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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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

CALAVERAS TELEPHONE COMPANY (U 1004 C)
CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
FORESTHILL TELEPHONE CO. (U 1009 C)
HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
HORNITOS TELEPHONE COMPANY (U 1011 C)
KERMAN TELEPHONE COMPANY (U 1012 C)
PINNACLES TELEPHONE CO. (U 1013 C)
THE PONDEROSA TELEPHONE CO. (U 1014 C)
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)
THE SISKIYOU TELEPHONE COMPANY (U 1017 C)
VOLCANO TELEPHONE COMPANY (U 1019 C)
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)
("SMALL LECs")

AND

SUREWEST TELEPHONE (U 1015 C)

TO MOTION FOR STAY OF D. 10-12-056

E. Garth Black
Mark P. Schreiber
Patrick M. Rosvall
COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
San Francisco, CA 94111
Phone: (415) 433-1900
Fax: (415) 433-5530

Attorneys for the
Small LECs and SureWest Telephone

February 8, 2011

Pursuant to Rule 11.1(e) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C) and Winterhaven Telephone Company (U 1021) (collectively, the "Small LECs") and SureWest Telephone (U 1015 C) hereby respond to the Motion of the League of California Cities, the California State Association of Counties, and SCAN NATOA, INC. for an Immediate Stay of Decision 10-12-056 (the "Motion"). The Small LECs and SureWest Telephone support the Motion and ask the Commission to grant the requested stay as soon as possible.

Decision 10-12-056 adopted General Order 170, which sets forth Commission procedures for reviewing proposed construction projects by California telephone corporations. Applications for rehearing were filed by: (1) AT&T California, SureWest Telephone, Frontier, and the Small LECs; and (2) the League of California Cities, the California State Association of Counties, and SCAN NATOA, INC. The rehearing requests ask that adoption of General Order 170 be set aside on the grounds of legal error. Separately, requests for extension of time to implement General Order 170 were filed by: (1) AT&T, and (2) the Small LECs, Frontier, SureWest Telephone, and Verizon. The basis of these requests is the need for time to implement the new rules.

The lack of clarity in the Decision regarding the implementation date of the new rules combined with the need for a reasonable time to implement the new rules warrant granting the request for extension. The stay requested in connection with the applications for rehearing would serve these purposes as well as avoid the problems that would be caused by having projects proceed under General Order 170 and then have the general order set aside on rehearing. Accordingly, given the likelihood that the applications for rehearing will be granted, the stay requested in the Motion should be granted; however, if the stay is not granted, the Commission should grant the requests for extension.

COOPER, WHITE
& COOPER LLP
ATTORNEYS AT LAW
201 CALIFORNIA STREET
SAN FRANCISCO, CA 94111

As explained in the Motion, if a stay is not granted, "Local governments and telephone corporations subject to the Decision will face intolerable uncertainty while the Application is pending." By contrast, maintaining the "status quo ante" by granting a stay will allow infrastructure development to proceed as it had, unaffected by the outcome of the rehearing process. The applications for rehearing identify significant legal problems with the Decision, which no current member of the Commission voted in favor of adopting.[1] This fact alone suggests that the Commission should grant a stay to allow it to evaluate whether to reconsider whether General Order 170 should go into effect.

Granting the stay would serve the public interest. As the record of this proceeding demonstrates, the implementation of General Order 170 introduces significant regulatory delays and uncertainties into the process of implementing infrastructure development. These delays harm consumers and increase costs. These additional costs are a disincentive for carriers to continue the rapid deployment of telecommunications facilities in California. This result is totally at odds with the stated goals of the proceeding to provide a clear and convenient CEQA process that provides greater certainty and promotes the deployment of advanced telecommunications networks.

Granting the stay would not adversely affect the public interest. A stay would not affect any carrier's actual compliance with CEQA. Carriers complied with CEQA prior to the adoption of General Order 170. Those that needed discretionary permits from the Commission to authorize construction had CEQA evaluated at the CPUC. Those that did not need to come before the Commission for such authority had CEQA compliance evaluated by their local jurisdictions. Thus, the stay of General Order 170 requested in the Motion would not result in carriers avoiding CEQA review. Thus, there is no potential harm to the public if a stay of General Order 170 is granted while the applications for rehearing are considered.

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[1] President Peevey and Commissioner Simon voted against adoption of the Decision. Commissioners Florio and Sandoval were not members of the Commission when the Decision was adopted.

