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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Cox California Telcom, LLC (U5684C),

Complainant,

vs.

Vaya Telecom, Inc. (U7122C)

Defendant.

Case 11-09-007  
(Filed September 9, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING MEMORIALIZING LAW AND  
MOTION RULING, RECEIVING EXHIBITS IN EVIDENCE  
AND REVISING SCHEDULE**

**1. Summary**

This ruling memorializes my July 6, 2012, oral rulings on the parties' motions to file various hearing exhibits under seal, receives in evidence specified exhibits that were not received at evidentiary hearing and revises the schedule to conform to the parties' recent proposal.

**2. Procedural Background**

At the conclusion of evidentiary hearing (EH) on June 12, 2012, I declined to receive in evidence a number of exhibits sponsored by either Cox California Telecom, LLC (Cox) or Vaya Telecom, Inc. (Vaya) but set a subsequent law and motion hearing to review the confidentiality issues asserted. I directed the parties to review their initial confidentiality claims and by June 26, 2012, to file

motions identifying what they wished to seal and the legal basis for doing so. I also set a law and motion hearing for July 6, 2012.

### **3. Motions to Seal Evidence**

#### **3.1 Overview**

At the conclusion of EH, I postponed ruling on all requests for confidential treatment. Accordingly, I took no action on requests to receive the following exhibits in evidence: Exhibits 1-C, 3-C, 4-C, 51-C, 52-C, 53-C and 54-C. This ruling memorializes my disposition, at the recent law and motion hearing, of the motions to effectively withdraw Exhibit 1-C (discussed below) and to file some part, or the entirety, of the other exhibits under seal. For clarity, I discuss each exhibit in the context of the redacted public version (e.g., Exhibit 3) and corresponding, complete version associated with some claim of confidentiality (e.g., Exhibit 3-C).

Public Utilities Code Section 583, the Commission's General Order (GO) 66-C (and other statutes cited there), and various decisions of this Commission govern public disclosure of information furnished to the Commission in the context of a public hearing. Generally, in the absence of an express legal ban or a recognized, contravening harm, state policy supports public disclosure. In their briefs, both Cox and Vaya discuss the applicability here of federal and state laws that require carriers to protect customer proprietary network information (CPNI), particularly 47 U.S.C. § 222 and Public Utilities Code § 2891. Both Cox and Vaya also recognize that GO 66-C, Section 2.2(b) expressly allows protection of "reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage." Vaya's motion includes the declaration of the Chief Financial Officer of O1 Communications, Inc. (O1);

Vaya is an affiliate of O1. The declaration describes the nature of Vaya's business as a voice over internet (VoIP) provider and sets forth why Vaya deems its call detail records (CDRs) and the Cox invoices to be confidential and competitively sensitive in this market sector. While Cox's motion does not include a similar declaration, Cox's in-house counsel was available by telephone bridge on July 6 and addressed the competitive sensitivity to Cox of its VoIP calculations.

Both parties have substantially narrowed their initial claims for confidential treatment of portions of the prepared testimony identified at evidentiary hearing. The remaining claims, as discussed further below, are reasonably asserted and the following exhibits should be filed under seal: Exhibits 3-C, 4-C, 51-C, 52-C, 53-C and 54-C. By July 16, 2012, public, redacted versions of all but Exhibits 52-C and 53-C will be prepared consistent with this ruling as replacements for the public versions identified at hearing. Exhibits 52-C and 53-C are computer disks; there are no public versions of them.

### **3.2 The Exhibits**

Exhibit 1/1-C. This is the opening testimony of Cox's witness Gillan. Cox originally asked the Commission to seal, as Exhibit 1-C, two attachments to the exhibit (referenced as JPG-2 and JPG-3) and related textual references on pages 5 and 7-12. The two attachments are network diagrams which include the names of specific equipment manufacturers; the text refers to particular equipment by the manufacturers' names. Cox deems its use of this equipment to have proprietary and competitive value but has proposed a simple solution that has avoided any need to rule on the confidentiality claims and moreover, results in a fully public exhibit. Cox has offered to substitute a generic reference (e.g., "Cox switch") for the more specific names used in a few places in the diagrams and in the text of the exhibit; Cox has also determined not to pursue a few other, initial

claims to redact text in the exhibit. At hearing, Cox distributed a mock up of its proposal; Vaya reviewed the mock up and did not oppose the proposal.

