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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the California's One Million New Internet Users Coalition's Misuse of California Advanced Services Fund Grant Funds; and Order to Show Cause Why the Commission Should Not Impose Penalties and/or Other Remedies for Violating Terms of Their Grant and for Refusing to Return Funds Previously Demanded by the Commission's Division.

Investigation 18-07-009

ADMINISTRATIVE LAW JUDGE'S RULING CONFIRMING DATES, TIMES, AND THE LOCATION OF THE EVIDENTIARY HEARING AND DIRECTING PREHEARING FILINGS

By this Ruling, the evidentiary hearing dates and times as referenced in the June 30, 2020 e-mail ruling in the instant proceeding are confirmed as follows:

Hearing Dates: August 24 - 27, 2020

Hearing Times: 9:30 a.m. (each day)

Due to the Coronavirus pandemic, the evidentiary hearing will occur via Webex. The Webex address and sign-in information will be provided before the evidentiary hearing in a separate ruling.

All parties shall have reviewed the attached hearing ground rules (Attachment 1) and be signed on and ready to proceed promptly at 9:15 a.m. each day, allowing for at least 15 minutes to address technical issues, if any. From 9:30 a.m. - 10:00 a.m. of each hearing day, the assigned Administrative Law Judge (ALJ) will entertain housekeeping issues (*e.g.* witness scheduling,

exhibits, logistics, and other similar housekeeping issues to move the proceeding efficiently). Each day, the hearing will commence, on the record of the proceeding, at 10:00 a.m. Reasonable break periods will be allowed throughout the day. Each hearing day should end between 3:30 – 4:00 p.m., unless otherwise noted at the start of the hearing day or as is determined necessary based on good cause.

By July 27, 2020, the Consumer Protection and Enforcement Division (CPED) and Community Union, Inc. (Community Union) shall file, and serve on the service list, the following:

1. Proposed Witness List (including the date, the time, and the order the witness would be called and the estimated time for questioning) of witnesses the party intends to call at the evidentiary hearing, including the witnesses to be used solely for impeachment or rebuttal. The parties will coordinate the order of the witnesses and the time for questioning.
2. Proposed Exhibits List of exhibits the party intends to offer at the evidentiary hearing, including exhibits to be used solely for impeachment or rebuttal.

By August 3, 2020, CPED and Community Union shall serve on the service list one master packet of proposed exhibits, pre-marked and identified with a cover page before each proposed exhibit. If one master packet is not possible, then CPED will serve the CPED master packet of proposed exhibits and Community Union serve the Community Union master packet of proposed exhibits. Prior to the evidentiary hearing, the parties will discuss and decide which exhibits can be admitted via stipulation.

By August 10, 2020, all parties shall file, and serve on the service list, each party's respective prehearing motion/motions, including those regarding witnesses, testimony, and evidence. Any response to a filed and served

prehearing motion is permitted, not to exceed five pages in length for each, and shall be served and filed no later than August 14, 2020. Any requests for confidential treatment and redacted versions of documents must be served and filed on or before August 10, 2020, to be addressed along with the parties' prehearing motions, if any.

Please note, on May 22, 2020, Mr. Ortega for Community Union emailed the assigned ALJ and the service list stating his intent to file a motion to seal the evidentiary record. On June 16, 2020, CPED served the confidential version of the Supplemental Report to the assigned ALJ and Community Union. There is no redacted version of the Supplemental Report. At the June 18, 2020 status conference, CPED stated that it kept the entire report confidential because Community Union intends to submit confidentiality claims. To date, Community Union has not identified what specific information is confidential. If there is any information that Community Union claims as deserving of confidential treatment, Community Union must set forth the claims in a timely and formal motion filed in compliance with Rule 11.5 of the Commission's Rules of Practice and Procedure describing the basis of each confidentiality claim according to General Order 66-D and all applicable laws. Any motions for confidential treatment must include a confidential version of the document and a public version with the claimed confidential information redacted.

By August 17, 2020, CPED and Community Union shall file, and serve on the service list, each party's respective prehearing opening brief addressing each of the following issues set forth and adopted in Section 2 of the Assigned Commissioner's Scoping Memo and Ruling, issued on December 18, 2018, and in Section 2 of the Assigned Commissioner's Ruling Amending the Scope of the

Proceeding, issued on July 10, 2020. Each brief must not exceed 20 pages in length and be in the following format:

1. A brief statement of the case;
2. A listing of the contentions made by the opposing party to each of the issues within the scope of the proceeding, as framed by the Assigned Commissioner's Scoping Memo and Ruling and the Assigned Commissioner's Ruling Amending the Scope of the Proceeding; and
3. A listing of the responsive contentions made by the party filing the brief along with applicable standards, citations to case law and statutory authority that support the brief filing party's contentions.

On August 20, 2020, the assigned ALJ will hold a combined law and motion hearing and status conference. The assigned ALJ will address the prehearing motions, the exhibits that can be admitted via stipulation, and any other prehearing issues. The Webex information for the August 20, 2020 hearing will be provided in a separate ruling.

IT IS SO RULED.

Dated July 16, 2020, at San Francisco, California.

 /s/ ZHEN ZHANG
Zhen Zhang
Administrative Law Judge

ATTACHMENT 1

HEARING GROUND RULES
I.18-07-009

The Presiding Officer/ Assigned Administrative Law Judge provides these ground rules herein for this proceeding and the evidentiary hearing. The Presiding Officer expects parties to comply with the ground rules to promote and ensure a uniform understanding as this proceeding begins.

Burden of Proof and Clarity of Showings

Consumer Protection and Enforcement Division has the burden of proof. All parties must prepare exhibits that are written clearly and concisely. Exhibits must contain references or footnotes to explain sources as necessary. (See Decision (D.) 92-12-019, 46 CPUC 2d 538 at 555 and 764-5, see also D.93-04-056, 49 CPUC2d 72 at 85-88).

No Surprises

The Commission is able to reach the most well-informed, well-reasoned decision when all parties are allowed to present their best evidence and argument. All parties are expected to engage in good faith cooperation during discovery. Thus, by the commencement of the evidentiary hearing on Monday, August 24, 2020, there should be no justification for surprises. A Commission proceeding is not the place to use surprise as a litigation tactic.

Exhibit Format

Prior to the evidentiary hearing, the parties should work together to compile one master packet of pre-marked and identified exhibits. If the parties cannot submit one master packet, each individual party will submit its own packet of pre-marked and identified exhibits.

The Commission's Rules of Practice and Procedure, Rule 13.7, requires exhibits to have a blank space two inches high by four inches wide to

accommodate the exhibit stamp. As the evidentiary hearing is occurring via Webex, and the exhibits will be circulated electronically, the parties must use a cover page for each exhibit for clarity. The cover page should state a short title that describes the document, witness name(s), and the exhibit number.

Excerpts from any lengthy documents should include the title page and, if necessary for context, the table of contents of the complete document.

Parties must use a type face no smaller than 12 points wherever practicable.

On the first day of the evidentiary hearing, counsel, parties, and witnesses will attest on the record that they will only use the documents in the master exhibits packet and/or materials previously disclosed to the opposing side.

Hearing Hours

Parties shall be completely signed on and ready to proceed, having established all setting adjustments on their devices. Parties must establish all necessary remote connections, including resolution of all technical and signing on and calling in issues, prior to the start of the housekeeping discussions. Housekeeping discussions will begin promptly at 9:30. Hearings will generally be on the record from 10:00 a.m. to noon, and from 1:00 p.m. to 3:30 p.m. There will be a lunch break. Also, there will be a morning and afternoon break scheduled by the Presiding Officer. Parties should plan for approximately 4.5 hours of time on the record each day.

Witness list

By July 27, 2020, the parties should work together to prepare a list of all witnesses, including the approximate direct, cross, and redirect examination times.

Cross-Examination

Cross-examination will be limited to the scope of the direct testimony. Absent a showing of good cause, cross-examination shall not be used for discovery. Rather, discovery, along with reasonable clarification and exhibits, should be completed before the hearing.

It may be necessary to limit cross-examination time, as well as time for redirect and re-cross-examination. Parties shall prepare an estimate of the time necessary for cross-examination of each witness and provide these estimates no later July 27, 2020.

