BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking On The Commission's Own Motion Into The Application Of The California Environmental Quality Act To Applications Of Jurisdictional Telecommunications Utilities For Authority To Offer Service And Construct Facilities.	R.06-10-006

Response of tw telecom of california, lp (U-5358-C) To Application For Rehearing of D.10-12-056 Of The League of California Cities, The California State Association of Counties And SCAN NATOA, Inc.

tw telecom of California, lp,[1] by its attorney and pursuant to Rule 16.1, hereby responds to Section IV. Of the Application for Rehearing of D. 10-12-056 ("Decision") filed by the League of California Cities, the California State Association of Counties and SCAN NATOA, INC. (collectively "Local Governments"). Local Governments claim that the Decision's statement that it is 'even-handed' is illusory because it did not modify any existing pre-2000 carrier CPCNs. This allegation is untrue and should be rejected. Moreover, lack of 'even-handedness' is not legal error warranting the grant of an application for rehearing.[2]

The Local Governments admit that the referenced CPCNs remain unchanged and that "there is no need for the Commission to conduct any CEQA review for these carriers."[3] This is because CEQA review already took place for each of these CPCN holders and a mitigated negative declaration was adopted after Commission CEQA review.[4] The Commission, aware of

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[1] tw telecom of california, lp was formerly named Time Warner Telecom of California, LP.

[2] *See e.g.* Public Utilities Code Section 1757.

[3] *Id.* at 10.

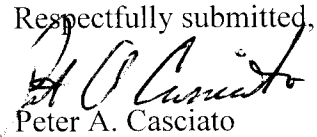
[4] *Order Instituting Rulemaking On The Commission's Own Motion Into The Application Of The California Environmental Quality Act To Applications Of Jurisdictional Telecommunications Utilities For Authority To Offer Service And Construct Facilities*, R.06-10-006 (issued October 11, 2006). ("As part of the approval process of the initial group of facilities-based CLCs, we prepared and approved a mitigated negative declaration as called for under CEQA." *Id.* At 11.) ("In D.96-12-020, we instituted a quarterly processing cycle for granting CPCN authority to facilities-based CLCs in order to streamline the approved processes (footnote omitted). For facilities-based CLCs with environmental impacts similar to those CLCs already approved in prior decisions, the CEQA review process required the quarterly preparation of a consolidated mitigated negative declaration. . . . If we

this prior review, adopted Sections II D. and E. in General Order 170, each of which provide that no further review of CEQA is required, if the Commission has **already** performed a CEQA review. Section D provides no further CEQA review if a "Final Negative Declaration" was adopted and Section E provides that there is no further CEQA review if the "proposed facilities have already undergone CEQA review."[5] Both of these sections demonstrate common sense, as well as adherence to existing law that no further CEQA review is required if discretionary review has already occurred.[6]

As a result, G.O. 170 does not, because it cannot, make *post facto* law that invalidates previous Commission determinations where discretionary CEQA review already occurred. Instead, it adopts a process on a going forward basis that accounts for prior CEQA determinations, and makes available exemptions and processes for achieving CEQA review in a timely, expeditious manner for all applicants with projects requiring discretionary review.

Thus, even though 'even-handedness' is not an element of the standard for rehearing, there is no lack of 'even-handedness' in the Decision. Consequently, the Local Governments' Application for Rehearing should be denied.

Respectfully submitted,



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February 8, 2011

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found upon review, that a negative declaration was unsuitable because of the nature of construction or installation of facilities being proposed by a given CLC, we retained the discretion to prepare an EIR." *Id.* at 12).

[5] G.O. 170 at 3.

[6] *See e.g. Friends of Westwood, Inc. v. City of Los Angeles,* (1987) 191 Cal. App. 3d 259, 272, 235 Cal. Rptr. 788.

CERTIFICATE OF SERVICE

I, Peter A. Casciato, hereby certify that copies of the foregoing "**Response of tw telecom of california, lp (U-5358-C) To Application For Rehearing of D. 10-12-056 Of The League of California Cities, The California State Association of Counties And SCAN NATOA, Inc.**" has been served on those on the official electronic service list for Rulemaking 06-10-006 by electronic mail, this 8th day of February, 2011.

Peter A. Casciato

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