



**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 November 5, 2015)

**REPLY COMMENTS OF CTIA ON
PROPOSED DECISION ANALYZING THE CALIFORNIA TELECOMMUNICATIONS
MARKET AND DIRECTING STAFF TO CONTINUE DATA GATHERING,
MONITORING, AND REPORTING ON THE MARKET**

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Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), CTIA¹ replies to certain comments on the Proposed Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring, and Reporting on the Market (“Proposed Decision”) that were filed in the above-captioned proceeding on November 7, 2016.

I. INTRODUCTION

In its opening comments, CTIA raised concerns with the breadth of the annual reporting requirement that the Proposed Decision recommended be imposed on communications providers and the lack of specificity in the Proposed Decision regarding the degree of confidentiality that will be afforded any information submitted.² In addition, CTIA addressed several findings in the Proposed Decision that were inadequately supported by record evidence. Review of other parties’ opening comments confirm that CTIA’s concerns were justified. The comments submitted by various consumer groups seek further proceedings in this docket, evidence their

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² Comments of CTIA on Proposed Decision Analyzing the California Telecommunications Market and Direct Staff to Continue Data Gathering, Monitoring, and Reporting on the Market, I. 15-11-005 (November 7, 2016) (“CTIA Comments”).

intent to seek access to all information that may be required to be submitted by communication providers pursuant to the dictates of a final decision, and seek to expand the Proposed Decision with additional findings of facts and conclusions of law not corroborated by the record. As detailed below, these efforts are inappropriate, unjustified, and should be rejected by the Commission.

II. THE PROPOSED DECISION DOES NOT ERR BY CLOSING THE PROCEEDING

Contrary to the allegations of the various consumer groups, the Proposed Decision does not err proposing to close this proceeding.³ Assertions that the Commission is compelled to act on certain findings in a subsequent stage of this proceeding are not accurate. To the contrary, the Commission's Rules of Practice and Procedure ("Rules") regarding the issuance of a scoping memo dictate that this proceeding be closed.

Specifically, the Commission's Rules define "scoping memo," in pertinent part, as "an order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding."⁴ After a prehearing conference is convened, the Assigned Commissioner must issue a scoping memo that "shall determine the . . . issues to be addressed in the proceeding."⁵ In administering a case, the Commission must "proceed in the manner required by law,"⁶ and courts have determined that the Commission violates the Public Utilities Code when it acts outside the announced scope of issues to be addressed in a proceeding.⁷

In the matter at bar, the Assigned Commissioner initially clarified the limited scope of this proceeding at the Prehearing Conference conducted in January 2016, stating that "[t]his proceeding is not a typical quasi-legislative proceeding in that we're not setting rules for the

³ See Opening Comments of the Utility Reform Network on the Proposed Decision of Administrative Law Judge Bemserfer, I. 15-11-007 (November 7, 2016) ("TURN Comments"), p. 2; Opening Comments of the Greenlining Institute and the Center for Accessible Technology on the Proposed Decision, I. 15-11-007 (November 7, 2016) ("Greenlining / CAT Comments"), p. 11; Comments of the Office of Ratepayer Advocates on Proposed Decision, I. 15-11-007 (November 7, 2016) ("ORA Comments"), pp. 2-3.

⁴ Rule 1.3.

⁵ Rule 7.3.

⁶ Pub. Util. Code, § 1757.1(a)(2).

⁷ See *Southern California Edison v. Public Utilities Commission*, 140 Cal. App. 4th 1085 (2006), (determining that the Commission had not proceeded in the manner required by law when it considered and acted upon a proposal that was not within the defined scope of the proceeding, as set forth in the preliminary and final scoping memos).

industry or a subset of the industry.”⁸ The assigned Administrative Law Judge confirmed this clarification, stating that “this proceeding is limited to information gathering” and “the Commission itself has disclaimed any intention to either make rules or set rates.”⁹ The Scoping Memo further reaffirmed the proceeding’s intended purpose by declaring:

We have repeatedly clarified that this docket is a data gathering and data analysis exercise. We have designed it to obtain a snapshot of telecommunications in California today, not to set (or repeal) rules.¹⁰

The Proposed Decision, which also acknowledges that “the object of this investigation has been to take a snapshot of the telecommunications marketplace in California” as of December 31, 2015,¹¹ achieves this objective – it sets forth a detailed analysis of the state of competition in the California telecommunications marketplace. Doing anything else is unnecessary, beyond the scope of the proceeding, and, therefore, would be unlawful.

