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

Order Instituting Investigation into the State of  
competition Among Telecommunications  
Providers in California, and to Consider and  
Resolve Questions raised in the Limited  
Rehearing of Decision 08-09-042

Investigation 15-11-007  
(Filed November 5, 2015)

**OPENING COMMENTS OF RESPONDENTS**  
**CONSOLIDATED COMMUNICATIONS OF CALIFORNIA COMPANY (U 1015 C)**  
**CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES F/K/A SUREWEST**  
**TELEVIDEO (U 7261 C) (“CONSOLIDATED”)**  
**ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BEMESDERFER**  
**ANALYZING THE CALIFORNIA TELECOMMUNICATIONS MARKET AND**  
**DIRECTING STAFF TO CONTINUE DATA GATHERING, MONITORING AND**  
**REPORTING ON THE MARKET**

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November 7, 2016

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

**I. INTRODUCTION.....1**

**II. THE PROPOSED DECISION GENERALLY REACHES PROPER FINDINGS REGARDING MARKET DEFINITION FOR VOICE SERVICES, BUT IT SHOULD ALSO STATE THE CONCLUSIONS THAT ARE COMPELLED BY THOSE FINDINGS.....2**

**III. THE PROPOSED DECISION DEVIATES FROM THE PROPER FOCUS OF THIS PROCEEDING IN ITS FINDINGS REGARDING THE BROADBAND MARKET.....3**

**IV. THE PROPOSED DECISION CONTAINS IMPORTANT ERRORS AND OMISSIONS REGARDING CONSOLIDATED’S COMPETITIVE CIRCUMSTANCES AND COMPETITIVE DYNAMICS.....4**

**V. THE ONGOING DATA SUBMISSION REQUIREMENTS ARE UNJUSTIFIED AND OVERLY EXPANSIVE AND SHOULD BE REPLACED WITH RELIANCE ON PUBLIC SOURCES TO GATHER INFORMATION ABOUT COMPETITIVE MARKETS.....6**

**VI. CONCLUSION.....7**

1 **I. INTRODUCTION**

2 Pursuant to Rule 14.3 of the Rules of Practice and Procedure (“Rules”) of the California  
3 Public Utilities Commission (“Commission”), Consolidated Communications of California  
4 Company (U 1015 C) and Consolidated Communications Enterprise Services f/k/a Surewest  
5 TeleVideo (U 7261 C) (“Consolidated”) hereby submit these opening comments on the Proposed  
6 Decision of Administrative Law Judge Bemserderfer Analyzing the California  
7 Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and  
8 Reporting on the Market (the “Proposed Decision”). Consolidated acknowledges the significant  
9 effort that Commission staff devoted to analyzing data in connection with the Proposed Decision,  
10 and, for the most part, the Proposed Decision appears to reach economically-sound, data-driven  
11 findings regarding the voice market. However, the Commission should ensure that the Proposed  
12 Decision includes proper conclusions that are based on those findings. The Proposed Decision’s  
13 findings regarding the broadband market in California exceed the Commission’s jurisdiction and  
14 extend beyond the “ultimate question” posed in the Scoping Memo. In addition, the Proposed  
15 Decision imposes new annual reporting requirements pertaining to broadband services and  
16 facilities that are not justified based on the record.

17 Consolidated has reviewed the opening comments of the Respondent Coalition submitted  
18 on the Proposed Decision and Consolidated joins in the overall views and proposed modifications  
19 to the Proposed Decision reflected in those comments. However, Consolidated submits these  
20 separate comments to emphasize Consolidated’s specific concerns regarding the Proposed  
21 Decision and to point out ways in which the Proposed Decision has inaccurately or incompletely  
22 described Consolidated’s competitive circumstances. The Proposed Decision should be modified  
23 to acknowledge the undisputed evidence regarding the competitive market in Consolidated’s  
24 service territory and to correct errors regarding the nature of Consolidated’s facilities deployment  
25 and competitive offerings. These and other key issues presented by the Proposed Decision are  
26 addressed herein.

