BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation to Address Intrastate Rural Call Completion Issues.	I. 14-05-012 (Filed May 15, 2014)

RESPONSE OF THE UTILITY REFORM NETWORK, THE CENTER FOR ACCESSIBLE TECHNOLOGY, AND THE COUNTY OF MENDOCINO, TO COALITION APPLICATION FOR REHEARING OF DECISION 16-12-066 ON RURAL CALL COMPLETION ISSUES

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Pursuant to Rule 16.1 of the California Public Utilities Commission Rules of Practice and Procedure, The Utility Reform Network ("TURN"), Center for Accessible Technology ("CforAT") and County of Mendocino file this response to the February 3, 2017, Coalition Application for Rehearing of Commission Decision 16-12-066 ("Final Decision") in the above-captioned proceeding.

I. INTRODUCTION.

In May 2014, the California Public Utilities Commission ("Commission") issued an order to investigate rural call completion failures, and other related issues ("OII").[1] In the Final Decision adopted in December 2016, the Commission made a series of findings regarding call completion and call initiation problems in rural areas of California and laid the foundation for further work in Phase II of the proceeding. Specifically with regard to Phase II, the Final Decision directed staff to do further investigation and data analysis, and required the respondent carriers to report data and initiate certain stakeholder meetings to inform the staff's analysis. Respondent carriers dispute several elements of the Final Decision and attempt to delay implementation of even the most basic requirements by requesting an extension of time to comply,[2] requesting a stay,[3] and filing this Application for Rehearing.[4] While the Coalition is seeking to re-litigate multiple aspects of the proceeding, the members of the Coalition have not filed a petition for modification, which would be the appropriate administrative mechanism for

[1] Order Instituting Investigation to Address Intrastate Rural Call Completion Issues. I. 14-05-012 (May 21, 2014).
[2] Cox Request for Extension of Time (January 27, 2017); AT&T Request for Extension of Time (January 27, 2017); Frontier Request for Extension of Time (January 30, 2017); Comcast Request for Extension of Time (January 30, 2017); MCImetro Request for Extension of Time (January 30, 2017); Charter Request for Extension of Time (February 1, 2017); Cox Request for Extension of Time (February 16, 2017).
[3] Coalition Motion for Stay of Decision 16-12-066 (February 10, 2017) (The Coalition of parties filing the motion for stay is the same Coalition of parties filing this application for rehearing).
[4] Coalition Application for Rehearing of Decision 16-12-066 (February 3, 2017).

addressing the limited number of identified concerns with the Final Decision that could benefit from clarification.

In the Application for Rehearing, the Coalition[5] argues that the Commission committed legal error when it adopted the Final Decision because the Commission: (1) abused its discretion, (2) did not proceed in a manner required by law, (3) issued a decision that is not supported by facts, (4) issued a decision that was procured by fraud,[6] and (5) issued a decision that violates the Constitution of the United States.[7] The Coalition argues that the Commission committed legal error on procedural grounds by addressing issues beyond the scope of the proceeding and making revisions to the Proposed Decision in violation of administrative procedures. The Coalition also objects on substantive grounds, asserting that the Final Decision may conflict internally, may conflict with another decision, and is allegedly not supported by the record.

The Coalition's collection of scattershot objections is not well founded. Some, like the fraud argument, are never actually developed. Other claims erroneously rely on authority that does not support the Coalition's position, while others are not appropriately the subject of an Application for Rehearing and would be more appropriately addressed through an alternative administrative mechanism. Each of these flaws is addressed in detail below.

[5] California Cable and Telecommunications Association, Charter Fiberlink CA-CCO, LLC (U6878C), Comcast Phone of California, LLC (U5698C), Consolidated Communications of California Company (U1015C), Cox California Telcom, LLC, dba Cox Communications (U5684C), CTIA, MCImetro Access Transmission Services, Corp. (U5253C), and Time Warner Cable Information Services (California) LLC (U6874C), and the Small LECSs. Application for Rehearing, p. 1.

[6] Although the Coalition cites Section 1757.1(5) (decision was procured by fraud), the Coalition did not submit any arguments to support a claim of fraud. Application for Rehearing, pp. 11-12.

[7] The Coalition also cited violations of Section 1757, however Section 1757 applies to complaints, enforcement proceedings, ratemakings, or licensing decisions; Section 1757 does not apply to this decision. *Southern Cal. Edison Co. v. Public Utilities Com.*, 101 Cal.App.4th 384, 395-396 (2002).

