Decision 08-09-015 September 4, 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)

DECISION REGARDING MONITORING REPORTS, RETAIL SPECIAL ACCESS PRICING AND CUSTOMER DISCLOSURE RULES

TABLE OF CONTENTS

Title **Page**

DECISION REGARDING MONITORING REPORTS, RETAIL SPECIAL ACCESS PRICING AND CUSTOMER DISCLOSURE RULES

1. Summary

In initiating the Uniform Regulatory Framework (URF) proceeding, we sought to review the regulatory framework for all telecommunications carriers and to determine the extent to which dramatic changes in the communications market support revising the regulatory framework. As we recognized in the first phase of this proceeding, the market is now far more competitive than it was when we imposed the New Regulatory Framework (NRF) on the incumbent local exchange carriers. In California, we have various competitive alternatives to the traditional wireline incumbent local exchange carriers (ILECs), including numerous wireless carriers; competitive local exchange carriers (CLECs); cable companies that have added Voice over Internet Protocol (VoIP) telecommunications products to yield a "triple play" of voice, video and data offerings; and pure-play VoIP providers that add voice communications services to broadband connections.

Both federal and state policies have changed to recognize the dynamic and competitive nature of the telecommunications market. This Commission has expressed its goal to encourage growth and innovation of services and level the playing field. Consistent with those policies, in URF Phase I, we granted pricing flexibility for most services to the URF Carriers[1] and we found that many of the requirements, such as monitoring reports that the ILECs filed pursuant to NRF, should be eliminated as no longer necessary. We left for Phase II of this

[1] The URF Carriers include the four largest incumbent local exchange carriers, CLECs, and interexchange carriers (IXCs). *See* D.07-08-018.

proceeding, however, specific decisions regarding, among other things, whether additional monitoring reports are necessary; whether retail special access should be deregulated; and whether there is a need for additional consumer protection rules.

This decision addresses those remaining issues in Phase II of this proceeding and finds that: i) there is no need for additional monitoring reports of URF Carriers due to satisfactory information to be obtained from reports by them to the FCC and remaining URF reports; ii) we should not deregulate pricing for retail special access at this time; and iii) there is no need for additional consumer protection rules to govern URF Carriers, given significant actions by this Commission in the last two years in the area of consumer protection initiatives, including cramming and in-language protections, and new enforcement measures.

We affirm the tentative finding of the first phase of this rulemaking that the Commission does not need to adopt new reporting requirements to monitor the industry and may rely instead on carrier reports to the Federal Communications Commission (FCC) and other existing filings by URF Carriers to provide it with sufficient information necessary to meet its statutory obligations and exercise effective regulatory oversight. If certain FCC reports are no longer required in the future, we will require URF ILECs to continue to file the California-specific information from those ARMIS reports pending this

Commission's determination as to the necessity of that information.[2] We note that targeted third-party surveys may be an effective way to monitor industry developments under URF, particularly with regard to affordability of voice services; however, we decline to establish such third-party surveys at this time. Finally, we reiterate that the Commission always has authority to enforce the Pub. Util. Code and its rules and may audit and obtain records from carriers pursuant to Pub. Util. Code §§ 313 and 314 if necessary.

We find that the record does not support a reconsideration of our regulation of special access at this time. Instead, we will observe the pending FCC action on interstate special access prices, terms, and conditions, and may determine whether to revisit this issue in the future. We clarify that our decision with regard to special access pertains to the URF ILECs and that competitive local exchange carriers (CLECs) and interexchange carriers (IXCs) have already had full pricing flexibility. We also clarify that CLECs and IXCs may detariff special access services as discussed below. We note that the deadline for URF Carriers to detariff their existing tariffed services was initially set at 18 months from the effective date of our detariffing decision D.07-09-018. Given some of the clarifications that we have had to make regarding detariffing, we are extending the implementation period for detariffing to September 12, 2009 (24 months from

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[2] We recognize that the FCC granted the petition of AT&T to forbear from enforcement of certain of the Commission's Cost Assignment Rules. *See In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, Petition of BellSouth Telecommunications, Inc., for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos.07-21, 05-342, Memorandum Opinion and Order, FCC 08-120 (AT&T Forbearance Order) (April 2008). As discussed below, we find that

Footnote continued on next page

the effective date of D.07-09-018); to the extent that they seek to detariff existing services, URF Carriers must file to detariff by that date.

We also decline to adopt additional customer disclosure rules beyond those adopted in Decision (D.) 06-03-013, as the Commission has taken several actions since the issuance of our Consumer Protection Initiative in D.06-03-013 to address issues of fraud, consumer education, and enforcement. We believe that our actions in these areas provide sufficient protections for consumers in a competitive environment.

We make these determinations based on our findings in the Phase I decision. The monitoring reports that were collected from the ILECs under NRF focused on data that pertained to rate-of-return or price-cap regulation; today, URF Carriers enjoy pricing freedom for most of their services. Moreover, we initially imposed the requirements for monitoring reports when the ILECs were the only providers offering voice services to consumers; today, consumers receive voice services from traditional landline, but also from wireless services, as well as VoIP providers. One recent survey of the levels of subscription to wireless services indicates that 15.8% of American homes relied only on wireless service (and have cut the cord to their wireline service) during the second half of 2007.[3] Thus, the competitive nature of the market eliminates the need for most regulations; the dynamic nature of the market makes most regulations obsolete

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the FCC's action in this order does not affect our determination to eliminate NRF-specific reports or to not impose additional monitoring reports.

[3] Wireless *Substitution, Early Estimates from National Health Interview Survey July – December 2007*, Center for Disease Control (June 2008). Further, that same survey found that 13.1% of American homes communicated mostly on their wireless phone despite having a wireline phone.

before they can be issued. The Commission has instead focused on developing targeted rules ensuring consumer protection for individuals who have limited English proficiency and on further developing its consumer education program to ensure consumers are aware of the laws and their rights. We have opted for a light-handed regulatory approach that emphasizes consumer empowerment through education while retaining the power to identify and penalize actions that violate our statutes and rules and harm consumers.

2. Procedural History

In D.06-08-030, which concluded Phase I of this Rulemaking (the Phase I decision), we granted carriers broad pricing freedoms concerning almost all telecommunications services, new telecommunications products, bundles of services, promotion, and contracts.[4] We made contracts effective when executed, and, with few restrictions, permitted carriers to add services to "bundles" and target services to specific geographic markets.

In D.07-09-018, we consolidated this proceeding with Rulemaking (R.) 98-07-038 in order to address some of the remaining issues in Phase II of this proceeding; in that decision, we adopted procedures for advice letter filings under the Uniform Regulatory Framework and procedures to detariff services. In D.08-04-057, we approved with modification two advice letters filed by AT&T pursuant to the provisions of the Phase I decision.

[4] We froze rates for basic service subsidized by CHCF-B subsidies, pending further review in R.06-06-028 and found that price caps for basic residential service not subsidized by CHCF-B shall be lifted on January 1, 2009. In D.07-09-020, we permitted an increase in the basic primary residential service rate for Verizon and AT&T, equivalent to the consumer price index rate of inflation, beginning January 1, 2008.

Our earlier decisions left the following issues for resolution in the final phase of this proceeding:

(a) Elimination of Commission-specific reports and their replacement by Automatic Reporting Management Information System (ARMIS) reports, other reports filed by carriers with the Federal Communications Commission, or new Commission-specific reports that can meet a cost-benefit test;

(b) Prices, terms and conditions that apply to retail special access service; and

(c) Determining whether there is any continuing need for customer disclosure rules in addition to the customer disclosure rules adopted in D.06-06-013.[5]

3. Discussion

On March 2, 2007, opening comments on the issues listed above were filed by Cox California Telecom LLC, Time-Warner Telecom of California LP, Pacific Bell Telephone Company, the Division of Ratepayer Advocates, XO Communications Services, Inc., Bell Atlantic Communications, MCI Communications Services, Inc. MCI Metro Access Transmission Services, NYNEX Long Distance Company, TTI National, Inc. Teleconnect Long Distance Services & Systems Company, Verizon California Inc., Verizon Select Services Inc., The Utility Reform Network, SureWest Telephone, the United States Department of Defense, Citizens Telecommunications Company of California Inc., Cricket Communications, Inc., Sprint Communications Company, LP,

[5] *Assigned Commissioner's Ruling and Revised Scoping Memo* (December 21, 2006) pp. 3-5. Other issues identified in this scoping memo have been addressed with in the prior decisions cited above.

T-Mobile, CTIA-The Wireless Association, California Association of Competitive Telecommunications Companies, and Disability Rights Advocates.

