

BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA



**FILED**  
12-17-10  
04:59 PM

Order Instituting Rulemaking on the  
Commission's Own Motion to establish  
Consumer Rights and Protection Rules  
Applicable to All Telecommunications  
Utilities.

R.00-02-004  
(Filed February 3, 2000)

**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES  
IN OPPOSITION TO APPLICATION FOR REHEARING OF  
DECISION 10-10-034 BY COX CALIFORNIA TELECOM, LLC DBA COX  
COMMUNICATIONS AND COX TMI WIRELESS**

DALE PIIRU  
Senior Analyst  
Division of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Phone: (415)703-1726  
Fax: (415) 703-1673  
[dgp@cpuc.ca.gov](mailto:dgp@cpuc.ca.gov)

HIEN VO  
Staff Counsel  
Division of Ratepayer Advocates  
California Public Utilities Commission  
320 W. Fourth Street, Ste 500  
Los Angeles, CA 90013  
Phone: (213) 620-2021  
Fax: (213) 576-7007  
[hcv@cpuc.ca.gov](mailto:hcv@cpuc.ca.gov)

December 17, 2010

Pursuant to Rule 16.1 of the California Public Utilities Commission’s Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits this response in opposition to the Application for Rehearing of Decision (D.) 10-10-034 by Cox California Telecom, LLC dba Cox Communications and Cox TMI Wireless, LLC (“Cox”) filed on December 2, 2010.

## I. INTRODUCTION

After a lengthy four-year proceeding, the Commission revised Part 4 of General Order (G.O.) 168, *Market Rules to Empower Consumers and to Prevent Fraud – Rules Governing Cramming Complaints*, in D.10-10-034. The revised rules in G.O. 168, Part 4 established reporting requirements applicable to all Billing Telephone Corporations,<sup>1</sup> including resellers and wireless carriers, and Billing Agents<sup>2</sup> regarding customer complaints of or refunds issued for unauthorized charges placed on customers’ phone bills (“cramming”). D.10-10-034 also provided exemptions from the reporting rules for two narrowly-defined types of carriers – (a) pre-paid wireless carriers and (b) carriers that provide service only to business and wholesale customers – as adopted in Rule 11.6 of G.O. 168, Part 4.

Cox’s Rehearing Application argues that Rule 11.6 should be expanded to allow *any* carrier that provides pre-paid wireless service or services to business or wholesale customers to file for an exemption from reporting complaints or refunds for those types of services.<sup>3</sup> Among other things, Cox complains that the Commission ignored its comments and contends that the record does not support Rule 11.6’s limitation to types of carriers as opposed to types of services.<sup>4</sup> None of Cox’s arguments, however,

---

<sup>1</sup> G.O. 168, Part 4 defines *Billing Telephone Corporation* as “a telephone corporation that bills a Subscriber for products or services”; *Telephone Corporation* means “any telephone corporation (as defined in Pub. Util. Code § 234) operating within California. This term includes resellers and wireless telephone service providers.”

<sup>2</sup> G.O. 168, Part 4 defines *Billing Agent* as “any entity which provides billing services for Service Providers directly or indirectly through a Billing Telephone Corporation.”

<sup>3</sup> Cox Rehearing Application at 6.

<sup>4</sup> *Ibid.* at 5 and 7.

establishes legal error. Essentially, Cox seeks a reweighing of the evidence and attacks a policy decision made by the Commission in the proper exercise of its discretion.

Therefore, the Commission should deny Cox's Rehearing Application.

**II. THE COMMISSION DID NOT ERR IN MAKING A POLICY DECISION TO LIMIT THE REPORTING EXEMPTIONS TO ONLY TWO VERY SPECIFIC TYPES OF CARRIERS**

**A. The Exemption from Reporting for Carriers that Provide Service *Only* to Business or Wholesale Customers Is Supported By Record Evidence.**

Cox argues that “neither the Decision nor the record as a whole support Rule 11.6 being limited to carriers that provide ‘only’ business services or wholesale customers (sic).”<sup>5</sup> This argument is without merit. With regard to this exemption, the Decision based this exemption on tw telecom's comments filed in the underlying proceeding. tw telecom argued that “applying the proposed record keeping and reporting rules to carriers that provide only business and wholesale telecommunications services is unwarranted, and that the Commission should exempt these carriers from the proposed rules as the Commission did with in-language rules in D.07-07-043.”<sup>6</sup> As Rule 11.6 (b) reflects tw telecom's recommendation by exempting “carriers that provide service only to business or wholesale customers,” this exemption is supported by record evidence.

