Decision 02-06-042 June 27, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA ISP ASSOCIATION, INC., Complainant, vs. PACIFIC BELL TELEPHONE COMPANY (U 100 C); SBC ADVANCED SOLUTIONS, INC. (U 6346 C) and DOES 1-20, Defendants.	Case 01-07-027 (Filed July 26, 2001)

ORDER EXTENDING STATUTORY DEADLINE

Background

The purpose of this order is to make findings in compliance with California Pub. Util. Code § 1701.2(d)[1] which states, in part: "Adjudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline." This provision applies in adjudication cases, such as the above-captioned case, where the Commission has determined that a hearing is necessary.

[1] All statutory references are the Public Utilities Code unless otherwise noted.

On July 26, 2001, the California ISP Association (CISPA, or "Complainant") filed this complaint alleging unlawful discrimination by the defendants in the provision of digital subscriber line (DSL) transport services in California. On October 22, 2001, the named defendants filed answers to the complaint and a joint motion to dismiss the complaint. Defendants' motion to dismiss was later denied by an Assigned Commissioner and Administrative Law Judge (ALJ) ruling. Subsequently, the Assigned Commissioner and ALJ issued a scoping memo setting a timetable for the case.

The 12-month anniversary of this case will occur on July 26, 2002.

Discussion

We find that the case cannot be concluded within 12 months of initiation in view of the shortness of the time remaining before the 12-month deadline expires and the remaining tasks to be concluded.

The progress toward concluding the case was initially slowed by defendants' three separate requests for additional time to respond to the complaint based on representations of ongoing negotiations to settle the case with Complainant. Complainant did not oppose any of these extension requests and they were granted by the ALJ. In total, the three extension requests resulted in an eight-week delay in Defendants' answer to the complaint, which was filed on October 22, 2001, along with a motion to dismiss.

Following denial of the motion to dismiss, the ALJ held a prehearing conference where she made preliminary rulings on the scope of the case in advance of the issuance of a scoping memo. At the prehearing conference, the parties jointly requested time to perform further discovery in this case and they requested a schedule involving prepared testimony in June and August 2002, and hearings in mid-September 2002. The parties agreed on the need for

hearings in this matter and were aware that their proposed schedule extended beyond the statutory 12-month deadline for the case. The schedule that the parties requested was affirmed in the scoping memo and is shown in the table below.

Complainant's Testimony	June 14, 2002
Defendants Reply Testimony	August 2, 2002
Complainant's Rebuttal Testimony (if needed)	August 16, 2002
Completion of Discovery	August 30, 2002
Prehearing Conference	September 12, 2002 (10 a.m.)
Evidentiary Hearing	September 16 through 20, 2002 (10 a.m. to 4 p.m.)
Concurrent Opening Briefs	October 18, 2002
Concurrent Reply Briefs	November 8, 2002
Projected Case Submission	November 8, 2002
Presiding Officer's Decision	January 7, 2003

The initial delays resulting from the parties' requests for an extension to respond, the motion to dismiss the case, and their request for additional time for discovery prior to testimony and hearings have resulted in a later than expected hearing date for this case. The schedule above indicates that the presiding officer expects to issue her presiding officer's decision (POD) in January 2003. Pursuant to Section 1701.2(a), the POD shall become the decision of the Commission if no appeals or requests for review are filed within 30 days after it is issued. Therefore, even if no appeals are made, this proceeding cannot be resolved

before the 12-month deadline expires on July 26, 2002. Additional time is required to allow the Commission to hold hearings on this matter, to issue a POD, to address any requests for review or appeals of the POD, and to permit the Commission to render its final decision.

Accordingly, we find that the 12-month deadline for processing this case pursuant to Pub. Util. Code § 1701.2(d) cannot be met, and that an extension in the schedule will be required to allow for adequate time to deliberate on potential appeals or requests for review. The schedule set forth in the scoping memo projects the issuance of a POD in January 2003, and we anticipate resolution of this case shortly thereafter depending on whether the POD is appealed.

We will waive public review and comment regarding today's decision, as provided in Rule 77.7(f)(4) of our Rules of Practice and Procedure.

Findings of Fact

1. The 12-month statutory deadline for resolving this case is July 26, 2002.
2. The scoping memo for this proceeding set a schedule for testimony in June and August 2002, and hearings in September 2002.
3. The case has experienced delay due to three requests by the named defendants for an extension to respond, a motion to dismiss, and a request from all parties for additional discovery time.
4. The Commission cannot resolve this case before the 12-month deadline expires on July 26, 2002, because there is not adequate time to hold hearings, issue a presiding officer's decision, and allow time for appeals before the 12-month deadline.
5. The current schedule for this case anticipates issuance of a POD in January 2003.

6. An extension of the 12-month deadline is necessary to allow the Commission adequate time to deliberate on any appeals or requests for review regarding the presiding officer's decision.

Conclusions of Law

1. California Pub. Util. Code § 1701.2(d) requires that adjudication cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline. This provision applies in adjudication cases where the Commission has determined that a hearing is necessary.

2. The findings set forth above constitute sufficient basis under Pub. Util. Code § 1701.2(d) to justify why this proceeding cannot be resolved within 12 months of initiation.

3. The order extending this case as set forth below should be adopted, effective immediately.

4. Public review and comment regarding today's decision has been waived, as provided in Rule 77.7(f)(4) of the Commission's Rules of Practice and Procedure.

O R D E R

IT IS ORDERED that the 12-month statutory deadline imposed by Public Utilities Code § 1701.2(d) is extended to permit conclusion of this proceeding shortly following the issuance of a Presiding Officer's Decision in January 2003.

This order is effective today.

Dated June 27, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners