

**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)

**COALITION MOTION FOR STAY OF DECISION 16-12-066 ON RURAL CALL
COMPLETION ISSUES, OTHER CALL COMPLETION ISSUES AND CALL
INITIATION ISSUES INCLUDING LACK OF 911 ACCESS AND DIAL TONE**

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TO: Chief Administrative Law Judge Karen V. Clopton

Pursuant to Rule 11.1 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, 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,¹ MCImetro Access Transmission Services, Corp. (U5253C), Time Warner Cable Information Services (California) LLC (U6874C) and the Small LECs²

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² The Small LECs are the following companies: Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C).

(collectively, “Coalition”) respectfully submit this motion for stay of Ordering Paragraphs 2, 5-7, 11-13, 15-16, 19-20, 23 and 25-26 (“Challenged OPs”) in Decision 16-12-066 (“Decision”).³

The Coalition filed an application for rehearing of Decision 16-12-066 (“Rehearing Application”) on February 3, 2017, in which it identifies and details seven independent legal errors in the Decision. The Rehearing Application demonstrates that the Coalition is likely to prevail on the merits of its legal challenge. As discussed herein, Coalition members will be exposed to irreparable harm if the Challenged OPs are not stayed. In the absence of a stay, the Coalition Members will be subject to the potential release of confidential information without protection, and a requirement to operate under rules that are unlawful, and fundamentally vague. Since no compelling countervailing harm to other parties or the public will result if a stay is issued, the balance of equities also favors a stay. Thus, the standard for a stay is met and there is good cause for the Commission to grant this stay request until such time as a decision on rehearing is adopted.

I. Factual Background and Procedural History.

A. The OII

The Commission issued the Order Instituting Investigation (“OII”) on May 21, 2014, for a limited purpose: to understand and evaluate rural call completion failures that arise from alleged problems of toll carriers and other intermediaries to complete calls to the rural telephone companies. This proceeding followed the Federal Communications Commission (“FCC”) *Rural Call Completion Order*, which took steps to “create incentives for providers to improve their

³ The Coalition consists of certain respondents to the OII, along with two industry associations, CCTA and CTIA, who are parties to this proceeding. CCTA and CTIA represent the interests of their members which includes communications providers that were not named as respondents.

rural call completion performance.”⁴ In the OII, the Commission established the scope of the proceeding as “the review of intrastate call completion failures in California, particularly in rural areas of the state.” OII at 33-34. The OII was explicitly framed as an investigation, not a rulemaking, and stated the instant proceeding would not involve the enactment of new regulations. *See* OII at 2. The OII named utilities that draw support from California High Cost Fund A or California High Cost Fund B as respondents. OII at 39-40.

B. The Scoping Memo and Public Participation Events

In May 2015, the assigned Commissioner issued the Scoping Memo and Ruling (“Scoping Memo”), which unexpectedly – and improperly - expanded the scope of the proceeding to include a “review of 911 call completion and access issues, including, but not limited to, those due to [a] loss of dial tone for reasons other than service cancellation.” Scoping Memo at 1. This statement sought to expand the scope of the proceeding beyond the bounds of the OII by including all “loss[es] of dial-tone,” whereas the OII was focused only on “call completion failures.” *Compare* Scoping Memo at 2 to OII at 33-34. The Scoping Memo also added “Intrado Communications, Comcast Phone of California, Time Warner Information Services Inc., and Charter Fiberlink” as respondents, “in view of the amended scope of this proceeding.” Scoping Memo at 1. The Assigned Commissioner originally published on the Commission’s website a proposed decision for the purpose of amending the scope of the OII, but this proposed decision was not served on parties and was withdrawn after appearing on two Commission meeting agendas.⁵

⁴ *Rural Call Completion*, WC Docket 13-39, *Report and Order and Further Notice of Proposed Rulemaking*, 28 FCC Rcd. 16154, FCC 13-135 (released November 8, 2013), at ¶ 85.

⁵ This proposed decision to amend the scope was to be considered at the April 9, 2015 Commission meeting (Agenda ID #13829) and after a hold, at the May 7, 2015 meeting. However, the proposed decision was withdrawn before the Commission could vote on it. *See* Public Agendas 3355 and 3356 and results at <https://ia.cpuc.ca.gov/agendadocs/>.

