

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



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Application of Cox California Telcom, LLC (U-5684-C) for Designation as an Eligible Telecommunications Carrier.

Application No. 12-09-014
Filed September 25, 2012

**JOINT MOTION OF COX CALIFORNIA TELCOM, LLC, THE GREENLINING
INSTITUTE AND THE UTILITY REFORM NETWORK FOR APPROVAL OF
SETTLEMENT AGREEMENT**

Pursuant to California Public Utilities Commission Rules of Practice and Procedure (“Rules”), Rule 11.1(e), Cox California Telcom, LLC (U-5684-C), dba Cox Communications (“Cox”), the Greenlining Institute (“Greenlining”) and The Utility Reform Network (“TURN”) (collectively, the “Settling Parties”) respectfully submit this motion requesting that the Commission adopt the Settlement Agreement, attached hereto as Attachment 1, approve the application and designate Cox as an eligible telecommunications carrier (“ETC”).

I. Introduction and Background.

In Decision 10-11-033, the Commission adopted a rule that prevents LifeLine providers from claiming amounts from the California LifeLine fund that could be reimbursed from the federal Lifeline program. As a long-time provider of LifeLine service and to ensure that it may continue to obtain reimbursement for serving LifeLine customers as its competitors do, Cox requested that the Commission designate it as an ETC, as the Commission has assumed jurisdiction to designate ETCs under Section 214(e)(2) of the federal Communications Act (“Section 214”) and Resolution T-17002.¹

Cox filed its Application on September 25, 2012, and the Division of Ratepayer Advocates (“DRA”) filed a protest and Greenlining filed a response. Cox filed its reply to DRA’s protest on November 8, 2012. The Commission conducted a pre-hearing conference in

¹ See Resolution T-17002.

this proceeding on January 28, 2013, at which DRA, TURN and Greenlining made appearances. Thereafter, the Assigned Commissioner's Ruling and Scoping Memo was issued on February 26, 2013 ("Scoping Memo"). Based on the breadth of issues included in the Scoping Memo and the Assigned Commissioner's Ruling Denying Motion to Amend the Scoping Memo, CALTEL,² AT&T, Time Warner Cable and Verizon sought and were granted party status. Each of these parties sought party status on the grounds that the Commission may address SB 1161 and VoIP issues identified in the Scoping Memo, among other reasons.³

On March 22, 2013, in response to a request submitted by Cox on behalf of itself, TURN and Greenlining, the Administrative Law Judge suspended the briefing schedule set forth in the Scoping Memo to allow parties to engage in settlement discussions. Thereafter, settlement discussions were diligently pursued. On May 22, 2013, the Settling Parties conducted a settlement conference in which all parties in this proceeding participated.

II. The Settlement Agreement.

The Settling Parties negotiated the attached Settlement Agreement in good faith and with the intent of resolving all issues identified for resolution in this proceeding. The Settlement Agreement provides, among other things that:

- Cox is a certificated carrier that utilizes circuit-switched and VoIP technology to provide basic service and LifeLine service throughout its service territory;
- Cox provides basic service and LifeLine service pursuant to its tariff on file with the Commission;
- Cox operates as a common carrier as it offers basic service and LifeLine service to the public on a nondiscriminatory basis and it holds itself out to serve indifferently all potential users;

² On March 14, 2013, CALTEL filed a motion requesting that the Commission limit its consideration of issues in this proceeding to those strictly necessary to decide whether to grant or deny Cox's application in this case. ("CALTEL Scoping Memo Motion")

³ See, CALTEL Motion for Party Status, pp. 2-3; AT&T Motion, p. 1; Time Warner Cable Information Services LLC Motion, p. 1; Verizon California Inc. Motion, p. 1.

