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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Bell Telephone Company D/B/A AT&T California (U1001C) to Relinquish its Eligible Telecommunications Carrier Designation.

Application 23-03-002

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This scoping memo and ruling (Scoping Memo) sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities Code section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

1. Procedural Background

On March 3, 2023, Pacific Bell Telephone Company dba AT&T California (AT&T) filed an application to relinquish its Eligible Telecommunications Carrier (ETC) designation (Application).

On April 6, 2023, The Utility Reform Network (TURN) and the Center for Accessible Technology (CforAT) filed a joint protest of AT&T's application.

On May 15, 2023, TURN and CforAT jointly filed a motion to dismiss the Application due to a lack of information in the record.

A prehearing conference (PHC) was held on June 1, 2023, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. After considering

all pleadings filed by parties, and the discussion at the PHC, this Scoping Memo sets forth the issues and initial schedule for this proceeding.

2. Issues

47 USC section 214(e)(4) reads, in part, that:

“[p]rior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission... shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.”

Sufficient notice shall not “exceed one year...” To that end, the issues to be determined or otherwise considered as part of this proceeding are:

1. What requirements apply to an eligible telecommunications carrier (ETC) seeking to cease providing universal service pursuant to 47 USC section (§) 214(e)(4)? In addressing this issue, parties should also respond to the following sub-questions.
 - a. Should the phrase “all customers served by the relinquishing carrier,” as used in 47 USC §214(e)(4), include both residential customers and business customers? Why or why not? Are there other types of customers that should be included? Parties shall support their arguments with the appropriate legal authority.
 - b. How should the Commission determine whether an area is “served by the relinquishing carrier,” as that phrase is used in 47 USC §214(e)(4)?
 - c. What should the Commission do to ensure that all customers served by the relinquishing ETC will continue to be served, as 47 USC §214(e)(4) requires?

- d. What evidence would a relinquishing ETC requesting to cease providing universal service need to submit to the Commission in order demonstrate that the current service territory from which the ETC is relinquishing service is served by one or more remaining ETCs?
 - e. Is it reasonable to include in the Commission's review of a relinquishing ETC's Application any ETC with a *conditional* ETC approval,¹ for purposes of demonstrating the existence of "remaining eligible telecommunications carriers?"
 - f. What evidence should an ETC requesting to cease providing universal service in an area submit to the Commission "to ensure that all customers served by the relinquishing carrier will continue to be served?" Explain why the evidence proposed satisfies the relevant statutory requirements.
2. What requirements should the Commission impose on "the remaining eligible telecommunications carrier," to satisfy 47 USC §214(e)(4)?
 3. In light of the issues raised in questions 1 and 2, does the AT&T California Application contain sufficient evidence and explanation to satisfy the requirements set forth in 47 USC § 214(e)(4)? In addressing this issue, parties should also respond to the following sub-questions.
 - a. Is there more than one remaining ETC serving *each* area that the Applicant, AT&T California, seeks to relinquish? Do the maps and mapping analysis submitted by the applicant accurately represent service coverage by the other remaining ETCs in the specific geographic area from which the applicant seeks to relinquish its ETC designation?
 - b. Will all customers currently served by the relinquishing carrier continue to be served? Explain how this requirement will be satisfied.

¹ See e.g., footnote 2, *infra*.

- c. If the remaining ETCs currently cannot serve all customers, would they be able to within one year of granting this application? What should the Commission do to ensure this happens? Under which conditions should the Commission allow this to happen?
4. How would the approval of this application impact public safety?
5. What are the impacts on environmental and social justice communities, including the extent to which granting this application impacts the achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan?

3. Need for Evidentiary Hearing

The issues listed above potentially contain issues of material fact in dispute. Accordingly, an evidentiary hearing to resolve any genuine dispute as to material facts is necessary. The assigned Administrative Law Judge (ALJ) will provide further instructions, including issuing a ruling with the date(s) of the evidentiary hearing, as well as additional guidance for parties.

4. Duty to Meet and Confer

Parties are required to meet and confer to comply with Rule 13.9 of the Commission's Rules of Practice and Procedure. The rule requires parties to identify and, if possible, informally resolve any anticipated motions; identify the facts and issues in the case that are uncontested and may be the subject of stipulation; identify the facts and issues in the case that are in dispute; determine whether the contested issues in the case can be narrowed; and whether settlement is possible. Parties should advise the assigned ALJ when they are prepared to meet and discuss stipulations at a status conference.

5. Schedule

The following schedule is adopted here and may be modified by the assigned ALJ as required to promote the efficient and fair resolution of the application:

Event	Date
Applicant files updated application ²	August 25, 2023
Intervenors' prepared direct testimony served	October 25, 2023
Applicant's prepared rebuttal testimony served	November 30, 2023
Public Participation Hearings	Q4 2023/Q1 2024
Evidentiary Hearings	April 2024
Opening briefs	TBD
Reply briefs <i>[matter submitted]</i>	TBD
Proposed decision	<i>[no later than 90 days after submission]</i>
Commission decision	<i>[no sooner than 30 days after PD]</i>

The proceeding will stand submitted upon the filing of reply briefs unless the assigned ALJ requires further evidence or argument. Based on this schedule, the proceeding should be resolved within 18 months as required by Public Utilities Code section 1701.5, though the schedule is contingent on no discovery disputes arising. Additionally, as noted in Section 7, the schedule for A. 23-03-003 may impact this proceeding.

