



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

05-14-10
04:59 PM

QWEST COMMUNICATIONS COMPANY, LLC (U53350C),

Complainant,

v.

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (U5253C),
XO COMMUNICATIONS SERVICES, INC. (U5553C), TW TELECOM
OF CALIFORNIA, L.P. (U5358C), GRANITE
TELECOMMUNICATIONS, INC. (U6842C), ADVANCED TELCOM,
INC. dba INTEGRA TELECOM (fdba ESCHELON TELECOM, INC.)
(U6083C), LEVEL 3 COMMUNICATIONS (U5941C), COX
CALIFORNIA TELECOM II, LLC (U5684C), ACCESS ONE, INC.
(U6104C), ACN COMMUNICATIONS SERVICES, INC. (U6342C),
ARRIVAL COMMUNICATIONS, INC. (U5248C), BLUE CASA
COMMUNICATIONS, INC. (U6764C), BROADWING
COMMUNICATIONS, LLC (U5525C), BUDGET PREPAY, INC.
(U6654C), BULLSEYE TELECOM, INC. (U6695C), ERNEST
COMMUNICATIONS, INC. (U6077C), MPOWER
COMMUNICATIONS CORP. (U5859C), NAVIGATOR
TELECOMMUNICATIONS, LLC (U6167C), NII
COMMUNICATIONS, LTD. (U6453C), PACIFIC CENTREX
SERVICES, INC. (U5998C), PAETEC COMMUNICATIONS, INC.
(U6097C), TELEKENEX, INC. (U6647C), TELSCAPE
COMMUNICATIONS, INC. (U6589C), U.S. TELEPACIFIC CORP.
(U5721C), AND UTILITY TELEPHONE, INC. (U5807C),

Defendants.

Case 08-08-006
Filed August 1, 2008

**RESPONSE OF COX CALIFORNIA TELCOM, LLC DBA COX COMMUNICATIONS, TO
QWEST COMMUNICATIONS COMPANY LLC REQUEST FOR JUDICIAL NOTICE**

Pursuant to the Commission's Rules of Practice and Procedure ("Rules") 11.1(e), Cox California Telcom, LLC, dba Cox Communications (U-5684-C) ("Cox") respectfully submits this response to the request for judicial notice that Qwest Communications Company LLC ("QCC") filed on April 29, 2010 ("Motion").¹ In its Motion, QCC requests that the Commission take judicial notice of Cox Advice Letter 731 and QCC's protest to such advice letter ("Advice Letter Documents").

¹ Similar to QCC's request for official notice filed on April 20, 2010, Cox confirmed with ALJ Bushey that QCC's request for official notice described herein will also be treated as a motion to which parties may respond.

Cox opposes the motion on the grounds that QCC fails to show that the Advice Letter Documents fall within the scope of California Evidence Code section 450 et seq and/or that they are relevant to the Commission deciding the issues in this proceeding.

I. QCC Fails To Cite A Legal Basis For Its Request.

Under Rule 13.9, the Commission may take official notice of "such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code ("EC") section 450 et seq." QCC requests that the Commission take notice of the Advice Letter Documents but the Motion fails to show, let alone suggest, that the documents fall within the scope of EC Section 450.² Without *some* explanation of the applicability of EC section 450 to the Advice Letter Documents, the Commission has no choice but to reject the Motion.

Moreover, QCC did not suggest or show how the Advice Letter Documents are relevant to the Commission's consideration of the allegations and requested relief set forth in QCC's complaint. For example, in I.00-11-052, the Commission considered Qwest's motion for official notice of documents that were filed in a separate complaint proceeding involving Pacific Bell.³ CPSD (f/k/a CSD) opposed the motions on both procedural and substantive grounds.⁴ The Commission agreed with CPSD, rejected Qwest's arguments and concluded that the documents had no evidentiary value in the investigation.⁵ Here, QCC does not even attempt to establish any relevancy between the Advice Letter Documents and this proceeding, and thus, the Commission must reject the Motion.⁶

² See, D.02-07-043, p. 7.