COOPER, WHITE
& COOPER LLP
ATTORNEYS AT LAW
201 CALIFORNIA STREET
SAN FRANCISCO, CA 94111

Accordingly, the legal standard for a stay has been satisfied. The rehearing requests have a strong likelihood of success. There is a need for immediate relief and risk of imminent harm to infrastructure development if General Order 170 is not stayed. The public interest would be served by an order granting the stay. Therefore, the Motion should be granted. However, if the Commission does not grant the Motion, it should grant the pending requests for extension of time to implement General Order 170.

Dated this 8th day of February, 2011, at San Francisco, California.

E. Garth Black
Mark P. Schreiber
Patrick M. Rosvall
COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
San Francisco, CA 94111
Phone: (415) 433-1900
Fax: (415) 433-5530

By: _____
Mark P. Schreiber
mschreiber@cwclaw.com

Attorneys for the

Small LECs and SureWest Telephone

648346.1

CERTIFICATE OF SERVICE

I, Noel Gieleghem, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is COOPER, WHITE & COOPER LLP, 201 California Street, 17th Floor, San Francisco, CA 94111.

On February 8, 2011, I served the:

RESPONSE OF

CALAVERAS TELEPHONE COMPANY (U 1004 C)
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DUCOR TELEPHONE COMPANY (U 1007 C)
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HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
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KERMAN TELEPHONE COMPANY (U 1012 C)
PINNACLES TELEPHONE CO. (U 1013 C)
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TO MOTION FOR STAY OF D. 10-12-056

by sending via e-mail a true and correct copy in Adobe Acrobat PDF searchable format to the parties on the CPUC's service list for Proceeding R. 06-10-006 (see attached).

Hard copies were also mailed to Assigned Commissioner Peevey and Assigned ALJ Bushey.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 8, 2011, at San Francisco, California.

Noel Gieleghem

SERVICE LIST

CPUC Service List as of February 1, 2011
Proceeding No. R. 06-10-006 (CEQA)

ADAM L. SHERR
QWEST COMMUNICATIONS CORPORATION
1600 7TH AVENUE, ROOM 1506
SEATTLE, WA 98191

AMANDA MONCHAMP
HOLLAND & KNIGHT LLP
50 CALIFORNIA STREET, 28TH FLOOR
SAN FRANCISCO, CA 94111

ANITA TAFF-RICE
EXTENET SYSTEMS, LLC
1547 PALOS VERDES MALL, NO. 298
WALNUT CREEK, CA 94597

ANN P. COHN
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

ANDREW BARNSDALE
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

NICOLE A. BLAKE, STAFF ATTORNEY
CONSUMER FEDERATION OF CALIFORNIA
1107 9TH ST., STE. 625
SACRAMENTO, CA 95814

WILLIAM R. NUSBAUM
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800 / 2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770

CENTRAL FILES
SDG&E AND SOCALGAS
8330 CENTURY PARK COURT, CP31-E
SAN DIEGO, CA 92123-1550

CLAY FABER
SOUTHERN CALIFORNIA GAS CO.
8330 CENTURY PARK CT., CP32D
SAN DIEGO, CA 92123

CHARLES E. BORN, MANAGER, GOV'T &
EXTERNAL AFFAIRS
FRONTIER COMMUNICATIONS
PO BOX 340
ELK GROVE, CA 95759

CINDY MANHEIM
SR. REGULATORY COUNSEL
NEW CINGULAR WIRELESS PCS, LLC
7277 - 164TH AVENUE, NE
REDMOND, WA 98052

DAVID P. DISCHER, ATTORNEY AT LAW
AT&T COMMUNICATIONS
OF CALIFORNIA, INC
525 MARKET ST., RM. 2027
SAN FRANCISCO, CA 94105

SARAH DEYOUNG
EXECUTIVE DIRECTOR
CALTEL
50 CALIFORNIA STREET, SUITE 500
SAN FRANCISCO, CA 94111

DAVID HANKIN
VP - & SR. COUNSEL
ASTOUND BROADBAND, LLC
200 PAUL AVENUE, SUITE 301
SAN FRANCISCO, CA 92124

DAVIS WRIGHT TREMAINE LLP
EMAIL ONLY
EMAIL ONLY, CA 0

DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, 8TH FLOOR
SAN FRANCISCO, CA 94111

