

Decision 08-05-019

May 15, 2008

## 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)

**ORDER MODIFYING DECISION (D.) 07-09-018 AND D.07-09-019,  
AND DENYING REHEARING OF BOTH DECISIONS, AS MODIFIED**

**I. INTRODUCTION**

We opened Rulemaking (R.) 05-04-005, the Uniform Regulatory Framework ("URF") proceeding, to "assess and revise the rate regulation of large and mid-sized [Incumbent Local Exchange Carriers ("ILECs")] in California." (*Opinion* ("Phase I Decision") [Decision (D.) 06-08-030] (2006) \_\_ CPUC.3d \_\_, p. 13 (slip op.).) The *Phase I Decision* concluded Phase I of the rulemaking and granted carriers broad pricing freedoms concerning many telecommunications services, new telecommunications products, bundles of services, promotion, and contracts. The *Phase I Decision* permitted all URF tariffs to be effective on one-day filing. The *Phase I Decision* left certain matters, including implementation issues, to be decided in Phase II.

Pursuant to an Assigned Commissioner's Ruling and Revised Scoping Memo issued in R.05-04-005, dated December 21, 2006, opening comments on Phase II issues other than detariffing were due March 2, 2007. Reply comments on Phase II issues other than detariffing were due March 30, 2007.

On January 29, 2007, we mailed the *Fourth Interim Opinion Adopting Remaining General Rules and Industry Rules for Energy and Water as Revisions to General Order 96-A* [D.07-01-024] (2007) \_\_ CPUC.3d \_\_ in R.98-07-038, the General Order (“GO”) 96-B proceeding. Ordering Paragraph (“OP”) 6 of D.07-01-024 specified that:

Within 30 days of the mailing of this decision, telecommunications utilities and other interested persons may file comments in Rulemaking 05-04-005 identifying what subjects they believe should be listed under each of the three tiers anticipated for the proposed Telecommunications Industry Rules. Reply comments may be filed within 15 days thereafter.

Pursuant to Rule 16.6 of the Commission’s Rules of Practice and Procedure, an Executive Director’s Order was issued in R.98-07-038, dated February 26, 2007, that granted parties an extension of time to file comments as required by OP 6 of D.07-01-024. (*Executive Director’s Order Granting Extension of Time to File Comments as Required by Decision 07-01-024* [D.07-02-038] (2007) \_\_ CPUC.3d \_\_.) The Executive Director’s Order permitted parties to file comments required by OP 6 of D.07-01-024 in R.05-04-005 on or before March 2, 2007 and to file reply comments on or before March 30, 2007. The Executive Director’s Order permitted these comments to be combined in the same pleading with comments required by the Revised Scoping Memo in R.05-04-005.

On September 12, 2007, we issued D.07-09-018, which addressed Phase II issues. Among other issues, this decision: clarified the notice and protest requirements for one-day-effective advice letters under GO 96(a), the Public Utilities Code, and prior Commission decisions; determined which subjects should fall under various tiers of the GO 96 draft 2001 Telecommunications Industry Rules; and consolidated the URF proceeding with the GO 96-B proceeding (R.98-07-038) in order to coordinate overlapping issues. (D.07-09-018, at pp. 2-3.)

On September 12, 2007, we also issued D.07-09-019 as a companion decision to D.07-09-018. This decision established the Telecommunications Industry

Rules as part of GO 96-B based on the consolidated URF record. D.07-09-019 also incorporated the new advice letter and detariffing requirements adopted in D.07-09-018.

Cox California Telcom, LLC, dba Cox Communications (“Cox”) timely filed an Application for Rehearing of D.07-09-018.<sup>1</sup> Cox alleges the following legal error: (1) there is no factual or legal support for requiring Competitive Local Exchange Carriers (“CLECs”) to file more restrictive changes to terms and conditions for basic service via Tier 3 advice letters and (2) the Commission did not properly provide notice prior to modifying an existing rule adopted in Phase I of URF. Cox requests that D.07-09-018 be modified to delete text that would subject the CLECs to the Tier 3 advice letter requirement, rather than its Tier 1 proposal.

Cox also timely filed an Application for Rehearing of D.07-09-019 alleging the same legal error as in its Application for Rehearing of D.07-09-018. Cox requests that D.07-09-019 be modified to delete text that would subject the CLECs to the Tier 3 advice letter requirement, rather than its Tier 1 proposal.

SureWest Telephone (“SureWest”) filed a response supporting Cox’s rehearing application of D.07-09-018. Verizon, California Inc. (“Verizon”) filed a response conditionally supporting Cox’s rehearing application of D.07-09-018.