³ *Investigation on the Commission's own motion into the operations, practices, and conduct of Qwest Communications Corporation (Qwest), U-5335-C and its wholly owned subsidiary, LCI International Telecommunications Corporation, doing business as Qwest Communications Services (LCIT), U-5270-C to determine whether Qwest and LCIT have violated the laws, rules and regulations governing the manner in which California consumers are switched from one long distance carrier to another and billed for long distance telephone services*, I.00-11-052, D.02-10-059, p. 13 (dated December 5, 2001) (*re-hearing denied in D.03-01-087*).

⁴ *Id.*

⁵ *Id.*, p. 14.

⁶ See *Rulemaking on the Commission's Own Motion into the Third Triennial Review of the Regulatory Framework Adopted in Decision 89-10-031 for GTE California Incorporated and Pacific Bell*, R. 98-03-040 (Filed March 26, 1998) D. 98-10-026; 82 CPUC2d 335, 1998 Cal. PUC LEXIS 669 * 115. In this decision, the Commission concludes that "GI/LIF ask the Commission to take official notice of other pending actions against Pacific which may affect disposition of the issues here. We are not persuaded that the issues in these other matters have any bearing on the issues here, and GI/LIF do not clearly and convincingly present any link. We decline to burden this record with the records from other proceedings that are not relevant." *Id.* (Footnotes omitted).

If QCC requests the opportunity to file a reply to this response, Cox respectfully requests that the Commission deny such request because it would allow QCC to submit primary support for its request which should have been included in its Motion and to which Cox would not have an opportunity to respond if included only in a reply.

II. If The Commission Grants QCC's Motion, Then It Should Also Include Cox's Reply To The Protest In The Record.

As discussed above, Rule 13.9 does not provide a proper basis for granting the Motion. If the Commission, nonetheless, determines it is reasonable to take notice of or otherwise include the Advice Letter Documents in the record of this proceeding, then it should also include Cox's reply to the protest and the Communications Division's email suspending the advice letter in response to QCC's protest. Cox timely submitted its reply to the Communications Division on May 7, 2010, and it is attached hereto as Exhibit A. Cox received the Communications Division email on May 11, 2010 and it is attached hereto as Exhibit B. Again, Cox opposes the Motion, but if the Advice Letter Documents are included in the record, then fairness and due process require the Commission to also include the documents attached hereto.

III. Conclusion.

Cox respectfully requests that the Commission reject the Motion as QCC failed to provide any basis for including such and prior Commission's provide clear guidance that the Advice Letter Documents should not be included in the record of this proceeding.

If, however, the Commission takes notice of the Advice Letter Documents, then Cox respectfully requests that the Commission also include Cox's reply to QCC's protest and that the Communications Division's email suspending Cox's advice letter in response to QCC's protest.

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(continued on next page for signature block)

Date: May 14, 2010

Respectfully submitted,

/s

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Exhibit A
Cox Reply to Qwest Protest of Cox Advice Letter 731

May 7, 2010

Via Hand Delivery and Email

Mr. Jack M. Leutza, Director
Communication Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Reply to Qwest Communications Company LLC to Cox
California Telecom, LLC Advice Letter 731

Dear Mr. Leutza:

Pursuant to General Order ("GO") 96-B, General Rule 7.4.4, Cox California Telcom, LLC ("Cox") submits this timely reply to the protest that Qwest Communications Company LLC ("QCC") submitted on April 29, 2010 ("protest"), in response to Cox Advice Letter 731. Contrary to QCC's allegations, the optional service offer that Advice Letter 731 adds to Cox's tariff is not inappropriate, unreasonable or discriminatory. In fact, the terms comply with the Commission's current rules and policies that the Commission adopted as early as 1989.

The protest should be summarily rejected because it is not permitted under the examples included in GO 96-B, General Rule 7.4.2, erroneously characterizes the services subject to the Cox tariff, makes invalid arguments based on those mischaracterizations and otherwise lacks any legal or substantive support.

Summary of Advice Letter 731.