II. THE ORDER INSTITUTING INVESTIGATION AND SCOPING MEMO SUPPORT THE FINAL DECISION.

Contrary to the Coalition's assertions, the Commission intended for the scope of this docket to be broad.[8] The OII opening the proceeding defined call completion failure expansively, with a primary – but not exclusive – focus on failures that prevent successful completion of voice communications between urban and rural customers.[9] The Commission's focus did not exclude, and indeed indicated an intent to conduct, additional investigation and consideration of other symptoms and probable causes of call completion failures.[10] The OII stated that the Commission thought it was necessary to initiate a broad review in order to understand the problem under consideration and to consider potential remedies, stating: "[t]o determine the scope of the [call completion] problem we need to identify the extent to which and how rural California experiences call completion failures or call degradations, and what actions the Commission has taken or can take to combat this issue."[11]

In acknowledgement of the expansive preliminary scope set out in the OII, the party response to this docket included identification of numerous additional call completion issues and complaints about serious public safety matters implicated by call completion failures, such as the inability to call 9-1-1, lack of dial tone, extended outages, and service problems.[12] Based on this information, and pursuant to the discussion set forth in the OII, the preliminary scope was further

[8] The OII itself begins with a broad statement of the Commission's intent, declaring: "In this OII, we seek comments to better understand causes of rural call completion failures, evaluate how intrastate call completion failures can be addressed at the state level, how carriers can be encouraged to address call completion failures, what existing rules could be revised or amended, and what new rules might be adopted." OII, p. 1. Contra Application for Rehearing, pp. 2-3, 8-12.
[9] "A call completion failure can happen at any point. . . we are *primarily* concerned with call completion failures that prevent successful termination of voice communications. . . . " OII, p. 25 (emphasis added).
[10] OII, pp. 25-30.
[11] OII, p. 11.
[12] Decision, p. 2; Scoping Memo, p. 1.

defined in the Scoping Memo, which included identified 9-1-1 call completion problems.[13] This Scoping Memo was issued in May of 2015.

Following release of the Scoping Memo, the members of the Coalition participated in the proceeding as scoped, and did not raise procedural concerns. The Coalition only raised concerns about the scope in comments on an Assigned Commissioner's Ruling filed 16 months later.[14] In these comments to the Assigned Commissioner's Ruling and later in comments on the Proposed Decision and now in this Application for Rehearing, the Coalition and its members erroneously relies on *Southern California Edison v. PUC*, 140 Cal.App.4th 185 (2006) to assert that the Commission had failed to proceed in the manner required by law when it addressed issues beyond the original scope of the proceeding.[15]

In *Southern California Edison*, the Commission permitted a party to file late comments in a proceeding - nearly a year after the comment period had concluded and days before issuing a proposed decision - and included in the proposed decision a proposal set out for the first time in the late-filed comments.[16] The court held that the adoption of the new proposal was beyond the scope of the proceeding because the original scope of the proceeding was limited to two specific proposals, and an amended scoping memo was not issued to include the new proposal.[17] The situation in the *Edison* proceeding is easily distinguishable from the present case. Here, the preliminary scope of the proceeding as set forth in the OII was broad, the Scoping Memo which expanded the preliminary scope was proper, parties had the opportunity to provide input on the broad range of issues included in the scope (and indeed participated actively), and the Proposed

[13] Scoping Memo; Application for Rehearing, p. 2.
[14] *See* Application for Rehearing, pp. 2-3 (discussing procedural history) and fn. 6 (identifying the comments in which Coalition members first challenged the scope of the proceeding).
[15] TURN Reply Comments on the Proposed Decision, p. 1-2 (December 12, 2016).
[16] *Southern California Edison*, 140 Cal.App.4th at 1093.
[17] *Southern California Edison*, 140 Cal.App.4th at 1105-1106.

Decision and subsequent Final Decision appropriately addressed issues related to and within the OII's broad scope.

A. The Preliminary Scope of the Proceeding was Broad and the Scoping Memo Properly Expanded It Further.

The Coalition takes issue with the Final Decision's various mandates, referrals, and directives, suggesting that these requirements do not properly reflect language in the OII and arguing specifically that the OII stated that the proceeding "would not involve the enactment of new regulations."[18] But no such language exists in the OII and the preliminary scope set out in the OII clearly did not include such limits. The OII anticipated that the Commission would "evaluate how intrastate call completion failures can be addressed at the state level, how carriers can be encouraged to address call completion failures, what existing rules could be revised or amended, and what new rules might be adopted."[19] Only after the OII set out a broad and detailed agenda for this proceeding did it then suggest that, "Contingent upon the findings in this OII, we will then consider opening an Order Instituting Rulemaking (OIR) proceeding to propose remedies to address problems identified in this Investigation."[20] The OII provided sufficient notice of the broad agenda the Commission was planning to consider as a basis for its eventual ordering paragraphs; the mere mention of a potential future OIR does not foreclose the Commission from adopting the types of remedies and foundational work for an additional phase of the proceeding, as found in the Final Decision.

