



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking for the Purpose of Reviewing and Potentially Amending General Order 156 and to Consider Other Measures to Promote Economic Efficiencies of an Expanded Supplier Base and to Examine the Composition of the Utilities' Workforce.

R.09-07-027
(Filed July 30, 2009)

REPLY COMMENTS OF AT&T CALIFORNIA (U 1001 C), ITS REGULATED AFFILIATES, CALTEL, CTIA – THE WIRELESS ASSOCIATION[®], MCI COMMUNICATIONS INC. DBA VERIZON BUSINESS, SUREWEST TELEPHONE, AND VERIZON CALIFORNIA INC.

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Pursuant to the Rulemaking 09-07-027 (“R.09-07-027” or “Rulemaking”) issued on August 7, 2009 and the October 16, 2009 directions from the Assigned Administrative Law Judge, Pacific Bell Telephone Company (“AT&T California”), certain of its regulated affiliates providing telecommunications services in California¹ (collectively “AT&T”), CALTEL, CTIA - The Wireless Association®, MCI Communications Inc. dba Verizon Business, SureWest Telephone, and Verizon California Inc. (“Joint Commenters”) respectfully file these reply comments in response to the opening comments submitted on September 30, 2009.

I. INTRODUCTION

On September 30, the Commission received comments from numerous utilities, including telecommunications companies, water companies, and gas and power companies. In their comments, these companies provided a view of their robust supplier diversity programs as well as the diversity of their workforces and the impressive scope of their philanthropic activities to support the diverse communities in this state. While these utilities certainly deserve credit for their efforts in the area of workforce and philanthropy, these issues are beyond the scope of General Order (“G.O.”) 156, and the Commission lacks authority to promulgate regulations with respect to these topics. Accordingly, we respectfully request that these issues not be pursued further in this rulemaking.

With respect to the G.O. 156 goals themselves, the comments demonstrated that the Minority, Women and Disabled Veteran Business Enterprise (“MWDVBE”) results for the utilities vary across the board. These results attest to the fact that each utility faces unique challenges in finding the appropriate MWDVBE vendors to meet its procurement needs. Accordingly, the Commission has appropriately determined that its goals are voluntary, and they should remain so. The Commission should not adjust the goals in G.O. 156 at this time. None

¹ The affiliates participating in these comments are AT&T Communications of California, Inc. (U 5002 C); AT&T Mobility LLC (New Cingular Wireless PCS, LLC) (U 3060 C), Cagal Cellular Communications Corporation (U 3021 C), Santa Barbara Cellular Systems, Ltd. (U 3015 C), and Visalia Cellular Telephone Company (U 3014 C)); TCG Los Angeles, Inc. (U 5462 C); TCG San Francisco (U 5454 C); TCG San Diego (U 5389 C); AT&T Corp. d/b/a AT&T Advanced Solutions (U 6346 C), and SBC Long Distance, LLC d/b/a AT&T Long Distance (U 5800 C).

of the comments submitted provide an evidentiary or a sound public policy basis for such increases. Moreover, and as a preliminary matter, before the advisability of any such increases could even be considered, more information on the availability of MWDVBEs in general and in particular industry segments that meet utility and carrier procurement needs would have to be developed.

While we do not support regulatory action to increase the existing goals, we do believe that the parties in this proceeding can develop principles for best practices to improve supplier diversity programs. As set forth in the opening comments, there are many proposals to further these principles as best practices. Based on the comments filed and as discussed below, we have culled certain proposals that are ripe for consideration as potential actions that utilities can take to implement the principles for best practices. Accordingly, we propose a schedule herein so that the parties can collaborate at workshops to identify principles for best practices as well as concrete steps to further these principles.

II. THE COMMISSION SHOULD CONVENE WORKSHOPS TO DISCUSS PRINCIPLES FOR BEST PRACTICES, INCLUDING CERTAIN SUGGESTIONS RAISED IN OPENING COMMENTS.

A number of issues raised in the opening comments submitted on September 30 could be discussed in workshops that in turn could lead to the recognition of best practices for supplier diversity programs. As a preliminary matter, the workshops should first focus on principles for best practices and then discuss specific actions that may be appropriate for certain utilities to implement. This flexible approach takes into account that the utilities have supplier diversity programs that are at different stages in their life cycle, as well as unique characteristics based on the scale and scope of the utilities themselves. Thus, once principles for best practices have been agreed upon, the parties can discuss different means that may be used to further these principles. Instead of mandated regulatory steps to implement best practices, the Commission could adopt a menu approach, whereby utilities could choose certain best-practice actions suited to their business needs.

With respect to the specific proposals to be considered, the opening comments contain a number of meritorious ideas. *First*, the African American Voice (“AAV”) raises the issue of certification as a barrier to opportunity,² and we support this issue as a topic for the workshops. We agree with the suggestion raised by Verizon that the Commission should adopt the recommendation made in the K&L Gates Report that the Commission recognize certifications and re-certifications by the National Minority Supplier Diversity Council (“NMSDC”) and the Women’s Business Enterprise National Council (“WBENC”). Such an action would significantly increase the pool of qualified WMBEs available to utilities.³

Second, the American Indian Chamber of Commerce of California (“AICCC”) states that it needs bid coaching as well as real feedback from the bidding process.⁴ We anticipate that many MWDVBEs could benefit from a better understanding of the bidding process, and believe this would be fruitful topic for a discussion of best practices to enhance the current G.O. 156 debriefing process set forth in section 6.2.1 of the general order.