Advice Letter 731 supplements Cox's intrastate switched access tariff by adding rules describing an optional service offer for intrastate switched access services. More specifically, Cox is not modifying the rates or terms currently in its tariff but adding additional terms with respect to customers purchasing services via contract. Consistent with GO 96-B, Telecommunications Industry Rule 8.2.2, Advice Letter 731 states that the terms made available to any given customer will be made available to similarly situated customers.¹

Advice Letter 731 also specifies that rates for Cox's intrastate switched access service will be based on three elements (a) tariffed rates for Switched Access services; (b) the amount of Dedicated and Ethernet Services that the Customer purchases; and (c) the manner in which Switched Access Services are delivered, i.e., by direct trunks to the Customer's respective switches or via a third-party tandem using tandem trunks. The Advice letter also properly describes billing terms, the discounts available and other contract terms.

¹ Telecom Rule 8.2.2 states in full: "The rate or charge under a contract then in effect must be made available to any similarly situated customer that is willing to enter into a contract with the same terms and conditions of service." See, Schedule Cal. P.U.C. B-1, Sheet 105-T, Rule 8.1.

With respect to applicable discounted rates, Advice Letter 731 states:

In calculating the applicable discount to the per-minute-of-use charges for intrastate Switched Access Services, when reaching or exceeding the Dedicated Service Purchase Level set forth in the following matrix, per minute-of-use charge(s) to the Customer shall not be lower than the then current published ILEC rate for Switched Access services in the applicable service area/state.²

In other words, any carrier electing to enter into a contract pursuant to the tariff offering and eligible for a discount will not pay less than what AT&T and Verizon charge in California. It follows that if Cox's discounted rates are not more than Cox's regular tariffed rates and not less than what the Commission approved for AT&T and Verizon, they are just and reasonable.

Commission Decisions on Access Charges.

In 2003, the Commission opened a rulemaking to consider removing the non-cost based elements from AT&T's (then SBC) and Verizon's respective intrastate switched access charges. Notably, CLECs were not subject to the first phase of the proceeding, in part, because the Commission does not regulate CLECs rates, including intrastate switched access rates.

In the second and final phase of the 2003 rulemaking, the Commission broadened the scope of the proceeding and considered the intrastate switched access rates of the mid-size ILECs, the small ILECs and CLECs. The Commission again considered the non-cost based elements that may be included in the ILECs' rates. Again, because the Commission does not generally regulate CLECs' rates, the Commission did not examine their rates but it did adopt a rate cap for CLECs' intrastate switched access rates. More specifically, the Commission did not order CLECs to charge any given rate, and concluded only that CLECs must not charge rates in excess of a given percentage of either AT&T's or Verizon's rates.³

Contrary to Qwest's suggestion,⁴ the Commission did not conclude that intrastate switched access is a "noncompetitive service." A simple search confirms that the term "noncompetitive service" is not included in Decision 07-12-020. The decision only references *allegations* about excessive rates but the Commission does *not* make any determination about the status of the underlying service:

The record shows *allegations* of competitive carriers imposing excessive intrastate access charges, and that the purchasing carriers are unable to seek alternatives to terminating the call traffic.⁵

Further, to the best of Cox's knowledge, no Commission decision *concerning CLECs' services* utilizes the term "noncompetitive service."⁶ Certainly, the protest cites to none, and thus, it appears the term is one created and used by QCC as the only basis for its protest. Accordingly, the protest must be

² Schedule Cal. P.U.C. B-1, Sheet 105-T, Rule 8.2.4.

³ D.07-12-020, Ordering Paragraph No. 4.

⁴ Protest, p. 2, n. 3.

⁵ D.07-12-020, p. 15. (Emphasis added).

⁶ The term "noncompetitive service" was included in Section 2882.3 which was repealed in 1998 and concerned the cross-subsidy of enhanced services by noncompetitive services offered by the ILECs. All Section references herein are to the California Public Utilities Code, unless noted otherwise.

rejected because any argument or theory about noncompetitive services is not based on any Commission decision or policy. QCC's arguments are based solely on what QCC would like the law to be.