Over a year after the issuance of the Scoping Memo, the Commission held a number of public participation hearings (“PPHs”). On September 8, 2016, the Assigned Commissioner issued a ruling (“ACR”) directing the public and parties to file written comments on certain matters raised during the PPHs.⁶ These matters included issues relating to 211 dialing, collect calls, pole and line safety, tree mortality, and 911 emergency response. Significantly, however, the Commission took no steps to add these issues to the scope of the OII, and the fact that PPHs were held does not independently change the scope. The parties’ comments submitted in response to the ACR highlighted that the Commission would err by further considering any of these additional issues in that they: (i) fall outside the scope of this proceeding and/or the Commission’s jurisdiction; (ii) have already been addressed by the Commission in a separate docket or are subject to existing rules; and/or (iii) are specific to a given provider or area and do not give rise to industry-wide issues.⁷

C. The Proposed Decision and Decision

The proposed decision in this proceeding (“Proposed Decision”) was issued for comment on November 15, 2016. The first revised Proposed Decision was issued on December 5, 2016. The second revised proposed decision was issued just before the close of business on December 14, 2016, the day before the voting meeting. The Decision was adopted at the Commission’s December 15, 2016 meeting by a 3 to 2 vote and formally issued on January 4, 2017, with the Dissent of Commissioners Randolph and Peterman.

⁶ *Assigned Commissioner’s Ruling Inviting Party and Public Comments Regarding Issues Raised at Public Participation Hearings and Workshops* at 1 (dated September 8, 2016).

⁷ *See, e.g.,* Cox October 2016 Comments at 3 (“The Commission would err in further considering any of these issues in that they: . . . fall outside the scope of this proceeding and/or the Commission’s jurisdiction”); CTIA October 2016 Comments at 2 (“Consideration of rural outage reporting requirements, in addition to being outside the scope of the proceeding, would be ill-timed at best and unlawful at worst.”); and MCImetro October 2016 Comments at 5 (“Adopting any rules as a result of this OII would contravene the OII, go beyond its scope and subject the decision to annulment.”).

The Decision addresses rural call completion issues, and correctly finds that those issues have abated. However, in a departure from even the broadest interpretation of the scope of the OII, the Decision also includes 26 different mandates, referrals, and directives on a host of issues, including outage reporting, Multi-Line Telephone System (“MLTS”) issues, network maintenance, the attachment of facilities to trees under General Order (“GO”) 95, 211 and 811 services, and Frontier service issues.⁸

D. Extension Requests Granted.

In response to multiple requests for extensions to comply with Ordering Paragraphs 1, 2, 5, 6, 7, 11 and 16, on February 6, 2017, the Executive Director granted the requesting respondents an extension of time until June 1, 2017 to comply with these Ordering Paragraphs.⁹ The extensions granted do not obviate the need for this Motion. A stay remains necessary to ensure that a decision on Rehearing or annulment of the Decision can occur before the compliance deadlines imposed by the Decision occur. The Rehearing Application identifies at least seven separate grounds demonstrating legal error with respect to the Commission adopting the Challenged OPs, which include but are not limited to the Ordering Paragraphs for which the Executive Director granted an extension. The Challenged OPs are broader than those included in the extension requests, both in terms of the requirements covered by the request and the entities that would be subject to the stay. If granted, the stay requested herein would apply to all Challenged OPs.

⁸ See Ordering Paragraphs 5-8, 11, 12, 13, 15, 16, 19, 20, 23, 25 and 26.

⁹ In addition, the Executive Director on February 6, 2017 granted Cox an extension to comply with OPs 5 and 6 until March 1, 2017.