² Required by Assigned ALJ's Ruling issued on July 21, 2023.

6. Direction to Parties Regarding Discovery

At the PHC, parties raised concerns about difficulties that may arise during the discovery process for this proceeding. Discovery between parties is guided by Article 10 of the Commission's Rules of Practice and Procedure. In an effort to reduce the possibility of discovery disputes, parties are directed to adhere to the following guidelines:

- When a party responds in full to a discovery request made by another party, the party that made the request should respond in writing that the response is complete, once it has reviewed the information or data and is able to make that determination;
- To avoid confusion over the use of similar terms, parties should develop a glossary of relevant terms they expect to use in the discovery process and agree to use those terms;
- If a party is confused by the use of a specific term or question in a discovery request, and needs clarification, even after the creation of a glossary, that party must inform the party requesting the information by no later than one week before the deadline to respond;
- If a party receiving a discovery request does not have or use the specific information or data being asked for, but instead possesses or uses similar data or information, or data or information that is different but essentially serves the same or similar purpose as the information or data being requested, that party must provide that information or data, accompanied with an explanation of how that data or information is used and why their answer is responsive to the question in the discovery request; and

- Counsel for the party answering the discovery request must attest that the response is accurate, complete, and true.³

7. A.23-03-002 and A.23-03-003 are not consolidated, but Public Participation Hearings will be Coordinated

After considering the arguments raised by parties at the PHC, both in favor of consolidating AT&T's ETC and carrier of the last resort (COLR) relinquishment applications (A. 23-03-002 and A. 23-03-003, respectively), as well as arguments against it, this ruling denies the request to consolidate A. 23-03-002 and A. 23-03-003. The legal standards, potential evidence, and analysis used in each proceeding will be different. Additionally, the parties are not the same in both proceedings.

While this ruling denies the request to consolidate A.23-03-002 and A.23-03-003, administrative coordination for purposes of PPHs will be carried forward in both dockets. This also means that while the proceedings are not consolidated, their schedules are very related. A ruling setting the dates and times of the public participation hearings, as well as any instructions for parties will come via an ALJ ruling.

³ We remind parties that Rule 1.1 states, in relevant part, that: "Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission... (is) never to mislead the Commission or its staff by an artifice or false statement of fact or law." Further, the Commission has held, in several instances, that a violation may occur "where there has been a lack of candor, withholding of information, or failure to correct information or respond fully to data requests" including, but not limited to, D. 13-12-053, D.93-05-020, D.92-07-084, D.92-07-078, and D.01-08-019. Rule 8.4 (c) of the California Bar Association's Rules of Professional Conduct finds that "It is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation..."

8. Alternative Dispute Resolution (ADR) Program and Settlements

The Commission's Alternative Dispute Resolution (ADR) program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the parties' request, the assigned ALJ can refer this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.⁴

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules of Practice and Procedure and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law, and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

9. Category of Proceeding and Ex Parte Restrictions

This ruling confirms the Commission's preliminary determination⁵ that this is a ratesetting proceeding. Accordingly, ex parte communications are restricted and must be reported pursuant to Article 8 of the Rules.

10. Public Outreach

Pursuant to Public Utilities Code section 1711(a), this ruling confirms that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on

⁴ See D.07-05-062, Appendix A, § IV.O.

⁵ See D.07-05-062, Appendix A, § IV.O.

Resolution ALJ-176-3524.

communities and business that subscribe to it and posted on the Commission's website. In addition, the applicant served its application on each party of record on the Service List in Rulemaking 20-02-008, Order Instituting Rulemaking to Update the California Universal Telephone Service (California LifeLine) Program.

11. Intervenor Compensation

Pursuant to Public Utilities Code section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by July 1, 2023, 30 days after the prehearing conference.

12. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the online docket card for the proceeding.

13. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

14. Filing, Service, and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is

correct and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4⁶.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Unless specifically instructed to provide paper copies, parties should only serve documents on the assigned ALJ using electronic mail.

When serving documents upon Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other

⁶ The form to request additions and changes to the Service list may be found at <https://www.cpsc.ca.gov/-/media/cpsc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

15. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive emails from the Commission. Please add “@cpuc.ca.gov” to your email safe sender list and update your email screening practices, settings and filters to ensure receipt of emails from the Commission.

16. Assignment of Proceeding

John Reynolds is the assigned commissioner and Thomas J. Glegola is the assigned ALJ and presiding officer for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing is needed.
4. The presiding officer is Administrative Law Judge Thomas J. Glegola.
5. The category of the proceeding is ratesetting.

Dated September 20, 2023, at San Francisco, California.

/s/ JOHN REYNOLDS

John Reynolds
Assigned Commissioner