Finally, the access charge decision is relevant because the Commission expressly concludes therein that carriers may contract for such services but it did not identify any restrictions or terms applicable to such contracts or the offering of such services.⁷ This is important because the Commission expressly acknowledges that contracting for intrastate switched access charges is appropriate and lawful. This necessarily means that carriers may offer such services at rates distinct from those in its tariff and such different rates are lawful provided that there is no "undue or unjust" preference or advantage⁸ or unreasonable difference in rates.⁹ If carriers may contract for discounted rates, then a tariff that includes a service offering with discounted intrastate switched access rates cannot equate to discrimination as QCC implies.

Because specific contract terms were not at issue or addressed in the access charge proceeding, Cox understands that any discounts or bundling of such services would need to comply with any other existing Commission decisions and rules, as discussed in more detail below.

The Commission Has Granted CLECs Full Pricing-Flexibility.

A long line of Commission decisions grant carriers the flexibility to bundle and discount their service offerings directly contradicts QCC's suggestion that (a) Cox may not offer discounts on intrastate switched access rates based on a customer purchasing services that are not subject to the Commission's jurisdiction; and (b) there must be some "nexus" between the services and discounts.

By way of background, in the URF proceeding the Commission expressly granted the four largest ILECs similar pricing flexibility that CLEC already enjoyed and continue to enjoy today.¹⁰ Specifically, the URF decisions do not grant CLECs *more* pricing flexibility because they already enjoyed full pricing flexibility (subject to any public policy program requirements, such as Lifeline).¹¹ Because CLECs are not rate-regulated and enjoy pricing flexibility, they have "the ability to change prices for services without restriction."¹²

Also as part of URF, the Commission made clear that carriers could offer bundles defined as follows:

⁷ D.07-09-020, pp. 16-17. The Commission concluded: "Existing contracts between carriers that specify intrastate access charges are not affected by this decision. Carriers may voluntarily contract with each other to pay intrastate access charges different from those adopted in today's decision."

⁸ Section 453(a).

⁹ Section 453(c). While alleging that Advice Letter 731 is non-discriminatory, the protest lacks any meaningful discussion of Section 473 and relevant Commission decisions.

¹⁰ See D.07-09-019, n. 23.

¹¹ While ILECs are required under the federal Act to provide certain services on a resale basis, there is no similar requirement applicable to CLECs. As such, CLECs have full pricing flexibility with respect to both "retail" and "wholesale" services in the event a CLEC were to offer services on a resale basis. For example, the Commission has concluded that CLECs and IXCs historically had pricing flexibility for special access services and that nothing in the decision was intended to reduce that flexibility. D.09-04-005, p. 4., n 6.

¹² See *Id.*, n. 4. In this decision, the Commission describes "full pricing flexibility" as "the ability to change prices for services without restriction, including price floors, or ceilings."

Bundling includes the sale of voice, data, and video in one package for a single price by major communications market participants, including telephone companies, cable providers, satellite service providers, wireless companies, BPL providers, and others.¹³

The Commission's express approval of such bundling is relevant here for at least two critical reasons. First, the Commission made clear that carriers may offer services subject to the Commission's jurisdiction and services not subject to the Commission's jurisdiction available as part of a bundle. It follows that to the extent that carriers have pricing flexibility with respect to such services, they may price the bundle of services as they see fit.¹⁴ Second, the Commission did not require carriers to establish any "nexus" between services and/or prices offered in a bundle.

The approval of bundling in URF, however, is not new. As early as 1989, the Commission authorized then-monopoly providers Pacific Bell and GTE to bundle their respective Category II and Category III services and again approved of this practice in 1996:

We conclude that the [incumbent] LECs should be granted the flexibility to bundle Category II local exchange service with Category III services (including all services moved from Category I to II in this decision) as long as no "tying arrangements" are involved and our imputation rules are strictly observed. This bundling comports with the rules in D.89-10-031 for bundling of Category II and III services.^{15 16}

Even when it allowed the ILECs to offer bundles prior to URF when they were more heavily regulated, the Commission did not require a nexus when making their bundled offerings.

