



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Investigation into the State
of Competition Among
Telecommunications Providers in
California, and to Consider and Resolve
Questions raised in the Limited Rehearing
of Decision 08-09-042.

I. 15-11-007
(Filed November 5, 2015)

**PREHEARING CONFERENCE STATEMENT
OF THE UTILITY REFORM NETWORK**

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PREHEARING CONFERENCE STATEMENT OF THE UTILITY REFORM NETWORK

I. INTRODUCTION

Pursuant to the June 7, 2016 *Administrative Law Judge's Ruling Setting Prehearing Conference and Addressing Related Issues*, the Utility Reform Network (TURN) hereby files its prehearing conference statement.

TURN has been an active party to this proceeding and plans to continue its participation in all elements of the docket. TURN encourages the Commission to design a process that supports its, “ongoing need and statutory mandate for vigilant Commission oversight of the competitive marketplace to ensure that the market serves consumers well.”¹ The Commission has also said that, “The goal of this data-driven OII is to develop a comprehensive record that shall include, but not be limited to, a thorough economic analysis of the competitive market, and its ability to produce reliable telecommunications service at just, reasonable and affordable rates. This OII will help fulfill our constitutional and statutory duties to oversee and regulate the telecommunications industry in the public interest.”² We make our comments below with these goals in mind.

II. DISCUSSION

A. Scope and Issues to be Resolved

The Ruling asks for comments on the “scope and issues to be resolved in this proceeding,” including the list of issues identified in Appendix A. TURN agrees that the issues listed in Appendix A should be within the scope and resolved in this proceeding. It appears that many of these issues are restatements or slightly revised versions of the Information Requests found in

¹ Order Instituting Investigation, I.15-11-007, p. 1.

² D.15-11-023, p. 13.

Appendix B of the Order Instituting Investigation (OII) in this proceeding.³ TURN has submitted testimony on these issues under the schedule set out in the February 4, 2016 Ruling.

However, the June 7, 2016 Ruling appears to be asking for comment on *all of the issues* to be resolved in this proceeding. If that is the case, the list of issues in the Appendix is insufficient. First, the list of issues does not reference the affordability of service, just and reasonable rates, or safety and reliability. Indeed, Ordering Paragraph 1 of the OII includes a list of ten issues related to competition that TURN believes are critical for the Commission to address. Except for passing reference, the issues listed in Appendix A do not adequately reflect the issues listed in the OII.

The OII and Information Requests make explicit reference to monitoring, data collection and other processes regarding the statutory mandate to ensure just and reasonable rates. The OII suggests that the affordability issue will be addressed in the LifeLine proceeding, but these issues must also be incorporated here to determine how issues of affordability and competition impact each other in the context of California's telecommunications market. The impact of competition, or lack of competition, on safety and reliability is also referenced in the OII but missing in Appendix A.⁴ Moreover it is unclear if the Ruling's reference to "customer segments" captures the OII's questions about geographic market variability or the impact of the developing broadband and advanced services market. While TURN would support a phased approach to addressing some of these issues, they cannot be lost and should be included in a scoping memo that attempts to scope the entire proceeding.

³ See, for example, Information Requests 9-12 (market definition), 13-19 (wholesale market definition and impact) and 20-22 (market monitoring and reporting). Question 23 regarding market failure is reflected in Question 3 of the Ruling Appendix A, subpart a of Question 23 are not properly reflected in the Ruling as discussed below.

⁴ OII, p. 14.

Second, the Ruling and the issue list in Appendix A make no mention of the related Rehearing Decision that has been consolidated in this case. That decision grants limited rehearing of issues that “relate to matters of competition, and whether competitive market forces are sufficient to keep services affordable and accessible for consumers.”⁵ The Rehearing Decision refers to four issues that should be reviewed in this proceeding- the impact of imposing rate caps in high cost areas, the methodology for designing rate caps, the rate increase for LifeLine customers and the lack of a record on issues of competition and affordability.⁶ Any scoping ruling in this docket should explicitly describe how these issues will be addressed in this proceeding.

Third, the scoping ruling should clarify that the market definition issues and findings of competition or lack of competition as described in Appendix A will just be the first phase of this docket. The current work in the docket is being described as “data gathering.” This data gathering is a necessary prerequisite to the Commission moving forward to revise and set its policies for communications regulation in California. Not only does the Commission need to clarify how and when the full contingent of issues from the OII and Rehearing Decision will be addressed but, if there is a finding of a lack of competition, how and when the Commission expects to review and determine what remedies and safeguards must be put in place. Under the current regulatory framework, the Commission is relying on competition to satisfy its duty and legislative mandate to protect consumers pursuant to Public Utilities Code Sections 451 and 453, among others, and, to encourage further competition pursuant to Public Utilities Code Section 709. If the Commission finds limited or no competition in California, new safeguards will need to be put in place to ensure the statutory mandate is satisfied.

⁵ Rehearing p. 11

⁶ Id. at p. 11-12

B. Evidentiary Hearings

TURN believes there is no need for evidentiary hearings and is unaware of any factual issue in dispute. While there is disagreement about how to interpret the facts and how the Commission should move forward, parties' data and testimony submissions speak for themselves. If parties have questions or need clarification about a parties' submission they should seek clarification through discovery requests as the most effective and efficient way of resolving those questions. TURN would support a round of opening and reply of comments or briefing to allow parties to synthesize and analyze the record and add limited amount of new information or data only in response to material submitted previously. However, the current record in the proceeding is sufficiently robust so that further rounds of testimony should not be necessary to address the scope of issues set out in Appendix A. Even if the scope is broadened to accommodate some of the issues discussed above, TURN believes that parties March 15, April 15 and June 1 filings should be sufficient to provide a robust record to move forward.

There is one exception. TURN notes that it and other parties to the case have not received all of the data submitted to the Commission by the carriers in light of the preliminary injunction put in place by the federal district court.⁷ Therefore, TURN reserves its right to revisit its position regarding evidentiary hearings and additional rounds of testimony if TURN is provided access to the subject data, if other parties or the Commission rely on the data, or if the scope of the proceeding is substantially revised.

⁷ See, *New Cingular Wireless PCS, LCC, et al. v. Michael Picker, et al.*, Case No. 3:16-cv-02461-VC, May 20, 2016 Ruling.

C. Schedule

TURN does not have a specific proposed schedule at this time but will review and comment on other parties' proposed schedules. In previous filings in this docket, TURN has emphasized the importance of the Commission moving forward on these issues in a timely manner. As the OII has made clear, TURN, ORA and others have been requesting that the Commission review its findings in URF for several years. TURN firmly believes that competition is not disciplining the market and as a result consumers are being harmed. Therefore, TURN urges the Commission to address these issues as quickly as possible.

Finally, TURN is a party to the federal district court action referenced above. There are numerous parties to this proceeding that are also party to that case. TURN urges the Commission to take the federal court schedule into account when setting the schedule here.⁸ As an intervenor with limited resources, it will be difficult for TURN to effectively participate in both proceedings if due dates and deadlines are within one or two days of each other.

Dated: June 15, 2016

Respectfully submitted,

/S/

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⁸ See, June 1, 2016 Order granting Stipulation on scheduling.