We have reviewed each and every argument raised in Cox’s rehearing applications and are of the opinion that modifications, as described herein, are warranted to: (1) delete language in D.07-09-018 and D.07-09-019 that requires URF Carriers to file advice letters with more restrictive terms and conditions for basic service under Tier 3; (2) clarify language in D.07-09-018 and D.07-09-019 that is inconsistent with the Commission’s determination that URF advice letters formerly qualifying for one-day effective filing under the *Phase I Decision* may now be filed under Tier 1 as set forth in GO 96-B, General Rule 7.3.3; and (3) clarify inconsistencies and correct clerical errors in

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<sup>1</sup> The Utility Reform Network (“TURN”) also timely filed an Application for Rehearing of D.07-09-018. We considered the disposition of this rehearing application at the April 24, 2008 Commission meeting, and issued D.08-04-063, which denied TURN’s application for rehearing.

D.07-09-019, as set forth below. Rehearings of D.07-09-018 and D.07-09-019, as modified, are denied.

## II. DISCUSSION

### A. Factual and Legal Support for Tier 3 Requirement

Cox contends that there is no factual or legal support for the Commission's determination that CLECs file more restrictive changes to basic service terms and conditions via Tier 3 advice letters. (Cox Rehr. App. of D.07-09-018, p. 2; Cox Rehr. App. of D.07-09-019, p. 2.) Cox contends that this requirement should be deleted because it is inconsistent with prior Commission rules and practice. (Cox Rehr. App. of D.07-09-018, p. 6; Cox Rehr. App. of D.07-09-019, p. 6.)

D.07-09-018 adopted the GO 96-B three-tier framework for advice letter filings of URF Carriers. (D.07-09-018, at pp. 17-18.) Tier 1 advice letters are effective upon filing and are approved automatically within 30 days ("deemed approved") if not protested. (GO 96-B, General Rule 7.3.3.) 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. (GO 96-B, General Rule 7.3.4.) Tier 3 advice letters are effective only after approval by Commission resolution and cannot be deemed approved. (GO 96-B, General Rule 7.3.5.)

D.07-09-018 makes the following determination regarding the filing of advice letters for basic service terms and conditions:

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 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.

(D.07-09-018, at pp. 14-15, See also D.07-09-018, at p. 76 & p. 89, Conclusion of Law ("COL") 4.)

The accompanying GO 96-B decision, D.07-09-019 states:

We reiterate that an URF Carrier may not change *terms and conditions* of its basic service tariff to the extent that the terms and conditions are required by state, or Commission rule or order. Imposition of more restrictive terms and conditions to the basic service tariff shall be filed in Tier 3. Otherwise, less restrictive and other changes to terms and conditions of basic service that do not conflict with law or Commission requirements shall be filed in Tier 1.

(D.07-09-019, at p. 58.)

In D.07-09-019, we adopted Telecommunications Industry Rule 7.1(5), which provides that matters eligible to be filed under Tier 1 include:

A change by an URF Carrier to a rate, charge, term, or condition of a regulated service (except for ILEC Basic Service rates). Changes to terms and conditions for Basic Service that are not more restrictive and that do not conflict with law or the Commission's decisions or orders are permitted.

We also adopted Telecommunications Industry Rule 7.3(1), which provides that any advice letter not subject to review under Tier 1 or Tier 2 must be filed under Tier 3.

Upon review of D.07-09-018 and D.07-09-019, as well as the administrative record in this proceeding, we agree with Cox that the record may be inadequate to support the determination that advice letters filings with more restrictive terms and conditions for basic service should be under Tier 3. Accordingly, we modify D.07-09-018 and D.07-09-019, as set forth in the ordering paragraphs below, to delete language that requires URF carriers to file more restrictive changes to basic service terms and conditions via Tier 3 advice letters.<sup>2</sup>

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<sup>2</sup> Although Cox's rehearing applications contentions relate only to CLECs, we delete this requirement as to URF Carriers, including both URF ILECs and CLECs, because the record also does not support imposing this requirement on URF ILECs. (See SureWest Response to Cox Rehr. App. of D.07-09-018, at p. 3; Verizon Response to Cox Rehr. App. of D.07-09-018, at p. 7.) Furthermore, this requirement was imposed on URF Carriers and there was no distinction made between URF ILECs and CLECs.

Cox contends that advice letters with more restrictive terms and conditions to basic service should be filed in Tier 1. (Cox Rehr. App. of D.07-09-018, pp. 3-4; Cox Rehr. App. of D.07-09-019, pp. 3-4.) This contention has merit.

In the *Phase I Decision*, we determined that:

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 intervention was required to protect customers. *Thus, it is reasonable that all advice letters for tariffed services should go into effect on a one-day filing.*

(*Phase I Decision* [D.06-08-030], *supra*, at pp. 182-183 (slip op.) (emphasis added).)