Third, AAV supports the idea of creating a pipeline from smaller utilities to larger utilities, whereby a vendor could start out working with a smaller utility and develop the scale and scope to obtain work from a larger utility.⁵ By facilitating this type of mentorship program, AAV anticipates that second-tier vendors could transition to first-tier vendors. A pipeline to foster this type of transition should be discussed as part of the best practices workshop.

Fourth, we also support further development and refinement of the process for including prime contractors in the diversity procurement process. For example, the California Hispanic Chambers of Commerce’s (“CHCC”) opening comments includes a request to “formulate goals

² The African American Voice: Opening Comments of The Black Economic Council and Scope of OIR, Response to Questions Raised and Request for Formal Hearings (“AAV Opening Comments”) at 5 (Sept. 18, 2009).

³ Joint Response of Verizon California Inc. (U 1002 C) and MCI Communications, Inc. (U 5378 C) d/b/a Verizon Business to the Rulemaking Questions (“Verizon Opening Comments”) at 29–34 (Sept. 30, 2009).

⁴ Opening Comment of the American Indian Chamber of Commerce of California to the Order Instituting Rulemaking (“AICCC Opening Comments”) at 5(Sept. 30, 2009).

⁵ *Id.* at 4.

to better promote the participation of prime contractors in the WMDVBE procurement process.”⁶ Given that G.O. 156 already has provisions for prime contractor programs, it would be beneficial for the utilities to share best practices in this area so that they can refine their programs and explain to MWDVBE vendors how such programs work.

Fifth, we support the many comments that seek to expand the supplier diversity programs to include energy efficiency.⁷ With respect to energy itself, we anticipate there will be a discussion of the types of renewable energy projects to be undertaken, and how those new projects may lead to new green procurement categories. Additionally, MWDVBEs need to learn how to document their green practices in order to remain competitive. Both aspects of energy efficiency should be discussed at the workshops.

Sixth, CHCC raised the idea of utilities sponsoring special programs from time to time to help enhance participation in supplier diversity programs. We support the idea of utilities adopting strategic initiatives based on the unique circumstances of their program. For example, this year, AT&T has adopted a program to coach a selected group of businesses owned by minority women. As another example, in 2008, Verizon partnered with the California Black Chamber of Commerce, the Black Business Association, and the National Black Business Council, Inc. to form the African American Supplier Engagement Collaborative (“AASEC”). The AASEC provides coaching, technical assistance, and capacity building training to African American and minority-owned businesses. Such strategic initiatives are used by utilities and carriers to target an aspect of their supplier diversity programs that merit extra attention. As discussed above, an analysis of these strategic initiatives should be included in workshops to determine whether they are best practices that fit governing principles for best practices developed in this proceeding.

⁶ California Hispanic Chambers of Commerce Opening Comments and Scope of OIR, Response to Questions Raised and Request for Formal Hearings (“CHCC Opening Comments”) at 5 (Oct. 6, 2009).

⁷ See, e.g., *id.* at 10.

Seventh, at the workshops, the parties should discuss how to efficiently manage all the outreach efforts that have been requested by commenters and are currently occurring. To achieve the best results, outreach should be focused and strategic in terms of identifying vendors capable of performing utility work. At the present time, many outreach efforts seem to be duplicative or have no lasting impact. The large number of trade shows and other events threaten to deplete the resources that utilities devote to their supplier diversity programs. We suggest that there be coordination of these events to make sure that resources are not wasted and utilities and carriers have the best chance of meeting capable vendors. Moreover, the workshops should address whether any metrics can be developed to assess the success of the capacity building and technical assistance programs provided to MWDVBEs by Community Based Organizations (“CBOs”), chambers of commerce, and other entities.

III. THE EXISTING G.O. 156 GOALS SHOULD NOT BE REVISED.

Several commenters request higher goals, but do not provide an adequate justification for the increases they support. For example, AAV asks that the goal for minorities be increased to 30% based on its allegation that in the 1980s, the Sacramento Urban League and the San Francisco African American Chamber urged such a goal.⁸ But AAV provides no facts that supported the adoption of such a goal in the 1980s or now.

The CHCC suggests that the goal for Hispanic vendors be set at one-third of the total dollars spent on outside business contracting.⁹ This request is based on CHCC’s representation that Hispanics make up 36% of California’s population.¹⁰ Although the Hispanic population in California is undoubtedly significant, it does not logically follow that the procurement goal for Hispanic vendors should be tied to the percentage of Hispanics in the general population, especially given there is no evidence in the record to suggest a related number of Hispanic

⁸ AAV Opening Comments at 8.

⁹ CHCC Opening Comments at 4.

¹⁰ *Id.* at 7-8.

vendors are available to provide services to the telecommunications industry. Such an oversimplified approach to setting goals is flawed and should be rejected.

