BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion into the application of the California Environmental Quality Act to applications of jurisdictional telecommunications utilities for authority to offer service and construct facilities.	Rulemaking 06-10-006 (Filed October 5, 2006)

ORDER GRANTING MOTION FOR STAY OF DECISION 10-12-056

On January 24, 2011, the League of California Cities, the California State Association of Counties and SCAN NATOA, Inc. ("Cities"), and AT&T California, Frontier, SureWest, and small local exchange carriers ("LECs") (collectively, "Joint Carriers") filed applications for rehearing of Decision (D.)10-12-056 ("Decision"). On the same day, the Cities also filed a motion for immediate stay of the Decision pending resolution of the applications. In today's order, we only address only the motion for stay and grant that request.

In the Decision, we adopted General Order ("GO") 170, which sets forth procedures for Commission review of certain telecommunications construction projects. As the Decision describes GO 170, it "implements the Commission's responsibilities pursuant to the California Environmental Quality Act (CEQA) to review possible environmental impacts of [telecommunications] construction projects…." (Decision, at p. 1.) The Cities' motion for stay is supported by a group of small LECs and Surewest Telephone (collectively "Small LECs"), and is opposed by a coalition of competitive local exchange carriers ("Competitive Carriers" or "CLECs").

We have carefully considered the Cities' arguments in support of a stay, and have determined that a stay of the Decision pending resolution of the applications for rehearing is warranted.

Pursuant to Public Utilities Code section 1735, our authority to grant a stay is discretionary. That section provides that a Commission decision is not stayed during the pendency of an application for rehearing, "except in such cases and upon such terms as the commission by order directs." (Pub. Util. Code, § 1735.) Thus, the statute allows us broad discretion to issue stays of our decisions.

In deciding whether to issue a stay the Commission considers:

> (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits of the application for rehearing; (3) a balance of the harm to the moving party (or the public interest) if the stay is not granted and the decision is later reversed, against the harm to the other parties (or the public interest) if the stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case. [Citations]

(*Order Granting Stay of D.08-01-031* [D.08-04-044].)[1]

After review of the pleadings in the instant case, we note that a number of the arguments allege structural deficiencies in the General Order. Although we do not believe that all the arguments presented by the rehearing applicants will have merit, certain allegations present a reasonable possibility that the General Order will need to be modified. We note that even the Competitive Carriers, who generally support the General Order and oppose the stay request, acknowledge that modifications to the General Order may be appropriate. Therefore, there is some likelihood that the rehearing applicants may prevail on portions of their applications.

[1] The Competitive Carriers cite to a more restrictive standard for stays announced in *North Shuttle Service, Inc. v. Public Utilities Comm.* (1998) 67 Cal.App.4th 386. Although the Commission has cited *North Shuttle* in discussing whether the Commission itself should issue a stay, that standard, which includes a strict irreparable harm prerequisite, in fact only applies to Court-issued, as opposed to Commission-issued stays of Commission decisions. Accordingly, the *North Shuttle* standard does not apply to the current situation, and the Commission retains broad discretion to determine whether a stay of a decision it issued is appropriate.

Moreover, one relevant factor in this particular case is that the decision in question adopts an entirely new General Order, and procedures to implement the requirements of the Order have not yet been finalized. We believe it is wise to ensure that a final version of the General Order is in place, before procedures for implementing its requirements are developed and carried out.

Therefore, **IT IS ORDERED** that:

1. Decision 10-12-056 is stayed pending the Commission's resolution of the applications for rehearing.

2. The Cities' motion for leave to file a reply to the opposition to their motion for an immediate stay is granted.

This order is effective today.

Dated May 26, 2011, at San Francisco.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners