

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DSLExtreme,

Complainant,

vs.

Verizon California, Inc.,

Defendant.

Case 05-09-008
(Filed September 8, 2005)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

This ruling sets the schedule for the proceeding and determines its scope following the November 29, 2005 prehearing conference (PHC). At the request of the parties, this ruling also refers this proceeding to an early neutral evaluation (ENE).

Background

Extreme Telecom, Inc., dba DSLExtreme (DSLExtreme) alleges Verizon California, Inc. (Verizon) is violating Pub. Util. Code §§ 451 and 453 in the provision of DSL transport. DSLExtreme alleges Verizon has failed to provide a reasonable level of service in the processing of DSL orders, provisioning of high capacity circuits, installation and maintenance of customers' DSL service, and in billing services and technical support provided to DSLExtreme. Further, DSLExtreme alleges discrimination in the provisioning of DSL transport in favor of Verizon's affiliate, Verizon Online. Verizon denies these allegations and asserts DSLExtreme seeks remedies beyond the jurisdiction of the Commission.

Verizon also asserts this complaint is preempted under federal statutory law and federal regulations.

At the request of the administrative law judge (ALJ), DSL Extreme and Verizon filed PHC statements on November 21, 2005 to address the impact of the Federal Communications Commission's (FCC) September 23, 2005 Report and Order in its broadband Internet access services proceeding on the issues raised in this complaint. (Report and Order, *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, et al.*, CC Docket No. 02-33; CC Docket No. 01-337; CC Docket Nos. 95-20, 98-10; WC Docket No. 04-242; WC Docket No. 05-271, 20 FCC Rcd. 14853.)

Verizon asserts the FCC's order divests the Commission of jurisdiction over the complaint, since the FCC no longer requires common carrier regulation for DSL transport service and permits carriers to discontinue offering DSL transport after one year. Verizon further asserts the FCC has classified its DSL transport as an interstate service, its DSL transport is tariffed at the FCC, and its DSL transport is subject to the FCC's jurisdiction, not the Commission's. DSLExtreme asserts the Commission retains jurisdiction, because the FCC's order does not specifically preempt states from regulating DSL.

DSLExtreme requests that the Commission order Verizon to take specific actions should the Commission find Verizon has violated Commission rules and regulations in the provisioning of DSL transport. DSLExtreme also requests that the Commission order penalties. DSLExtreme's requests for compensatory damages and attorneys' fees are beyond the relief this Commission may grant.

Scope of the Proceeding

The dispute between the parties centers on three issues:

1. Whether Verizon provides a reasonable level of service to DSLExtreme in the provisioning of DSL transport.
2. Whether Verizon discriminates in favor of its affiliate, Verizon Online, in the provisioning of DSL transport.
3. Whether any issues raised and/or relief requested in this case are beyond the jurisdiction of the Commission.

Early Neutral Evaluation

The parties have agreed to participate in an ENE of the substantive issues involved in this proceeding. ENE is an assessment of a case soon after it has been filed by one or more experienced ALJs (evaluators) based on brief presentations by the parties to the case. This proceeding lends itself to an ENE assessment, since the complaint alleges numerous violations and requests detailed relief and defendant asserts many, if not all, of the issues raised and relief requested are beyond the jurisdiction of the Commission. The evaluator(s) have no decision-making authority in the case. After the parties' presentations, the evaluator(s) will provide an assessment of the apparent strengths and weaknesses of each party's position. The parties will then be invited to discuss settlement. If the case does not settle, the evaluator(s)' assessment will be kept confidential. However, the evaluator(s) may assist the parties in simplifying and tailoring the case for hearing. After the issuance of this Scoping Memo, an Assistant Chief ALJ will contact the parties to make arrangements for the ENE. Normally a proceeding of this size would require one evaluator. However, after conferring with the ALJ Division, I agree this case will be assigned three evaluators for training purposes. The ENE will be held and completed no later

than February 9, 2006. I direct the parties to cooperate fully with the evaluator(s).

Schedule

The following schedule is adopted for this proceeding:

Date	Event
Thursday, February 9, 2006	ENE completed
Friday, February 24, 2006	Complainant serves opening testimony
Friday, March 24, 2006	Defendant serves opening testimony
Friday, April 14, 2006	Complainant serves rebuttal testimony
Thursday, April 27, 2006 and Friday, April 28, 2006 at 9:30 a.m. at the Commission's Courtroom, 505 Van Ness Avenue, San Francisco, CA 94102	Evidentiary hearings
Within 18 days of conclusion of hearings	Concurrent briefs filed
Within 78 days of conclusion of hearings	Presiding Officer's Decision filed

My goal is to resolve this case as soon as possible and I anticipate that the resolution will not exceed 12 months from the date of filing the complaint, pursuant to Pub. Util. Code § 1701.2(d).¹

¹ Section 1701.2(d) states that adjudication cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline.

Category of Proceeding

This proceeding is categorized as adjudicatory, and it is determined that hearings are necessary.

Ex Parte Communications

Pursuant to Pub. Util. Code § 1701.2(b), ex parte communications are prohibited in this proceeding.

Presiding Officer

Pursuant to Rule 6(c) of the Commission's Rules of Practice and Procedure, I designate ALJ Grau as the presiding officer.

IT IS RULED that:

1. The schedule and issues are as set forth in this ruling, unless subsequently modified by Assigned Commissioner or assigned Administrative Law Judge (ALJ) directive.
2. This case is referred to early neutral evaluation (ENE) to be completed on or before February 9, 2006. The parties shall cooperate with the ENE evaluator(s).
3. ALJ Grau is the presiding officer in this proceeding.
4. Pursuant to Pub. Util. Code § 1701.2(b), ex parte communications are prohibited.

Dated January 17, 2006, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling and Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated January 17, 2006, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.