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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the Review of the California High Cost Fund-A Program.

Rulemaking 11-11-007
(Filed November 10, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING
MOTION TO DISQUALIFY CURRENT CARRIER OVERSIGHT AND
PROGRAMS BRANCH ADVISORS FROM FURTHER ADVISORY ROLES IN
THIS PROCEEDING, DENYING MOTION TO STRIKE THE OPENING
COMMENTS OF TYLER WERRIN AND AFFIRMING RULING DENYING
MOTION TO HOLD PROCEEDING IN ABEYANCE**

With the Order Instituting Rulemaking (OIR), the Commission began a review of the California High Cost Fund-A (CHCF-A) program. The OIR was issued pursuant to the Commission's Decision (D.) 10-02-016. The Commission has determined that a detailed review of the program is warranted in response to market, regulatory, and technological changes since the CHCF-A program was first established in 1987. In this OIR, the Commission seeks comment on how the program can more efficiently and effectively meet its stated goals. To the extent deficiencies are identified, the Commission will solicit constructive proposals on whether the program should continue and if so, how it should be modified.

The OIR was approved on November 10, 2011, and issued on November 18, 2011. The preliminary schedule mandated that the initial comments be filed and served 61 days after issuance (January 18, 2012), and that

reply comments be due 91 days after issuance. On January 3, 2012¹ (via e-mail), The Utility Reform Network, a party in the proceeding, requested an extension of time to file initial comments pursuant to Rule 16.6.² In a ruling issued on January 17, the request for extension was granted. By that ruling the proceeding schedule was revised so that initial comments were to be filed and served by February 1, and reply comments were to be filed and served by March 2.

On February 17 (via e-mail), the Commission's Division of Ratepayer Advocates requested an extension of time to file reply comments. In a ruling issued on February 23, an extension, allowing reply comments to be filed and served on March 16, was granted.

Ruling Background/Timeline

On March 8, Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company and Volcano Telephone Company (collectively, Small Local Exchange Carriers (LECs) or Incumbent Local Exchange Carriers (ILECs)) filed a Motion to Disqualify Current Carrier Oversight and Programs Branch Advisors from Further Advisory Roles in the instant proceeding (Motion to Disqualify). Contemporaneously, the Small ILECs filed a Motion to Strike the Opening Comments of Tyler Werrin (Motion to Strike). Attached to the motion was the Declaration of Patrick Rosvall (Rosvall Declaration), counsel for the Independent

¹ All dates are 2012 unless otherwise noted.

² All references to Rules are to the Commission's Rules of Practice and Procedure.

Small ILECs. On March 9 the Small ILECs filed a Motion to Hold the Proceeding in Abeyance or Extend Time for Reply Comments (Motion to Hold in Abeyance).

Also on March 8, the Small ILECs sent a letter to Commission President Michael R. Peevey requesting that the Commission initiate an investigation into the Communications Division's (CD) conduct in connection with the instant proceeding (Request for Investigation). The Request for Investigation, the Motion to Disqualify, the Motion to Strike and the Motion to Hold in Abeyance were all predicated on the alleged misconduct of a member of the Commission's Communications Division CHCF-A advisory staff, Mr. Alex Lewis-Koskinen (Mr. Koskinen). The Small ILECs alleged that Mr. Koskinen fraudulently submitted comments in the instant proceeding under the guise of his close friend, Mr. Tyler Werrin (Werrin Comments).³ In addition to allegations against Mr. Koskinen, the Small ILECs alleged that other (unnamed) members of the CD advisory staff were involved in misconduct and/or an effort to manipulate the record in the instant proceeding.⁴

On March 9, the Commission's Executive Director (Executive Director) informed the assigned Administrative Law Judge (ALJ) that, as a result of the allegations set forth in the Request for Investigation, Mr. Koskinen had been placed on administrative leave, that other CD CHCF-A advisory staff had been reassigned, and that the entire matter had been referred to the California Department of Justice (DOJ) for investigation. On March 14, in response to the

³ Small ILECs' Request for Investigation, at 1.

⁴ *Id.* at 2; Motion to Disqualify, 2:7, 4:1-11, 5:1-3; Motion to Strike 1:12-14, 2:3-7, 2:15-17, 8:3-7; Rosvall Declaration 11:3-10; Motion to Hold in Abeyance 2:15-24.