**B. The Commission Intended to Narrowly Tailor Rule 11.6 (b) for Carriers that Provide Service *Only* to Business or Wholesale Customers.**

DRA disagrees with the Decision's inclusion of any exemptions because DRA presented evidence of cramming complaints from the types of exempted carriers<sup>7</sup>. Nonetheless, the Decision makes clear that the Commission did consider other comments proposing broad exemptions.

---

<sup>5</sup> Cox Rehearing Application at 7.

<sup>6</sup> See D.10-10-034, *mimeo*, at 17.

<sup>7</sup> See e.g., DRA Comments (10/4/10) at 8-9.

Finally, in response to many comments seeking blanket exemptions from the reporting rules, a process for requesting such an exemption is created for pre-paid wireless carriers and carriers that provide service only to business and wholesale customers.<sup>8</sup>

In addition to tw telecom's comments, the Decision also acknowledged the comments of the California Association of Competitive Telecommunications Companies (CALTEL). Notably, CALTEL made a recommendation similar to Cox – “the exemption for carriers that provide service only to business or wholesale customers should ... apply to business services, even if provided by a company that also provides residential services.”<sup>9</sup> The Decision also referenced comments by Cbeyond Communications, LLC, which found the proposed rules overly broad and “recommended that the Commission focus its resources on carriers with a history of applying or allowing unauthorized charges on residential and small business customer bills, rather than on carriers that serve larger businesses.”<sup>10</sup>

The Decision's inclusion of these comments, especially those by CALTEL, demonstrates that the Commission already considered, and rejected, Cox's recommendation to modify Rule 11.6(b) to exempt types of services rather than types of carriers. As articulated above, Rule 11.6(b) is supported by the record and therefore, the Commission properly exercised its discretion in making a policy decision to only exempt from reporting requirements those carriers that only serve business or wholesale customers. Cox's attempt to have the Commission reconsider its policy decision in its Rehearing Application is thus inappropriate.

Moreover, the Commission had a rational basis for limiting the exemption in the manner prescribed in the Decision for carriers only providing business or wholesale services. The Decision notes, in referencing the comments submitted by CALTEL, Cbeyond, and tw telecom, that all of those types of carriers provided telecommunications

---

<sup>8</sup> D.10-10-034, *mimeo*, at 39.

<sup>9</sup> *Ibid.* at 40.

<sup>10</sup> *Ibid.* at 15 (footnote omitted).

services to businesses only and did not provide billing and collection services for third parties.<sup>11</sup> As the reporting rules focus on third party billing, a function that these carriers do not perform, a reviewing court likely would find that the Commission reasonably exempted them from reporting. Thus, the Commission should reject Cox's claim that Rule 11.6 "unreasonably discriminates against some carriers and the Decision does not include any basis for the disparate treatment."<sup>12</sup>

The Commission should also deny Cox's request to expand the exemptions because the Commission did not intend to create reporting exemptions for wireline Billing Telephone Corporations, who remain subject to the complaint reporting requirements adopted in D.00-03-020, such as Cox. The Decision explicitly stated as follows:

For the wireline Billing Telephone Corporations and their Billing Agents, we retain the current complaint reporting requirements adopted in D.00-03-020. As noted by AT&T, these requirements have been in place since 2000, and there is insufficient basis to conclude that they are deficient.<sup>13</sup>

Because the reporting rules pursuant to D.00-03-020 do not allow any carriers to seek any exemptions from reporting, Cox's request contravenes the Commission's clear intent in the Decision to maintain the status quo for wireline Billing Telephone Corporations and their Billing Agents.

### **III. CONCLUSION**

The Commission should deny Cox's Rehearing Application because Cox fails to demonstrate legal error in D.10-10-034. Rather, Cox inappropriately attempts to have the Commission reweigh the evidence and seeks to undermine the policy decision the Commission duly made. DRA believes the Commission's Decision to distinguish and assign exemptions based on types of carriers is appropriate, non-discriminatory, and is

---

<sup>11</sup> See *Ibid.* at 13, 15, and 17.