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[18] Application for Rehearing, p. 2 (citing OII, p. 2). Contra Final Decision, pp. 178-184. The Final Decision imposes important obligations and next steps on both the staff and carriers, but does not adopt rules that would require major operational changes nor is it unreasonable in its short-term requirements. For example, the Ordering Paragraphs require the Commission staff to issue formatted data requests, monitor outages, and analyze data requested from respondents. The respondents are required to comply with the data requests, complete a report, educate their consumers, provide an emergency contact phone number, meet with stakeholders to discuss call competition problems, and participate in Phase II of the proceeding.

[19] OII, p. 2.

[20] OII, p. 2.

Nor does the classification of the proceeding as an investigation preclude the remedies adopted in the Final Decision.[21] The Commission's Rules define investigations broadly and do not limit the scope of an investigation as the Coalition suggests.[22] Moreover, the California Public Utilities Code defines what actions the Commission may take in various types of proceedings, stating that "Quasi-legislative cases . . . establish policy, including, but not limited to, rulemakings and investigations *which may establish rules affecting an entire industry*."[23] Thus it is established by statute that an investigation that is classified as a quasi-legislative proceeding, as is the case for this proceeding, may establish rules for an industry. This authority includes authority to require production of data and to set further meetings; the Commission was not obligated to open a separate rulemaking to adopt these remedies, which set the stage for a second phase of the proceeding

B. The Scoping Memo Was Procedurally Proper.

The Coalition contends that a Commission vote is necessary to amend or expand the scope of a proceeding; thus, the Coalition argues that the Assigned Commissioner improperly amended the scope of the OII by not seeking full Commission review when she expanded the preliminary scope by issuing a Scoping Ruling.[24] The Coalition cites Decision 00-10-028 as support for this overly narrow interpretation of the Commission's rules. However, neither D.00-10-028, nor any other argument raised in the Application for Rehearing, supports the need for the level of procedural formality asserted by the Coalition. Rather, the Assigned Commissioner

[21] Application for Rehearing, p. 2.
[22] Rule of Practice and Procedure Article 5.
[23] Cal. Pub. Util. Code Section 1701.1(c)(1) (emphasis added).
[24] Application for Rehearing, p. 10.

acted in accordance with standard Commission procedure, and in direct compliance with the OII itself, in expanding the preliminary scope of the proceeding.[25]

The Coalition contends that the revisions to the preliminary scope set out in the OII were improper, notwithstanding the direct authorization in the OII for the Assigned Commissioner to act in response to initial party input. Specifically, the OII invited such input and then noted, as is standard, that "after comments are received and reviewed, the Assigned Commissioner's Scoping Ruling will lay out the issues and procedural path in more detail."[26] Because the scope set out in the Scoping Memo was modified in accordance with the broad intent of the OII and in keeping with the comments and input received before it was issued, there was no obligation for further Commission action to ratify the addition of relevant issues.

In spite of this language, the Coalition argues that the Assigned Commissioner improperly acted alone, and only the Commission could amend or expand the scope of the proceeding through a formal decision.[27] The Coalition confuses the issue. The Commission's Rules of Practice and Procedure grant an assigned commissioner – acting alone – the discretion to determine which issues will be addressed in a proceeding.[28] This is the standard that was restated in the OII. While the Commission's Rules explicitly require a full Commission vote on

[25] *See* OII at p. 39 ("Comments [on the OII] directed to the issues identified may include *whether to amend the issues* and how to prioritize the issues to be resolved; how to procedurally address these issues; the proposed separation of certain issues into different tracks; and the proposed timeline for resolving the issues identified. *After comments are received and reviewed, the Assigned Commissioner's Scoping Ruling will lay out the issues and procedural path in more detail*" (emphasis added)).
[26] OII, p. 39.
[27] Application for Rehearing, p. 10.
[28] Rule 7.3(a), "At or after the prehearing conference (if one is held), the assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed."

scoping memos that change the preliminary determination of whether a hearing is necessary,[29] the Rules do not require a vote for changes to the issues set forth in the *preliminary* scoping memo contained in an OII or OIR. Indeed, requiring a full Commission vote every time a scoping memo makes changes to the preliminary scoping memo would be burdensome and inefficient for the Commission. Here, the Commission spoke through its decision to order an expansive OII, and the Assigned Commissioner modified the scope consistent with the broad intent of that OII, after receipt of comments from parties, via release of a Scoping Memo as contemplated by the Rules and the very language of the OII.[30] There is no error.

