BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
09/22/22
03:34 PM
R2103002

Order Instituting Rulemaking to Update Surcharge Mechanisms to Ensure Equity and Transparency of Fees, Taxes and Surcharges Assessed on Customers of Telecommunications Services in California	Rulemaking 21-03-002

COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION ON THE PROPOSED DECISION UPDATING THE MECHANISM FOR SURCHARGES TO SUPPORT PUBLIC PURPOSE PROGRAMS

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September 22, 2022

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LIST OF RECOMMENDED CHANGES

- The definition of "access line" should be further revised to remove the reference to "unique identifier" in order to ensure the clarity intended by the Order Instituting Rulemaking.

- The implementation period should be extended to April 1, 2023, as providers need sufficient time to modify their billing systems.

- Finding of Fact 6 regarding certificates of public convenience and necessity is legally flawed, unnecessary, prejudges a key issue in a separate commission proceeding, and should be removed.

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Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the California Cable & Telecommunications Association ("CCTA")[1] hereby submits these comments on the September 2, 2022 Proposed Decision ("PD") in the above-captioned docket.

I. INTRODUCTION

The Commission opened this proceeding with the intention of creating a surcharge mechanism that is unambiguous, readily implementable, applied uniformly, equitable, and technology-neutral. CCTA appreciates the efforts of the Assigned Commissioner and Administrative Law Judge ("ALJ") to ensure a balanced approach to the proceeding, including adopting clear and implementable language to define "access line," such as "a real-time two-way voice telecommunications service or VoIP service," and disposing of unreasonable and/or unlawful proposals, such as assessing surcharges on broadband.

[1] CCTA is a trade association consisting of cable providers that have collectively invested more than $40 billion in California's broadband infrastructure since 1996 with systems that pass approximately 96% of California's homes.

The PD makes progress towards achieving the Commission's goals. Building on the work accomplished thus far, CCTA respectfully makes the following specific and targeted recommendations to help the Commission fully meet its goals:

- The term "unique identifier" should be removed from the definition of "access line." It is an ambiguous and undefined term that most parties opposed and, if adopted, would undermine the clarity necessary for consistent implementation.
- The implementation date included in the PD should be extended. Providers requested a minimum of six months to implement and transition to the new surcharge mechanism. However, even calculating from the date the PD was issued, the PD would unreasonably grant providers three months to undertake and complete the significant information technology-related changes necessary to transition to the new mechanism.
- Proposed Finding of Fact 6 should be deleted from the PD. It is not relevant to or within the scope of issues identified for resolution in this proceeding. It addresses certificates of public convenience and necessity, which are not mentioned anywhere in the body of the PD. It also misstates the cited law, Public Utilities Code Section 1001, and it prejudges an open issue currently being addressed in a separate proceeding.[2]

II. THE TERM "UNIQUE IDENTIFIER" SHOULD BE REMOVED FROM THE "ACCESS LINE" DEFINITION AS IT WOULD INTRODUCE UNCERTAINTY AND INCONSISTENT IMPLEMENTATION.

Given the transition to a per-access line framework, it is important to ensure that the definition of "access line" meets the Commission's goals of being unambiguous, readily implementable, applied uniformly, equitable, and technology-neutral.[3] The PD's definition of "access line" includes the undefined phrase "unique identifier," which introduces ambiguity into the definition of "access line," makes the surcharge mechanism more difficult to implement, and increases the likelihood that it will not be uniformly applied. Additionally, it remains unclear what

[2] See R.22-08-008 (VoIP licensing proceeding).

[3] The PD defines "access line" as "a wire or wireless connection that provides a real-time two-way voice telecommunications service or VoIP service to or from any device utilized by an end-user, regardless of technology, which is associated with a 10-digit NPA-NXX number or other unique identifier and has a service address or Place of Primary Use in California." Proposed Decision Updating the Mechanism for Surcharges to Support Public Purpose Programs, R.21-03-002, September 2, 2022 ("PD"), p. 52.

this term is intended to cover. The PD merely mentions that the Public Advocates Office—the only party in this proceeding to support this language—suggested retaining the term,[4] and even it found the term so vague that it proposed that there should be changes to "easily determine which customers are in the billing base."[5] However, it is too late to clarify this term as neither Commission staff nor any party opined on what this term could mean and any attempt to define "unique identifier" at this point would lack record support.