Therefore, pursuant to the *Phase I Decision*, advice letters with more restrictive terms and conditions for basic service were effective on one-day filing. This one-day effective filing rule applied to URF ILECs and to CLECs. (*Id.* at p. 235, OP 9 & p. 236, OP 13.)

In D.07-09-018 and D.07-09-019, we modified the one-day effective advice letter filing requirement of the *Phase I Decision* and instead applied the GO 96-B three-tier framework for URF advice letter filings. Specifically, D.07-09-018 and D.07-09-019 modified the one-day effective filing rule to “effective pending disposition” under GO 96-B’s General Rule 7.3.3 (Tier 1).<sup>3</sup> (See e.g. D.07-09-018, at pp. 13-14.) In D.07-09-018 and D.07-09-019, we stated that Tier 1 would comprehensively apply to the URF advice letters that formerly qualified for one-day effective filing. (See e.g. D.07-09-018, at p. 89, COL 1; D.07-09-019, at p. 8.) Thus, in response to Cox/Time Warner Telecom of California, LP’s (Time Warner’s) Comments, we stated:

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<sup>3</sup> The *Phase I Decision* required URF carriers to provide 30-day advance notice to all affected customers for tariffs that imposed price increases or more restrictive terms and conditions. (*Phase I Decision* [D. 06-08-030], *supra*, at p. 232, COL 35 (slip op.).) D.07-09-018 and D.07-09-019 did not modify this notice requirement.

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. As discussed, we believe that this approach best accommodates the policies of URF while providing guidelines for the advice letters.

(D.07-09-018, at p. 24 (footnote omitted).)

Since advice letter filings with more restrictive terms and conditions for basic service qualified for one-day effective filing under the *Phase I Decision*, Tier 1 treatment for these advice letters is consistent with our determination that Tier 1 would apply comprehensively to advice letters that were previously effective on one-day filing. Therefore, it is consistent with our treatment of other URF advice letters that had previously qualified for one-day effective filing.<sup>4</sup> We note that there is no support in the record for treating basic service terms and conditions differently than terms and conditions for other services, which are eligible to be filed under Tier 1. In making their proposals regarding which tier would be appropriate for advice letter filings for changes to terms and conditions, parties did not differentiate between basic service and other services.<sup>5</sup>

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<sup>4</sup> A review of the types of advice letter filings in Tiers 2 and 3 further supports the appropriateness of Tier 1 for advice letter filings with more restrictive terms and conditions for basic service. Most of the advice letter filings in Tiers 2 and 3 involve GRC-LEC advice letters. GRC-LECs are rural local exchange carriers who are still subject to traditional rate-of-return regulation and have their rates set through general rate cases. (D.07-09-018, at pp. 43-44.) The market power findings of the *Phase I Decision* excluded the GRC-LECs. (D.07-09-018, at pp. 43-44.) Aside from GRC-LEC advice letters, Tier 2 includes: detariffing by an URF Carrier; a request to transfer by a carrier other than a GRC-LEC or URF ILEC; and an advice letter appropriate to Tier 1 but for which the utility submitting the advice letter requests review and disposition under Tier 2. (Telecommunications Industry Rule 7.2.) Aside from GRC-LEC advice letters, Tier 3 includes: a matter appropriate to an advice letter but not subject to review and disposition under Tier 1 or Tier 2 and a negotiated interconnection agreement pursuant to Section 252 of the Telecommunications Act of 1996. (Telecommunications Industry Rule 7.3.)

<sup>5</sup> See e.g. Opening Comments of Cox/Time Warner dated February 28, 2007 at p. 1; Opening Comments of the Division of Ratepayer Advocates dated March 2, 2007 at p. 50; Opening Comments of TURN dated March 2, 2007 at p 19; Reply Comments of Cox/ Time Warner dated March 30, 2007 at p. 13; and Reply Comments of Calaveras Telephone Company, et al. dated March 30, 2007 at pp. 1-2.

Accordingly, we modify D.07-09-018 and D.07-09-019, as set forth in the ordering paragraphs below, to clarify language regarding advice letter filings for basic service terms and conditions that is inconsistent with our determination that Tier 1 would comprehensively apply to the URF advice letters that formerly qualified for one-day effective filing.<sup>6</sup>

### **B. Notice of Tier 3 Requirement**

Cox contends that by requiring CLECs to file more restrictive basic service terms and conditions via a Tier 3 advice letter, the Commission modified the existing rules without providing notice and a comment period in violation of Cox's procedural due process rights. (Cox Rehr. App. of D.07-09-018, p. 7; Cox Rehr. App. of D.07-09-019, p. 7.) As discussed above, we are modifying D.07-09-018 and D.07-09-019 to delete this requirement. Accordingly, Cox's contention about notice is moot.