The procedural history of the docket resulting in Decision 00-10-028, cited by the Coalition in support of the argument that a further Commission vote is required, is very different from the present circumstances. Before that docket (addressing the Lifeline subsidy program for telecommunications customers) was opened, the Commission obtained significant staff and stakeholder input through workshops and comments, and used this input to shape the resulting OIR.[31] The OIR identified very specific issues to be addressed in the proceeding, including proposed revisions to a specific General Order and a detailed list of issues included in an appendix to the OIR. Subsequently, the assigned commissioner prepared a scoping memo that significantly departed from the OIR by *excluding* issues that were initially contemplated by the full Commission and including different issues that were raised by parties after the OIR was

[29] Rule 7.5, "If the assigned Commissioner, pursuant to Rule 7.3(a), changes the preliminary determination on need for hearing, the assigned Commissioner's ruling shall be placed on the Commission's Consent Agenda for approval of that change."
[30] OII, p. 39; Final Decision, p. 8.
[31] Final Decision 00-10-028, p. 11.

voted out.[32] Under those circumstances, the assigned commissioner determined it was appropriate to submit a proposed scoping memo to the Commission for a vote.

Here the circumstances are very different. Unlike the OIR at issue in D.00-10-028, the OII in this proceeding was written expansively and expressly indicated that the scope of the problems under review could only be understood after further work to identify issues.[33] In expanding the preliminary scope after receipt of stakeholder input, the Scoping Memo did not act "beyond the scope initially determined in the OII"[34] but, instead, properly reflected the OII's intent. Therefore, the unusual procedure utilized in D.00-10-028 of seeking full Commission review of a Scoping Memo should be recognized as an exceptional situation, which is not applicable here.[35]

Without support for its arguments from the Commission's Rules or Commission precedent, the Coalition is left to cite the dissent to the Final Decision as support of its claims that the Scoping Memo was overly broad.[36] With all due respect to the dissenting Commissioners, parties' previous arguments that the Proposed Decision went beyond the initial scope of the proceeding were rejected by a 3-2 vote of the full Commission. While dissenting opinions are an important feature of Commission decision-making, the existence of a dissent

[32] D.00-10-028, p. 7, Additionally, the OIR called for a "legislative hearing" but, while not clear from the text of the decision, the scoping memo appears to deny party requests for evidentiary hearings and, as a result, no hearings (legislative or otherwise) were held. By denying the requests for hearings, the assigned commissioner possibly triggered what is today Rule 7.5, discussed above, that requires an assigned commissioner to get Commission approval before changing the preliminary determination from a Commission order regarding hearings.
[33] OII, p. 11.
[34] Application for Rehearing, p. 10.
[35] The Coalition noted that a proposed decision to amend the scope was added to the Commission agenda, but it was held and then withdrawn. See Application for Rehearing, p. 3, fn. 4. This provides further evidence that all parties to the proceeding were aware of the changes to the preliminary scoping memo and did not object. It also indicates that the rest of the Commission was made aware of the changes by reviewing the agenda item and did not object.
[36] Application for Rehearing, p. 10, fn. 22.

does not allow an issue that was resolved in a final decision to be re-litigated.[37] Other issues raised by the dissent and the Coalition are more properly addressed in Phase 2 and cannot support a claim of legal error in the Final Decision.

III. THE REVISIONS TO THE PROPOSED DECISION WERE PROPERLY CONSIDERED AND ADOPTED.

The Coalition contends the Commission did not proceed lawfully when it made substantive changes to the Proposed Decision before and during the Commission meeting at which the Final Decision was adopted.[38] The Coalition erroneously takes issue with the timing of the changes, the lack of another opportunity for further comment, and the lack of an alternate proposed decision.[39]

A proposed decision is a proposal of recommended outcomes, which is subject to revisions until a Commission vote.[40] The Commission has previously stated that, "[proposed decisions] are subject to change and do not become binding unless adopted by the Commission."[41] Therefore the Commission should reject the Coalition's arguments that modifications to the Proposed Decision discussed at a properly noticed voting meeting, voted on by the Commission as a whole, and incorporated into the Final Decision are invalid.

[37] The Coalition's own cited authority on an unrelated matter can be used to refute its arguments here. See, for example, D.15-07-010 (The Commission does not speak through individual members of staff); and D.00-09-042 ("Applicants have cited no authority and we are aware of none for the proposition that oral comments made by individual commissioners affect the validity of the decision. What is relevant is what is contained in the document signed").
[38] Application for Rehearing, p. 4-8.
[39] Application for Rehearing, p. 4-8.
[40] California Public Utilities Code Section 311(d) (The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision); Decision 15-07-044, p. 8.
[41] Decision 15-07-044, p. 8.

