

**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

Investigation 15-11-007  
(Filed Nov. 5, 2015)

**RESPONSE OF THE WRITERS GUILD OF AMERICA, WEST, INC. TO THE  
COMMUNICATIONS INDUSTRY COALITION'S MOTION TO STRIKE AND  
OBJECTIONS TO PROPOSED OFFICIAL NOTICE**

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**I. Introduction**

On July 29, 2016, the Communications Industry Coalition (“Industry Coalition”) filed a Motion to Strike and Objections to Proposed Official Notice, identifying four areas of issue for which they seek to strike all or portions of WGAW’s written and oral testimony. The claimed grounds for striking testimony pertaining to WGAW are as follows:

1. Written or Live Testimony that the Parties were Not Allowed to Cross-Examine Should be Stricken
2. Testimony that is Outside the Defined Scope of the Proceeding Should be Stricken from the Evidentiary Record (specifically, Testimony Regarding Competition Among Broadband or Wireless Providers and Competition for Broadband Internet Access Services is Not Relevant to the Key Issues in this Docket and Should Be Stricken)
3. Testimony Expressing Opinions from Witnesses Not Qualified to Offer Expert Testimony Should Be Stricken from the Evidentiary Record (specifically, Unqualified Expert Opinion Regarding Economics).

#### 4. Testimony Constituting Impermissible Hearsay Should Be Stricken

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure and the Administrative Law Judge's Ruling on Dates for Motions to Strike (July 26, 2016), WGAW hereby files this Response. The Industry Coalition's arguments are not valid or persuasive, and the Commission should reject its Motion to Strike.

### **II. Objections to WGAW Testimony**

#### a. Parties' Right to Cross-Examine Testimony

The Industry Coalition argues that they have been denied their due process right in that they have not been allowed to cross-examine testimony, and thus that all of the written and oral testimony not submitted by Coalition members should be stricken.<sup>1</sup> WGAW supports the Response to this issue filed by CALTEL; the Commission should reject this argument.

#### b. Relevance of Issues Pertaining to Broadband

The Industry Coalition argues that testimony pertaining to competition within broadband markets is outside the scope of the proceeding and so should be excluded from the record.<sup>2</sup> However, there can be no doubt that testimony related to competition in broadband is relevant to the proceeding as envisioned by the original Order Instituting Investigation and subsequent rulings such as the Scoping Ruling and Issue and Briefing Outline.<sup>3</sup> Broadband or "data" services are explicitly mentioned in the original OII, including "the extent to which wireless and wireline services are substitutes for one another in the voice and/or data markets."<sup>4</sup> No ruling

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<sup>1</sup> The Communications Industry Coalition's Motion to Strike and Objections to Proposed Official Notice (July 29, 2016) at 6 ("Motion to Strike").

<sup>2</sup> *Id.* at 15-16.

<sup>3</sup> See, for instance, Order Instituting Investigation to Assess the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Limited Rehearing of Decision (D.) 08-09-042 (Nov. 5, 2015) at 8, 14, 21, B-3 and B-4, ("OII") and Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (July 1, 2016) at Appendix A, Issue and Briefing Outline.

<sup>4</sup> OII at 21.

since has indicated broadband issues are no longer to be included. The Commission should reject this argument.

c. Relevant Expertise for Ms. Blum-Smith's Testimony

The Industry Coalition alleges that portions of WGAW's testimony should be struck because its witness, Ms. Blum-Smith, addresses economic topics such as market definition and product substitutability but is not an economist. The Coalition argues that Ms. Blum-Smith "do[es] not possess any expertise in economics or market composition" and that WGAW "did not lay the required foundation to qualify these witnesses as experts on economics."<sup>5</sup> However, Ms. Blum-Smith does not present herself as an economist, nor is her testimony based on concepts or knowledge outside her area of expertise. Her experience is in areas of telecommunications policy matters as related to screen and television writers' employment and business, specifically including telecommunications company mergers, where she has participated in several Federal Communications Commission and CPUC proceedings on behalf of the WGAW.<sup>6</sup> These proceedings have directly concerned issues such as product market definitions, the substitutability of wireless and wireline broadband, and broadband development and competition,<sup>7</sup> and Ms. Blum-Smith's participation in them have given her sufficient expertise to offer comment on these areas. The Commission should reject the Coalition's motion to strike portions of Ms. Blum-Smith's testimony on these issues.

d. Ms. Blum-Smith's Use of "Hearsay"

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<sup>5</sup> Motion to Strike at 24-25.

<sup>6</sup> Testimony of Laura Blum-Smith Submitted as Supplemental Information Request Response on Behalf of Writers Guild of America, West, Inc. (June 1 Testimony), Statement of Qualifications of Laura Blum-Smith.

<sup>7</sup> See, for instance, Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, MB Docket No. 15-149 (2016).