Motion to Hold in Abeyance, the assigned ALJ issued an e-mail ruling granting parties to the instant proceeding a two-week extension of time to file and serve reply comments. That ruling noted that the Werrin Comments had been served but never properly filed in compliance with Rule 1.13(a) and (b) and Rule 1.14(a) and thus were not part of the record in the instant proceeding. The ruling advised parties that the Werrin Comments should not be referenced in any parties' reply comments.⁵

On June 4, a prehearing conference (PHC) was held in the instant proceeding. The assigned ALJ informed the parties that he would not rule on the Motion to Disqualify until some underlying issues had been resolved.⁶ The Motion to Hold in Abeyance was denied.⁷ Counsel for the Small ILECs requested that the assigned ALJ rule on the Motion to Strike the Werrin Comments. The assigned ALJ did not directly rule on the Motion to Strike the Werrin Comments but indicated that they (the Comments) were not filed or part of the record.⁸

On June 13, the assigned ALJ received an oral briefing from the Supervising Deputy Attorney General who had overseen the DOJ's investigation of Mr. Koskinen, the Werrin Comments and CD CHCF-A advisory staff. On

⁵ March 14, e-mail ruling on Independent Small ILECs Motion to the Proceeding in Abeyance.

⁶ PHC Transcript 8:17-28, 9:1-11, 104:24-28, 105; 1-8.

⁷ *Id.* 9:12-20.

⁸ *Id.* 106:8-28, 107:1-7.

June 20, the Executive Director informed the assigned ALJ of the actions taken by the Commission as a result of the findings of the DOJ investigation.

Werrin Comments, Koskinen and DOJ Investigation

The Werrin Comments were served (but not filed) on February 1. Counsel for the Small ILECs has indicated that he reviewed the comments on the date they were submitted.⁹ The unusual amount of telecommunications insider knowledge displayed in the Werrin Comments caused counsel for the Small ILECs to investigate Mr. Werrin's background.¹⁰ The results of that investigation are detailed in the Rosvall Declaration. As set forth in the Motion to Disqualify and the Request for Investigation, the investigation conducted by counsel for the Small ILECs discovered that:

- Mr. Werrin has no background in economics, ratemaking, telecommunications policy or any other field that would explain how he could have written detailed comments on the specialized and esoteric matters in the instant proceeding;¹¹
- The Werrin Comments were served from a residential address associated with Mr. Koskinen, creating a strong inference that Mr. Koskinen served the comments from his home;¹²

⁹ Rosvall Declaration ¶ 4.

¹⁰ *Id.* at ¶ 5.

¹¹ Motion to Disqualify citing Rosvall Declaration ¶ 15.

¹² *Id.* citing Rosvall Declaration ¶ 10(a) and (b).

- Mr. Werrin and Mr. Koskinen grew up in the same neighborhood, remained friends throughout high school and college and were listed as Facebook friends as recently as February 23;¹³
- Mr. Werrin lied about having any connection to Commission personnel. On February 23, Mr. Werrin stated in writing to counsel for the Small ILECs that he did not know anyone at the Commission. Other evidence shows this statement to be false; and¹⁴
- Following a conversation between counsel for the Small ILECs and Mr. Werrin on February 23, Mr. Werrin and Mr. Koskinen engaged in an effort to cover up their connections to each other. As of February 24, Mr. Werrin's Facebook account was either cancelled or made publicly inaccessible and Mr. Koskinen had shed 18 friends on his Facebook account, including Mr. Werrin and 10 friends he had in common with Mr. Werrin.¹⁵

As previously indicated the Commission referred the allegations contained in the Small ILECs' Request for Investigation to the DOJ. The DOJ investigation report was received by the Commission on May 25. On June 13, the Supervising Deputy Attorney General who conducted the DOJ investigation provided an oral briefing to the assigned ALJ. The ALJ was told that the investigation determined:

- Mr. Koskinen wrote and was the sole author of the Werrin Comments;

¹³ *Id.* ¶ 10(c-h).

¹⁴ Request for Investigation, at 2 citing Rosvall Declaration ¶ 15, Exh. 20.

¹⁵ *Id.* citing Rosvall Declaration ¶¶ 18-19.

- The Werrin Comments were based, in substantial part, on legitimate CD staff work produced in connection with the CHCF-A proceeding;
- A primary motivation for Mr. Koskinen writing the Werrin Comments was to receive compensation through the Commission's Intervenor Compensation Program;
- E-mail records indicate that Mr. Koskinen failed to disclose his involvement in drafting the Werrin Comments to his supervisor and/or co-workers; and
- All allegations and charges leveled against other CD employees were unfounded and those employees have been exonerated of any misconduct.

