar to DRA's, we need not repeat our response here. However, there are certain assumptions DRA and TURN seem to share but that surface sharply in TURN's arguments. For example, TURN defends its modified Tier 2 by saying "to the extent a carrier's service is tariffed, there must be some meaningful review of changes to those tariffs." Reply Comments of The Utility Reform Network (March 30, 2007) at p. 30. The statement is undeniably true, but what is "meaningful" logically relates to the kind of regulatory scrutiny required.

Due to new and vibrant competition, our regulation of the telecommunications industry has changed. In that context, we may and should question the usefulness of procedures, such as advice letter suspension, which DRA and TURN regard as critical to our procedures. We discussed above the reasons why the grounds for protest of URF advice letters should be narrow and why there should not be suspension of these advice letters. When we approved the Tier 1 procedure in D.07-01-024 adopting GO 96-B earlier this year, we also rejected the possibility of suspension for Tier 1 filings generally,[49] and we see nothing in DRA's or TURN's arguments to convince us to do otherwise with URF advice letters.

---

[48] In contrast, under DRA's Tier 2 proposal, DRA would require the URF utility to file its advice letter on the same day the utility gives notice to its customers.

[49] D.07-01-024 at 15.

4. Detariffing Services Other than Basic Service

4.1. Positions of the Parties

Today's decision on detariffing has considered, and combines, elements of comments and reply comments from many parties. We summarize the parties' positions below.

4.1.1. Verizon

Verizon submitted its detariffing proposal[50] on September 25, 2006, in the form of initial comments in response to our request for briefs on detariffing in the URF Phase I decision. Verizon's proposal contains four elements:

1. Permissive detariffing over an 18-month period using the one-day effective advice letter process adopted in the URF Phase I decision .[51]

2. Use of any binding agreement permissible under applicable law to replace tariffs.

3. Elimination of the contract filing requirement.

4. Public disclosure of generally available terms and conditions by any method permissible under applicable law.

Verizon urges us to permit detariffing of all services in this fashion except for basic residential service.

---

[50] Opening Brief of Verizon California Inc. (U 1002 C) and its Certificated California Affiliates on Legal and Implementational Issues Associated with Detariffing (September 25, 2006).

[51] Verizon proposes that carriers be permitted to detariff on a service-by-service basis during an 18-month transition period.

4.1.2. Pacific Bell

Pacific Bell's initial proposal[52] resembles Verizon's except that Pacific Bell also urges us to exempt 911 services from the permissive detariffing regime. On the other hand, Pacific Bell urges us to include tariffed third-party billing and collection services in the list of services that could be detariffed by the filing of an advice letter.

4.1.3. Sprint Nextel

Sprint Nextel makes a single observation:[53]

> "[I]f the Commission should elect to provide for the detariffing of *retail* telecommunications services, other than 'basic exchange service,' it should take care to specify that it is *not* ordering the detariffing of *wholesale* services, for which all existing tariff filing requirements should be retained."

4.1.4. Cox

Like Verizon and Pacific Bell, Cox states that the Commission should allow carriers to detariff services voluntarily, and that Pub. Util. Code Section 495.7 does not authorize mandatory detariffing.[54] Cox also questions whether the competition findings in Phase I of this proceeding meet the statutory standard. Cox points out that, while the statute requires the Commission to consider market share in a competition analysis, the URF Phase I decision

---

[52] Comments of Pacific Bell Telephone Company (U 1001 C)Addressing Legal and Implementation Issues Related to Detariffing Telecommunications Services (September 25, 2006).

[53] Opening Brief of Sprint Nextel on Detariffing Issues Identified in D.06-08-030 (September 25, 2006).

[54] Opening Comments of Cox California Telecom, LLC (U 5684 C)Regarding Detariffing (September 25, 2006).

disapproves of and disclaims reliance on market share in its competition analysis.[55] Cox adds that "the URF decision could not possibly serve as the basis for the findings required by Section 495.7(b), since the issue of detariffing was not addressed in detail in that decision."[56] Cox also argues that the "limitation of liability" exclusion contained in Section 495.7(g) should be interpreted only to eliminate the limitations of liability as found in filed tariffs. Limitations of liability contained in contracts that replace tariffs should not be proscribed by the language of Section 495.7(g).[57] Finally, Cox urges the Commission to adopt specific standardized terms and conditions that carriers could incorporate in contracts with their customers in place of tariffs.[58]

4.1.5. SureWest

Like the other large ILECs, SureWest endorsed permissive detariffing,[59] adding that the Commission should recommend to the Legislature that Section 495.7 be amended to permit full detariffing of all services including basic service,[60] and that the Commission should do away with the requirement that

---

[55] *Id.*, at 5.

[56] *Id.*, FN 3, at 5.

[57] *Id.*, at 7-8.

[58] *Id.*, at 12.

[59] Comments of SureWest Telephone (U 1015 C) on Detariffing Issues in Response to Paragraph 10 of D.06-08-030 (September 25, 2006).

[60] *Id.*, at 3.

contracts be filed with the Commission.[61] SureWest proposes an 18-month transition period if the Commission chose to order detariffing.[62]

4.1.6. Frontier

Frontier's comments[63] mirror those of SureWest, supporting permissive detariffing and the elimination of filed contracts.

4.1.7. Time Warner

Time Warner also supports permissive detariffing.[64]

4.1.8. DRA

In its opening brief,[65] after discussing the relationship among tariffs, the filed rate doctrine and the limitation of carrier's liability conferred by filing tariffs, DRA concludes that the Commission lacks statutory authority to order mandatory detariffing and that the Commission should not eliminate tariffs without providing for a replacement source of reliable information about carriers' rates and services.[66] DRA also argues that the detariffing briefs called for in the URF Phase I decision are not evidence and cannot form the basis of a

---

[61] *Id.*

[62] *Id.*, at 5.

[63] Comments of Citizens Telecommunications Company of California Inc. (U 1024 C)d/b/a Frontier Communications of California on Decision 06-08-030 Regarding Detariffing (September 25, 2006).

[64] Opening Brief of Time Warner Cable Information Services (California), LLC (U 6874 C) Concerning Detariffing of Telecommunications Services (September 25, 2006).

[65] Brief of the Division of Ratepayer Advocates on Detariffing Issues (September 29, 2006) ("DRA Brief").

[66] *Id.*, at 3.

reasoned decision regarding detariffing.[67] Although DRA questions the due process given parties on this issue, DRA "acknowledges that the time is ripe to consider whether traditional tariffs are the best vehicle to serve consumer and Commission interests under the newly adopted regulatory regime."[68]

DRA points out that the plain language of Section 495.7 contemplates a permissive process whereby carriers apply to detariff specific services rather than a mandatory detariffing order by the Commission.[69] DRA also argues that the URF Phase I decision improperly conflates "basic service" with "basic residential service."[70] While recognizing that detariffing may benefit consumers by eliminating the liability shield provided by the filed rate doctrine, DRA argues that consumers will lack adequate information on which to base telephone service decisions unless the Commission couples detariffing with improved consumer access to information about carriers' prices, terms, and conditions of service.[71] In particular, DRA recommends that we follow the lead of Colorado Public Utilities Commission and require that all carriers post on their web sites "the rates, terms and conditions associated with all California intrastate telecommunications services and service bundles that they offer, regardless of whether those services are tariffed or detariffed."[72] In addition,

---

[67] *Id.*, at 4-5 *and see* FN 6, above.

[68] Amended Brief of DRA and Disability Rights Advocates on Detariffing Issues (October 3, 2006) ("Amended DRA/Disability Rights Advocates Brief") at 2.

[69] DRA Brief, at 5-7.

[70] *Id.*, at 9-10.

[71] *Id.*, at 12-14.

[72] *Id.*, at 16.

DRA asserts that carriers should be required to provide the Communications Division and DRA with one-day notice of any changes in prices, terms, and conditions for all California services and service bundles and maintain for a period of at least two years an archive of their service offerings at a public Internet site.[73] DRA also recommends that carriers notify their customers 30 days in advance of any price increases or price-affecting changes to terms and conditions.[74]

4.1.9. TURN

TURN's opening brief states that the statute does not allow for mandatory detariffing but instead allows for permissive detariffing. TURN argues in general that if the Commission were to permit detariffing, it must eliminate old rules that insulate carriers from liability and adopt new rules that ensure consumers receive adequate information about prices and services and have meaningful recourse for complaints in a post-tariff world.[75] TURN also objects to using the advice letter procedure adopted in the URF Phase I decision as a vehicle to accomplish detariffing on the grounds that the decision is unclear about the manner in which advice letters will be protested and reviewed.

TURN makes the following specific recommendations:

---

[73] *Id., at* 16.

[74] *Id.*, at 17.

[75] Opening Brief of The Utility Reform Network Regarding Detariffing (September 29, 2006)

1. The Commission needs to make the specific findings outlined in Pub. Util. Code Section 495.7 before ordering detariffing of any services. The market power findings of the URF Phase I decision are inadequate for this purpose.[76]

2. Any carrier that is allowed to detariff a service should lose the protections of the filed rate doctrine and the limitation of liability for that service.[77]

3. The Commission should review the effect of its detariffing order within two years of implementation.[78]

4. The Commission should require carriers to file and post price lists for all services.[79]

5. The Commission should require carriers to provide customers with advance notice of rate changes, changes in terms or conditions of service, and ownership changes.[80]

6. The Commission should adopt new rules to prohibit deceptive or abusive marketing practices.[81]

7. The Commission should prohibit carriers from making unilateral changes in consumer contracts and incorporating tariff terms and conditions in them by reference.[82]

---

[76] *Id.*, at 10-11.

[77] *Id.*, at 18-19.

[78] *Id.*, at 19-20.

[79] *Id.*, at 13-14.

[80] *Id.*, at 14-15.

[81] *Id.*, at 15-17.

[82] *Id.*, at 20-21.

8. Carriers should have the burden of proof to show that rates, terms and conditions are just and reasonable and non-discriminatory in any complaint proceeding.[83]

9. The Commission should not order mandatory detariffing but instead consider requests to detariff on a case-by-case basis and should not detariff certain services, such as E911.[84]

4.2. The Criteria of Section 495.7 Have Been Met

Pub. Util. Code Section 495.7 permits us to establish procedures to allow URF Carriers to detariff services, if certain requirements have been met. We explain below that Pub. Util. Code Section 495.7 requirements have been met. Moreover, as a policy matter, detariffing procedures will allow carriers flexibility in offering various rates, terms, and conditions for services. Indeed, the consumer advocates have pointed out that, in light of the Phase 1 decision and the advice letter process, tariffs may "no longer serve the same consumer protections as they have in the past."[85] These parties have acknowledged that detariffing has its place in a deregulatory environment – if accomplished with sufficient safeguards.[86] As we discuss further below, tariffs *afford carriers*

---

[83] *Id.*, at 22-23.

[84] *Id.*, at 23-24.

[85] *See* TURN Brief at 5; Amended Brief of DRA and Disability Rights Advocates at 3 (noting that a "properly implemented detariffing plan could alleviate certain consumer harms of the current tariffing regime").