EDWARD W. O'NEILL, ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

ELAINE M. DUNCAN
VERIZON CALIFORNIA, INC.
711 VAN NESS AVENUE, SUITE 300
SAN FRANCISCO, CA 94102

ELIZABETH LAKE, ATTORNEY AT LAW
HOLLAND & KNIGHT LAW FIRM
50 CALIFORNIA STREET, SUITE 2800
SAN FRANCISCO, CA 94111

ERIC VAN WAMBEKE
CALIF PUBLIC UTILITIES COMMISSION
CARRIER OVERSIGHT
AND PROGRAMS BRANCH
AREA 3-E
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

FASSIL FENIKILE, DIRECTOR-REGULATORY
AT&T CALIFORNIA
525 MARKET STREET, ROOM 1925
SAN FRANCISCO, CA 94105

FRANCES YEE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B10A
SAN FRANCISCO, CA 94105

GREGG CASTRO
SALINAN NATION CULTURAL
PRESERVATION ASS
5225 ROEDER RD.
SAN JOSE, CA 95111-4064

GAIL SLOCUM, ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105

GREG ROGERS
DIRECTOR STATE REGULATORY AFFAIRS
LEVEL 3 COMM., LLC;/WILTEL COMM LLC
1025 ELDORADO BLVD.
BROOMFIELD, CO 80021

GWEN JOHNSON
AT&T
525 MARKET STREET, 19TH FLOOR
SAN FRANCISCO, CA 94105

JANE WHANG
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

JEANNE B. ARMSTRONG
ATTORNEY AT LAW
GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

JIM HAWLEY
CALIFORNIA DIRECTOR &
GENERAL COUNSEL
TECHNOLOGY NETWORK
1215 K STREET, STE.1900
SACRAMENTO, CA 95814

JO L. LAMBERT
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94120

JENSEN UCHIDA
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JOE CHICOINE, MANAGER, STATE
GOVERNMENT AFFAIRS
FRONTIER COMMUNICATIONS
PO BOX 340
ELK GROVE, CA 95759

JOSH DAVIDSON
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY ST, STE 800
SAN FRANCISCO, CA 94111-6533

JANET P. EIDSNESS
2488 SONNENFELT RD
BAYSIDE, CA 95524-9308

JULIAN K. QUATTLEBAUM
CHANNEL LAW GROUP
207 E. BROADWAY, STE. 201
LONG BEACH, CA 90802-4323

JUDY PAU
DAVIS WRIGHT TREMAINE LLP
EMAIL ONLY
EMAIL ONLY, CA 00000-0000

JONATHAN J. REIGER
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5035
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KARIN M. HIETA
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER
PROGRAMS BRANCH
ROOM 4102
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KERRY C. KLEIN, ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94120

KRISTIN L. JACOBSON
SPRINT NEXTEL
201 MISSION STREET, SUITE 1500
SAN FRANCISCO, CA 94105

ROBERT LEHMAN
CALIF PUBLIC UTILITIES COMMISSION
COMMUNICATIONS POLICY BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LESLA LEHTONEN, VP LEGAL AND
REGULATORY AFFAIRS
CALIFORNIA CABLE & TELECOM
ASSOCIATION
1001 K STREET, 2ND FLOOR
SACRAMENTO, CA 95814-3832

LINDA BURTON
SIERRA TELEPHONE
PO BOX 219
OAKHURST, CA 93644-0219

LINDSAY M. BROWN
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LORI ORTENSTONE, ATTORNEY AT LAW
AT&T SERVICES, INC.
101 W. BROADWAY RM 1300
SAN DIEGO, CA 92101

LORRAINE A. KOCEN
SENIOR STAFF CONSULTANT
VERIZON CALIFORNIA INC.
112 S. LAKEVIEW CANYON ROAD, MC 501LS
THOUSAND OAKS, CA 91362

MARIBETH A. BUSHEY
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE
LAW JUDGES
ROOM 5018
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MADELINE STONE
HOLLAND & KNIGHT
50 CALIFORNIA STREET, SUITE 2800
SAN FRANCISCO, CA 94111

MARYBELLE C. ANG, STAFF ATTORNEY
THE UTILITY REFORM NETWORK
115 SANSOME STREET, STE. 900
SAN FRANCISCO, CA 94104

MARGARET L. TOBIAS
TOBIAS LAW OFFICE
460 PENNSYLVANIA AVENUE
SAN FRANCISCO, CA 94107

MARGARET FELTS
CALIFORNIA COMMUNICATIONS
ASSOCIATION
1321 HOWE AVE. SUITE 202
SACRAMENTO, CA 95825

NINO J. MASCOLO, ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, ROOM 354
ROSEMEAD, CA 91770

