

KJB/sbf 10/20/2014



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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Comcast Corporation, Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U6874C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U6955C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a).

Application 14-04-013
(Filed April 11, 2014)

And Related Matter.

Application 14-06-012

**ADMINISTRATIVE LAW JUDGE'S RULING SUSPENDING SCHEDULE,
GRANT OFFICIAL NOTICE, AND SET LAW AND MOTION HEARING**

This ruling memorializes an e-mail I sent to parties on October 4, 2014 on behalf of Judge Bemserfer, who is out of the office. On October 1, 2014, Office of Ratepayer Advocates (ORA) filed two motions: 1) a motion to modify the schedule of the proceeding, and 2) a motion for reconsideration of a law and motion ruling by Judge Yacknin on September 23, 2014 regarding a motion to compel discovery.

On October 7, 2014, ORA filed a motion seeking official notice of actions by the Federal Communications Commission (FCC) with regard to its review of the same merger for which the Applicants seek approval in these consolidated proceedings. Specifically, ORA asks for official notice of two documents released Friday October 3, 2014 by the FCC, which stop “the informal 180-day transaction clock in this proceeding until October 29, 2014, the deadline for commenters to file their Responses, or until Commission [*i.e.*, FCC] staff has determined that your responses to the Commission’s information requests are complete, whichever is later.”

First, pursuant to Commission Rule of Practice and Procedure 13.9, the Commission may take official notice of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 *et seq.* Rule 13.9 incorporates California Evidence Code 450 *et seq.* Under Section 452(c), a court may take judicial notice of official acts of the executive branch of the United States:

452. Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451.... (c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

Therefore, I find preliminarily that it is appropriate to take official notice of the matters attached to ORA's October 7, 2014 motion. By my October 9 e-mail, I allowed Parties to file comments on this in 10 calendar days, indicating if they agreed with the interpretation on official notice.

Second, given the ongoing discovery disputes apparent in the motions and responses filed, I am suspending the schedule of this case until further ruling. The FCC public notice of October 3, 2014 noticing a delay in the FCC proceeding

makes delay in the proceedings here at the CPUC reasonable. Opening Briefs are no longer due October 20, 2014 and the rest of the schedule is suspended. The discovery cutoff of October 1, 2014 remains in place, at least until further notice. No further discovery may be propounded by parties at this time. However, parties are still permitted to follow-up with questions related to responses that were unresponsive to document requests made prior to the October 1, 2014 cutoff date.

A law and motion hearing was set for Thursday, October 16, 2014 at 10 a.m. at the Commission's courtroom, 505 Van Ness Avenue, San Francisco, California before Administrative Law Judge Jean Vieth acting as Law and Motion Judge.

At the law and motion hearing, ORA will be asked to demonstrate why it needs all of the data that may be outstanding from its discovery requests, and the relevance of that information to the issues as specified in the scoping memo of this consolidated proceeding. At the hearing, ORA will be expected to address whether it can support or narrow each of its outstanding discovery requests. Specifically, ORA should address why each of its requests seeks material that is relevant to the matter before the Commission. It is insufficient for ORA simply to assert that because the Applicants submitted information to the FCC, the information is relevant to this Commission's deliberations. Rather, it should show why each of its requests seeks information germane to the inquiry this Commission must make.

In advance of the law and motion hearing, parties were directed to meet and confer regarding the following:

- 1) Status of all outstanding discovery requests propounded prior to October 1, 2014.

- 2) Options for resolution of format disputes related to outstanding discovery requests (*i.e.*, pdf or other options as suggested by Comcast Corporation, Time Warner, and other applicants in their Response of October 7). I ask the parties to discuss the applicability of California Code of Civil Procedure 1985.8(b), which provides that “(b) A party serving a subpoena requiring production of electronically stored information may specify the form or forms in which each type of information is to be produced.”
- 3) A new schedule for this proceeding and whether the schedule should involve testimony, hearings, and/or briefs.

Parties should be prepared to report any agreements or narrowing of requests and disputes on these items at the law and motion hearing. Parties may also comment at the hearing on the official notice taken by this ruling, if needed.

IT IS RULED that:

1. Official notice is taken of the two Federal Communications Commission documents attached to Office of Ratepayer Advocate’s October 7, 2014 motion for official notice.
2. The schedule of this proceeding is suspended until further ruling, but the October 1, 2014 discovery cut-off remains in place for new discovery requests.
3. A Law and Motion hearing was set for Thursday October 16, 2014 at 10 a.m. the Commission’s courtroom, 505 Van Ness Avenue, San Francisco, California.

Dated October 20, 2014, at San Francisco, California.

/s/ DOROTHY J. DUDA for
Karl J. Bemederfer
Administrative Law Judge