On March 30, 2007, reply comments were filed by Pacific Bell Telephone Company, Sprint Nextel, Time Warner Telecom of California LP, Cox California Telecom, LLC, Time Warner Cable Information Services, the Division of Ratepayer Advocates, California Association of Competitive Telecommunications Companies, the United States Department of Defense and all other Federal Executive Agencies, Nextel of California, Inc., Omnipoint Communications, Inc., Sprint Communications Company, L.P., Sprint Spectrum L. P. as agent for Wireless Co., L.P., Sprint Telephony PCS, L.P., The Utility Reform Network, Bell Atlantic Communications, Inc., MCI Communications Services, Inc., MCI Metro Access Transmission Services, NYNEX Long Distance Company, TTI National, Inc., Teleconnect Long Distances Services & Systems Company, Verizon California Inc., Verizon Select Services Inc., SureWest Telephone, Integra Telecom of California, Inc., Pac-West Telecomm, Inc., XO Communications Services, Inc., Citizens Telecommunications Company of California Inc., and CTIA-The Wireless Association.

3.1. Monitoring Reports

3.1.1. Proposals and Comments

In Phase I of this proceeding, we eliminated the monitoring reports imposed on the URF ILECs through the New Regulatory Framework (NRF) and related audits, noting that the NRF reporting requirements make little sense where we are not engaged in ratemaking for the four largest ILECs. We also noted that these NRF reports have not provided much benefit to ratepayers,

particularly in recent years as we moved away from rate-of-return regulation.[6] Given the foregoing, the Commission determined to rely instead on the FCC ARMIS data. As we stated in URF Phase I:

> We expect that companies in a competitive marketplace will respond to market abuse by filing complaints with the Commission or a court.[7]

We further acknowledged, however, that we should consider whether there are any new monitoring reports that the Commission should adopt in a competitive environment under URF. To that end, the assigned Commissioner issued a Ruling seeking review of the reports that carriers currently file with the Commission and the FCC.[8] In conjunction with that Ruling, the Commission's Communications Division held a workshop on December 12, 2006 to discuss with carriers and other parties the form and content of the existing reports and to discuss the information that the reports are designed to capture.[9] Further, in that Ruling, the Commission directed parties to file and serve before January 5, 2007 any proposals regarding additional reports that the carriers should file or whether the carriers should resume filing reports previously discontinued. On December 12, 2006, the Commission's Telecommunications Division held a preliminary workshop regarding monitoring report issues. Parties were asked to

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[7] D.06-08-030, at p. 213.

[8] *Assigned Commissioner Ruling dated November 9, 2006 Directing the Production of Reporting Requirement Related Documents and Setting Schedule for Consideration of Additional Monitoring Reports. See also Assigned Commissioner's Dated November 16, 2006, Ruling Clarifying November 9, 2006 Ruling* (stating that the ruling applies to parties on the service list and clarifying that the issue of reporting requirements will be explored in Phase II of this proceeding).

[9] Pursuant to that November 9 and 16 Ruling, carriers filed lists of reports that they file with the FCC and the Commission.

provide comments on the various reports that they currently file, the costs/benefits of such reports, and the content of such reports.

In the Phase 2 scoping memo dated December 21, 2006, the assigned Commissioner directed parties to address the elimination of Commission-specific reports and their replacement by ARMIS reports, other reports filed by carriers with the FCC, and whether new Commission-specific reports can meet a cost-benefit test.[10] Parties submitted proposals for new monitoring requirements on February 7, 2007. The assigned ALJ held a second workshop on these topics on February 16, 2007, focusing on the costs and benefits of any additional reporting proposals. Although all parties were invited to submit proposals for new or reinstated reports, only the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) did so.

DRA proposed six new monitoring reports to obtain information about service availability, affordability, and competition:

1) A report from each provider indicating by zip code (or Census tract) whether the provider offers local voice service to "residential" and business customers and by what technology; and whether the service provider offers broadband service to residential and business customers and if so, by what technology;
2) Either a price list from each provider including all recurring and nonrecurring rates for stand-alone services and associated fees as well as a list of typical service bundles; or an annual report from each service provider with pricing and related information for each product/service by relevant geographic area;

[10] *Assigned Commissioner Ruling dated December 21, 2006*, *supra*, pp. 3-5.

3) A quarterly report from each service provider of total revenue by product (including service bundles), service volumes by product and average revenue by customer type, to be submitted in electronic format;
4) Reinstatement of the NRF Field Research affordability study with modifications to increase the coverage areas, increase reporting granularity and to include customers subscribing to service providers other than ILECs;
5) Service provider reports regarding the total universe of telecommunications services in California from either:
    a. A supplement to the FCC Form 477 reports, or
    b. Extracts of the E911 databases supplemented with information from the ILECs concerning resold lines.
6) Commission subscriptions to third-party competition and bill survey data to track trends in the market shares of individual service providers (and of categories of providers such as non-cable VoIP and wireless).[11]

DRA further argued that the Commission should require the carriers to post service availability and price information from these reports on a consumer-friendly Web site, such as www.calphoneinfo.com. DRA asserted that the Commission has the authority to impose this requirement on wireless carriers as part of its residual jurisdiction over "other terms and conditions" in a wireless contract. DRA also contended that information supplied by carriers was complementary to, and different from, information obtained from consumers and that the Commission needs both types of information in order to function effectively.

[11] *DRA Proposal* (February 2, 2007), Appendix A.

TURN proposed similar reporting requirements and only differs from DRA's proposal in that it did not propose third-party competition reports or aggregating service/price information on a website:

1) Price data (quarterly reports regarding current prices for various services, including stand-alone residential basic exchange service, Universal Lifeline Telephone Service, other bundles, privacy-related services, and features for individuals with disabilities, by geographic area, including zip codes for each rate zone).
2) Competition and broadband data (service availability and total subscribers by carrier per zip code for both voice and broadband services).
3) Statewide total revenue and total line counts by product type; service volumes by product; and average revenue per customer type.
4) Reinstatement of the Field Research Affordability Study (augmented to procure survey data on the extent of customer use of competitive telecommunications services such as wireless, high speed broadband and video service).[12]

TURN asserted that the most efficient way to track prices is to require carriers to submit quarterly reports on prices. TURN emphasized that if the Commission adopts detariffing, "rate information should be provided by carriers based on their price lists."[13] TURN also asserted that service availability is another important piece of information that the Commission should monitor by requiring carriers to provide data by zip code as to: i) whether the carrier offers local residential voice service; ii) whether the carrier offers ULTS service;

[12] *TURN Proposal* (February 2, 2007), pp. 11-12.

[13] *TURN Proposal* (February 2, 2007) at p. 12.

iii) whether the carrier offers local single-line business voice service; iv) what technology is used to provide each local voice service (circuit switched wireline, VoIP, cable, non-cable VoIP, wireless); v) whether the carrier offers residential broadband service and if so by which technology and the minimum/maximum data speeds; and vi) whether the carrier offers business broadband service and if so by which technology and the minimum/maximum data speeds.

TURN argued that this information must be available on a zip code basis to identify specific offerings in an area and the characteristics of areas.[14] TURN joined DRA in urging for the Commission to reinstate the "Field Affordability" study that is conducted on behalf of the Commission by Field Research for a period of five years after the cap on residential basic exchange rates is lifted.[15]

In both workshops and in their subsequently filed comments, the four large incumbent local exchange carriers (ILECs) argued for the elimination of all state-specific monitoring reports, stating that the commission receives all the information necessary for it to carry out its statutory obligations and exercise effective regulatory oversight from the so-called ARMIS reports and other reports that carriers file with the FCC.[16] The ILECs argued that:

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[14] *TURN Proposal* (February 2, 2007) at p. 19. Although the FCC's Form 477 provides data regarding line counts, it does not provide this information by zip code and TURN suggests that the Form 477 could be modified to provide such information.

[15] *TURN Proposal* (February 2, 2007), at p. 23.

[16] *Opening Comments of Pacific Bell Telephone Company on Phase 2 Issues (Pacific Bell Opening Comments)*, (March 2, 2007) pp. 23-40 ; *Opening Comments of Verizon California Inc. and its Certificated California Affiliates On All Phase 2 Issues Other Than Detariffing (Verizon Opening Comments)*, (March 2, 2007) pp. 8-13; *Opening Comments of SureWest Telephone Company on Phase 2 Issues (SureWest Opening Comments* (March 2, 2007)*)* pp. 5-17; *Opening Comments of Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California on Phase II Issues Other than Detariffing of*

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(1) FCC reports are on-line so that there is no incremental cost to the commission to obtain the information found in those reports;[17]

(2) ARMIS data has been collected for years, so it is relatively easy to identify and analyze trends in the data;[18]

(3) FCC data permits the commission to benchmark and compare the performance of carriers in California with carriers in other states;[19]

(4) FCC reports include data on wireless carriers and other voice service providers not subject to commission jurisdiction;[20] and

(5) Third-party consumer surveys would provide more meaningful information regarding consumer choices and service availability than carrier-generated reports.[21]

CalTel recommended at the second monitoring workshop and in its comments that a third party survey or study should evaluate the competitive nature of the telecommunications market.[22] Cox California Telecom noted in its Phase II comments that there should not be any new reporting requirements unless the reports offer more benefits to the Commission in its regulatory role in

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Decision 06-08-030 and the Revised Scoping Memo (Citizens Opening Comments) (March 2, 2007) pp. 5-21.