Further, the Commission has approved of discount plans for intrastate services that relied on interstate service usage. For example, the Commission approved a then-GTE (now Verizon) discount plan that GTE modified in response to competitors' concerns so that the plan applied the *percentage of interstate usage* per end office to determine *qualifying intrastate terminating minutes of use*. Not only did the Commission approve the plan, it recognized that few, and possibly only one IXC¹⁷ may benefit:

We find that GTEC's proposal to offer a rate discount with no offsetting increase in other rates poses no harm to GTEC's ratepayers. *At worse, it could be utilized to greater advantage by AT&T-C than by the smaller IECs.* This concern is overshadowed by the possibility that uneconomic bypass may occur without the plan.¹⁸

¹³ D.06-08-030, at 75, n. 298.

¹⁴ See D.08-09-042, p. 45. The Commission has rejected ILECs' request for revenue neutrality in decreasing CHCF-B subsidies on the grounds they have pricing flexibility other than for basic services (until December 31, 2010).

¹⁵ D.96-03-020, 65 CPUC2d 156; 1996 Cal. PUC LEXIS 257 *93.

¹⁶ The Decision states "A tying arrangement arises under antitrust laws when a seller conditions the sale of one product (the tying product) or service on the purchase of a separate product or service (the tied service)." The decision goes on to state: "We find no reason to conclude that the mere authorization allowing the LECs to bundle Category II and III services on this basis constitutes an anticompetitive tying arrangement. Federal case law supports the conclusion that bundling of services does not constitute an unlawful tying when the offered terms do not preclude purchase of the separate services. (*Robert's Waikiki U-Drive*, 732 F.2d 1403, 1407 (9th Cir. 1989).)"

¹⁷ See protest, pp. 4-5.

¹⁸ D.94-09-065, 56 CPUC2d 1171994 Cal. PUC LEXIS 681 Part 2 * 40.

To the best of Cox's knowledge, the Commission has not adopted a policy that requires a carrier to show that more than one customer will subscribe to its tariffed service offerings. As such, QCC's suggestion that a "factual investigation" about such completely misses the mark. Similarly, Cox is not aware of any Commission decision that prohibits carriers from bundling intrastate and interstate services and exercising their existing pricing flexibility in setting prices for such services.¹⁹ This flexibility is necessary in today's communications market so that carriers may package their service offerings to best serve their customers needs and remain competitive.²⁰

Importantly, the bundling of services is not discriminatory and does not harm QCC because it may continue to purchase Cox's stand-alone intrastate switched access service at rates that are consistent with the rate-cap adopted by the Commission in D.07-09-020.

QCC's Protest.

Although lengthy, the protest boils down to QCC suggesting that the optional service offering in Cox's tariff would be discriminatory and that the "advice letter" proposes an unjust, unreasonable and discriminatory practice. QCC's protest is without merit because it is based on the following erroneous assumptions:

- GO 96-B authorizes QCC to submit a protest;
- CLECs like Cox offer "non-competitive services;"
- carriers are prohibited from bundling intrastate and interstate services;
- carriers are prohibited from offering discounts on one service that are based on the purchase of another service that is not subject to the Commission's jurisdiction; and
- there is no nexus between Cox offering switched access and special access services.

First, the Communications Division should reject the protest because GO 96-B plainly prohibits the type of protest QCC filed. General Rule 7.4.2 describe the basis for submitting protests, and importantly, gives examples of advice letter filings that are *not* subject to protest:

- Example 2. Where the *Commission does not regulate the rates of a specific type of utility*, an advice letter submitting a rate change by a utility of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.
- Example 3. Where the Commission has *established a rate band within which a utility is free to set rates for a specific type of service*, an advice letter submitting a rate change within the band for a service of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.²¹

¹⁹ For example, AT&T filed its Advice Letter No. 35556 last year in which it obtained approval for the format and content of the Master Agreement it utilizes for customers entering into *multi-state* and in some cases *multi-nation* contracts under which AT&T California and its affiliates provide communications services, subject to negotiated pricing schedules, terms and conditions. AT&T, like most other carriers, may offer intrastate, interstate and international services to its customers subject to the pricing flexibility the Commission has granted them. Cox is not aware of any protest to this advice letter and that it became effective.

²⁰ For example, AT&T filed its Advice Letter No. 35556 last year in which it obtained approval for the format and content of the Master Agreement it utilizes for customers entering into *multi-state* and in some cases *multi-nation* contracts under which AT&T California and its affiliates provide communications services, subject to negotiated pricing schedules, terms and conditions. AT&T, like most other carriers, may offer intrastate, interstate and international services to its customers subject to the pricing flexibility the Commission has granted them. Cox is not aware of any protest to this advice letter and that it became effective.

