

Decision 17-12-015 December 14, 2017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Cox California Telcom, LLC (U5684C) for Waiver to Provide Access to Interexchange Carriers When Offering Basic Service and California LifeLine Wireline Service.

Application 17-06-032

(See Appendix A for Appearances)

DECISION GRANTING COX COMMUNICATIONS A WAIVER OF THE REQUIREMENT TO PROVIDE BASIC AND CALIFORNIA LIFELINE CUSTOMERS "EQUAL ACCESS" TO INTEREXCHANGE TELECOMMUNICATIONS SERVICES

Summary

This decision approves the application of Cox Telcom, LLC dba Cox Communications (U5684C) for a waiver of the requirement to provide its customers equal access to interexchange telecommunication services within the State of California when offering basic and LifeLine wireline services. This approval is subject to the terms and conditions set forth in this decision.

This proceeding is closed.

1. Background

1.1. Parties

Cox California Telcom, LLC dba Cox Communications (U5684C) (Cox or Applicant) is a Delaware limited liability company providing local exchange services in southern California, and interexchange services throughout

California.¹ Its principal business office is located at 5887 Copley Drive, San Diego, CA 92111.² Cox has provided basic³ and wireline Lifeline⁴ services since 1997 and is designated by the Commission as an eligible telecommunications carrier eligible to receive federal LifeLine support.⁵

The Utility Reform Network (TURN) is an independent statewide utility consumer advocacy organization whose mission is representing the interests of residential ratepayers, primarily with respect to energy and telecommunications issues.⁶ TURN has been in existence for more than forty years and frequently participates in Commission proceedings. Its principal business office is located at 785 Market Street, Suite 1400, San Francisco, CA 94103.

1.2. Summary of Application

Cox currently utilizes two types of technologies to provide California wireline LifeLine service: circuit switched and Voice over Internet Protocol (VoIP). However, it intends to transition away from the circuit-switched network and primarily use VoIP technology on a going-forward basis.⁷ Therefore, in this application, Cox argues that it should be allowed to adhere to requirements that the Commission has adopted for uncertificated, fixed-VoIP

¹ Decision (D.) 06-09-074 granted a Certificate of Public Convenience and Necessity (CPCN) to Cox for local exchange services and D.97-06-027 granted authority to Cox to offer inter- and intraLATA services.

² Application at 15-16.

³ As defined in D.12-12-038.

⁴ As defined in D.14-01-036.

⁵ D.13-10-002. *See also* Application at 10.

⁶ *See* website at <http://www.turn.org/about/>.

⁷ Application at 11.

providers that voluntarily participate in the California LifeLine program. It seeks a waiver of the “equal access” requirement, which obligates Cox to provide its customers with the option to subscribe to stand-alone long distance service from a different carrier when Cox offers basic service and California LifeLine wireline service.

2. Procedural History

Cox filed this application on June 30, 2017. Notice of the application appeared in the Commission’s daily calendar on July 7, 2017. A telephonic prehearing conference (PHC) was held on August 7, 2017.

TURN filed a response to the application on August 7, 2017 (TURN Response). TURN responds that local service providers are required to provide customers with “equal access” to third-party long distance providers to ensure that customers have a choice of long distance providers, including the option to obtain cheaper long distance calling rates from a third party than they might be offered from their local service provider.⁸ TURN observes that equal access has long been an integral part of California’s basic service requirements, as well as a valuable consumer protection and money saving tool for residential households. Thus, TURN urges the Commission to grant the application only with conditions that will provide sufficient notice to Cox customers,⁹ will support ongoing basic service requirements, and will ensure that Cox customers continue to have choices for long distance services.¹⁰

⁸ See TURN Response at 1.

⁹ See TURN Response at 1-2.

¹⁰ Cox replied to TURN’s response on August 17, 2017 (Reply), pointing out that its request will have narrow impact because only a de minimis percentage of Cox customers subscribe to a

Footnote continued on next page

Cox filed a reply on August 17, 2017, stating its view that access to interexchange carriers is no longer an “integral element of basic service,” because of changes in the long distance marketplace. Therefore, Cox argues that elimination of equal access requirements no longer diminishes the functionality of basic services. Cox emphasizes that the proposed waiver would have a *de minimis* impact, as it would affect less than 0.05% of Cox customers. Cox offers to provide a transition period to allow its affected customers to consider other options for basic service should they desire to do so.¹¹

On August 21, 2017, counsel for Cox and TURN filed a joint PHC statement¹² informing the ALJ that they had met and conferred about the application and the concerns delineated in TURN’s response. The parties also agreed upon steps that Cox would take to inform customers about the proposed changes in service (discussed in Section 3 below), which if acceptable to the Commission, would provide valuable protection to customers.