17 *Verizon Opening Comments*, p. 10, *Pacific Bell Opening Comments*, p. 37.

18 *Verizon Opening Comments,* p. 10.

19 *Id.,* p. 11.

20 *Ibid.*

21 *Pacific Bell Opening Comments, pp. 23*, 39-40.

22 *Opening Comments of the California Association of Competitive Telecommunications Companies on Elimination of Commission-Specific Reports and Their Replacement by ARMIS Reports, Other Reports Filed by Carriers with the FCC or New Commission-Specific Reports (Phase 2) (CalTel Opening Comments)* pp. 4-5 (March 2, 2007).

this competitive market than costs for providing the reports. Cox supported the CalTel recommendation that the Commission develop third-party studies of consumer attitudes and behavior to monitor the competitive status of the California telecommunications market.[23]

The Joint Wireless Carriers noted that DRA's and TURN's proposed monitoring reports would create significant costs for carriers such as wireless carriers, and that it would be "ironic… if under the banner of supposedly creating more competition, the Commission saddled competitive carriers with burdensome and expensive requirements for reporting data that they do not have to assemble or report today."[24] The Joint Wireless Carriers suggested that the Commission focus on reviewing changes in the industry from a consumer-oriented perspective and that a limited and focused third-party availability/affordability survey might provide the Commission with information to understand how the market is operating.[25] The Joint Wireless Carriers noted that the costs of funding such third-party reports could be funded through existing Commission surcharges.

On April 4, 2008, TURN sent a letter to the assigned Commissioner pointing out that five ILECs, including AT&T and Verizon, had recently petitioned the FCC to be relieved of the obligation of filing ARMIS reports[26] and

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[23] *Cox Opening Comments* (March 2, 2007) at p. 11.

[24] *Joint Wireless Carriers Opening Comments* (March 2, 2007) at p. 5.

[25] *Joint Wireless Carriers Opening Comments* (March 2, 2007) at p. 6.

[26] The Verizon petition went further and asked the FCC to pre-empt all state-imposed reporting and recordkeeping requirements.

that the FCC had opened dockets to consider the issues raised by the petitions.[27] TURN also pointed out that the commission had formally opposed the forbearance petitions in comments filed with the FCC.[28] The TURN letter urged the commission to adopt new state-specific monitoring reports in anticipation of the possibility that the FCC might grant one or more of the forbearance petitions.

On April 11, 2008, AT&T sent a letter to the assigned Commissioner in response to the TURN letter pointing out that in its comments in Phase II it had consistently questioned the value to the commission of relying on ARMIS data. Similarly on April 11, 2008, Verizon submitted a letter to the Assigned Commissioner responding to the TURN letter. Verizon argued that it and other carriers have not sought to eliminate other FCC non-ARMIS reports, including the Form 477, which provides data on intermodal competition. Further, Verizon emphasized that the Commission retains inherent authority to seek additional data from carriers if issues arise in the future and to address those issues through the enforcement process. Verizon also noted that TURN had failed to indicate in its letter that Verizon and other carriers proposed sponsoring a third-party consumer survey to obtain additional information.

3.1.2. No New Reporting Requirements Necessary

We clarify that URF Carriers shall continue to file the existing reports that they indicated that they file with the Commission. Many of these reports are filed pursuant to existing General Orders (*e.g.*, GO 133) or other Commission

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[27] *See* FCC Docket Nos. WC 07-139, WC 07-204, WC 07-07-273.

[28] *Comments of the California Public Utilities Commission and the People of the State of California to the FCC* in WC Docket No. 07-273, February 1, 2008, p. 4.

decisions. However, we determine not to impose new additional reporting requirements on URF Carriers at this time. The purpose of the monitoring reports in the past was to provide the Commission with information to enforce certain rules or requirements governing, among other things, incumbent local exchange carriers' rates and transactions with affiliates. We have not been engaged in rate-of-return regulation of the carriers subject to URF for some time, and in URF Phase I, we granted pricing flexibility for URF Carrier services, with limited exceptions. Because URF Carriers have pricing flexibility for their services and we have determined that there is competition in the URF Carriers' markets, concerns about cross-subsidization of unregulated services with regulated rates do not exist either. Therefore, the purpose of monitoring reports under the URF is less clear than under the prior regulatory framework. We find that in a competitive environment, the Commission is interested in ensuring that it has access to information about whether services are affordable as well as whether carriers are complying with the law and the Commission's rules.

Having considered DRA's and TURN's proposed reporting requirements and the arguments presented on the proposals, we find that these proposed reporting requirements are not justified in light of the costs that would be imposed, particularly on those competitive and wireless carriers that have not had to file such reports previously. Although we agree with DRA and TURN that affordability and competition are areas that we may have an interest in reviewing periodically, we believe that existing information available to the Commission (from advice letters and other sources) and reports filed with the FCC (ARMIS and non-ARMIS) provide us with sufficient information to enforce the law and our rules as well as to monitor the industry.

With regard to the issue of affordability, DRA and TURN expressed concerns that in a detariffed environment, the Commission would no longer be able to monitor the prices of carriers' services. However, even under URF, carriers are still required to file tariffs with the Commission, unless they are detariffing services. URF Carriers may not detariff basic service and therefore, the rates for basic service will continue to be tariffed.[29] To the extent that they file tariffs, the Commission will continue to have information as to the pricing of such services throughout the state. In D.07-09-018, we established detariffing rules for URF Carriers.[30] As a condition of detariffing, we required that carriers at all times and without charge, webpublish and provide without charge via request to a toll free number the applicable retail rates, charges, terms and conditions for any service available to the public on a detariffed basis.[31] Such website postings will enable consumers to obtain this information to make informed choices and will be publicly available so that the Commission may also monitor this information. Therefore, there is no basis for DRA's and TURN's concerns that the Commission will not be able to monitor prices of telecommunications services in California on an ongoing basis under a detariffed environment.[32] Consequently, we do not see a need for detailed price reports as proposed by DRA and TURN.

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[29] Pub. Util. Code § 495.7(b).

[30] *See also* D.07-09-19 (establishing GO 96-B Telecommunications Industry Rules).

[31] D.07-09-018.

[32] The Commission continues to have a duty to ensure that rates are just and reasonable, and to ensure that carriers do not discriminate in their rate, charges and in other respects. (*See* Pub. Util. Code §§ 451 and 453.)

With regard to DRA's and TURN's proposals for detailed information regarding broadband offerings, we have established broadband data gathering requirements for video franchise holders in D.07-03-014 in our Digital Infrastructure and Video Competition Act (DIVCA) proceeding pursuant to Pub. Util. Code § 5960. We most recently adopted additional reporting requirements regarding the speed tiers that franchise holders or their affiliates offer in California.[33] Our rules would track the broadband data collection efforts of the FCC; the FCC recently issued an order establishing detailed broadband data requirements on a census tract basis.[34] The data collection requirements that the FCC imposed would greatly expand the *Form 477* broadband connection reporting requirement to require service providers to submit information pursuant to various speed tiers with new categories for download and upload speeds.[35] The FCC also established that providers shall report, for each Census

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[33] *See* D.08-07-007.

[34] *In Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership,* WC Docket No.07-38, Report and Order and Further Notice of Proposed Rulemaking; FCC 08-89 (Form 477 Order) (2008); and *In Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership,* WC Docket No.07-38, Order on Reconsideration, FCC 08-148 (Form 477 Reconsideration Order) (2008).

[35] *See Form 477 Order*, FCC 08-89, at para. 20. The FCC established the following reporting tiers applicable to both download and upload transfer rates under the new Form 477 collection: (1) greater than 200 kbps but less than 768 kbps; (2) equal to or greater than 768 kbps but less than 1.5 mbps; (3) equal to or greater than 1.5 mbps but less than 3.0 mbps; (4) equal to or greater than 3.0 mbps but less than 6.0 mbps, (5) equal to or greater than 6.0 mbps but less than 10.0 mbps; (6) equal to or greater than

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Tract and each speed tier in which the provider offers service, the number of subscribers and the percentage of subscribers that are residential.[36] Accordingly, the FCC's expanded Form 477 data reporting requirements address a number of concerns that DRA and TURN raised about obtaining information about residential broadband connections as well as the speeds of broadband connections.

