

Decision **PROPOSED DECISION OF ALJ BURCHAM** (Mailed on 7/28/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission’s Own Motion into the Operations, Practices, and Conduct of Comcast Phone of California, LLC (U-5698-C) and its Related Entities (Collectively "Comcast") to Determine Whether Comcast Violated the Laws, Rules, and Regulations of this State in the Unauthorized Disclosure and Publication of Comcast Subscribers’ Unlisted Names, Telephone Numbers, and Addresses.

Investigation 13-10-003
(Filed on October 3, 2013)

DECISION AFFIRMING ADMINISTRATIVE LAW JUDGE’S RULINGS DENYING LATE-FILED NOTICES OF INTENT TO CLAIM COMPENSATION

1. Summary

This decision affirms three rulings of the assigned Administrative Law Judge regarding two late-filed notices of intent to claim intervenor compensation, filed by The Greenlining Institute and Consumer Federation of California in this proceeding.

2. Background

Public Utilities Code Section 1804(a)(1) states:

A customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation. In cases where no prehearing conference is scheduled or where the commission anticipates that the proceeding will take less than 30 days, the

commission may determine the procedure to be used in filing these requests. In cases where the schedule would not reasonably allow parties to identify issues within the timeframe set forth above, or where new issues emerge subsequent to the time set for filing, the commission may determine an appropriate procedure for accepting new or revised notices of intent.

The first prehearing conference (PHC) in this case was held on January 9, 2014. Based on this statute, notices of intent (NOIs) to claim compensation were due on February 10, 2014. Consumer Federation of California (CFC) and The Greenlining Institute (Greenlining), both frequent participants in Commission proceedings, attended the January 9 PHC. CFC filed a motion for leave to late- file its NOI on February 11, and Greenlining filed a similar motion on February 12, 2014. CFC and Greenlining both explain that they missed the February 10 deadline based on a calendaring error and assert that there is no prejudice to allowing the NOIs to be accepted late.

The Administrative Law Judge (ALJ) denied CFC's and Greenlining's motions (by rulings dated February 21 and March 5, respectively) on the grounds that Section 1804(a)(1) is mandatory and confers no discretion on the Commission to excuse customers who fail to comply.

A second PHC was held on May 21, 2014, at which Greenlining was present. Greenlining inquired whether the holding of a second PHC provided a new opportunity to file their notice of intent. The ALJ treated the inquiry as a motion for leave to file an NOI and denied the motion on the grounds that no new issues were raised during the second PHC and Greenlining did not contend or show that it had insufficient time to allow them to identify issues on which it planned to participate within 30 days of the first PHC.

In the interim, on March 19, 2014, Greenlining filed a motion seeking interlocutory review of the ALJ's March 5, 2014 ruling denying it leave to late-file its NOI. By Assigned Commissioner Ruling dated July 2, 2014 and pursuant to Rule 13.6(c), the request for reconsideration was granted and the matter referred to the Commission for its determination.

3. Discussion

This decision affirms the ALJ's rulings denying Greenlining and CFC leave to late-file an NOI and the opportunity to file an NOI in view of the conduct of a second PHC.

Section 1804(a)(1) does not provide the Commission discretion to accept NOIs filed more than 30 days after the PHC, unless parties cannot reasonably identify issues within the 30 day timeframe or if new issues emerge subsequent to the time for filing an NOI. Neither of these conditions applies here: The Order Instituting Investigation gave ample notice of the potential scope of issues to allow potential intervenors to assess their interest and intent to participate, as evidenced by CFC's and Greenlining's November 18 and 21 motions for party status. The parties actively participated in the PHC where the scope of issues was discussed, and there is no showing that any of the issues identified in the scoping memo exceeds the scope of that discussion.

We cannot interpret the statute to allow us to subvert it by the mere conduct of subsequent PHCs. The phrase "prehearing conference" appears in only two places in the Public Utilities Code: Section 1701.1 and Section 1804. Section 1701.1(b) mandates the scheduling of a PHC upon the Commission's determination that a proceeding may require a hearing, followed by the assigned Commissioner's issuance of a scoping memo that describes the issues to be considered and the applicable timetable for resolution. As a matter of statutory

construction, the PHC referenced in Section 1804(a)(1) necessarily refers to the initial, mandatory PHC previously identified in Section 1701.1.

Furthermore, the plain language of Section 1804(a) states that the deadline and exceptions to it are to address circumstances “where the schedule would not reasonably allow parties to identify issues within the timeframe set forth above.” Unless a subsequent PHC presents such circumstances, it is not grounds for a later NOI.

This is not to say that we are unsympathetic. We see no apparent public interest in the statutory prohibition of late-filed NOIs absent prejudice and for good cause shown. However, we do not have the authority to pick and choose to enforce only those statutes that we endorse.

4. Reduction of Comment Period

Pursuant to Rule 14.6(b) of the Commission’s Rules of Practice and Procedure, all parties stipulated to reduce the 30-day public review and comment period required by Section 311 of the Public Utilities Code to 11 days. Pursuant to the parties’ stipulation, comments should be filed by August 8, 2014, and reply comments were waived.

On August 7, 2014, TURN filed comments in favor of the assigned Commissioner’s alternate proposed decision. TURN argues that the Commission has previously permitted late-filed NOI’s in circumstances outside the specified exceptions in the statute. TURN further argues (citing from the alternate) that the statute is ambiguous, and that ambiguity, coupled with the legislative intent of supporting diverse consumer participation gives the Commission “discretion to

permit an NOI to be filed within thirty days of any PHC – not simply the initial PHC.”¹

On April 8, 2014, The Greenlining Institute also filed comments in favor of the assigned Commissioner’s alternate proposed decision, arguing that the statute “does not specify that a party must submit an NOI within 30 days from the “first” PHC”.² Greenlining further argues that adoption of the alternate proposed decision would further the public policy interest of ensuring “the participation of parties ‘advocating consumer interests that would otherwise go un- or under-represented.’”³

5. Assignment of Proceeding

Carla Peterman is the assigned Commissioner and Dan Burcham is the assigned ALJ for this proceeding.

Findings of Fact

1. CFC and Greenlining did not file NOIs within 30 days of the initial PHC.
2. CFC and Greenlining were reasonably able to identify issues within 30 days of the initial PHC.
3. The Commission does not have the discretion to accept late-filed NOI’s beyond the exceptions specified in section 1804(a)(1).

Conclusions of Law

1. The ALJ’s rulings denying CFC’s and Greenlining’s motions to late-file their NOIs and to file an NOI after the conduct of the second PHC should be affirmed.

¹ TURN’s comments at 4.

² The Greenlining Institute’s Comments at 1.

³ *Ibid.* at 2.

2. This order should be effective immediately.

O R D E R

IT IS ORDERED that the Administrative Law Judge's rulings denying Consumer Federation of California and The Greenlining Institute's motions to late-file their Notice of Intent (NOIs) and to file an NOI after the conduct of the second prehearing conference should be affirmed.

This order is effective today.

Dated _____, at San Francisco, California.