

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

Resolution ALJ-176-2990  
Administrative Law Judge Division  
April 9, 1998

**RESOLUTION**

**RESOLUTION ALJ-176-2990. 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.

### **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/BAR/wav

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 April 9, 1998, the following Commissioners voting favorably thereon:

*Wesley Franklin*

WESLEY M. FRANKLIN  
Executive Director

RICHARD A. BILAS  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEPPER  
Commissioners

## PRELIMINARY DETERMINATION SCHEDULES

Resolution ALJ-176-2990 (4/9/98)

NUMBER	SHORT TITLE	PROPOSED CATEGORY	PRELIMINARY DETERMINATION	HEARING EXPECTED
A98-03-036	Airnex Communications, for registration as an interexchange carrier telephone corporation (facilities-based)	*RATESETTING	RATESETTING	NO
A98-03-037	Matrix Telecom, Inc. and Avtel Communications, Inc., for Matrix Telecom, Inc. to transfer 100% of its shares for 80% of AvTel Communications, Inc.'s shares	RATESETTING	RASETING	NO
A98-03-038	Public Interest Network Services, Inc., for registration as an interexchange carrier telephone corporation	*RATESETTING	RATESETTING	NO
A98-03-041	Armando Nava, dba Transportes Nava, for authority to operate as a passenger stage between points in the Los Angeles County and San Diego County (3648 Walnut Avenue, Lynwood, CA 90262; (310) 632-6150)	RATESETTING	RATESETTING	NO
A98-03-042	Qwest Communications International, Inc.; LCI International, Inc.; LCI International Telecom Corp. and USLD Communications, Inc., for approval of a transfer of control to Qwest Communications of LCI International Telecom and USLD Communications	RATESETTING	RATESETTING	NO

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NUMBER	SHORT TITLE	PROPOSED CATEGORY	PRELIMINARY DETERMINATION	HEARING EXPECTED
A98-03-043	Blue and Gold Fleet, L.P., to increase fare levels for the transportation of passengers in vessel common carrier service between the Alameda Gateway area and the Port of Oakland, on the one hand, and authorized points in San Francisco, on the other hand	RATESETTING	RATESETTING	YES
A98-03-044	Rasmi B. Assaf and Ayman Fadlalla, dba Citywide Shuttle & Limousine Service, for authority to operate as a passenger stage corporation between points in San Francisco, Santa Clara, Alameda and Contra Costa Counties and the San Francisco, Oakland and San Jose International Airports and to establish a zone of rate freedom	RATESETTING	RATESETTING	NO
A98-03-045	Manjit Singh and Sukhvir Singh, for a certificate of public convenience and necessity to establish and operate an on-call, door-to-door, passenger stage service	RATESETTING	RATESETTING	NO
A98-03-046	KDD America, Inc., for registration as an interexchange carrier telephone corporation	*RATESETTING	RATESETTING	NO

\* NDIEC Registration Application

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NUMBER	SHORT TITLE	PROPOSED CATEGORY	PRELIMINARY DETERMINATION	HEARING EXPECTED
A98-03-047	Sierra Telephone Company, Inc., for an order authorizing it to issue notes in an amount not exceeding \$35,500,000 and to execute a related agreement and supplemental security instruments	RATESETTING	RATESETTING	NO
A98-03-050	Megsinet-CLEC, Inc., for registration as an interexchange carrier telephone corporation	* RATESETTING	RATESETTING	NO
A98-03-051	Associated Limousine Operators of San Francisco, to transfer and Associated Limousines, Inc. to acquire certificate of public convenience and necessity and certain assets and liabilities of Associated Limousine Operators of San Francisco	RATESETTING	RATESETTING	NO
A98-03-052	County of Stanislaus, to construct one grade crossing of the Union Pacific Transportation Company main line at Dakota and Murphy Avenue in the town of Salida	QUASI-LEGISLATIVE	RATESETTING	NO
A98-03-056	Department of Transportation, State of California, for an order authorizing the Department to: widen the Kelley Park overhead, located in the City of San Jose, County of Santa Clara	RATESETTING	RATESETTING	NO

\* NDIEC Registration Application

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NUMBER	SHORT TITLE	PROPOSED CATEGORY	PRELIMINARY DETERMINATION	HEARING EXPECTED
A98-03-057	Telephone and Data Systems, Incorporated, an Iowa corporation, Telephone and Data Systems, Incorporated, a Delaware corporation, Happy Valley Telephone, Hornitos Telephone Company, Winterhaven Telephone Company, and California Rural Service Area #1, Inc., to reincorporate in Delaware	RATESETTING	RATESETTING	NO
A98-04-001	City of Palmdale, to construct Blackbird Drive, a public street, across the railroad tracks of the Union Pacific Railroad Company and the Metropolitan Transportation Authority in the City of Palmdale, County of Los Angeles	RATESETTING	RATESETTING	NO
A98-04-002	Abebe Merdassa, an individual dba San Jose Express Shuttle, for authority to operate as a passenger stage corporation between points within Santa Clara and San Mateo Counties, to San Jose International Airport and San Francisco International Airport	RATESETTING	RATESETTING	NO



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NUMBER	SHORT TITLE	PROPOSED CATEGORY	PRELIMINARY DETERMINATION	HEARING EXPECTED
A98-04-003	Pacific Gas and Electric Company, for Commission order finding that its electric operations during the reasonableness period from January 1, 1997 to December 31, 1997, as well as certain of its gas operations during the reasonableness periods from January 1, 1996 to December 31, 1996 and January 1, 1997 to December 31, 1997, were prudent	RATESETTING	RATESETTING	YES
A98-04-005	Plains All American Inc. and All American Pipeline Company, for Plains All American Inc. to acquire control of All American Pipeline Company	RATESETTING	RATESETTING	NO