

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

Resolution ALJ 176-3099  
Administrative Law Judge Division  
November 7, 2002

**R E S O L U T I O N**

RESOLUTION ALJ 176-3099. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

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The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

**The Categories**

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

### **Mixed or Unclear Category Proceedings**

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hkr

### **Next Steps**

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

### **Conclusion**

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

**IT IS ORDERED** that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on November 7, 2002, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN  
Executive Director

LORETTA M. LYNCH  
President

HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3099 (11/7/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A02-10-020</b> CYTELA COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A02-10-021</b> ARIZONA TELEPHONE BROKERS, L.L.C., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A02-10-022</b> 360NETWORKS (USA) INC., for authorization to transfer control of public utility operations in California.	Ratesetting	Ratesetting	NO
<b>A02-10-023</b> LEADING EDGE BROADBAND SERVICES, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A02-10-024</b> ONESTAR LONG DISTANCE, INC., for a certificate of public convenience and necessity to operate as a provider of limited facilities-based local exchange telecommunications service.	Ratesetting	Ratesetting	NO
<b>A02-10-025</b> SAN BERNARDINO ASSOCIATED GOVERNMENTS, in cooperation with the cities of Colton and San Bernardino for an Order authorizing construction of a grade separation structure between Hunts Lane and the tracks of the Union Pacific Railroad in the City of Colton and the City of San Bernardino, San Bernardino County, California [PUC Crossing No.541.00].	Ratesetting	Ratesetting	NO
<b>A02-10-027</b> NATIONAL VIDEOPHONE SERVICES, INC., for a certificate of public convenience and necessity to provide interLATA and IntraLATA videoconferencing services, advanced data services and competitive local exchange services as a facility-based carrier and reseller.	Ratesetting	Ratesetting	NO

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Resolution ALJ 176-3099 (11/7/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A02-10-028</b> PARVIZ KARMOZD, Application for Approval of the Transfer by Sale of the operating authority held in Passenger Stage Certificate No.11097 by Parviz Karmozd (Seller) to Payma Management System, LLC (Buyer), pursuant to the provisions of California Public Utilities Code Section 851 et seq.	Ratesetting	Ratesetting	NO
<b>A02-10-029</b> SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E) for Authority to lease communication Facility Sites and Antenna Equipment Locations to Los Angeles SMSA Limited Partnership, Oxnard-Ventura-Simi Limited Partnership and GTE Mobilnet of Santa Barbara Limited Partnership, individually and collectively doing business as Verizon Wireless.	Ratesetting	Ratesetting	NO
<b>A02-10-030</b> SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-M) for Approval of Power Purchase Agreement with CP Kelco, U.S., Inc.	Ratesetting	Ratesetting	YES
<b>A02-10-031</b> PACIFICORP, (U 901-E) for Exemption from the Requirements of California Public Utilities Code Section 851.	Ratesetting	Ratesetting	YES
<b>A02-10-032</b> MOHAMMAD YOONOS, dba DISCOUNT SHUTTLE, for authority to operate as an on-call Passenger Stage Corporation to transport passenger and their baggage between points and places in the Counties of San Bernardino, Riverside, Orange and Los Angeles, on the one hand, and the Los Angeles International Airport (LAX), Long Beach Airport (LGB), Burbank Airport (BUR), Ontario International Airport (ONT), and John Wayne Airport (SNA), on the other hand; and to establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A02-10-033</b> FAWAD ALI AND OMAR TARZI, dba TRRIFTY EXPRESS AIRPORT SHUTTLE, V. TRAVELER, INC., dba THRIFTY EXPRESS AIRPORT SHUTTLE, for Approval of the Transfer of Passenger Stage Certificate No.15006 without consideration from Fawad Ali and Omar Tarzi dba Thrifty Express Airport Shuttle (Transferor) to V. Traveler, Inc., a California corporation, dba Thrifty Express Airport Shuttle (Transferee).	Ratesetting	Ratesetting	NO
<b>A02-10-034</b> CITY OF MARTINEZ, for authority to install and maintain a pilot project of automatic horn systems at two public crossings over Union Pacific Railroad Company's tracks at Ferry Street and Berrellesa Street in the City of Martinez.	Ratesetting	Ratesetting	NO
<b>A02-10-036</b> XO CALIFORNIA, INC., XO LONG DISTANCE SERVICES, INC., pursuant to Public Utilities Code Section 854 for Approval of the Indirect Transfer of Control of XO California, Inc. (U 5553-C) and XO Long Distance Services, Inc. (U 6272-C) from XO Communications, Inc., Debtor-in-Possession, to a reorganized XO Communications, Inc., controlled by High River Limited Partnership	Ratesetting	Ratesetting	NO
<b>A02-10-037</b> LOS ANGELES TO PASADENA METRO BLUE LINE CONSTRUCTION AUTHORITY, for an order authorizing the construction of a two track at-grade Public Pedestrian Crossing for light rail transit at MP 12.09 South of the Del Mar Station in the City of Pasadena, County of Los Angeles, California.	Ratesetting	Ratesetting	NO
<b>A02-10-038</b> CITY OF EL SEGUNDO, for an order authorizing construction of Douglas Street across the right of way and beneath the existing aerial structure of the Los Angeles County Metropolitan Transportation Authority Light Rail Metro Green Line at its mile post T-2.2 and beneath the Harbor Branch track of the Burlington Northern Santa Fe Railway at Harbor Branch Mile Post 15.1.	Ratesetting	Ratesetting	NO