[86] *See, e.g.,* DRA and Disability Rights Advocates Brief at 3-4 (noting that tariffs are "not even sufficient to provide consumers and the Commission with truly useful and timely information about service rates, terms, and conditions" but that detariffing can only provide meaningful customer protections against market power abuse if the Commission "completely eradicates all of the benefits conferred on telecommunications

Footnote continued on next page

protection under the filed rate doctrine and limitation of liability provisions, and in fact, are often cumbersome, legalistic and unwieldy documents that are difficult for most consumers to read or understand. We conclude that we should establish detariffing procedures for URF carriers as discussed below and believe that our existing safeguards provide adequate protection for consumers.[87]

Although we believe that the requirements of Section 495.7 are satisfied by our existing statutes and rules, we adopt additional new safeguards in this decision to protect consumers who purchase detariffed services. For example, we will require that a carrier provide 30-day notice to its customers of any increase to rates, or more restrictive terms or conditions for detariffed services. Further, carriers shall provide such 30-day notice before they unilaterally raise rates, or impose more restrictive terms and conditions to detariffed services in a term contract, and permit the customer an opportunity to opt out of the contract without any penalty. We will also require a carrier to publish on its website and make available without charge via a toll free number the rates, terms, and conditions for its tariffed (to the extent required by GO 96-B) and *detariffed retail services* and to comply with certain notice requirements for increases to rates and more restrictive terms and conditions. An archive of a carrier's retail rates, terms and conditions (both tariffed to the extent required by GO 96-B and detariffed)

---

carriers by today's tariff regime - including not only the protections of the 'filed rate' doctrine, but also the limitations on liability.") As discussed below, in the absence of tariffs, carriers cannot assert the filed rate doctrine. Further, any limitations of liability that are approved in tariffs would not apply.

[87] Although the record reflects that parties have addressed policy issues concerning detariffing, we are permitting parties, to the extent that they have not done so already, an opportunity to address in their comments on this proposed decision all policy issues that they believe should be considered in establishing detariffing for carriers.

must be made available on the web for three years, with dates of effectiveness and geographic applicability clearly delineated.

4.2.1. The Commission Has Found that the AT&T, Verizon, SureWest and Frontier Lack Significant Market Power (Section 495.7(b)(1) is Satisfied)

Pub. Util. Code Section 495.7 outlines the conditions under which the Commission may establish procedures for carriers to apply to exempt services from tariffing requirements:

> (a) The commission may, by rule or order, establish procedures to allow telephone or telegraph companies to apply for the exemption of certain telecommunications services from the tariffing requirements of Sections 3454, 489, 491, and 495.
>
> (b) The commission *may, by rule or order, partially or completely exempt certain telecommunications services, except basic exchange services* offered by telephone or telegraph corporations, from the tariffing requirements of Sections 454, 489, 491, and 495 if either of the following conditions is met:
>
> (1) The commission finds that the telephone corporation lacks significant market power in the market for that service for which an exemption from Sections 454, 489, 491, and 495 is being requested. Criteria to determine market power shall include, but not be limited to, the following: company size, market share, and the type of service for which exemption is being requested. The commission shall promulgate rules for determining market power based on these and other criteria.
>
> (2) The commission finds that a telephone corporation is offering a service in a given market for which competitive alternatives are available to most consumers, and the commission has determined that sufficient consumer protections exist in the form of rules and enforcement mechanisms to minimize the risk to consumers and competition from unfair competition or anticompetitive behavior in the market for the competitive

> telecommunications service for which a provider is requesting an exemption from Sections 454, 489, 491, and 495. [88]

Thus, the Commission has the legal authority under Section 495.7 to establish permissive detariffing procedures when certain requirements have been met. The detariffing policies we announce today rest securely on the recently concluded fact-finding and rule-making in URF Phase I. We reject the argument of some parties that there is an insufficient record to support our decision to establish detariffing procedures. In fact, in Phase I of the URF rulemaking, we found that the record was sufficient to permit us to make market power findings of the kind required by Public Utilities Code § 495.7(b)(1).[89] In making these findings, we relied on evidence supplied by the four large incumbent local exchange carriers (ILECs) regarding the state of the market for voice communications in California. This evidence included proof of: (a) rapid decline in the number of traditional land lines operated by the ILECs, (b) rapid growth in the number of wireless phones and (c) near-substitutability of wireless, cable and Internet-based voice communications for traditional land lines.

---

[88] Pub. Util. Code Section 495.7 (emphasis added).

[89] Findings of Fact 50 and 51 from D. 06-08-030 states:

50. Review of the extensive record in this proceeding shows that Verizon, AT&T, SureWest, and Frontier lack the ability to limit the supply of telecommunications services in the voice communications market, and therefore lack the market power needed to sustain prices above the levels that a competitive market would produce.

51. This lack of market power pertains throughout the service territories of Verizon, AT&T, SureWest, and Frontier, and pertains to both business and residential services.

The decline in land lines and the growth in wireless access lines were documented in the FCC's 2004 Local Competition Report, "Local Telephone Competition: Status as of June 30, 2004," Federal Communications Commission, Industry Analysis and Technology Division Wireline Competition Bureau, December 2004).[90]

The near-substitutability of the VoIP and cable telephony for traditional land lines was documented in the FCC's 2004 Broadband Report, "High-Speed Services for Internet Access: Status as of June 30, 2004," FCC Industry Analysis and Technology Division – Wireline Competition Bureau, December 2004.[91]

Additional evidence for the competitive nature of the market for voice communications in the service territories of the four large ILECs was drawn from the FCC's Form 477 data. As summarized by Verizon expert witness Aron at paragraph 58 of her Opening Declaration, these data demonstrate that competitive local exchange carriers presently offer service in Zip Codes that together encompass 90% of Verizon's service territory.[92]

In our discussion of market power in Phase I, we considered criteria such as those listed in Section 495.7(b)(1) and concluded that one of the criteria, market share, was not the only controlling factor in a market power analysis. Indeed, the statutory language requires that the Commission consider the criteria of company size, market share, type of service but *does not limit* the Commission's consideration to only those factors in coming to its

---

[90] *See* D.06-08-030 at 92, FN. 359 (citing FCC 2004 Local Competition Report).

[91] D.06-08-030 at 76.

[92] *See* D.06-08-030 at 119 (citing Verizon evidence).

determination.[93] In analyzing the relationship of market share to market power, we followed the reasoning of the FCC in its 1996 AT&T detariffing order:

> [I]t is well-established that market share, by itself, is not the sole determining factor of whether a firm possesses market power…Other factors, such as demand and supply elasticities, conditions of entry and other market conditions, must be examined to determine whether aparticular firm exercises market power in the relevant market. [94]

Applying this reasoning to the record, we concluded that the relevant market cannot be limited to a specific type of telecommunications service and instead should be defined broadly to encompass a variety of services and service providers, including CLECs, cable companies, VoIP, and wireless service providers.[95] We found that the four large ILECs had provided compelling evidence that they faced sufficient competition from CLECs and from non-traditional providers of voice communications services such as wireless

---

[93] We considered factors such as 1) the relevant voice communications market; 2) the extent to which entry or the threat of entry by competitors is sufficiently real to prevent the exercise of market power by the incumbents; 3) the extent to which competing communications technologies can check the market power of the wireline incumbents; and 4) the extent to which the presence of competitors in the service territories of ILECs already offers an alternative supply of telecommunications services and thereby provides a check on market power. D.06-08-030 at 52-53. These factors address criteria similar to those listed in Section 495.7(b)(1) such as type of service, relevant market, and other important criteria such as the extent to which competitors may check the incumbents' exercise of market power.

[94] D.06-08-030, p. 127.

[95] D.06-08-030 at 74.

companies, cable companies and VOIP services to prevent them from unilaterally raising prices for any of their voice communications services.[96]

Regarding Verizon's evidence, we said:

> In summary, Verizon has developed a record in this proceeding that demonstrates that policy, technology, and market developments prevent it from exercising market power in its California service territories. The extensive presence of competitors in Verizon's service territory and the ease of expanding service by both wireless and VOIP carriers makes it clear that Verizon could not limit the supply of telecommunications services provided in any part of its California service territories and thereby cannot sustain above-market prices. [97]

Regarding AT&T's evidence, we said,

> While AT&T does not follow Verizon's lead in showing the ubiquitous presence of competitors throughout its service territory, AT&T nonetheless has convincingly demonstrated that competitive forces limit its market power.[98]

We reached similar conclusions regarding the markets for voice communications in the service territories of Frontier and SureWest. Our market power findings were limited to the state's four large ILECs, and exclude the

---

[96] D.06-08-030 at 92, *see also* Finding of Fact Para. 50. Specifically Verizon submitted evidence that wireless migration accounted for "*approximately half of ILEC primary residential wireline losses*," with increasing customers willing to "cut the cord." D.06-08-030 at 119, citing Verizon Opening Brief (citing Aron Reply Declaration at ¶ 72). AT&T also provided evidence that from the years 2000-2004, "SBC California lost almost 19 percent of its residential switched access lines, including a loss of over 21 percent of its non-lifeline primary residential switched access lines… [and] 23 percent of its business switched access lines." D.06-08-030 at 122, citing Pacific Bell Opening Brief at 61.

[97] *Id.*, at 118.

[98] *Id.*, at 120.

small fraction served by rural local exchange carriers who are still subject to traditional rate-of-return regulation and have their rates set through general rate cases (GRC-LECs).

Consistent with this reading of the record, we rejected the evidence of TURN and DRA regarding market share and entity size that sought to demonstrate that the relevant markets were not competitive:

> From an economic standpoint, the market share analysis provided by TURN and DRA is not particularly useful or probative for evaluating market power in the voice communications market. Market share tests are inherently backward looking and not good predictors of future developments, particularly in a rapidly changing industry like telecommunications. For example, U.S. VoIP subscribership had reached 2.7 million in mid-2005—a six-fold increase from the prior year—and is expected to continue to grow rapidly. [Citation omitted.] In addition, wireless carriers now compete in offering voice communications services. [Citation omitted.] DRA's and TURN's market share analyses do not reflect these developments. Indeed, their HHI figures completely exclude any consideration of competition from wireless or VoIP providers. Thus both the rapid changing technological environment and the overly narrow market definition combine to make the HHI figures calculated by TURN and DRA meaningless for our analysis of the market situation.[99]

While our recent Telecommunications Consumer Bill of Rights decision, D.06-03-013, adopted the kinds of rules and consumer protection mechanisms required by § 495.7(b)(2),[100] we choose to rely solely on the extensive market

---

[99] *Id.*, at 128.

[100] *Id.*, at 185. The rules adopted in D.06-03-013 enumerating consumer rights vis-à-vis telephone and telegraph corporations and specific prohibitions against billing consumers for unauthorized services, were codified in GO 168.

power findings of the URF Phase I decision to support the conclusions reached in this phase of the proceeding regarding detariffing. Therefore, we believe that Section 495.7(b) has been satisfied.

4.2.2. The Requirements of Sections 495.7(c) and (d) Have Also Been Met

Some parties noted that the requirements of Sections 495.7(c) and (d) must be met before the Commission establishes detariffing procedures.[101] We believe that these requirements are met by existing statutory and regulatory requirements, along with our adoption of additional safeguards in this decision.

Pub. Util. Code Section 495.7(c) requires that the Commission establish consumer protection rules for detariffed services in order to satisfy various requirements. Pub. Util. Code Section 495.7(c)(1) specifically requires that there are rules regarding availability of rates, terms, and conditions of service to consumers; and Section 495.7(c)(2) requires that the Commission establish rules regarding notices to consumers of rate increases and decreases, changes in terms and conditions of service, and change of ownership.[102]

---

[101] *See, e.g.,* TURN Brief at 12, 18, Amended Brief of DRA and Disability Rights Advocates at 6, 7.

[102] *See* Pub. Util. Code Section 495.7(c): Before implementing procedures to allow telephone corporations to apply for the exemption of certain telecommunications services from the tariffing requirements of Sections 454, 489, 491, and 495…the commission shall establish consumer protection rules for those exempted services that include, but are not limited to:

(1) Rules regarding the availability of rates, terms, and conditions of service to consumers.

