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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 AMENDED SCOPING MEMO AND RULING

This Amended 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 (Rules).

1. Procedural Background

On August 14, 2020, Governor Gavin Newsom issued Executive Order (E.O.) N-73-20 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.

Pub. Util. Code § 280.5 also directs the Commission to implement the Digital Divide Grant Program through pilot projects funded by the Digital Divide Account, which is established in the California Teleconnect Fund (CTF), Administrative Committee Fund. Section 280.5(c)(2) further states that the Commission shall provide grants on a competitive basis subject to criteria to be

established by the Commission in a way that disburses funds widely, including urban and rural areas. Grants shall be awarded to community-based nonprofit organizations for the purpose of funding community technology programs. 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.

A prehearing conference (PHC) in this proceeding 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.

On December 28, 2020, the initial Scoping Memo and Ruling to set forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding, was issued. On December 30, 2020, the assigned Administrative Law Judge (ALJ) issued a ruling requesting comments on a staff proposal.

On February 1, 2021, Parties filed briefs/comments in response to the Scoping Memo and assigned ALJ Ruling and filed reply briefs/comments on February 16, 2021.

After considering the comments and reply comments, I have determined to revise the initial scope and schedule of the proceeding, as set forth in this Amended Scoping Memo.

2. Issues

This proceeding will be divided into two 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 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

The revised scope of issues for Phase I are:

1. What requirements, if any, should the Commission impose on communications service providers and the California energy Investor-Owned Utilities (IOUs) related to the restoration of facilities after a disaster such as a fire (*e.g.*, notice and outreach)?

As part of this discussion, I am ordering a supplemental round of comments and reply comments on whether the Commission should adopt the following proposed requirements.

To ensure rebuilds are coordinated in a timely and public manner, I propose that this Commission require both the IOUs and communications providers to coordinate on their construction activities. In particular, I propose that the Commission require the IOUs and the communications provider to each file an advice letter detailing the impact of the disaster on their facilities, and to include service restoration plans, no later than 15 days after the disaster. Additionally, I propose that the Commission require IOUs and communications providers to meet and confer prior to filing their advice letter. Further, if the proposed rebuild involves undergrounding and the range of costs or the cost sharing arrangement differs from this Commission's Rule 20 formulas, the IOU must explain the reason for the difference. Finally, I propose that the Commission require

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/>.

- both the IOUs and communications providers communicate with the impacted community via the local or tribal government representatives such as city and county officials, the Regional Broadband Consortium, or other interested stakeholders on rebuild status, plans and timelines, and seek comment on the specifics.
2. Based on the parameters set forth in Pub. Util. Code § 280.5, how should the Commission use the roughly \$1 million in the Digital Divide Account to help schools and students? In particular, a supplemental round of comments is ordered to comment on the proposal in Section 2.2, regarding criteria for choosing recipients of Digital Divide Account funds.

2.2. Proposal for Digital Divide Account

Section 280.5 requires the Commission to provide grants on a competitive basis subject to criteria to be established by the Commission and in a way that disburses the funds widely, including urban and rural areas. Staff proposes a pilot program to focus the \$1 million in limited grant funds available on a small number of schools, with the following eligibility criteria:

- Grants are limited to serving rural low-income small school districts;
- The beneficiary school must be in a small rural school district, as identified by the California Department of Education;
- The beneficiary school must have a free lunch participation rate of at least 25 percent or greater;
- The grant recipient must be a Community Based Organization (CBO) 501c3 non-profit with a demonstrated record of work to address the digital divide;
- CBO administrative expenses are limited to no more than five percent of the grant amount;
- Grants must provide a holistic solution including, but not limited, to:

- Student home broadband connection;
- Student required hardware including laptop, Chromebook and/or hotspots;
- Student curriculum focused on the use of technology;
- Software to enable distance learning for student and teacher; and
- Training for teachers in the use of technology for distance learning;
- The term of the project is limited to one school year;
- Ongoing subsidies for CTF eligible services may be available for the participating school and student; and
- Grant amounts do not exceed \$250,000 per pilot project.

After an evaluation period, staff anticipates ongoing grant funding of about \$100,000 per school year. This program as currently envisioned would be administered by CTF using existing staff and resources.

2.3. Phase II

Phase II will be separated into two decisions, a Phase II-A decision and Phase II-B decision. Phase II-A, or the Pilot track of Phase II, will address what role the IOUs can play in deploying broadband Internet access services to communities lacking access to download speeds of 100 megabytes per second (Mbps) by establishing demonstration pilot projects that will assist in responding to the following questions:

1. Are there ways to make existing and future IOU fiber infrastructure more available? What Commission rules or processes, if any, need to be modified to facilitate greater availability?
2. Given all the hardening of IOU infrastructure taking place, are there opportunities to use existing dark fiber or to include additional fiber for unserved communities?