A. The Timing of Revisions to A Proposed Decision Does Not Affect the Validity of the Decision.

The Coalition contends the changes made to the Proposed Decision during the voting meeting were improper and failed to follow Commission rules and procedures, including those found in Public Utilities Code Section 311.5[42] and the Commission Meeting Guide.[43] The Coalition does *not* argue that the Proposed Decision and accompanying proposed revisions were not included on the Commission's agenda or properly made available to the public; instead the Coalition takes issue with the timing of further revisions made to the Proposed Decision during the Commission meeting.[44]

Section 311.5 contains no requirements regarding the exact timing of the issuance of proposed changes or revisions to agenda items, only that "agenda item documents" must be made available upon request prior to a Commission meeting.[45] Section 311.5 is primarily focused on how the Commission should use its website, and does not bar revisions to an agenda document after publication but before a vote, nor does it set out any procedural requirements if an agenda document is revised as long as those revisions are transparent and part of an open meeting.[46] Indeed, prescriptive or strict rules regarding timing of proposed revisions would chill the Commission's ability to respond to Commissioner or staff concerns or public comment raised during the meeting itself. Therefore, Section 311.5 does not support the Coalition's position.

[42] Application for Rehearing, pp. 4-6.
[43] Application for Rehearing, pp. 4-5.
[44] Application for Rehearing, pp. 5-6.
[45] Application for Rehearing, p. 5 (emphasis added).
[46] The Commission Rules of Practice and Procedure do address the procedure for agenda documents that are not ready at the time the agenda is published, but also are silent with respect to revisions to agenda documents. Rule 15.3(b) ("If an agenda item documents are not ready when the agenda is issued, they will be available at no charge at 9a.m. on the day and at the location of the Commission meeting").

The Coalition cites the Commission's Meeting Guide to suggest that a "one-hour rule" applies to prohibit any revisions to agenda items from the dais.[47] But the carriers appear only to rely on a section entitled "Meeting Documents," that discusses use of the Escutia Table. The Coalition does not address the preceding section of the Meeting Guide entitled "Meeting Agenda" that includes a subsection entitled "Alternates, Revisions and Modification to Agenda Items." Yet this portion of the Commission's Meeting Guide explicitly states, "In addition, Commissioners or Commission Division Directors may suggest changes to agenda items *at the meeting*. If adopted, they will be incorporated into the Commission's decisions."[48]

Contrary to the Coalition's assertions, the Commission's Meeting Guide expressly permits revisions to a proposed decision from the dais as proposed by a Commissioner and adopted by a vote of the Commission as a whole. The Coalition's argument that such revisions are not permitted, and thus this Final Decision was improperly adopted, must be rejected.

B. Revisions to A Proposed Decision in Response to Party Comments Do Not Create an Alternate Decision.

As set forth in Rule 14.1(d) of the Commission's Rules of Practice and Procedure, a substantive revision to a proposed decision does not create an "alternate proposed decision" if the revisions do no more than make changes suggested in prior comments.[49] The Coalition provides no authority for its claim that an alternate proposed decision was required to support the

[47] Application for Rehearing, pp. 5-6 (citing Commission Meeting Guide. Meeting Documents. http://docs.cpuc.ca.gov/published/report/117551.htm. Last accessed on February 3, 2017).
[48] Commission Meeting Guide. Alternatives, Revisions, and Modifications to Agenda Items. http://docs.cpuc.ca.gov/published/report/117551.htm (emphasis added). (Last accessed on February 15, 2017).
[49] California Public Utilities Commission Rules of Practice and Procedure, Rule 14.1(d). See also D.15-07-044, p. 8

revisions incorporated into the Final Decision or that the proposed decision should have been reissued.[50] In fact, the Commission has previously considered and rejected similar arguments.[51]

In Decision 07-11-051, the Commission considered the question of how extensive modifications to a proposed decision could be before they triggered an obligation to formally issue an alternate proposed decision.[52] In that decision, applicants for rehearing asserted that changes to the underlying decision made after the receipt of comments were substantial enough to trigger the requirement to issue an "alternate" under Section 311 of the California Public Utilities Code,[53] and thus provide an opportunity for further comment. The Commission disagreed, and found that the revisions were linked directly to comments already submitted on the proposed decision. The Commission noted that, "when the Commission adopts a version of the PD that has been revised after the receipt of comments, it exercises its statutory authority to 'modify, or set aside the proposed decision or any part of the decision'" without the need to issue an alternate or even to serve the revisions on the service list.[54]

Here, the Coalition's assertion that revisions to the Proposed Decision violated the plain meaning of Rule 14.1(d), Section 311 or Commission precedent on this matter are not valid. As discussed further below, comments on the Proposed Decision very clearly argue for an expansive application of the revised reporting requirement and other changes, including requirements on consumer education and reporting on operational procedures at issue here. The revisions to the Proposed Decision go no further than implementing those comments and did not trigger Rule 14.1(d) or other relevant authority.