### **C. Clarifications**

In addition, we clarify and correct the following inconsistencies and clerical errors in D.07-09-019:

Telecommunications Industry Rule 5.2(i) should be modified so that the word "services" follows the word "detariffed."

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<sup>6</sup> The modifications made herein to D.07-09-018 and D.07-09-019 do not change our determination that only changes to terms and conditions for Basic Service that do not conflict with law or the Commission's decisions or orders are permitted under Tier 1. For instance, there are requirements regarding basic service imposed in prior Commission decisions, such as in *Re Universal Service and Compliance with the Mandates of Assembly Bill 3643* [D.96-10-066] (2006) 68 CPUC.2d 524, that cannot be changed through a Tier 1 advice letter.

Furthermore, the modifications made herein to D.07-09-018 and D.07-09-019 only apply to requirements regarding advice letter filings for basic service terms and conditions. Therefore, the modifications made herein do not affect any other determinations we made in D.07-09-018 or D.07-09-019 that certain advice letters that may have formerly been effective on one-day filing do not qualify for Tier 1 treatment. For instance, the modifications do not affect advice letter filings for basic service rates since we explicitly deferred consideration of this issue to R.06-06-028.



Telecommunications Industry Rule 7.1(5) should be modified to replace the word “regulated” with the word “retail.”

Telecommunications Industry Rule 7.4(3) should be clarified to state that: “a GRC-LEC or an URF Carrier that is an incumbent local exchange carrier” is subject to the application requirement for transfers of control. This clarification is consistent with Telecommunications Industry Rule 7.2(4), which provides that the following matter must be filed under Tier 2: “A request to transfer by a carrier other than a GRC-LEC or an URF Carrier that is an incumbent local exchange carrier.”

### III. CONCLUSION

For the reasons stated above, D.07-09-018 and D.07-09-019 are modified to: (1) delete language requiring URF Carriers to file advice letters with more restrictive terms and conditions for basic service under Tier 3; and (2) clarify language that is inconsistent with the Commission’s determination in these decisions that URF advice letters formerly qualifying for one-day effective filing under the *Phase I Decision* may now be filed under Tier 1 as set forth in GO 96-B, General Rule 7.3.3. D.07-09-019 is also modified for the purpose of clarifying inconsistencies and correcting clerical errors, as set forth below. Rehearings of D.07-09-018 and D.07-09-019, as modified, are denied.

**THEREFORE, IT IS ORDERED** that:

1. D.07-09-018 shall be modified as follows:
  - a. The first bullet point on page 3 is modified to read:  
“All tariff changes to retail service offerings other than basic service rates;”
  - b. The first bullet point on page 14 is modified to read:  
“Changes to services other than basic service rates;”
  - c. The last sentence on page 14 beginning with “As also discussed in our accompanying GO 96-B decision ...” and ending on page 15 with “more restrictive” is modified to read:  
“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 the law, or Commission orders or decisions.”

- d. The second complete sentence on page 15 beginning with “Imposition of more restrictive ...” is deleted.
  - e. The second and third sentences under Section 7.8 on page 76 are modified to read:

“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, such changes may be filed in Tier 1.”
  - f. Conclusion of Law 4 on page 89 is modified to read:

“Changes to basic service terms and conditions that do not conflict with law, or Commission decisions or orders, may be filed in Tier 1.”
2. D.07-09-019 shall be modified as follows:
- a. The last sentence on page 7 beginning with “Tier 1 now includes” and ending on page 8 is modified to read:

“Tier 1 now includes changes by an URF Carrier to a “rate, charge, term, or condition of a regulated service other than Basic Service rates.”
  - b. The second and third sentences of the second paragraph on page 58 are deleted.
  - c. Telecommunications Industry Rule 5.2(i) in Appendix A, Page 7 and Appendix B, Page 8, is modified so that the word “services” follows the word “detariffed.”
  - d. The first sentence of Telecommunications Industry Rule 7.1(5) in Appendix A, Page 9 and Appendix B, Page 11, is modified to replace the word “regulated” with the word “retail.”
  - e. The second sentence of Telecommunications Industry Rule 7.1(5) in Appendix A, Page 9 and Appendix B, Page 11, is modified to read:

“Changes to terms and conditions for Basic Service that do not conflict with law or the Commission’s decisions or orders are permitted.”

- f. Telecommunications Industry Rule 7.4(3) in Appendix A, Page 13 and Appendix B, Page 16, is modified to replace “URF Carrier” with “URF Carrier that is an incumbent local exchange carrier.”
- 3. Rehearing of D.07-09-018, as modified, is denied.
- 4. Rehearing of D.07-09-019, as modified, is denied.
- 5. Rulemaking (R.) 98-07-038 is closed.

This order is effective today.

Dated May 15, 2008 at San Francisco, California.

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