- 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. Are there specific opportunities for utilities to have a role in offering middle mile fiber or last mile? What are the critical requirements and incentives for this business arrangement to be effective?
 4. What requirements, if any, should the Commission impose on 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?

To assist in developing these issues in greater detail, Pacific Gas and Electric Company, San Diego Gas & Electric, and Southern California Edison, PacifiCorp, Liberty Utilities, and Bear Valley Electric Service are ordered to work with Communications Division Staff to identify at least one unserved pilot community within each service territory² where the utility could provide dark or managed fiber services to a local government, tribal government or an Internet service provider that in turn will offer Internet service to households and businesses within that unserved community. By June 30, 2021, the IOUs shall collectively host a workshop on this topic. By July 15, 2021, each IOU shall file and serve their proposals on the Service List of this proceeding. Each proposal must identify the local government, tribal government or Internet service

² For purposes of this proceeding, communities without access to Internet service at download speeds of 100 Mbps are unserved.

provider that will offer service to residents, businesses, and anchor institutions, as well as the conditions or arrangements necessary for the proposal to succeed.

Concurrently with Phase II-A, Phase II-B 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. To begin this investigation, the assigned ALJ will issue a ruling requesting comment on several studies on the issue, allowing parties to comment and offer their own data and analysis. In addition, Phase II-B will review the following questions:

1. 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. 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.

3. Need for Evidentiary Hearing

In the Order Instituting Rulemaking (OIR), the 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. The initial Scoping Memo found no issues of material disputed fact, but afforded parties the opportunity to file motions requesting evidentiary hearing for up to

30 days after issuance of the Scoping Memo. On January 27, 2021, AT&T, the California Cable & Telecommunications Association, CTIA, Frontier, and the Small LECs³ filed a motion regarding the need for evidentiary hearings, asserting that the potential for factual disputes in Phases II⁴ could not be discerned at that time. These parties expressed concern about the IOU proposals in Phase II-B and over the issue of whether service providers are engaging in the practice of redlining might require evidentiary hearing.

Given that parties have not raised a disputed material fact, this Amended Scoping Ruling confirms that evidentiary hearing is not needed. For Phase II-A, parties have 15 days after the IOUs file their proposals to file motions requesting evidentiary hearing, and 15 days after issuance of the Phase II-B assigned Commissioner ruling.

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.

³ Per the motion, The Small LECs are: Calaveras Telephone Company (U1004C), Cal-Ore Telephone Co. (U1006C), Ducor Telephone Company (U1007C), Foresthill Telephone Co. (U1009C), Happy Valley Telephone Company (U1010C), Hornitos Telephone Company (U1011C), Kerman Telephone Co. (U1012C), Pinnacles Telephone Co. (U1013C), The Ponderosa Telephone Co. (U1014C), Sierra Telephone Company, Inc. (U1016), The Siskiyou Telephone Company (U1017C), Volcano Telephone Company (U1019C), and Winterhaven Telephone Company (U1021C).

⁴ Now Phase II-C.

Event	Date
All Party Meeting to discuss Amended Scope, Held	May 14, 2021, 1:00 p.m.
Phase I Supplemental Comments, Filed and Served	15 days after issuance of Amended Scoping Memo
Phase I Supplemental Reply Comments, Filed and Served	5 days after filing deadline for Comments
Phase I Proposed Decision, Issued	June 2021
Phase II-B Assigned Commissioner Ruling, Issued	May 2021
Phase II-A Pilot Proposals Workshop, Filed and Served	by June 30, 2021
Phase II-A IOU Pilot Proposals, Filed and Served	July 15, 2021
Deadline for Motions Requesting Evidentiary Hearing, Filed and Served	July 30, 2021
Phase II-A Comments, Filed and Served	August 16, 2021
Phase II-A Reply Comments, Filed and Served (Matter Submitted)	August 26, 2021
Phase IIA 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

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 § 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 § 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 Investigation 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 § 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 PHC.

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 (TYY), 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 Administrative Law Judge.

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 is not needed.
4. The category of the proceeding is quasi-legislative.
5. Pacific Gas and Electric Company, San Diego Gas & Electric, Southern California Edison Company, PacifiCorp, Liberty Utilities, and Bear Valley Electric Service shall work with Communications Division Staff to identify an unserved community(s) within each service territory where the Investor-Owned Utility (IOU) could provide dark or managed fiber services to a local

government, tribal government or an Internet service provider that in turn will offer Internet service to households and businesses within that unserved community. By June 30, 2021, the IOUs shall collectively host a workshop on this topic. By July 15, 2021, each IOU shall file and serve their proposals on the Service List of this proceeding. Each proposal must identify the local government, tribal government or Internet service provider that will offer service to residents, businesses, and anchor institutions, as well as the conditions or arrangements necessary for the proposal to succeed.

This order is effective today.

Dated April 20, 2021, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves
Assigned Commissioner