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1 **II. THE PROPOSED DECISION GENERALLY REACHES PROPER FINDINGS**  
2 **REGARDING MARKET DEFINITION FOR VOICE SERVICES, BUT IT**  
3 **SHOULD ALSO STATE THE CONCLUSIONS THAT ARE COMPELLED BY**  
4 **THOSE FINDINGS.**

4 The Proposed Decision reaches findings regarding the nature of the voice market that  
5 correctly recognize the intermodal substitutability across service platforms and the economic  
6 consequences of that substitutability. In particular, the Proposed Decision recognizes that  
7 “[a]lmost by definition, wireless and wireline phones are functional substitutes for one another in  
8 the voice market.” *Proposed Decision*, at p. 34. The Proposed Decision also finds that “[t]he  
9 ultimate question is whether the availability of wireless service alternatives disciplines the prices  
10 of wireline service” and then the Proposed Decision answers the question: “[w]e believe it does.”  
11 *Proposed Decision*, at p. 36. The same principles apply to “fixed” interconnected Voice over  
12 Internet Protocol (“VoIP”), which the Proposed Decision includes in its definition of the market  
13 for voice services. *Proposed Decision*, at p. 8, fn. 15.<sup>1</sup> Using these analytical building blocks, the  
14 Proposed Decision then finds that “[e]ighty-seven percent of households live in census blocks with  
15 six or more voice providers.” *Proposed Decision*, at p. 69 (emphasis added).

16 These findings all reflect a market definition and overall market analysis that is consistent  
17 with consumer choices in the voice market and aligned with sound economic principles.  
18 However, notwithstanding these findings, the Proposed Decision fails to clearly state the  
19 conclusion that is compelled by these findings – the voice market is highly competitive. Instead,  
20 the Proposed Decision presents market concentration data from only certain segments of the  
21 intermodal market, which it characterizes as “highly concentrated” or “moderately concentrated.”  
22 *Proposed Decision*, at pp. 65, 67, 68. The Proposed Decision also focuses on perceived  
23 limitations on the overall service availability findings, including concerns regarding bundling and  
24 the relationship between AT&T and Verizon and their wireless affiliates. *Proposed Decision*, at p.  
25 69. Although Consolidated does not necessarily agree that these are limitations on the

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27 <sup>1</sup> Consolidated continues to disagree with the premise that “over the top” VoIP providers should be excluded from the  
28 voice market. Despite these disagreements, even the inclusion of fixed VoIP in the voice market is sufficient to  
demonstrate the wide availability of competitive options for consumers in the voice market.

1 competitiveness of the market, the Proposed Decision should directly state that the market is  
2 competitive where there are six separate networks available to consumers. This central conclusion  
3 is inescapable from the data, and it is also the answer to the “ultimate question” posed in the  
4 Scoping Memo regarding voice competition. *Scoping Memo*, at p. 2 (“the ultimate question before  
5 us is whether intermodal competition, in the decade after URF, has offered sufficient discipline to  
6 produce just and reasonable prices for traditional landline services”).

7 Contrary to the Proposed Decision, “the market [the Commission] envisioned in 2006” is  
8 not “very different from the market that exists in 2016” in terms of the anticipated pressure that  
9 intermodal alternatives have placed on traditional voice services. *Proposed Decision*, at p. 26.  
10 Regardless of any complexities posed by developments in the broadband market, which was not  
11 the focus of URF, the Proposed Decision should acknowledge that the market for voice services is  
12 competitive because consumers have numerous choices – most from at least six networks – in the  
13 vast majority of customer locations. As Consolidated has noted in its briefs, these conclusions are  
14 undisputed in Consolidated’s service territory, where there is 99% competitive overlap from five  
15 other service providers who provide voice service. *Consolidated Opening Brief*, at p. 1.

16 The Proposed Decision should be modified to ensure that its overall conclusions regarding  
17 the voice market match its most important and meaningful competitive findings. Based on the  
18 Proposed Decision, the competitive basis for URF’s deregulation of the traditional voice market is  
19 as strong today as it was when URF was adopted.

20 **III. THE PROPOSED DECISION DEVIATES FROM THE PROPER FOCUS OF THIS**  
21 **PROCEEDING IN ITS FINDINGS REGARDING THE BROADBAND MARKET.**

22 While the Proposed Decision’s conclusions regarding the voice market generally address  
23 issues that are within the Commission’s jurisdiction and properly related to the “ultimate question”  
24 in this proceeding, the analysis of broadband market dynamics addresses a wide variety of subjects  
25 that relate to unregulated service offerings and affiliate businesses that do not pertain to the voice  
26 market. It also imposes annual reporting requirements that pertain directly to broadband  
27 subscribership, broadband availability, and broadband-enabled facilities. *Proposed Decision*, at p.