(2) Rules regarding notices to consumers of rate increases and decreases, changes in terms and conditions of service, and change of ownership.

The requirements of Sections 495.7(c)(1) and (2) are already addressed by existing statutes, including Pub. Util. Code Section 2896. The statute requires carriers to provide customers with sufficient information on which to make informed choices among telecommunications services and providers.[103] To fulfill these statutory conditions further, however, we adopt new requirements for carriers seeking to detariff (which will be established in Telecommunications Industry Rules 5.2 and 5.3 in GO 96-B in our companion decision being adopted today). These new industry rules require carriers that detariff their services to make available at no cost to the consumer information substantially equivalent to the information previously contained in their tariffs by posting the information (rates, terms, and conditions for services) on their websites and providing a toll-free number for consumers to call to obtain a copy of rates, terms, and conditions. We also require that carriers who have detariffed services must archive this information for a period of three years.

With regard to Section 495.7(c)(2), today we also establish new rules that are being reflected in GO 96-B that require the URF Carriers that have detariffed services to provide 30 days notice to customers prior to any rate increase, or more restrictive changes in terms and conditions.[104] We also will require an URF

---

[103] *See, e.g.,* Pub. Util. Code Section 2896(a):

2896. The Commission shall require telephone corporations to provide customer service to telephone customers that includes, but is not limited to, all the following:

(a) Sufficient information upon which to make informed choices among telecommunications services and providers. This includes, but is not limited to, information regarding the provider's identity, service options, pricing, and terms and conditions of service.

[104] See GO 96-B, Telecommunications Industry Rules 5.1 and 5.2. Carriers with tariffed services are already subject to such notice requirements.

Carrier that offers detariffed services in a term contract to provide customers 30-day notice and offer the customer an opportunity to opt out of the contract before unilaterally changing any rates, terms, or conditions to such term contract. Moreover, this Commission already requires carriers to obtain approval prior to transferring the carrier's customer base in whole or in part to another entity and included in its requirements for all carriers is notice to customers of the transaction.[105] Given the findings in the Phase I decision regarding the state of competition, we do not believe that notice of rate decreases to consumers is necessary. Indeed, even TURN acknowledges that advance notice of *rate decreases* or *change of ownership* may be unnecessary if the change does not affect services.[106] Thus, we believe that these safeguards meet Section 495.7(c)(2)'s requirements.

Section 495.7(c)(3)-(6) require rules to identify and eliminate unacceptable marketing practices including fraudulent practices; to assure that aggrieved customers have access to low-cost, effective, and efficient avenues for relief; to ensure customers that they have privacy for services; to assure a telephone corporation will cooperate with Commission investigations of complaints. The Commission already has in place numerous rules and safeguards to satisfy Section 495.7(c)(3), particularly against slamming and cramming. As part of our telecommunications Consumer Protection Initiative, the Commission also adopted enhanced investigation and enforcement capability via an eight person

---

[105] Pub. Util. Code Sections 851-854. *See also* D.06-10-021, D.04-10-038, D.02-01-038, D.97-06-096.

[106] TURN Brief at 14-15.

Telecommunications Fraud Unit, and a consumer fraud toll-free hotline.[107] Further, we have published in thirteen languages consumer brochures on slamming, cramming, complaint procedures, how to understand your phone bill, and tips on purchasing wireless services.[108] These safeguards fully satisfy the additional requirements of Section 495.7(c)(3)-(5).[109] Further, several provisions of the Pub. Util. Code require that telephone corporations cooperate with the

---

[107] D.06-08-030.

[108] The Commission makes this consumer information available both in www.CalPhoneInfo.com and in brochure form to consumers. The information is available in consumer friendly "plain English", at the third grade reading level.

[109] Section 495.7(c)(3)-(6) require:

> (3) Rules to identify and eliminate unacceptable marketing practices including, but not limited to, fraudulent marketing practices.
>
> (4) Rules to assure that aggrieved customers have speedy, low-cost and effective avenues available to seek relief in a reasonable time.
>
> (5) Rules to assure customers that [sic] their right to informational privacy for services over which the commission has oversight.
>
> (6) Rules to assure a telephone corporation's cooperation with the commission investigations of customer complaints.

In Appendix D to D. 06-03-013, our decision adopting revised consumer protection rules, we identified more than 160 existing Federal and state statutes, regulations or Commission decisions that establish consumer protections for the benefit of telecommunications customers. For example, Pub. Util. Code Section 2889.9 prohibits parties from misrepresenting affiliation with carrier when soliciting or implementing customer agreement to purchase services. Pub. Util. Code Sections 2891 and 2893 also prohibit carriers from releasing certain personal information of subscribers to residential service and require carriers to block Caller ID information for consumers at no charge. The Commission has also established in the Consumer Bill of Rights that consumers have the right to participate in public policy proceedings, to be informed of their rights and to have effective recourse if their rights are violated.

Commission in its investigations and there is no need for further rules or requirements emphasizing the Commission's authority in this regard.[110]

We reject TURN's argument that we have not made findings sufficient to satisfy the requirements of Section 495.7(d). In finding that the URF ILECs lack market power throughout their service territories,[111] we have found they lack the ability to engage in the kind of anti-competitive pricing behavior referenced in the statute. We have also frozen the price of basic service in areas where carriers receive High Cost Fund B subsidies pending further review in R.06-06-028 and capped the price for basic service in all other areas until January 2009. In addition, we find that because URF carriers will still be required to post rates, terms, and conditions for their services on their websites and provide a toll-free number for consumers to obtain a copy of such information, they cannot engage in anti-competitive pricing without detection. Further, by deregulating the pricing of all but basic residential services, we have eliminated the financial incentive for a licensed carrier to engage in cross-subsidization with an unlicensed affiliate.

Accordingly, given these findings, we believe that the requirements of Section 495.7 have been met.

4.3. Permissive Detariffing Procedure

In our discussion of detariffing in the URF Phase I decision, we indicated that our preference was to issue an order detariffing nearly all

---

110 *See, e.g.,* Pub. Util. Code Sections 581 and 582.

111 D.06-08-030 at 183.

telecommunications services within a certain time period.[112] However, it is not clear that that the Public Utilities Code authorizes us to take such a sweeping step. Several parties assert that the Commission does not have authority to mandate detariffing. Section 495.7 speaks of granting carrier requests to detariff *particular* services. It does not explicitly authorize us to enter a blanket order mandating detariffing. On the other hand, the statute was enacted at a time when the market for telecommunications services was not competitive and all telephone services were obtained from a single monopoly provider. Having found that all markets in which the state's largest ILECs offer services are now competitive, we could conclude that requiring individual applications for detariffing (other than from a GRC-LEC) is no longer in the public interest because all such applications should be granted.

This was the position taken by the FCC in 1996 when it decided to mandate, rather than permit, the detariffing of all telecommunications services offered by non-dominant interexchange carriers. In its detariffing order, the FCC held that under the Federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 "complete detariffing of interstate, domestic, interexchange services offered by nondominant interexchange carriers is in the public interest, and that permissive detariffing of such services is not in the public interest."[113]

We recognize that the state and federal statutes are different, but the public policy issues we face are quite similar to those the FCC faced in 1996.

---

[112] "We preliminarily propose ordering carriers to cancel tariffs during a certain time period, either by replacement, supplement or expiration." D.06-08-030, at 180.

[113] 11 FCC Rcd 20730, 20768 (1996) (emphasis added).

While mandatory detariffing automatically places all carriers on a level playing field and eliminates the need for further Commission involvement in the selection and pricing of services, permissive detariffing may lead to the opposite result to the extent that carriers are able to preserve those elements of the old model that are beneficial to them, such as the filed rate doctrine and the limitation of liability,[114] but avoid the restrictions that tariffs otherwise would impose. To guard against this possibility, any permissive detariffing regime would have to bar carriers from retaining tariff protections when cancelling tariffs.

However, given that mandatory detariffing may not be authorized under the statute, we will instead permit carriers to apply to cancel tariffs by filing Tier 2 advice letters (as defined in revised GO 96-B with the Telecommunications Industry Rules). After a service has been detariffed, we will not require the URF carrier to file an individual case basis (ICB) contract.

Having concluded that the requirements of Section 495.7 have been met, we direct staff to approve a request to detariff filed as a Tier 2 advice letter provided that the advice letter is otherwise in compliance with GO 96-B and our rules and does not propose to cancel:

1. A tariff for basic service;[115]

---

[114] Section 495.7(g) removes the protection of limited liability from any detariffed service.

[115] Section 495.7 addresses the detariffing of all services except "basic exchange service." In Phase I of this decision, we proposed to consider detariffing of all services except "basic residential service." We discuss below our decision to refer to the term "basic service," as defined in D.96-10-066, as opposed to "basic residential service."

2. A tariff that includes a requirement or condition imposed in an enforcement/complaint or merger proceeding;

3. A tariff for 911 or other emergency services;

4. A tariff relating to customer direct access to an interexchange carrier or customer choice of an interexchange carrier; or

5. A tariff for a service that was not granted full pricing flexibility in D.06-08-030.

6. A tariff that contains obligations pursuant to Carrier of Last Resort obligations, or state or federal law, or Commission orders and decisions.

If a tariff does not fall within the above exceptions, the URF carrier may seek to cancel it by filing a Tier 2 advice letter.[116] Although staff will be under a general instruction to approve an advice letter if it complies on its face with the requirements we adopt in this decision, staff review is necessary to determine if the advice letter seeks to detariff a service in the above categories for which we do not allow detariffing.

We do not think that, at least as an initial matter, carriers should be permitted to self-certify such compliance. Pursuant to our newly-revised GO 96-B, if no protest is filed within 20 days of the filing and staff takes no action, the advice letter is deemed approved at the end of the 30-day period. If the advice letter is protested, pursuant to GO 96, staff is required to review and investigate the protest and, if at the end of the 30-day period, staff needs more time to investigate, it will notify the carrier that it needs to extend the period of

[116] *See* Telecommunications Industry Rules, Rule 7.2(3) in Appendix C to GO 96-B.

time to review the advice letter.[117] *See* GO 96-B General Rule 7.6.1. During staff's review, the advice letter is suspended and only becomes effective upon staff's written approval or Commission resolution approving it. See General Rule 7.3.4.

Once a service is detariffed, the carrier need not file anything further with the Commission regarding the detariffed service, including advice letters or contracts. However, the carrier must notify customers of increased rates, or more restrictive terms and conditions and further must post all available information on its website.

An URF Carrier may not detariff existing services/promotional offerings/bundles 18 months after the effective date of this decision. If an URF Carrier seeks to offer on a detariffed basis a "new service," the carrier shall file a Tier 2 advice letter describing the new service that it intends to offer as detariffed as long as the new service does not fall into the categories of services for which we prohibit detariffing, as discussed further below, and the new service does not fall into a category of services that the carrier has already detariffed. We are requiring a Tier 2 advice letter for the detariffing of such new services that fall into categories of services that an URF Carrier has not already detariffed, to be consistent with our detariffing process and Section 495.7.

Although we have established an 18 month implementation period for carriers to request detariffing of their existing services, we do not apply the

---

[117] If there is a protest, the advice letter may be suspended if necessary for staff to complete review of the issues raised by the protest. Pursuant to General Rule 7.6, staff may approve the advice letter if the protest is not made on proper grounds; the protest may be rejected on a technical basis if the protest is clearly erroneous. Pursuant to General Rule 7.4.2., the grounds for protest are narrow; for example, a party could protest that an advice letter is seeking to detariff a service that falls within the exceptions (e.g., basic service), and staff would need to review that allegation.

