

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

Application of Comcast Phone of California LLC (U5698C) to expand its existing Certificate of Public Convenience and Necessity to provide limited facilities-based telecommunication service in the service territory of Ponderosa Telephone Co.

Application 19-01-003

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This scoping memo and ruling sets forth the category, the issues to be addressed, the additional information required, and the schedule of the proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rule).

**1. Procedural Background**

On January 4, 2019, Comcast Phone of California, LLC (Comcast) filed an application to expand its existing Certificate of Public Convenience and Necessity (CPCN) to provide limited facilities-based telecommunication service in the service territory of Ponderosa Telephone Company (Ponderosa). On February 8, 2019, Ponderosa filed a protest and the *Motion of the Ponderosa Telephone Co. to Stay or Hold in Abeyance the Application of Comcast Phone of California, LLC to Expand the Territorial Scope of its Certificate of Public Convenience and Necessity* (motion). On February 19, 2019, Comcast filed a reply to the protest and a response to the motion.

A prehearing conference (PHC) was held on February 28, 2019 to discuss the issues of law and fact, determine the need for an evidentiary hearing (EH), and discuss the schedule for resolving the matter. At the PHC, the parties agreed that if necessary, concurrent opening testimony would be due May 17, 2019, concurrent rebuttal testimony would be due June 21, and an EH would be held on July 15 - July 16, 2019.<sup>1</sup>

After considering the application, protest, motion, reply, response, and the discussion at the PHC, I have determined that within the scope of this proceeding is a threshold issue that must be decided before delving into whether Comcast meets all Commission requirements for expanding its existing CPCN authority.

## **2. Issues**

The issues to be determined are as follows:

Threshold Issue:

- 1) Threshold issue: given existing law and Commission policy, should Comcast's request to be a service provider in Ponderosa's territory be considered?

Secondary Issue:

- 2) Does Comcast meet all Commission requirements to expand its existing CPCN for limited facilities-based authorization to provide resold interexchange services on a statewide basis?

## **3. Additional Information Required**

As discussed in Ponderosa's motion, the Commission previously determined in the California High Cost Fund A Rulemaking (R.) 11-11-007

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<sup>1</sup> PHC, Feb. 28, 2019, transcript at 41:23 to 42:2.

(CHCF-A Rulemaking or Rulemaking) that phase 2 of the CHCF-A Rulemaking would assess whether some or all of the 13 small incumbent local exchange carriers (ILECs) should be open to wireline voice competition.<sup>2</sup> Only after the Commission completes a detailed evaluation of the impact of wireline voice competition on the ILECs would the Commission consider requests to amend CPCNs to include small ILECs.<sup>3</sup> Phase 2 would include two parts: 1) a study of the competition issue, and 2) an evaluation of the study itself and the impacts of competition on the 13 ILECs.<sup>4</sup> In September 2018, Mission Consulting, LLC, issued the *Broadband Internet and Wireline Voice Competition Study*. On March 22, 2019, the Commission issued the *Fourth Amended Assigned Commissioner's Scoping Memo and Ruling on Phase 2*, which referenced the Mission Consulting study and reiterated that the Rulemaking will resolve the key issue of whether the small ILECs should be open to wireline voice competition.<sup>5</sup>

Ponderosa is one of the 13 ILEC territories subject to evaluation in the Rulemaking. Furthermore, the Rulemaking encompasses comprehensive factual and policy questions regarding the impact of wireline voice competition on the 13 ILEC territories. To resolve the threshold question in this instant proceeding of whether Comcast can be considered to be a potential wireline voice service provider in Ponderosa's territory at this given existing law and Commission

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<sup>2</sup> Motion at 2-3; D.14-12-084 at 46.

<sup>3</sup> D.14-12-084 at 101-102, Conclusion of Law 43.

<sup>4</sup> Motion at 2-3; D.14-12-084 at 46.

<sup>5</sup> Fourth Amended Assigned Commissioner's Scoping Memo and Ruling, R.11-11-007, March 22, 2019, at 4.

policy, within 15 calendar days of this scoping memo and ruling, the parties shall submit a response regarding the following:

- 1) How does Comcast's assertion that it seeks interconnection in Ponderosa's territory based on 47 U.S.C § 251 (a) and § 251 (b), and not § 251 (c), change the applicability of Commission policy and decisions?<sup>6</sup>
- 2) What are the circumstances particular to Comcast and Ponderosa that requires a decision on the expansion of the Comcast CPCN separately from phase 2 of the R.11-11-007?
- 3) Given the *Fourth Amended Assigned Commissioner's Scoping Memo and Ruling* in R.11-11-007, can the Commission evaluate Comcast's CPCN separately from R.11-11-007?
- 4) Given the *Fourth Amended Assigned Commissioner's Scoping Memo and Ruling* in R.11-11-007, what are the policy reasons for and against evaluating Comcast's CPCN separately from R.11-11-007?
- 5) Does D.14-12-084 apply to Comcast's application?

#### **4. Need for Evidentiary Hearing**

Resolution ALJ 176-3430 issued on January 31, 2019 preliminarily determined that an EH is needed. At the PHC, the parties agreed that if necessary, concurrent opening testimony would be due May 17, 2019, concurrent rebuttal testimony would be due June 21, 2019, and an EH would be held on July 15 - July 16, 2019. However, we must resolve the threshold question before reaching the matter of the expansion of Comcast's CPCN. As such, we will determine the appropriateness of the previously discussed schedule after receiving the parties' responses to the questions in this scoping memo and ruling.

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<sup>6</sup> Reply at 4-5.

## 5. Schedule

Although further details will follow as discussed above, the following schedule is adopted here and may be modified by the Administrative Law Judge (ALJ) as required to promote efficient and fair resolution of the application:

Submission of the Matter	To be Determined
Proposed Decision	[no later than 90 days after submission]
Commission Decision	[no sooner than 30 days after the proposed decision]

The proposed decision shall be filed no later than 90 days from the submission date for public review and comment.

## 6. Category of Proceeding/*Ex Parte* Restrictions

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding. (Resolution ALJ 176-3430.) Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

## 7. Oral Argument

Unless comment is waived pursuant to Rule 14.6(c)(2) for granting the uncontested relief requested, motion for oral argument shall be by no later than the time for filing comment on the proposed decision.

## 8. Public Outreach

Pursuant to Pub. Util. Code § 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it on page five of the February 2019 edition of "Working for California" newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

## **9. 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 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **10. Service of Documents on Commissioners and Their Personal Advisors**

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on 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.

## **11. Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and Zhen Zhang is the assigned ALJ for the proceeding.

### **IT IS RULED:**

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.

3. This proceeding is categorized as ratesetting.
4. Evidentiary hearings are needed.

Dated April 4, 2019, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph  
Assigned Commissioner