

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-176-2999
Administrative Law Judge Division
September 3, 1998

RESOLUTION

RESOLUTION ALJ-176-2999. 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.)

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

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is

categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

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

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

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

Mixed or Unclear Category Proceedings

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

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

ALJ/avs

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.

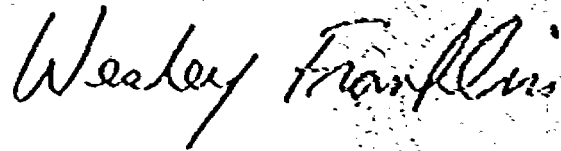
Conclusion

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/avs

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 September 3, 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. NEEPER
Commissioners

PRELIMINARY DETERMINATION SCHEDULES

Resolution ALJ-176-2999 (9/3/98)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-07-061 Sonoma County Airport Express, Inc., dba Airport Express, for amendment of certificate of public convenience and necessity to obtain citywide authority for City of Santa Rosa	RS	RS	YES
A98-07-062 Ponderosa Community Services District, utility receiver's application to contest purported transfer of wellsite easement	A	A	NO
A98-07-063 Mark K. Sneed and Jose Luis Ayala-Arocha dba El Corre Caminos, to amend certificate of Public Convenience and Necessity to operate as a passenger stage corporation	RS	RS	NO
A98-08-005 TelOne Telecommunications, Inc., for registration as an interexchange carrier telephone corporation	*RS	RS	NO

A = Adjudicatory
 QL = Quasi-legislative
 RS = Ratesetting
 Y = Yes
 N = No
 * NDIEC Registration Application

PRELIMINARY DETERMINATION SCHEDULES

Resolution ALJ-176-2999 (9/3/98)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-08-007 Angelito N. David, dba BABES Airporter, for authority to operate as a passenger stage corporation between points in San Francisco, San Mateo, Alameda and Contra Costa Counties and the San Francisco, Oakland and San Jose International Airports and to establish a tone of rate freedom	RS	RS	NO
A98-08-009 San Diego Metropolitan Transit Development Board, City of El Cajon, and County of San Diego, for an order authorizing construction of an at- grade crossing on two light rail vehicle tracks at Marshall Avenue (north) extension in the City of El Cajon, San Diego County	RS	RS	NO
A98-08-010 Total Media Technologies, Inc., for registration as an interexchange carrier telephone corporation	*RS	RS	NO

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Resolution ALJ-176-2999 (9/3/98)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-08-011 Mercury Marketing Company, Ltd., dba MMC Interactive Exchange, for registration as an interexchange carrier telephone corporation pursuant to the provisions of public utilities code section 1013	*RS	RS	NO
A98-08-012 San Diego Gas & Electric Company, for competitive transition charge recovery of capital additions	RS	RS	YES
A98-08-013 Z-Tel Communications, Inc., for a certificate of public convenience and necessity to provide intrastate telecommunications services on a resale basis as a competitive local carrier	RS	RS	NO
A98-08-014 Wholesale Telecom, Inc, for registration as an interexchange carrier telephone corporation	*RS	RS	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-08-015 NET-tel Corporation, for authority to operate as a resale provider of local exchange service	RS	RS	NO
A98-08-016 City of Ontario, for authority to construct an at-grade crossing on Francis Street between Haven Avenue and Dupont Avenue	RS	RS	NO
A98-08-017 Global Communications, Inc., for registration as an interexchange carrier telephone corporation	*RS	RS	NO
A98-08-018 Pacific Gas and Electric Company, for an order granting PG&E an exemption from the requirements of PUC Section 851, or, alternatively for an order approving the sale of certain public utility properties	RS	RS	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-08-019 Voice International, Inc., for registration of interexchange carrier telephone corporation	*RS	RS	NO
A98-08-020 Gerber Water Works, Inc., for an authority to sell and Gerber-Las Flores Community Services District to buy the water system in Tehama County	A	RS	NO
A98-08-021 City of Fontana, for an order authorizing the construction of a new at- grade crossing at Santa Ana Avenue across the existing Union Pacific Railroad Company's DeeLezville Branch Line; the addition of active protection at the existing Hemlock Avenue at-grade crossing and the abandonment of Beech Avenue at-grade crossing both across the existing "Hog Farm Spur" track in the City of Fontana	RS	RS	YES

