



**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)

**REPLY COMMENTS OF THE GREENLINING INSTITUTE ON PROPOSED
DECISION**

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In accordance with the Commission’s Rules of Practice and Procedure and the Proposed Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market (Proposed Decision) issued on October 18, 2016, The Greenlining Institute (Greenlining) submits these Reply Comments. Providers’ Opening Comments offer a number of objections to the Proposed Decision’s reporting requirements. These objections are no more than an extension of providers’ attempts to prevent (1) the Commission from engaging in a meaningful review of competition and (2) public participation in this proceeding. Accordingly, the Commission should reject those arguments.

1. The Commission Should Reject Provider Arguments that the Commission Lacks the Authority to Impose Reporting Requirements.

The Commission has the Constitutional authority to inspect public utilities’ records.¹ Additionally, Public Utilities Code sections 311 and 314 give the Commission the authority to inspect records held by a public utility and

[T]he accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation, or a water corporation that has 2,000 or more service connections, with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.²

Providers take an overly restrictive view of the term “inspect,” apparently arguing that a pre-scheduled review of providers’ data is somehow not an “inspection.” However, nothing in the statutes restricts the definition of “inspect” to meet providers’ proposed definition, and the Commission should reject that definition. Public Utilities Code Section 701 expressly gives the

¹ Cal. Const. Art. XII, § 6.

² Cal. Pub. Util. Code. § 314, subd. (b).

Commission the power to take any actions which are “necessary and convenient in the exercise of [its] power and jurisdiction,” and the Proposed Decision’s reporting requirement is an entirely reasonable means of performing an “necessary and convenient” inspection of providers’ records.

Providers also argue that Public Utilities Code Section 716 only authorizes the Commission to request information after a provider has filed a forbearance petition with the Federal Communications Commission.³ However, this argument disregards language in the statute directing the Commission to be “prepared to timely reply” to such a petition. It is unclear whether, in drafting section 716 the Legislature specifically anticipated providers’ dogged attempts to stall or foreclose disclosure of information in proceedings such as this one. However, the text of section 716, subdivision (b)(1) contemplates the need for the Commission to respond quickly and, while not a model of clarity, appears to authorize the Commission’s collecting data in advance. Accordingly, the Commission should reject providers’ arguments.

2. The Commission Should Reject Provider Claims Regarding the Cost of Reporting.

Some providers once again argue that that they will be irreparably harmed because they will be unable to recoup the costs of complying with the Commission’s requests, arguing that , stating only that compliance will be “time-consuming and costly.”⁴ Additionally, while providers previously claimed that compliance would require “significant resources and employee-hours,”⁵ providers now argue that compliance might also “required the assistance of a consultant who can prepare the data in that format.”⁶ However, despite the fact that providers first raised the issue of costs of compliance in December of 2015, they have not provided any

³ Respondent Coalition Opening Comments at p. 11.

⁴ Respondent Coalition Opening Comments at p. 21.

⁵ Coalition Motion for Stay, Declaration of Beth Choroser at ¶ 15; Declaration of Philip J. Wood at ¶ 8

⁶ Respondent Coalition Opening Comments at p. 21.

information regarding the actual cost of compliance.⁷ Providers' claims regarding the costs of compliance are vague and general as to be meaningless, and the Commission should reject those claims.

3. The Commission Should Reject Continued Provider Efforts to Exclude Stakeholders from Participation.

Providers argue that the Proposed Decision's data requests are too vague for providers to determine "what should be reported."⁸ However, at the same time, providers argue that any data they provide in response to these allegedly overly vague requests should automatically qualify as confidential.⁹ These inconsistent arguments are yet another example of providers' underlying desire to avoid any true review of the state of competition in the telecommunications marketplace.¹⁰

Similarly, some providers go so far as to argue that data they provide to the Commission should not be disclosed to any third parties.¹¹ As Greenlining has previously noted, the U.S. District Court recently confirmed the Commission's authority to allow third parties to review such data, stating that "[f]ederal law does not preempt state commissions from requiring, under an appropriate protective order and in connection with a regulatory proceeding, disclosure of subscription data to parties participating in that proceeding."¹² This proceeding has been characterized by pervasive provider efforts to prevent intervenors from accessing provider data and therefore being able to meaningfully participate in the proceeding.¹³ The Commission

⁷ Joint Consumers Consolidated Response to Motions at p. 17.

⁸ Respondent Coalition Opening Comments at p. 18.

⁹ Respondent Coalition Opening Comments at p. 19.

¹⁰ See Joint Consumers Joint Response and Opposition at p. 13.

¹¹ CTIA Opening Comments at p. 6.

¹² Order re Summary Judgement, *New Cingular v. Picker*, Case No. 16-cv-02461-VC (November 3, 2016).

¹³ Greenlining and CforAT Opening Comments at p. 5.

should reject further provider attempts to prevent public access to provider data under appropriate protections.

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Respectfully submitted,

/s/ Paul Goodman
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