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[50] Application for Rehearing, pp. 7-8.
[51] D.15-07-044; D.07-11-051.
[52] Here again, the Coalition's own cited authority can be used to demonstrate the weakness of its arguments. Application for Rehearing, p. 5.
[53] California Public Utilities Code Section 311 provides the statutory requirements of an alternate proposed decision's notice and comment period.
[54] Decision 07-11-051, p. 7.

IV. THE COMMISSION LAWFULLY ADOPTED NEW REPORTING REQUIREMENTS BASED ON UNIQUE EVIDENCE IN THE RECORD.

In adopting the Final Decision, the Commission considered and rejected the Coalition's arguments opposing a lower reporting threshold as described in Order Paragraph 20.[55] In its Application, the Coalition re-argues that the Commission was not authorized to adopt a new threshold for outage reporting requirements, in part, because the Commission recently declined to adopt such a threshold in a proceeding addressing service quality in telecommunications.[56] While precedent should inform the Commission's decision-making, the Commission has authority to reconsider an issue or rule, or adopt a different rule, based on changed or unique circumstances. Here, the Commission's reconsideration of the reporting threshold was supported by a robust record and findings of fact, which were not present in the prior service quality decision.

In this proceeding, the Commission reconsidered the outage reporting threshold from the service quality docket based on the record developed through hearings, workshops and comments. Specifically, the Commission considered comments by Mendocino County, TURN and others, and found that, "This data request and reporting [of outages of 90,000 user minutes lasting for 30 minutes] is adopted to protect public safety and enable the Commission to perform its duties to ensure safe, reliable service including 9-1-1 access…"[57] The Commission had previously declined to adopt similar outage reporting requirements in Decision 16-08-021;

[55] Final Decision, pp. 142-146, 159-161; Application for Rehearing, p. 13; Cox ACR Comments, pp. 3-4; CTIA ACR Comments, pp. 2-4; MCImetro ACR Comments, pp. 1-5; CCTA ACR Comments, p.3.
[56] Application for Rehearing, p. 13; AT&T Proposed Decision Opening Comments, pp. 8-11; Frontier Proposed Decision Opening Comments, p. 2; MCImetro Proposed Decision Opening Comments, p. 2; Comcast Proposed Decision Opening Comments, p. 3; TURN Proposed Decision Reply Comments, p. 4; Mendocino County Proposed Decision Reply Comments, pp. 1-5.
[57] Final Decision, p. 165-166.

however as Mendocino County noted in its reply comments on the Proposed Decision, Mendocino County was not a party to the Service Quality docket.[58] In fact, no county, city, or municipality – rural or otherwise – was a party to the Service Quality docket.[59] Mendocino County's participation in this docket was crucial in demonstrating outage implications for public safety and hospital efficiency, and demonstrating flaws in the prior outage reporting requirements.[60]

In light of this new information, which was not available in the Service Quality docket, the Commission adopted a lower threshold outage reporting requirement.[61] Therefore, the Commission properly considered and rejected the Coalition's assertion that this issue was previously decided, and the Commission lawfully adjusted the reporting threshold.[62]

The Coalition also argues that the Findings of Fact do not support the reporting threshold and applicability set forth in Ordering Paragraph 20.[63] This argument is disingenuous. The Coalition fails to recognize the many Findings of Fact that support Ordering Paragraph 20.[64] For example, Findings of Fact 25, 26, 33, and 34 recognize an outage data gap that existed throughout California under the prior outage reporting threshold, and does not limit these findings to specific types of carriers. Findings of Fact 29, 30, and 38 specifically found, in

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[58] Mendocino County Reply Comments on the Proposed Decision, p. 2 (December 12, 2016).
[59] See, service list in R.11-12-001, https://ia.cpuc.ca.gov/servicelists/R1112001_80181.htm (updated 2/1/17).
[60] Final Decision pp. 112-114, 120-122; See also Mendocino Reply Comment on the Proposed Decision at 4 (Mendocino County was in favor of an even lower reporting threshold than what was adopted by the Decision).
[61] Final Decision, pp. 138-142.
[62] Final Decision at p. 164. Contra Application for Rehearing, pp. 14-16.
[63] Application for Rehearing, pp. 15-16. The Coalition appears to confuse the COLR-specific outage reporting requirement with the respondent outage reporting requirement of Ordering Paragraph 20. It appears that the COLR-specific outage reporting requirement, discussed in Finding of Fact 27, was not reflected in an Ordering Paragraph, an error which can be rectified by a petition for modification. Contra Final Decision, pp. 182-183.
[64] See, FOF 25, 26, 29, 30, 33, 34, 37 and 38. See also Decision, pp. 123-124, 143, 146-154 (Section 8.4 "Discussion of Reporting Threshold to Address the Data Gap about California Communication Outages"); 165-166.