II. Legal Standard.

The Commission has broad discretion in granting a stay (D.11-05-050 at 2) and will grant a stay upon the moving party establishing "good cause." D.99-09-035, 1999 Cal. PUC LEXIS 602 * 7. When considering a request for stay, the Commission "looks to the probability of prevailing on rehearing and/or the threat of irreparable harm in its assessment of good cause." *Id.* (citing, *Re Southern California Gas Co.* (1990) 39 CPUC2d 14, D.90-12-101). Additionally, the Commission balances the harm to the moving parties or the public interest if the stay is not granted and the decision is later reversed, with the harm to other parties or the public interest if the stay is granted and the decision is later affirmed. D.08-04-044 at 3. Finally, the Commission also considers other factors relevant to a particular case. *Id.*

In reviewing these factors, the Commission applies a flexible standard. For example, with respect to the probability of prevailing on rehearing, the Coalition does not need to demonstrate that its rehearing application will be granted, but rather, must show that there is "a reasonable possibility" that the Decision will be overturned or modified. D.11-05-050 at 2. The Coalition makes such showing below and in its Rehearing Application. Similarly, while not required to demonstrate irreparable harm,¹⁰ the Coalition nonetheless establishes irreparable harm for certain Challenged OPs. In light of this showing, and upon considering and weighing all of the relevant factors, the Commission should find that the balance weighs decisively in favor of the Commission granting this Motion.

¹⁰ See e.g. D.11-05-050; D. 01-12-026; D. 95-02-047 (1995 Cal. PUC LEXIS 98).

III. The Coalition’s Application for Rehearing Demonstrates Good Cause Exists for the Commission Granting this Motion.

A. Coalition Movants Are Likely to Prevail On the Merits.

The Decision presents a number of procedural and substantive legal errors that merit rehearing and these errors are carefully detailed in the Rehearing Application. For example, the Rehearing Application identifies the following ways in which the Decision commits legal error:

- The Commission failed to proceed lawfully when it contradicted its own rules by failing to publish substantive revisions to the Proposed Decision on the “Escutia Table” at least one hour prior to a vote on the proposed decision. Based on this procedural error, the Decision must be annulled in its entirety. At a minimum, the Decision must be modified to eliminate modifications made after the business meeting started.
- The Commission failed to proceed lawfully by materially changing the Proposed Decision, without sufficient notice and opportunity for comment, directing the Communications Division to issue a standing data request requiring outage reporting from *all* respondents, not just carriers of last resort (“COLRs”) as had been previously stated. Therefore, Ordering Paragraph 20 must be eliminated.
- The Commission abused its discretion and failed to proceed lawfully by addressing issues that are outside the scope of the OII, including outages, MLTS programming, Frontier service issues, and the placement of telecommunications facilities on trees. Therefore, Findings of Fact 5-38, Conclusions of Law 7, 10-13, 18-19, and 23-26, and Ordering Paragraphs 5-8, 11-13, 15-16, 19-20, 23, and 25 present legal error and must be eliminated.
- The Commission abused its discretion and failed to proceed lawfully by addressing issues that are beyond the scope of the Scoping Memo, including adopting requirements that pertain to tree attachment, Frontier service issues, and MLTS services. Therefore, Findings of Fact 5-16, and 18-19, Conclusions of Law 13, 19, and 22, and Ordering Paragraphs 5-8, and 11-13 present legal error and must be eliminated.
- Ordering Paragraph 20’s extension of statewide outage reporting requirements to all respondents is not supported by the findings. Therefore, Ordering Paragraph 20 must be eliminated.
- The Commission abused its discretion by adopting Ordering Paragraph 20 because: (i) the findings and text of the decision conflict with the outage reporting requirement and prior Commission decisions; and (ii) the Commission failed to consider all relevant factors and ultimately drew conclusions without substantial reason.

Therefore, Findings of Fact 25-30, 32-35, 37-38 and Ordering Paragraphs 15-16, 20, 23, and 25 must be eliminated.

- The Commission failed to proceed lawfully and violated the constitution by denying due process to an undefined class of entities called “carriers.” Although it is unclear what entities the Decision considers to be “carriers,” it may include members of CTIA and CCTA. Therefore, Ordering Paragraphs 2, 5-7 and 15 must be eliminated.

The Rehearing Application addresses each of these legal deficiencies in detail, and thereby, establishing that the Coalition is likely to prevail on the merits.¹¹

B. Respondents and “Carriers” Will Suffer Irreparable Harm Without a Stay.

Absent a stay, respondents will suffer irreparable harm because Ordering Paragraphs 20 and 25 require the production of confidential outage reporting information -- which is categorized as critical network infrastructure under federal law -- without adequate protection from public disclosure. In addition, requirements purporting to apply to an undefined category of “carriers” (OPs 2, 5, 6, 7 and 15) and “telecommunications carriers” (OPs 11-12) violate such entities’ constitutional right to due process.