- Cox will comply with current and future laws applicable to providers participating in the state and/or federal LifeLine programs, including without limitation applicable Commission decisions and General Orders (i.e. GO 153, GO 133-C and GO 168);
- The Commission will have the authority to address and resolve inquiries and complaints that it receives related to basic service and LifeLine service provided by Cox;
- Cox will comply with General Order 96-B (or its successor) with respect to the rules therein governing detariffing basic service and LifeLine service, withdrawing such services and/or modifying rates for such services, unless applicable law in the future provides otherwise (in which case, Cox will comply with such applicable law);
- Designating Cox as an ETC is consistent with Resolution T-17002, Decision 12-12-038, PU Code Sections 285 and 710 and the Commission's universal service goal of a 95% service penetration rate in low-income households;
- Cox's Application includes all requisite information and is consistent with the requirements set forth in Resolution T-17002; and
- Designating Cox as an ETC is in the public interest.

III. In Light of The Record, The Settlement Agreement Is Reasonable, Consistent with Applicable Law, and In The Public Interest.

Pursuant to Rule 12.1(d), the Commission may not approve a settlement agreement “unless the settlement is reasonable in light of the whole record, is consistent with law, and is in the public interest.” The Commission has consistently recognized the strong public policy favoring settlement agreements:

The Commission favors settlements because they generally support worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.⁴

In assessing proposed settlements, the Commission considers whether the entire agreement when taken as a whole is in the public interest.⁵ Consistent with Rule 12.1(d) and the

⁴ D. 10-12-035, p. 58 (citing D.10-06-031) (*re-hearing denied in D. 11-10-043*).

⁵ Id. at 27. The Commission also considers other factors, Factors that the Commission has considered

Commission's policy on settlement agreements, the Settling Parties recommend that the Commission adopt the Settlement Agreement, grant Cox's application and close the proceeding, as the Settlement Agreement is reasonable, consistent with applicable law and in the public interest.

The Settlement Agreement is reasonable in that it demonstrates that Cox's application is consistent with and satisfies the requirements of Resolution T-17002. The Settlement Agreement is also reasonable in that it clearly and explicitly applies to Cox, and only Cox. Further, the Settlement Agreement is reasonable in that it recognizes that Cox, a long-time provider of Lifeline service in California, should be designated as an ETC so that it may continue to provide LifeLine service to all of its existing LifeLine customers, as well as future LifeLine customers without interruption. Further, by resolving issues specific to Cox, the Settlement Agreement is not prejudicial to any other provider that may later seek an ETC designation from the Commission.

The Settlement is consistent with applicable law. First, Section 214(e)(2) delegates to the Commission the authority to designate common carriers as ETCs and the Commission has assumed the authority to make such designations and determine whether such designation is in the public interest. The Settlement Agreement establishes that Cox is a common carrier in that it offers, via its tariff on file with the Commission, basic service and LifeLine service to the public on a nondiscriminatory basis and it holds itself out to serve indifferently all potential users.⁶

in reviewing settlements include: (1) the risk, expense, complexity and likely duration of further litigation, (2) whether the settlement negotiations were at arms-length, (3) whether major issues were addressed, and (4) whether the parties were adequately represented. *Id.* (footnote with citations omitted).

⁶ See, 47 USC § 153(11); See also, *Nat'l Assoc. of Reg. Util. Comm'n v. Federal Communications Commission*, 525 F.2d 630, 641 (D.C. Cir. 1976) (*cert. denied*, 425 U.S. 992 (1976)). For purposes of designating Cox as ETC, it is not necessary or required for the Commission to determine whether Cox is a "telephone corporation" under Section 1001. Scoping Memo, p. 7.

Second, the Settlement Agreement designating Cox as an ETC is consistent with Section 710, as that Section does not prevent or preclude the Commission from designating Cox as an ETC. Under Section 214(e)(2), the Commission *must* designate a carrier that meets the ETC requirements and whose designation as an ETC is consistent with the public interest, convenience and necessity, and the Settlement Agreement demonstrates that Cox satisfies both federal and state requirements. Section 710 expressly grants the Commission the authority to act under delegation of federal law.⁷ Accordingly, Section 710 does not raise any issues with respect to the Commission designating carriers that operate on a common carrier basis and that comply with federal and state requirements as ETCs.