response to requests from municipal and local emergency authorities, that a standing data request with a lower outage reporting threshold for all respondents would allow the Commission, local and state authorities to track localized outages and address the data gap in rural counties and throughout California. Because Ordering Paragraph 20 is supported by multiple factual findings, there is no error in its adoption.[65]

The Coalition further argues that the Commission acted in an "arbitrary and capricious manner" when the Commission relied upon statements made at multiple public participation hearings and workshops held in this docket to support findings in the Final Decision.[66] The hours of transcribed public testimony and party comments gathered at ten PPHs and three workshops throughout several rural areas of the state are an important part of the record in this proceeding. Not only were these PPHs and workshops properly noticed and widely advertised with goal of reaching all community stakeholders, but parties to the proceeding had an opportunity to participate in these events and the Assigned Commissioner specifically requested comments from parties related to the information gathered from these discussions.[67]

The Commission routinely and appropriately relies upon information and public testimony given during public participation hearings for support of its decisions.[68] While

[65] If the Coalition needs further clarification of the Commission's intent or the anticipated process to implement the outage reporting, a petition for modification is the proper administrative remedy that would clarify the Commission's delegation of authority to the Communications Division to implement this requirement.
[66] Here again, as discussed above, the Coalition in appropriately resorts to reliance on the argument made in the dissent to support its claims of legal error.
[67] September 8, 2016 Assigned Commissioner's Ruling, p. 2.
[68] See, OIR Residential Rate Design (R.12-06-013), D.15-07-001, p. 25 (While we cannot accord the comments the same weight as evidence presented in sworn testimony of witnesses subject to cross-examination, we value the input and incorporate it into our deliberations. These comments provide valuable assistance in understanding the perspective of customers and others who are affected by our decisions."). See also, OIR on CHCF-B (R.09-06-019), D.12-12-038, p. 7("the record underlying this decision was compiled through written comments, working group meetings, and public participation hearings"); OIR on LifeLine (R.11-03-013), D.14-01-036, Appendix C (extensive discussion of testimony from multiple PPHs).

testimony from public hearings is generally given less weight than formal testimony, the Commission has found that use of public input is in the public interest, especially when considering matters relevant to specific disadvantaged and hard-to-reach communities.[69] Here the Assigned Commissioner used the PPH process just as the Commission has intended in the past, to hear from ratepayers directly about how the Commission's actions, and the actions of utilities, affect ratepayers, as well as to provide an opportunity for the public to shape and customize policies and regulations that impact them.[70] Therefore, the Commission committed no legal error by relying on comments from the PPHs and workshops to make specific findings in the Final Decision.

Contrary to the Coalition's rendition of the events, the Commission properly exercised its ability to consider new and unique information - provided by public participation and parties' comments - in the Commission's reconsideration of the reporting threshold and related Ordering Paragraphs, as well as other mandates such as meeting with stakeholders and investigating operational procedures for network and facilities maintenance. For these reasons, the Commission should reject the Coalition's attempt to substantively reargue these issues.

V. DRAFTING ERRORS AND CLARIFICATIONS ARE BETTER ADDRESSED THROUGH A PETITION FOR MODIFICATION, OR PHASE II.

The Coalition contends that errors, inconsistencies or vagueness in the ordering paragraphs of the Final Decision indicate that the Commission acted in an arbitrary and capricious manner and thus void the Decision.[71] However, the existence of drafting errors or ambiguities that require clarification does not rise to the level of legal error undermining an

[69] See, D.15-07-001, p. 25 and related April 23, 2015 ALJ Ruling Denying SCE Motion to Strike in R.12-06-013, pp. 3-4.
[70] *Id*. See also fn. 73, *supra*.
[71] Application for Rehearing, pp. 16-17, 21-22.

entire decision. Rather, a party that identifies such errors or ambiguities can, instead, file a Petition for Modification or perhaps a request for clarification through the Executive Director.[72] As detailed below, many of the items identified by the Coalition would be appropriately addressed through a Petition for Modification. Other alleged deficiencies are appropriately scheduled to be addressed in Phase II of the proceeding,[73] and thus require no additional action at this time.