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-08-022 Bay Associates, dba Baytelecom, for registration as an interexchange carrier telephone corporation pursuant to section 1013 of the Public Utilities Code	*RS	RS	NO
A98-08-024 RhondaCom, Inc., for registration as an interexchange carrier telephone corporation	*RS	RS	NO
A98-08-025 Pacific Gas and Electric Company, for authority to lease to Metricom, Inc. certain space on overhead electric distribution facilities for the installation and maintenance of telecommunications equipment	RS	RS	NO
A98-08-026 Big Planet, Inc., for registration as an interexchange carrier telephone corporation	*RS	RS	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-03-027 Ernest Communications, Inc., for a certificate of public convenience and necessity to operate as a resale provider of local exchange service	RS	RS	NO
A98-03-028 Jeffrey Rhodes and Antonio Luna dba East Bay Airporter, to transfer and Jeffrey Rhodes dba East Bay Airporter to acquire a certificate of public convenience and necessity PSC-10812 to operate a passenger stage	RS	RS	NO
A98-03-029 Timothy James Smith and Terrence Blaine Kirschman dba S.P.A.C.E. Shuttle, Inc., for authority to operate as a passenger stage corporation, to and from the Sacramento, Oakland, and San Francisco Airports, between Pleasanton, Tracy, Manteca, Modesto, Stockton and Lodi	RS	RS	NO

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PRELIMINARY DETERMINATION SCHEDULES

Resolution ALJ-176-2999 (9/3/98)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-08-030 Network Billing Systems, L.L.C., for registration as an interexchange carrier telephone company	*RS	RS	NO
A98-08-031 Campuslink Communications Systems, Inc., for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code Section 1013	*RS	RS	NO
A98-08-032 Atlanta-New York Warehouse Outlets, Inc., dba DNP Communications, for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code Section 1013	*RS	RS	NO

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**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ-176-2999 (9/3/98)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<p>A98-08-033</p> <p>Pacific Pipeline System, Inc. (PPSI) and Pacific Pipeline System LLC (PPS LLC), for an ex-parte order authorizing the approval of the merger of PPSI into PPS LLC, the change of the ownership structure of PPSI by its merger into PPS LLC, the transfer of all public utility property and rights of PPSI to PPS LLC, the assumption of all public utility rights and obligations of PPSI by PPS LLC; and the release of PPSI from its public utility rights and obligations</p>	<p>RS</p>	<p>RS</p>	<p>NO</p>
<p>A98-08-034</p> <p>Samsung Data Systems America, Inc., for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code Section 1013</p>	<p>*RS</p>	<p>RS</p>	<p>NO</p>

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-08-035 PacTec Communications, Inc., for certificate of public convenience and necessity to provide local exchange telecommunications service	RS	RS	NO
A98-08-036 Elias Ventures, Inc., dba American Freeway 100, for registration as an interexchange carrier telephone corporation	*RS	RS	NO
A98-08-037 Antonio Luna and Jeffrey Rhodes, dba Bay Area Shuttle, for authority to establish a zone of rate freedom for passenger stage corporation service	RS	RS	NO
A98-08-039 State Communications, Inc., for a certificate of public convenience and necessity to provide resold local exchange service	RS	RS	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-08-041 Telecom Licensing, Inc., for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code Section 1013	*RS	RS	NO
A98-08-042 Washington Water Power Company, for an order authorizing the issue up to 2,000,000 shares of a new series of its preferred stock, convertible series L, in exchange for up to 20,000,000 shares of common stock, etc.	RS	RS	NO
A98-08-043 NOS Communications, Inc., for a certificate of public convenience and necessity to provide local exchange service on a resale basis	RS	RS	NO
A98-08-045 Linkmax Communications, Inc., for registration as an interexchange carrier telephone corporation	*RS	RS	NO

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