Therefore, as ruled at hearing, Cox will serve, by July 16, 2012 a replacement for Exhibit 1, which will be prepared consistent with the mock up distributed at hearing and discussed on July 6. Exhibit 1-C is withdrawn.

Exhibit 3/3C. This is the opening testimony of Cox's witness Allen. Cox initially asked the Commission to seal, as Exhibit 3-C, a single attachment to the exhibit (referenced as RLA-2), which is a breakdown by month, for the period March 2011 through March 2012, of the amounts that Cox claims Vaya owes to Cox. The same chart, with some color highlighting added by Vaya, also appears as Attachment 6 to Vaya's Exhibit 51/51-C. Vaya argues that the chart reveals recent, specific quantities of minutes of use (MOUs) disaggregated by category at a level that, if publicly available, could cause competitive harm to Vaya. At hearing, Cox did not oppose Vaya's request that this chart be redacted to show only bill date, invoice number and column headings. I granted Vaya's request to seal the redacted portions of the summary. Accordingly, Cox will serve, by July 16, 2012 a replacement for Exhibit 3, showing RLA-2 in redacted form consistent with the version of Exhibit 51, Attachment 6 appended to Vaya's motion.

Exhibit 4/4-C. This is the rebuttal testimony of Cox's witness Allen. Cox initially asked the Commission to seal, as Exhibit 4-C, text that quantifies the dispute with Vaya (using either MOUs or dollars) at highly aggregate levels as well specific, disaggregate levels. At hearing on July 6, Cox clarified that the data is not confidential to Cox. Vaya expressly narrowed its concerns to extend only to certain disaggregate data, which it claims could cause Vaya competitive harm if publicly released. This data consists of specific quantifications of recent

MOUs, by month, disaggregated by category and Cox's corresponding calculations of the monies Vaya owes Cox. I ruled that the following terms are to be redacted from the public version of Exhibit 4: on page 12, line 1 - the number; on page 18, line 15 - the number; on page 18, line 16 - the dollar amount; on page 18, line 21 - the number; on page 18, line 22 - the dollar amount; page 18, line 23 - the dollar amount; and on page 19, line 6 - the number. Accordingly, Cox will serve, by July 16, 2012 a replacement for Exhibit 3, showing only these redactions. Contrary to my ruling on July 6, however, Cox need not supply a replacement for Exhibit 4-C consisting only of the full text of pages 12, 18, and 19. I will seal the copy identified at EH as Exhibit 4-C.

Exhibit 51/51-C: This is the reply testimony of Vaya witness Mertz. Attachments 3, 7, and the corrected first page of Attachment 11 were given separate exhibit numbers at EH and confidentiality claims associated with them are discussed separately, below. This paragraph concerns confidentiality claims associated with the exhibit text and remaining attachments.

Initially, Vaya asked the Commission to seal, as Exhibit 51-C, portions of the text and various attachments; in its motion and at the July 6 hearing, Vaya's request was narrowed. In some instances Vaya has proposed to replace specific figures (e.g., MOUs, dollar amounts) with percentages, in order to communicate its meaning but avoid confidentiality issues. The continuing requests for confidential treatment rely either on (1) Vaya's assertions that, if released, the disaggregate information about MOUs, etc. could cause it competitive harm and/or that the information contains CPNI for Vaya, or (2) Cox's similar assertions. With the exception of parts of Attachment 15, neither party objects to the other's confidentiality claims.

Regarding the text, I ruled that Vaya will revise or redact the public version of the following pages of Exhibit 51 consistent with the version of Exhibit 51 attached to its motion: pages 11 and 12; the chart on page 17; page 19; page 23; and pages 25-27. Page 36 will be public. Regarding the following attachments, I ruled that Vaya will make redactions to the public versions consistent with the attachment its motion: Attachment 3 (see discussion of Exhibit 52-C below); Attachment 4 (spreadsheet summary of Cox invoices); Attachment 6 (augmented Cox Attachment RLA-2); Attachment 7 (see discussion of Exhibit 53-C below); Attachment 8 (percent of Vaya traffic without full automatic number identification); Attachment 10 (Vaya CDR study); Attachment 11 (summary of Cox MOUs by month; first page identified at EH as Exhibit 54-C); Attachment 12 (comparison of Vaya CDR study MOU with Cox MOUs billed by usage period); and Attachment 13 (spreadsheet showing interstate, intraMTA and local billed as interstate).

