BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding Revisions to the California High Cost Fund B Program.	R.09-06-019 (Filed June 18, 2009)

OPENING COMMENTS OF COX CALIFORNIA TELCOM, LLC, DBA COX COMMUNICATIONS, IN RESPONSE TO ISSUES IDENTIFIED IN THE AMENDED SCOPING MEMO, DATED MAY 10, 2010

Douglas Garrett
Cox Communications
2200 Powell St., Suite 1035
Emeryville, CA 94608
T: 510.923.6222
E: douglas.garrett@cox.com

Esther Northrup
Cox Communications
350 10th Avenue, Suite 600
San Diego, CA 92101
T: 619.266.5315
E: esther.northrup@cox.com

Margaret L. Tobias
Tobias Law Office
460 Pennsylvania Avenue
San Francisco, CA 94107
T: 415.641.7833
E: marg@tobiaslo.com
Attorney for Cox Communications

Dated: May 28, 2010

Pursuant to the Commission's Rules of Practice and Procedure ("Rules"), Cox California Telcom, L.L.C., *dba* Cox Communications (U-5684-C) ("Cox") submits these timely comments on issues included in the Assigned Commissioner's Amended Scoping Memo and Solicitation of Comments Regarding Revisions To The "Basic Telephone Service" Requirements, dated May 10, 2010 ("AC Ruling").

I. Background and General Recommendations.

Cox appreciates the AC Ruling clarifying that the definition of Basic Service will be addressed in this proceeding as there has been significant overlap on this issue in R.06-06-028, the Commission's prior proceeding designated to review the CHCF-B program, and R.06-05-028, the docket in which the Commission is currently considering changes to the Lifeline program, which created confusion and due process issues with respect to the Commission modifying the current definition.[1]

Cox supports the Commission taking up the issue in this proceeding and wishes to emphasize that the definition of Basic Service will impact carriers offering residential service, as well as those that may serve as carriers of last resort ("COLR"). It is Cox's understanding that there are only five carriers designated as COLRs with respect to service territories within the CHCF-B program,[2] but all residential providers must provide Lifeline service. This is because the Moore Act requires any carrier offering residential service to provide Lifeline service – or basic telephone service ("Basic Service").[3] As such, the Commission should not consider changes to the definition of Basic Service solely in terms of carriers "qualifying for support,"[4] but should also keep in mind whether carriers can readily comply with the Moore Act and continue to provide residential services. This will ensure that the Commission continues its pro-competitive policies and ensure that consumers have choices with respect to Basic Service.[5]

The Commission considering the definition of Basic Service is a welcomed first step as parties generally agree that the Commission cannot proceed with CHCF-B and Lifeline reform until this first step

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1 AC Ruling, p. 4.

2 The five carriers included AT&T, Verizon, Surewest, Frontier and Cox.

3 See Sections 871-884. Section 872 states "'residential' means residential use and excludes industrial, commercial, and every other category of end use." All sections references herein are to California Public Utilities Codes unless stated otherwise.

4 AC Ruling, p. 5.

5 See Id., p. 5.

is completed. The definition of Basic Service once adopted, however, will not dictate that the Commission undertake any other substantive CHCF-B reform. The AC Ruling states that once the Commission adopts a definition of Basic Service, then the "remaining design and implementation of reserve auction protocols can be addressed based on a more informed understanding of risks and opportunities."[6] These statements are troublesome in that they could be interpreted to suggest that the Commission has already elected to conduct a reverse auction even though the record evidence demonstrates it is *not* feasible or advisable to do so.

Implementing a reverse auction at this time is not feasible without regard to the definition of Basic Service that the Commission may ultimately adopt. All parties, other than AT&T, submitting comments in response to the Assigned Commission ruling issued in February ("February AC Ruling") recommended that the Commission *not* pursue a reverse auction[7] for numerous procedural and substantive reasons. In just one example, parties pointed out that only AT&T and Verizon would likely participate in a reverse auction[8] which means there would not be a sufficient number of bidders for a successful auction.[9]

Also in response to the February AC Ruling, parties identified a number of issues and proposals for Commission consideration in this proceeding. For example, Cox recommended the Commission not pursue a reverse auction or take any other substantive CHCF-B program reform until after completing and

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[6] Id., p. 4.