The Commission will be collecting similar information in its DIVCA broadband reports from franchise holders. Although there may be concerns that not all carriers will become franchise holders, under our DIVCA framework, we now have authority to collect information from a wider universe of providers than before – namely, cable companies – than prior to the enactment of the DIVCA law.[37] In any event, the FCC will be collecting information from all providers of broadband services in its Form 477 reports. We will be using this information to monitor the deployment of broadband offerings throughout the state, consistent with our goals to promote advanced telecommunications services.[38]

DRA and TURN were also concerned as to whether consumers had access to information about the various service providers and services that are offered

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10.0 mbps but less than 25.0 mbps; (7) equal to or greater than 25.0 mbps but less than 100.0 mbps; and (8) equal to or greater than 100 mbps.

[36] *Form 477 Reconsideration Order*, FCC 08-148.

[37] In addition, the largest URF Carriers (AT&T and Verizon**)** have become franchise holders; as a practical matter, therefore, we will be obtaining broadband subscription information for a significant portion of the state's consumers.

[38] *See also* D.07-12-054 (expressing the Commission's goal to promote deployment of additional broadband within unserved or underserved areas).

in a given area within the state. LECs, such as Verizon and AT&T and numerous competitive carriers, have provided some of this information to the Commission in their annual reports.[39] We believe that this information may be useful to consumers and therefore, the Commission has updated its website to include information regarding the various service providers that are offering "residential voice service" within an area code or county.[40] We do not find, however, that this information must be mandated, as there are a variety of other resources available for consumers to determine whether a given provider serves that area and what services that provider offers.[41] There are limits to the amount of information that the Commission can provide to consumers regarding the various service providers offering telephone service in a given area. The Commission would not obtain this information from (i) providers outside of its jurisdiction or (ii) those it does not regulate. DRA and TURN also proposed that we obtain information about providers' revenues by product or service type, bundles, and by customer type. The Commission requires information about a carrier's intrastate revenues for purposes of its various public policy programs and the Commission User surcharge. However, as discussed above, we are not

[39] The Commission has recently revised its annual report form to seek information from providers as to whether they are providing residential voice service within zip codes. Certificated carriers have voluntarily responded with this information, although some carriers (wireless carriers in particular) have asserted that this information is beyond the Commission's jurisdiction.

[40] http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/carrierlists.htm. This information is compiled from service providers that voluntarily provide information about their services to the Commission.

[41] Consumers are still provided access to the White Pages and Yellow Pages when they relocate. Moreover, many consumers now rely on the Internet to find information about telecommunications choices and offerings.

engaged in ratemaking functions for URF Carriers and do not see a need for this type of detailed reporting.

As for the status of competition, there are various sources from which the Commission can obtain such information. The FCC ARMIS reports and the non-ARMIS reports that are filed with the FCC provide significant and relevant data on local competition (FCC Local Wireline and Wireless Competition Reports); broadband and access lines (Form 477); trends in telecommunications (the Wireline Competition Bureau Statistical Report); and telephone price indices (report from the Industry Analysis Division). These reports monitor availability of different types of telephone service (wireline, wireless), as well as the price trends, and levels of competition – the very areas that DRA asserts that the Commission should continue to monitor.

We recognize that the ILECs have petitions pending at the FCC for forbearance from some of the ARMIS reporting obligations and that the FCC granted AT&T's petition to forbear from some of the FCC's cost assignment rules.[42] Those rules pertain to accounts that AT&T maintained for nonregulated activities, affiliate transactions, jurisdictional separations, and cost apportionment. Because the FCC does not regulate AT&T's interstate services pursuant to rate-of-return regulation, among other things, the FCC found that the enforcement of these rules were not necessary to ensure that AT&T's charges are just, reasonable, and not unjustly or unreasonable discriminatory.[43] The FCC

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[42] *See AT&T Forbearance Order,* FCC 08-120.

[43] The FCC found that other prongs of the forbearance test were also met: enforcement of the regulations were not necessary to protect consumers; and forbearance is consistent with the public interest.

did not, however, grant forbearance generally from Part 32 of its rules and thus other requirements remain in place (such as revenue accounting). The FCC further conditioned its forbearance of the cost assignment rules on certain conditions, including requiring AT&T to file a compliance plan that will explain how it will continue to preserve its accounting system for costs and revenues to ensure that if the FCC seeks such data in the future, it will be available and reliable.[44]

The critical aspect of the FCC's grant of the forbearance petition for our purposes is that the FCC found that the cost assignment rules were no longer necessary to determine whether rates are "just, reasonable, and not unjustly or unreasonably discriminatory" because it was not regulating AT&T's rates by rate of return regulation.[45] We similarly are not engaged in ratemaking for

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[44] *AT&T Forbearance Order,* FCC 08-120, at para. 21. The FCC also required that the compliance plan explain how AT&T will continue to fulfill obligations under the Telecommunications Act of 1996, including sections 272(e)(3) and 254(k). AT&T filed its compliance plan with the FCC on July 24, 2008, and explained that AT&T will continue to comply with Section 272 requirements and use processes to charge affiliates amounts that is no less than the amount charged to unaffiliated interexchange carriers for services; and in the event that it provides in-region, interLATA long distance services on an integrated basis, "impute to themselves an amount for access to telephone exchange service and exchange access that is no less than the amount charged to unaffiliated interexchange carriers for such service." Further, AT&T will comply with Section 254(k) requirements and maintain and provide requested cost accounting information necessary to prove compliance with 47 U.S.C. § 254(k), which prohibits subsidy of services that are subject to competition. AT&T also notes that it will, among other things, continue to maintain USOA books of account for its regulated operating telephone companies that include account-specific investment, expense and revenue data for individual Part 32 accounts and that such data will be available for inspection by the FCC. *See AT&T Compliance Plan*, FCC WC Docket Nos. 07-21 and 05-342 (July 24, 2008).

[45] *AT&T Forbearance Order,* FCC 08-120, at para. 16.

URF Carriers's retail services (with the exception of basic service rates in the interim). The Commission has not, in fact, relied on cost information for the URF ILECs for many years nor does the information gathered in the cost assignment rules provide relevant data that we need today for regulation under URF. Accordingly, we do not believe that the FCC's forbearance from the cost-assignment rules for AT&T requires us to consider new reporting requirements. The FCC's order noted that AT&T "has committed to work with the state commissions in its in-region territory to address state needs" as to information and that AT&T has promised that "total company cost information will remain readily available if needed for valid regulatory purposes."[46]

We reserve the right to reconsider these issues and to revisit the topic at any time. Further, if the FCC should grant other pending future forbearance petitions from ARMIS requirements, we shall require the ILECs to continue to file the California-specific information from such reports with this Commission, until we determine in a new phase of this proceeding that the ARMIS report information is necessary on a going-forward basis for this Commission to achieve its statutory objectives under Pub. Util. Code § 709(a) for assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians, under our uniform regulatory framework.

We adopt this approach in view of the dynamic and rapidly evolving market for voice communications. If the market changes as rapidly in the next decade as it did in the last, it is a virtual certainty that the information we will

[46] *AT&T Forbearance Order,* FCC 08-120, at paras. 34-35.

need to act as a responsible regulator in the future will be significantly different from the information currently gathered either by the FCC or by us.[47] Any state-specific reporting requirement we put in place today is likely to be obsolete tomorrow. Reports from the carriers subject to our jurisdiction will produce a partial and inaccurate picture of the total market and one that is likely to become more inaccurate over time as consumers migrate from traditional landlines to the various unregulated forms of voice communication now available to them.

As most of the parties suggested, one possible area of further data collection may be through the third-party targeted surveys. Such third party surveys may provide useful information regarding consumers' experiences and perceptions with their telecommunications services. However, we will not adopt such third-party surveys at this time. The Commission issues an annual report on subscribership in the state; if the annual report on subscribership reflects a drop in subscribership, the Commission may consider at that time whether to conduct surveys on affordability or to impose new reporting requirements. We believe that the Commission may consider the development of a third-party survey after observing how the market develops.[48]

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[47] On May 20, 2008 the National Center for Health Statistics, a department of the National Institutes of Health, reported that 15.8% of American households were wireless only in the latter half of 2007, up from 6.1% in the same period in 2004.

[48] Further, the Commission is determining whether to conduct surveys on service quality in R.02-12-004; if it does so in that proceeding, those surveys may also be revised in the future to incorporate questions on affordability if and when the Commission finds it necessary. The Commission may also on its own motion open a proceeding in the future to consider whether to conduct surveys as a method of monitoring affordability and the telecommunications market.

In conclusion, we find that it is best to wait and observe how the market develops before considering whether to impose new state-specific reporting requirements on the carriers subject to our jurisdiction or take other steps, such as the consumer surveys suggested by the ILECs, to obtain the necessary information.

