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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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)

**MOTION FOR EXTENSION OF PROCEDURAL DEADLINES IN THE  
JULY 1, 2016 SCOPING MEMO AND RULING OF ASSIGNED  
COMMISSIONER AND ADMINISTRATIVE LAW JUDGE**

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**July 11, 2016**

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1 **I. INTRODUCTION.**

2 Pursuant to Rule 11.6 of the Rules of Practice and Procedure (“Rules”) of the California  
3 Public Utilities Commission (“Commission”), Consolidated Communications Of California  
4 Company (U 1015 C), Consolidated Communications Enterprise Services, fka Surewest  
5 TeleVideo (U 7261 C), Citizens Telecommunications Company of California (U 1024 C), Frontier  
6 California Inc. (U 1002 C), Frontier Communications of America, Inc. (U 5429 C), and Frontier  
7 Communications of the Southwest Inc. (U 1026 C), AT&T California (U 1001 C), New Cingular  
8 Wireless PCS, LLC (U 3060 C), Comcast Phone of California, LLC (U 5698 C), Cox California  
9 Telcom, LLC, d/b/a Cox Communications (U 5684 C), T-Mobile West LLC (U 3056 C), Time  
10 Warner Cable Information Services (California), LLC (U 6874 C), Charter Fiberlink CA-CCO,  
11 LLC (U 6878 C), and CTIA<sup>1</sup> (collectively, "Communications Industry Coalition") bring this  
12 motion to request extensions and related modifications to the procedural deadlines in the Scoping  
13 Memo and Ruling of Assigned Commissioner and Administrative Law Judge, issued on July 1,  
14 2016, (the "Scoping Memo") in this proceeding. The current procedural schedule imposes  
15 unreasonable deadlines that make it impracticable or even impossible for parties to provide  
16 meaningful input on the important issues at stake in this proceeding. Modifications to the  
17 schedule are necessary to ensure that the record is fully developed and that the parties’ due process  
18 rights are not compromised.

19 This motion is submitted contemporaneously with a Motion to Shorten Time by which the  
20 Communications Industry Coalition requests that responses to this Motion be provided no later  
21 than Wednesday, July 13, 2016, so that a ruling addressing this Motion can be issued in advance  
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25 <sup>1</sup> CTIA – The Wireless Association® (“CTIA”) ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry.  
26 With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and  
27 products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century  
28 ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the  
industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

1 of the July 15, 2016 deadline for submission of “rebuttal/supplemental testimony.”<sup>2</sup> As set forth  
2 herein, good cause exists for the requested adjustments to the procedural schedule.

### 3 II. PROCEDURAL BACKGROUND

4 This proceeding was initiated on November 5, 2015. The Order Instituting Investigation  
5 (“OII”) contained a preliminary scope, but until approximately one week ago, on July 1, 2016, no  
6 scoping memo had been issued in this proceeding. A preliminary schedule was included in the  
7 OII. The preliminary schedule anticipated that this proceeding would be resolved through  
8 workshops, formal testimony, and hearings, and that the proceeding would be concluded within 18  
9 months of the Scoping Memo, which would put the target date for conclusion of the proceeding in  
10 the early 2018 timeframe. *See* OII at 16-17.

11 The OII stated that “[t]his Investigation will provide parties notice and an opportunity to be  
12 heard on all issues within its scope.” OII at 10. However, it also left all procedural steps after the  
13 Scoping Memo as “[t]o be determined.” *Id.* at 17. The parties similarly were advised at the  
14 January 20, 2016 Prehearing Conference that the precise scope and course of the proceeding  
15 would not be determined until after all the information was gathered and a Scoping Memo was  
16 issued. *See, e.g.,* 1/20/16 PHC Tr. at 25, 81.

17 Despite this background, the July 1, 2016 Scoping Memo establishes an extremely  
18 aggressive and unrealistic schedule whereby the entirety of the remaining evidentiary process and  
19 briefing would be concluded in less than two months from the issuance of the Scoping Memo.  
20 The Scoping Memo states that “the ultimate question before us is whether intermodal competition,  
21 in the decade after URF, has offered sufficient discipline to produce just and reasonable prices for  
22 traditional landline services” and to “meaningfully answer that question, we must conduct a  
23 rigorous examination of the telecommunications marketplace . . . .” *Scoping Memo*, at p. 2.

24 There is no basis for such a hurried approach to this proceeding, which purports – for the

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25 <sup>2</sup> Various Communications Industry Coalition parties are submitting a contemporaneous request seeking full  
26 evidentiary hearings in this proceeding, and the proposed scheduling adjustments in this motion incorporate that  
27 request. *See Respondents’ Request for Rehearing of Scoping Memo Ruling on Evidentiary Hearings*. In addition, the  
28 plaintiffs in the federal litigation relating to release of 477 data have submitted a request for extension of time that  
parallels this request, also submitted today. *See Respondents’ Motion to Continue or Modify the Schedule in the July  
1, 2016 Scoping Memo To Accommodate A Ruling By The Federal Court On Plaintiffs’ Pending Motion To Enforce  
The Preliminary Injunction Relative To Dr. Selwyn’s Testimony On Behalf Of ORA.*

1 first time since the URF proceeding – to make determinations about the state of competition in the  
 2 telecommunications industry. Moreover, no reasonable justification for rushing this proceeding is  
 3 provided in the Scoping Memo.