<sup>12</sup> Cox Rehearing Application at 6.

<sup>13</sup> D.10-10-034, *mimeo*, at 37.

supported by the record. Thus, the Commission intended to adopt Rule 11.6 in General Order 168, Part 4, and had a rational basis for exempting carriers that only serve business and wholesale customers. The Commission did not err in adopting D.10-10-034.

Respectfully submitted,

/s/ HIEN C. VO

---

Hien C. Vo

Attorney for Division of Ratepayer  
Advocates

California Public Utilities Commission  
320 W. Fourth Street, Ste. 500  
Los Angeles, CA 90013  
Phone: (213) 620-2021  
Email: [hcv@cpuc.ca.gov](mailto:hcv@cpuc.ca.gov)

December 17, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES IN OPPOSITION TO APPLICATION FOR REHEARING OF DECISION 10-10-034 BY COX CALIFORNIA TELECOM, LLC DBA COX COMMUNICATIONS AND COX TMI WIRELESS** to the official service list in **R.00-02-004** by using the following service:

**E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

**U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **December 17, 2010** at San Francisco, California.

/s/           JOANNE LARK            
Joanne Lark

**SERVICE LIST**  
**R.00-02-004**

Phyllis.Whitten@ftr.com  
charak@nclc.org  
barbalex@ctel.net  
jbeahn@skadden.com  
slancellotta@butzeltp.com  
dadams@kelleydrye.com  
Terrance.Spann@hqda.army.mil  
rmorton@burr.com  
dbrown@rumberger.com  
sylvia.castillo@bsgclearing.com  
kmudge@Covad.com  
christina.tusan@doj.ca.gov  
eperez@atty.ci.la.ca.us  
henry.weissmann@mto.com  
andrew.song@mto.com  
mhartigan@cwa9400.com  
jacque.lopez@verizon.com  
jesus.g.roman@verizon.com  
keith@preferredlongdistance.com  
carl@wirelessconsumers.org  
esther.northrup@cox.com  
KMelville@SempraUtilities.com  
lori.ortenstone@att.com  
mshames@ucan.org  
mdjoseph@adamsbroadwell.com  
elaine.duncan@verizon.com  
margarita.gutierrez@sfgov.org  
wit@cpuc.ca.gov  
hcv@cpuc.ca.gov  
sjy@cpuc.ca.gov  
savama@consumer.org  
cmailloux@turn.org  
bfinkelstein@turn.org  
steve.bowen@bowenlawgroup.com  
anna.kapetanakos@att.com  
david.discher@att.com  
Kristin.L.Jacobson@sprint.com  
jwmctarnaghan@duanemorris.com  
stephen.h.kukta@sprint.com  
marg@tobiaslo.com  
ashm@telepacific.com  
pcasciato@sbcglobal.net  
pcasciato@gmail.com  
pacasciato@gmail.com  
pacasciato@gmail.com  
oshirock@pacbell.net  
jarmstrong@gmssr.com  
smalllecs@cwclaw.com  
mschreiber@cwclaw.com  
mday@goodinmacbride.com

prosvall@cwclaw.com  
rcardozo@reedsmith.com  
tmacbride@goodinmacbride.com  
suzannetoller@dwt.com  
StoverLaw@gmail.com  
doug94119@sbcglobal.net  
ens@loens.com  
lex@consumercal.org  
john\_gutierrez@cable.comcast.com  
clay@deanhardtlaw.com  
betsy.granger@att.com  
isabelle.salgado@att.com  
anitataffrice@earthlink.net  
lmb@wblaw.net  
pucservice@dralegal.org  
wcooper@fcblaw.com  
Charlie.Born@ftr.com  
Norine\_Marks@dca.ca.gov  
cbapowers@aol.com  
sblackledge@calpirg.org  
lesla@calcable.org  
cindy.manheim@cingular.com  
aisar@millerisar.com  
dklein@legal.org  
jon.franke.@bingham.com  
r.delsesto@bingham.com  
judypau@dwt.com  
Susan.Jackson@ftr.com  
john.scott@verizonwireless.com  
WBrantl@KelleyDrye.com  
telecomlit@arentfox.com  
channon@aarp.org  
mcherry@icnlt.com  
jsilva@crain.com  
jgjacobs@jacobskolton.com  
kelli.cubeta@bsgclearing.com  
Marjorie.Herlth@Qwest.com  
lstevenson@att.com  
rex.knowles@xo.com  
jaeger4329@earthlink.net  
pam@consumerwatchdog.org  
harvey@consumerwatchdog.org  
don.eachus@verizon.com  
bruce00cx@aol.com  
lbiddle@ferrisbritton.com  
art@ucan.org  
pshiple@cricketcommunications.com  
michael.bagley1@verizonwireless.com  
thomas.mahr@verizonwireless.com  
framer@socal.rr.com

