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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
Regarding Broadband Infrastructure
Deployment and to Support Service
Providers in the State of California.

Rulemaking 20-09-001

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This Scoping Memo and Ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1. and Article 7 of the Commission's Rules of Practice and Procedure.

1. Procedural Background

Governor Gavin Newsom issued Executive Order (E.O.) N-73-20 on August 14, 2020, directing state agencies to accomplish 15 specific actions to help bridge the digital divide, including ordering state agencies to pursue a minimum broadband speed goal of 100 megabits per second download to guide infrastructure investments and program implementation to benefit all Californians.

On September 10, 2020, this Commission opened Rulemaking (R.) 20-09-001 to set the strategic direction and changes necessary to deploy expeditiously reliable, fast, and affordable broadband Internet access services that connect all Californians. This proceeding will explore near-term and medium-term actions to achieve this goal.

A prehearing conference (PHC) was held on November 10, 2020 to discuss the issues of law and fact, determine the need for hearing, set the schedule for

resolving the matter, and address other matters, as necessary. After considering the comments and reply comments to the Order Instituting Rulemaking (OIR), as well as the discussion at the PHC, I have determined the issues and initial schedule of the proceeding to be set forth in this Scoping Memo.

2. Issues

This proceeding will be divided into three phases as described below. Throughout the proceeding, the Commission will also consider the issue of how the digital divide and low and/or no broadband access impacts on environmental and social justice communities, including improvements to better achieve any of the nine goals of the Commission's Environmental and Social Justice Action Plan,¹ as well as any issues identified as a result of emergencies or pending activities. The Commission may also consider other issues identified by its Communications Division and included in staff proposals or reports.

2.1. Phase I

Phase I will address the following issues:

1. What requirements, if any, should the Commission impose on communications service providers and the California energy Investor-Owned Utilities (IOUs) to facilitate the construction of fiber facilities or other technologies capable of providing a minimum download speed of 100 Mbps when restoring facilities after a disaster such as a fire? Related to this topic, parties will be asked to comment on a forthcoming staff proposal on this issue.
2. How should the Commission use the roughly \$1 million in the Digital Divide Account to help schools and students?

¹ More information on the Commission's Environmental and Social Justice Action Plan available on the Commission's website at: <https://www.cpuc.ca.gov/ESJactionplan/>

2.2. Phase II

Phase II will be separated into two decisions, a Phase II-A decision and a Phase II-B decision.

Phase II-A will address what role the IOUs can play in deploying broadband Internet access services to communities lacking access to download speeds of 100 Mbps, including the following questions:

1. Are there ways to make existing and future IOU fiber infrastructure more available?
2. Given all the hardening taking place of IOU infrastructure, are there opportunities to include additional fiber for unserved communities?
3. Are there specific opportunity for utilities role in offering middle mile fiber? What are the critical requirements and incentives for this business arrangement to be effective?

To assist in developing these issues in greater detail, the assigned Administrative Law Judge (ALJ) will issue a ruling ordering each IOU to work with Communications Divisions Staff to develop proposals and then file and serve those proposals on parties for comment. Additionally, the IOUs collectively will host one workshop on this topic.

Concurrently with Phase II-A, Phase II-B will address the following issues:

1. What strategies, incentives or standards can improve open access in deploying wireline and wireless infrastructure to be utilized by multiple carriers, particularly in rural and Tribal areas? Specifically, how can communications service providers better share their assets and build planning? Examples of assets include, but are not limited to points of presence, carrier hotels, trenches, conduit, towers, poles.
2. Should General Order 95 be modified to require utility pole owners to repair, reinforce or replace poles in

unserved areas that are determined to be unsafe, as they currently exist, or that would become unsafe with the addition of a requested broadband attachment, within one year of becoming aware of the safety violation, if an attachment to such pole to provide broadband service is requested? How should the Commission fund this work?

3. How should the Commission address access to existing infrastructure for those communities where infrastructure, such as fiber, traverses through a community without an Internet service provider offering residential service to that community? Are there other incentives, beyond existing public purpose programs, that the Commission should explore?

2.3. Phase III

Phase III will investigate whether Internet service providers are refusing to serve certain communities or neighborhoods within their service or franchise areas, a practice called redlining and if so, which measures should be taken to mitigate or eliminate that practice.

2.4. Issues not in Scope

We could have considered several other issues raised by parties. Several parties proposed this proceeding consider issues that appear to be within the scope of other open Commission proceedings, including issues such as the affordability of services (R.18-07-006) and rule changes to public purpose programs, in particular the California Advanced Services Fund (R. 20-08-021). In addition, although this proceeding will consider a specific proposal to modify General Order 95 to require utility pole owners to repair, reinforce or replace poles in unserved areas within 1 year, we will not be considering any other rule changes regarding access to poles and other utility support structures (R.17-06-028 and Investigation (I.) 17-06-027). This proceeding will not consider

rules regarding the same issues being considered within the scope of those open proceedings.

Numerous parties proposed interagency discussions on a few different topics. While the Governor's E.O. clearly encourages that dialogue, these cooperative discussions can take place outside of a Commission proceeding and, regardless, would not be governed by a Commission order.