Third, and closely related, the Commission has expressly identified issues relating to VoIP providers participating in LifeLine for consideration in R.11-03-013. The Settling Parties submit that R.11-03-013 is the proper proceeding to resolve industry-wide issues related to LifeLine, Section 710 and any related matters. In the Settlement Agreement, Cox agrees to comply with applicable law governing both ETCs and LifeLine service. Accordingly, Cox will be subject to any rules the Commission may adopt in R.11-03-013 applicable to LifeLine providers.

Fourth, consistent with its findings in Decision 10-11-033 which specifically addresses the LifeLine program,⁸ in Decision 12-12-038 the Commission again re-stated its previously

⁷ Section 710(a) states in full, “The commission shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute or as set forth in subdivision (c). In the event of a requirement or a delegation referred to above, this section does not expand the commission's jurisdiction beyond the scope of that requirement or delegation.” (Emphasis added).

⁸ In D.10-11-033, the Commission concluded, “This proceeding’s record contains *overwhelming evidence* supporting the continuation of LifeLine in a *technology-neutral manner*. *California LifeLine should serve as a channel to greater access as technologies are employed in residential use by consumers.*” Id., p. 67 (emphasis added; footnotes omitted).

decided policy to allow non-traditional providers to provide basic service, and thereby participate in the LifeLine program:

The adopted basic service elements are designed to apply on a technology-neutral basis to all forms of communications technology that may be utilized, including wireline, wireless, and Voice over Internet Protocol (VoIP) or any other future technology that may be used in the provision of telephone service.

The Commission also concluded in D.12-12-038 that:

Any carrier that seeks Lifeline support even if they are not a COLR, must offer the basic service elements as specified in Appendix A. Our revised definition adopted in Appendix A shall apply to Lifeline service as a starting point subject to further analysis and possible refinements that the Commission may consider in the Lifeline Rulemaking (R.) 11-03-013.⁹

As such, designating Cox as an ETC so that it may continue to participate in and seek reimbursement from the California LifeLine program is consistent with the Commission's most recent findings that carriers may utilize any type of technology to provide basic service and carriers providing LifeLine must offer basic service. As such, designating Cox as an ETC is wholly consistent with prior Commission decisions and its universal service goals stated therein.

Fifth, pursuant to Section 285, interconnected VoIP providers must collect and remit surcharges for the Commission's public policy programs, including LifeLine. And Section 871.5 requires the Commission to implement and administer the LifeLine program in a way that is "equitable, nondiscriminatory, and without competitive consequences for the telecommunications industry in California." Allowing Cox which utilizes VoIP technology to be designated as an ETC, and thereby, participate in and seek reimbursement from the California LifeLine program is equitable in that Cox's customers must contribute to the program and those surcharge contributions should not be available only to Cox's competitors. Just as important,

⁹ Decision 12-12-038, p. 4. See Scoping Memo, p. 8 (Part 1(c)).

designating Cox as an ETC will ensure that the Commission is administering a LifeLine program that is non-discriminatory and competitively-neutral.

Sixth, consistent with Rule 12.5, the Settlement Agreement is binding only on Cox and the other parties to the settlement and is not intended to constitute a precedent regarding any principle or issue in any other proceeding.¹⁰ The Settling Parties submit that approval of the Settlement Agreement and designating Cox as an ETC in this proceeding will not have a prejudicial effect as the Settlement Agreement is premised solely on Cox's application and facts otherwise specific to Cox. As such, the Commission will need to resolve the request of any other provider's ETC request on the merits of that request, whether filed via advice letter or application.

Finally, the Settling Parties recommend that the Commission adopt the Settlement Agreement because it is in the public interest. Cox's application describes the public interest benefits related to the Commission designating Cox as an ETC.¹¹ Cox is the third largest wireline LifeLine provider in the state and has a long-history of providing high-quality service to its customers. For example, for the last ten consecutive years, Cox's residential telephone service has received highest honors in J.D. Power and Associates' Customer Satisfaction Survey in the West (which includes California).¹² Further, Cox will comply with state laws applicable to LifeLine and basic service and to resolve customer complaints before the Commission, regardless of the technology being used to provide these services. This provision ensures that

¹⁰ Rule 12.5 states in full, "Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding."

