



*DRA*

*Division of Ratepayer Advocates*

**Mark W. Toney, Ph.D.**  
Executive Director

711 Van Ness Avenue  
Suite 350  
San Francisco, CA 94102  
Tel: (415) 929-8876  
Fax: (415) 929-1132  
[www.turn.org](http://www.turn.org)

**Dana S. Appling, Director, DRA**  
California Public Utilities Commission

505 Van Ness Avenue  
San Francisco, CA 94102  
Phone: (415) 703-2544  
Fax: (415) 703-2057

<http://dra.ca.gov>

April 1, 2009

John Leutza  
Communications Division  
California Public Utilities Commission  
505 Van Ness Avenue, Room 3210  
San Francisco, California 94102

Re: DRA/TURN Comments on Proposed Resolution T-17203 (re AT&T California's Advice Letter 33423 – Detariffing)

Dear Mr. Leutza:

Pursuant to the March 17, 2009 Notice of Availability, the Commission's Division of Ratepayer Advocates ("DRA"), and The Utility Reform Network ("TURN"), submit the following comments on the proposed Resolution T-17203, which would approve AT&T California's ("AT&T") Advice Letter 33423 ("AL").

As noted in the proposed Resolution, AT&T's original AL 33423 attempted to detariff over 90 of its retail telecommunications services, and replace those with a residential service agreement (RSA) and Guidebook which imposed in many cases more restrictive terms and conditions on consumers. The RSA was not part of the

AL, thus unjustifiably attempting to move consideration of those terms and conditions beyond the purview of this Commission.

DRA and TURN protested the AL (Joint Protest) on September 18, 2008. At least partly as a result of that Joint Protest and concerns expressed by Commission staff, AT&T has revised its detariffing request and RSA, reportedly to remove some of the more onerous and illegal terms and conditions, including the attempt to detariff portions of Basic Service and to impose limits on arbitration rights.

We say “reportedly,” because AT&T still has not provided DRA or TURN with a final version of the RSA. While we appreciate Commission staff’s work with AT&T to revise the documents and mitigate customer harm and confusion, other interested stakeholders have had little to no insight into the process or the final result of changes to the RSA or Guidebook.<sup>1</sup> This is the crux of the problem: the Commission has allowed AT&T to remove the terms and conditions for most of its services from its tariffs, so that the Commission (as well as its Division of Ratepayer Advocates and outside groups like TURN) will have little direct knowledge of what terms AT&T is in fact imposing on its residential and small-business customers, especially if those terms are constantly changing.

In the proposed Resolution, the Commission abjures responsibility for such terms and conditions:

Consistent with our conclusion in D.07-09-018, we see no need to adopt content regulations for AT&T’s RSA. We anticipate that the RSA and Guidebook will be routinely revised because the communications market is so dynamic. We intend for the process for carriers to roll out new products or to revise terms and conditions to be flexible. Developing specific contract content requirements for detariffed carriers beyond those already required by law is unnecessary and could result in stifling innovation resulting in more harm than benefit. Accordingly, under our detariffing decision, the Commission stated that it need not approve the specific terms of the RSA in order for it to become effective. Consistent with that view, we neither approve nor disapprove of the

---

<sup>1</sup> TURN and DRA were shown an earlier draft of the revised RSA, but have not seen the final version of the changes to the Guidebook or the RSA that will be sent to customers once the Commission approves this Draft Resolution. Additionally, even if AT&T has incorporated some of the changes suggested below in the revised materials, by requiring those elements in writing the Commission will ensure AT&T doesn’t take these important consumer protections out of the contract in later revisions that will not come before the Commission.

contents of the AT&T RSA. However, we reiterate that we do expect such contracts to be clear, informative, and just and reasonable, and to comply with federal and state law.

Resolution at p. 7. This allows the Commission to focus on the legal technicalities of whether AT&T's latest amendment to AL 33423 complies with the Commission's detariffing rules, while ignoring the elephant in the living room: the rules which will actually define customers' relationship with the utility and *de facto* carrier of last resort for many Californians. The Commission may have "expectations" that contracts for detariffed services be clear and just and reasonable, but expectations are meaningless without clear guidance and enforceable rules. Indeed, AT&T has already failed to meet the expectations once by imposing an RSA that generated a "dismaying" number of consumer complaints and by developing an unworkable Guidebook that included improper elements of Basic Service. It took months to work out changes to both the RSA and detariffing request, leaving AT&T customers unsure of their legal relationship with the carrier. Yet, the Draft Resolution approves AT&T's request with no additional safeguards to avoid a repeat performance by another carrier or by AT&T when it revises this RSA which the Commission acknowledges will happen numerous times.

Short of mandating specific provisions in the RSA, which TURN and DRA believe that the Commission has full authority to do, there are several specific steps this Commission should take to ensure consumers are treated fairly and provided the necessary tools and information to make informed choices. While the Draft Resolution suggests that such safeguards may limit flexibility and "stifl[e] innovation" TURN and DRA disagree. Thus far, after receiving pricing flexibility, we have seen little innovation from AT&T except in the area of price increases and onerous contract terms. The simple disclosure-type requirements listed below should not limit innovation, but instead encourage customers to make the right economic choices for their communications needs. The Draft Resolution should be revised to require, at a minimum, that:

- The RSA be posted on AT&T's website with a clear and conspicuous link to the contract on the front page of the "Home Phones" or "Bundles" pages;
- The RSA be available in hard copy within five days from a request;
- The RSA (and all associated documentation) clearly disclose which services are covered (and not covered) by the RSA and clearly disclose the right to opt-out of the RSA by cancelling service with no penalty and reverting to basic service;