NATALIE BILLINGSLEY
CALIF PUBLIC UTILITIES COMMISSION
COMMUNICATIONS POLICY BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

OURANIA M. VLAHOS
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5127
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

PATRICIA MARTZ, PH.D.,
PRESERVATION CALIFORNIA
CULTURAL RESOURCE
PO BOX 54132
IRVINE, CA 92619-4132

PETER A. CASCIATO
A PROFESSIONAL CORPORATION
355 BRYANT STREET, SUITE 410
SAN FRANCISCO, CA 94107

DOUGLAS PHASON
CALIF PUBLIC UTILITIES COMMISSION
CONSUMER ISSUES ANALYSIS BRANCH
AREA 2-B
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

PHILIP H. KAPLAN, CHAIR
TELECOMMUNICATIONS
ACCESS FOR THE DEAF
19262 PEBBLE BEACH PLACE
NORTHRIDGE, CA 91326-1444

PETER SPENCER
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING
& POLICY BRANCH
ROOM 4104
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

PHYLLIS A. WHITTEN
FRONTIER COMMUNICATIONS
EMAIL ONLY
EMAIL ONLY, CA 0

PETER VAN MIEGHEM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94120

PAUL S. PHILLIPS
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5212
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

RAISSA LERNER
OFFICE OF THE CALIF.
ATTORNEY GENERAL
1515 CLAY ST., 20TH FLR., PO BOX 70550
OAKLAND, CA 94612

ROBERT L. DELSMAN, ATTORNEY AT LAW
NEXTG NETWORKS OF CALIFORNIA, INC.
2216 O TOOLE AVENUE
SAN JOSE, CA 95131

ROBERT A. MILLAR
SR. REGULATORY COUNSEL
NEXTG NETWORKS, INC.
EMAIL ONLY
EMAIL ONLY, CA 0

ROBERT GNAIZDA
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE., 2/F
BERKELEY, CA 94704

RUDY REYES
VERIZON
711 VAN NESS AVENUE, SUITE 300
SAN FRANCISCO, CA 94102

ROBERT J. WULLENJOHN
CALIF PUBLIC UTILITIES COMMISSION
POLICY ANALYSIS BRANCH
ROOM 3207
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

EARL NICHOLAS SELBY
LAW OFFICES OF EARL NICHOLAS SELBY
530 LYTTON AVENUE, 2ND FLOOR
PALO ALTO, CA 94301-1705

STEPHANIE C. CHEN
THE GREENLINING INSTITUTE
EMAIL ONLY
EMAIL ONLY, CA 0

STEPHEN H. KUKTA, ESQ.
SPRINT NEXTEL
201 MISSION STREET, SUITE 1500
SAN FRANCISCO, CA 94105

STEPHEN P. BOWEN
BOWEN LAW GROUP
235 MONTGOMERY STREET, SUITE 912
SAN FRANCISCO, CA 94104

GLENN STOVER
STOVER LAW
584 CASTRO ST., NO 199
SAN FRANCISCO, CA 94114-2594

SUZANNE K. TOLLER
DAVIS WRIGHT TERMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

THOMAS K. BRAUN
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE., STE 354
ROSEMEAD, CA 91770

THOMAS J. SELHORST, SENIOR PARALEGAL
AT&T CALIFORNIA
525 MARKET STREET, RM. 2023
SAN FRANCISCO, CA 94105

PAUL VALLE-RIESTRA
ASSISTANT CITY ATTORNEY
CITY OF WALNUT CREEK
PO BOX 8039
WALNUT CREEK, CA 94596

VIDHYA PRABHAKARAN
DAVIS WRIGHT & TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111

WILLIAM K. SANDERS
DEPUTY CITY ATTORNEY
OFFICE OF THE CITY ATTORNEY
1 DR. CARLTON B. GOODLETT PLACE
ROOM 234
SAN FRANCISCO, CA 94102-4682

GREGORY T. DIAMOND
COVAD COMMUNICATIONS COMPANY
7901 LOWRY BLVD.
DENVER, CO 80230

KEN ALEX, SUPERVISING DEPUTY
ATTORNEY GENERAL
1515 CLAY STREET, STE. 2000
OAKLAND, CA 94612

SHEILA HARRIS
MANAGER, GOVERNMENT AFFAIRS
INTEGRA TELECOM HOLDINGS, INC.
1201 NE LLOYD BLVD., STE.500
PORTLAND, OR 97232