

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3018
Administrative Law Judge Division
June 24, 1999

RESOLUTION

RESOLUTION ALJ 176-3018. 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.

Next Steps

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

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

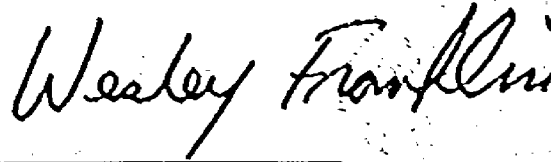
Conclusion

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

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

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on June 24, 1999, the following Commissioners voting favorably thereon:



WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
Commissioners

I abstain.
/s/ CARL W. WOOD
Commissioner

PRELIMINARY DETERMINATION SCHEDULES

Resolution ALJ 176-3018 (06/24/99)

| NUMBER TITLE | PROPOSED CATEGORY | PRELIM. CATEGORY | HEARING |
|---|---|---------------------|---------|
| A99-01-025 UTILITY REFORM NETWORK for rehearing of Resolution T-16260 | N/A | Ratesetting | YES |
| A99-06-010 CABLE & WIRELESS GLOBAL MARKETS, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code Section 1013 | Ratesetting NDIEC Registration Application | Ratesetting | NO |
| A99-06-011 TRUE AMERICA COMMUNICATIONS for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code Section 1013 | Ratesetting NDIEC Registration Application | Ratesetting | NO |
| A99-06-012 CENTENNIAL TELECOMMUNICATIONS for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code 1013 | Ratesetting NDIEC Registration Application | Ratesetting | NO |
| A99-06-014 ANTELOPE VALLEY AIRPORT EXPRESS, INC. to establish a zone of Rate Freedom and individual fares for passenger stage service between points in authorized service area and Los Angeles International Airport | Ratesetting | Ratesetting | NO |
| A99-06-015 PACIFIC FIBER LINK, LLC for approval of a pro forma change of control and transfer of a certificate of public convenience and necessity to Worldwide Fiber Networks, Inc. under Section 854 of the Public Utilities Code | Ratesetting | Ratesetting | NO |
| A99-06-016 CITY OF VISALIA for a railroad crossing over the San Joaguin Valley Railroad Company's railroad at the intersection of Oak Avenue and Bridge Street Section 29, Township 18 South, Range 25 East, M.D.B. & M | Ratesetting | Ratesetting | NO |

**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ 176-3018 (06/24/99)

| NUMBER TITLE | PROPOSED CATEGORY | PRELIM. CATEGORY | HEARING |
|---|---|-----------------------------|----------------|
| A99-06-017 BIG BEAR TELECOM, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of California Public Utilities Code Section 1013 | Ratesetting NDIEC Registration Application | Ratesetting | NO |
| A99-06-018 NORTHSTATE AIRPORT SHUTTLE, INC. for authority to operate a passenger service between the cities of Redding, Anderson, Red Bluff, Corning, Orland and Willows and the Sacramento Airport | Ratesetting | Ratesetting | NO |
| A99-06-019 U.S. COMMUNICATION SERVICES, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code Section 1013; confidential documents attached and filed under seal | Ratesetting NDIEC Registration Application | Ratesetting | NO |
| A99-06-020 PRESIDENTIAL LIMOUSINE LLC for authority to operate as a passenger service throughout San Diego County, Orange County, Riverside County and Los Angeles County | Ratesetting | Ratesetting | NO |
| A99-06-021 CIERA NETWORK SYSTEMS, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code Section 1013 | Ratesetting NDIEC Registration Application | Ratesetting | NO |
| A99-06-022 OAKLAND (CITY OF) for permission to construct three separate crossings at-grade on 7th Street in the City of Oakland | Ratesetting | Ratesetting | NO |
| A99-06-023 OAKLAND (CITY OF) for permission to construct a crossing of Middle Harbor Road at-grade in the City of Oakland | Ratesetting | Ratesetting | NO |

**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ 176-3018 (06/24/99)

| NUMBER TITLE | PROPOSED CATEGORY | PRELIM. CATEGORY | HEARING |
|---|---|-----------------------------|----------------|
| A99-06-025 AGUILAS DEL DESIERTO, LLC to operate a pre-arranged, inter-city, passenger stage service between the cities of Calexico, San Ysidro and Tecate on the one hand, and the cities of Los Angeles, El Monte, Anaheim, San Bernardino and intermediate points, on the other hand, pursuant to Section 1031, et seq. of the Cal. Pub. Util. Code | Ratesetting | Ratesetting | NO |
| A99-06-027 SOUTHERN CALIFORNIA GAS COMPANY regarding year five (1998-99) under its experimental gas cost incentive mechanism and related gas supply matters | Ratesetting | Ratesetting | YES |
| A99-06-028 LEVEL 3 COMMUNICATIONS LLC for modification of certificate of public convenience and necessity to provide switched and dedicated, resale and facilities-based, interexchange and local exchange telecommunications services | Adjudicatory | Ratesetting | YES |
| A99-06-029 PARADISE SHUTTLE for certificate of public convenience and necessity to operate as a passenger stage corporation with operational routes including but not limited to San Diego International Airport, residences of San Diego County, San Diego attractions, San Diego Hotels, San Diego Ports of calls, Los Angeles International Airport, John Wayne Airport, Ontario Airport, and points there within | Ratesetting | Ratesetting | NO |
| A99-06-030 AXCES, INC., dba AXCES OF DELAWARE, GEMINI II, INC. for authority to transfer the stock of Axces, Inc. dba Axces of Delaware, an NDIEC operating in California, to Gemini II, Inc. | Ratesetting | Ratesetting | NO |
| A99-06-031 ARC PHONE USA INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utility Code Section 1013 | Ratesetting NDIEC Registration Application | Ratesetting | NO |

ALJ/hkr

**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ 176-3018 (06/24/99)

| NUMBER TITLE | PROPOSED CATEGORY | PRELIM. CATEGORY | HEARING |
|--|---|-----------------------------|----------------|
| A99-06-032 COLUMBIA TELECOMMUNICATIONS, INC., dba AXESSA for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013 | Ratesetting NDIEC Registration Application | Ratesetting | NO |