18-month implementation period to "new services," as technological innovations will continue to result in new services that carriers are not currently aware of or are offering at this time, and which should not be subject to traditional regulation. We intend by establishing an 18-month implementation period to give URF Carriers a strong incentive to broadly detariff their existing services within the 18-month period, within the limits that we have established. As we also discuss in our accompanying GO 96-B decision, if a carrier does not detariff during that 18-month period, we assume that the carrier does not believe detariffing services is useful for its business and thus that carrier should not have the ability to detariff New Services.

If the carrier seeks to offer the "new service" on a tariffed basis under Tier 1, the carrier may do so.

We now discuss the categories of services and/or tariffs that may not be detariffed below.

4.4. Services That May Not be Detariffed Under Tier 2 Advice Letter

4.4.1. Exception: Basic Service

Phase I of this proceeding preserved basic residential service as a tariffed service and we do not modify that determination in this phase.[118] However, we clarify that by "basic residential service," we meant "basic service" as defined in D.96-10-066. DRA questions whether the terms "basic residential service" and "basic exchange service" are co-extensive and, if not, how they relate to one

[118] Ordering Para. 21 of D. 06-08-030: "With the exception of conditions relating to basic residential rates, all asymmetric requirements concerning marketing, disclosure or administrative processes shall be eliminated." The phrase "basic residential rates" might more accurately have been replaced with "basic service rates."

another.[119] We find that the term "basic residential service" means "basic exchange service," or "basic service" as defined in D.96-10-066.

We believe that the phrase "basic exchange service" is equivalent to "basic service;" in D.96-10-066, we used the phrase "basic service *or basic exchange service"* as interchangeable terms.[120] We further defined "basic service" in D.96-10-066 to mean the service elements that a provider of local exchange service must offer to each *residential customer* who requests service from the provider.[121] Because "basic service" is limited to a form of *residential* service, the phrase "basic residential service" that we initially proposed as the exception to detariffing in the Phase I decision is unnecessary. Instead, we use the defined term "basic service" to describe the statutory exception to detariffing. We reflect this definition in our modified GO 96-B.

4.4.2. Exception: Asymmetric Obligations/Tariffs incorporating penalties or merger conditions

As discussed above, we deferred to this Phase II the issue of how to address in the detariffing context those tariffs that incorporate requirements imposed by the Commission in an enforcement or complaint proceeding. Although these tariffs may result in "asymmetric" requirements of the kind that we eliminated in Phase I, we clarify that it was not our intention in adopting that decision to permit a carrier to use a one-day effective advice letter to lift a condition or requirement that we imposed in an enforcement or complaint case

---

[119] DRA Opening Brief at 9-10 (noting that the Commission has identified no language in the statute that defines "basic exchange service" as "residential service" only).

[120] D.96-10-066, 1996 Cal. PUC LEXIS 1046, *26.

[121] D.96-10-066 (Appendix D, Part 4).

simply because it created an apparent regulatory asymmetry. On the contrary, we impose a penalty or requirement when a carrier violates one of our rules, i.e., when the carrier deliberately creates an asymmetry between its situation and that of other carriers by its own conduct. The purpose of our proceeding in such a case, including the imposition of the penalty, is to restore the symmetry that the carrier's conduct has set askew. Accordingly, to the extent that Ordering Paragraph 21 of the URF Phase I decision could be read as authorizing carriers to use advice letters to cancel tariffs that include penalties or conditions imposed for prior misconduct, we reject that reading.

We recognize that, based on its plain language, some parties may have inadvertently misinterpreted Ordering Paragraph 21 of the Phase 1 decision. Consistent with the uniform regulatory framework that we established, Ordering Paragraph 21 was intended only to eliminate regulatory asymmetry among carriers with regard to marketing, disclosure or administrative processes that are contained within their tariffs, with the exception of conditions relating to basic service rates, or conditions or requirements imposed as a result of an enforcement or complaint case.[122] We also clarify that we also did not intend in Ordering Paragraph 21 to relieve URF carriers of specific conditions or requirements imposed on them through merger proceedings, or from other existing state and federal statutes (such as the requirements under the Telecommunications Act of 1996 as they pertain to ILECs).

---

[122] We note that Conclusion of Law Paragraph 53 in the Phase 1 decision stated that "[p]arties should be able to modify their *tariffs* to eliminate asymmetric or company-specific restrictions on marketing practices, disclosure requirements or administrative processes." D.06-08-030 at Conclusion of Law Para. 53 (emphasis added).

Our consistent practice has been that a penalty or condition/requirement imposed in a Commission decision may only be lifted by demonstrating compliance with its terms -- for example, by paying a fine or complying with certain conditions or requirements -- or by a subsequent Commission decision. Before lifting such an obligation or requirement, the Commission must consider whether conditions have changed such that the requirement is no longer necessary (e.g., that the carrier has complied with its terms or that there is no longer a reason to continue the penalty or requirement in force). Moreover, in considering whether to lift a requirement imposed through an enforcement or complaint case, parties such as consumer representatives, including the Division of Ratepayer Advocates, and the carrier, may want to have the opportunity to address the issues implicated in modifying such a requirement or prior Commission decision. An advice letter, even one filed under Tier 3, which purports to cancel a tariff that includes a penalty or requirement imposed through an enforcement or complaint case is an inadequate means of guaranteeing full review of the carrier's post-penalty conduct. Accordingly, we conclude that a carrier required to file tariffs to comply with certain obligations or conditions imposed as a result of an enforcement/complaint case must file a petition to modify the underlying decision that imposes such penalty, requirements, or conditions. As discussed, a carrier similarly may not file an advice letter to remove obligations or conditions contained in its tariffs that were imposed by a merger case.

On a going forward basis, we put parties on notice that we prohibit the use of advice letters as a means of removing or reducing obligations imposed on carriers as a result of complaint or enforcement actions. Such obligations may be removed only by filing petitions to modify the original decisions. With regard to

tariffs incorporating merger conditions, parties seeking to modify them should file separate applications or petitions to do so.

4.4.3. Other Exceptions

Different considerations lead us to conclude that the requirement to provide emergency service via 9-1-1 may not be modified or cancelled by filing an advice letter. The 9-1-1 system is a public safety necessity that must be equally available to all phone customers regardless of who provides their service. Permitting cancellation or modification of a 9-1-1 tariff by advice letter would undermine public safety and not be in the public interest. Any modifications to the 9-1-1 system should be adopted only as the result of a rulemaking that applies to all carriers and is incorporated in a subsequent Commission decision.

The exception for access to or change of an interexchange carrier recognizes the unique circumstance that a customer will necessarily use the services of such a carrier before forming a contractual relationship with it. For example, a customer dialing a number to access an interexchange carrier directly through its local exchange line will not form a contract with that carrier. Because they are ill-adapted to a contractual model, these services should also remain tariffed.

Finally, services that were not considered within the scope of this proceeding, such as wholesale tariffs and those matters we referred to our service quality and Universal Service Public Policy Proceeding (Lifeline) rulemakings, or other services for which we did not grant full pricing flexibility, cannot be cancelled by the advice letter procedure authorized in this proceeding. In addition, a carrier may not detariff any provisions pertaining to Carrier of Last Resort obligations. We consider AT&T's request for detariffing of billing and

collection services provided to other carriers to be outside the scope of this proceeding and therefore deny its request.

We also clarify (discussed in further detail below), that URF ILECs may not detariff resale service tariffs at this time. We have not fully considered the market for resale services, and therefore, even if an URF ILEC detariffs the retail service, the URF ILEC must continue to file resale tariffs for that retail service that comply with the Commission's requirements governing resale service and federal or state law.

4.5. Additional Comments on Discrete Detariffing Issues Not Subject to Page Limitations

In Ordering Paragraph 10 of D.06-08-030, we sought comment from parties as to the "legal and implementation issues" regarding detariffing. We stated in the URF Phase I decision that we would consider these comments in determining whether to detariff services.[123] As discussed, the record reflects that parties addressed legal, implementation, and policy issues, including whether the Commission should establish detariffing procedures.[124] However, in the interest of ensuring that parties are aware that they should comment on all issues surrounding detariffing (including policy issues), we gave parties an additional opportunity, *to the extent that they had not already*, to address any policy issues that they would like to bring to the Commission's attention in comments on the

[123] D.06-08-030 at 186.

[124] In D.06-12-066, we clarified that "we did not make the determination to detariff in this [Phase I] Decision, nor did we make any findings pursuant to section 495.7," and that we "merely articulated our intention to further consider the issue." Accordingly, we requested that parties address legal and implementation issues pertaining to detariffing. We did not explicitly include "policy issues" in the notice for comment, but intended for parties to address all such issues.

proposed decision. If a party had not previously commented on this issue and wished to do so, we waived the page and content limitation under Rule 14.3 for comments on this specific issue on the proposed decision.

We intend for these detariffing procedures to apply for all URF Carriers, including the four major ILECs, CLECs, and IXCs. However, because there was some confusion as to whether these detariffing procedures would apply to IXCs,[125] we noted that parties could also take this opportunity in commenting on the PD to address whether the detariffing procedures established here should apply to IXCs and supersede existing procedures adopted by the Commission. For purposes of commenting on this specific issue, we also waived the page and content limitations for comments on proposed decisions (Rule 14.3).

4.6. Responses to Specific Comments

The four ILECs and all others who commented on the issue agree that Section 495.7 may not permit mandatory detariffing. We concur and for that reason have adopted a permissive detariffing regime as discussed above.

DRA and TURN also urge us to clarify that carriers will no longer enjoy the protection of the filed rate doctrine[126] or the limitation of liability for services

---

[125] *See, e.g.*, Verizon Opening Brief at 3. The Commission has previously established procedures for detariffing IXCs. *See, e.g.*, D.96-09-098, D.98-08-031.

[126] The filed rate doctrine consists of several elements: a carrier cannot charge any price for a service other than the price contained in its tariff; the price in the tariff is per se reasonable; the carrier must offer the same price to all customers; and parties who deal with the carrier are deemed to have knowledge of the price in the tariff. The filed rate doctrine is a double-edged sword. On the one hand, it limits what a carrier can charge for a service and mandates that the carrier charge the same rate for that service to all customers; on the other hand, it provides a defense to the carrier in lawsuits that allege the rate is unreasonable or discriminatory. *Louisville & Nashville R.R. Co. v. Maxwell*, 237 U.S. 94 (1915)

that they have detariffed. We agree that carriers offering detariffed services cannot use the filed rate doctrine or any tariffed limitation of liability as a defense in any action involving the detariffed services. In short, two significant changes in carriers' potential liability will separate tariffed from detariffed services. In competitive markets, the risk of liability operates to discipline the behavior of market participants. In particular, since carriers will no longer be required to file rates, there is no logical reason to continue to afford them the protection of the filed rate doctrine as to such detariffed rates. As for the limitation of liability, Section 596.7(g) explicitly notes that a carrier's detariffed services will not be subject to the tariffed limitations of liability.

TURN and DRA urge us to mandate certain disclosures in contracts entered into between carriers and customers as a replacement for tariffs while Cox urges us to rule that carriers may limit their liability in such contracts notwithstanding the language of Section 495.7(g). We decline to adopt any content regulation for contracts.[127] In a competitive market, carriers compete on both price and non-prices terms. By offering different contract terms and conditions, carriers seek to differentiate themselves from their competitors.