1. The Decision Does Not Protect Confidential Outage Reports from Disclosure and Does Not Limit Cal OES’ Use of Such Confidential Information.

Ordering Paragraph 20 directs the Communications Division “to issue standing data requests to all respondents,” requiring them to submit a new outage report to the Commission with concurrent notice to the California State Warning Center of the California Office of

¹¹ See D.11-05-050. This decision states: “After review of the pleadings in the instant case, we note that a number of the arguments allege structural deficiencies in the General Order. Although we do not believe that all the arguments presented by the rehearing applicants will have merit, certain allegations present a reasonable possibility that the General Order will need to be modified. We note that even the Competitive Carriers, who generally support the General Order and oppose the stay request, acknowledge that modifications to the General Order may be appropriate. Therefore, there is some likelihood that the rehearing applicants may prevail on portions of their applications.” *Id.* at 2.

Emergency Services (“Cal OES”).¹² Decision at OP 20. Ordering Paragraph 25 further states any reports that respondents must provide to Cal OES must be submitted via the California State Warning Center.¹³ Although this information is highly confidential and raises network and homeland security issues, the Decision fails to require Cal OES to protect confidential information included in the outage reports, or even address whether Cal OES has mechanisms to ensure confidentiality and protection of such information if requested via a Public Records Act request. Consequently, unless the Commission stays Ordering Paragraphs 20 and 25, respondents will suffer irreparable harm because they would be required to disclose their confidential information without adequate protections or use restrictions in place.

Under federal law, outage reports are presumed to be confidential and are given significant protection.¹⁴ Additionally, telephone networks are deemed to be Critical Network

¹² OPs 19 and 23 are directly related to OP 20. OP 19 orders “Communications Division shall make available a format for reporting outages in response to Commission data requests and Commission Decisions.” OP 23 states that the “Communications Division shall monitor outage reports submitted to the Commission and their effect on user minutes, users, and public safety, and monitor other outages that fall below the Major Service Interruption threshold of General Order 133-D.” Accordingly, OP 19 and 23 should be stayed along with OP 20.

¹³ OP 25 states in full, “Any reports that respondents and carriers are directed by this decision to provide to California’s Office of Emergency Services (Cal OES) shall be submitted to Cal OES via the California State Warning Center.”

¹⁴ The FCC’s confidentiality regime for outage data (which is reported to the FCC via a system called “NORS”) affords significant protections given outage data’s relation to critical infrastructure and potential for competitive advantage. In its 2012 Order, the FCC ruled that individual outage reports will be treated on a presumptively confidential basis and will not be routinely available for public inspection under the federal Freedom of Information Act, consistent with Section 4.2 of the Rules, which permits release only under the procedures set forth in 47 C.F.R. Section 0.461. *See In the Matter of the Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, Report and Order, FCC 12-22 (rel. Feb. 21, 2012) at ¶ 112. These reports also implicate national security, and the FCC has considered providing states access only if the states have in place certain protections against public disclosure: “we reaffirm our view that NORS data should be presumed confidential and shielded from public inspection. We thus propose that, in order to receive direct access to NORS, a state must certify that it will keep the data confidential and that it has in place confidentiality protections at least equivalent to those set forth in the federal Freedom of Information Act (FOIA).” *In re Amendments to Part 4 of the Comm’n’s Rules*, 30 FCC Rcd 3206, ¶ 51 (rel. March 30, 2015). In addition, the FCC’s submission process for NORS reports requires verification via username and password in order to be able to even

Infrastructure,¹⁵ and thus the disclosure of outage reporting information raises homeland security issues.¹⁶ The Commission has recognized the sensitive nature of outage reports in other contexts including in GO 133 (which expressly provides confidential treatment for the outage reports submitted to the Commission under those rules).¹⁷ However, the Decision fails to include any discussion of how, if at all, outage information that is provided to Cal OES will be protected from public disclosure. This shortcoming jeopardizes respondents' confidential information because, unlike the Commission, Cal OES is not subject to Pub. Util. Code § 583 or GO 66-C (or, presumably, the Commission's jurisdiction).