1 163 (O.P. 1 and O.P. 2). Consolidated has previously noted its objections to this overly expansive  
2 scope and it will not repeat those arguments here. However, Consolidated observes that Public  
3 Utilities Code Section 710 would be rendered meaningless if the Commission could “exercise  
4 regulatory jurisdiction and control” over “Internet Protocol enabled services” by imposing new  
5 annual reporting obligations pertaining to those services. Pub. Util. Code § 710(a). To the extent  
6 the proposed requirements mandate the submission of data regarding VoIP and other IP-enabled  
7 services (including broadband), they violate Section 710(a). Consolidated incorporates Section III  
8 of the Respondent Coalition’s Opening Comments, which address this point in more detail.

9 **IV. THE PROPOSED DECISION CONTAINS IMPORTANT ERRORS AND**  
10 **OMISSIONS REGARDING CONSOLIDATED’S COMPETITIVE**  
11 **CIRCUMSTANCES AND COMPETITIVE DYNAMICS.**

12 Even setting aside any concerns relating to the Proposed Decision’s discussion of  
13 competition overall, the Proposed Decision is incorrect and incomplete regarding the record  
14 evidence bearing on the competitiveness of the areas where Consolidated operates. First, the  
15 Proposed Decision mischaracterizes the nature and extent of Consolidated’s overbuilding of other  
16 Incumbent Local Exchange Carrier (“ILEC”) service territories. The Proposed Decision states  
17 that “we understand that some or all of [Consolidated’s] overbuild may be designed to reach  
18 specific business customers, rather than residential end-users.” *Proposed Decision*, at p. 59. This  
19 statement is misleading, as it suggests that Consolidated’s overbuilding is focused on business  
20 customers.

21 The true facts are that Consolidated has substantially overbuilt Frontier’s Elk Grove  
22 exchange, and this build-out has targeted both residential and business customers. This is clear  
23 from the CPUC Broadband Availability Map, which has been officially noticed and entered into  
24 the record in this proceeding. *See Scoping Memo*, at p. 17 (indicating intent to officially notice all  
25 items in Appendix A of the OII); *OII*, Appendix A, at p. A-2 (citing to CPUC Broadband  
26 Availability Map). The results of the CPUC Broadband Availability Map are also confirmed in  
27 Consolidated’s Response to TURN’s Data Request No. 14, which asked specifically for residential  
28 overbuilding information from Consolidated. *Consolidated’s Supplemental Response to TURN Set*

1 *I, Data Request 14*, attached to Ex. 54 *TURN (Roycroft) 6/1 Testimony*. That same data request  
2 response also debunks the statement that overbuilders have “less than 50,000 connections in  
3 California.” *Proposed Decision*, at p. 59; Ex. 54 *TURN (Roycroft) 6/1 Testimony*, at 96:12-14 &  
4 attached *Consolidated's Supplemental Response to TURN Set 1, Data Request 14*. Based on  
5 Consolidated’s circumstances alone, that statement cannot be true, and it should be removed from  
6 the Proposed Decision.

7 Second, the Proposed Decision fails to acknowledge undisputed record evidence that  
8 definitively shows the presence of six facilities-based providers of both voice and broadband  
9 service in Consolidated’s service territory (including Consolidated). *See Consolidated Opening*  
10 *Brief*, at pp. 5-6, Appendix A. The Proposed Decision emphasizes its commitment to a granular,  
11 data-driven process, but it does not acknowledge Consolidated’s compelling, undisputed evidence  
12 that it faces strong competition from well-endowed competitors in its service territory, and that  
13 essentially every one of its customers has five competitive alternatives to Consolidated’s voice and  
14 broadband service. Because Consolidated is an URF ILEC facing fierce competition in a localized  
15 market, this omission is material and should be corrected. To avoid the impression that  
16 Consolidated’s service territory has exactly the same characteristics as the Commission’s overall  
17 observations, Consolidated’s undisputed proof should be noted, and – as it is all based on publicly-  
18 available data and data in the Commission’s possession – it should be credited. Consolidated is  
19 much smaller than AT&T and Frontier, but it is still an URF ILEC, which makes Consolidated’s  
20 competitive situation directly relevant to any review of URF. To be faithful to the Proposed  
21 Decision’s view that “a customer’s actual choices are best seen at the local level,” Consolidated’s  
22 localized approach and the results of that approach should be incorporated into the Proposed  
23 Decision.<sup>2</sup> *Proposed Decision*, at p. 54.

