



FILED
11-21-16
04:59 PM

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

Joint Application of Webpass
Telecommunications, LLC (U7278C) and
Google Fiber Inc. for Approval of a Transfer of
Control of Webpass Telecommunications, LLC

A. 16-08-009
(Filed August 15, 2016)

**PREHEARING CONFERENCE STATEMENT
OF WEBPASS TELECOMMUNICATIONS, LLC (U7278C) AND
GOOGLE FIBER INC.**

John L. Clark
GOODIN MACBRIDE, SQUERI & DAY LLP
505 Sansome Street, Suite 900
San Francisco, CA 94111
Phone: (415) 765-8443
Fax: (415) 398-4321
Email: jclark@goodinmacbride.com

Counsel for WEBPASS
TELECOMMUNICATIONS, LLC

James W. McTarnaghan
PERKINS COIE LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105
Phone: (415) 344-7007
Fax: (415) 344-7207
Email: JMcTarnaghan@perkinscoie.com

Counsel for GOOGLE FIBER INC.

Date: November 21, 2016

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

Joint Application of Webpass
Telecommunications, LLC (U7278C) and
Google Fiber Inc. for Approval of a Transfer of
Control of Webpass Telecommunications, LLC

A. 16-08-009
(Filed August 15, 2016)

**PREHEARING CONFERENCE STATEMENT
OF WEBPASS TELECOMMUNICATIONS, LLC (U7278C) AND
GOOGLE FIBER INC.**

Pursuant to the October 13, 2016 *Administrative Law Judge’s Ruling Setting A Prehearing Conference and Requiring the Parties to Meet and Confer and File a Joint Prehearing Conference Statement* (the “October 31 ALJ Ruling”) and the October 24, 2016 *Administrative Law Judge’s Ruling Resetting A Prehearing Conference For November 30, 2016; Requiring the Parties to Meet and Confer and File a Joint Prehearing Conference Statement* (the “October 24 ALJ Ruling”), Webpass Telecommunications, LLC (U7278C) (“Webpass Telecommunications”) and Google Fiber Inc. (“Google Fiber”) (collectively “Applicants”) here submit their joint Prehearing Conference Statement. Although Applicants met and conferred with the only party protesting the Application, the National Diversity Coalition (“NDC”), both sides agreed that, given the remaining areas of disagreement between them, it would be more efficient for the parties to each file individual Prehearing Conference Statements.

I. INTRODUCTION

As explained in the Application, the transaction at issue here is a simple and straightforward transfer of control of Webpass Telecommunications to Google Fiber under Section 854(a). Webpass Telecommunications is a start-up and holds a Certificate of Public Convenience (“CPCN”) from the CPUC issued in D.15-04-051. This transaction does not have an impact on customers, does not result in increases in market share, and is of the type that the Commission routinely approves.¹

In this proceeding, presumably because one of the Applicants is a subsidiary of a well-known corporation, Google Inc., NDC filed a protest to the Application in which it raised arguments similar to those raised in recent very large mergers considered by the Commission. In doing so, NDC presented novel—but completely unsubstantiated—claims that parties other than Webpass Telecommunications were California public utilities in an effort to move this transaction under the more strenuous review of Sections 854 (b) or (c) and to extract various conditions and commitments from Applicants wholly unrelated to the limited transaction before the CPUC. Notably, no other party other than NDC, including the Office of Ratepayer Advocates (“ORA”), filed a protest to the Application and, but for NDC’s protest, this Application may already have been approved.

On September 29, 2016, Applicants filed a Joint Reply to the Protest and explained in detail why NDC’s arguments should be rejected. Since that time, NDC has propounded two sets

¹ See e.g., D.16-10-010, *Joint Application of Inmate Calling Solutions, LLC, and TKC Holdings, Inc.*, issued October 14, 2016; D.16-06-048, *Joint Application of TeleCommunication Systems, Inc., Comtech Telecommunications Corp., and Typhoon Acquisition Corp.*, issued July 5, 2016; D.16-04-027, *Joint Application of GTCR Onvoy Holdings, LLC, Communications Infrastructure Investments, LLC, Onvoy, LLC, and Broadvox-CLEC, LLC*, issued April 22, 2016; D.15-12-034, *Joint Application of Cequel Corp., Cebridge Telecom CA, LLC, , Altice N.V., and Patrick Drahi*, issued December 8, 2015; D.15-10-038, *Joint Application of Odyssey Acquisition, LLC, ExteNet Holdings, Inc., and ExteNet Systems (California), LLC*, issued October 22, 2015. Notably, NDC did not file a protest in any of these proceedings.

of data requests to which Applicants have responded or objected on relevance grounds. Applicants and NDC have also met in constructive conversations, and both sides have expressed an interest in continuing such discussions. As of the date of this Statement, however, the parties have not reached an agreement. Nonetheless, as detailed here, Applicants submit that the matter before the Commission in this proceeding can and should be resolved based on the pleadings filed to date and that the Application can and should be approved under Section 854(a) without further delay.

