



FILED

09-20-11

04:34 PM

KJB/eam 9/20/2011

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)

ADMINISTRATIVE LAW JUDGE'S RULING GRANTING MOTION OF COX CALIFORNIA TELCOM, LLC TO TAKE OFFICIAL NOTICE OF AN ORDER OF THE FLORIDA PUBLIC SERVICE COMMISSION AND DENYING MOTION OF VERIZON CALIFORNIA, INC. TO DISMISS COMPLAINT WITHOUT PREJUDICE

On June 27, 2011, Defendant Verizon California, Inc. (Verizon) filed a motion to dismiss the complaint in this matter without prejudice. The motion states that the Federal Communications Commission (FCC) in a pending rulemaking has identified "intercarrier compensation for VoIP (Voice Over Internet Protocol) traffic" as one of the issues it intends to resolve and that such resolution is expected "within a few months." Verizon asserts that intercarrier compensation for VoIP traffic is the subject of the present complaint and any

decision made by the Commission would be superseded by the FCC rulemaking.

In response to the Verizon motion, Complainant Cox California Telcom, LLC (Cox) asserts that the pending FCC rulemaking is unlikely to deal with the issues raised by this complaint and, even if the FCC rulemaking does address those issues, there is no guarantee that it will do so in a timely manner. Cox also asserts that any decision in the FCC rulemaking will have prospective effect only and is therefore inapplicable to this dispute about past intercarrier compensation. Finally, Cox points out that a central element in its disagreement with Verizon, namely, the calculation of “percentage of Internet usage,” (PIU) is not part of the FCC rulemaking.

In reply, Verizon notes that the FCC has specifically sought comment on the question of whether to give retroactive effect to its decision in this proceeding. Verizon argues that the PIU issue can be separated from the rest of the Cox complaint and, as an alternative to a dismissal without prejudice, this proceeding can go forward to consider only that question.

On September 2, 2011 Cox filed a motion asking the Commission to take official notice of an order of the Florida Public Service Commission (FL PSC) issued August 26, 2011. In the underlying proceeding, Verizon’s Florida affiliates asked the FL PSC to dismiss an intercarrier compensation dispute between them and a Florida-based Competitive Local Exchange Carrier (Bright Star) on the same grounds as Verizon has advanced in this matter. The FL PSC declined to dismiss the action and addressed Verizon’s federal arguments as follows:

“Verizon Business has gotten ahead of the facts in its assumption and assertion that the FCC has preempted state consideration of all matters relating, however indirectly, to

VoIP service. Our review of FCC and federal court decisions indicate that this is not the case with respect to the provision of fixed VoIP service or to the method of intercarrier compensation for telecommunications providers that translate VoIP traffic for transfer to the public switched telecommunications network.”¹

“In the absence of a dismissal, Verizon Business seeks a stay of the proceedings until the FCC completes its rulemaking process, ostensibly to include intercarrier compensation for fixed VoIP services and the transfer of that traffic to the PSTN by telecommunications carriers like Bright House CLEC. As Bright House CLEC points out, however, there is no guarantee that the FCC will resolve these issues soon, and Bright House suffers financial harm in the interim.”²

I concur with the reasoning of the Florida Public Service Commission and conclude that (a) it is by no means certain that the FCC rulemaking will resolve the intercarrier compensation issues in this proceeding (b) delay in resolving these issues is harmful to Cox and (c) the FCC may not act promptly in spite of its announced intention to do so.

IT IS RULED that:

1. The motion of Cox California Telecom, LLC for judicial notice of the August 26, 2011 order of the Florida Public Service Commission is granted.
2. The motion of Verizon California, Inc. to dismiss this proceeding without prejudice is denied.

¹ Florida Public Service Commission Order No. PSC-11-0359-PCO-TP, at 7.

² *Ibid.*, at 8.

C.11-05-012 KJB/eam

Dated September 20, 2011, at San Francisco, California.

/s/ KARL J. BEMESDERFER
Karl J. Bemederfer
Administrative Law Judge