²¹ GO 96-B, General Rule 7.4.2. (Emphasis added).

Both of those examples are applicable here. The Commission does not regulate Cox's intrastate switched access rates as discussed herein. Further, the Commission has set a rate cap for intrastate switched access rates for CLECs and it has approved AT&T's and Verizon's intrastate switched access rates. Cox's discounted rates plainly fall within that range, and thus, they are not subject to protest, as detailed in Example 3.

Second, one of the most glaring errors in the protest is QCC's characterization of intrastate switched access services as a "noncompetitive" service and the suggestion that the Commission has adopted rules governing such. As discussed above, the Commission has not defined services offered by CLECs like Cox as being "noncompetitive." In fact, other than Lifeline and other services subject to public policy program requirements, the Commission does not require CLECs to offer – or prohibit them from offering - any service or any bundle of services at any given price. QCC's use of the term "noncompetitive service" is not meaningful, and thus, all of its arguments premised on such lack merit and must necessarily be rejected.

Third, neither the California Public Utilities Code nor any Commission decision prohibits or even suggests that carriers may not bundle intrastate services subject to the Commission's jurisdiction and for which pricing flexibility is granted with interstate services or other services which are not subject to the Commission's jurisdiction. Nonetheless, the protest implies that doing so would be inappropriate to the extent there is no nexus between the two services. While QCC implies that a nexus between services must exist, it does not cite to any law or Commission decision with that requirement.²² Here again, QCC is making up rules instead of applying the Commission's rules.

But even *if* there were a nexus requirement, legitimate nexuses between switched and special access exist. For example, it is reasonable for Cox to create a service offering to encourage IXCs to purchase directly from Cox the dedicated transport services (*i.e.* special access) used to connect the given IXC's network and Cox. An IXC is not required to do so and could buy these services from any other CLEC, ILEC or the IXC's affiliate. The IXC establishing dedicated trunks with Cox would reduce Cox's transport costs.²³

Indeed, how carriers connect their networks impact prices and applicable terms. For example, when adopting ILEC resale rates, then-Pacific Bell (*i.e.* now-AT&T) justified making different pricing available to switchless resellers and facilities-based resellers based on the fact that the switchless resellers do not pay for dedicated access.²⁴

Qwest is wrong in implying that there must be a "nexus" between services that are bundled and offered at given rates. But even if a nexus requirement were to exist, the Commission has already

²² Instead, QCC sites to a declaration filed in the complaint proceeding that specifically addresses "non-competitive, regulated services" which are not at issue here. Protest, p. 4, n. 7.

²³ QCC ignores the fact that the discounts set forth in Advice Letter 731 are also based on the existence of direct or tandem trunking.

²⁴ The Commission concluded as follows: "The retention of this restriction is also consistent with the way that volume discounts are determined in the interexchange toll market. As explained by Pacific, customers of switchless resellers in that market that lack dedicated access cannot qualify for volume discounts. Likewise, CLC resellers perform no switching functions that aggregate toll traffic. Therefore, the interexchange toll market provides no basis to justify a volume-based discount for CLCs that aggregate toll volumes." D.97-08-059, p. 1997 Cal. PUC LEXIS 697 *86-87.

recognized that there is a connection between terms and pricing for dedicated access and switched access. Accordingly, the Communications Division must reject the protest.

While it suggests offering intrastate and interstate services together with discounted pricing for the intrastate services is discriminatory, QCC never gets around to describing any actual unlawful discrimination. What QCC effectively complains about is the size of *its* customer base and that other carriers that have much larger customer bases may take advantage of Cox's tariff offering. Cox offering services at prices set forth in a tariff that some, but not all customers may contract for does not amount to unlawful discrimination; it amounts to Cox developing competitive service offerings to grow its business and making such service offering available to similarly situated customers .

Requested Relief.