mmulkey@arrival.com  
bnusbaum@turn.org  
ewallace@jonesday.com  
rcosta@turn.org  
cestewart@jonesday.com  
Burton.Gross@mto.com  
mark.berry@att.com  
michelle.choo@att.com  
thomas.selhorst@att.com  
nlubamersky@telepacific.com  
deyoung@caltel.org  
sleeper@manatt.com  
joshdavidson@dwt.com  
pvicencio@metropcs.com  
lmartin@pacwest.com  
ysmythe@caltel.com  
rl@comrl.com  
mmoreno@aarp.org  
Adam.Sherr@Qwest.com  
cwp@cpuc.ca.gov  
kyl@cpuc.ca.gov  
mrx@cpuc.ca.gov  
ayk@cpuc.ca.gov  
dgp@cpuc.ca.gov  
jwh@cpuc.ca.gov  
jlt@cpuc.ca.gov  
jol@cpuc.ca.gov  
jmh@cpuc.ca.gov  
knr@cpuc.ca.gov  
kpp@cpuc.ca.gov  
ljw@cpuc.ca.gov  
lmb@cpuc.ca.gov  
mab@cpuc.ca.gov  
mnc@cpuc.ca.gov  
nyg@cpuc.ca.gov  
rcm@cpuc.ca.gov  
rhh@cpuc.ca.gov  
rw1@cpuc.ca.gov  
leh@cpuc.ca.gov  
raw@cpuc.ca.gov  
sbs@cpuc.ca.gov  
sni@cpuc.ca.gov  
sim@cpuc.ca.gov  
tdp@cpuc.ca.gov  
xsh@cpuc.ca.gov  
gal@cpuc.ca.gov

Holly Henderson  
MGR, Regulatory Matters  
GTW Mobilnet of Central CA  
One Verizon Place, BLDG A  
Alpharetta, GA 3004

Mary E. Wand  
Attorney at Law  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105  
For: GTE Wireless

Walter McGee  
Working Assets Funding Service  
101 Market Street #700  
San Francisco, CA 94105

Darren Weingard  
Reed Smit LLP  
Two Embaradero Center, Suite 2000  
San Francisco, CA 94111

Laila Correa  
Latino Issues Forum  
160 Pine Street, Suite 700  
San Francisco, CA 94111

Joann Rice  
Southwestern Bell Communication Service  
5130 Hacienda Dr, FL 1  
Dublin, CA 94568

Ignacio Hernandez  
Consumer Federation of California  
428 J Street, Suite 400  
Sacramento, CA 95814

Harry N. Malone  
Bingham McCutchen LLP  
2020 K Street, NW  
Washington, CA 20006  
For: Paetec Communications, Inc.

Robert A. Smithmidford  
Vice President  
Bank of America  
8011 Villa Park Drive  
Richmond, VA 23228

John Di Bene  
Vice President & General Counsel  
SBC Long Distance  
5130 Hacienda Dr, Fl 1  
Dublin, CA 94569

William P. Adams

Adam Electrical Safety Consulting  
716 Brett Avenue  
Rohnert Park, CA 94928

Josh P. Thieriot  
Regulatory Team  
Pac-West Telecomm  
4210 Coronado Ave, Ste A  
Stockton, CA 95204

Nancy Griffin  
Regulatory Compliance  
Pac-West Telecomm. Inc.  
4210 Coronado Ave, Ste A  
Stockton, CA 95204

Peter Lewis  
Seattle Times  
PO BOX 70  
Seattle, WA 98111