Cross-Examination Exhibits and Impeachment Exhibits

Providing each witness time to review a new or unfamiliar document during cross-examination is generally an inefficient use of hearing time. Each party intending to introduce an exhibit in the course of cross-examination must identify the exhibit in the exhibit list due on July 27, 2020.

The exhibit list due on July 27, 2020 must include impeachment exhibits as well. Usually, a party is not required to give the witness or other parties an advance copy of the document if it is to be used for purposes of impeaching the witness' credibility or to obtain the witness' spontaneous reaction. Here, due to the nature of the evidentiary hearing via Webex, having ALL exhibits identified before the hearing will eliminate any technical difficulties or confusion associated with contemporaneous exchanges.

All cross-examination exhibits, impeachment exhibits, and any exhibits proposed to be used for any other legitimate purpose must be identified in the master exhibits list due on July 27, 2020.

Court Reporters and the Record

The creation of a complete and accurate record is critical. Each speaker must always identify themselves prior to speaking. All parties must stay muted unless they are speaking to reduce audio feedbacks. All parties must be courteous to each other, the court reporters, and other hearing participants. For example, counsel shall wait for the witness to finish his or her answer before asking another question. Similarly, the witness should wait for the whole question to be asked before answering. Counsel shall refrain from simultaneous arguments on motions and objections. Conversations that may be distracting to the court reporter and other participants must be minimized.

Attestations Regarding the Remote Evidentiary Hearing via Webex

Counsel, parties, and witnesses will attest to the following at the first opportunity they are on the record.

- I (counsel, parties, or witnesses) attest I will not make any recording of the proceeding. I attest I understand that any recording of a proceeding held by Webex and/or teleconference, including “screen-shots” or other visual copying of a hearing, is absolutely prohibited. Violation of these prohibitions may result in sanctions, including removal of court-issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the court.
- I (counsel) agree to the oaths of remote witnesses being received by telephonic or Webex communication.
- I ((counsel, parties, or witnesses) attest I will adhere to all formal rules of decorum, including the prohibition against coaching witnesses (or being coached).

- I (counsel, parties, or witnesses) attest I will use the master list of exhibits pre-marked and identified by the parties and I will not use documents not previously shared with the opposing party.
- I (witness) attest to the following:
 - I will adhere to all the formal requirements of testifying under oath.
 - I will refer only to the exhibits and materials provided to myself (by counsel or party representative) and testify based on my own knowledge and memory free from external influences or pressures.
 - I will not engage in any private communications (by phone, text, or email, any other another mode of communication) while being examined.
 - If I experience any attempts to tamper with the witness testimony, I will report the occurrence to the Presiding Officer immediately.

Technical Webex Requirements

- Counsel, parties, and witnesses will familiarize themselves with the Webex application before the beginning of the evidentiary hearing on August 24, 2020. Webex best practice tips are available at <https://www.webex.com/learn/best-practices.html>.
- Before August 24, 2020, counsel, parties, and witnesses must familiarize themselves on how to control their video and audio on WebEx so that they will be visible and heard if called upon by the Presiding Officer during the evidentiary hearing.
- All counsel and parties agree to prepare their respective remote attendance technology and be connected at 15 minutes early (9:15 a.m.) at the beginning of each day of the evidentiary hearing to assess and resolve technical issues related to Webex.

- All counsel and parties will be muted upon entering the Webex hearing. If it is not your turn to speak, but you wish to have the opportunity to be heard, please use the hand button next to your name.
- Only the Judge and supporting staff will be visible on the screen always. When appropriate, the speaking party will be visible on the screen. If you have not been identified by the Judge to speak, you will be muted and not be visible on the screen.
- Webex grid view will be helpful during presentations involving multiple people (e.g. examination of a witness or quick exchanges between attorneys).
- There must be no cross talk. Webex cannot be used to confer between witnesses, parties, and representatives. The chat option will be disabled on Webex. The parties may request a recess or use alternatives such as emails and/or text messages outside of Webex to communicate.
- All counsel and parties agree to use headphones to reduce background noise and ensure optimal sound quality.
- Webex suggests using Google Chrome to run its applications.

[END OF ATTACHMENT]