QCC states that Advice Letter 731 is an end run around QCC's pending complaint and suggests the advice letter should be rejected or suspended. First, the logic and legal support for this proposition are wholly lacking. The protest itself states its complaint concerns "agreements" between defendants and IXCs.²⁵ Neither the protest or the complaint concern the new tariff language included in Advice Letter 731.

Second, QCC states that the Commission "will likely need" to address is whether defendant CLECs are prohibited from discounting switched access rates based on the purchase of interstate services. QCC did not request this relief in its complaint, nor is it an issue that QCC has raised in its complaint or amended complaint. In fact, Qwest in no way contests the validity of the contracts but requests that the Commission order defendants to bill QCC as the most preferential rate charged to any other IXC per such.²⁶

Third, by requesting that the advice letter be rejected or suspended, QCC seeks to effectively prohibit Cox and other defendants from conducting their normal operations and modifying their intrastate switched access offerings until the complaint proceeding is completed. That is not a reasonable request. Moreover, QCC will not be harmed by the advice letter taking effect because QCC will continue to pay intrastate switched access charges that comply with D.07-12-020, or it may seek to obtain the service offer set forth in Advice Letter 731 or otherwise enter into negotiations for a contract with Cox.

Fourth, it appears that QCC filed the protest for purposes of harassing Cox. As detailed herein, QCC is protesting Cox's advice letter even though the protest is simply scant on substantive law. Moreover, QCC did not protest PAETEC, another defendant in C.08-08-006, filing its advice letter 118 on August 17, 2009 which includes an agreement with credits applicable to intrastate switched access rates based on the purchase of other services, including dedicated access services. Cox urges the Communications Division to consider QCC not protesting that advice letter but now electing to protest Cox's advice letter which seeks to implement a service offering that is similar.

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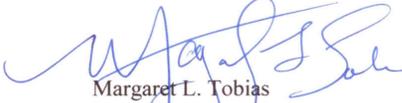
²⁵ Protest, p. 5.

²⁶ Amended Complaint, ¶21(f).

Mr. Jack Leutza
May 7, 2010
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As detailed herein, the protest is one that is not permitted under GO 96-B, General Rule 7.4.2 and otherwise wholly lacks any substantive basis. For all the reasons set forth herein, Cox respectfully requests that the Communications Division reject the protest.

Very truly yours,



Margaret L. Tobias
Attorney for Cox

cc: Leon Bloomfield, counsel for QCC (via email)
Douglas Garrett, Cox California Telcom, LLC (via email)
Esther Northrup, Cox California Telcom, LLC (via email)

Exhibit B
Communications Division Email Suspending Cox Advice Letter 731

Marg Tobias

From: richard.fish@cpuc.ca.gov
Sent: Tuesday, May 11, 2010 12:42 PM
To: Martin.Corcoran@cox.com
Cc: lmb@wblaw.net; alex.koskinen@cpuc.ca.gov; michael.amato@cpuc.ca.gov
Subject: U-5684-C AL 731 suspension notice

Mr. Corcoran,

The Communications Division has suspended Cox California Telecom II, LLC Advice Letter No 731 for 120 days (5/9/10 to 9/7/10) for further time to evaluate the protest by Qwest Communications Company and the company's response to the protest. The AL suspension process is described in Section 7.5.2 of General Order 96B.

Thank you for your attention to this matter.

PROOF OF SERVICE

I, Margaret L Tobias, the undersigned, hereby declare that, on May 14, 2010, I caused a copy of the foregoing:

RESPONSE OF COX CALIFORNIA TELCOM, LLC DBA COX COMMUNICATIONS, TO QWEST COMMUNICATIONS COMPANY LLC REQUEST FOR JUDICIAL NOTICE

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

- [X] Via U.S. Mail and email to the Assigned Commissioner's office
- [X] Via U.S. Mail and email to the assigned Administrative Law Judge
- [X] Via Email Service to the parties included on the attached service list

Dated: May 14, 2010 at San Francisco, California.

/s

Margaret L. Tobias

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists
Proceeding: C0808006 - QWEST COMMUNICATIONS
Filer: QWEST COMMUNICATIONS CORPORATION (U5335C)
List Name: LIST
Last changed: May 5, 2010

Via Email

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