With respect to DRA's and TURN's proposals for new rules requiring carriers to disclose rates, terms and conditions of service and to publish such information on their web sites, we note that are requiring URF carriers that seek

[127] In D.98-08-031, we established consumer protection rules for detariffing of interexchange carriers. In that decision, we concluded that Section 495.7 does not prohibit carriers offering detariffed services from imposing a limitation of liability provision in their contracts, but we interpreted Section 495.7 as "precluding a carrier offering detariffed services from enjoying the benefits that a *Commission-sanctioned tariffed* limitation of liability provision confers on a carrier." See D.98-08-031, 1998 Cal. PUC LEXIS 592, 600 (1998).

to detariff to publish on their websites their rates, charges, terms and conditions of service and to offer a toll-free number for consumers to obtain a copy of such information. We also add some clarifying requirements for website publishing, discussed below and in our accompanying GO 96-B decision in response to parties' comments on this Proposed Decision.

We reject TURN's proposal that in any complaint proceeding we require carriers to prove that their rates, terms and conditions are just, reasonable and non-discriminatory. In a competitive market, where contracts have succeeded tariffs, complaints by customers are likely to allege either that a carrier is in breach of its contract or of its statutory obligation to provide sufficient information for a consumer to make informed choices. The allocation of the burden of proof on these and similar issues is a matter for the judge hearing the case to decide.

We agree with Sprint Nextel that nothing in this decision applies to wholesale or resale tariffs. Wholesale/resale rates are to remain tariffed by URF carriers. We will address requests for reform of retail and resale special access in the next decision in this phase.

5. AT&T's Advice Letters

We will not resolve in this decision the issues raised by protests to AT&T's Advice Letters 28800 and 28982 – including whether to permit these advice letters modifying Rule 12 tariff to remain in effect.[128] TURN contends that

[128] However, given our clarification of Ordering Paragraph 21 in the URF Phase I decision, to the extent that AT&T desires on a going-forward basis to remove any remaining marketing restrictions or conditions contained in its Tariff Rule 12, we direct it to file a petition for modification of the underlying decision imposing such requirements.

evidentiary hearings are necessary to resolve issues raised by the protests to AT&T advice letters. We will address TURN's request for evidentiary hearings shortly by a separate ruling in this proceeding before issuing a decision on the remainder of the protest issues.

TURN also argues that "the advice letter process is an inappropriate procedural vehicle to modify or eliminate the marketing disclosure requirements" that were imposed through a prior Commission decision.[129] Pub. Util. Code Section 1708 permits the Commission, if it has given notice and opportunity to be heard pursuant to Section 1708, to modify or alter existing decisions and orders. We have provided notice in Resolution No. L-339 and in the December 2006 Assigned Commissioner's Ruling and Revised Scoping Memo to all interested parties (including those in the URF rulemaking and those in the consolidated complaint case C.98-04-004) that we would be addressing in Phase II the issue of whether AT&T's advice letters could modify its Rule 12 tariff. This notice alerted interested parties that issues raised by the protests (including whether AT&T's Rule 12 tariff may be modified) would be addressed in this proceeding. Accordingly, we may consider the issues raised by the protests in this proceeding. However, as noted, we will first address the request for evidentiary hearings by a separate ruling before we resolve the issues.

6. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Karl J. Bemesderfer and Steven Kotz are the assigned Administrative Law Judges.

[129] TURN Comments on Phase 2 at 31.

7. Comments on Proposed Decision

The proposed decision of Commissioner Chong in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed on August 13, 2007, and reply comments were filed on August 20, 2007. Parties filing comments are AT&T, California Association of Competitive Telecommunications Companies (CALTEL), Cox/Time Warner/XO, DRA, Small LECs, Sprint Nextel, SureWest, TURN, and Verizon. Parties filing reply comments are all of the foregoing except CALTEL, and Small LECs. Parties sought clarification on the tiers in which to file certain advice letters and revisions to the detariffing requirements that were set forth in the Proposed Decision. We have responded to these issues in this decision and/or in our accompanying GO 96-B decision, particularly where revisions to the Telecommunications Industry Rules were required.

We analyze and respond to various issues raised by the comments below. We have reflected some changes resulting from consideration of the comments in the text of the Decision, but our discussion of the issues is set forth below.

7.1. Detariffing Analysis

TURN argues that the Commission cannot pre-approve detariffing applications because Section 495.7 requires a "service-by-service" analysis before detariffing. TURN Comments at 2-3. We disagree with TURN's interpretation of Pub. Util. Code Section 495.7.

TURN claims, for example, that Public Utilities Code Section 495.7 requires a service-by-service analysis before detariffing can be authorized.[130] TURN reads more into §495.7 than is in the plain language of the statute. Contrary to TURN's claims, the statute merely authorizes us to detariff any service which meets either of two statutory criteria set forth in Section 495.7(b)(1) or (b)(2) and requires that the Commission make certain findings. The detariffing regime we establish in this decision meets both criteria.

With respect to the market power finding required by Section 495.7(b)(1), in URF Phase I, we conducted a thorough review of the extensive record in this proceeding and we found that the ILECs lack market power in the voice communications market with respect to business and residential services they offer throughout their service territories and further found that competitive alternatives such as wireless, VoIP, and cable-based services are widely available to customers as substitutes for wireline services.[131] Specifically, our review of market power for URF ILECs focused on the market of "voice communications services regardless of technology, not just traditional wireline communications services." D.06-08-030 at 124.[132] We found:

> This lack of market power pertains throughout the service territories of Verizon, AT&T, SureWest, and Frontier, and holds for both

[130] TURN comments, at 2-4. All references to code sections refer to the Public Utilities Code.

[131] D.06-08-030, at 4, (Findings of Fact 50, 51), 262-267 (Findings of Fact 17, 19-20, 32, 36, 39, 44, 50-51, 62-63), 274-275 (Conclusions of Law 13-20).

[132] We stated that "[t]here is a single market for voice services, and no carrier has market power within California." D.06-08-030 at 192.

> business and residential services based on the ubiquity of the UNE-L unbundling scheme throughout the service territories of each of the four ILECs in this proceeding and on the cross-platform competition present throughout California.

D.06-08-030, Finding of Fact 51. These market power findings therefore establish that Section 495.7(b)(1) has been met as to *all* of the four largest ILECs' *telecommunications services* throughout their service territories.

TURN also challenges the market power findings, by arguing that the Commission's competition analysis did not consider market share, as required by § 495.7(b)(1). In the URF Phase I Decision, we explicitly considered market share but found that it was neither particularly useful nor probative for evaluating market power in today's telecommunications market.[133] We discussed why, from the standpoint of economic analysis, market share data are a misleading means of evaluating market power. In particular, we found that in the dynamic industry of telecommunications, "market share tests are inherently backward looking and not a good predictor of future developments."[134] We further articulated that loss of market share is not necessary to demonstrate loss of market power, and that other factors, including the FCC's unbundling policies, the threat of entry, and competitive substitutes serve to check pricing and market power.[135] Therefore, we considered market share, but concluded that other factors were more indicative of market power.

---

[133] *See also* D.06-08-030, at 125-129, 246-247, 266 (Findings of Fact 57, 60) 275 (Conclusions of Law 22-23).

[134] D.06-08-030, Finding of Fact 57.

[135] D.06-08-030, Findings of Fact 58-61.

The alternative criterion for authorizing detariffing is found in Section 495.7(b)(2). This subsection requires us to make two sub-findings, including: (i) that adequate alternatives exist for any service being detariffed and (ii) that we have adopted and are enforcing broad consumer protection regulations. The evidence that led to the URF Phase I Decision included evidence regarding the availability and substitutability of alternatives such as wireless, cable, and Internet-based voice communications. We rejected arguments by TURN and DRA that we should define the market for telecommunications service more narrowly and focus only on wireline services.[136] Instead, we concluded that the market should be defined broadly to include a variety of services and service providers.[137] As a result, we found that competitive alternatives are widely available.[138] Contrary to TURN's contention, the URF Decision provides ample basis for us to conclude therefore that competitive alternatives are available to most customers.

TURN also asserts that the consumer protection requirements of Section 495.7(b)(2) and (c) have not been satisfied.[139] In D.06-03-013, we referred to numerous laws and regulations covering freedom of choice, disclosure of information, privacy, and enforcement that currently protect consumers in

---

[136] TURN comments, at 6-7.

[137] D.06-08-030, at 124.

[138] D.06-08-030, at 202, 262, Findings of Fact 46-47, 49, 51, 267 (Findings of Fact 62-63), 268 (Findings of Fact 77), 274 (Conclusions of Law 11, 13-14), 276 (Conclusion of Law 28). We found that the ILECs' market power is limited by the FCC's unbundling scheme, "which makes it possible for competitors to provide telecommunications services in every wire center located in their service territories." *Id.* at 274 (Conclusion of Law 16).

[139] TURN comments at 7-9.

California.[140] As already mentioned, in the past year, we have significantly increased the staffing of our Consumer Affairs Bureau, added an 800 number for direct assistance to consumers, and adopted new consumer education initiatives in 13 languages via a consumer-oriented website (www.calphoneinfo.com) and by training community-based organizations. We also recently adopted additional rules requiring carriers that market in languages other than English to provide support to those consumers who have limited English proficiency.[141] Additional protection against unfair competition and anticompetitive behavior exists in the form of antitrust laws and statutory requirements that prohibit unfair business practices. We also have established a Telecommunications Fraud Unit in our Enforcement Bureau to root out fraud and abuse of telecommunications consumers.

Moreover, in this decision, we are requiring that carriers detariffing their services comply with new rules requiring them to publish on their websites the rates, terms, and conditions for detariffed services substantially equivalent to information available in their tariffs, and provide a toll-free number for consumers to call to obtain a copy of such rates, terms, and conditions as well as archive this information for a period of three years. On review of the comments, we have also decided to expand our web-publishing requirements. In particular, we are amending the requirements for web-publishing to require that the carrier's webpage containing rates, terms, and conditions for detariffed services shall be free of marketing and sales information or ads; the webpages for rates,

[140] *See*, *e.g.*, D.06-03-013, Appdx. D (listing consumer protection statutes and regulations).

[141] D.07-07-043.

terms, and conditions shall be accessible to consumers without requiring personally identifying information except for area code, NXX, or zip code; and that the carrier provide the Commission with a link to the carrier's page for accessing tariffed and detariffed rates. As we discuss also in our accompanying GO 96-B decision, we believe that these requirements will ensure that this information is accessible to consumers in a simple and clear format. Carriers shall also comply with notice requirements for increases to rates, or more restrictive terms and conditions for detariffed services. These and other consumer protections discussed in this decision provide the necessary consumer protection against anticompetitive behavior required by the statute.

Finally, we amend our detariffing analysis to add additional findings that Pub. Util. Code Section 495.7 has also been satisfied for "New Services" offered by the URF Carriers. New Services are defined by our companion decision today as a "service that (i) is distinguished from any existing service offered by the Utility by virtue of the technology employed; or (ii) includes features or functions not previously offered in any service configuration by the Utility." *See* Telecommunications Industry Rule 1.8. Based on our findings in D.06-08-030 that the four largest ILECs lack market power with regard to all telecommunications services in their territories,[142] we make an additional finding that, to the extent that a New Service is a "telecommunications service," the URF Carriers lack market power for the New Service. We are clarifying our detariffing treatment for New Services to require Tier 2 advice letters for New Services that do not fall into categories of services that a carrier has already

[142] D.06-08-030, Findings of Fact 51, 78; Conclusions of Law 20, 24.

detariffed, as also discussed in our companion GO 96-B decision. Requiring a Tier 2 advice letter for these New Services is consistent with our detariffing framework and Pub. Util. Code Section 495.7.