While AAV and CHCC support increasing the goals, the utilities and carriers agree that such increases are not warranted. As pointed out by the Energy Utilities, “[r]aising the supplier diversity goal will not necessarily create a renewed emphasis on seeking diverse suppliers across a broad range of procurement.”¹¹ The Energy Utilities note that while G.O. 156 has encouraged utilities to establish supplier diversity programs, many utilities have reached a point where they are internally motivated to increase procurement from diverse suppliers, regardless of meeting G.O. 156 targets. While utilities with mature supplier diversity programs are managing to meet and sometimes exceed G.O. 156 goals, other utilities, such as the water utilities, are struggling with the G.O. 156 program.¹² Furthermore, achieving the DVBE goal remains elusive for all utilities. Changes in the procurement needs of utilities as well as fluctuations in the availability of vendors cause all of these contractual arrangements to be continually reevaluated. In light of these circumstances, to set a higher target is not necessarily going to have a positive effect, and, in fact, may actually thwart company initiatives for supplier diversity programs. Given the range of procurement results discussed by the utilities in their opening comments, there is no basis for concluding that the existing goals should be increased.

We also agree with the Energy Utilities that if the Commission nonetheless decides to pursue potential increases to the goals, then any revised goal should be:

firmly based on an appropriate record and consistent with law, *i.e.*, that the goals do not give an unwarranted advantage to any ethnic/gender groups. Any new goal should generally reflect the current and anticipated future availability of qualified diverse vendors who supply the goods and services utilities purchase.¹³

The Energy Utilities also correctly recognize that the existing goals are not based on evidence regarding the availability of qualified MWBEs and that the fact some utilities may meet

¹¹ Energy Utilities Joint Opening Comments Addressing Supplier Diversity Goals and Economic Benefit Reporting (“Energy Utilities Opening Comments”) at 2 (Sept. 30, 2009).

¹² *See e.g.*, Opening Comments of Park Water Company at 5 (Sept. 30, 2009).

¹³ Energy Utilities Opening Comments at 3.

the existing goals “is not sufficient cause to select that percentage as appropriate for all utilities.”¹⁴ Thus, if the Commission moves forward with investigating the potential for increased goals, there must be an adequate record on which to base any revised goal. The party who proposes the increased goal should have the burden of proof with respect to establishing a basis to support a new increased goal.

IV. BASED ON THE OPENING COMMENTS, THERE IS NO BASIS FOR FURTHER REVIEW OF CERTAIN ISSUES IDENTIFIED IN THE RULEMAKING.

A. Workforce Diversity

The OIR states that the Commission “may consider whether an aging workforce presents an opportunity or necessity for Commission guidance in assuring the utilities are developing and maintaining a broadly diverse and well-trained workforce to maintain continuity of service at the lowest reasonable cost.”¹⁵ As demonstrated in our opening comments, however, the Commission lacks jurisdiction to address issues of utility workforce diversity. The statutory basis for G.O. 156 simply does not encompass an expansion of the procurement diversity programs to workforce diversity.¹⁶

As stated by PG&E, “because it is not clear what role the Commission could have in the area of workforce diversity and goals, or what the objective of such involvement might be, PG&E questions whether it should be included in the scope of this Rulemaking.”¹⁷ We agree. Moreover, if the Commission’s interest is merely collection of illustrative data on the diversity of

¹⁴ *Id.*

¹⁵ Rulemaking 09-07-027 at 2 (July 30, 2009).

¹⁶ A point noted by Commissioner Bohn in his concurrence with the Rulemaking: “this rulemaking also seeks to make[] the employment plans and practices of each utility, with respect to as yet, unstated objectives, pursuant to as yet, unstated, authority.” *Id.*, Bohn Concurrence at 4.

¹⁷ Response and Opening Comments of Pacific Gas and Electric Company (“PG&E Opening Comments”) at 15 (Sept. 30, 2009). *See also* Opening Comments of San Diego Gas & Electric Company (U 902 M) and Southern California Gas Company (U 904 G) to the Order Instituting Rulemaking to Review and Potentially Amend General Order 156 (“SDG&E/SoCalGas Opening Comments”) at 18 (Sept. 30, 2009) (stating that workshop diversity issues should remain outside the scope of this proceeding).

utilities' workforces, this information was provided in the opening comments of several utilities. Such data illustrate that utilities' workforces are fairly diverse.¹⁸

The only argument presented as to why Commission evaluation of utilities' workforces should be undertaken, that provided by the California Coalition of Utility Employees ("CCUE"), is not directed at increasing workforce diversity, but rather ensuring the reliability of the electric grid. In this regard, CCUE emphasizes that the utility workforce is aging, while the number of apprentices hired by the electric utilities is rapidly declining.¹⁹ First, the issue of workforce for service reliability purposes simply falls outside the scope of this proceeding. Second, the telecommunications industry would point out that the specific issue raised by CCUE – needing to train apprentices to replace an aging workforce – is not applicable to telecommunications companies. The bottom line is that the telecommunications industry is highly competitive and has every incentive to ensure the continuity of its workforce to ensure reliable service.

