BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In The Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U338E) for Authority to Lease Certain Fiber Optic Cables to CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS under the Master Dark Fiber Lease Agreement Pursuant to Public Utilities Code Section 851.	A.17-02-001 (Filed February 03, 2017)

OPENING COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION

THE UTILITY REFORM NETWORK
Lower bills. Livable planet.

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure ("Rule"), The Utility Reform Network ("TURN") files these opening comments on the Proposed Decision of Administrative Law Judge Hallie Yacknin regarding Southern California Edison's ("SCE's") Application for approval of a Master Lease Agreement ("MLA") with Verizon Wireless for dark fiber facilities. TURN supports the Proposed Decision and its finding that SCE's MLA does not meet the standards of a nontariff product and service and, therefore, should be subject to different sharing rules and mechanisms than those proposed by SCE in its Application. TURN also supports the requirement by SCE to submit each Lease Route Order entered into with Verizon for specific dark fiber routes. TURN believes such a requirement will allow the Commission to monitor the impact of this MLA on safety and competitive access to SCE's fiber facilities. However, as discussed below, TURN requests narrow changes to the Proposed Decision to correct errors of fact and reinforce the need for more detailed information than provided in this specific MLA when the Commission reviews these types of leases agreements in the future.

II. THE PROPOSED DECISION APPROPRIATELY ADOPTS TURN'S PROPOSED REVENUE SHARING MECHANISM TO PROVIDE 75% TO RATEPAYERS

The Proposed Decision correctly concludes that SCE's unused (or dark) fiber that it seeks to pursuant to a MLA with Verizon Wireless does not meet the conditions for non-tariffed products and services established in D.98-08-035.[1] The Proposed Decision notes that the Commission's intent when authorizing a sharing mechanism for nontariffed products and services was that the products would "stem from only incidentally underutilized utility assets, not from a systematic build-up of assets funded by ratepayers."[2] However, as indicated by the record here, SCE has used ratepayer funds to build excessive capacity on its fiber optic network, adding unreasonable expenses to its ratebase. For support, the Proposed Decision notes that SCE

[1] Proposed Decision ("PD"), p. 8.

[2] PD, p. 6.

is currently using only 17.8% of its fiber optic network for internal communications and electric system monitoring and automation, leaving the overwhelming majority of this primarily ratepayer funded asset available for sale or lease.[3] In fact, SCE uses a greater percentage of its network (19.1%) to provide non-tariffed products and services than it does its core electric services, giving 90% of revenues to the shareholders.[4] Meanwhile, 63% of the network capacity is unused.[5] Therefore, the Proposed Decision correctly finds that the MLA does not meet the conditions for non-tariffed products and services, TURN supports the Proposed Decision's adoption of a 25/75 shareholder/ratepayer sharing mechanism,[6] which is consistent with recent Commission policy on these issues.[7]

III. THE PROPOSED DECISION APPROPRIATELY REQUIRES SCE TO SUBMIT LEASE ROUTE ORDERS BUT DOES NOT GO FAR ENOUGH TO MITIGATE THE RISKS OF THE OVERLY BROAD STRUCTURE OF THE MASTER LEASE AGREEMENT

TURN supports the requirement that SCE must submit its Lease Route Orders entered into under the approved MLA to Communications Division and the direction to Communications Division to monitor these to ensure competitive access.[8] We also support the Proposed Decision's clear direction to SCE that it must not enter into sub-agreements under the protection of the pre-approved MLA that may prohibit non-discriminatory access or allow preferential treatment.[9]

However, the Proposed Decision errs when it finds that the potential safety and competitive concerns raised by this Application and the MLA are "equally implicated by all of SCE's fiber leases" and that any protections the Commission might implement here are done only "out of an abundance of caution."[10] It is undisputed that this MLA provides SCE only a right to bid on future Verizon business[11] and, therefore, the Application and MLA contain only

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[3] PD, p. 7.
[4] *Id.*
[5] *Id.*
[6] PD, p. 8.
[7] D.13-05-010 (A.10-12-005, Sempra Utilities' 2012 GRC), pp. 600 and 1023-1024.
[8] PD, p. 13, 16.
[9] *Id.*
[10] PD, p. 9, 13.
[11] PD, p. 1, 11, FOF 7.

vague descriptions and details regarding the location, revenue, and scope of future leases. TURN noted in its comments that this Application equates to SCE asking the Commission to approve a “pig in a poke” and that previous fiber leases, including those cited by SCE in its Application, are not analogous to, and do not support, this MLA because those leases cover specific fiber routes and revenue details.[12] The Proposed Decision acknowledges that CCTA’s comments also suggest that the terms and conditions of the sweeping contract may uniquely impact (or at least make it difficult to assess) competitive impacts such as preferential reservations of space and information sharing.[13]

While the Proposed Decision accurately states that these issues can be taken up in other proceedings, TURN requests that the Proposed Decision be revised to acknowledge the unique characteristics of this MLA and the risks to ratepayers and competitors posed by approval of these vague agreements. In doing so, the Final Decision can provide guidance for future applications to ensure applicants provide sufficient details to allow the Commission to better assess the safety and competitive impacts of these types of leases.