On August 31, 2017, the assigned Commissioner issued a Scoping Memo and Ruling under which the following matters were deemed to be within the scope of this proceeding:

third party long distance provider. Cox also indicated that it would take steps to ensure that impacted customers will have other long distance options.

¹¹ See Reply at 2. Cox proposes to permit impacted customers to: 1) subscribe to a Cox long distance service; 2) maintain Cox basic service with toll restriction but access long distance service by using another provider’s toll free access number and/or prepaid calling card; 3) maintain current long distance service, but obtain basic service/LifeLine service from a different provider, or 4) replace wireline service and subscribe to a different service.

¹² See Joint Post Pre-Hearing Conference Statement of Cox California Telcom, LLC dba Cox Communications (U5684C) and the Utility Reform Network dated August 21, 2017 (Joint Statement).

- a. Whether Cox has demonstrated that it should be granted waiver of the requirement to provide equal access to third party long distance providers as part of its tariffed basic service and LifeLine requirements?
- b. Whether there are conditions that should be required if waiver is granted, that will ensure sufficient notice to Cox customers and will ensure that its customers continue to have adequate long distance choices?

The assigned Commissioner also noted that there were no contested issues of material fact requiring evidentiary hearing.

3. Discussion

In its application, Cox thoroughly explains the genesis of “equal access” requirements - put into place upon divestiture of the former AT&T¹³ which operated both local telephone operations and long distance services across the United States. Following AT&T’s divestiture, equal access obligations were adopted - first for the regional Bell operating companies (so that consumers could use the interexchange carrier of their choice to make toll calls by dialing “1” plus the called party’s number) - and later when the Federal Communications Commission (FCC) extended equal access requirements to all incumbent local exchange carriers (LECs).¹⁴ In California, the Commission also adopted decisions requiring other incumbent LECs to offer equal access.¹⁵ The

¹³ See Application at 2. AT&T was the American Telephone and Telegraph Company until divestiture pursuant to *United States v. American Tel. & Tel.*, 552 F. Supp. 131 (D.D.C. 1982), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). AT&T was required to divest itself of the Regional Bell Operating Companies (RBOCs), including Pacific Bell Telephone Company in California.

¹⁴ See Application at 3, footnote 4 citing *Investigation of Access and Divestiture Related Tariffs*, 97 FCC Rcd 2d 1082 (FCC 84-51) 1984 FCC LEXIS 2902.

¹⁵ See Application at 3, citing D.96-12-078 and D.97-04-083, 1997 Cal. PUC LEXIS 495.

Commission also required direct competitive local carriers (such as Cox) to file advice letters implementing equal access requirements similar to those required by the FCC,¹⁶ as prerequisite for participating in LifeLine programs.

Cox discusses the FCC's gradual modification of its definition of services eligible to participate in federal high-cost or LifeLine programs to include wireless and VoIP services, as well as other platforms over which voice service can be provisioned. These platforms are now characterized as "voice telephony services,"¹⁷ and have been eligible for the federal LifeLine program since 2012.

Like the FCC, the Commission has begun allowing participation of wireless and VoIP providers in the California LifeLine program, recognizing the need to administer the California LifeLine program in a technology-neutral manner.¹⁸ Cox notes that in 2016, the Commission stated that it was permitting non-certificated VoIP providers to participate in the California LifeLine program without requiring that they provide equal access to interexchange carriers, in order to "promote competition by preserving essential consumer protections across technology platforms and by ensuring that minimum communications needs are met regardless of income."¹⁹

¹⁶ *Id.* at 3, citing D.97-06-104.

¹⁷ See Application at 4, citing *In re Connect Am. Fund*, 26 FCC Rcd 17663 (FCC 11-161) and *In re Lifeline & Link Up Reform & Modernization*, 27 FCC Rcd 6656 (FCC 12-11).

¹⁸ See Application at 8, citing D.10-11-033 and D.12-12-038.

¹⁹ See Application at 9, citing D.16-10-039.