Workforce diversity is not within the statutory basis for General Order 156 and therefore does not fall within the Commission's jurisdiction. In addition, no party has presented a clear rationale for its inclusion in this proceeding. Accordingly, workforce diversity should be excluded from the scope of the OIR.²⁰

B. Economic Benefits

In our opening comments, we presented several reasons why any requirement that utilities report on the "economic benefits" that may accrue from their respective MWDVBE programs be rejected as an unconstructive use of utilities' limited resources – resources which could be better spent on aspects of improving supplier diversity.²¹ Each of the specific rationales

¹⁸ See, e.g., PG&E Opening Comments at 18-20; Opening Comments of AT&T California and Certain of its Regulated Affiliates ("AT&T Opening Comments") at 6 (Sept. 30, 2009).

¹⁹ Comments of the Coalition of California Utility Employees on Commission's Rulemaking to Review and Potentially Amend General Order 156 ("CCUE Opening Comments") at 2 (Sept. 30, 2009).

²⁰ Similarly, any suggestion that there should be diversity requirements related to utility boards of directors should be viewed as outside the scope. In this regard, as noted by Commissioner Bohn in his concurrence, a myriad of laws prohibit discrimination in employment practices. Title VII prohibits disparate treatment -- intentional discrimination as well as practices that are facially non-discriminatory but have a discriminatory impact.

²¹ AT&T Opening Comments at 4-6.

for not mandating economic benefit reporting discussed in our opening comments was mirrored in the joint comments of the Energy Utilities.²² Namely, that this requirement would divert limited resources from more worthwhile supplier diversity activities, could potentially result in undervaluing secondary benefits, and would necessitate the utilities performing a task for which they have no obvious expertise and for which others are much better suited.

Indeed, not all organizations representing MWDVBEs support economic benefit reporting. In this regard, the AICCC argues that such reporting is not necessary:

It is intuitive that contracting with American Indian businesses will and has had a tremendous economic effect on our community. When [we] do receive jobs it seems due to: “lowest bid win;” superior quality service or innovative product offering; or best value proposed all of which are indicators of best business practices for any industry.²³

In contrast, calls for requiring such economic benefits reporting were unsupported, often relegated to a simple statement that such reporting should be required,²⁴ or based on inapplicable justification.²⁵ Given that no stated benefit for utility preparation and submission of economic benefit reports has been set forth, whereas significant justification to the contrary has been provided, the issue of reporting requirements measuring the economic benefits of G.O. 156 programs should be excluded from the scope of this proceeding.

²² Energy Utilities Joint Opening Comments at 3-4.

²³ AICCC Opening Comments at 6.

²⁴ *See, e.g.*, CHCC Opening Comments at 8 (“GO-156 should be amended to require utilities to report on the economic benefits of using diverse suppliers as one of several indicators to determine the economic benefits of utilizing WMDVBE suppliers. This factor, alone, should not be a binding indicator, however.”); *see also* AAV Opening Comments at 8 (“GO-156 should be amended to require utilities to report on the economic benefits of using minority suppliers.”).

²⁵ Response and Opening Comments of the Greenlining Institute (“Greenlining Opening Comments”) at 11-12 (Sept. 30, 2009) (justification for required economic benefit reporting was inapplicable; justification went to assuring that utilities used a broader base of diverse suppliers).

V. THE COMMISSION SHOULD EXCLUDE FROM THE PROCEEDING ISSUES RAISED IN OPENING COMMENTS THAT DO NOT RELATE TO BEST PRACTICES.

A. The Commission should exclude setting any goals for procurement from WMBEs that are California residents.

Greenlining suggests amending G.O. 156 to require that at least 70% of procurement be obtained from WMBEs based in California.²⁶ There are several reasons to exclude this recommendation as an issue in this proceeding. First, it would be an unwise policy decision to reduce the number of WMBEs available to utilities and carriers, when an expansion of the number of diverse suppliers is necessary. The California Clearinghouse now only has about 3500 vendors -- WMBEs and DVBEs -- based on an open process whereby non-California residents are allowed to certify.²⁷ In an effort to overcome the obstacle presented by a small vendor pool, we support increasing the number of vendors available by amending G.O. 156 to allow the Clearinghouse to accept the verifications and re-verifications of two national certifying agencies—the NMSDC and the WBENC. By accepting the certifications from NMSDC and WBENC, the number of vendors would increase by 6000 WBEs and 15000 MBEs.²⁸ Increasing the pool of qualified vendors would provide the program with the probability of greater success.

Second, the utilities and carriers as a group are not currently meeting the G.O. 156 goals. Limiting the vendors to just those from California or having a goal that a percentage of vendors be California-based, would exacerbate this lack of success.²⁹ Utilities and carriers already have a substantial challenge meeting the current goals. If the Commission adopts Greenlining's recommendation, the goals may become unattainable.

Third, including a California residency requirement would in effect rewrite the definitions found in section 8282 of the Public Utilities Code. Section 8282(a) does not include

²⁶ Greenlining Opening Comments at 19-20.

²⁷ Verizon Opening comments at 34 (citing K&L Gates Report at 8-10).

