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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cox California Telcom, LLC (U5684C),

Complainant,

vs.

Verizon California, Inc. (U1002C), MCI Metro
Access Transmission Services (U5253C), MCI
Communications Services, Inc. (U5378C),

Defendants.

Case 11-05-012
(Filed May 9, 2011)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure this Scoping Memo is issued to set the issues to be addressed and the schedule. It also designates the presiding officer.

Background

This case arises from a dispute between the parties regarding the interpretation of two Interconnection Agreements (ICAs) between Complainant (Cox) and Defendants Verizon California, Inc. and MCIMetro Access Transmission Services (collectively, Verizon). The dispute may be briefly summarized as follows. The parties exchange traffic pursuant to the ICAs. The ICAs recite that with the exception of defined "Local Traffic" which is exchanged on a bill-and-keep basis, Verizon shall compensate Cox for terminating Verizon

traffic at either the Switched Access Tariff Rate in Cox's state tariff (for calls originating and terminating within California) or the Switched Access Tariff Rate in Cox's Federal Communications Commission (FCC) tariff (for interstate calls). Since January 2010, Verizon has refused to compensate Cox for such calls at either the state tariff rate or the federal tariff rate. Instead, Verizon has compensated Cox for terminating such traffic at the much lower federal information services rate of \$0.0007 cents per minute of use.

Verizon contends that the switched access rates contained in Cox's tariffs apply only to traffic which is wholly transported using the Time Division Multiplexing Algorithm (TDMA). According to Verizon, all of the traffic in question is either wholly or partly carried over the Internet using the Voice over Internet Protocol (VOIP) or is originated or terminated using Internet Protocol (IP) format. Verizon asserts that applicable FCC rulings exempt all VOIP traffic and all traffic originated or terminated in IP format from the switched access tariff regimes. In short, Verizon contends that (1) otherwise intrastate traffic is rendered jurisdictionally interstate when any part of it is carried over the Internet using VOIP or it is originated or terminated in IP format; (2) all such IP-related traffic is "information service" traffic rather than "telecommunication" traffic.

Cox contends that the ICAs are valid and binding contracts whose obligations are not altered if some portion of the traffic is carried over the Internet using VOIP rather than TDMA or the parties originate or terminate the traffic using IP format. In short, Cox contends that all Verizon-originated traffic, other than Local Traffic, terminated by Cox is compensable at the applicable state or federal switched access rate.

In addition to this basic dispute over the interpretation of the ICAs and the applicability of the state and federal tariffs or the federal information service rate, the parties have a related disagreement regarding the percentage of interstate use (PIU) to be assumed for traffic which cannot be readily identified as either intrastate or interstate. Verizon assigns a higher PIU to this traffic than does Cox.

A. Issues to be Considered

Following the October 11, 2011 pre-hearing conference, at the direction of the assigned Administrative Law Judge the parties prepared memoranda of issues proposed for inclusion in this Scoping Memo. Having reviewed the pleadings and the parties' respective issue memoranda, I specify the overall scope of this proceeding as follows: on what legal basis and at what rate or rates should Verizon compensate Cox for terminating traffic, other than Local Traffic? To answer that question, the following sub-issues are included in the scope of this proceeding:

1. Is Interstate traffic that originates or terminates in IP format or is carried wholly or partly over the Internet using VOIP, "telecommunication" traffic or "information service" traffic, as those terms are interpreted by the FCC?
2. If the traffic described in Issue 1 is telecommunication traffic, at what rate and on what basis should Verizon compensate Cox for terminating it?
3. If the traffic described in Issue 1 is information service traffic, at what rate and on what basis should Verizon compensate Cox for terminating it?
4. Is traffic that originates and terminates within the State of California and is either originated or terminated in IP format or carried wholly or partly over the Internet using VOIP, "intrastate" traffic or "interstate" traffic as those terms are interpreted by the FCC?

5. If the traffic described in Issue 4 is intrastate traffic, at what rate and on what basis should Verizon compensate Cox for terminating it?
6. If the traffic described in Issue 4 is interstate traffic, at what rate and on what basis should Verizon compensate Cox for terminating it?
7. What PIU should be applied to otherwise unidentifiable traffic?

In its issue memorandum, Verizon proposed including several affirmative defenses in the scope of this proceeding. After reviewing that proposal, I have decided to limit this proceeding to the issues raised by the complaint. This limitation is without prejudice to Verizon's ability, should it wish to do so, to pursue its independent claims against Cox in a separate proceeding.

B. Schedule

Event	Date
Cox Opening Testimony	March 5, 2012
Verizon Reply Testimony	April 2, 2012
Cox Rebuttal Testimony	April 16, 2012
Evidentiary Hearings Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102	May 7-9, 2012 10:00 a.m.
Concurrent Opening Briefs	June 1, 2012
Concurrent Reply Briefs	June 15, 2012
Presiding Officer's Decision	September 28, 2012

C. Designation of Presiding Officers

Administrative Law Judge Karl J. Bemesderfer is designated as the presiding officer.

IT IS RULED that:

1. The scope of issues in this proceeding is as set forth in Section A of this Ruling.
2. The schedule for this proceeding is as set forth in Section B of this ruling.
3. Karl J. Bemesderfer is designated as the Presiding Officer of this proceeding.
4. Hearings are necessary.

Dated February 24, 2012, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL
Catherine J.K. Sandoval
Assigned Commissioner