4 **III. SUMMARY OF PROPOSED PROCEDURAL ADJUSTMENTS.**

5 The Communications Industry Coalition seeks adjustments to the procedural schedule to  
 6 address the unreasonably short timeframe provided for further testimony, hearings, briefing, and  
 7 the other procedural events anticipated in the Scoping Memo. Adjustments should also be made  
 8 to resolve motions to strike in advance of any hearings, and to provide sufficient time for  
 9 evidentiary hearings; this is true regardless of whether the full evidentiary hearings suggested by  
 10 the Communications Industry Coalition take place, or whether the Commission proceeds with the  
 11 expert panel, as contemplated in the Scoping Memo. Since the Commission has indicated that it  
 12 wishes to issue a decision by the end of the year, the Communications Industry Coalition requests  
 13 that the Commission modify the schedule as set forth in the third column, below.<sup>3</sup> Even if full  
 14 evidentiary hearings are not ultimately scheduled, the deadlines in the proceeding should at least  
 15 be modified as set forth in the fourth column, below.

16 Item/Action	17 Scheduled Date	18 Date Requested (With Full Evidentiary Hearings)	19 Alternative Date (No Evidentiary Hearings)
20 Final Rebuttal/Supplemental Testimony	July 15, 2016	August 15, 2016	August 15, 2016
21 Motions to Strike, Objections to Official Notice Identified in Appendix A to the OII and the Scoping Memo	July 22, 2016	August 26, 2016	August 22, 2016
22 Reply to Motions to Strike, Objections	July 26, 2016	September 2, 2016	August 26, 2016
23 Ruling on Motions to Strike, Official Notice	July 29, 2016	September 9, 2016	September 2, 2016
24 Evidentiary Hearing	July 20, 2016	September 12-16, 2016	September 12, 2016
25 Concurrent Opening Briefs	August 12, 2016	October 14, 2016	October 5, 2016
26 Concurrent Reply Briefs	August 26, 2016	October 28, 2016	October 18, 2016
27 Proposed Decision	October 2016	December 2016	November 2016

28 <sup>3</sup> Notwithstanding this proposed schedule, the Communications Industry Coalition does not agree that there is a reasonable basis to rush the events in this proceeding simply to complete the proceeding by the end of the year. The schedule proposed by the Communications Industry Coalition in advance of the second PHC in this proceeding would still be more appropriate than what is being proposed here.

1 In both proposed adjustments to the schedule, the Communications Industry Coalition has  
2 proposed – and strongly recommends – that the motions to strike and objections to official notice  
3 be briefed and decided in advance of hearings. Absent this adjustment, the parties would proceed  
4 to evidentiary hearings or the expert panel hearing without knowing whether certain proffered  
5 testimony or authorities will be stricken. As a result, testimony and examination could be  
6 permitted regarding testimony and/or authorities that is ultimately stricken, requiring additional  
7 objections and motions to strike. It is more efficient and fair for the Commission to decide the  
8 motions to strike and objections in advance of any hearings so the parameters of permissible  
9 testimony and examination are known.

10 **IV. COMPLIANCE WITH RULE 11.6.**

11 The Communications Industry Coalition requested other parties' positions regarding this  
12 motion, in compliance with Rule 11.6. On July 8, 2016, counsel for Frontier and Consolidated, on  
13 behalf of the Communications Industry Coalition, requested the concurrence of the Office of  
14 Ratepayer Advocates ("ORA"), The Utility Reform Network ("TURN"), Center for Accessible  
15 Technology ("CforAT"), Greenlining, and Writers' Guild of America West, Inc. ("Writers Guild")  
16 (collectively, the "Intervenors"). Positions were also solicited from the California Association of  
17 Competitive Telecommunications Companies ("CALTEL") and Sprint Telephony PCS, LP  
18 ("Sprint"). Counsel for CALTEL stated that it supports the "alternative schedule" outlined in the  
19 fourth column of the chart in Section III, above. Aside from Writers Guild, Intervenors have  
20 stated that they oppose the requested modifications of the schedule. Writers Guild stated that it  
21 has no position on the requested relief.