The Supervising Deputy Attorney General informed the assigned ALJ that counsel for the Small ILECs had been informed of the findings of the DOJ investigation sometime prior to the June 4, PHC. On June 20, 2012 the Executive Director informed the assigned ALJ that Mr. Koskinen had been terminated from the Commission as of June 19. He also confirmed that all other CD staff had been cleared of any and all allegations of misconduct and were free to resume work on the CHCF-A proceeding.

Motion to Disqualify

The Independent Small LECs and their counsel should be commended for recognizing the unusual nature of the Werrin Comments and initiating an investigation into Mr. Werrin's background and the true motivation, nature and source of his comments. The Motion to Disqualify and the Rosvall Declaration contained objective, substantiated evidence that Mr. Werrin did not author the comments submitted under his name but rather the comments had been authored by a Commission employee, Mr. Koskinen. This evidence, as set forth in the motion and the Request for Investigation, led directly to a DOJ investigation into the true source of and motivation for the Werrin Comments

and resulted in Mr. Koskinen being placed on administrative leave and ultimately being terminated from the Commission.

The Motion to Disqualify, Motion to Strike, Motion to Hold in Abeyance and the Request for Investigation contained direct and indirect allegations that members of the CD CHCF-A advisory staff, other than Mr. Koskinen, were involved in or aware of Mr. Koskinen's misconduct and were involved in an effort to manipulate the record in the instant proceeding.¹⁶ The primary basis for these allegations was the personal opinion(s) of counsel for the Small ILECs as set forth in the Rosvall Declaration.¹⁷ Unlike the objective, substantiated evidence concerning the conduct of Mr. Werrin and Mr. Koskinen the accusations against other members of the CD CHCF-A advisory staff are supported only by innuendo and personal opinion; as is the description of Mr. Koskinen's advisory activities in the instant proceeding including his alleged role in advising the assigned ALJ.¹⁸ As has been noted, the DOJ investigation concluded that Mr. Koskinen was the sole author of the Werrin Comments and that no other CD staff were directly or indirectly involved.

As has been previously noted, as a result of the allegations contained in the Request for Investigation, on March 8, Mr. Koskinen was placed on administrative leave and other CD advisory staff were reassigned from the CHCF-A proceeding pending the outcome of the DOJ investigation. The

¹⁶ See footnote 4.

¹⁷ See Rosvall Declaration ¶ 22.

¹⁸ *Id.*, at ¶ 11.

Commission takes very seriously allegations of employee misconduct. Commission employees are held to the highest professional and ethical standards in performing their duties and service to the public and are required to uphold the integrity of every aspect of the Commission's business and responsibilities. As Mr. Koskinen has been terminated and all other CD advisory staff have been cleared of any misconduct, the Motion to Disqualify Current Carrier Oversight and Programs Branch Advisors from further Advisory Roles in this Proceeding is denied as moot.

Motion to Strike

In an e-mail ruling, dated March 14, in response to a request for an extension of time to file reply comments, the assigned ALJ noted that the Werrin Comments were never properly filed in compliance with Rule 1.13(a) and (b) and Rule 1.14(a) and thus were not part of the record in the instant proceeding and should not be referenced in reply comments. However, as noted by counsel for the Small ILECs at the June 4 PHC, the assigned ALJ did not directly rule on the Motion to Strike.¹⁹

As noted in the March 14 e-mail ruling and at the PHC, the Werrin Comments were never filed and thus are not part of the record. The Motion to Strike the Opening Comments of Tyler Werrin is denied as moot. The ALJ cannot strike comments that were not filed.²⁰

¹⁹ See footnote 8.

²⁰ PHC Tr. 106:18-19.

Motion to Hold In Abeyance

As previously noted, an e-mail ruling was issued in response to the Motion to Hold in Abeyance. The ruling granted parties a two-week extension of time to file reply comments. The Motion to Hold in Abeyance was, again, addressed at the June 4 PHC, and was denied on the record as moot.²¹ That ruling is hereby affirmed.

IT IS RULED that:

1. The Motion to Disqualify Current Carrier Oversight and Programs Branch Advisors from Further Advisory Roles in this Proceeding is denied as moot.
2. The Motion to Strike the Opening Comments of Tyler Werrin is denied as moot.
3. The ruling denying the Motion to Hold the Proceeding in Abeyance is affirmed.

Dated June 29, 2012, at San Francisco, California.

/s/ W. ANTHONY COLBERT
W. Anthony Colbert
Administrative Law Judge

²¹ PHC Tr. 9:12-20.