24 The Proposed Decision suggests that a granular analysis of Placer County, where  
25 Consolidated serves, may be part of a future analysis, but there is no reason for such an analysis  
26

27 <sup>2</sup> Consolidated does not agree that markets operate on a micro-level, but because Consolidated  
28 only operates in a specific area, it can only be subject to the competitive dynamics in that area.

1 when the data have already been presented. *Proposed Decision*, at pp. 51-52, fn. 146. The  
2 Proposed Decision should acknowledge the competitive character of Consolidated’s service  
3 territory along with the other factual findings that the record in this proceeding have yielded.<sup>3</sup>

4 **V. THE ONGOING DATA SUBMISSION REQUIREMENTS ARE UNJUSTIFIED**  
5 **AND OVERLY EXPANSIVE AND SHOULD BE REPLACED WITH RELIANCE**  
6 **ON PUBLIC SOURCES TO GATHER INFORMATION ABOUT COMPETITIVE**  
7 **MARKETS.**

8 As noted above and in the Respondent Coalition comments, there are jurisdictional and  
9 procedural problems with the Commission’s proposed new broadband data collection  
10 requirements. However, this jurisdictional intrusion is also unnecessary. To the extent that the  
11 Commission wishes to continue to monitor the broadband market, it can do so through the many  
12 publicly-available sources that have been identified in this proceeding, such as the FCC’s urban  
13 rate studies<sup>4</sup>, and FCC reports reflecting aggregated Form 477 data. . If specific follow-up  
14 questions were necessary to evaluate matters within the Commission’s jurisdiction, it could ask  
15 data requests of providers within its jurisdiction at the time. There is no need to decide in advance  
16 on a sweeping set of annual reporting requirements.

17 These proposed requirements are also insufficiently justified in the Proposed Decision.  
18 The Proposed Decision does not analyze the costs of imposing these requirements, nor does it  
19 consider their potential distortive effects. Consolidated operates in a fiercely competitive  
20 environment, and some of its competitors would not be subject to the reporting requirements  
21 because they are beyond the Commission’s jurisdiction. These requirements would impose costs  
22 on Consolidated that its competitors do not face. This burden could be significant given the open-  
23 ended requirement to provide “other information requested by Communications Division staff in

24 <sup>3</sup> Consolidated does not agree with all of the Proposed Decision’s observations regarding the  
25 overall market, but the undisputed facts regarding Consolidated’s territory should be part of the  
26 Proposed Decision’s findings.

27 <sup>4</sup> See “Wireline Competition Bureau Announces Results of 2016 Urban Rate Survey for Fixed  
28 Voice and Broadband Services, Posting of Survey and Explanatory Notes, and Required Minimum  
Usage Allowance for ETCs Subject to Broadband Public Interest Obligations,” WC Docket No.  
10-90, Public Notice DA 16-362 (rel. Apr. 5, 2016).



1 order to monitor competition.” *Proposed Decision*, at p. 163.

2 Rather than decide in advance that specific reporting requirements will be imposed, the  
3 Commission should rely on publicly-available data and reserve judgment about whether to ask  
4 specific questions of certificated providers to assist its data collection efforts in the future. In the  
5 meantime, the Commission should end this proceeding and let the competitive market operate.

6 **VI. CONCLUSION.**

7 The Proposed Decision reaches many reasonable findings regarding the voice market that  
8 confirm the findings of URF. However, the broadband discussion in the Proposed Decision  
9 reaches subjects and proffers conclusions that are beyond the Commission’s jurisdiction and at  
10 odds with the evidence. These conclusions should be reconsidered. At a minimum, the  
11 Commission should correct specific misstatements regarding Consolidated and ensure that the  
12 Proposed Decision properly includes undisputed evidence regarding Consolidated’s competitive  
13 circumstances.

14 Dated this 7<sup>th</sup> of November, 2016.

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# **Appendix to Consolidated's Opening Comments to Proposed Decision**

## **Appendix to Consolidated's Opening Comments to Proposed Decision**

Consolidated joins in Appendix A attached to the Respondent Coalition's Opening Comments. In addition, Consolidated proposes the following two additions to the Findings of Fact:

### **Findings of Fact**

XX. Consolidated's overbuilding includes significant residential customer locations.

YY. Consolidated's service territory includes at least six facilities-based providers of voice and broadband services and is highly competitive.