BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

FILED
11-07-16
01:47 PM

Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions raised in the Limited Rehearing of Decision 08-09-042.	**I.15-11-007** (Filed November 5, 2015)

OPENING COMMENTS OF CELLCO PARTNERSHIP DBA VERIZON WIRELESS (U 3001 C) AND MCI COMMUNICATIONS SERVICES INC. (U 5378 C) ON PROPOSED DECISION OF ALJ BEMESDERFER

Cellco Partnership dba Verizon Wireless and MCI Communications Services Inc. (collectively "Verizon") respectfully submit these opening comments on the Proposed Decision of ALJ Bemesderfer (PD).

Verizon agrees with the "high degree of regulatory humility" with which the ALJ approached this complex subject and with much of the PD's findings of fact and conclusions of law.

I. COMMUNICATIONS HAVE EVOLVED

As the PD recognizes, the market for communications services has evolved from the service and jurisdictional boundaries of the past. The PD notes that "[v]oice communication itself is a diminishing segment of the broader telecommunications market, which includes data services and text communication, a market segment that is expanding

more rapidly than voice."[1] The Commission correctly recognizes that regulation in the face of such market transitions "might create unintended consequences that would harm consumers" and that therefore it is "[un]certain that rate-regulating telephone services would result in just and reasonable rates."[2]

Of course, the reason rate-regulation is unnecessary to achieve just and reasonable rates is because the Commission's cornerstone policy of promoting competition for communications services for the past two decades has been successful. The Commission has helped create the conditions for California to move from a highly-regulated monopoly voice market to a vibrant, dynamic, competitive communications market.

In the early days of competition, all competitive alternatives looked essentially like traditional phone services and were provided by carriers who were themselves regulated or at least reported information to regulators, but now the market is so varied and so robust that no one can have all of the information about what is happening in the market. This is a feature of robust competitive markets, where there are few, if any, centralized points of control and market outcomes are instead the product of uncoordinated decisions of many sellers and consumers. Consumers have many options for their communications services, over multiple networks, platforms, and applications, and this is the successful end result of the Commission's policies to create a choice architecture based on open entry, innovation, and respect for varied consumer preferences.

---

1 PD at 3.

2 PD at 122-123.

II. THE PD PROPERLY RELIES ON PUBLIC PURPOSE PROGRAMS

The PD recommends use of existing subsidy programs to address various issues identified as needing Commission intervention. For example, the PD concludes that there are different gaps in the market for rural/tribal customers than there are for low income customers.[3] While some rural and tribal customers face an availability gap—the lack of services deployed to their residence—certain low-income customers face an affordability gap—while services are available, a group of low income customers cannot afford high speed services and are often[4] unable to choose both a mobile subscription and a high-speed residential subscription. The PD appropriately concludes that the Commission "will continue to address the gaps impacting these populations through our administration of Public Purpose Programs,"[5] including Lifeline, high cost funds, the California Advanced Service Fund, the California Teleconnect Fund and the Deaf and Disabled Telecommunications Program.

III. THE ANALYSIS OF ASYMMETRIC INFORMATION MISUNDERSTANDS THE NATURE OF COMPETITIVE MARKETS

Citing the FCC and Nobel-winning economist Friedrich Hayek, the PD states that "[f]ull information about, and visibility into, the telecommunications network and its associated markets would allow the regulator's choices to be data driven, and regulation

---

[3] PD at 137; COL 13

[4] The PD does not quantify the affordability gap and some may have reason to quibble with the scope of this conclusion, but the point that there is a segment of society that simply will not purchase communications services due to limited income should be accepted as a fair conclusion.

[5] PD at 137, 150.

to be as efficient as we would like the market to be,"[6] and later that "competition, and well-functioning markets, rely on the distribution of information among market participants."[7]

The notion that any one actor – supplier, consumer, or regulator – can have "full information about, visibility into" any market is misplaced and is assuredly not the context that Prof. Hayek was discussing in terms of how information is disseminated in a market. In a dynamic market, information is conveyed by the unplanned and varied decisions of a wide range of consumers and producers, each of whom has a different set of preferences and values. In that sense, information is the *result*, not the input, for the competitive process. Some information about suppliers -- such as operational and financial data mandated by the Securities and Exchange Commission -- is publicly available and contributes to efficient market decisions, but the type of detailed operational and demand data that public utility regulators collect is more geared toward the regulation of monopolies than it is the efficient operations of competitive markets.

Efficient markets operate on the basis that all public information is incorporated in market transactions, *not* on the basis that all possible information is made public. Citing Prof. Hayek, even indirectly, in support of a government role in mandating and collecting information is particularly inapt.[8]

---

6 PD at 111.

7 PD at 113-114.

8 To highlight this, here is how George Mason University economics Prof. Donald Boudreaux explains the point, channeling Prof. Hayek: "With perfect information, no one gets fooled; no one errs; no one takes unjustified advantage of anyone else; no one fails to seize the most valuable opportunities available to him or her. The outcomes of perfect-information markets generally seem to be, not surprisingly, ideal or perfect. Prices are always 'right.' No one ever suffers any inconvenience, loss, or other ill consequence of being less than fully ("perfectly") informed.

