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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Consolidated Communications Holdings, Inc., Consolidated Communications, Inc. and WH Acquisition II Corp. and Surewest Communications, Surewest Telephone (U1015C), Surewest Long Distance (U5817C), and Surewest Televideo (U6324C) to Authorize the Acquisition of Control of Surewest Telephone (U1015C), Surewest Long Distance (U5817C), and Surewest Televideo (U6324C).

Application 12-02-011  
(Filed February 10, 2012)

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO**

**1. Summary**

This Ruling and Scoping Memo sets forth the procedural schedule and issues to be addressed, designates the principal hearing officer, and addresses other procedural issues which will facilitate the efficient processing of this proceeding.

**2. Background**

On February 10, 2012, Consolidated Communications Holdings, Inc. (CCHI), Consolidated Communications Inc.(CCI) (CCHI and CCI, together Consolidated), WH Acquisition II Corp. (Merger Sub II), and SureWest Communications, SureWest Telephone, SureWest Long Distance, and SureWest TeleVideo (collectively the SureWest Companies) jointly (Applicants) filed

Application (A.) 12-02-011 (Application) requesting Commission approval for Merger Sub II to acquire direct control and for Consolidated to acquire indirect control of the SureWest Companies pursuant to a merger agreement “by which Consolidated proposes to acquire all of the assets of SureWest Communications, the parent of the SureWest California Utilities, through a series of mergers.”<sup>1</sup>

The Applicants also seek Commission approval to modify the encumbrance of SureWest’s assets:

In addition, Applicants seek approval for SureWest Telephone to encumber its assets. In connection with the Transactions, SureWest Communications’ existing debt of approximately \$204 million, for which the SureWest California Utilities have already encumbered their assets, will be repaid and redeemed in full, but the SureWest Companies will be required to encumber their assets, along with all of Consolidated’s other subsidiaries, to secure existing financing arrangements of Consolidated.<sup>2</sup>

On March 8, 2012, Resolution ALJ 176-3290 reached a preliminary determination that this proceeding was ratesetting and that hearings would be necessary.

On March 19, 2012, the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN), filing jointly, and Citizens Telecommunications Company of California, Inc. d/b/a, Frontier Communications of California, Inc., (Frontier), filed protests to the Application.

On March 29, 2012, the Applicants filed a reply to the protests.

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<sup>1</sup> Application at 2.

<sup>2</sup> *Id.* at 2.

On March 30, 2012, a prehearing conference (PHC) was held in San Francisco to address issues concerning the management of this proceeding, including proposals concerning the scheduling of the proceeding.

**3. Interested Parties to the Proceeding**

The Applicants include Consolidated and the SureWest companies. DRA, TURN, and Citizens are parties to this proceeding. All parties (including the applicant) shall comply with the requirements of this ruling.

**4. Categorization and the Need for Hearings**

This ruling confirms the Commission's preliminary categorization in Resolution ALJ 176-3290 (March 8, 2012) of this proceeding as ratesetting.

At the time of the PHC, no party identified any issues for which they believed an evidentiary hearing was necessary, but some parties believed that hearings could prove necessary. Because of this indeterminacy, we conclude at this time that evidentiary hearings may be necessary. We are therefore unable to either affirm or reverse the preliminary determination.

This ruling, only as to categorization, is appealable under the provisions of Rule 7.6 of the Rules.<sup>3</sup>

**5. Ex Parte Rules**

Since this is a ratesetting proceeding, *ex parte* communications with the decision makers are generally prohibited. The limited exceptions to this prohibition are described at Pub. Util. Code § 1701.3(c) and in Article 8 of the Commission's Rules of Practice and Procedure.<sup>4</sup>

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<sup>3</sup> Rules, Rule 7.6 at 47.

<sup>4</sup> *Id.* at 48-53.

## **6. Scope of Proceeding**

The scope of the proceeding includes the issues presented in the application and the refined issues growing out of the parties' protests and the PHC.

At the PHC, the Administrative Law Judge (ALJ) summarized the principal issues identified in the filings as follows:

1. Should the Commission approve the proposed acquisition?
2. Is more information required to permit a fuller determination consistent with the criteria contained in Pub. Util. Code § 854 (b) and (c)?
3. Will the company that results from the acquisition be financially fit?
4. Can the company that results from the acquisition maintain quality service in the face of the departures of management staff?
5. Should customers be allowed to change carriers during this time without penalty?