Attachment 15 consists of several Vaya data requests to Cox and Cox's responses to each one; three confidentiality claims were pursued by motion and at hearing. There is no dispute about public disclosure of the following and they will be made part of Exhibit 51, Attachment 15: Request 3-5 and Cox's response; Request 3-18 and Cox's response; Request 3-19 and Cox's response; and Request 3-5 and Cox's response.

The first of the three with continuing confidentiality claims is Request 1-4 and Cox's response, which includes as Attachment 1 and Attachment 2, respectively, the two charts (JPG-2 and JPG-3, respectively) attached to the now withdrawn Exhibit 1-C. Cox has proposed that the same substitution approved for Exhibit 1 be made here; with that substitution, Cox no longer opposes the

public release of this portion of Attachment 15. Vaya has no objection to this solution and my July 6 ruling approved this change.

The second is Request 3-4 and Cox's response, which explains how Cox calculates VoIP traffic and lists a calculated percentage of VoIP traffic by month for the time period indicated. At hearing, Cox claimed that its method is proprietary, that these percentages are not publicly available and that public release of either could cause Cox competitive harm. Cox conceded that the year and date information, alone, is meaningless and did not object to public disclosure. I ruled that the public version of this part of Attachment 15 will redact the two sentences of text that describe Cox's method and each of the individual percentage entries under the column heading "% VoIP."

The third is Request 3-7 and Cox's response, which includes as Attachment 1, all Cox Federal Communications Commission Form 477 filings since January 1, 2009. By motion and at hearing, Cox has asserted that its Form 477 filings, which all carriers file under seal with the FCC, should not be released here. Cox's confidentiality claims do not extend to the data request or textual response on the same page, but only to Attachment 1. While Vaya argued at hearing that the FCC forms should be redacted to remove confidential information but reveal headings and other form boilerplate, I declined to require that here, since the blank forms are readily available from the FCC. I ruled that Attachment 1 to Request 3-7 will be placed under seal in the evidentiary record.

Exhibit 52-C: This is Attachment 3 to Exhibit 51/51-C; it consists of a single computer disk that contains the Cox invoices for all the Vaya traffic at issue in this complaint case. Vaya claims that public release of these invoices could cause Vaya competitive harm by revealing specific quantities of MOUs or billed dollar amounts at a disaggregate level useful to competitors and that the

invoices contain Vaya's CPNI. Cox has not opposed Vaya's request to seal this computer disk. I ruled that it will be placed under seal in the evidentiary record.

Exhibit 53-C: This is Attachment 7 to Exhibit 51/51-C; it consists of 14 computer disks that contain all of the Vaya Call Detail Records (CDRs) maintained by its switch and system. Vaya has used these CDRs, which contain information such as calling and called telephone numbers, date, time, duration of call, routing, etc., to evaluate the accuracy of the Cox invoices. Vaya argues that public release of the CPNI in these CDRs is barred by state and federal law and also, would cause Vaya competitive harm by revealing a large amount of disaggregate information useful to competitors. Cox has not opposed Vaya's request to seal these computer disks. I ruled that they will be placed under seal in the evidentiary record.

Exhibit 54-C: This is the first page of Attachment 11 to Exhibit 51/51-C, as corrected at EC. Like the rest of Attachment 11, this page will be sealed in the evidentiary record to avoid competitive harm. Consistent with my ruling on July 6, the redacted, public version should conform with the attachment to Vaya's motion.

#### **4. Admission in Evidence**

The following exhibits should now be received in evidence and should be sealed: Exhibits 3-C, 4-C, 51-C, 52-C, 53-C and 54-C. The previously identified Exhibit 1-C has been withdrawn and the copy identified for the record has been destroyed. Attached to this ruling is an Exhibit Index which lists each exhibit offered in evidence at hearing and the disposition.