3.2. Pricing of Special Access Services

In response to the December 21, 2006 Assigned Commissioner's Ruling and Scoping Memo seeking comment on the prices, terms and conditions that apply to retail special access services, AT&T argues that the market for retail special access is competitive and that its retail private line services should be given the same pricing flexibility as given to other retail business services. AT&T explains that its retail special access offering consists of retail private line service that provides circuits to connect two or more customer locations within a Local Access and Transport Area (intraLATA).[49] AT&T's prices, terms, and conditions for both retail and wholesale special access currently are contained in the same tariffs; it asserts that retail private line is primarily purchased by retail customers such as medium to large businesses and government agencies. AT&T also asserted that there are several competitive companies such as Level 3, and TelePacific, as well as wireless companies, that offer private line services that compete with AT&T's retail private line services.[50] AT&T proposes that its retail private line services should be granted full pricing flexibility under URF; if such treatment were granted, AT&T would move its retail private line services

[49] *Pacific Bell Opening Comments*, p. 5.

[50] *Pacific Bell Opening Comments*, pp. 10-16.

included in its Special Access Tariffs into its existing retail private line tariff, separate from its wholesale private line service.[51]

Verizon argues that there are many substitutes for retail special access services including SONET Ring, LAN interconnect and other interexchange and CLEC providers that offer special access. Given this array of competitors, Verizon argues that there is no longer a need for regulation of special access pricing.[52] Similar to AT&T's proposal, Verizon suggests that the Commission grant full pricing flexibility for retail special access services. Verizon also proposes detariffing for retail special access services, while retaining tariffs for its wholesale special access customers.[53]

Sprint Nextel, Time Warner and XO Communications (Joint Commenters) argue that the Commission should reject full pricing flexibility for retail special access services. These carriers argue that the Commission cannot grant full pricing flexibility for retail special access as the Commission has failed to identify the proper geographic market for determining competition in the special access market; these carriers assert that although there may be competitive options for special access in some areas of the state, such alternatives do not exist statewide.[54] The Joint Commenters specifically point out that the FCC has considered and used the Metropolitan Statistical Area (MSA) as the relevant geographic area for determining the level of competition in order to grant pricing

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[51] *Pacific Bell Opening Comments*, pp. 4-19.

[52] *Verizon Opening Comments*, pp. 2-8.

[53] *Verizon Opening Comments*, p. 3.

[54] *Joint Commenters Reply Comments*, pp. 6-8.

flexibility for special access.[55] The Joint Commenters also contended that the Commission cannot assume that wholesale special access and the unbundled network elements (UNEs) will provide competitors with tools to compete. They argue that if the ILECs get full pricing flexibility they will undercut competitors by offering retail special access at a price less than the price of wholesale special access, as well as offering retail special access exclusively for the benefit of their wireless affiliates.[56]

XO Communications and PacWest argue similarly that retail special access cannot be segregated from wholesale special access services because AT&T's private line services are now offered to both retail and wholesale customers, and that permitting deregulation of retail special access services will allow the companies to discriminate against wholesale customers.[57]

We find that there is not sufficient evidence on the record to compel us to reconsider or change our rules governing ILECs' retail special access services at this time. As pointed out by some of the parties, the FCC considered a specific geographic area in determining whether to grant pricing flexibility for interstate special access. We are not convinced by the arguments that pricing flexibility should be granted on a statewide basis at this time.

The FCC is reviewing its rules governing interstate special access in WC Docket No. 05-25, RM-10593 currently, and in particular has asked parties to comment on the price and availability of interstate special access. Although the

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[55] *Joint Commenters Reply Comments*, p. 7.

[56] *Sprint Nextel Opening Comments* pp. 2-6; *Joint Reply Comments of Sprint Nextel and Time Warner*, pp. 2-12 (March 30, 2007).

[57] *XO Communications Opening Comments* pp. 3-6.

FCC's action focuses on interstate special access services and does not preclude us from considering on our own the prices and terms and conditions of intrastate special access, we believe that it may be useful to review the record in that proceeding before we undertake any significant change in our regulation of retail special access. Accordingly, we decline to revise our regulation of special access at this time, but may revisit this at a later time on our own initiative, or after monitoring the FCC's proceeding on interstate special access as it may provide useful guidance to us.

3.3. Additional Customer Disclosure Rules

We also sought comment on whether there was a need for additional consumer disclosure rules beyond those that we adopted in our Consumer Protection Initiative decision, D.06-06-013 (adopting General Order (GO) 168).

Both DRA and TURN argue that GO 168 does not provide sufficient customer disclosure rules. DRA noted that, in an environment without tariffs, it is unclear what basis a consumer would have to bring a complaint or challenge regarding rates, terms, and conditions. DRA argues that numerous pieces of information should be available to consumers at carrier websites, particularly in an environment where services are detariffed.[58] Among its proposed disclosure requirements are the following, in 10 point font: current rates and charges for all services and technologies; current rates or fees by geographic region; clear statement of the billing process; clear explanation of the fees, taxes, surcharges that appear on bills; and various other terms and conditions related to obtaining service from a carrier. DRA also proposes detailed rules governing carrier communications with customers.

TURN asserts that many of the Pub. Util. Code provisions that the Commission cites in D.06-06-013 are not specific enough to allow a consumer to bring a complaint at the Commission or to a court; and that the Commission should define the scope of any "customer disclosure" requirements. TURN notes that, if the Commission were to eliminate existing customer disclosure requirements, it must be clear as to the process and procedure and which notices are no longer mandated.[59]

TURN also argues that," to the extent that the Commission moves forward with the goal of eliminating certain customer disclosure requirements … the staff, perhaps with the help of the parties to the proceeding, prepare a list of all Commission regulations and requirements that would be subject to this review."[60] TURN also notes that the Commission cannot make a final determination on this issue until it completes its rulemaking addressing the needs of limited English proficient customers.

The carriers argue that there is no need for additional consumer protection rules. AT&T asserted that the Commission adopted D.06-03-013 based on the Commission's findings of a dynamic and competitive telecommunications environment and that those rules already accounted for a competitive market.[61] SureWest asserted that the Commission properly chose to implement a bill of rights that emphasizes the right to disclosure, without adopting prescriptive disclosure rules and argued that DRA's proposed disclosure requirements may

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[58] *DRA Opening Comments*, Appendix F.

[59] *TURN Opening Comments*, at p. 13.

[60] *TURN Opening Comments*, at p. 15.

[61] *AT&T Reply Comments* at pp. 15-18.

violate the First Amendment.[62] Cox and Time Warner asserted that revenue data from carriers is not useful and that carriers vary in size, and market territories so that revenue levels will not adequately reflect competition levels.[63] CTIA argued that DRA has provided no basis to reconsider the Commission's decision in D.06-03-013 to emphasize education and not to impose prescriptive disclosure requirements, and that the Commission should focus instead on expanding its consumer education website.[64] In response, TURN refuted the carriers' arguments and noted that GO 168 (adopted in D.06-03-013) only offered principles and no enforceable rights.[65]

We find that it is not necessary at this time to establish new consumer protection disclosure requirements, in light of the extensive actions we have taken pursuant to D.06-06-013 to ensure consumers are educated, and protected from fraud and bad actors. D.06-06-013 established the Consumer Protection Initiative, which established 23 initiatives for the Commission in the areas of consumer education, fraud prevention/enforcement, and complaint resolution. Since the decision was adopted, the Commission has completed most of the listed initiatives.

Among other things, the Commission established a consumer website – www.calphoneinfo.com, launched an extensive media and bill fair outreach effort to educate consumers; improved its consumer complaint resolution database, added additional consumer representatives to its Consumer Affairs

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62 *SureWest Reply Comments* at pp. 14-17.

63 *Cox and Time Warner Reply Comments* at p. 4.

64 *CTIA Reply Comments* at pp. 10-12.

65 *TURN Reply comments* at p. 27.

Bureau; and established a Telecommunications Fraud Unit focusing on fraud issues and working jointly with the Attorney General's Office on cases. In addition, the Commission has initiated the LEP proceeding (R.07-01-021), in which it adopted rules requiring telecommunications carriers that market in a language other than English to provide certain customer support in that non-English language. (*See* D.07-07-043.) The Commission is also considering currently in R.00-02-004 whether to adopt any reporting requirements governing cramming complaints.

Moreover, to the extent that parties expressed concerns about the lack of information and protection that consumers may experience in a detariffed environment, in D.07-09-018, we established specific rules and conditions for detariffing. Specifically, we required carriers that detariff services to post on their websites the generally available terms and conditions related to those detariffed services.

