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

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 November 5, 2015)

**RESPONSE OF
RESPONDENTS
CONSOLIDATED COMMUNICATIONS OF CALIFORNIA COMPANY (U 1015 C)
CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES
F/K/A SUREWEST TELEVIDEO (U 7261 C) ("CONSOLIDATED")
TO MOTION OF AT&T CALIFORNIA (U-1001-C) AND NEW CINGULAR WIRELESS
PCS, LLC (U-3060-C) TO STRIKE PORTIONS OF ORA REPLY BRIEF**

Mark P. Schreiber
Patrick M. Rosvall
Sarah J. Banola
COOPER, WHITE & COOPER LLP
201 California Street, Seventeenth Floor
San Francisco, California 94111-5002
Telephone: (415) 432-1000
Facsimile: (415) 433-5530

Attorneys for Consolidated

September 30, 2016

1 Pursuant to Rule 11.1(e) of the California Public Utilities Commission's ("Commission")
2 Rules of Practice and Procedure, Consolidated Communications of California Company (U 1015
3 C) and Consolidated Communications Enterprise Services f/k/a SureWest TeleVideo (U 7261 C)
4 ("Consolidated") hereby respond in support of the Motion of AT&T California and New Cingular
5 Wireless PCS, LLC (collectively "AT&T") to Strike Portions of ORA Reply Brief ("AT&T's
6 Motion"). As explained in AT&T's Motion, the referenced portions of ORA's Reply constitute
7 new economic testimony to which the parties have not had a fair opportunity to respond in
8 violation of the Scoping Memo¹ and the parties' due process rights. As noted by AT&T, this new
9 testimony "should have been submitted as part of ORA's July 15, 2016 reply testimony or raised at
10 the expert panel on July 20, 2016."² Instead, when the subject of the new economic testimony was
11 specifically raised at the expert panel, ORA's witness Dr. Selwyn remained silent.³

12 The new testimony also violates the well-established rule prohibiting new evidence with
13 reply briefs. *See, e.g.*, D.02-08-064 at 36-38 (striking portions of Southwest's reply brief that
14 introduced new evidence because the County and ORA did not have "an opportunity to either
15 respond or test the reliability or validity of this evidence."); *see also Jay v. Mahaffey* (2013) 218
16 Cal.App.4th 1522, 1537-1538, ("The general rule of motion practice . . . is that new evidence is
17 not permitted with reply papers."); *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

18 Unlike ORA, Consolidated and the other parties confined their opening and reply briefs to
19 the record evidence. ORA's assertion of new economic testimony on reply is improper as the
20 Commission denied the parties' requests for three rounds of testimony and evidentiary hearings.⁴
21 The Commission further denied the parties' subsequent requests for an extension of the deadline to
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24 ¹ Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge at 14 (July 1, 2016)
25 (limiting the parties to rebuttal/supplemental testimony in order to "reply to the testimony submitted
through June 1, 2016, and/or to provide the Commission with any further analysis or recommended view of
the marketplace[.]").

26 ² AT&T's Motion at 1.

27 ³ AT&T's Motion at 2; 7/20/16 Tr. at 86.

28 ⁴ Prehearing Conference Statements (June 15, 2016) and Scoping Memo.

1 submit "rebuttal/supplemental" testimony and for full evidentiary hearings.⁵ As a result,
2 Consolidated did not have sufficient time to prepare complete testimony addressing all of the
3 issues in the Scoping Memo and responding to the several hundreds of pages of testimony
4 submitted by ORA and the other Intervenors. For similar reasons, it did not have time to retain an
5 outside expert. Therefore, it is particularly harmful for ORA to submit new economic testimony
6 on reply when Consolidated was denied a meaningful opportunity to submit testimony.

7 For the reasons set forth above and in AT&T's Motion, Consolidated requests that the
8 Commission strike the improper portions of ORA's Reply Brief identified in AT&T's Motion.

9 Dated this 30th day of September, 2016, at San Francisco, California.

10 Respectfully submitted,

11 COOPER, WHITE & COOPER LLP
12 Mark P. Schreiber
13 Patrick M. Rosvall
14 Sarah J. Banola
15 201 California St., 17th Floor
16 San Francisco, California 94111
17 Telephone: 415-433-1900
18 Telecopier: 415-433-5530
19 Email: prosvall@cwclaw.com

20 By: /s/ Patrick M. Rosvall
21 Patrick M. Rosvall
22 Attorneys for Consolidated

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27 ⁵ Motion for Extension of Procedural Deadlines in the July 1, 2016 Scoping Memo and Ruling of Assigned
28 Commissioner and Administrative Law Judge and Respondents' Request for Rehearing of Scoping Memo
Ruling on Evidentiary Hearings (July 11, 2016); Assigned Commissioner and Administrative Law Judge's
Ruling Re: 7/20/16 Evidentiary Hearing and Denying Related Party Motions (July 13, 2016).