No party in this proceeding has demonstrated any benefit of including the term "unique identifier" in the "access line" definition. To the contrary, the overwhelming consensus in this proceeding opposes the inclusion of this vague language, and for good reason. CCTA has previously emphasized that the term is "ill-defined"[6] and "introduce[s] uncertainty to what should be a straightforward and easy-to-apply definition."[7] TURN and the Center for Accessible Technology agree with CCTA that the term is undefined and including it makes the definition unclear.[8] Frontier and the Small LECs similarly advocate to remove this "ambiguous and potentially overbroad" term, which will help the Commission and providers avoid the pitfalls of "implementation disputes," "additional uncertainty[,] or unlawfully expand[ing] the definition to

[4] *See* PD, p. 48.

[5] Reply Comments of the Public Advocates Office on March 30, 2022 Administrative Law Judge's Ruling Requesting Comment, R.21-03-002, May 16, 2022, p. 2.

[6] Reply Comments of the California Cable and Telecommunications Association on the Administrative Law Judge's March 30, 2022 Ruling Seeking Comments on the Staff's Proposed Revisions for Defining an Access Line, R. 21-03-002, May 16, 2022, p. 7.

[7] Opening Comments of the California Cable and Telecommunications Association on the Administrative Law Judge's March 30, 2022 Ruling Seeking Comments on the Staff's Proposed Revisions for Defining an Access Line, R. 21-03-002, April 29, 2022 ("CCTA Access Line Definition Comments"), p. 4.

[8] Reply Comments of The Utility Reform Network and the Center for Accessible Technology on the Administrative Law Judge's Ruling, R.22-03-010, May 16, 2022, p. 2.

interstate or information services."[9] CTIA, Frontier, and the Small LECs have proposed striking the "unique identifier" language in its entirety.[10]

The record reflects that including the highly ambiguous term "unique identifier" impairs service providers' ability to readily implement a new mechanism undermining the *very* objection of the Commission, including how to determine "the number of access lines subject to surcharge" as proposed in the March 30, 2022 ALJ Ruling.[11] Including this term further risks the adverse outcome of non-uniformity by permitting dissimilar practices among providers that result from a lack of clarity and easy implementation. Moreover, the term "unique identifier" bears no direct relationship to any approaches taken by any other states that have transitioned to a connections-based model.[12] Again, nothing in the record substantively counters or challenges the record on these points.

Accordingly, the Commission should avoid this error by removing references to "unique identifier" from the updated "access line" definition as simply not implementable. The definition should therefore be changed as follows:

> "Access Line"[13] means a wire or wireless connection that provides a real-time two-way voice telecommunications service or VoIP service to or from any device utilized by an end-user, regardless of technology, which is associated with a 10-

[9] Reply Comments of Frontier California Inc. (U 1002 C) et al. to Administrative Law Judge Ruling Issued March 30, 2022, R.21-03-002, May 16, 2022, p. 3; Reply of Calaveras Telephone Company (U 1004 C) et al. to Administrative Law Judge Ruling Issued March 30, 2022, R.21-03-002, May 16, 2022, pp. 2-3.

[10] Comments of CTIA on Staff's Revised Access Line Definition, R.21-03-002, April 29, 2022 ("CTIA Access Line Definition Comments"), p. 5; Opening Response of Frontier California Inc. (U 1002 C) et al. to Administrative Law Judge Ruling Issued March 30, 2022, R.21-03-010, April 29, 2022 ("Frontier Access Line Definition Comments"), Appendix A; Opening Response of Calaveras Telephone Company (U 1004 C) et al. to Administrative Law Judge Ruling Issued March 30, 2022, R.21-03-010, April 29, 2022 ("Small LECs Access Line Definition Comments"), Appendix A.