**5. Revised Schedule**

Consistent with Decision (D.) 12-04-039, which extended the statutory timeline for resolving this proceeding to March 8, 2013, the revised schedule is as follows:

Date	Event
July 16, 2012	Parties serve replacement versions of public exhibits
July 23, 2012	Parties file/serve concurrent opening briefs
August 17, 2012	Parties file/serve concurrent reply briefs
Date to be determined	Submission
Within 60 days of submission (Pub. Util. Code §1701.2(a))	Presiding Officer’s Decision filed

**IT IS RULED** that:

1. This ruling memorializes my oral rulings at the law and motion hearing on July 6, 2012. Replacement copies of public versions of exhibits, redacted as described in the body of this ruling, shall be served by July 16, 2012.
2. Exhibit 1-C is withdrawn; Exhibits 3-C, 4-C, 51-C, 52-C, 53-C and 54-C are received in evidence under seal.
3. The Exhibit Index for this docket is attached to this ruling.
4. If either party believes that the information placed under seal, pursuant to ruling paragraph 2, above, should be granted protection beyond two years, that party may file a motion stating the justification for further withholding the material from public inspection or for such other relief as the Commission Rules may then provide. The motion shall be filed no later than 45 days before the expiration of this ruling.

5. The revised schedule for this proceeding is set forth in the body of this ruling.

Dated July 13, 2012, at San Francisco, California.

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/s/ JEAN VIETH  
Jean Vieth  
Administrative Law Judge

# **EXHIBIT INDEX**

<b>Proceeding No.</b>
C.11-09-007

<b>ALJ</b>
Vieth

### EXHIBIT INDEX

Exh. No.	Date		Sponsor/Witness	Description
	Ident.	Recd.		
<b>Cox Exhibits</b>				
1	6/12/12	“	Cox/Gillan	Opening Testimony of Joseph Gillan
1C	“	<b>With-drawn</b>	“	Confidential version of 1
2	“	<b>6/12/12</b>	“	Rebuttal Testimony of Joseph Gillan
3	“	“	Cox/Allen	Opening Testimony of Robert Allen
3C	“	<b>7/13/12</b>	“	Confidential version of 3
		<b>7/13/12</b>		
4	“	<b>6/12/12</b>	“	Rebuttal Testimony of Robert Allen
4C	“	<b>7/13/12</b>	“	Confidential version of 4
5	“	<b>6/12/12</b>	Cox/Mertz x	Vaya Responses to Cox Data Requests 1-3,1-4,1-5 and 1-6
6	“	“	“	1-page schematic of various connections
7	“	“	“	Vaya Response to Cox Data Request 1-25
8	“	“	“	Vaya Response to Cox Data Request 3-53

<b>Vaya Exhibits</b>				
50	6/12/12	<b>6/12/12</b>	Vaya/Selwyn	Reply Testimony of Lee L. Selwyn
51	“	“	Vaya/Mertz	Reply Testimony of James Mertz
51C	“	<b>7/13/12</b>	“	Confidential version of 51

52C	“	7/13/12	“	Attachment 3 to Reply Testimony of James Mertz (1 DVD)
53C	“	7/13/12	“	Attachment 7 to Reply Testimony of James Mertz (14 DVDs)
54C	“	7/13/12	“	Revised Attachment 11, 1 <sup>st</sup> page, to Reply Testimony of James Mertz
55	“	6/12/12	Vaya/Gillan x	The Transition to an ALL-IP Network: A Primer on the Architectural components of IP Interconnection
56	“	“	“	47 CFR 9.3
57	“	“	“	Multi-page print out of Cox website re: voice services
58	“	“	“	Vaya 1 <sup>st</sup> Supplemental Response to Cox Data Request 1-7
59	“	<b>Not Rec'd</b>		Vaya Response to Cox Data Request 1-10
60	“	“	“	IP-Originated Traffic
61	“	“	“	Cox Tariff Schedule Applicable to Access Service w/in California
62	“	“	Vaya/Allen x	Multiple Exchange Carrier Access Billing (MECAB) Guidelines
63	“	<b>Not Rec'd</b>		C09-09-010, Answer of Calif Telcom, LLC dba Cox to Complaint of 01 Communications, Inc.

**(END OF EXHIBIT INDEX)**