Further, the Decision does not discuss whether Cal OES has any obligation to keep respondents' information confidential even if respondents request such treatment. Without any required or agreed upon restrictions, Cal OES could (theoretically) unilaterally disclose respondents' confidential information. It bears mention that Cal OES is the "central information hub for statewide emergency communications and notifications" and has "the responsibility to

access the NORS reporting system, and submission of reports occurs via a secure server. *See* Network Outage Reporting System, <https://www.fcc.gov/nors/outage/StartUp.cfm> (last accessed Jan. 19, 2017).

¹⁵ *See* Department of Homeland Security, Critical Infrastructure Sectors: "The Communications Sector is an integral component of the U.S. economy, underlying the operations of all businesses, public safety organizations, and government. Presidential Policy Directive 21 identifies the Communications Sector as critical because it provides an 'enabling function' across all critical infrastructure sectors. Over the last 25 years, the sector has evolved from predominantly a provider of voice services into a diverse, competitive, and interconnected industry using terrestrial, satellite, and wireless transmission systems. The transmission of these services has become interconnected; satellite, wireless, and wireline providers depend on each other to carry and terminate their traffic and companies routinely share facilities and technology to ensure interoperability." <https://www.dhs.gov/communications-sector>

¹⁶ *New Part 4 of the Commission's Rules Concerning Disruptions to Commc'ns*, 19 FCC. Rcd. 16830, 16834 (rel August 19, 2004) at ¶ 3 (in which the FCC asserts that the disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity, and therefore treats the information as confidential, withholding from disclosure to the public in accordance with the Freedom of Information Act.).

¹⁷ GO 133-D, Rule 4(d). This rule states in full: Confidentiality. "Major Service Interruption reports submitted to the Commission pursuant to these rules shall be treated as confidential in accordance with Pub. Util. Code § 583 and General Order 66-C." *Emphasis added.*

receive, coordinate, verify and *disseminate information*.”¹⁸ If, consistent with this responsibility, Cal OES disseminates respondents’ confidential outage information, respondents will suffer irreparable harm. Once the data is produced, “the cat is out of the bag” (*CBS Corp. v. F.C.C.*, 785 F.3d 699, 708 (D.C. Cir. 2015) (quotation marks omitted)), and there is no way to claw back the information. Such an action would put at risk the disclosure of critical network infrastructure data, information as described above the federal government has found to be highly sensitive, the disclosure of which could have a number of negative impacts not just to respondents, but also homeland security.

For these reasons, respondents would be irreparably harmed if Ordering Paragraph 20 is not stayed and respondents are forced to disclose confidential information to Cal OES without any protections, including use and sharing restrictions.

2. The Undefined Category of “Carriers” will Be Irreparably Harmed by Having to Comply with Directives of Which They Received no Notice of

The Rehearing Application explains that it is a basic principle of due process that an enactment is void for vagueness if its prohibitions and requirements are not clearly defined.¹⁹ The vagueness doctrine bars enforcement of a rule “which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.”²⁰ Several of the Decision’s directives are void for vagueness because they purport to apply to the undefined category of “carriers” (OPs 2, 5, 6, 7, 15 and 25) or “telecommunications carriers” (OPs 11-12). This lack of definition as to which entities are subject to these requirements violates constitutional right of the “carriers” to due process. It is

¹⁸ See <http://www.caloes.ca.gov/cal-oes-divisions/warning-center>. (Emphasis added).

¹⁹ Rehearing Application at 21 (citing *Mason v. Office of Admin. Hearings*, 89 Cal.App.4th 1119, 1126 (2001)).

²⁰ *In re Sheena K.*, 40 Cal.4th 875, 890 (2007).

well-established that a “[v]iolation of a constitutional right in, and of itself, constitutes irreparable injury.”²¹

Additionally, to the extent that both the requirements in OPs 2, 5, 6, 7, 15 and 25 are intended to apply to non-respondent “carriers,” and the requirements in OPs 11-12 are intended to apply to “telecommunications carriers,” the adoption of such requirements violates those entities’ due process rights.²² Although non-respondent, certificated, and registered providers were apparently served with the OII itself,²³ the Commission did not require that those providers be added and maintained on the service list of the proceeding.²⁴ As a result, these entities received no notice that: (i) the OII would extend beyond rural call completion issues; or (ii) that any rules would be adopted in the proceeding since the OII was explicitly framed as an investigation and made clear that if any rules were to be considered those would be addressed in a subsequent rulemaking. *See* OII at 2.