Finally, we reject the assertions that without detailed new disclosure requirements, consumers will be unable to enforce their rights or that the Commission cannot enforce statutes. Under Pub. Util. Code § 701 and California Constitution, Article 12, Section 6, the Commission has statutory and constitutional authority to regulate both wireline and wireless carriers with regard to consumer protection matters, and will continue to enforce the law vigorously. Recently, in D.08-04-057, as part of our consideration of whether to modify an underlying enforcement decision, we required AT&T to make additional consumer disclosures in conversations between Customer Service Representatives and consumers, as well as to post information on its Web site in accordance with the requirements of Pub. Util. Code § 2896(a).

For the foregoing reasons, we believe that no further disclosure rules are necessary at this time.

4. Comments on Proposed Decision

The proposed decision (PD) of Commissioner Rachelle B. Chong in this matter was mailed to the parties in accordance with § 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. On July 21, 2008, opening comments on the proposed decision were received from Cox California Telcom, LLC, (Cox) the Division of Ratepayer Advocates (DRA), Verizon entities consisting of Bell Atlantic Communications, Inc., MCI Communications Services, Inc., MCImetro Access Transmission Services LLC, NYNEX Long Distance Company, TTI National, Inc., Teleconnect Long Distance Services & Systems Company, Verizon California Inc. and Verizon Select Services Inc. (collectively, Verizon), U.S. Department of Defense and All Other Federal Executive Agencies (DOD), Disability Rights Advocates and The Utility Reform Network (TURN), Pacific Bell Telephone Company (AT&T), Sprint entities consisting of Nextel of California, Inc., Sprint Communications Company, L.P., Sprint Spectrum L.P. as agent for Wireless Co, L.P. (U 3062 C) and Sprint Telephony PCS, L.P. (U3064) (collectively Sprint/Nextel), Telecom of California L.P. (TimeWarner) and SureWest Telephone (SureWest).

On July 28, 2008, reply comments were received from Disability Rights Advocates, Verizon, TURN, CTIA-The Wireless Association (CTIA), DRA, AT&T, Sprint/Nextel, TimeWarner, Cox and SureWest.

The comments generally focus on the following issues:

(a) AT&T, Verizon, Cox, Sprint/Nextel, TimeWarner, CTIA and SureWest support the findings and conclusions of the proposed decision except that AT&T and Verizon

dispute the decision's conclusion that no further changes in the rules regarding retail special access services are required at this time.

(b) Disability Rights Advocates, DOD, DRA and TURN dispute the proposed decision's conclusion that no further monitoring reports or additional customer disclosure rules are required at this time. They take no position on retail special access.

4.1. Monitoring Reports

With regard to the need for additional monitoring reports, DRA[66] and Disability Rights Advocates and TURN[67] specifically argue that the reports filed with the FCC (ARMIS and non-ARMIS) and information contained in advice letter filings, and available from other sources such as carrier web sites, is inadequate. DRA argues that the PD fails to justify the "wait and see" approach and these consumer groups therefore urge the Commission to conduct an affordability study similar to the Field Affordability Study, which they assert will enable the Commission to understand income disparities and geographic diversity and the effects of increasing prices.[68] DRA asserts that the PD fails to ensure consumers that the Commission will monitor affordability of services.[69]

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[66] *Comments of the Division of Ratepayer Advocates on Proposed Decision Regarding Monitoring Reports, Retails Special Access Pricing and Customer Disclosure Rules July 21 2008* (DRA Opening Comments on PD) pp. 5-9.

[67] *Comments of The Utility Reform Network and Disability Rights Advocates on Proposed Decision Regarding Monitoring Reports, Retail Special Access Pricing and Customer Disclosure Rules July 21, 2008* (TURN/Disability Opening Comments on PD) pp. 2-8.

[68] *TURN and Disability Opening Comments on PD* at pp. 3-4; *DRA Reply Comments on PD* at p.4.

[69] *Comments of the Division of Ratepayer Advocates on Proposed Decision Regarding Monitoring Reports, Retails Special Access Pricing and Customer Disclosure Rules July 28, 2008* (DRA Reply Comments on PD) at p. 1.

DRA continues to assert that the Commission should adopt its monitoring report proposal, comprised of six reports that would provide information on service availability; prices; revenues; and line counts.[70] DOD/FEA supports DRA's monitoring proposals.[71] DRA asserts that the PD fails to cite record evidence of real or burdensome costs associated with DRA's and TURN's monitoring proposals.[72]

DRA also asserts that the PD's reference to the Commission's jurisdiction over VoIP providers is incorrect and should be deleted.[73]

Finally, although DRA and TURN assert that the ARMIS Reports do not provide useful information, they also argue that, in the event that the FCC grants pending forbearance petitions filed by AT&T and Verizon for ARMIS filings, the ILECs should be required to continue to file with this Commission the California-specific information that would have appeared on those ARMIS reports (including national or regional data if there is no California-specific reporting on a particular item).[74]

The carriers dispute these assertions. CTIA notes that DRA's monitoring proposal would require wireless carriers to provide the Commission with detailed reports that "would require a level of detail which far exceeds the type

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[70] *DRA Opening Comments on PD* at p. 9.

[71] *Comments of the United States Department of Defense and All other Federal Executive Agencies on Proposed Decision Regarding Monitoring Reports, Retail Special Access, and Pricing and Customer Disclosure Rules, July 21, 2008 (*DOD/FEA Opening Comments on PD) at p. 4.

[72] *DRA Opening Comments on PD* at p. 9.

[73] *DRA Opening Comments on PD* at pp. 12-13.

[74] *DRA Opening Comments on PD* at p. 6; *TURN Reply Comments on PD* at p. 3.

of information which a wireless carrier might track or report or otherwise post on its website" and refutes DRA's contention that this information is on hand with the wireless carrier or necessary for compliance with the CTIA Consumer Code.[75] AT&T notes that DRA has failed to acknowledge that there are already many reports that the carriers are still required to file with this Commission.[76] AT&T points out that the Commission determined that sufficient competition exists to discipline rates and therefore, DRA and TURN fail to justify how their proposed monitoring reports would provide data that would be useful.[77]

As for the retention of ARMIS reports, Verizon argues that the benefits of continued reliance on ARMIS reports is "questionable."[78] AT&T notes that the cost assignment rules are a return to rate-of-return regulation and fail to provide useful data under URF, and that the PD's approach to the ARMIS reports is well-reasoned and the Commission can consider new requirements if circumstances later warrant it.[79]

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[75] *CTIA Reply Comments on PD* at pp. 2-3. CTIA asserts that the CTIA Consumer Code does not require tracking or disclosing the type of detailed and potentially proprietary information suggested by DRA and TURN.

[76] *Reply Comments of Pacific Bell Telephone Company D/B/A AT&T California (U 1001 C) on Proposed Decision Regarding Monitoring Reports, Retail Special Access Pricing and Customer Disclosure Rules July 28, 2008* (AT&T Reply Comments on PD) at p. 1 (stating that the "PD correctly recognizes that (1) URF carriers are already subject to existing Commission reporting requirements, which will continue; (2) other existing sources provide sufficient information to monitor the industry; and (3) there is no valid justification for adopting new reporting requirements such as those proposed by DRA and TURN.").

[77] *AT&T Reply Comments on PD* at p. 4.

[78] *Reply Comments of Verizon California Inc. (U 1002 C) on the Proposed Decision of Commissioner Chong Dated July 1, 2008* (July 28, 2008) (Verizon Reply Comments) at p. 4.

[79] *AT&T Reply Comments on PD* at p. 2.

Arguments that new monitoring reports are necessary to monitor rates are unfounded. These assertions fail to recognize that the Commission obtains information about basic service rates through tariff filings and will continue to do so, even after the rate caps for basic service are lifted. Therefore, nothing has changed in terms of the Commission's ability to monitor basic service rates. Moreover, as stated above, URF Carriers that detariff services will be required to provide information about rates, terms, and conditions on their websites, and a toll-free number for consumers to call to obtain a copy of rates, terms, and conditions. Therefore, this information will be available and, if anything, more easily accessible to consumers than they are currently – given that most consumers are likely unaware of even the existence of tariffs or how to read them. Moreover, URF Carriers are still required (even under detariffing) to provide notice to consumers as to increases in rates or imposition of more restrictive terms and conditions. We encourage URF Carriers to provide notice to our staff in Consumer Affairs Bureau and Communications Division of such rate increases or more restrictive terms and conditions so that they are informed of these changes and may respond to consumer inquiries more adequately.