22 **V. THE PROCEDURAL DEADLINES IN THE SCOPING MEMO SHOULD BE**  
23 **EXTENDED TO ENSURE THAT PARTIES WILL HAVE A MEANINGFUL**  
24 **OPPORTUNITY TO PROVIDE INPUT ON THE ISSUES IN THE**  
25 **PROCEEDING.**

26 The Scoping Memo sets forth an unreasonable schedule for completion of the remaining  
27 items in this proceeding. The timing of events is accelerated to such a degree that it effectively  
28 strips parties of proper notice and any meaningful opportunity to be heard as afforded under both  
the United States and California Constitutions. *See, e.g., Fuentes v. Shevin*, 407 U.S. 67, 80

1 (1972) (holding that notice and an opportunity to be heard must come at a “meaningful time and in  
2 a meaningful manner” in order to comport with the requirements of due process). Accordingly, if  
3 the schedule in the Scoping Memo is not modified, at least to provide extensions to dates similar  
4 to those set forth above, the Communications Industry Coalition members will be denied their  
5 constitutional due process rights. This will also compromise one of the concerns that led to the  
6 initiation of this proceeding, which was the view that the Commission had failed to “develop an  
7 adequate record on which to make necessary findings and conclusions in fulfilling [its] mandated  
8 constitutional and statutory regulatory duties in the public interest” in connection with D.08-09-  
9 042 (which the OII terms “URF II”). *See* D.15-11-023, at p. 1.

10 In particular, the submission of "final rebuttal/supplemental" testimony is currently  
11 scheduled for only nine business days from the date of the Scoping Memo. Nine business days is  
12 simply inadequate for any party to submit fulsome testimony and respond completely to the  
13 myriad of issues raised by the many hundreds of pages of intervenor testimony. It is further  
14 insufficient time for the parties to propound any discovery relating to the intervenor witnesses'  
15 testimony that is informed by the defined scope of the proceeding, a scope which was not known  
16 until July 1, 2016. Specifically, the Communications Industry Coalition members have not had a  
17 sufficient opportunity to explore intervenors' work papers or inquire about predicate facts or  
18 clarifications related to intervenor testimony. Absent a change to the schedule, there will not be a  
19 reasonable opportunity for discovery or factual analysis in advance of the "final  
20 rebuttal/supplemental testimony" dates. The unreasonableness of the current deadlines is  
21 compounded by the fact that the Scoping Memo was issued only a few minutes before the close of  
22 business before a major holiday weekend when many of the parties were away from the office.

23 The insufficient timeframe allotted to prepare and file testimony is also inadequate relative  
24 to the complexity and volume of issues identified in the Scoping Memo and the lengthy testimony  
25 that intervenors served in response to the Information Requests in the OII. In light of the  
26 significant issues being addressed in this proceeding and potential for the Commission to “rescind,  
27 alter, or amend” its prior Uniform Regulatory Framework ("URF") decision (D.06-08-030)—an  
28 extensive multi-year proceeding that included traditional testimony, workshops and evidentiary

1 hearings—the Communications Industry Coalition requests that parties be afforded a meaningful  
2 opportunity to submit at least one round of fully-developed testimony whose scope is not defined  
3 by the Information Requests.

4         The fact that parties were ordered to serve previous responses to the specific Information  
5 Requests in the OII in the form of “testimony” does not cure the unreasonableness of the schedule  
6 in the Scoping Memo. Responses to the Information Requests, even if offered in the form of  
7 “testimony,” are not the same as traditional testimony, which would be designed to present the  
8 facts and information the parties feel is most relevant to the scope of issues in the proceeding in  
9 light of their positions. Parties have not yet had the opportunity to submit testimony except  
10 according to the parameters of the Information Requests, and the current schedule unreasonably  
11 curtails what would be the parties’ only opportunity to provide comprehensive testimony.

12         The time allotted under the current schedule to prepare for the anticipated one-day panel  
13 hearing, presently scheduled for July 20, 2016, is similarly insufficient. The current schedule  
14 allows for only twelve business days from the issuance of the Scoping Memo, and two business  
15 days from the submission of the rebuttal/supplemental testimony due on July 15th. This is not  
16 enough time for reasonable hearing preparation, especially where the anticipated one-day hearing  
17 is the only opportunity to challenge factual representations provided by the current schedule.  
18 Holding a hearing within such a short time from a Scoping Memo is irregular, antithetical to the  
19 development of a full record in this proceeding, and deprives parties of their due process rights.

20         Even as modified by the Communications Industry Coalition’s proposal, the schedule for  
21 this proceeding would be extremely aggressive. However, the current schedule in the Scoping  
22 Memo could make meaningful input impracticable or impossible. It should be replaced with a  
23 schedule where parties can at least prepare thoughtful testimony, hire necessary experts, conduct  
24 discovery, and offer full views on the issues in the proceeding based on the recently-defined scope  
25 of the issues.


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1 VI. CONCLUSION.

2 Good cause exists for the adjustments to the schedule proposed in this motion. Absent  
3 these adjustments, the quality and completeness of the record will suffer, and parties will be  
4 denied a meaningful opportunity to be heard. This motion should be granted through an  
5 expeditious ruling to ensure that clarity regarding the schedule is provided in advance of the  
6 testimony date.

7 Respectfully submitted this 11th day of July, 2016.

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