²⁸ *Id.*

²⁹ The utilities are not currently meeting the G.O. 156 goal for DVBEs. Under the applicable statutes, utilities can only include in their annual MWDVBE results the amounts they spend with California DVBEs. Limiting DVBEs to just those from California exacerbates the lack of success in this area. The Commission should seek legislation to include amounts spent with DVBEs from other states.

a California residency requirement in its definition of women business enterprise. Similarly, section 8282(b) does not include such a requirement in its definition of minority business enterprise. Changes to the statute are the province of the Legislature, and the Commission cannot change the law to adopt Greenlining's recommendation. *Re SB 1488 and Confidentiality of Information*, Decision No. 07-05-032, *Order Modifying Decision 06-06-066 and Denying Rehearing of the Decision, as Modified*, 2007 Cal. PUC LEXIS 131, *94 (May 3, 2007) ("While it might be neater to have one confidentiality statute rather than two, we cannot change the law."); *Carmel Valley Fire Prot. Dist. v. Cal.* (2001) 25 Cal.4th 287, 300 ("administrative action that is not authorized by, or is inconsistent with, acts of the Legislature is void. . . . The rulemaking authority of an agency is circumscribed by the substantive provisions of the law governing the agency Regulations that alter or amend the statute or enlarge or impair its scope are void.").

In addition to the foregoing, placing *de facto* limits on utilities' use of MWDVBE vendors located outside of California could create other negative consequences. First, adoption of such a policy could invite retaliation by other states that have similar programs to promote diversity in procurement. As mentioned by Assemblywoman Gwen Moore at the Commission's En Banc held on November 2, 2009, this concern regarding retaliation was a reason that no such limits were incorporated into the existing regulations. Second, a limitation of the program to MWBEs based in California would require the Commission to define "California-based business," which is not necessarily a simple task and one that could lead to inequitable results for vendors with significant operations and employees located in California, but which are "based" in other states. Third, such a *de facto* limitation on the used of out-of-state WMBE vendors would raise issues under the Commerce Clause of the United States Constitution (U.S. Const. art. I, § 8, cl. 3) and could cause litigation and program uncertainty until the litigation is resolved. Fourth, general economic theory holds that protectionism of this sort is ultimately bad for business and limits competition. Finally, the Commission should consider the fundamental unfairness of adopting such a policy without affording out-of-state MWDVBE vendors a full opportunity to participate

in the formulation (or rejection) of such a policy and its implementation, if adopted. Some of these vendors do significant business with California utilities and to diminish their opportunity to continue to do so without input is not fair.

B. The Commission should reject the request to pay intervenor compensation upfront.

Two commenters ask the Commission to pay their preferred expert witnesses upfront.³⁰ The Commission should deny this request in its Scoping Memo. Expert witnesses proffered by intervenors are paid through the intervenor compensation program, and that program only pays after completion of the extensive analysis required by the intervenor compensation statute.³¹ Compensation of intervenors, including their experts, requires the intervenor to meet all of the statutory conditions, which includes ensuring that a Category 3 customer (*i.e.*, a corporate or organizational intervenor) is properly authorized to represent the interests of customers in its articles of incorporation and bylaws.³² At the appropriate time, the Commission will need to perform an in-depth analysis of these entities to determine their eligibility for intervenor compensation, including whether to compensate their expert witnesses.

Assuming that the entities are confirmed to be Category 3 customers,³³ then the Commission must determine that the intervenor has provided a substantial contribution.³⁴ The statute states "substantial contribution" means that, in the judgment of the Commission, the customer's presentation has substantially assisted the Commission in the making of its order or

³⁰ See AAV Opening Comments at 2, 11 ("this Commission should in this proceeding ensure that intervenor compensation promotes active and effective minority voice through up-front funding."); *see also* CHCC Opening Comments at 4.

³¹ See Cal. Pub. Util. Code §§ 1801-1812.

³² See Intervenor Compensation Program Guide at section 3.3 for explanation of Category 3 customer.

³³ This is an assumption that cannot be made. Indeed, a Category 3 customer is defined as an organization authorized to "represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation." Cal. Pub. Util. Code § 1802(b)(1)(C). The CHCC describes itself in opening comments as a "nonprofit chamber of commerce that represents Hispanic businesses." CHCC Opening Comments at 1. As an entity that represents businesses, not residential customers, the CHCC would not appear to qualify as a Category 3 customer or intervenor.

³⁴ Section 1802(i); *see also* section 1803 ("The commission shall award . . . reasonable expert witness fees . . . to any customer who complies with Section 1804 and . . . makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.")

decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer.³⁵ The Commission cannot make such a determination *a priori* because it cannot be assumed a particular intervenor will in the future substantially assist the Commission in the making of its order or decision (or that the order or decision will adopt in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer). The analysis must be done after the proceeding has concluded and at least an interim decision has been adopted by the Commission.

The Commission also ensures that intervenors representing the same or similar interests avoid duplication of effort as required by section 1801.3(f). This section requires the Commission to administer the program “in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding.” In discharging this obligation, the Commission disallows compensation for work that is duplicative or inefficient. In Decision 01-09-045, for example, the Commission found that the efforts of Public Advocates and The Greenlining Institute/Latino Issues Forum were duplicative and reduced each of their requests for compensation by 40%.³⁶ The likelihood of duplication between AAV and the CHCC is substantial here as they both advocated similar positions in their

³⁵ Section 1802(i).