Moreover, we stated in D.06-08-030 that we would consider whether the benefits of the proposed monitoring reports exceed their costs. DRA's and TURN's proposed monitoring reports would require detailed information on a zip code basis regarding, among other things, the various types of local voice services that a provider offers to residential and/or business customers and by what technology (*e.g.*, wireline, cable, non-cable VoIP, wireless); price lists for all recurring and non-recurring rates for stand-alone services and associated fees; and quarterly reports of total revenues by product type, service volumes, and average revenue by customer type. Currently, competitive, cable, and wireless

carriers are not required to track any detailed information along these lines. These proposals would therefore require all carriers to incur significant costs to establish reporting systems and impose significant burdens on competitors. DRA and TURN failed to identify the specific benefits that would result from this information that the Commission cannot already obtain from existing tariffs, advice letter filings, carrier notices and website postings. Further, the FCC publishes reports that provide information on telephone subscribership, and telephone penetration by income by state; these reports provide state-specific data on affordability and provide information about trends in pricing.[80] The Commission can always obtain additional data from providers as it deems necessary if it becomes concerned with affordability of rates.[81]

As for concerns that the Commission should monitor competition in the marketplace, the Commission has the ability and authority to obtain information as it believes necessary on an ongoing basis. In addition, the FCC's reports on wireline and wireless competition as well as the Form 477 reports that all providers are required to file provide substantial data on the level of competition in the wireline, wireless, and broadband markets. The fundamental conclusion of Phase 1 of this proceeding is that the market for telecommunications services in the service territories of the state's four large incumbent local exchange

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[80] *See, e.g.*, *Telephone Penetration by Income by State*, FCC Industry Analysis and Technology Division Report (Mar. 2008); *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service*, FCC Industry Analysis and Technology Division (2007).

[81] We note that we are addressing the issue of affordability of basic service rates in R.06-06-028. To the extent that the parties assert that an affordability study must be done of basic service rates, the appropriate forum for determining that issue is in that proceeding.

carriers is competitive. In a competitive market, as we remarked in the Phase 1 decision, "the rates of the market participants are disciplined by each other's offerings."[82] DRA appears to believe that any increase in the price of any service offering is evidence of "market failure."[83] This comment fundamentally misunderstands the operation of markets. Market failure is present only if a seller can unilaterally raise its prices without losing customers. In the competitive market that now exists in California, price increases by the state's ILECs have been accompanied by dramatic losses in access lines.[84] Customers are migrating in large numbers from wireline to wireless phones or VoIP-based telephony to take advantage of the convenience, enhanced features, and/or lower prices offered by the non-wireline service providers.

As for the question of whether the ILECs should continue to file ARMIS Reports even if the FCC grants pending or future forbearance petitions, we will revise the Proposed Decision to require the ILECs to file the California-specific information from the ARMIS reports with this Commission, until we determine in a new phase of this proceeding that the ARMIS report information is necessary on a going-forward basis for this Commission to achieve its statutory objectives under Pub. Util. Code § 709(a) for assuring the continued affordability and

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[82] D.07-09-018, p. 28.

[83] *DRA Opening Comments on PD*, p. 3.

[84] *See Residential Telephone Subscribership and Universal Telephone Service Report to the Legislature,* California Public Utilities Commission (June 2008) (noting that since 2001, California's largest ILECs have lost 25% of their embedded wireline customer base as a result of migration to broadband DSL and cable, as well as substitution of VoIP and wireless for wireline voice services). This report finds that there are "now more wireless than wireline subscribers in California, a number that has increased over three-fold since 1999." *See id*. at p. 8.

widespread availability of high-quality telecommunications services to all Californians, under our uniform regulatory framework.

4.2. URF Special Access

The ILECs object to the PD's finding that there is insufficient information in the record to determine whether to grant full pricing flexibility for retail special access services and assert that, if the Commission believes that there is an insufficient record, it should specify what additional information is necessary for determining the issues.[85] AT&T also requests that the Commission clarify what it means by "retail special access;"[86] in particular, whether the PD's determinations as to "retail special access" apply only to ILEC retail special access and not to offerings by CLECs and IXCs.[87] Verizon argues that, because CLECs and IXCs have had pricing flexibility for their special access services, the Commission's determination to "carve out" special access services from the detariffing authority in D.07-09-018 should apply only to ILEC-provisioned special access services and not to CLECs and IXCs.[88]

The competitive carriers, including Sprint-Nextel, TimeWarner, and Cox, support the PD's conclusion that the Commission should not revise the pricing rules governing retail special access at this time. Sprint-Nextel and TimeWarner further assert that *all URF Carriers*, including CLECs and IXCs are prohibited

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[85] *Opening Comments of Verizon California Inc. on Proposed Decision of Commissioner Chong Dated July 1, 2008* (July 28, 2008) (Verizon Opening Comments on PD) at pp. 2-3; *Comments of Pacific Bell Telephone Company D/B/A AT&T California (U 1001 C) on Proposed Decision Regarding Monitoring Reports, Retail Special Access Pricing and Customer Disclosure Rules July 21, 2008* (AT&T Opening Comments on PD) at pp. 4-5.

[86] *AT&T Opening Comments on PD* at p. 2.

[87] *Verizon Opening Comments on PD* at pp. 4-5; *AT&T Opening Comments on PD* at p. 2.

from detariffing retail special access at this time, as the URF Phase II Decision D.07-09-018 carved out consideration of retail special access from detariffing.[89] Accordingly, they assert that the Commission should reject the ILECs' arguments that their CLEC/IXC affiliates should be allowed to detariff retail special access. Sprint Nextel and Time Warner express concerns that, if the ILECs' CLEC and IXC affiliates were able to offer special access on a detariffed basis, the ILECs would be able to enter into "special pricing deals for favored customers to their CLEC affiliates, for service on a discriminatory basis."[90]

4.2.1. ILEC Special Access

We clarify that the PD's reference to "special access" in this proceeding is a reference to the *ILECs*' offering of non-switched lines dedicated to a customer's use between two points.[91] The Commission initially opened the URF proceeding to examine the regulatory framework for the URF ILECs; in our subsequent decision D.07-09-018 on detariffing and advice letters, we defined "URF Carriers" to encompass the four largest ILECs, as well as CLECs and IXCs, for purposes of developing uniform detariffing and advice letter rules that would govern those carriers. However, our consideration of special access was limited to the ILECs' offering of special access.[92] Because we are maintaining our

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[88] *Verizon Opening Comments on PD* at p. 5.

[89] *Sprint Nextel and TimeWarner Opening Comments on PD* at pp. 3-4.

[90] *Id*. at p. 4.

[91] *See, e.g., Verizon Opening Comments* (Mar. 2, 2007) at p. 3 and *Tanimura Phase 2 Opening Declaration* at para. 15.

[92] The ILECs are the only carriers that have pricing restrictions on special access services and therefore, are subject to some Commission oversight over their prices for special access. Therefore, our consideration of whether to grant full pricing flexibility for special access could only apply to ILECs.

pre-existing treatment of special access services, ILECs shall continue to comply with the pricing floors or ceilings that were established previously for each carrier. CLECs and IXCs have had full pricing flexibility for their services, and they shall continue to have such pricing flexibility.

We reject arguments that the record does not support our determination not to revise our pricing rules for retail special access at this time.[93] As noted by Sprint-Nextel and Time Warner (Joint Commenters) in the proceeding, we should seek additional consideration regarding the geographic market for full pricing flexibility of special access services.[94] The existence of competitors throughout the state may not establish statewide competition for special access services. We also wish to explore the claim that predatory pricing may result from the grant of pricing flexibility for ILECs' special access services to business enterprise customers even though competitors may obtain access to UNEs.[95] In URF Phase I, we made our determination to grant pricing flexibility for ILECs' services based on the existence of competition, including competition by carriers using UNEs and special access services. Before granting pricing flexibility, we would like to explore further if changing existing pricing rules for ILECs' special access services could affect this level of competition. We find, therefore, that

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[93] AT&T seeks confirmation that our reference to "retail" special access means those services that are sold to business enterprise customers – and not other carriers. *See AT&T Opening Comments on PD* at p. 3. We clarify that "retail" special access refers to special access services that are sold to end-user customers. However, we also note that regardless of whether special access services are sold to end-users or other carriers, there should not be use or user restrictions placed on the offering of the service.

[94] *Joint Reply Comments of Sprint-Nextel and Time Warner* (Mar. 30, 2007) at p. 7.

[95] *See Joint Reply Comments of Sprint Nextel and Time Warner* (Mar. 30, 2007), at pp. 2-12.

there is not enough evidence to reconsider pricing rules for ILEC special access at this time but we may reconsider this issue in the future.

4.2.2. Detariffing of Special Access Offered by CLECs or IXCs

As for detariffing of special access services, we clarify that because this decision applies only to ILECs' special access services, nothing prohibits a CLEC or an IXC from seeking to detariffing their special access services. We intended to carve out special access and resale services from detariffing in D.07-09-018:

> 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.

D.07-09-018 at p.60. However, as discussed above, our reference to "reform of retail and resale special access" was intended to focus on ILECs' special access services – not CLECs or IXCs.[96] Therefore, a CLEC or IXC may detariff their special access offerings.