**II.
RESPONSES TO SPECIFIC TOPICS
IN SECTION 2 OF OCTOBER 24 ALJ RULING**

Both ALJ Rulings requested the parties to discuss specific matters in advance of the Prehearing Conference. Applicants address each of these specific matters in order here:

1. Specific Factual and Legal Issues that the CPUC Needs to Decide

As stated in the Application that initiated this proceeding, Joint Applicants submit that the only issue that needs to be decided by the CPUC is whether the proposed, routine transfer of control is in the public interest consistent with Public Utilities Code Section 854(a). Joint Applicants respectfully submit that all facts necessary for the CPUC to decide that the transfer of control is in the public interest were contained in the verified Joint Application submitted on August 15, 2016.

Joint Applicants anticipate that NDC will indicate that there are factual issues concerning the revenues and role of Google Inc. and Alphabet Inc. which relate to NDC's theories on applicability of Public Utilities Code Section 854(b) or (c). As fully explained in the Joint Reply, neither of these companies are (a) California public utilities or (b) a party to the transaction at issue here.

2. Discovery Needs and Discovery Cut-Off Date

After the issuance of the October 13 ALJ Ruling, NDC served its first set of Data Requests on October 14, 2016 and subsequently served its second set of Data Requests on November 1, 2016. In total, NDC has propounded 34 individual data requests, many of which contain more than one request. Applicants have now responded or objected to all of NDC's Data Requests and respectfully submit that no additional discovery is needed for this straightforward transaction. As such, Applicants propose that discovery be immediately cut-off. To the extent that discovery continues, Applicants reserve their rights to conduct discovery against NDC but note that, to date, discovery has all been from NDC directed to Applicants. Under all circumstances, no discovery should be permitted after December 7, 2016, one week after the Prehearing Conference.

3. Undisputed Material Facts

Applicants contend that the following set of facts are the only material facts necessary to resolution in this proceeding and to determine that this transaction should be approved under Section 854(a) of the Public Utilities Code in this proceeding. These facts are undisputed:

- (a) Webpass Telecommunications is a California public utility;
- (b) Webpass Telecommunications does not have over \$500 million in California revenues; and
- (c) Google Fiber does not have over \$500 million in California revenues.

There are other non-material facts which are not disputed between the parties. Applicants anticipate that NDC will argue that other facts are material including various facts regarding Google Fiber's parent company, Google Inc., and Webpass Inc. Many of these facts are undisputed, but the parties disagree as to their relevance. However, Applicants respectfully disagree with NDC that there are disputed facts that are relevant to this proceeding and submit

that any further inquiry regarding Google Inc. is unnecessary. To the extent that NDC continues to assert that either Section 854(b) or Section 854(c) is applicable here, Applicants believe that such issue could be resolved as a matter of law on the pleadings already submitted.

4. Need for Hearings and/or Testimony/Declarations

As stated in the original Application (at 2), Applicants submit that the information presented in the Application filed in August 2016 is sufficient to permit the Commission to rule on the transfer of control and that there is no need for a hearing. To the extent necessary, Applicants would certainly be willing to submit a declaration stating that neither Webpass Telecommunications nor Google Fiber has California revenues over \$500 million to support a conclusion of law that Section 854(a) is applicable and that Sections 854(b) and (c) are not applicable.

5. Time for Hearing and Number of Potential Witnesses

As stated above, Applicants do not believe that hearings are necessary at all. If hearings are deemed necessary, Applicants submit that they should be limited to one day.

6. Proposed Schedule.

This Application was filed in August 2016. Joint Applicants proposed a schedule that ended with a Commission Decision on December 1, 2016. NDC's protest has delayed this proceeding. However, Applicants submit that this proceeding can and should move forward without additional delay.

**III.
CONCLUSION**

The Applicants have requested approval of a straightforward transfer of control of a small CLEC in California and have complied with Section 854(a) by showing that such transfer of control meets the Commission's public interest standard under that section. NDC's efforts to

convert this routine filing into a proceeding comparable to recent very large merger proceedings is unwarranted here. Applicants are prepared to discuss any of these issues at the Prehearing Conference on November 30, 2016.

Respectfully submitted,

/s/ John L. Clark

John L. Clark
GOODIN MACBRIDE, SQUERI & DAY LLP
505 Sansome Street, Suite 900
San Francisco, CA 94111
Phone: (415) 765-8443
Fax: (415) 398-4321
Email: jclark@goodinmacbride.com

Counsel for WEBPASS
TELECOMMUNICATIONS, LLC

Date: November 21, 2016

/s/ James W. McTarnaghan

James W. McTarnaghan
PERKINS COIE LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105
Phone: (415) 344-7007
Fax: (415) 344-7207
Email: JMcTarnaghan@perkinscoie.com

Counsel for GOOGLE FIBER INC.