"But to call such outcomes "perfect" strongly suggests that different, less-ideal outcomes are "imperfect." … The impression conveyed by such language and theorizing is that the lack of

That is, the PD errs in suggesting that correcting for the existence asymmetry of information is necessary because then the Commission can intervene to achieve its preconceived notions of a perfectly competitive market or efficient regulation. The PD inappropriately strives for that "perfect information", seemingly on the basis of this misguided notion, by requiring carriers to annually report granular block level voice and broadband subscription and availability data, the location of middle-mile facilities by technology type and capacities[9] and other information demanded by Communications Division staff.[10]

The Commission should not impose such reporting requirements based on this fundamentally incorrect analysis; moreover, a candid review of the Commission's history

---

perfect information causes markets to fail in some ways – to come up short – to not perform as well-functioning markets 'should' perform (or can, perhaps, perform if only the "imperfection" is gotten rid of). It's a short leap for many theorists from this conclusion to the belief that government should do one of three things: (1) intervene in the market to force the market outcomes to be more like what the theorists theorize the outcomes would have been if information were perfect; (2) intervene to encourage or enable market participants to gather more information; or (3) replace these imperfect markets with government-run enterprises or agencies that – because of the "Then a miracle occurs" step – are simply assumed to be able to outperform markets.

"Without here denying the theoretical (or even practical) possibility that any one or more of these kinds of government interventions into the economy can make people generally better off, enthusiasm for such interventions is fueled too quickly, too strongly, too voluminously, and mindlessly by the mistaken impression conveyed by talk of "imperfect markets" and "imperfect information." In fact, markets that economize on information are no more imperfect than are markets that economize on lumber or lightbulbs." A Note on Economic Theorizing and "Imperfect" Information, April 4, 2014, available at http://cafehayek.com/2014/04/a-note-on-economic-theorizing.html.

[9] And "whether such facilities are available to unaffiliated providers of Broadband Internet access service in shapefile form designated by Communications Division staff." PD, OP 2.

[10] The PD also errs in ordering the collection of data for all the reasons stated in the opening comments concurrently filed by CTIA and the Respondent Coalition.

with such annual reports would confirm that they are costly but ultimately "little used" and fail to produce tangible benefits to consumers.[11]

IV. THE COMMISSION SHOULD NOT ADDRESS IP INTERCONNECTION DISPUTES

Relying on assertions by Sprint, Cox and CalTel, the PD concludes that "interconnection access strikes us as fundamental to an efficiently competitive marketplace"[12] and then suggests that the ALJ Division and Communications Division should jointly host a workshop to solicit feedback on the interconnection resolution process."[13] The Commission should reject any effort to take a regulatory role in IP interconnection agreements as inconsistent with the ongoing FCC efforts.

The FCC announced in 2011 that it expected all providers to negotiate IP interconnection in good faith while it considered whether any provision of the federal Communications Act requires regulation of IP interconnection for VoIP traffic, or whether the Act instead is best interpreted to continue to "leave IP-to-IP interconnection to unregulated commercial agreements."[14] Just last year, the FCC twice re-affirmed that the issue is squarely before it. In a brief to the DC Circuit Court of Appeals, the FCC stated: "It is unsettled whether VoIP providers themselves have a right to interconnection under Section 251 of the Communications Act."[15] And in June 2015, the FCC "decline[d] to mandate [IP interconnection] arrangements, as the [Federal Communications]

---

11 Decision 06-08-030, Finding of Fact 99; *see also id.* at 217-18 ("Our experience over the last several years indicates that these NRF-specific detailed reports are of little use.").

12 PD at 108.

13 PD at 153.

14 ICC Reform Order at ¶¶ 1011, 1341, 1343.

15 FCC Brief for Respondents, *AT&T v. FCC*, Case No. 15-1059 (DC Cir., Oct. 5, 2015),

Commission is currently considering the appropriate policy framework for VoIP interconnection in pending proceedings."[16]

A Commission requirement that IP interconnection agreements for VoIP traffic be subject to public disclosure and dispute resolution at the Commission could have a chilling effect on the negotiation of IP interconnection agreements. Commercial agreements are routinely negotiated and executed on a confidential basis. VoIP providers who expect to negotiate and implement IP interconnection on a commercial basis may choose not to do so where their negotiations and agreements are subject to public disclosure and regulatory review. If the FCC ultimately rules that IP interconnection agreements are not subject to Section 252 and should be addressed through commercial agreements, the Commission may have discouraged and delayed IP interconnection agreements by requiring their public disclosure and regulatory review.

In short, the Commission need not and should not try to get ahead of the FCC on IP-interconnection matters. Accordingly, it should remove the directive to host a workshop to solicit feedback on the IP interconnection resolution process.

CONCLUSION

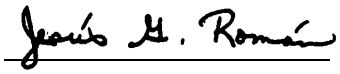
The PD reached a number of correct conclusions regarding the evolution of the communications market, including finding that the intermodal voice market is competitive. Some conclusions, however, are not supported by the record or are incorrect, as discussed herein and in the Opening Comments of CTIA and the Respondent Coalition. For example, the PD errs in its failure to find as competitive alternatives in the communications ecosystem the myriad of social media and over-the-top services used for

[16] *See* Report and Order, In the Matter of Numbering Policies for Modern Communications, 30 FCC Rcd. 6839, 6863 ¶ 50 (2015).

communications and service resold by mobile virtual network operators; unsupported adoption of a definition of high speed broadband for mobile service as 25 Mbps download and 3 Mbps upload; overreliance on the Commission's CalSpeed tool and the demonstrably incorrect conclusion that actual speeds are less than those mobile carriers advertise; and incorrect legal analysis of section 706 of the Federal Telecommunications Act and PU Code section 716.

November 7, 2016

Respectfully submitted,



Jesús G. Román
15505 Sand Canyon Avenue
Irvine, CA 92618
Tel: (949) 286-7202
jesus.g.roman@verizon.com

Attorney for Verizon