C. The Balancing of Harms Strongly Favors a Grant of Stay, As the Public Interest and non-moving Parties Will not be Harmed by a Stay.

In considering a stay request, the Commission considers the harm to the moving parties or the public interest if a stay is not granted and the underlying decision is later reversed, with the harm to other parties or the public interest if the stay is granted and the decision is later affirmed. The Commission has concluded, for example, “a principal purpose of this stay is to protect the public interest by minimizing the number and scope of actions with respect to the RPS program that may be subject to review, reconsideration, and/or revision once the

²¹ *Napa Valley Publ’g Co. v. City of Calistoga*, 225 F. Supp. 2d 1176, 1182 (N.D. Cal. 2002).

²² *See Goldberg v. Kelly*, 397 U.S. 254, 269 (1970).

²³ OII at 40.

²⁴ Logically it would seem that certain of the requirements should not, for example, apply to certificated telephone corporations that provide only wholesale service since the requirements relate only to retail services. *See, e.g.*, OPs 7 and 15.

Commission acts on the Petitions for Modification.” D.10-05-018 at 6. In light of the number of substantive errors identified in the Rehearing Application and the corresponding numerous and wide-ranging directives included in the Decision, balancing these respective harms weighs decisively in favor of staying the Challenged OPs pending full Commission review of the Rehearing Application.

First, as discussed above, if the decision is not stayed, respondents will be required to provide outage reports without adequate confidentiality protections under Ordering Paragraphs 19-20 and 25. This in turn presents a real risk that confidential information about critical network infrastructure could be publicly released, which would harm respondents and public pose security risks. In contrast, other parties and the public interest would not suffer any harm, let alone irreparable harm, if the Commission defers the commencement of any new outage reporting requirements—especially since the Decision requires Commission staff to develop templates and issue a standing data request, provides them with flexibility about the level of reporting (up to the current GO 133-D reporting level) and does not specify a compliance deadline.

Also, as explained above, the undefined class of “carriers” and “telecommunications carriers” would suffer irreparable harm if OPs 2, 5-7 and 15 are not stayed. These entities will either need to allocate resources to comply with these ordering paragraphs – which include vague, undefined and confusing requirements - or risk being in a state of non-compliance. Moreover, in some instances, regardless of the efforts put forth, compliance with certain requirements may not be possible. As just one example, Ordering Paragraph 7 states as follows:

By the end of the first quarter of 2017, carriers shall hold a meet and confer with the *2-1-1 coalition and the 8-1-1 coalition*, as described herein to discuss short code access and education. (Emphasis added).

However, the Decision does not identify “the 2-1-1 coalition” or “the 8-1-1 coalition.” Further, the term “meet and confer” is ambiguous, confusing and appears to be used in a manner that is not consistent with the Commission’s Rules. For example, the Commission’s Rules require parties to meet and confer to resolve pending disputes prior to filing a discovery motion. *See* Rule 11.3(a). Yet here, it is not clear what “carriers” and the given “coalitions” would meet and confer about as there are no pending disputes. Just as it has considered impediments to implementing new regulations as weighing in favor of granting a stay in other cases,²⁵ the Commission should do the same here and grant this Motion. This is especially true when non-moving parties and the public interest would not suffer any harm from a delay in the effective date of these ordering paragraphs if the stay were granted and the Decision later affirmed.

Similarly, OP 16 is vague in that it requires respondents to provide a non-public telephone number to city, county, and federally recognized tribal Office of Emergency Services officials. However, the Decision does not identify the OES officials that should receive such information or include parameters for use by authorized OES officials. Moreover, OES officials may wish to have such information disseminated in a different manner.²⁶ In fact, Ordering Paragraph 22 requires that that a working group of parties, staff and Cal OES officials be convened to discuss “improving communications between carriers and first responders during emergency situations.” As such, there is a strong likelihood that OP 16 will be eliminated or modified, and as such, it should be stayed.

