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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 SECOND AMENDED
SCOPING MEMO AND RULING**

This Second Amended Scoping Memo and Ruling (Scoping Memo) 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 California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules).

1. Procedural Background

This is the Second Amended Scoping Memo to be filed in this proceeding. The most recent procedural history of this proceeding is recounted in the First Amended Scoping Memo, issued on April 20, 2021, in the initial Scoping Memo, issued on December 28, 2020, and the Order Instituting Rulemaking (OIR) initiating this proceeding, issued on September 10, 2020. All are incorporated here by reference.

Additionally, on August 14, 2020, Governor Gavin Newsom issued Executive Order (EO) 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.

On July 20, 2021, Governor Gavin Newsom signed Senate Bill (SB) 156 into law, directing the creation of a statewide open-access middle mile network. The law requires this Commission to provide the locations for the statewide open-access middle-mile broadband network in a Commission staff report. As part of this process, this Commission is required to solicit and receive public comments within 90 days of enactment on a variety of topics in relation to the middle-mile network including technical, business, and operational considerations.

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021,¹ also called the COVID-19 Stimulus Package or American Rescue Plan. In total, this law is a \$1.9 trillion economic stimulus plan that includes funds for states to deploy last-mile broadband Internet networks. The law requires funds to be expended by the end of 2024 and projects to be completed by the end of 2026. SB 156 creates a Federal Funding Account where these funds will be deposited and directs this Commission to allocate \$2,000,000 from this new account to implement a program to connect unserved and underserved communities by applicable federal deadlines. These funds are separate from the CASF Broadband Infrastructure Account, and the same rules are not necessarily applicable.

In light of these developments, I revise the scope and schedule of this proceeding, as set forth in this Second Amended Scoping Memo.

¹ Public Law No. 117-2

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 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,² 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-A: Rebuilding and Coordination Efforts

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 order 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

² More information on the Commission's Environmental and Social Justice Action Plan available on the Commission's website as of this writing at:

<https://www.cpuc.ca.gov/ESJactionplan/>.

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 both the IOUs and communications providers to 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. Phase 1-B: Proposal for Digital Divide Account

Pub. Util. Code 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-A: IOU Broadband Pilots

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 (GO) 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 the Commission's Communications Division Staff to identify at least one

unserved pilot community within each service territory³ 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. The IOUs collectively hosted a workshop to discuss their prospective proposals and on July 30, 2021, filed and served their proposals for comment.

2.4. Phase II-B: Redlining Investigation

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 Administrative Law Judge (ALJ) issued a ruling on May 28, 2021, 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

³ For purposes of this proceeding, communities without access to Internet service at download speeds of 100 Mbps are unserved.

to points of presence, carrier hotels, trenches, conduit, towers, poles.

2.5. Phase III: Broadband Legislation Implementation

In light of the enactment of SB 156, a new Phase III has been added to this proceeding, and the deadlines have been updated in order for this Commission to collect public comments that will assist with the development of the locations for the statewide open-access middle mile network, and to implement rules for the Federal Funding Account required in SB 156. SB 156 requires only the submission of a Commission Staff Report on recommended statewide middle-mile network locations to the California Department of Technology, so a proposed decision will not be issued on those issues. A forthcoming Assigned Commissioner Ruling will request comments on specific topics.

To begin the process of implementing the direction in SB 156 to develop and implement rules for a program funding the deployment of last-mile broadband Internet networks, the assigned ALJ will issue a ruling ordering comments and reply comments on a staff proposal, when that proposal is available in Quarter 4 of 2021.

3. Need for Evidentiary Hearing

In the OIR, the Commission preliminarily determined that evidentiary hearings would not be needed in this proceeding. No party objected, though at the prehearing conference (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 LECs⁴ filed a motion regarding the need for evidentiary hearings, asserting that the potential for factual disputes in Phases II⁵ could not be discerned at that time.⁶

Given that parties have not raised a disputed material fact, this Second Amended Scoping Ruling confirms that evidentiary hearing is not needed, though parties retain the opportunity to file a motion for evidentiary hearing in response to the IOU Broadband Pilot proposals. Phase III is strictly a rulemaking and therefore evidentiary hearing is not required.

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.

⁴ 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). Parties to this motion 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.

⁵ Now Phase II-B.

⁶ The First Amended Scoping Memo granted that request. A July 30, 2021 ruling from the assigned ALJ extends the deadline for motions to August 16, 2021.

Event	Date
Phase I Proposed Decision, Issued	August 2021
Deadline for Motions on Phase II-A Requesting Evidentiary Hearing, Filed and Served	August 16, 2021
Phase II-A IOU Broadband Pilot Proposal, Filed and Served	July 30, 2021
Phase II-A Comments, Filed and Served	August 30, 2021
Phase II-A Reply Comments, Filed and Served (Matter Submitted)	September 13, 2021
Phase II-B, Comments, Filed and Served	July 2, 2021
Phase II-A Reply Comments, Filed and Served	July 26, 2021
Phase II-A Proposed Decision, Issued	TBD
Phase II-B Proposed Decision, Issued	TBD
Phase III Middle Mile Public Comments	Quarter 3, 2021
Phase III Federal Funding Account Staff Proposal	Quarter 4, 2021
Phase III Federal Funding Account Proposed Decision	December 2021- March 2022

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. Compliance with Rule 7.5

Rule 7.5 of the Commission's Rules require the Commission holding both a workshop for parties and a public engagement workshop in a quasi-legislative proceeding, though the assigned Commissioner may modify these requirements in the Scoping Memo if good cause is demonstrated.⁷

The lack of adequate broadband Internet has been a topic of discussion at numerous Commission meetings, Commission-sponsored workshops and other events, including community events and meetings I have attended remotely or in

⁷ Rule 7.5 (3)(b).

person. Additionally, this proceeding has over 40 parties, with more likely to join. Finally, community involvement will be a critical component to any application the Commission receives once this program is developed. Given the amount of discussion and input that has already occurred, and will occur, plus the very tight deadline created by the federal program, Phase III of this proceeding will not include a workshop.

9. 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.

10. 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.

11. 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 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

12. 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).

13. 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. Workshops, as required in Rule 7.5, are not needed.
5. The category of the proceeding is quasi-legislative.

This order is effective today.

Dated August 2, 2021, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES
Martha Guzman Aceves
Assigned Commissioner