TURN agrees that Cox's summary of the trends away from third party long distance providers is accurate.²⁰ TURN notes that equal access has been an integral part of California's basic service requirements, both from a consumer protection standpoint and as a money saving tool for residential households since 1996. However, TURN also acknowledges the economic challenges that Cox would face if required to maintain equal access in an environment of changing infrastructure and network capabilities.²¹ TURN does not oppose Cox's application for waiver, but urges the Commission to ensure that certain safeguards for consumers accompany the Commission's approval of Cox's request for waiver from equal access requirements.

In view of the fact that both federal LifeLine and California LifeLine programs have eliminated the requirement to offer equal access to VoIP interexchange carriers, and because there is minimal impact to Cox's customers, it is reasonable to exempt it from offering customers continued equal access to interexchange carriers as a condition of participation in the California LifeLine program.

4. Parties' Proposed Resolution of Concerns

In their Joint Statement, the parties indicate that they are in agreement that Cox will take several steps which, if approved by the Commission and implemented, would allay the concerns that TURN expressed in its Response to the Application.

²⁰ TURN Response at 2: "While TURN has not done its own study or analysis of the specific examples and anecdotes provided by Cox, our experience gives us no reason to question Cox's analysis."

²¹ TURN Response at 3.

First, Cox will, over two billing cycles, provide written notices to all of its tariffed basic service and California LifeLine wireline customers that: 1) informs them that Cox will no longer offer access to third party long distance providers; and 2) explains options for placing long distance calls either by presubscribing to Cox or by accessing another long distance provider toll free.²²

Second, if a current Cox customer presently subscribes to third-party long distance service, Cox will offer them a competitively priced Cox long distance promotional offer with the goal of retaining the customer.²³ Any customer that does not wish to switch to a Cox long distance services will be informed of the last date of access to third-party long distance services. The customer will then be given an explanation about other options available.

Third, Cox agrees that it will not assess any charges, such as early termination fees, against customers who decide to cancel Cox telephone services upon learning that access to third-party long distance services will be discontinued. Additionally, Cox will offer to pay or credit a customer's bill for cancellation charges, if any, assessed upon a customer by a third-party long distance provider.²⁴

²² See Joint Statement at 2, Bullet Point 1. Cox will provide prepaid calling cards or a toll free access number to access long distance providers. Cox will also inform customers to report any third party provider who attempts to impose charges for third party long distance service.

²³ See Joint Statement at 2, Bullet Point 2. Cox representatives will contact these customers directly by phone and may also send at least one letter or email to communicate this offer.

²⁴ See Joint Statement at 3, Bullet Point 3.

Fourth, Cox agrees to provide TURN with demographic information about customers²⁵ utilizing LifeLine services, Deaf and Disabled Telecommunications services and Spanish language invoices, who also subscribe to a third party long distance provider. TURN contends that having this information will assist TURN and the Commission to understand the relevance and importance of equal access to such customers.

5. Conclusion

We are persuaded by Cox's analysis. The long distance market has dramatically changed since equal access requirements were a prerequisite for participation in the federal and the California LifeLine programs. We approve the steps proposed by Cox and TURN which will offer safeguards for Cox customers who may have limited options for access to long distance services. Accordingly, with the caveat that the steps proposed by Cox and TURN are implemented for Cox customers, we grant Cox the waiver it is requesting and will no longer require Cox to provide its basic and California LifeLine customers equal access to interexchange telecommunication services within the State of California.

The Commission's Communications Division has determined that Cox's request for waiver of the equal access requirement is the first that the Commission has received. We emphasize that this waiver is granted based on the unique characteristics of Cox's customer demographics - upon which the proposed waiver would have a *de minimis* impact and affect less than 0.05% of its customers. No precedential effect is intended and any carrier seeking a similar

²⁵ See Joint Statement at 4, Bullet Point 6. Cox and TURN agreed that TURN would sign a non-disclosure agreement as a prerequisite to receiving customer demographic data.

waiver must be evaluated on its individual merits to determine the impact upon their own customers.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3401 dated July 13, 2017, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. TURN filed a response to the application stating concerns which have now been resolved between the parties. Although a PHC was held, there are no disputes of material fact requiring an evidentiary hearing. Accordingly, we formally change the preliminary determination to find that no hearings are required.

7. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

8. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Patricia B. Miles is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Cox (U5684C) provides local exchange services in southern California and interexchange services throughout California, and is a telephone corporation and a public utility subject to Commission jurisdiction, as defined in Pub. Util. Code §§ 234(a) and 216(a).

2. Cox filed A.17-06-032 on June 30, 2017 to seek a waiver of the requirement to provide its customers equal access to interexchange telecommunication

services within the State of California, when offering basic and California Lifeline wireline services.