We reiterate that we will establish an 18-month period for implementing detariffing. We seek to promote detariffing of services within a finite period to allow for some clarity at the end of the period as to which services offered by a carrier are detariffed and which services are not detariffed. We believe that an indefinite period for detariffing will result in more confusion for consumers as carriers might detariff services on a piecemeal basis without finality. For the same reason, we seek to require carriers to detariff in whole or in part their existing services before they seek to detariff any New Services.

7.2. "Basic Service"

DRA asserts that the Commission failed to consider the legislative intent behind Section 495.7, which permits the Commission to establish detariffing procedures for services except for "basic exchange services." DRA Comments at 7. DRA argues that the interpretation of "basic exchange service" should include residential and business basic exchange services.

We will define "basic exchange service" to mean "basic service" as defined by D.96-10-066. We explain earlier in this decision our reasoning for interpreting the term to mean basic service or, effectively, basic residential service. Further, our review of the legislative history, including various Utilities and Commerce Committee Assembly Analysis Reports (from the date of introduction of the bill through September 1995, when the final bill for Section 495.7 was enrolled), does not support an interpretation that "basic exchange service" was meant to include business services. In fact, many of the Assembly Analysis Reports indicated that the detariffing statute was intended to exclude services "classified as monopoly

services (*residential* basic exchange service)."[143] If anything, therefore, the legislative intent appears to have been that Section 495.7 exclude only *residential* basic exchange service.

7.3. Detariffing Resale Services

Verizon asserts that it should not maintain a separate resale tariff for detariffed services, because the resale obligation and wholesale discount are mandated by law and cannot be eliminated by detariffing. Verizon Comments at 2. Although it is true that the resale obligation is mandated by law, we will not allow URF Carriers to detariff their existing resale tariffs at this time. We have not considered fully whether to detariff resale services in this proceeding, nor undertaken the analysis required by Pub. Util. Code Section 495.7 for detariffing of resale services at this time. Accordingly, carriers must continue to file resale tariffs even where the corresponding retail service is detariffed.[144]

7.4. Detariffing of "Basic Terms and Conditions" Underlying All Services

DRA requests clarification that "basic terms and conditions remaining in the tariff continue to apply even to customers of services that are detariffed." DRA Comments at 14.[145] We clarify that terms and conditions that are required

---

[143] *See, e.g.*, Analysis of Utilities and Commerce Committee Assembly Bill 828 and Assembly and Senate Floor Votes (September 1, 1995); *see also* http://www.legislature.ca.gov/cgi-bin/port-postquery?bill_number=ab_828&sess=9596&house=B&author=assembly_member_conroy

[144] If an URF Carrier is not required to file resale tariffs pursuant to the law or this Commission's orders and rules, this decision does not impose new requirements on these carriers to file a resale tariff.

[145] DRA notes specifically that if an URF Carrier "has tariffed service conditions that require it to advise residential customers of available low-cost services, those conditions

Footnote continued on next page

by federal or state law or by Commission decisions or orders and which are currently contained in carriers' tariffs (or required to be in carriers' tariffs) must continue to be filed in the tariff and continue to apply generally to all services – tariffed and detariffed.[146] We will not permit detariffing of such language at this time until we further consider whether such terms and conditions are unnecessary for detariffed services. Carriers offer many of their services on a bundled basis, and although we may permit detariffing of bundles (that include basic service), we believe that the terms and conditions currently contained in tariffs and which are required by law, or by the Commission's orders or decisions, should continue to remain in the tariff so that we can retain some oversight over any changes to these terms and conditions and the same set of terms and conditions can continue to apply.

To the extent that a carrier is offering detariffed services in a contract with the customer, the carrier shall incorporate by reference any relevant tariffed terms and conditions into its contract.

---

were presumably intended to apply to *all* interactions with residential customers, regardless of whether the customer subscribes to a service that is still included in the tariff or to one that has been detariffed." DRA Comments at 14.

[146] If a carrier is seeking entry as a newly certificated carrier in California and seeks to detariff its services, that carrier shall file a tariff to the extent that certain requirements are required by law or the Commission to be tariffed. *See, e.g.*, GO 96-B, General Rule 8.5.7 (requiring that carriers establish rules on basic matters such as how a customer establishes or terminates an account, or pays or disputes a bill). We are not at this time reconsidering the general language (terms and conditions) currently required to be tariffed for competitive or interexchange carriers, and such language would need to be filed as a tariff.

7.5. Notices/Opt-Out for Increased Rates/Restrictive Terms and Conditions for Detariffed Services

We clarify, pursuant to AT&T's request, that the 30-day notice requirement applies to detariffed services for rate increases, and when more restrictive terms and conditions are imposed. *See* AT&T comments at 9-10.

We also clarify language in the PD pursuant to DRA's request regarding the 30-day notice provided to customers purchasing detariffed services. *See* DRA Comments at 12-13. Specifically, we clarify that an URF Carrier must offer 30-day notice to its customers receiving detariffed services of any rate increases, or more restrictive terms and conditions, regardless of whether a contract incorporates information by reference. Further, if the URF Carrier seeks unilaterally to raise rates or impose more restrictive terms and conditions during a term contract for detariffed services, the URF Carrier shall provide 30-day notice and an *opportunity for the customer to opt out* or cancel the contract without incurring any early termination fees or penalty.

7.6. Detariffing Internet Publication Rules for Business Customers

We reject CALTEL's request that Rule 5.2's web-publishing requirements for detariffed services not apply to services provided to business customers.[147] We find that the web-publishing requirements should apply to all detariffed services, including those offered to business customers. The parties have failed

[147] CALTEL argues that "[s]ophisticated business customers are simply not in need to the same levels of protection as mass market residential customers" and the "administrative burden of attempting to maintain detailed information about these complex business services, and archiving that information" would be more time consuming than filing tariffs and related customer contacts. CALTEL Comments at 5.

to convince us that there is no need for these requirements for business customers; in the absence of tariffs, consumers benefit from being able to access key information about services on the carrier's website so that they can make informed choices. Further, not all business customers are "sophisticated;" many may be small business customers who purchase services from generally available rates, terms, and conditions.[148] Carriers already provide such information online for their tariffed customers pursuant to GO 96-B if they meet certain revenue thresholds.

We reject assertions[149] that carriers should post on their websites any ICB offerings with business customers for detariffed services. The Commission currently does not require carriers to post ICB contracts for tariffed services[150] and there is no need for such additional requirements for contracts for detariffed services.

We also reject DRA's proposal that the Commission require contracts for detariffed services to inform customers that they have the right to submit complaints to the Commission for investigation. DRA Comments at 6. We note, however, that carriers generally have the obligation to include information on customer bills regarding toll-free numbers for the consumer to call, and specifically:

Each telephone bill shall include the appropriate telephone number of

---

[148] As TURN points out, deleting such requirements for services provided to business customers could harm small businesses and that such proposals should be rejected until the concept of business customer is more clearly defined. TURN Reply Comments at 3.

[149] See DRA Comments at 10.

[150] D.94-09-065, Conclusion of Law 177.

the commission that a subscriber may use to register a complaint.[151]

7.7. Detariffing Notice Rules for Business Customers

AT&T asserts that the customer notice requirements set forth for detariffed services (*see also* Industry Rule 5.3 in GO 96-B Decision) should not apply to business customers. AT&T asserts that carriers and their business customers should be able to establish terms applicable to their business relationship unimpeded by unnecessary regulatory rules. AT&T Comments at 11. SureWest asserts that the Commission should rely on contract law to define boundaries of parties' rights. SureWest Comments at 6. TURN, on the other hand, argues that the notice requirements were not specific enough, and contends that notice should be served on all interested parties, including the Commission; should include certain font size requirements; should appear in a clear and conspicuous part of the bill; and the term "affected customers" must be clarified. TURN Comments at 11-12. Time Warner/Cox/XO recommend that the Commission clarify that notice may be sent electronically via email to a customer who has elected to receive notices in such format. Time Warner et al. Comments at 5.

We will require carriers to comply with the notice requirements in Rule 5.3 for all customers (including business customers) to ensure that there are sufficient safeguards in place to protect consumers in the context of detariffing consistent with the requirements of Section 495.7. We believe that these safeguards may be as necessary for business customers as individual end-user customers. Small business customers may not have the power to negotiate

[151] Pub. Util. Code Section 2890(d)(2)(B).

favorable terms regarding notice. We clarify that customer notice may be sent electronically to a customer who has elected to receive notices in such format. We decline to impose prescriptive font size requirements for these notices.

7.8. Filing of Basic Service Tariffs

As discussed in our accompanying GO 96-B decision, we are deferring to the pending R.06-06-028 rulemaking the issue of which tier to file any changes to URF ILEC basic service rates. To the extent that a carrier seeks to file any changes to terms and conditions for basic service, and such changes are not inconsistent with Commission decisions or orders, or state or federal law, and are not more restrictive, such changes may be filed in Tier 1. More restrictive terms and conditions for basic service shall be filed in Tier 3.

7.9. Clarification of Tiers for Services Not Addressed by URF Phase I

7.9.1. Resale Services

AT&T asserts that it requires some clarification as to which tier to file tariffs for services that were not within the scope of URF Phase I, yet are "flexibly priced services," such as resale services. AT&T Comments at 2. AT&T contends that the tariffs for such services should be filed in Tier 1.

We agree with AT&T that Tier 1 is the appropriate category in which to file advice letters to *change the* rates for resale service tariffs that appropriately correspond to changes to the relevant retail service tariff. Pursuant to Commission decisions, AT&T and Verizon are required to offer resale services at a discount from their retail service rates.[152] Thus, if an URF Carrier files a change

[152] D.96-03-020, D.96-12-076, D.97-08-059.

to a retail service rate in Tier 1, it may also file changes to rates to resale service tariffs in Tier 1 (assuming that the rate changes are permissible pursuant to URF Phase I and the Commission's resale decisions).

An URF Carrier may also *change terms and conditions* for its resale tariffs that correspond to changes to terms and conditions for its retail tariffs in Tier 1. However, an URF Carrier may not impose *more resale restrictions* in its resale tariffs than is currently permitted by the Commission.[153]

7.9.2. Treatment of Special Access Service Filings

AT&T also seeks clarification as to what tier filing would apply to special access and switched access services. AT&T Comments at 2-3. AT&T asserts that, under the current language in the accompanying GO 96-B PD, the phrase "regulated service other than Basic Service or Resale Service" for Tier 1 would apply to its special access and switched access services and would indicate that it may file Tier 1 advice letters for changes to access services. *Id.* In the alternative, AT&T requests that the Commission clarify that the advice letter procedures previously applicable to those services prior to the URF Phase I decision continue to apply.[154] Sprint Nextel expresses concern that the definition of "resale" service would create a distinction between "retail" and "resale" special access services,

[153] *See, e.g.*, D.97-08-059 (permitting certain resale restrictions).

[154] AT&T Comments at 5. Sprint Nextel notes that it will refrain from commenting on permitting retail special access to be eligible for tariffing under Tier 1, until it is clear that the Commission will subject retail special access to Tier 1 treatment. Sprint Nextel Comments at 6, n.16. Sprint Nextel also points out that services such as special access were not granted full pricing flexibility under D.06-08-030 and should not be eligible for detariffing.

and argues that in practicality, there is no distinction between retail and resale special access. Sprint Nextel Comments at 4.

The pricing of special access was not part of URF Phase I, and the Commission explicitly carved out "special access" services from the impact of the URF Phase I decision.[155] We have deferred consideration of "special access" – whether retail or resale – altogether to a later phase of this proceeding. In the interim, we decline to permit the URF Carriers to file advice letters for special access or switched access in Tier 1. Instead, we will require that URF Carriers file their advice letters for these services pursuant to existing requirements until we define further treatment of these services.

