

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

Utility Consumers' Action Network,

Complainant,

vs.

SBC Communications, Inc. dba SBC Pacific  
Bell Telephone Company (U-1001-C) and  
related entities (collectively "SBC"),

Defendants.

Case 05-11-011  
(Filed November 14, 2005)

Utility Consumers' Action Network,

Complainant,

vs.

Cox California Telecom II, LLC, doing  
business as Cox Communications, and related  
entities (collectively "Cox"),

Defendants.

Case 05-11-012  
(Filed November 14, 2005)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER  
AND ADMINISTRATIVE LAW JUDGE**

Two cases filed with the Commission, while not consolidated, are coordinated in these proceedings. The first complaint, Case (C.) 05-11-011, was commenced on December 30, 2005. The complainant, Utility Consumer's Action Network (UCAN), alleges that SBC Communications, Inc., dba SBC Pacific Bell

Telephone Company (SBC), defendant, has violated the Public Utilities Code by failing to properly provide access to 911 emergency phone service for certain persons living in residential properties. The second complaint, C.05-11-012, was also filed by UCAN on December 30, 2005, against Cox California Telecom II, LLC, dba Cox Communications (Cox). UCAN makes the same general allegations against Cox.

The Prehearing Conference (PHC) in both cases was held on January 4, 2006. The assigned Administrative Law Judge (ALJ) decided against consolidating the two cases at that time since the evidence at hearing may be substantially different for each of the defendants. The decision not to consolidate may be reconsidered closer to the evidentiary hearing.

This ruling determines the scope, schedule, necessity of a hearing, and other matters in accordance with Rules 6(b) and 6.3 of the Commission's Rules of Practice and Procedure (Rules).<sup>1</sup>

### **1. Parties to Proceedings**

In C.05-11-011, the complainant is UCAN and SBC is the defendant. In C.05-11-012, the complainant is UCAN and Cox is the defendant. All these entities are parties in their respective cases and shall comply with the requirements of this ruling.

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<sup>1</sup> The Commission's Rules are available on the Commission's website: [www.cpuc.ca.gov/PUBLISHED/RULES\\_PRAC\\_PROC/8508.htm](http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/8508.htm).

## **2. Assigned Commissioner; Principal Hearing Officer**

Geoffrey F. Brown is the Assigned Commissioner. Pursuant to Pub. Util. Code § 1701.3, ALJ John E. Thorson is designated as the principal hearing officer in these proceedings.

## **3. Categorization and Need for Hearing**

Because both cases were filed as complaints, they are categorized as adjudicatory. This ruling, only as to categorization, is appealable under the provisions of Rule 6.4 of the Commission's Rules. This ruling confirms that evidentiary hearings are necessary as factual issues are in dispute.

## **4. Ex Parte Communications**

Since both cases are adjudicatory proceedings, *ex parte* communications with the Assigned Commissioner, other Commissioners, their advisors and the ALJ are prohibited. (*See* Rule 7(b).)

## **5. Scope of the Proceedings**

In both cases, UCAN alleges that the respective defendant has failed to properly provide access to 911 emergency phone service for those customers who either received residential phone service from the defendant and thereafter had their telephone service with the defendant terminated either voluntarily or involuntarily and did not sign up for service with another local telephone corporation but maintained the same residential unit, or those persons who reside in a residential unit where a telephone connection has been installed into the residential unit but no landline telephone service has been initiated.

SBC and Cox both answered the respective complaints against them on December 22, 2005. They admit and deny certain allegations, advance affirmative defenses, and request the Commission deny the relief sought by UCAN.

## 6. Specific Issues to Be Addressed

The specific factual and legal issues to be decided in each of these proceedings are as follows:

- (a) Does Public Utilities Code Section 2883 require the defendant to provide basic 911 emergency phone service, within its service area in California, to:
  - (1) Residential units where the resident(s) has not initiated local telephone service but where the defendant has installed a telephone connection?
  - (2) Residential units where the resident(s) no longer voluntarily maintains local telephone service with the defendant and where the defendant was the last designated local exchange carrier?
  - (3) Residential units where the resident(s) no longer maintains local phone service with the defendant due to nonpayment of a delinquent account?
  - (4) Newly constructed residential units where the defendant has not installed a residential telephone connection?
- (b) What constitutes a “telephone connection” within the meaning of Section 2883?
- (c) How long does the law require the defendant to provide basic 911 emergency phone service?
- (d) Does the defendant’s alleged California’s practice of discontinuing basic 911 emergency phone service violate California Public Utilities Code Section 2883?
- (e) What are the defendants’ obligations, pursuant to California Public Utilities Code Section 2883(c), to advise subscribers of the availability of basic 911 emergency service as required by Section 2883(a)? Does the defendant comply with that obligation?

- (f) In C.05-11-011, do any of the above allegations, if proven against SBC, also constitute a violation of Commission Schedule Cal PUC No. A2.1.14?
- (g) If a defendant has violated Public Utilities Code provisions or Schedule Cal PUC No. A2.1.14, what remedies should be imposed?