[7] Verizon supports the reverse auctions generally but has raised significant concerns which are not remedied by the proposed auction design included in the February AC Ruling. For example, although not addressed in detail for procedural reasons, Verizon questions whether proceeding with an auction without any reserve is an approach that has merit. As Verizon explained in its November 9, 2007, comments, an auction reserve – or maximum bid – is an important consideration to ensure that the auction reduces rather than inflates subsidies over time. See Comments of Verizon Regarding the October 5, 2007 Assigned Commissioner's Ruling, pp. 9-10 (dated November 9, 2007). The overriding goal of any reverse auction should be to ***reduce overall subsidies and produce an efficient result, or it should not be conducted at all***." Verizon Opening Comments, n. 1 (dated March 19, 2010). (Emphasis added). See also DRA Reply Comments, p. 3 (dated April 2, 2010).

[8] See TURN Reply Comments, p. 1 (dated April 2, 2010); DRA Reply Comments, p. 3 (dated April 2, 2010).

[9] The FCC recognized that a reverse auction may be a potential mechanism for determining support in high-cost areas but *only if* "a sufficient number of bidders compete in an auction." FCC 10-58, ¶ 19 (quoting *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495, 1500 para. 11 (2008)). The record evidence in this proceeding (which incorporates the record from R.06-06-028) plainly demonstrates that only AT&T and Verizon intend to participate in a reverse auction. See citation note 9.

reviewing the affordability report.[10] Since submitting those comments, the Federal Communications Commission ("FCC") released its National Broadband Plan ("NBP"), as well as numerous orders soliciting input on both the federal high-cost and low-income universal service programs with respect to implementing the NBP. The FCC actively considering significant changes to the federal programs weighs heavily in favor of the Commission not pursuing a reverse auction or making substantive program changes to the CHCF-B (other than modifying the definition of Basic Service) at this time. Specifically, it should wait until the FCC provides more guidance on what will be permitted or required with respect to both federal and state programs.

In addition to Cox, other parties submitted recommendations with respect to the CHCF-B program. Because the issues raised by Cox and other parties were not discussed in the OIR, the February AC Ruling or the AC Ruling, it is not clear if they are within the scope of issues the Commission will address. Although not required by the Rules,[11] Cox respectfully requests that the Commission issue a separate scoping memo in this proceeding to clarify that issues included in comments filed in March and April are within the scope of this proceeding.

II. The Commission Should Adopt A Definition of Basic Service That Includes The Service Elements Included In The FCC's Definition of Service For Federal Universal Support Services.

To facilitate review and consideration of the definition of Basic Service, the AC Ruling includes a "Straw Proposal" based on the current definition which the Commission adopted in 1996. The Commission adopted the current definition before competitive local exchange markets had taken hold and before subscriptions to wireless services exploded in the past several years. In particular, the percentage of Americans who presently subscribe to wireless service only has grown dramatically.[12] The passage of

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[10] See Cox Opening Comments, pp. 3-4 (dated March 19, 2010).

[11] See Rule 7.3(b) and OIR, p. 9.

[12] See early release data from the 2009 survey at: http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.htmhttp://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.htm

time and the evolution of both the competitive marketplace and applicable technologies require the Commission to review and update the current definition.

Consistent with its recommendation in R.06-06-028 and R.06-05-028, Cox recommends that the Commission adopt the definition of service that the FCC adopted for its Universal Service programs. Adopting the elements in the FCC's service definition is an appropriate and better solution because the FCC's definition is pro-competitive and technology-neutral in that it allows for both wireline and wireless carrier participation. Adopting the service elements included in the FCC's definition will ensure that wireline and wireless carriers may compete fairly in the marketplace for all consumers, including Lifeline consumers, and as applicable, those residing in CHCF-B areas.

Cox recommends that the Commission adopt the following elements included in the federal definition:

- Voice grade access to the public switched network
- Local usage
- Dual tone multi-frequency signaling
- Single party service
- Access to emergency services
- Access to operator services
- Access to interexchange service
- Access to directory assistance and
- Toll limitation for qualifying low-income consumers.[13]

The Straw Proposal and the FCC's definition are strikingly similar with respect to service elements that the Commission and parties generally deemed critical, such as access to 911, toll-blocking, access to interexchange services and access to operator services, among others. The attached compares

[13] Cox recommends that the Commission define Basic Service as including these specific elements, as compared to generically adopting the FCC's definition as that definition may change over time. Upon the FCC changing its service definition, the Commission would need to determine, at that time, whether it was reasonable and appropriate to incorporate any such changes to the definition of Basic Service.

the definitions and shows that all but three of the service elements in the Straw Proposal and the FCC's definition are the same,[14] equivalent or how elements included in the Straw Proposal can be incorporated into the elements included in the FCC's definition.[15]

While the FCC's definition does not exactly match every element in the Straw Proposal's definition, it is equivalent in most respects and superior for at least three critical reasons. First, it is drafted in terms of a carrier providing the given "services or functionalities,"[16] which makes the definition technology-neutral. Because carriers may provide the listed service or the functional equivalent, both wireline and wireless carriers participate in the federal program. Second, it's a proven service definition that the FCC adopted in implementing the federal Telecommunications Act of 1996.[17] The FCC received significant input from a wide-range of interested parties. This definition is reasonable, fair and has proven to be flexible enough to accommodate changes in the marketplace over the last decade (unlike the definition of Basic Service adopted in D.96-10-066).[18] Third, the FCC's definition is consistent with the Moore Act, which requires affordable, basic telephone service is offered to the greatest number of citizens.[19] Specifically, by adopting a definition that expressly contemplates the provision of Basic

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[14] While some elements in the two definitions are not exactly the same, they are very similar. For example, the Straw Proposal would require access to directory assistance within the same geographical area as they currently have from their ILEC; whereas the FCC defines "access to directory assistance" as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings. The Straw Proposal is not competitively- or technology- neutral in that it defines directory access in terms of the ILECs. As such, the FCC's definition which is competitively neutral is the reasonable choice.

[15] Cox acknowledges that two service element included in the Straw Proposal are not expressly called out in the FCC's definition, but submits they could be readily and reasonably reflected within the terms of the FCC's service definition. The Straw Proposal includes access to 800- or 800-Like Toll-Free Services and access to customer service for information about ULTS, service activation, service termination, service repair and bill inquiries. While the FCC's definition does not separately call out these two elements, it does require carriers to provide "local usage" which means an amount of minutes of use of exchange service, prescribed by the FCC without charge to end users. Because the Straw Proposal proposes including the ability to place and receive calls, subject to a reasonable allowance for prepaid minutes of usage, the Commission could adopt the "local usage" service element and as part of that also adopt a "reasonable allowance" that takes into account 800-access calls and calls to customer service.

[16] 47 C.F.R. §§ 54.101(a), 54.401(a)(3).

[17] See FCC 97-157 (12 FCC Rcd. 8776).

[18] If the FCC updates its service definition in its efforts to implement the NBP, the Commission would then

[19] Section 871.5(a).

Service by wireline and wireless carriers, the Commission will ensure that the greatest number of consumers will have the choice of service that best meets their needs.[20]

There are only three elements in the Straw Proposal that are not included and cannot be readily incorporated into the elements included in the FCC's definition: (1) the option (but not a requirement) for directory listing per year at no charge and as provided in D.96-02-072; (2) local telephone directory without charge; and (3) one-time free blocking for information services and one time billing adjustments for inadvertent or unauthorized charges.[21]

With respect to (3), the Straw Proposal acknowledges that problems encountered with 900/976 numbers have subsided. But then states that the service element should be retained because it covers "other" types of unauthorized charges or even an unlimited number of billing adjustments for information service calls.[22] That is not the case as this service element is limited to calls and charges concerning information services, also referred to as 900 or 976 service:[23]

> We also decline to adopt Cal/Neva's suggestion to have unlimited free blocking and unlimited billing adjustments for unauthorized information services calls. Such a change would invite an avalanche of billing adjustment complaints over whether calls were authorized or not. The end user should be responsible for deciding whether information services calls from their household should be blocked after this problem first occurs.[24]

Accordingly, as the Straw Proposal recognizes that original problems with 900/976 billing no longer exists and because the existing service element is limited to telephone calls to such, Cox submits it is reasonable for the Commission to eliminate this service element. With respect to (1) and (2), the Commission should retain these elements only if the record in this proceeding reasonably demonstrates doing so is technology- and competitively-neutral, and otherwise reasonable.[25]

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[20] See Section 871.5(a).
[21] Straw Proposal, pp. 8-9, 10.
[22] Id., p. 10.
[23] Section 2884(a).
[24] D.96-10-066, p 30.
[25] For example, when the Commission included the provision of a local telephone directory, it do so because it reasoned customers had become accustomed to receiving it. Id., p. 28.

In the current competitive marketplace, the Commission cannot expressly or implicitly adopt public policy program rules that discriminate against, and ultimately preclude, certain carriers from participating in the public policy programs. Such an approach would not only violate federal requirements for "competitively neutral" rules,[26] it would also be wholly contrary to the Uniform Regulatory Framework the Commission has carefully pursued and developed to date. A carrier being deemed eligible to serve both Lifeline consumers and consumers in high-cost areas is significant as they represent a large number of consumers in California. Allowing competition for these consumers is consistent with the URF and will extend the benefits of competition to more consumers.

III. Conclusion.

Cox appreciates the Commission moving forward with revising the definition of Basic Service in this proceeding. For all the reasons discussed herein, Cox recommends that the Commission adopt the service elements in the definition the FCC adopted for the federal Lifeline and high-cost programs.

Dated: May 28, 2010

Respectfully submitted,

/s

Margaret L. Tobias
Tobias Law Office
460 Pennsylvania Avenue
San Francisco, CA 94107
T: 415.641.7833
E: marg@tobiaslo.com
Attorney for Cox Communications

Douglas Garrett
Cox Communications
2200 Powell St., Suite 1035
Emeryville, CA 94608
T: 510.923.6222
E: douglas.garrett@cox.com

Esther Northrup
Cox Communications
350 10th Avenue, Suite 600
San Diego, CA 92101
T: 619.266.5315
E: esther.northrup@cox.com

[26] 47 U.S.C. § 253(b); See 47 U.S.C. § 254(f).

Attachment A

R. 09-06-19, AC Ruling, Straw Proposal	FCC – Supported Services Definition (47 C.F.R. . § § 54.101 and 54.401)
	Services designated for support. The following services ***or functionalities*** shall be supported by federal universal service support mechanisms:
access to single-party two-way voice service;	(4) *Single-party service or its functional equivalent*. ''Single-party service'' is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;
access to interexchange service (or its functional equivalent for intermodal carriers);	(7) *Access to interexchange service*. ''Access to interexchange service'' is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;
ability to place calls;	*See (4) Single-party service above and (1) Voice grade access to the PSTN below;*
ability to place and receive calls (subject to a reasonable allowance for prepaid minutes of usage);	(2) *Local usage*. ''Local usage'' means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users;
touch-tone dialing, if used to provide basic service, shall be offered at no additional charge;	(3) *Dual tone multi-frequency signaling or its functional equivalent*. ''Dual tone multi-frequency'' (DTMF) is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time;
access to emergency services 911/E911; wireless carriers offering basic service must satisfy the mandated compliance requirements for free and unlimited access to emergency services at the level mandated by the FCC; each carrier must verify that it has the capability to provide 911 access throughout the region where it provides basic service;	(5) *Access to emergency services*. ''Access to emergency services'' includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code ''911,'' to call emergency services through a Public Service Access Point (PSAP) operated by the local government. ''Enhanced 911'' is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. ''Access to emergency services'' includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems;
access to directory assistance within the same	(8) *Access to directory assistance*.

R. 09-06-19, AC Ruling, Straw Proposal	FCC – Supported Services Definition (47 C.F.R. . § § 54.101 and 54.401)
geographical area as they currently have from their ILEC;	‘‘Access to directory assistance’’ is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings;
offering of lifeline rate for eligible customers;	(9) *Toll limitation for qualifying low-income consumers*. Toll limitation for qualifying low-income consumers is described in subpart E of this part. Comment: There is no need to modify or supplement the FCC service definition as all carriers offering Lifeline must off toll-blocking services). (See General Order 153, Rule 8.1.8.).
choice of calling option of a reasonable allowance of voice communication without a per-minute charge;	*See (4) Single-party service and (2) Local usage above*;
the option (but not a requirement) for directory listing per year at no charge and as provided in D.96-02-072;	Not included;
local telephone directory without charge;	Not included;
access to operator services;	(6) *Access to operator services*. ‘‘Access to operator services’’ is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call;
voice-grade connection to public switched telephone network;	(1) *Voice grade access to the public switched network*. ‘‘Voice grade access’’ is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signalling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz;
access to 800- or 800-Like Toll-Free Services;	*See (4) above – Single-party service or its functional equivalent*;
one-time free blocking for information services and one time billing adjustments for charges incurred inadvertently, mistakenly, or that were unauthorized;	Not included;
free access to customer service for information about ULTS, service activation, service termination, service repair and bill inquiries;	Not expressly included but can be incorporated in “Local Usage”;

PROOF OF SERVICE

I, Margaret L Tobias, the undersigned, hereby declare that, on May 28, 2010, caused a copy of the foregoing:

OPENING COMMENTS OF COX CALIFORNIA TELCOM, LLC, DBA COX COMMUNICATIONS, IN RESPONSE TO ISSUES IDENTIFIED IN THE AMENDED SCOPING MEMO, DATED MAY 10, 2010

in the above-captioned proceeding, to be served as follows:

[X] Via email and US Mail to the Assigned Commissioner's Advisor

[X] Via email and US Mail to Administrative Law Judge

[X] Via email service to all parties included in the attached service

Signed and dated: May 28, 2010 at San Francisco, California.

/s

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Margaret L. Tobias

Proceeding: R0906019 - CPUC - OIR REGARDING
Filer: CPUC
List Name: LIST
Last changed: May 27, 2010

Via Email

kevin.saville@frontiercorp.com
jesus.g.roman@verizon.com
jkwalt2@yahoo.com
esther.northrup@cox.com
elaine.duncan@verizon.com
margo.ormiston@verizon.com
ayo@cpuc.ca.gov
lgx@cpuc.ca.gov
ndw@cpuc.ca.gov
leh@cpuc.ca.gov
cmailloux@turn.org
rcosta@turn.org
bnusbaum@turn.org
david.discher@att.com
michael.foreman@att.com
peter.hayes@att.com
Stephen.h.Kukta@sprint.com
thomas.selhorst@att.com
marg@tobiaslo.com
pacasciato@gmail.com
jclark@gmssr.com
mschreiber@cwclaw.com
prosvall@cwclaw.com
deyoung@caltel.org
suzannetoller@dwt.com
selbytelecom@gmail.com
tlmurray@earthlink.net
renfrowo@pacbell.net
douglas.garrett@cox.com
lmb@wblaw.net
ll@calcable.org
pucservice@dralegal.org
cratty@comcast.net
g.gierczak@surewest.com
charlie.born@frontiercorp.com
beth.fujimoto@cingular.com
cindy.manheim@cingular.com
trevor@roycroftconsulting.org
Johnj@Rapidlink.com
kmudge@Covad.com
PHILILLINI@aol.com
don.eachus@verizon.com
jacque.lopez@verizon.com
jborchelt@gmail.com
mshames@ucan.org
lindab@STCG.net
rudy.reyes@verizon.com
thomas.long@sfgov.org
GKarish@millervaneaton.com
marcel@turn.org
Kristin.L.Jacobson@sprint.com
maryliz.dejong@att.com
gblack@cwclaw.com
mmattes@nossaman.com
janewhang@dwt.com
mariacarbone@dwt.com
StoverLaw@gmail.com
John_Gutierrez@cable.comcast.com
anitataffrice@earthlink.net
asj@calcable.org
pucservice@dralegal.org
jwakefield@covad.com
joe.chicoine@frontiercorp.com
mcf@calcom.ws
alk@cpuc.ca.gov
ayk@cpuc.ca.gov
aba@cpuc.ca.gov
crs@cpuc.ca.gov
dgw@cpuc.ca.gov
pod@cpuc.ca.gov
gvc@cpuc.ca.gov
gtd@cpuc.ca.gov
kar@cpuc.ca.gov
lah@cpuc.ca.gov
ma1@cpuc.ca.gov
mki@cpuc.ca.gov
nxb@cpuc.ca.gov
psp@cpuc.ca.gov
rwc@cpuc.ca.gov
rwh@cpuc.ca.gov
trp@cpuc.ca.gov
tch@cpuc.ca.gov
xsh@cpuc.ca.gov

Via US Mail

Enrique Gallardo
Latino Issues Forum
160 Pine St, Suite 700
San Francisco, CA 94111