7.9.3. Other Services That Have Full Pricing Flexibility

Aside from reference to special access services, AT&T did not provide specific examples in its comments of other services that have "full pricing flexibility" but were not within the scope of URF Phase I. Thus, in the absence of specific requests for clarification, we are unable to provide guidance on the appropriate Tier treatment for such services. In general, if a service was granted full pricing flexibility in URF Phase I, and does not fall within the exceptions for Tier 1, the URF Carrier may file tariff filings in Tier 1. However, an URF Carrier may always file a tariff in Tier 2, if it believes that there is some uncertainty as to whether the tariff belongs in Tier 1. Further, if a carrier would like to have certainty before its tariff is effective, the carrier could also file the tariff in Tier 1 but seek a later effective date.

[155] *See, e.g.*, D.06-08-030, Finding of Fact 119.

7.9.4. General Rule 7.4.2 Grounds for Protest

General Rule 7.4.2 has already been adopted by the Commission as part of GO 96-B in D.07-01-024. We have discussed General Rule 7.4.2 earlier in today's decision because of the guidance the rule provides regarding the permissible scope of protests to advice letters in an industry where the Commission has partially or fully deregulated rates. We noted that the URF Phase I decision granted full rate flexibility except for Basic Service, and subject to that exception the advice letter of an URF Carrier increasing a rate may not be protested on the ground that the rate would be unjust or unreasonable.

SureWest, DRA, and TURN raise concerns with our discussion of General Rule 7.4.2. SureWest believes we should further narrow the grounds of protest in the URF environment; TURN and DRA believe we are unduly restrictive. Having carefully reviewed these parties' comments, we are not persuaded to revise our earlier discussion. We respond first to SureWest, then take up TURN's and DRA's comments.

SureWest objects to two of the six enumerated grounds of protest under General Rule 7.4.2. Neither objection has merit. We allow a protest on the ground that "the relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process." General Rule 7.4.2(5). Contrary to SureWest, this ground does not invite broad-based policy argument; the Telecommunications Industry Rules state in detail the contents of the three advice letter tiers, and Industry Rule 7.4 provides guidance on the dividing line between advice letters and formal proceedings, with examples of the latter. Our Rules of Practice and Procedure further delineate formal proceedings. We find that General Rule 7.4.2(5) states a proper ground of protest that staff may readily administer.

SureWest also objects to General Rule 7.4.2(6), which allows protests on the grounds that the relief requested in an advice letter is unjust, unreasonable, or discriminatory. However, as we noted earlier in today's decision, there follow in General Rule 7.4.2 several important limitations on the ability to protest on these grounds, for example, when the Commission does not regulate the rates of a type of utility. These limitations are relevant to many of the advice letters that URF Carriers such as SureWest will file. Nevertheless, some advice letters will continue to be subject to protest as unjust, unreasonable, or discriminatory, depending on the type of carrier filing the advice letter or the service to which the advice letter relates.

TURN asserts:

> General Rule 7.4.2 does not contemplate the specific scenario we have here: a utility that has some rates subject to detailed price regulation and some rates subject to price flexibility but still tariffed. General Rule 7.4.2 focuses on preventing parties to a proceeding getting a second bite at the litigation apple to change a previously decided Commission decision where presumably a reasonableness analysis has already been performed.

Opening Comments at p. 14. TURN is partly right: A fair reading of General Rule 7.4.2 reveals that a principal concern of the rule is to bar "a second bite at the litigation apple." *See, e.g.,* General Rule 7.4.2(6) and Example 1. The "reasonableness analysis," at which TURN would like to get a "second bite," is that performed by the Commission in Phase I of the URF rulemaking. Based on this analysis, the Commission determined that all retail price regulations for business services and for many residential services for the four largest incumbent local exchange companies would be eliminated. D.07-01-024, Ordering Paragraph 5.

It is true that Ordering Paragraph 5 does not eliminate all price regulation. We were careful to note in our earlier discussion some of the various ways that URF advice letters remain subject to protest under GO 96-B. (*See* Section 3.1.3 Protesting URF Advice Letters Under GO 96-B.) To the extent that the Commission has eliminated price regulation, the Commission's determination to do so may not be relitigated by means of protesting an advice letter.

DRA's comments ask the Commission at least to consider the possibility that the above determination may be wrong, if not for all of California, then perhaps for "very-high-cost areas" that prove unattractive to serve and thus do not benefit from competition. Opening Comments at pp. 3-5. DRA argues that the Commission must retain a mechanism for protesting and suspending at least those advice letters relating to rate increases for high-cost areas still requiring a CHCF-B subsidy to support universal service. Moreover, DRA argues, it is unwise to "embark on a major deregulatory experiment without safeguards in place that allow the Commission to act rapidly should rates appear to be increasing unreasonably. The PD goes too far toward opening California to the same type of market manipulation as occurred when electricity was deregulated." *Id*. at p. 5.

In response to DRA, as GO 96-B explains, when the Commission grants pricing flexibility for services, these services are not subject to protests as to whether the rates are just and reasonable. GO 96-B, General Rule 7.4.2. Because we found that URF Carriers lack market power, we also concluded that URF Carriers will not be able to raise prices for telecommunications services unreasonably due to market forces. Permitting protests to the rates in these advice letters would effectively challenge and refute the findings and pricing flexibility granted in the URF Phase I decision.

The inability to file a protest as to rates does not, however, foreclose consumers' rights to complain that rates are not just and reasonable. Pursuant to Pub. Util. Code Section 1702, and Commission's Rules of Practice and Procedure Rule 4.1, a party may complain as to the reasonableness of any rate or charge, and bring such complaint before the Commission. This procedure affords consumers the opportunity to have the Commission consider whether rates and charges are no longer just and reasonable. In such a complaint proceeding, the Commission may also determine whether conditions have changed to an extent to necessitate revisiting findings made in its prior decisions (including in URF Phase I).

We also believe the Commission will have the information and the capability to take appropriate action on its own, if the telecommunications market in California fails to develop as we expect. In such situations, we might institute an investigation or rulemaking on our own motion.

DRA also argues that our limitation on protests should entail the elimination of protections that carriers enjoy regarding their tariffed services (namely, the filed rated doctrine and limitation of liability). DRA offers no legal support for its argument. In rebuttal, Verizon and Cox/Time Warner/XO cite federal and California appellate decisions holding that the filed rate doctrine applies where tariff filing is still required by statute or regulation, or even where a tariff was voluntarily filed.

We reject DRA's argument. To the extent that a carrier files a tariff, the courts recognize the filed rate doctrine and limitation of liability contained in that tariff. As we discussed above, however, a consumer may bring a complaint to the Commission regarding the rates, terms, and conditions of tariffed services;

furthermore, nothing prevents us from considering or opening an investigation into tariffed offerings.

We also reject DRA's suggestion that service quality may serve as the basis for a protest to an advice letter. To the extent that there is a pending proceeding regarding service quality and a carrier seeks to lift requirements governing service quality that are at issue in the proceeding or to lift any other requirements that are being considered in a pending proceeding, the carrier may not do so. *See* GO 96-B, General Rule 7.4(4).

Findings of Fact

1. Consolidation of the URF and GO 96-B proceeding will help us to coordinate issues that overlap between the proceedings and to address questions of how or whether GO 96 procedures should relate to URF advice letters.

2. D.06-08-030 granted carriers broad pricing freedoms concerning many telecommunications services, new telecommunications products, bundles of services, promotion, and contracts. It also simplified tariff procedures and made tariffs effective one day after filing and required that all carriers provide a thirty-day notice to customers of any price increase or more restrictive term or condition.

3. On December 21, 2006, the assigned Commissioner issued a revised Scoping Memo seeking comment on, among other things: (i) the relationship between one-day effective advice letters and the notice and protest requirements of GO 96-A and the Public Utilities Code and prior Commission decisions; (ii) whether to detariff telephone service other than basic exchange service; (iii) clarifying the scope of the asymmetric administrative process language of Ordering Paragraph 21 of D.06-08-030; and (iv) whether company-specific marketing and disclosure requirements imposed as a condition or requirement

resulting from an enforcement or complaint case should be continued, or whether, in light of changed market conditions, they may be lifted through the filing of an advice letter.

4. In adopting the one-day filing procedure in D.06-08-030, we wanted to provide URF Carriers with the ability to innovate and offer new services or rates, terms, and conditions without regulatory delay.

5. There are Commission precedents for advice letters effective one day after filing. However, the precedents, in particular, Res. T-15139, do not provide advice letter procedures that are consistent with the Commission's intent in D.06-08-030.

6. GO 96-B provides an adequate framework for URF advice letter filings and such advice letters should be filed pursuant to General Rule 7.3.3 (effective pending disposition).

7. Tier 1 under GO 96-B is well-suited to the filing of URF advice letters. Because an advice letter filed under Tier 1 may be effective immediately, Tier 1 enhances the ability of market participants to act quickly in competitive conditions.

8. Tier 1 advice letters may not be suspended. Tier 1 also provides flexibility: If the carrier so chooses, it may designate an effective date later than the filing date, or it may file the advice letter under Tier 2 (effective upon staff approval) if the carrier for whatever reason desires to have prior regulatory approval before taking a particular action.

9. If there is a protest to a Tier 1 advice letter, staff will review the issues raised by the protest. If the Commission or staff finds that the advice letter was impermissibly filed under Tier 1, the carrier may be required to withdraw the filing and take other action as the Commission may require.

10. The large local exchange carriers object to the tier structure of GO 96-B, but they have not analyzed the Commission precedents for one-day filing or recognized that Tier 1 under GO 96-B would promote streamlined regulation. They also do not offer alternative guidelines for processing the URF advice letters.

11. The competitive advantage enjoyed by VoIP and wireless carriers, who do not have to file advice letters at all, is lessened by our adoption today of Tier 1 procedure for URF advice letters, allowing them to become effective immediately. Detariffing can further offset this advantage.

12. DRA and TURN propose to apply GO 96-B procedure, in modified form, to URF advice letters. However, their proposed modifications are inconsistent with the principles and goals of URF.

13. GO 96-B recognizes the emergence of alternative regulatory approaches at this Commission, and the greater flexibility we have accorded utility management in all the regulated industries.

14. In competitive conditions, market participants must be able to act quickly. Tier 1 procedures enable them to do so because Tier 1 advice letters are effective upon filing, and because they are already in effect, they may not be suspended.

15. There is no real benefit to have a one-day delay between filing and effectiveness of an advice letter.

16. Under GO 96-B, the grounds for protest are more narrow where the Commission has determined not to regulate rates.

17. We found in Phase I of the URF proceeding that Verizon, AT&T, Frontier, and SureWest lack significant market power with respect to any retail voice communications service offered within their service territories.

18. In D.06-08-030, we found that the market for all retail voice communications services throughout the service territories of Verizon, AT&T, Frontier and SureWest is competitive and rejected evidence that market share and entity size indicate that a market is not competitive.

19. We rely on the market power findings of D.06-08-030 that the four major ILECs lack market power.

20. Based on our market power findings that AT&T, Verizon, SureWest and Frontier lack market power for retail voice communications services in their service territories, we find that the URF Carriers lack market power for new services as well.