## 7. Schedule

The defendants believe that the cases predominately involve legal issues and may be disposed upon early motions to dismiss. Accordingly, the schedule provides for two phases: an initial phase to address potentially dispositive legal issues and a latter phase, if necessary, to address evidentiary matters. The schedule for these proceedings follows.

| Event  | Date (all 2006) |
|--|-----------------|
| <i>Phase I</i>   |                 |
| Motion to Dismiss (MTD) filed; discovery opens (discovery limited to 15 requests, including subparts, unless cause can be shown justifying additional discovery) | January 27      |
| Deadline for propounding discovery   | February 3      |
| Deadline to provide discovery objections & responses   | February 10     |
| Deadline to meet and confer over discovery objections & responses  | February 13     |
| Deadline to file/serve Motion to Compel (MTC) responses to discovery   | February 17     |
| Deadline to file/serve response to MTC discovery   | February 22     |
| Deadline to hold hearing on MTC discovery  | February 23     |
| Deadline for complying with ruling on MTC  | March 2         |
| UCAN response to MTD due   | March 7         |
| Reply to UCAN response due   | March 14        |
| Oral argument before ALJ on MTD  | March 16        |
| If MTD denied in whole or in part, then ALJ Ruling issued  | April 14        |

| <b>Event</b>   | <b>Date (all 2006)</b>                     |
|--|--|
| If MTD granted, then Proposed Decision (PD) issued                   | April 14                                   |
| Comments on PD   | May 4                                      |
| Replies to comments on PD  | May 9                                      |
| Final CPUC Decision (Commission Meeting Date)                        | May 11                                     |
| <i>Phase II (if necessary)</i>                                       |  |
| Discovery re-opens   | April 14 (if ALJ Ruling) or May 11 (if PD) |
| Deadline for propounding discovery                                   | May 18                                     |
| Deadline for providing discovery objections & responses              | May 25                                     |
| Deadline to meet and confer over discovery objections & responses    | May 30                                     |
| Deadline to file/serve Motion to Compel (MTC) responses to discovery | June 6                                     |
| Deadline to file/serve response to MTC discovery                     | June 13                                    |
| Deadline to hold hearing on MTC discovery                            | June 15                                    |
| Deadline for complying with ruling on MTC                            | June 22                                    |
| UCAN opening testimony due   | June 30                                    |
| Reply testimony due  | July 14                                    |
| Evidentiary hearings   | Week of July 31                            |
| Concurrent opening briefs due  | August 11                                  |
| Concurrent reply briefs due  | August 18                                  |
| Presiding Officer's Decision (POD) issued                            | September 26                               |
| Appeal of POD due  | October 26                                 |
| Response to appeal of POD due  | November 2                                 |
| Deadline for Commission Decision (CPUC Meeting Date)                 | November 9                                 |

## **8. Alternative Dispute Resolution**

The possible use of alternative dispute resolution (ADR) methods was discussed at the PHC. Because legal issues will be addressed in Phase I, ADR is not now appropriate. However, ADR may be more appropriate closer to the evidentiary hearing.

## 9. Discovery

Discovery will be conducted according to the Rules. If the parties have discovery disputes they are unable to resolve by meeting and conferring, they shall raise these disputes under the Commission's Law and Motion procedure. (See Resolution ALJ-164 (September 16, 1992).)

## 10. Service Lists/Filing and Service of Documents

The official service lists for these proceedings are attached to this ruling. The parties shall notify the Commission's Process Office of any address, telephone, or electronic mail (e-mail) change to a service list. The updated service list for each case is available on the Commission's Web page maintained for these proceedings.

Rule 2.3.1, "Service by Electronic Mail," applies to these proceedings.

Therefore, **IT IS RULED** that:

1. Case (C.) 05-11-011 and C.05-11-012 are coordinated.
2. For each case, the parties, scope of the proceeding, specific issues to be addressed, and service list are set forth in paragraphs 1, 5, 6, and 10, above.
3. Administrative Law Judge John E. Thorson is the principal hearing officer.
4. The preliminary categorization of this proceeding as adjudicatory is confirmed. An evidentiary hearing is required.
5. The *ex parte* prohibition of Pub. Util. Code § 1701.2(b) applies to this proceeding.
6. The schedule for the proceeding is set forth in paragraph 7.
7. Discovery will be conducted and discovery disputes will be resolved pursuant to paragraph 9.
8. The time period for filing a notice of intent to claim intervenor compensation commenced on January 4, 2006.

Dated January 20, 2006, at San Francisco, California.

/s/ GEOFFREY F. BROWN  
Geoffrey F. Brown  
Assigned Commissioner

/s/ JOHN E. THORSON by PSW  
John E. Thorson  
Administrative Law Judge

**ATTACHMENT**

**C0511012 LIST**

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**CERTIFICATE OF SERVICE**

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

Dated January 20, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS  
Elizabeth Lewis

**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.

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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.