

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

U.S. TELEPACIFIC CORP. (U5271C), and
MPOWER COMMUNICATIONS CORP.
(U5859C)

Complainants,

vs.

HYPERCUBE TELECOM, LLC (U6592C),

Defendant.

Case 15-06-006
(Filed June 4, 2015)

ORDER EXTENDING STATUTORY DEADLINE

Summary

This decision extends the statutory deadline in the above proceeding to March 31, 2017.

1. Procedural Background

Public Utilities Code Section 1701.2(e) provides that adjudicatory cases shall be resolved within 12 months of the date that they are initiated unless the Commission makes findings as to why that deadline cannot be met and issues an order extending that deadline. This proceeding has been categorized as adjudicatory.

Complainants U.S. TelePacific Corp. and MPower Communications Corp. (collectively TelePacific) filed this complaint on June 4, 2015, against HyperCube

Telecom, LLC (HyperCube) under Pub. Util. Code § 737,¹ alleging that HyperCube violated HyperCube's own intrastate switched access tariffs.

In this proceeding, TelePacific contends that HyperCube improperly charged TelePacific for intrastate California usage charges and late payment charges, and also asserts, as an affirmative defense in the federal suit, that the Commission has primary jurisdiction over the interpretation and application of intrastate switched access tariffs. HyperCube filed a Motion to Dismiss the complaint on July 29, 2015, contending that the Commission did not have jurisdiction over the dispute.

The Administrative Law Judge (ALJ) initially set a Prehearing Conference (PHC) on August 18, 2015, however, at the request of the parties, the PHC date was postponed to September 16, 2015. The parties appeared and argued their respective positions concerning the Commission's jurisdiction. On October 1, 2015, the ALJ issued her ruling denying the Motion to Dismiss and set a further PHC on October 29, 2015.

¹ This suit was filed as a result of HyperCube's suit against TelePacific initiated in the United States District Court for the Eastern District of California¹ seeking \$1,287,075.22 for usage charges and late payment charges related to 8YY calls that TelePacific refused to pay. TelePacific then filed this suit under Pub. Util. Code § 737, which provides, in pertinent part, that:

"If suit for collection of the lawful tariff charges or any portion thereof of a public utility is filed in any court in accordance with the terms of this section, or if such collection is made by the public utility without filing suit, the person against whom such suit is filed or from whom such collection is made may, within 90 days from the date of service of summons in the suit, or the date of the collection, file with the commission, or with any court of competent jurisdiction, a complaint for damages resulting from the violation of any of the provisions of this part with respect to the transaction to which the suit of the public utility relates, or for which such collection has been made."

The Commissioner's Scoping Ruling was issued on November 18, 2015 and set the procedural schedule, including Evidentiary Hearing (EH) dates of January 14-15, 2016.

On December 11, 2015, the ALJ granted the parties' request for a 30-day extension of time and reset the EH to February 22-23, 2016. However, on January 29, TelePacific filed a Motion to Suspend the Procedural Schedule, due to its counsel's illness and discovery disputes between itself and HyperCube. The ALJ then required the parties to appear for further PHC on February 22 (which would have been the first day of EH). At that hearing, the ALJ informed the parties that EH would commence on May 17, 2016 unless the parties were able to reach an informal resolution of the case.

On March 16, 2016, the parties filed a Joint Motion for Temporary Stay of Proceedings to Conduct Settlement Discussions and requested an additional 60 days to attempt to resolve the case informally.

The ALJ granted the parties' request and issued a Ruling Setting a Revised Procedural Schedule on April 1, 2016. Under the revised procedural schedule, EH is set on July 12-13, 2016, post-hearing opening briefs are due August 12, 2016, and simultaneous reply briefing is due on August 24, 2016. As of the reply briefing date, the matter will stand submitted and the Presiding Officer's Decision (POD) will be prepared within the 60-day deadline required by statute. The Commission's rules permit an additional two weeks for party responses to any appeals received. This means that, if an appeal of the POD is received, the Modified POD should be ready for Commission consideration at a December 2016 or January 2017 meeting.

Due to the delays in this case at the request of both parties, the statutory deadline for resolving these consolidated complaints should be extended to March 31, 2017.

2. Waiver of Comment Period

Under Rule 14.6(c)(4) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment of proposed decisions extending the deadline for resolving adjudicatory proceedings. Accordingly, the otherwise applicable period for public review is being waived.

3. Assignment of Proceeding

Liane R. Randolph is the assigned Commissioner and Patricia B. Miles is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The complaint C.15-06-006 was initiated on June 4, 2015.
2. PHCs were held September 16, 2015, October 29, 2015 and February 22, 2016.
3. The parties have requested and have been granted continuances due to discovery disputes, scheduling conflicts and their efforts to resolve the matter informally.
4. Evidentiary hearing is set for July 12-13, 2016, and the matter is anticipated to be submitted on August 24, 2016, with the submission of briefs.
5. Based upon the statutory deadline, this proceeding must be resolved within 12 months of their initiation, unless this date is extended.
6. The POD is scheduled to be issued within 60 days of submission of briefs, however, the parties will have a right to appeal the POD.

7. An extension of the statutory deadline to the end of the first quarter of 2017 is necessary to allow the Commission time to deliberate on this matter and to issue its final decision, in the event that the POD is appealed.

Conclusions of Law

1. The statutory deadline imposed by Public Utilities Code Section 1701.2(e) should be extended until the end of the first quarter of 2017 - March 31, 2017.
2. This order should be effective immediately.

ORDER

IT IS ORDERED that the statutory deadline in this proceeding is extended until March 31, 2017.

This order is effective immediately.

Dated _____, 2016, at San Francisco, California.