Sprint Nextel and Time Warner argue that, because the Commission did not grant full pricing flexibility for special access in URF Phase I, D.06-08-030,[97] CLECs and IXCs are also barred from detariffing their special access services. We clarify that our reference to services that were "not granted full pricing flexibility in D.6-08-030" was intended to restrict carriers from detariffing services that are subject to pricing restrictions. Because CLECs and IXCs have already had full pricing flexibility for their services, they may currently detariff

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[96] CLECs and IXCs have already had full pricing flexibility for these services.

[97] We established in D.07-09-018 that detariffing was available for all URF Carriers' retail services, except for certain categories, including services that were not granted full pricing flexibility in D.06-08-030.

their special access services. We further note, however, that the CLECs and IXCs should not impose use or user restrictions on their service offerings, as such practice would be inconsistent with Pub. Util. Code § 453.

The deadline for URF Carriers to detariff their existing tariffed services was initially set at 18 months from the effective date of our detariffing decision D.07-09-018. Because of some of the uncertainty regarding detariffing of services, such as special access, and in light of our clarifications above, we are extending the implementation period for detariffing of eligible services to September 12, 2009 (24 months from the effective date of D.07-09-018); to the extent that they seek to detariff existing services, URF Carriers must file to detariff by that date.

4.3. Consumer Disclosure Requirements

With regard to additional customer disclosures, both DRA and TURN appear to believe that customers are unable to make informed choices among providers unless the Commission mandates a host of new disclosures and sets the mechanism by which those disclosures should be made. Both parties reference our recent decision to require AT&T to make certain disclosures regarding stand-alone basic service on its web site.[98] We imposed this requirement on AT&T as a corrective action to past abusive behavior. There is no evidence in the record of this proceeding that any other carrier required this type of remedial sanction. And as we noted in that decision, we will not hesitate to impose similar sanctions on similar conduct by other carriers.

In response to TURN's comment that the proposed decision "could reasonably be interpreted to suggest that the Commission would eliminate

existing consumer protection and disclosure rules beyond those contained in G[eneral] O[rder] 168,"[99] we clarify that this decision is not intended to reduce or replace any existing customer disclosure rules. We decline to adopt additional rules but we do not alter the framework of rules currently in place.

TURN argues that "[i]t is factually incorrect to cite to '23 initiatives' generated from D.06-03-013 as sufficient to protect consumer interests."[100] To the same effect, DRA argues that "[t]he PD fails to provide a rational basis for concluding that the comprehensive consumer protection regime in D.06-03-013 is sufficient."[101] On the contrary, D.06-03-013 was based on an extensive record, compiled over a period of years, and carefully reviewed in the decision, including more than 50 pre-existing statutes, decisions and rules mandating various consumer disclosures, all of which remain in place following adoption of that decision.[102] Both TURN and DRA also recognize that significant consumer protection initiatives undertaken following the adoption of D.06-03-013 are still in the process of implementation, rendering any judgment of insufficiency premature.

With the exceptions of the revisions discussed above, we decline to change the decision.

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[98] D.08-04-057.

[99] *TURN/Disability Opening Comments on PD*, p. 9.

[100] *TURN/Disability Opening Comments on PD*, p. 10.

[101] *DRA Opening Comments on PD*, p. 14.

[102] D.06-03-013, Appendix D.

5. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Karl Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. All interstate carriers currently file multiple reports with the FCC including ARMIS reports.

2. In Phase I of this proceeding, the Commission determined that most reports previously filed by carriers subject to state regulation, including so-called NRF-specific reports, were no longer necessary to the Commission's discharge of its statutory duties in a competitive market.

3. The Commission is able to obtain timely information about changes in the pricing of tariffed services from advice letters filed by carriers.

4. The Commission is able to obtain timely information about the nature and price of detariffed services from carrier-specific price lists posted on carriers' websites, as required by our detariffing rules.

5. The Commission will be able to obtain information about the status of competition through the carriers' filings of FCC ARMIS and non-ARMIS Reports.

6. The Commission will obtain detailed information about broadband subscription through the DIVCA Reports as well as through reports filed with the FCC.

7. The FCC has opened dockets to consider petitions from incumbent local exchange carriers requesting forbearance from the requirement of filing one or more ARMIS reports.

8. The Commission has opposed the forbearance petitions in comments filed with the FCC.

9. The FCC is reviewing the issue of interstate special access in WC Docket No. 05-25, RM-10593.

10. CLECs and IXCs have already had pricing flexibility for special access services.

11. The Commission adopted a comprehensive consumer protection regime in D.06-03-013.

12. The Commission established additional consumer protection rules in its LEP proceeding R.07-01-021.

13. The Commission is considering additional consumer protection rules in its cramming docket R.00-02-004.

14. The Commission enforced § 2896(a) of the Pub. Util. Code by requiring additional consumer protection disclosures in a specific case.

Conclusions of Law

1. ARMIS and other reports filed with the FCC, together with data gathered by Commission staff and advice letters that continue to be filed with the Commission, provide adequate information for the Commission to meet its statutory obligations and exercise effective regulatory oversight.

2. No additional monitoring reports should be required of URF Carriers at this time.

3. The Commission should not deregulate retail special access at this time.

4. In D.07-09-018, we stated that services that were "not granted full pricing flexibility in D.6-08-030" are not eligible for detariffing; that sentence was intended to prevent URF Carriers from detariffing services that are subject to pricing restrictions. We did not intend to prevent URF Carriers from detariffing retail services that have full pricing flexibility.

5. IXCs and CLECs may detariff their special access services, but may not impose use or user restrictions on such service offerings.

6. No additional consumer protection disclosures are required at this time.

O R D E R

IT IS ORDERED that:

1. No additional monitoring reports are required of any carrier subject to Commission jurisdiction at this time.

2. There are no changes in the Commission's pricing regulations for retail special access services at this time.

3. No additional consumer protection disclosures are required at this time.

4. The deadline for Uniform Regulatory Framework Carriers to file to detariff their existing services is extended to September 12, 2009.

5. If the Federal Communications Commission grants the pending or future Automatic Reporting Management Information System (ARMIS) report forbearance petitions, the incumbent local exchange carriers are required to continue to file with this Commission the California-specific information from the ARMIS reports, until we determine in a new phase of this proceeding that the ARMIS report information is necessary on a going-forward basis for this Commission to achieve its statutory objectives under Pub. Util. Code § 709(a) for assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians, under our uniform regulatory framework.

6. Rulemaking 05-04-005 is closed.

This order is effective today.

Dated September 4, 2008, at San Francisco, California.

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

I will file concurrence.

/s/ DIAN M. GRUENEICH
Commissioner

Uniform Regulatory Framework Phase II
Concurrence of Commissioner Dian M. Grueneich

This decision addresses the issues of special access, consumer protections, and monitoring. I support the decision's finding that the Commission should not deregulate pricing for retail special access. I agree that there is insufficient evidence to compel us to change our current rules. While modifications made to the decision addressed some of my concerns on the issues of monitoring, I remain troubled by other provisions in the decision regarding monitoring as well as a lack of further consumer protection.

In 2006, when the Commission adopted its Consumer Protection Initiative, I dissented because it did not contain sufficient requirements to protect consumers and instead relied overwhelmingly on voluntary actions by telephone companies and transferred the responsibility of educating consumers from the carriers to the Commission and consumers themselves. While today's decision falls under the Uniform Regulatory Framework proceeding, it also serves to further implement the Commission's current policy to use education in place of regulation to protect consumers. As in 2006, I am disappointed to find that there are no specific recommendations for additional consumer protections in this decision, especially in light of detariffing actions by the carriers.

Regarding monitoring issues, I voted to support the Phase I decision in the Uniform Regulatory Framework proceeding because I agreed that the Commission needed to simplify and modernize California's outdated regulatory framework. But I was concerned about a lack of safeguards in the decision, especially for low income customers. Once again my concern

lies with safeguards for consumers. The Commission continues to move, in my opinion, too far away from its monitoring responsibilities. In order to ensure that our policies and processes are working, we must require reporting of the information we need to judge performance and consumer protection.

I agree with the decision's finding that current reports filed with the Federal Communications Commission (FCC), together with data gathered by Commission staff, provide adequate information for the Commission to meet its statutory obligations … not complete, but adequate. More importantly, I find unconvincing carrier statements that these same reports that two years ago the carriers placed such a profound value to the commission have suddenly become outdated and of little to no value to the Commission. I am pleased that -- at this time -- we are not persuaded by the carriers' statements and that the decision requires carriers to continue providing ARMIS reports to the Commission should the FCC forbear from any of these reports. The ARMIS data, while not a complete picture, provides us with a snapshot to look at the telecommunications industry in California. At the very least, we need this snapshot to perform our basic monitoring responsibilities.