[11] CCTA Access Line Definition Comments, p. 5.

[12] CCTA Access Line Definition Comments, p. 5 (citing Nebraska, Maine, and Utah).

[13] The number of access lines a service provider provides to an end-user shall be deemed equal to the number of inbound or outbound two-way communications by any technology that the end-user can maintain at the same time as provisioned by the service provider's service.

digit NPA-NXX number ~~or other unique identifier~~ and has a service address or Place of Primary Use in California.

III. THE COMMISSION SHOULD MODIFY THE PD TO INCLUDE REASONABLE IMPLEMENTATION DATES.

The PD requires all providers to commence collection of the new per-access line fee as of January 1, 2023.[14] However, moving from an end-user surcharge to a per-line fee is a significant change which requires all providers to modify their billing systems in order to both properly assess the number of per-access line fees for each customer and produce billing statements that accurately reflect such fees via a single line-item fee. The Commission can avert committing factual and technical error by giving providers a reasonable amount of time to comply which should also minimize transition flaws. Additionally, its reasonable for the Commission to require providers to implement the new per-line fee *after* the Commission confirms that the Telecommunications and User Fee Filing System ("TUFFS") has been successfully modified.

The proceeding record demonstrates that providers need a minimum of six months to implement the PD's changes.[15] This time is needed to transition complex billing systems from a revenue-based mechanism to a new line-based charge,[16] including negotiations with third-party

[14] PD, Ordering Paragraph 6.

[15] *See* Comments of Cox California Telcom, LLC (U-5684-C), dba Cox Communications on Order Instituting Rulemaking to Update Surcharge and User Fee Collection Mechanisms, R.21-03-002, April 5, 2021 ("Cox OIR Comments"), pp. 7-8; Comments of Time Warner Cable Information Services (California), LLC (U-6874-C) and Charter Fiberlink CA-CCO, LLC (U-6878-C) to Order Instituting Rulemaking 21-03-002, R.21-03-002, April 5, 2021 ("Charter OIR Comments"), p. 4; Comments of Comcast Phone of California, LLC (U-5698-C) on Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, R.21-03-002, April 5, 2021, p. 4; Opening Comments of Calaveras Telephone Company (U 1004 C) et al. on Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, R.21-03-002, April 5, 2021 ("Small LECs OIR Comments"), p. 5. *See also* Reply Comments of the California Emerging Technology Fund on the OIR to Update the Surcharge Mechanism for Public Purpose Programs, R.21-03-002, April 23, 2021, p. 9 (proposing a 4-6-month transition period with an extension of up to 2 months).

[16] Charter OIR Comments, p. 4.

vendors and billing platforms to make the necessary changes,[17] development and testing of billing system changes, competition with providers' existing year-end projects and obligations for time and staff resources amidst holiday schedules,[18] and the logistics of notifying customers about changes to their bills.[19]

While the PD directs providers to input their access lines counts to TUFFS as of January 1, 2023, the PD is silent on all of the underlying work that providers will need to develop and complete prior to January 1, 2023. For example, a critical piece of the transition means that providers will be able to actually impose and collect the new per-line fee from customers as of January 1, 2023. That means that in addition to modifying billing systems to assess a per-line fee, billing systems must also be updated to generate modified bill statements. Directing providers to complete a project with this significance in less than three months is unreasonable and, again, not supported by the record.[20] In light of the impact that the new mechanism will have on consumers, it is both reasonable and wise for the Commission to do everything it can to ensure a smooth and successful transition. While CCTA appreciates the Commission's desire to move forward, there does not appear to be an emergency funding situation that demands a cutover on January 1, 2023, less than three months after the issuance of any Final Decision.

Further, while the PD anticipates that the Commission will complete necessary changes to the TUFFS by January 1, 2023, implementing changes can take longer than expected and be delayed for unanticipated reasons. However, even if the changes are completed as expected, the

[17] Small LECs OIR Comments, p. 2.

[18] *See* Cox OIR Comments, pp. 7-8.

[19] Cox OIR Comments, pp. 7-8.