- Customers are informed of any changes to the RSA and be clearly informed of the right to cancel service within 30 days of a change that imposes more restrictive terms;
- Such changes must be archived on AT&T's website for a period of years;
- The Guidebook have a clear and conspicuous link on the "Home Phones" or "Bundles" pages;
- The Guidebook be more user-friendly with a link to a single unified document in addition to (or in lieu of) the individual PDF Guidebook files now in use; a hyperlink table of contents; subject headings that reflect services as sold and marketed to customers, not technical tariff jargon; and a search functionality that allows the user to search for the incidence of specified terms and conditions.<sup>2</sup>

These changes will mitigate, but not eliminate the empirically obvious "information asymmetry" between the lone consumer and AT&T.<sup>3</sup> The Commission retains, even in a deregulatory or detariffed environment, a clear constitutional and statutory mandate to ensure that the terms of utility service are "just and reasonable" under P.U. Code § 451, and fully disclosed under §§ 2896, 2890, *inter alia*. This mandate is especially important as the Commission deregulates the telecommunications market prior to customers having widespread competitive choices.<sup>4</sup>

---

<sup>2</sup> In its business voicemail case (Decision 01-04-037), the Commission recognized and described how difficult it was for a consumer to find out that the "call forwarding" bundled innocuously with voicemail actually implied an extra per-minute usage fee. An effective search functionality would help mitigate this problem of cross-referenced and convoluted tariff terms.

<sup>3</sup> Carriers collect a tremendous amount of information about customers. See Glazer, "Winning in Smart Markets," 40:4 *Sloan Management Rev.* 62 (1999). At the same time, carriers have traditionally resisted disclosures and transparency that would help redress this imbalance. The customer education promoted by the Commission is important to remedy this situation; part of that education is making as much data as possible available to consumers. As one economic analyst put it:

In the past, retailers could make profits from what economists call "*information asymmetry*": sellers knew much more about prices, quality, and value than consumers did, in large part because good information for consumers was either hard to obtain or just not available at all.

Surowiecki, "A Buyer's Christmas," 12/24/07 *New Yorker* (emphasis added), available at [http://www.newyorker.com/talk/financial/2007/12/24/071224ta\\_talk\\_surowiecki](http://www.newyorker.com/talk/financial/2007/12/24/071224ta_talk_surowiecki).

<sup>4</sup> See, "Why 'Competition' is Failing to Protect Consumers: The Limits of Choice in California's Residential Telecommunications Market", Trevor Roycroft, Ph.D. on behalf of TURN, March 25, 2009.

John Leutza  
Communications Division  
April 1, 2009  
Page 5

We urge the Commission not to allow an RSA or Guidebook that interested stakeholders and many Commission staff may have never seen to take effect without insuring some modicum of fair disclosure, transparency, and accountability.

If you have any questions regarding this protest, please contact:

Christine Mailloux for TURN at (415- 929-8876, ext. 353) [cmailloux@turn.org](mailto:cmailloux@turn.org) ), or  
Chris Witteman for DRA at (415-355-5524, [wit@cpuc.ca.gov](mailto:wit@cpuc.ca.gov)).

Yours truly,

Christine Mailloux  
For The Utility Reform Network (TURN)

Christopher Witteman  
For the Division of Ratepayer Advocates

cc: Service List for Draft Resolution T-17203  
Commissioners and their Advisors  
Eric Batongbacal, 525 Market Street, #1944, San Francisco, CA 94105

#### ATTACHMENTS

Appendix of Proposed Findings and Ordering Paragraphs

## APPENDIX OF PROPOSED FINDINGS AND ORDERING PARAGRAPHS

Finding No. 2 should be revised to add the underlined language:

2. DRA's and TURN's joint protest raised issues that were only partly addressed by AT&T's advice letter supplement and its revisions to its RSA.

A new Finding No. 5 should be added:

5. AT&T shall not inform customers that a revised RSA will take effect until the Commission's Communications Division approves a plan for effective, accessible and transparent ongoing disclosure and archiving of the terms and conditions incorporated in any AT&T RSA.

Ordering Paragraph 1 should be revised to add the underlined language and delete the language here struck-through:

AT&T's request for detariffing, contained in AL 33423 is approved subject to AT&T's compliance with the following requirements:

- a) The RSA be posted on AT&T's website with a clear and conspicuous link to the contract on the front page of the "Home Phones" or "Bundles" pages;
- b) The RSA be available in hard copy within five days from a request;
- c) The RSA (and all associated documentation) clearly disclose which services are covered (and not covered) by the RSA and clearly disclose the right to opt-out of the RSA by cancelling service with no penalty and reverting to basic service;
- d) Customers are informed of any changes to the RSA and be clearly informed of the right to cancel service within 30 days of a change that imposes more restrictive terms.
- e) Such changes must be archived on AT&T's website for a period of years;
- f) The Guidebook have a clear and conspicuous link on the "Home Phones" or "Bundles" pages;
- g) The Guidebook be more user-friendly with a link to a single unified document in addition to (or in lieu of) the individual PDF Guidebook files now in use; a hyperlink table of contents; subject headings that reflect services as sold and marketed to customers, not technical tariff jargon; and a search functionality that allows the user to search for the incidence of specified terms and conditions

AT&T may set the effective date of detariffing by filing a supplement consistent with this requirement, effective immediately, indicating such a date.