³⁶ *Re GTE Corp.*, Decision No. 01-09-045, 2001 Cal. PUC LEXIS 778, *Opinion on Request for Intervenor Compensation*, at*20 (“We find that the duplication warrants a 40% reduction in the award for both GL/LIF and PA.”), *44-*45 (Findings of Fact 8-9). The analysis of duplication of effort is extended to expert witnesses. *See Re Policies, Procedures and Rules for California Solar Initiative*, Decision No. 08-05-015, 2008 Cal. PUC LEXIS 192, *Decision Granting Intervenor Compensation to A WISH and Greenlining for Contributions to California Solar Initiative Rulemaking*, at *20-*21 (“The timesheets Greenlining submits with its request suggest substantial duplication of effort, with all three of its experts reviewing the proposed decision, drafting comments and editing them.”).

opening comments.³⁷ The Commission will be tasked with ensuring that their expert witnesses are not compensated when they duplicate each other's efforts, and that can only be done after the fact.

C. The Commission should exclude from this proceeding any consideration of imposing a requirement related to corporate giving because it has no authority in this area.

Three commenters seek to have the Commission require utilities and carriers to designate a percentage of income or revenues for philanthropic purposes.³⁸ The Commission should promptly exclude this issue from the rulemaking. The Commission has repeatedly recognized that it lacks authority to require such, and discussion in this Rulemaking will serve to divert resources from the important fact-gathering related to best practices. The nature, amount, and recipients of any shareholder philanthropic activities are not within the scope of any general rate proceeding or other regulatory purview. For many reasons, including good corporate citizenship and social responsibility, utilities and carriers believe philanthropy is an important activity. Indeed, in the absence of any regulatory requirement, utilities and carriers engage in robust philanthropy. There is no need here for the Commission to adopt any guidance or requirements.

The Commission should continue to reject any role in enforcing corporate commitments regarding philanthropy. In an effort to have a vehicle to enforce voluntary but non-binding agreements regarding philanthropy, intervenors have sought to include this type of requirement in several general rate cases ("GRC"), and each time the Commission has rejected the request.

³⁷ Duplication between AAV and Greenlining is also probable, but AAV committed in opening comments to coordinate with Greenlining to "ensure efficiency and lack of duplication." *See* AAV Opening Comments at 1. This commitment is entirely appropriate as Greenlining claims to also represent the interests of African Americans. *See* Greenlining Mission Statement: "The Greenlining Institute's mission is to empower communities of color and other disadvantaged groups through multi-ethnic economic and leadership development, civil rights, and anti-redlining activities" at < <http://greenlining.org/about>>. *See also* Greenlining Mission Statement regarding the Greenlining Coalition: "The Greenlining Institute remains connected to the grassroots via the Greenlining Coalition, a diverse group of nearly forty African American, Asian American, Latino community-based organizations that comprise one of the nation's most effective and longest lasting multi-ethnic coalitions." *Id.*

³⁸ *See* AAV Opening Comments at 3 (seeking commitments that carriers and utilities spend 2% of each corporation's pre-tax income on philanthropy); Greenlining Opening Comments at 21 (seeking ways to promote carriers and utilities to spend 2% of each corporation's pre-tax revenues on philanthropy); CHCC Opening Comments at 3 (seeking 33% of philanthropy dollars for Hispanic businesses).

In a GRC for Southern California Edison (“SCE”), the Commission found it had no authority to compel SCE or its parent Edison International (“EIX”) to take any involuntary action related to philanthropy and stated: “For many reasons, including good corporate citizenship, social responsibility, and public perception, philanthropy is an important consideration for SCE/EIX and corporations in general. However, as we have previously indicated, we have no jurisdiction to order a change in SCE's giving practices.”³⁹ The Commission came to a similar conclusion with regard to SDG&E and SoCalGas:

[W]e find that the Commission has no authority to make a lawful order to either SDG&E or SoCalGas to adopt the Greenlining agreement's provisions on philanthropy⁴⁰

This acknowledgement regarding the Commission’s lack of jurisdiction over corporate giving was recently reaffirmed in D.09-03-025: “the Commission has no jurisdiction over a utility's charitable contributions.”⁴¹

The issue of philanthropy should also be excluded from this proceeding because it is beyond the scope of issues related to supplier diversity. This proceeding is about best practices in promoting procurement of products and services from women-owned business enterprises, minority-owned business enterprises, and service-disabled veteran business enterprises. It is not about corporate giving. In short, the Scoping Memo to be issued in this proceeding should not include philanthropic giving as an issue in this proceeding.

³⁹ *Re Southern California Edison Co.*, Decision No. 06-05-016, *Opinion on Southern California Edison Company's Test Year 2006 General Rate Increase Request*, 2006 Cal. PUC LEXIS 189, *mimeo*, at 183. See also *Re Southern California Edison Co.*, Decision No. 04-07-022, *Opinion on Base Rate Revenue Requirement and Other Phase I Issues*, 235 P.U..R4th 1, 305 (July 8, 2004) (noting that although Greenlining proposes to require increased philanthropic goals, Greenlining acknowledges that "the Commission does not appear to have the explicit authority to require Edison to set goals with respect to philanthropy").