III. THE COMMISSION SHOULD NOT MODIFY THE PROPOSED DECISION TO PROVIDE THIRD PARTIES ACCESS TO HIGHLY CONFIDENTIAL, MARKET-SENSITIVE INFORMATION

At present, the Proposed Decision recommends that communications providers annually report to the Commission’s Communications Division highly confidential, market-sensitive “voice and broadband subscriber and availability block-level data,” the “location of middle-mile facilities by technology type and capacities,” and “whether such facilities are available to unaffiliated providers of Broadband Internet access service.”¹² Such information would implicate serious competitive concerns if released to the public; however, various commenters assert that they should have direct access to such data.¹³ They do so without providing any reasoned explanation as to why, in the absence of any ongoing proceeding, they would need to have such access. Moreover, they do so without acknowledging, as explained in the opening comments of both CTIA and the Joint Respondents, that the data is strictly confidential under the tenets of both state and federal law and the Commission is legally restricted regarding its

⁸ Prehearing Conference Transcript, p. 11, lines 15–18.

⁹ *Id.*, p. 24, lines 1–9.

¹⁰ Scoping Memo and Ruling of Assigned Commissioner and Assigned Administrative Law Judge, I. 15-11-005 (July 1, 2016), p. 7.

¹¹ Proposed Decision, p. 8.

¹² *Id.*, p. 163.

¹³ Greenlining / CAT Comments, p. 5; ORA Comments, Appendix A, pp. 6–7.

release.¹⁴

The Commission should therefore reject the consumer groups' requests that the Proposed Decision be modified to ensure their access to the information submitted by the communications providers pursuant to the requirements of the Proposed Decision. Rather, as advocated by CTIA and the Joint Respondents, the Commission should clarify the Proposed Decision to provide that such data will be treated as strictly confidential and not disclosed to any third parties.

IV. THE COMMISSION SHOULD NOT MODIFY THE PROPOSED DECISION TO ADD UNSUPPORTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

As noted in CTIA's comments, the Proposed Decision errs in making certain findings of fact that are either predicated on extra-record information or are clearly contrary to record evidence.¹⁵ CTIA reiterates its request that such findings be removed from the Proposed Decision. Review of comments on the Proposed Decision reveals that certain parties seek to compound the Proposed Decision's error by requesting that it be modified to include even more findings of fact and conclusions of law that have no support in the record. The Commission should ignore such requests.

For example, the Greenlining Institute ("Greenlining") and the Center for Accessible Technology ("CforAT") request that the Proposed Decision be modified to add several findings of fact with respect to the digital divide.¹⁶ Of particular note is the proposed finding that: "For Californians with disabilities, the "digital divide" stems from the inadequacy of mobile service to meet their telecommunications needs."¹⁷ While proposed as a finding of fact, no record evidence supports this untrue statement. Accordingly, Greenlining and CforAT's request must be denied.

Similarly, the Office of Ratepayer Advocates ("ORA") seeks the addition of a finding of fact that "[m]obile and residential broadband services are generally complementary, not substitutes."¹⁸ To support this finding, ORA relies on the discussion contained on page 40 of the Proposed Decision. However, as noted in the Respondent Coalition's opening comments,¹⁹ the

¹⁴ CTIA Comments, pp. 5–6; Respondent Coalition Opening Comments on Proposed Decision, I. 15-11-005 (November 7, 2016), pp. 21–23.

¹⁵ CTIA Comments, pp. 6–10.

¹⁶ Greenlining / CAT Comments, p. 4.

¹⁷ *Id.*, Appendix A, p. 1.

¹⁸ ORA Comments, Appendix A, p. 3.

¹⁹ Respondent Coalition Opening Comments, p. 14 (explaining that in economic terms, when services are considered complements, it is generally understood to mean that if the price of one good goes down, the demand for the other complementary good goes up).

Proposed Decision misuses the term “complement” in the economic sense. Such misuse distorts the intent and meaning of the statement. Accordingly, the proposed finding of fact is inappropriate. ORA also proposes other findings of fact that are not based on record evidence and, therefore, should be rejected.²⁰

Finally, ORA requests the addition of a new conclusion of law stating that “[c]ompetition ostensibly provided by wireless services has not led to wireline prices that are just and reasonable.”²¹ However, ORA does not, and cannot, cite any source in the record or the Proposed Decision as the basis for this proposed conclusion of law. Moreover, such conclusion is inconsistent with the Proposed Decision’s finding that wireless and VoIP services have rapidly displaced traditional land line phones.²² There is therefore nothing “ostensible” about competition between wireline services and wireless and VoIP services. Therefore, the Commission should reject ORA’s request for this additional conclusion of law.

V. CONCLUSION

CTIA respectfully requests that the Commission reject the consumer groups’ requests to (1) keep this proceeding open; (2) be granted access to such data as the communications providers are required to submit to the Commission pursuant to the ultimate dictates of the Commission’s final decision; and (3) supplement the Proposed Decision with unsupported findings of fact and conclusions of law.

²⁰ See e.g., ORA Comments, Appendix A, p. 1 (Findings of Fact sourced to pages § 7.4.1, p. 124, and § 7.4.2, p. 130).

²¹ ORA Comments, Appendix A, p. 6.

²² Proposed Decision, p. 156, Finding of Fact 1.

Respectfully submitted November 14, 2016, at San Francisco, California.

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