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<b>A02-10-039</b> FALAHI, FARROKH REZA, dba SEA BREEZE SHUTTLE, KARGARAN, JAFAR, dba PRIME RIDE SHUTTLE, KOHL, KEVIN AND ASSOCIATES LLC, dba SEA BREEZE SHUTTLE, for Approval of the Transfer by Sale of the Operating Authority held in Passenger Stage Certificate PSC-9524 by Jafar Kargaran and Farrokh Reza Falahi, dba Prime Ride Shuttle, and dba Sea Breeze Shuttle, to Kevin Kohl and Associates LLC, dba Sea Breeze Shuttle, pursuant to the provisions of Public Utilities Code Sections 851 et seq.	Adjudicatory	Ratesetting	NO
<b>A02-10-040</b> SAN DIEGO GAS & ELECTRIC COMPANY, to modify and extend permanent gas procurement performance-based ratemaking mechanism.	Ratesetting	Ratesetting	YES
<b>A02-10-042</b> SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY, requesting a variance from CPUC General Order No.26-D requirement on side clearance at the Laguna Niguel/Mission Viejo Metrolink Station located on the Orange Subdivision at railroad mile post 193.00 in the City of Laguna Niguel, County of Orange, California.	Ratesetting	Ratesetting	NO
<b>A02-11-001</b> GREGORY J. PHELPS, dba MOUNTAIN EXPRESS, to establish a Zone of Rate Freedom of plus \$15.00/minus \$4.00 from his current tariff rates, pursuant to the provisions of Section 454.2 of the California Public Utilities Code.	Ratesetting	Ratesetting	NO
<b>A02-11-002</b> DIAL WORLDWIDE COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A02-11-003</b> DHAMI, KUNDAN SINGH, dba SENIORS AIRPORTER SHUTTLE, to establish a Zone of Rate Freedom from its current tariff rates pursuant to the provisions of Section 454.2 of the Public Utilities Code.	Ratesetting	Ratesetting	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A02-11-004</b> CITY OF RIVERSIDE, for authority to install and maintain Stationary Horn Warning Systems at six (6) public crossings over Union Pacific Railroad Company's mainline, Streeter Avenue, Palm Avenue, Brockton Avenue, Magnolia Avenue, Riverside Avenue and Panorama Road, City of Riverside, as a pilot project as permitted by SB 1491 for the purpose of testing the utility and safety of stationary automated warning devices.	Ratesetting	Ratesetting	NO
<b>A02-11-005</b> LOS ANGELES TO PASADENA METRO BLUE LINE CONSTRUCTION AUTHORITY, authorizing the construction of two light rail transit tracks at-grade Pasadena Water and Power Private Crossing South of Glenarm Street MP 11.09 in the City of Pasadena, County of Los Angeles, California.	Ratesetting	Ratesetting	NO