⁴⁰ *Re San Diego Gas & Electric Co.*, Decision No. 08-07-046, *Decision on the Test Year 2008 General Rate Cases for San Diego Gas & Electric Company and Southern California Gas Company*, 2008 Cal. PUC LEXIS 281, *102, *reh'g denied*, Decision No. 09-06-052 (rejecting claims that Commission had jurisdiction over philanthropy).

⁴¹ *Re Southern California Edison Co.*, Decision No. 09-03-025, *Alternate Decision of President Peevey on the Test Year 2009 General Rate Case for Southern California Edison Company*, 2009 Cal. PUC LEXIS 165, *476 (recognizing the Commission’s lack of authority in this area, but encouraging SCE to increase its philanthropic giving).

D. The Commission should promptly exclude from this proceeding consideration of any obligation to “unbundle” procurement contracts.

Two commenters suggest that utilities and carriers should break potential agreements into smaller-sized contracts in order to provide MWDVBES with a greater chance of getting work.⁴² This suggestion should also be excluded as an issue in this Rulemaking. The Commission has never taken action to micromanage how utilities and carriers succeed in achieving progress towards the G.O. 156 targets. It should not now change that practice. Carriers are engaged in robust competition. The only way for some of these competitors to remain viable is to lower costs, while keeping prices in check. One method carriers have to reduce costs is to obtain efficiencies by having fewer contracts. The bigger the volume involved in a contract, the more discounts a carrier can obtain from, *e.g.*, a manufacturer of fiber cable. Unbundling contracts drives inefficiencies and adds costs to carriers. Utilities can continue to address this issue by attempting to implement effective prime supplier programs whereby prime suppliers subcontract with MWDVBES.

E. The issue of providing MWDVBES access to capital is beyond the scope of General Order 156 and should not be addressed in this proceeding.

One commenter raised the issue of access to capital for MWDVBES to grow their businesses.⁴³ We believe that there should be an effort to educate MWDVBES about all the existing sources of financial support available to them. Based on an understanding of all these financial resources, it becomes clear there are no valid reasons to have the utilities provide capital to these entities. Additionally, there is no legal basis to require telecommunications carriers to act as banks for businesses. Given this context, the issue of access to capital should not be addressed in this proceeding.

There are numerous entities that offer financial assistance to small businesses. *First*, the California Economic Development Lending Initiative (“CEDLI”) is a statewide for-profit loan fund sponsored by California financial institutions. The purpose of CEDLI is to create jobs by

⁴² Greenlining Opening Comments at 6; AICCC Opening Comments at 5.

⁴³ CHCC Opening Comments at 7. This issue was also raised at the *en banc* hearing held on November 2, 2009.

providing financing to support small business and community economic development activities which fall outside of normal bank lending practices. CEDLI aims to achieve and sustain financial self-sufficiency to ensure the continuing availability of credit to CEDLI borrowers, while providing appropriate returns for the funds placed at risk by the participating institutions. CEDLI serves both urban and rural California through a partnership of a wide diversity of banks, public sector and nonprofit sector partners. Through the establishment and operation of the CEDLI loan fund, participating financial institutions offer more flexible sources of financing to both traditional and non-traditional borrowers while sharing risks among fund participants.

Second, the Community Reinvestment Act⁴⁴ is a United States law designed to encourage commercial banks and savings associations to meet the needs of borrowers in all segments of their communities, including low- and moderate-income neighborhoods. Congress passed the Act in 1977 to reduce discriminatory credit practices against low-income neighborhoods, a practice known as redlining. The Act requires the appropriate federal financial supervisory agencies to encourage regulated financial institutions to meet the credit needs of the local communities in which they are chartered, consistent with safe and sound operation.

Third, MWDVBEs can pursue access to capital through minority equity funds, such as the Marathon Club. The Marathon Club is focused on increasing the availability and investment of private equity capital into enterprises that have significant minority ownership and management participation.

Fourth, the federal government has agencies that assist with funding of businesses, namely the Small Business Administration (“SBA”) and the Department of Commerce Minority Development Agency. The Obama Administration has recently announced it is making Troubled Assets Relief Program (“TARP”) funds available to small businesses through the SBA. Community banks with less than \$1 billion in assets will be allowed to borrow money from TARP at a three percent interest rate, lower than the previous five percent. Community-

⁴⁴ Pub. L. 95-128, title VIII, 91 Stat. 1147, *codified at* 12 U.S.C. §§ 2901 *et seq.*

development financial institutions, which provide credit to low-income areas, will be able to borrow money from the TARP at a rate of 2 percent.⁴⁵

Fifth, the California Association for Micro Enterprise Opportunity (“CAMEO”) promotes economic opportunity and community well being through micro-enterprise development. CAMEO operates a statewide network of 130 members, 68 of whom are nonprofit groups providing business training, technical assistance and financing to micro and small businesses throughout the diverse regions of California. In 2007, CAMEO’s members served an estimated 18,000 business owners. There are currently 28 nonprofits providing micro loans, under \$25,000, to entrepreneurs of low and moderate incomes. Over the past two years, these organizations served 1900 clients with estimated total loan value of \$17 million.⁴⁶