After discussions at the PHC by the parties off the record, the Applicants expressed an interest in attempting to resolve the issues in an expeditious manner and expressed a willingness to explore negotiations with the parties.

## **7. Schedule**

At the PHC, the parties discussed the details of scheduling with the ALJ. The parties agreed to make a good faith effort to resolve outstanding issues in the month of April. If a settlement was reached and the application became an uncontested matter, then parties would work to enable the Commission to address the matter as expeditiously as possible. The Applicants noted that a Commission decision at the June 7, 2012 meeting would enable the applicants to avoid substantial costs.

In the event that negotiations fail to resolve this matter, the parties committed to dates for evidentiary testimony. Parties would submit the testimony with appropriate attestations so that the Commission can move the exhibits into the record without hearings. Parties, however, reserved the right to file motions asking the Commission to schedule evidentiary hearings in the event that a party believes that hearings are needed.

In addition, Frontier argued that the Applicants' Reply to Frontier's protest contained factual errors and sought leave to file a response. The ALJ agreed to accept such a filing.

Based on all these considerations, the following schedule emerged as an appropriate way to proceed:

Event	Date
Frontier Response to Applicants' Reply to Protests	April 9, 2012
Discussions between Parties in Search of Settlement	Month of April
In the event no settlement is reached, the following schedule applies	
Intervenor Testimony	May 11, 2012
Rebuttal Testimony	May 18, 2012
Evidentiary Hearings	At this point, there is no determination on the necessity for hearings
Opening Briefs and Requests for Final Oral Argument	June 1, 2012
Reply Briefs and Replies to Requests for Final Oral Argument	June 8, 2012
Projected Proposed Decision	Late June, 2012
Projected Commission Consideration	August 2, 2012 Commission Meeting

Since this schedule produces a timely decision and is consistent with statutory requirements pertaining to the processing of decisions, the above schedule shall be the schedule for this proceeding.

Consistent with Pub. Util. Code § 1701.5, the deadline for the conclusion of this proceeding is 18 months from the date of this ruling.

#### **8. Intervenor Compensation**

The PHC in this matter was held on March 30, 2012. Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation shall file and serve a notice of intent to claim compensation on or before April 30, 2012.

#### **9. Final Oral Argument**

Motions for a final oral argument, if any, shall be filed and served concurrently with opening briefs.<sup>5</sup> The motion shall state the request, subjects to be addressed, amount of time requested, recommended procedure and order of presentations, and anything else relevant to the motion. If more than one party plans to file such a motion, parties shall use their best efforts to present a joint motion, including a joint recommendation on procedure, order of presentation, and anything else relevant to the motion. A response to the motion may be filed concurrently with the reply briefs.

#### **10. Settlements**

Any settlements between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules and shall be served in writing. Such settlements shall include a complete explanation of the settlement and

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<sup>5</sup> See Rule 13.13(b).

complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

**11. Presiding Officer**

Pursuant to Pub. Util. Code § 1701.3, ALJ Timothy J. Sullivan is designated as the presiding officer in this proceeding.

**12. Service List/Filing and Service of Documents**

The official service list for this proceeding is attached to this ruling. The parties shall notify the Commission's Process Office of any address, telephone, or electronic mail (email) change to the service list.

Parties shall file and serve all pleadings as set forth in Article 1 of the Commission's Rules of Practice and Procedure. All documents shall be served electronically, as set forth in Rule 1.10. Testimony shall be served, but not filed.

**IT IS RULED that:**

1. The final categorization of this proceeding is ratesetting.
2. At this time, hearings may be required.
3. *Ex parte* communications, if any, shall comply with Article 8 of the Commission's Rules of Practice and Procedure.
4. The scope of the proceeding is as set forth above.
5. The schedule is as set forth above unless amended by the assigned Commissioner or Administrative Law Judge.
6. Consistent with Pub. Util. Code § 1701.5, the deadline for the conclusion of this proceeding is 18 months from the date of this ruling.
7. Parties shall follow the procedure stated above in making any request for final oral argument.

8. Any settlements reached between parties shall be served in writing as discussed above.

9. Administrative Law Judge Timothy J. Sullivan is the presiding officer in this proceeding.

10. The service list for filing and service of documents and service of testimony in this proceeding is as set forth above.

Dated April 6, 2012, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner