BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

FILED
6-15-16
04:59 PM

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.	I.15-11-007 (Filed November 5, 2015)

PREHEARING CONFERENCE STATEMENT OF COX CALIFORNIA TELCOM, LLC, DBA COX COMMUNICATIONS, (U-5684-C)

Pursuant to the Commission's Rules of Practice and Procedure ("Commission Rules"), and the Administrative Law Judge's Ruling Setting Prehearing Conference and Addressing Related Issues, dated June 6, 2016 ("ALJ Ruling"), Cox California Telcom, L.L.C., *dba* Cox Communications (U-5684-C) ("Cox") respectfully submits this prehearing conference statement.

The ALJ Ruling solicits comments on the following four issues: the scope and issues to be resolved in this proceeding, including issues in Appendix A and others that should be included;[1] the need for evidentiary hearings; if evidentiary hearings are held, how they might be most efficiently structured; and a proposed schedule.

As detailed below, governing and applicable law prescribe the scope of the proceeding such that only services for which the Commission has jurisdiction and actions that the Commission may undertake in the context of a "ratesetting" proceeding[2] may be included in the Scoping Memo.

---

[1] The ALJ Ruling, Appendix A includes potential topics for the proceeding and lists the following categories (two of which include several subparts): (1) defining the California market sectors or segments; (2) how is competition best measured in the California telecommunications sector; and (3) based on proposed definitions of market sectors and competition, how competitive is the California telecommunications market.

[2] Resolution ALJ-328. Rule 1.3(e) defines Ratesetting proceedings as "proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities)." Further, the Assigned Commissioner Ruling confirming the categorization states, "It is gathering information about the state of

I. The Scope of this Proceeding Must Be Limited to Issues that Can be Addressed in a Ratemaking Proceeding; Address Services for Which the Commission Has Regulatory Authority, and otherwise be Consistent with Applicable Law.

The OII states that the goal of this proceeding is to confirm by looking at the competitive marketplace that the Uniform Regulatory Framework ("URF") has generally resulted in intrastate voice services being just and reasonable as required by Section 451[3] and also to ensure that the record developed in this OII supports findings on that issue. The Commission commenced this OII with a broad data-collection effort by issuing Information Requests soliciting data and information about intrastate voice services, but also about other services and matters to which the Commission's jurisdiction does not extend.

The Commission now has the data to develop any number of descriptive analyses of conditions in California markets, recognizing that such analyses will become the subject of discussion and debate. Much of the data the Commission has collected touches on networks and services that are not subject to the Commission's authority. Whether such a far-ranging data collection was appropriate, however, is not the focus of this prehearing statement. Rather, it is simply that there comes a point – and Cox believes that point is reached here – when the Commission must *narrow* its scope to successfully accomplish its goals. As the Commission moves to its next steps, it is important that the scope of the proceeding be limited to addressing the URF and the intrastate voice services that the Commission has jurisdiction to regulate. To that end, any findings that the Commission may ultimately adopt in this OII will need to satisfy and be consistent with the following guiding legal principles:

---

the telecommunications market following the Commission's Universal Regulatory Framework decisions in the mid-2000s to assess whether competition has produced just and reasonable prices (OII at 13)." Assigned Commissioner's Ruling Regarding Categorization of this Proceeding, pp. 2-3 (dated February 3, 2016).

[3] All sections references herein are to the California Public Utilities Code, unless stated otherwise.

- the Commission's authority to consider whether the rates for intrastate wireline voice service are just and reasonable under Section 451;
- issues related to intrastate wireline voice service for which the Commission granted re-hearing in D.15-11-023;[4]
- Section 710 and the FCC's regulatory framework governing broadband Internet access service, both of which preclude the Commission from regulating or in any way adopting rules governing such service in this proceeding; and
- the Commission categorizing this proceeding as "ratesetting," and thereby, limiting the type of actions to be undertaken.

This list identifies the primary legal parameters that must inform the scope of the proceeding and to ensure that any final decision will withstand legal scrutiny and not result in legal error. Indeed, the Commission commenced this OII, in part, to remedy what the Commission identified as an inadequate record supporting Decision 08-09-042. Further, the Commission issuing a scoping memo that is consistent with these legal parameters, at a minimum, will also ensure that Commission's resources, as well as those of interested parties, (and that the user fees that California ratepayers pay and which fund participation of certain intervening parties), will be utilized efficiently throughout this proceeding.

II. Proposed Schedule and Evidentiary Hearings.

As of June 1, 2016, respondents and parties have submitted a significant volume of data and responses in response to the Information Requests in the OII. In order to best develop the Scoping Memo based on the information submitted to date, Cox believes parties should be

[4] D.15-11-023, pp. 11-12; Ordering Paragraph 1. D.15-11-023 which granted re-hearing of D.08-09-042 which is titled "Decision Adopting Phased Transition Plan for Pricing Basic Telephone Service." As the title of the decision indicates, D.15-11-023 provides for rehearing of issues related to competition, affordability and current market conditions for *basic service*, including Lifeline and basic service provided in high-cost areas. Id.

provided an opportunity to file a single round of limited comments (i.e. no more than fifteen pages) that address other parties' proposals and recommendations submitted in responses to the Information Requests included in the OII ("Scoping Comments"). These comments will be focused on addressing why any given proposal in a party's response to any Information Request should or should not be included in the scoping memo. After parties submit their Scoping Comments, the Commission will issue a Scoping Memo.

A single-round of focused comments will assist the Commission in identifying and considering issues raised in parties' responses to the Information Requests that may be beyond the scope of what the Commission may consider in this proceeding, in order to avoid a scoping memo that may be too broad, improper, unreasonable or otherwise unlawful, and subject to legal challenge. Moreover, by carefully tailoring the scope, parties will be in a much better position to focus on addressing issues in this proceeding in a timely fashion. Taking this step now should enhance the efficiency and timeliness of the remaining portion of the proceeding.

In terms of a schedule, Cox generally concurs with the schedule proposed by AT&T in its Prehearing Conference Statement. In terms of evidentiary hearings, Cox submits it is premature for either the Commission or parties to make a determination on the need for hearings at this point in the proceeding. Cox recommends that the Commission adopt a schedule that allows the parties to request evidentiary hearings within 15 days after the day parties serve Rebuttal Testimony. It is only after all rounds of testimony are served that parties can reasonably determine whether they wish to pursue factual issues through evidentiary hearings.

/

/

/

(continued for signature page)

Dated: June 15, 2016

Respectfully submitted,

/s/ Margaret L. Tobias

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
3466 Mt. Diablo Blvd., Suite C205
Lafayette, CA 94549
T: 925.310.4494
E: douglas.garrett@cox.com

Esther Northrup
Cox Communications
5887 Copley Drive, Suite 300
San Diego, CA 92111
T: 858.836.7308
E: esther.northrup@cox.com