The Proposed Decision discussed by rejects TURN’s specific proposals for a framework that the Commission could use to review the Lease Route Orders under this MLA. TURN agrees that the Proposed Decision’s requirement for SCE to submit these Lease Route Orders to Communications Division mitigates some of the concerns raised by TURN and CCTA. However, at a minimum, TURN suggests that the Proposed Decision be revised to add two elements to this requirement. First, SCE to also submit the Lease Route Orders to Energy Division so that each division can use their expertise to review the Lease Route Orders for safety and competitive concerns. Second, the process should incorporate a review period initiated by an advice letter filing by SCE half way through the term of the MLA. If the number of Lease Route Orders submitted by that time is insufficient to allow Staff to conduct a proper review of safety and competitive impacts, Staff should have the authority to postpone the review until a different threshold is met. These changes will bolster the effectiveness of the requirement to submit the Lease Route Orders.

[12] TURN Reply Comments at pp. 1-2, 6-7.
[13] PD at p. 11.

IV. CONCLUSION

TURN urges the Commission to adopt this Proposed Decision with only the narrow changes recommended above. TURN supports the Proposed Decision and its clear message that the potential scope and scale of this MLA highlights that SCE's deployment of fiber optic cable in its network cannot be characterized as excess capacity, thus compelling a different revenue sharing treatment for the sales under the MLA. Further, TURN supports the mechanisms adopted by the Proposed Decision to guard against safety and competitive access concerns raised by this MLA as supported by comments from TURN and CCTA on the record.

Dated: January 29, 2017

Respectfully submitted,

By: _______ /s/______________
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Revisions to Proposed Decision

Revise Findings of Fact

8. To the extent that SCE might inappropriately use its strategic position as electric utility to benefit its role as a competitor in the backhaul market business, that possibility is not solely a function of the Master Lease Agreement.

9. The Master Lease Agreement does not contain any terms or conditions that interfere with competitive access to telecommunications infrastructure, non-discriminatory access for carriers as required by the Commission's "right of way" decision, D.98-10-085 but the Commission only has a template Lease Route Order to consider as part of this application process and additional details may be necessary to adequately assess safety and competitive impacts.

Add a FOF, Communications and Energy Divisions should use their separate expertise on safety and competitive issues to monitor the Lease Route Orders submitted by SCE pursuant to this Decision and to conduct a review of the Master Lease Agreement and collective impact of the Lease Route Orders submitted no sooner than half way through the term of the Agreement.

Revise Conclusions of Law

3. The Master Lease Agreement does not raise safety and reliability concerns that are not otherwise addressed in existing safety and reliability requirements and SCE's duty to conform to best practices in its normal course of business, but further review by Staff of the Lease Route Orders entered into under this Master Lease Agreement will ensure the Commission monitors any potential impacts on safety and reliability of individual routes and equipment because the Master Lease Agreement does not provide sufficient information about individual routes and equipment requested by Verizon.

6. ~~Out of an abundance of caution~~, Because the Mast Lease Agreement is broad, SCE should be barred from entering into any agreement under the Master Lease Agreement that prohibits nondiscriminatory access to the lease routes entered into with Verizon

10. SCE should be directed to regularly forward the individual Lease Route Orders to the Commission's Communications Division and Energy Division within three business days of their receipt by SCE and Staff should conduct a review of the MLA and collective Lease Route Orders no sooner than half way through the MLA to consider evolving safety and competitive impacts.

Revise Ordering Paragraphs

2. Southern California Edison Company shall forward the individual Lease Route Orders received under the Master Dark Fiber Lease Agreement dated November 17, 2016, to the Commission's Communications Division and Energy Division at cdcompliance@cpuc.ca.gov and [insert appropriate email] within three business days of their receipt by Southern California

Edison Company and Staff should conduct a review of the collective Lease Route Orders no sooner than half-way through the term of the Master Lease Agreement to assess potential safety and competitive impacts.