Some parties suggest we make changes to surcharge and user fee mechanisms that fund various public purpose programs to include a charge for Internet service on a customer's monthly billing statement. We will not consider that proposal in this this proceeding, but the Commission may consider and act on such a proposal in another proceeding.

Finally, several parties, especially telecommunications service providers, proposed, mostly in extremely broad terms, improvements to the environmental review process under the California Environmental Quality Act (CEQA). CEQA governs all state and local agencies within California, not just this Commission, and most of the discussion in comments and at the PHC involve discretionary decisions made by other agencies. For example, even if the Commission were to issue a programmatic Environmental Impact Report on broadband-related construction activities, as some parties suggested, an agency like CalTrans would still need to comply with CEQA prior to issuing an encroachment permit to use CalTrans right-of-way. Finally, the Commission already has a 21-Day expedited review process for full facilities-based providers, and almost all infrastructure grants awarded by the Commission through the California Advanced Services Fund have received categorical exemptions. Thus, while discussions with other agencies may lead to improvements, parties have not proposed in concrete terms, issues or activities that require a Commission proceeding to resolve, nor

ones that would be resolved in the near-term and medium-term by a Commission decision in a manner leading to the expeditious deployment of reliable, fast, and affordable broadband Internet access services that connect all Californians.

3. Need for Evidentiary Hearing

In the OIR, this Commission preliminarily determined that evidentiary hearings would not be needed in this proceeding. No party objected, though at the PHC, several parties requested the opportunity to submit a motion for evidentiary hearing after issuance of the Scoping Memo. I find there are no issues of material disputed fact. Accordingly, this Scoping Ruling confirms that evidentiary hearing is not needed. Parties have 30 days after the issuance of this Scoping Memo to file motions requesting evidentiary hearings.

4. Oral Argument

Unless comment is waived pursuant to Rule 14.6.(c)(2) for granting the uncontested relief requested, motion for oral argument shall be by no later than the time for filing comment on the proposed decision.

5. Schedule

The following schedule is adopted here and may be modified by the assigned ALJ as required to promote the efficient and fair resolution of the Rulemaking.

Event	Date
Deadline for Motions Requesting Evidentiary Hearing, Filed and Served	30 days after issuance of Scoping Memo
Phase I Opening Briefs (including comments on forthcoming Staff Proposal), Filed and Served	February 1, 2021

Reply Comments on Phase I Staff Proposal, Filed and Served (matter submitted)	February 15, 2021
Phase I Proposed Decision, Issued	May 2021
Phase II-A IOU Proposals, Filed and Served	TBD
Phase II-A Workshop	TBD
Phase II-A Briefs, Filed and Served	TBD
Phase II-A Reply Briefs, Filed and Served (Matter Submitted)	TBD
Phase II-A Proposed Decision, Issued	TBD
Phase II-B Briefs, Filed and Served	TBD
Phase II-B Reply Briefs, Filed and Served (Matter Submitted)	TBD
Phase II-B Proposed Decision, Issued	TBD
Phase III Commenced	TBD

For each phase of this proceeding, the proceeding will stand submitted as indicated in the schedule, unless the assigned ALJ requires further evidence or argument. Based on this schedule, the proceeding will be resolved within 18 months as required by Pub. Util. Code Section 1701.5.

6. Category of Proceeding and Ex Parte Restrictions

This ruling confirms the preliminary determination in the OIR that this is a quasi-legislative proceeding. Accordingly, ex-parte communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Rules.

7. Public Outreach

Pursuant to Pub. Util. Code Section 1711. (a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on

communities and business that subscribe to it and posted on the Commission's website.

The OIR also was served on all respondents and on the service lists for the following Commission proceedings:

- R.18-07-006;
- R.12-10-012;
- R.20-02-008;
- R.11-11-007);
- R.18-03-011); and
- the consolidated proceedings R.17-06-028 and I.17-06-027.

Finally, the OIR was served on the state agencies and individuals listed in Appendix A of the OIR.

8. Intervenor Compensation

Pursuant to Pub. Util. Code Section 1804.(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by December 10, 2020, 30 days after the prehearing conference.

9. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the online docket card for the proceeding.

10. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public

Advisor at 866-849-8390 or 866-836-7825 (TYT), or send an e-mail to public.advisor@cpuc.ca.gov.

11. Filing, Service, and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10. requires service on the ALJ of both an electronic and a paper copy of filed or served documents. The assigned ALJ for this proceeding requests that all items be served electronically. When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Parties are directed to the Commission's Practitioner Alert for COVID-19 Temporary Filing and Service Protocol for Formal Proceedings at <https://www.cpuc.ca.gov/COVID19practitioneralert/>.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9.(f).

12. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Thomas J. Glegola is the assigned ALJ.

IT IS RULED that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is set forth above.
3. Evidentiary hearing not needed.
4. The category of the proceeding is quasi-legislative.

This order is effective today.

Dated December 28, 2020, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES
Martha Guzman Aceves
Assigned Commissioner