[20] While providers could anticipate the Commission would adopt a new mechanism, they could not begin implementing any changes until the Commission identified such mechanism, applicable definitions and related requirements.

Commission should provide a period of time by which providers can test the new TUFFS prior to being required to do so as this should ensure a more successful transition.

As the new requirement applies to every wireline, wireless, and registered interconnected VoIP provider, the Commission should adopt a reasonable implementation schedule so that service providers can readily comply. The Commission should enact an approximate six-month implementation period at a minimum to ensure that these changes are successfully done. Specifically, CCTA recommends that the Commission require providers to both report their access line counts *and* begin imposing the per-line fee on their customers as of April 1, 2023.

IV. FINDING OF FACT 6 REGARDING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY IS LEGALLY FLAWED, UNNECESSARY, AND PREJUDGES A KEY ISSUE IN A SEPARATE COMMISSION PROCEEDING.

The PD's Finding of Fact 6 asserts that "each telecommunications company providing full … Facilities-based Interconnected VoIP services in California must receive operating authority through a Certificate of Public Convenience and Necessity [CPCN] from the Commission, subject to Pub. Util. Code Section 1001." This is a factual and legal error, and this proposed Finding of Fact should be removed.

First, the finding appears to or could be interpreted as prejudging a key issue that is in the scope of an active proceeding before the Commission, Rulemaking 22-08-088. That proceeding is addressing whether and how VoIP providers obtain registration or certification.[21] The Commission is currently soliciting comments on that issue, and it would be entirely inappropriate for the

[21] Order Instituting Rulemaking Proceeding to Consider Changes to Licensing Status of Interconnected Voice over Internet Protocol Carriers, R.22-08-008, August 30, 2022, pp. 6-7.

Commission to adopt an unsupported finding on that matter in this proceeding and prejudge the issue.

Second, this finding is irrelevant to the issue of whether the Commission should adopt a revised surcharge mechanism. In fact, CPCNs are not mentioned anywhere else in the body of the PD; they appear for the first time in Finding of Fact 6. That is not surprising since neither the Order Instituting Rulemaking nor the Scoping Memo identifies this as an issue for consideration.[22] The Commission creating a new surcharge mechanism can be substantiated without delving into this unrelated issue.

Finally, the finding misstates the law. Public Utilities Code Section 1001 references *telephone corporations*, not telecommunications companies—these are not necessarily synonymous terms. Also, the Commission has the authority under Public Utilities Code Section 1013 to adopt other processes in lieu of a CPCN.[23] Indeed, it has adopted a simplified registration process for certain communications service providers, including interexchange carriers,[24] and has been using this process since at least the 1990s.[25]

The Commission should avoid legal error and prejudicing its other proceedings by removing Finding of Fact 6 from the PD. The Commission should uphold its principles of due process and maintain the integrity of the discussion of CPCNs within that proceeding.

V. CONCLUSION

[22] *See* PD, p. 9 (identifying the issues for Phase 1 of the proceeding).

[23] Public Utilities Code § 1013(a) ("The commission may by rule or order, partially or completely exempt certain telecommunications services offered by telephone and telegraph corporations from the certification requirements of Section 1001 and instead subject them to registration as the commission may determine.").

[24] *See* California Public Utilities Commission, *Information for Telecommunications Applicants and Registrants in California* (last accessed September 17, 2022), https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/information-for-telecommunications-applicants-and-registrants-in-california.

[25] *See* Opinion, D.97-07-107, June 25, 1997 (establishing a simplified registration process).

CCTA appreciates this opportunity to comment on this matter and urges the Commission to adopt its recommendations.

Respectfully submitted,

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September 22, 2022

APPENDIX A: PROPOSED FINDINGS OF FACT

Findings of Fact

6. ~~Each telecommunications company providing full Facilities-Based/Limited-Facilities Based, Resold Competitive Local Exchange Services, and Facilities-based Interconnected VoIP services in California must receive operating authority through a Certificate of Public Convenience and Necessity from the Commission, subject to Pub. Util. Code Section 1001.~~