3. TURN filed a response to the application, and thus became a party to this proceeding on August 7, 2017.

4. On August 21, 2017, Cox and TURN filed a Joint Statement setting forth certain steps that Cox agrees to take to allay concerns that TURN expressed in its Response to the Application.

5. The steps proposed by the parties are intended to provide reasonable safeguards for Cox's customers.

6. The waiver will have a *de minimis* impact as it will affect less than 0.05% of Cox's existing customers.

7. The Commission allows participation of wireless and VoIP providers in the California LifeLine program, recognizing the need to administer the California LifeLine program in a technology-neutral manner.

8. The Commission permits non-certificated VoIP providers to participate in the California LifeLine program without requiring that they provide equal access to interexchange carriers.

Conclusions of Law

1. Cox's request for a waiver of the requirement to provide its customers equal access to interexchange telecommunication services within the State of California when offering basic and California Lifeline wireline services should be granted.

2. It is appropriate for the Commission to ensure that safeguards for consumers accompany the Commission's approval of the waiver from equal access requirements.

3. Because this waiver is granted based on the unique characteristics of Cox's customer demographics, upon which the proposed waiver has a *de minimis* impact, and affects less than 0.05% of its customers, this decision should have no precedential effect.

4. Any carrier seeking a similar waiver must be evaluated on its individual merits to determine the impact upon their own customers.

5. Application 17-06-032 should be closed.

O R D E R

IT IS ORDERED that:

1. The application of Cox Communications (U5684C) for a waiver of the requirement to provide its basic service and California LifeLine wireline customers equal access to interexchange telecommunication services within the State of California, is approved.

2. To ensure that there are adequate safeguards for affected Cox Communications customers, Cox Communications shall do the following:

a) Prepare a draft notice, for review by the Commission's Public Advisor's Office, that will be sent to all of Cox's tariffed basic service and California LifeLine wireline customers that (i) informs them that Cox Communications will no longer offer access to third party long distance providers, and (ii) explains options for placing long distance calls either by presubscribing to Cox Communications or by accessing another long distance provider toll free. The notice shall be provided to the Commission's Public Advisor's Office at public.advisor@cpuc.ca.gov, at least 14 days before distribution to customers. Cox shall send the notice to customers both as a bill insert and as a stand alone notice.

b) Offer current Cox Communications basic service and California LifeLine wireline customers that presently subscribe to third party

long distance services, a competitively priced Cox Communications long distance promotional offer, and explanation about other options available.

3. Cox Communications shall not assess any charges, such as early termination fees, against customers who decide to cancel its telephone services upon learning that access to third-party long distance services will be discontinued.

4. Cox Communications shall pay or credit, at customer request, any customer whose third-party long distance provider assesses cancellation charges in connection with the customer's request to discontinue third party long distance services.

5. Application 17-06-032 is closed.

This order is effective today.

Dated December 14, 2017, at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners

Appendix A

***** SERVICE LIST A1706032*****

***** PARTIES *****

Christine A. Mailloux
Attorney At Law
THE UTILITY REFORM NETWORK
785 MARKET ST., STE. 1400
SAN FRANCISCO CA 94103
(858) 558-7930
cmailloux@turn.org
For: TURN

Margaret L. Tobias
Attorney
TOBIAS LAW OFFICE
460 PENNSYLVANIA AVE
SAN FRANCISCO CA 94107
(415) 641-7833
marg@tobiaslo.com
For: Cox California Telcom, LLC, dba Cox Communications

Mark Dinunzio
COX COMMUNICATIONS
1550 WEST DEER VALLEY ROAD
PHOENIX AZ 85027
(623) 328-3252
Mark.DiNunzio@cox.com

Charlie Born
FRONTIER COMMUNICATIONS
1201 K STREET, STE. 1980
SACRAMENTO CA 95814
(916) 686-3570
Charlie.Born@FTR.com

***** STATE EMPLOYEE *****

Penney Legakis
Communications Division
AREA 3-F
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2785
pl1@cpuc.ca.gov

Patricia Miles
Administrative Law Judge Division
RM. 5044
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3180
pm6@cpuc.ca.gov

***** INFORMATION ONLY *****

Esther Northrup
State Regulatory Affairs
COX CALIFORNIA TELCOM, LLC
5887 COPLEY DRIVE, STE. 300
SAN DIEGO CA 92111
(858) 836-7308
Esther.Northrup@cox.com

(End of Appendix A)