In light of these existing resources, there is no need for the Commission to seek to impose regulations in this area. Furthermore, the Commission has not identified any legal authority that would serve as a basis for imposing such regulations.⁴⁷

VI. SCHEDULE FOR PROCEEDING

As addressed in Section II above, we believe that issues raised in this proceeding which are properly within the scope of this proceeding can best be addressed through a workshop process. While several parties have requested evidentiary hearings and have even noted subject matter areas in which they would submit testimony, it is unclear at this juncture whether there are any disputed issues of fact which would necessitate hearings. Indeed, it would appear that

⁴⁵ “Obama: Small Businesses to Be Offered TARP Help” (PBS Online NewsHour, Oct. 21, 2009), available at: http://www.pbs.org/newshour/updates/business/july-dec09/smallbusiness_10-21.html.

⁴⁶ See <http://www.microbiz.org/executive-summary.html>.

⁴⁷ Several comments made at the *en banc* hearing on November 2, 2009 suggested that utilities should place their deposits in minority and women owned banks, who can then loan such funds to MWDVBEs. This request incorrectly presumes that utilities make such deposits. Instead, some utilities and carriers are net borrowers, therefore this type of arrangement would not benefit MWDVBE community banks. In the comments at the *en banc* hearing, there was discussion of utilities acting as incubators for new businesses. While it is not entirely clear what the different speakers meant by the term “incubator,” presumably it is an arrangement whereby an entity provides space and other resources under one roof to nurture new businesses. Such activities are essentially philanthropic in nature and are beyond the scope of G.O. 156.

certain of the matters parties have attested should be addressed through hearings would be better handled through a workshop process. For example, AAV states that:

To the degree that this Commission ensures broad participation and extensive hearings, we will endeavor to bring in the best practices from the **more than one thousand** corporations with diversity programs, including the best programs from mega corporations, such as Wal-Mart, that have effectively promoted diversity.⁴⁸

Evidentiary hearings are not necessary to present the best practices of various corporations' diversity programs and certainly not an effective forum for presenting the best practices of numerous diversity programs. To the contrary, a workshop forum to discuss various presentations submitted **in writing prior to the workshops** would be more conducive to the presentation and analysis of such information. Accordingly, we offer the following schedule for consideration. Such schedule affords sufficient time for holding evidentiary hearings should it be determined at a future date that they are necessary.⁴⁹

Rulemaking 09-07-027 Proposed Schedule⁵⁰	Date
Pre-Hearing Conference held	December 15, 2009
Scoping Memo issued	January 11, 2009
Workshops held to address Best Practices in Diversity Procurement (subject matters to be set forth in Scoping Memo; number of workshops will be dictated by number of topics)	January 25, 2010 through June 30, 2010
Status Conference regarding need for evidentiary hearings, issues left unaddressed during workshops, and issues deferred to a future proceeding	July 2010
Joint Workshop Report submitted	August 2010
Opening Comments on Workshop Report	September 2010
Reply Comments on Workshop Report	September 2010
Proposed Decision	November 2010
Decision	December 2010

⁴⁸ AAV Opening Comments at 4 (emphasis added).

⁴⁹ The Rulemaking allots 24 months from the issuance of a scoping memo to resolve all issues in the proceeding.

⁵⁰ If the Commission determines that an availability study should be conducted, then the study should be conducted on a parallel path to the best practices workshops, with parties being afforded the opportunity to comment on the study subsequent to its issuance.

VII. CONCLUSION

For the reasons set forth above, we respectfully request that this proceeding be focused on the adoption of principles for best practices for supplier diversity programs established pursuant to G.O. 156. Such principles and actions taken pursuant to them will drive more benefits and results than the mere revision of the existing goals. There is no factual basis for increasing the existing procurement goals contained in G.O. 156, nor is it appropriate to have utilities track and report on the economic benefits of G.O. 156 programs. Furthermore, the Commission does not have legal authority to regulate the areas of workforce diversity and philanthropy. Accordingly, the Commission should determine that these issues are beyond the scope of this proceeding.

Dated at San Francisco, California, this 20th day of November 2009.

Respectfully submitted
on behalf of the Joint Commenters,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **REPLY COMMENTS OF AT&T CALIFORNIA (U 1001 C), ITS REGULATED AFFILIATES, CALTEL, CTIA-THE WIRELESS ASSOCIATION[®], MCI COMMUNICATIONS INC. DBA VERIZON BUSINESS, SUREWEST TELEPHONE, AND VERIZON CALIFORNIA INC.** in **R.09-07-027** by electronic mail, U.S. mail, and/or by hand-delivery to the persons on the official Service List.

Executed this 20th day of November 2009, at San Francisco, California.

AT&T CALIFORNIA
525 Market Street, 20th Floor
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A handwritten signature in blue ink that reads "Michelle K. Choo". The signature is written in a cursive style and is positioned above a horizontal line.

Michelle K. Choo



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