²⁵ *See* D.11-05-050. The Commission granted stay of this decision, in part, due the fact that the Decision implemented new rules in a new GO and implementing requirements had not been finalized. The Commission stated “one relevant factor in this particular case is that the decision in question adopts an entirely new General Order, and procedures to implement the requirements of the Order have not yet been finalized.” *Id.* at 3

²⁶ *See* AT&T California (U 1001 C) Request for Extension of Time for Compliance with Certain Ordering Paragraphs of Decision 16-12-066 at 2.

The Commission should stay OPs 8, 13, 17 and 26 for similar reasons. These OPs require divisions within the Commission to undertake certain actions and the Rehearing Application demonstrates that there are a number of “structural deficiencies” in the Decision and as such there is “some likelihood” the Coalition will prevail. D.11-05-050 at 2. Accordingly, a stay of these ordering paragraphs is in the public interest such that Staff is not required to undertake resource-intensive work that may not be required in the future. Further, if the Decision were to be affirmed or modified, there does not appear to be any harm to non-moving parties or the public interest in having a slight delay in the effective date of these ordering paragraphs.

Finally, Ordering Paragraphs 11-12 require “telecommunications companies” to “evaluate the practice of attaching facilities to trees” and to provide a report back to the Commission by March 1, 2017. As discussed above, this issue is far beyond the scope of both the OII, as well as the Scoping Memo. Undertaking this type of broad network review and providing a report would be burdensome and expensive for “telecommunications companies” and there would be no way to recover such resources. On the other hand, non-moving parties and the public interest will not be harmed by a delay in the review of facilities attached to trees, in part, because the Commission already has in place robust rules to address any safety violations relating to utility attachments (including to trees).²⁷ As such, the balance weighs in favor of the Commission granting a stay for these ordering paragraphs.

If the Decision is not stayed and the Rehearing Application is granted, in whole or part, then moving respondents will necessarily be harmed in complying or commencing efforts to

²⁷ See General Order 95, Rule 21.5 (defining an overhead guy as a “guy extending from a pole, crossarm or structure to a pole, crossarm, structure or tree...”).

comply with the Challenged OPs, whereas the same is not the case for non-moving parties or the public interest. Accordingly, the Coalition recommends the Commission grant this Motion.

D. Other Relevant Factors Weigh in Favor of a Grant of Stay

In considering a request for stay, the Commission may consider the other factors relevant to a particular case. Decision 99-09-035, 1999 Cal. PUC LEXIS 602 * 6. As discussed above, the Assigned Commissioner's attempt to expand the explicit scope of the OII via a Scoping Memo, the lack of sufficient findings and the overreliance on comments from public participation hearings are unique facts that the Commission should consider in reviewing this Motion. The Coalition also submits that the number and types of legal errors demonstrated in the Rehearing Application and that two Commissioners dissented on both procedural and substantive grounds are relevant facts that weigh in favor of the Commission granting this Motion.

Additionally, the Rehearing Application raises unique due process concerns that weigh in favor of a stay. Granting a stay is consistent with prior Commission action. For example, when a party complained of ineffective service, the Commission issued a stay "in an abundance of caution and to ensure there is no question that PCS has been afforded adequate due process and opportunity to be heard on the merits." D.08-04-044 at 1. The Commission concluded that even though none of the other factors for a stay were met, the due process allegation was a unique "other factor" that dictated the Commission grant the requested stay. *Id.* at 3. The Coalition submits the same is true with respect to the unique due process claims identified and detailed in the Rehearing Application.

Moreover basic fairness requires that the threshold challenges as to the proper scope of the proceeding and the directives included in the Decision should be resolved before Coalition

members and other entities are forced to bear the costs and burdens imposed by the Challenged OPs. Because the requested stay would plainly serve the public interest, this fourth factor weighs heavily in favor of granting a stay.

IV. Conclusion.

For all the reasons discussed herein and the Rehearing Application, the Coalition respectfully requests that the Commission grant this motion and stay Ordering Paragraphs 2, 5-8, 11-13, 15-16, 19-20, 23, 25 and 26 in Decision 16-12-066.

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Respectfully submitted, pursuant to
Rule 1.8(d),

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