21. We adopt new rules for carriers that seek to detariff to satisfy the requirements of Pub. Util. Code Section 495.7(c)(1) and (2). In particular, we require carriers that detariff services to make available, at no cost, to the consumer information that is substantially equivalent to information previously contained in their tariffs by posting the rates, terms and conditions for detariffed services on their publicly available websites and providing a toll-free number for consumers to call to obtain a copy of rates, terms and conditions. We also require that carriers archive this information for three years, and make this archive available to the public.

22. There are existing Commission rules and safeguards (including those against cramming and slamming) in place to protect consumers against fraud. The Commission has also adopted enhanced investigation and enforcement capability in the Telecommunications Fraud Unit and a consumer fraud toll-free hotline.

23. URF Carriers lack market power and lack the ability to engage in the kind of anti-competitive behavior referenced in Pub. Util. Code Section 495.7(d). We

are not deregulating resale rates, and we require that URF Carriers post rates, terms, and conditions for services on their websites; thus, URF Carriers will not be able to engage in anti-competitive pricing without detection.

24. We have deregulated all but Basic Service rates, and thus eliminated the financial incentive for a licensed carrier to engage in cross-subsidization with an unlicensed affiliate.

25. Tariffs afford carriers protection under the Filed Rate Doctrine and limitation of liability provisions. Tariffs are often cumbersome, legalistic and unwieldy documents that are difficult for most consumers to read or understand.

26. It is desirable to establish detariffing procedures for URF Carriers. The Commission's existing rules together with those adopted today will provide adequate protection for consumers.

27. We do not establish mandatory detariffing procedures. Instead, we permit carriers to apply to detariff by filing Tier 2 advice letters pursuant to GO 96-B within an 18-month implementation period after the effective date of this decision.

28. Carriers may detariff new services that fall into categories of services that have not already been detariffed through Tier 2 advice letters beyond the 18-month implementation period.

29. If there is no protest to a Tier 2 advice letter seeking to detariff services and the advice letter is otherwise in compliance with GO 96-B and the services do not fall within the categories for which we prohibit detariffing, the advice letter is deemed approved.

30. If a Tier 2 advice letter is protested, staff will review the protest under the procedures set forth in General Rule 7.6.1 of GO 96-B. Since the grounds for

protest are narrow, staff will usually be able to approve or reject the advice letter by the end of the initial 30-day review period.

31. Detariffing of basic service is not permitted under Pub. Util. Code Section 495.7.

32. Detariffing of resale service is outside the scope of this proceeding.

33. On a prospective basis, a carrier may not file an advice letter to remove a requirement or condition in its tariffs resulting from an enforcement, complaint, or merger proceeding.

34. The 911 system provides the public an important public service that must be available to all phone customers and must not be detariffed.

35. Carriers may not detariff services offered by an interexchange carrier that allows a consumer to dial around a local exchange carrier to use the services of the interexchange carrier without a contract.

36. Carriers may not detariff a service that was not granted full pricing flexibility in D.06-08-030, such as resale services.

37. Carriers may not detariff obligations pursuant to existing state or federal law, including Carrier of Last Resort obligations, or Commission decisions or orders.

38. Carriers may not detariff basic terms and conditions that are required by federal or state law or by Commission decisions or orders and which are contained in carriers' tariffs or required to be carriers' tariffs.

39. Any conditions or requirements imposed in a Commission decision may be lifted only by demonstrating compliance with its terms, and by a subsequent Commission decision.

40. We will address the issues raised by protests to the AT&T Advice Letters 28800 and 28982 after we address the request for evidentiary hearings on that issue.

Conclusions of Law

1. D.06-08-030 should be modified such that the URF advice letters formerly qualifying for effectiveness one day after filing must now be filed under the procedures for Tier 1 advice letters, as those procedures are set forth and explained in D.07-01-024.

2. Changes to resale service rates, to the extent that such changes comply with the required discount for resale service rates, may be filed in Tier 1

3. Changes to terms and conditions for resale tariffs that correspond to changes to terms and conditions for retail service tariffs, may be filed in Tier 1.

4. Changes to basic service terms and conditions that are not more restrictive and that do not conflict with law, or Commission decisions or orders, may be filed in Tier 1. More restrictive terms and conditions for basic service shall be filed in Tier 3.

5. Under GO-96-B, the grounds upon which an advice letter may be protested are limited. For example, where the Commission has granted utilities full pricing flexibility, which it has done for URF Carriers with respect to many services in D.06-08-030, an advice letter increasing a rate for one of these services may not be protested an unreasonable.

6. The competitive advantage enjoyed by VoIP and wireless carriers over carriers that file advice letters arises from federal preemption over certain aspects of VoIP and wireless service. The advantage does not result from any action taken in the URF or GO 96 rulemakings.

7. GO 96-B provides procedures that are consistent with the policies we adopted in D.06-08-030 and should govern advice letter filings under URF.

8. Pub. Util. Code Section 495.7 authorizes the Commission, by rule or order, to establish procedures to detariff a service if the Commission finds that the telephone corporation lacks significant market power for that service for which an exemption from tariffing requirements is being requested.

9. The requirements of Pub. Util. Code Section 495.7 have been met for the Commission to establish detariffing procedures.

10. Section 495.7 does not permit detariffing of basic exchange service. We interpret "basic exchange service" to mean "basic service," as defined in D.96-10-066.

11. We rely on the record in Phase I of the URF proceeding to find that Section 495.7(b)(1) is met.

12. The Commission considered various criteria including market share, but did not rely on market share in determining that AT&T, Verizon, Frontier, and SureWest lack significant market power. Pub. Util. Code Section 495.7(b)(1) does not require that the criterion of "market share" be the sole factor to consider in assessing a carrier's market power.

13. Pub. Util. Code Section 495.7(c) is met, because there are existing statutes and rules that address the safeguards that are necessary to protect consumers prior to establishing detariffing procedures.

14. We adopt new requirements for carriers seeking to detariff to satisfy Pub. Util. Code Section 495.7(c), including the requirement that carriers detariffing their services must make available to the public their rates, terms, and conditions for detariffed services on their websites and provide a toll-free number for consumers to call to obtain a copy of rates, terms, and conditions.

15. General contract principles prohibit a carrier from unilaterally changing rates, terms, or conditions to a contract with a customer.

16. Carriers that enter into a term contract (with early termination fees) with a consumer for detariffed services shall not unilaterally increase rates, or impose more restrictive terms or conditions to the term contract unless the carrier has provided the customer 30-day notice and given the consumer an opportunity to opt out of contract..

17. We conclude that Pub. Util. Code Section 495.7(d) is satisfied under URF. We find that URF Carriers that are incumbent local exchange carriers lack market power throughout their service territories and also lack the ability to engage in anti-competitive pricing and lack incentive to engage in cross-subsidization with an affiliate.

18. We establish permissive detariffing procedures that allow URF Carriers to detariff telephone services via Tier 2 advice letters.

19. We intend for these detariffing procedures to apply to all URF Carriers, including the four major ILECs, CLECs, and IXCs.

20. It is not in the public interest for carriers to amend or lift tariffs containing conditions or requirements imposed through enforcement, complaint, or merger proceedings.

21. A carrier seeking to amend or lift a tariff containing conditions or requirements imposed as a result of a prior Commission enforcement, complaint, or merger case must file an application or petition to do so.

22. Detariffing of 911 services is not in the public interest.

23. Detariffing of dial-around services or other forms of direct connection to an interexchange carrier is not in the public interest.

24. Detariffing of obligations pursuant to existing state or federal law (such as Carrier of Last Resort obligations), or Commission orders and decisions, is not in the public interest or lawful.

25. Detariffing of basic terms and conditions that are required by federal or state law or by Commission decisions or orders and which are contained in carriers' tariffs or required to be carriers' tariffs, is not in the public interest.

26. Detariffing of resale services or other services that were not granted full pricing flexibility in D.06-08-030 is not in the public interest.

27. Once a service is detariffed, the carrier need not file anything further with the Commission regarding the detariffed service, such as advice letters regarding rate changes or changes to terms and conditions. The carrier also does not need to file the contract for the detariffed service. The carrier must continue to notify a customer 30 days in advance of increased rates, or more restrictive terms and conditions for detariffed services and must post all available information on its website.

28. The 18-month implementation period for detariffing does not apply to the carrier's offering of new services on a detariffed basis. For example, if an URF Carrier seeks to offer new services on a detariffed basis after the 18-month implementation period, the carrier shall submit a Tier 2 advice letter to offer a new service as a detariffed offering if the new service does not fall into the categories for which the Commission does not permit detariffing, and does not fall into categories that the carrier has already detariffed.

29. The filed rate doctrine does not apply to detariffed telephone services.

30. Detariffed telephone services are not subject to tariffed limitations of liability.

31. Ordering Paragraph 21 of D.06-08-030 was intended to permit carriers to file advice letters removing certain asymmetrical marketing, disclosure, and administrative requirements, as long as such requirements did not pertain to basic service; resale service; include requirements imposed on a carrier as a result of an enforcement, complaint, or merger proceeding; or contain obligations related to Carrier of Last Resort requirements or state or federal law, or Commission decisions and orders.

32. As of the effective date of this decision, URF Carriers that seek to remove conditions or obligations imposed in their tariffs as a result of an enforcement, complaint, or merger case, must file a petition or application to modify the underlying decision that imposes the conditions, obligations, or penalties.

O R D E R

IT IS ORDERED that:

1. On or 30 days after the effective date of this decision, an URF Carrier shall file an advice letter for the following services pursuant to General Rule 7.3.3 (Tier 1 treatment) under General Order 96-B:

   a. Changes to retail service offerings other than basic service rates.

   b. Changes to basic service terms and conditions, to the extent that the changes are not more restrictive, and do not conflict with law, or Commissions decisions or orders.

   c. Changes to resale service rates, to the extent that such changes comply with the required discount for resale service rates.

   d. Changes to terms and conditions for resale tariffs that correspond to changes to terms and conditions for retail service tariffs.

   e. Promotional offerings, bundles, new services.

   f. Withdrawal of services other than basic residential (1MR and 1 FR) and basic business (1MB) services where withdrawal of service would raise public safety issues.

2. Staff reviewing protests to Tier 1 advice letters shall notify the carrier and the Director of the Communications Division if its review will take longer than the initial 30-day period of review, and thereafter shall report on the status of the review every 30 days. The Commission shall issue a resolution to dispose of the protest no later than 150 days from the date of filing the advice letter.

3. Within the next 18 months, a carrier may detariff existing retail services and tariff sheets for those services by filing an advice letter that complies with the terms of General Order 96-B, General Rule 7.3.4, and does not purport to cancel:

a. A tariff for basic service.
b. A tariff that includes a requirement, condition, or obligation imposed through an enforcement, complaint, or merger proceeding.
c. A tariff for 911 or other emergency services.
d. A tariff relating to customer direct access to an interexchange carrier or customer choice of an interexchange carrier.
e. A tariff for a service that was not granted full pricing flexibility in D.06-08-030 (e.g., resale services).
f. A tariff containing obligations as a Carrier of Last Resort or other obligations under state and federal law, or under Commission decisions and orders.

4. The 18-month implementation period for detariffing does not apply to "new services" as defined in the Telecommunications Industry Rules of GO 96-B. An URF Carrier may seek to detariff new services that fall into a category that the carrier has not previously detariffed after the 18-month implementation period by filing a Tier 2 advice letter with the Commission as long as the new

service does not fall into the categories of services for which we do not permit detariffing. A carrier may also offer new services as tariffed if it wishes.

5. Today's decision shall be served on parties protesting AT&T advice letter 28800 and 28982, all parties in R.05-04-005 and R.98-07-038, and all parties in Case 98-04-004.

6. Rulemaking 98-07-038 is closed.

This order is effective today.

Dated September 6, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners