



FILED
06-27-12
09:39 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell Telephone Company d/b/a
AT&T California (U1001C),

Complainant,

v.

Halo Wireless, Inc. (U3088C),

Defendant.

Case 12-02-007
(Filed February 13, 2012)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE**

This scoping memo and ruling (Scoping Ruling) sets forth the category, need for hearing, issues to be addressed and schedule of the proceeding, and designates the presiding officer pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure.

1. Background

1.1 AT&T's Complaint

On February 13, 2012, Pacific Bell Telephone Company d/b/a AT&T California (U1001C) (AT&T California) filed a complaint against Halo Wireless, Inc. (U3088C) (Halo). AT&T California alleges that on May 4 and May 5, 2010, the parties executed an interconnection agreement (ICA) which authorized Halo to send only wireless-originated traffic to AT&T California.

AT&T California alleges that Halo breached the ICA by sending traffic to AT&T California that was not wireless-originated traffic, but was instead landline-originated interstate, interLATA, or intraLATA toll traffic.

AT&T California asserts the following counts: (1) Breach of ICA: Sending Wireline-originated traffic to AT&T California; (2) Breach of ICA: Alteration or Deletion of Call Detail; (3) Obligation to Pay Access Charges for Termination of Landline-Originated Traffic; and (4) Breach of ICA: Non-Payment for Facilities.

1.2. Halo's Answer

On April 13, 2012, Halo filed its Answer to AT&T California's Complaint and denies that it breached the ICA. Halo claims to provide commercial mobile radio service (CMRS) and sells telephone exchange service to Transcom Enhanced Services, Inc. (Transcom), Halo's high-volume customer. According to Halo, Transcom is an end-user and an enhanced service provider (ESP) even for phone-to-phone calls because Transcom changes the content of every call that passes through its system and also offers enhanced capabilities. Halo claims that as a CMRS, it is selling telephone exchange service to an ESP end-user and, as such, the minutes of the relevant traffic are not subject to access charges. Halo asserts two affirmative defenses: (1) the Commission has no jurisdiction to consider the federal issues involved in Counts I, II, and III of the complaint, nor does the Commission have jurisdiction to award the relief requested in these three Counts; and (2) the complaint fails to state a claim upon which relief can be granted.

1.3. Halo's Partial Motion to Dismiss Counts I, II, and III

Halo included in its answer a Partial Motion to Dismiss Counts I, II, and III of the complaint on the grounds that the Commission lacks jurisdiction to consider and resolve the federal issues involved in these three Counts. On

April 16, 2012, the Commission's Docket Office noticed and instructed Halo to refile its Answer and Partial Motion to Dismiss as separate documents within seven business days of the notice. Halo refiled its Answer and Partial Motion to Dismiss as separate pleadings on April 23, 2012.

The assigned Administrative Law Judge (ALJ) denied Halo's Partial Motion to Dismiss Counts I, II, and III on May 30, 2012.

2. Scope of the Proceeding

As set forth in the parties' joint prehearing conference (PHC) statement, the factual and legal issues for resolution are identified as follows:

- Does the Commission have jurisdiction to address AT&T California's Complaint?
- Has Halo delivered traffic to AT&T California that was not "originated through wireless transmitting and receiving facilities" as provided by the parties' ICA?
- Has Halo complied with the signaling requirements in the parties' ICA?
- Has Halo paid the appropriate compensation to AT&T California as prescribe by the parties' ICA? If not, what compensation, if any, would apply?
- Has Halo failed to pay AT&T California for facilities that AT&T California provided pursuant to the parties' ICA and that the ICA obliges Halo to pay for? and
- Has Halo committed a material breach of its ICA with AT&T California?
 - If Halo has committed a material breach of its ICA with AT&T California, is AT&T California entitled to terminate the ICA? and
 - If Halo has committed a material breach of its ICA with AT&T California, is AT&T California entitled to discontinue performance under the ICA?

- What action should the Commission take based on its findings in the above-identified issues?

3. Discovery

Discovery will be conducted according to Article 11 of the Rules. If the parties have discovery disputes they are unable to resolve by meeting and conferring, they shall raise these disputes under the Commission's Law and Motion procedure. (*See* Rule 11.3.)

4. Filing, Service, and Service List

The official service list was discussed and agreed to at the May 31, 2012 PHC and is now on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the judge. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's web site meets that definition.

Electronic service is now the standard under Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded that, when serving copies of documents, the document format must be consistent with the requirements set forth in Rule 1.10(a).

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service

protocols adopted by the Commission in Rule 1.10, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. Additionally, parties shall serve paper copies of all filings on the presiding officer and Assigned Commissioner.

5. Categorization, Need for Hearings, and Schedule

This scoping memo confirms the Commission’s preliminary categorization of this proceeding as adjudicatory. This determination is appealable under the provisions of Rule 7.6. This scoping memo also confirms that hearings are necessary and sets forth the hearing schedule as follows:

Event	Dates
Discovery Cut off	June 22, 2012
Direct Testimony Served	July 27, 2012
Rebuttal Testimony Served	August 10, 2012
Evidentiary Hearing	September 20 and 21, 2012 starting at 10:00 a.m. ¹ Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, Ca 94102
Post-Hearing Opening Briefs Filed and Served	October 1, 2012

¹ The parties were instructed at the PHC hearing to also hold September 6 and 7 open as possible alternative dates for the evidentiary hearings.

Post-Hearing Reply Briefs Filed and Served	October 10, 2012
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The above Schedule anticipates a final decision in this proceeding within 12 months of the date it was filed pursuant to Pub. Util. Code § 1701.2.

6. *Ex Parte* Communications

As this is an adjudication proceeding, *ex parte* communications are prohibited. (See Rule 8.3 (b) in the Commission's Rules of Practice and Procedure.

7. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

8. Presiding Officer

Pursuant to Public Utilities Code Section 1701.2 and Rule 13.2, ALJ Robert M. Mason III is designated as the presiding officer.

IT IS RULED that:

1. The scope of this proceeding is as set forth above.
2. The schedule of this proceeding is as set forth above.
3. This proceeding is categorized as adjudicatory.
4. The Commission's preliminary determination that hearings are necessary is confirmed.
5. The issues to be resolved in this proceeding are listed in Section 2 of this Scoping Memo and Ruling.

6. The procedural schedule is listed in Section 5 of this Scoping Memo and Ruling.

7. The prepared testimony in this proceeding shall be electronically served on the entire service list on the dates set forth in the adopted procedural schedule, and hard copies shall be provided to the assigned Commissioner and Administrative Law Judge.

8. Administrative Law Judge (ALJ) Robert M. Mason III is the assigned ALJ and is designated as the presiding hearing officer.

9. Rule 8.3 prohibiting *ex parte* communications in adjudicatory proceedings applies to this proceeding.

Dated June 27, 2012, at San Francisco, California.

/s/ ROBERT M. MASON III
Robert M. Mason III
Administrative Law Judge

/s/ CATHERINE J.K. SANDOVAL
Catherine J.K. Sandoval
Assigned Commissioner