A. The Coalition Can Seek Clarification of Drafting Errors Through a Petition for Modification.

In its Application, the Coalition raises concerns of internal inconsistencies within the Final Decision and potential conflict with other decisions regarding reporting requirements.[74] To the extent that there is ambiguity, this is a situation that is properly addressed through a Petition for Modification, which is the appropriate vehicle for parties to seek changes to an issued decision.[75] This mechanism could appropriately address the Coalition's request for the Commission to clarify the entities subject to the requirements of the Final Decision. The Coalition notes that the OII identifies "respondents" in Ordering Paragraph 4 and the term "carrier" is not defined in the OII or Final Decision, nor is it used in the Commission's rules or codes. The Coalition also asserts that these terms are used seemingly inconsistently in the Final Decision.[76] The Coalition accurately notes some ambiguity, but then erroneously contends that this lack of clarity voids multiple ordering paragraphs in the Final Decision.[77] This result would

[72] Compare Rule 16.1 of the Commission's Rules of Practice and Procedure governing Applications for Rehearing ("The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously" with Rule 16.4(a) governing Petitions for Modification ("A petition for modification asks the Commission to make changes to an issued decision").
[73] Decision, pp. 183-184 (Ordering Paragraphs 21, 22, and 27).
[74] Application for Rehearing, pp. 16-18.
[75] Rule 16.4(a).
[76] Application for Rehearing, p. 21 (affecting Ordering Paragraphs 2, 5, 6, 7, and 15).
[77] Application for Rehearing, p. 22.

be excessive. An appropriate response would be for the Coalition to prepare a petition for modification asking the Commission to clarify its terminology. Such a petition for modification could also resolve any other drafting errors that might have resulted in internal inconsistencies or purported conflicts with other decisions.[78]

B. The Coalition Can Address the Schedule for Reporting Requirements in Phase II of this Proceeding.

This Decision orders Phase II of this proceeding to begin by June 30, 2017.[79] Phase II "shall explore whether the Commission should require Carriers of Last Resort or other respondents or other carriers under the Commission's jurisdiction to report outages. . . This Phase shall evaluate the suitability of the thresholds, procedures, and results of the reporting."[80] Phase II is the most appropriate vehicle to address the Coalition's concerns about reporting requirements and the schedule for preparation of reports because these issues are properly identified for further work to provide clarity and incorporate additional information from affected stakeholders. Specifically:

> "Phase 2 shall convene a Working Group including Communications Division, Safety and Enforcement Division, the parties, and invite Cal. Office of Emergency Services, and city, county, and federally recognized tribal Office of Emergency Services officials, and the California Utility Emergency Association to discuss and recommend outage reporting thresholds, requirements, and protocols that reflect California's public safety needs and this Commission's responsibilities, including discussion of call completion reporting and improving communications between carriers and first responders during emergency situation."[81]

Although the Commission requires COLRs to report outage data to Commission staff, the Decision does not otherwise require respondent carriers to report outage data to any third party at this time. Instead, the Decision states its intent to require such reporting and sets up a path

[78] Application for Rehearing, pp. 16-17.
[79] Final Decision, p. 183 (Ordering Paragraph 22).
[80] Final Decision, p. 183 (Ordering Paragraph 21).
[81] Final Decision, p. 183 (Ordering Paragraph 22).

forward for the Commission and stakeholders to implement this reporting requirement,[82] but not until several conditions are met: (1) Communications Division provides a format for reporting outages (OP 19); (2) Communications Division issues a standing data request (OP 20); (3) Stakeholders "explore" reporting thresholds and procedures in Phase 2 (OP 21); and (4) the Commission forms a Working Group as part of Phase 2 to discuss outage reporting. For those reasons, Phase 2 would also be the appropriate forum for the Coalition to raise and address any concerns it may have about confidentiality of outage data.[83]

VI. CONCLUSION.

For the reasons stated above, the Commission properly exercised its ability to comprehensively investigate and address the root causes and impacts on consumers of call completion issues. As a result, the Decision is lawful. The Coalition has more appropriate

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[82] This path forward will also address the intent of the Commission to apply this requirement broadly to all relevant carriers, thus addressing the Coalition's due process argument regarding notice to non-parties of the scoping memo's inclusion of 9-1-1- and outages as it relates to call completion. Application for Rehearing, p. 3.

[83] Application for Rehearing, pp. 19-20.

administrative remedies available than an application for rehearing to request any clarification of the Decision. The Commission should reject the Coalition's Application as without merit.

Respectfully submitted,

/s/

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On behalf of The Utility Reform Network; Center for Accessible Technology; and the County of Mendocino

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