¹¹ For example, Cox's Application states, in part, "Cox is a well-established competitive local exchange carrier in California with a proven track record of providing innovative and quality services to consumers, including LifeLine consumers. Indeed, Cox has been offering LifeLine service since first providing service to residential customers approximately fifteen years ago. Cox continues to have the financial resources and commitment to bring high-quality, cost-effective communications service to the consumers it serves in California, as it has done for so for years. As such, there is no potential harm to consumers from designating Cox as an ETC." Application, p. 18.

¹² Application, p. 7.

Cox's customers will have strong protections and recourse if any problems arise. Cox serving as an ETC is consistent with the Commission's pro-competitive policies that ensure consumers have a choice of providers, and thereby, designating Cox as an ETC is in the public interest.

IV. Conclusion.

For all the reasons stated above and as set forth in Cox's Application, the Settling Parties recommends that the Commission adopt the Settlement Agreement, designate Cox as an ETC and close this proceeding.

Dated: June 3, 2013

Respectfully submitted pursuant to Rule 1.8(d):

/s/ Margaret L. Tobias

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Attachment 1
Settlement Agreement of Cox, Greenlining and TURN

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

Application of Cox California Telcom, LLC (U-5684-C) for Designation as an Eligible Telecommunications Carrier.

Application No. 12-09-014
Filed September 25, 2012

SETTLEMENT AGREEMENT

In accordance with Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Cox California Telcom, LLC, The Utility Reform Network (“TURN”) and the Greenlining Institute (“Greenlining”) (each individually, a “Party” and, collectively, the “Parties”) have agreed on the terms of this Settlement Agreement that they now submit for approval. This Settlement Agreement recommends that the Commission grant Cox’s application to be designated as an eligible telecommunications carrier (“ETC”) without conducting further briefing in this proceeding.

I. Background.

A. As stated in its Application, pursuant to the certificate of public convenience and necessity (“CPCN”) that the Commission issued, Cox provides local exchange services in its service territory in California. Cox commenced providing basic service and LifeLine service, both of which are defined by the Commission, in 1997 and continues to provide both services in its service territory.

B. In Decision 10-11-033, the Commission adopted a rule that does not allow providers participating in the California LifeLine program to claim amounts from the California LifeLine fund that could be reimbursed from the federal Lifeline program.

C. In Decision 12-12-038, the Commission adopted a new definition of basic service and concluded that the Commission may adopt further modifications in R.11-03-013 for the provision of LifeLine service.

D. Pursuant to Decision 10-11-033 and Resolution T-17002, Cox submitted an advice letter requesting ETC designation, on July 2, 2012, and the Division of Ratepayer Advocates protested such advice letter. Thereafter, Cox withdrew its advice letter and filed its Application in this proceeding.

E. Pursuant to the pre-hearing conference conducted in this proceeding, the Assigned Commissioner issued a Scoping Memo adopting a schedule such that an evidentiary hearing will be not conducted and parties would file opening and reply briefs on issues identified in the Scoping Memo. Thereafter, the Parties to this agreement commenced settlement negotiations for purposes of settling issues identified for consideration in the Scoping Memo.

II. Settlement Agreement Terms.

A. The Parties agree that the basis for and the terms of this Settlement Agreement apply only to Cox with respect to the Application it filed in A.12-09-014.

B. Cox offers LifeLine service using circuit-switched and VoIP technologies pursuant to the tariff Cox has on file with the Commission.

C. When it provides basic service and LifeLine service, regardless of the technology Cox utilizes, Cox will comply with state laws, those currently in effect and those adopted in the future, that are applicable to providers participating in the state and/or federal LifeLine programs, including without limitation applicable Commission decisions and General Orders (i.e. GO 153, GO 133-C and GO 168). For clarity, when using VoIP technology to provide basic service or LifeLine service, Cox will comply with laws applicable to those services, notwithstanding arguments made to the Commission and the Legislature regarding those decisions and rules' applicability to VoIP and IP-enabled services.

D. For basic service and LifeLine service provided by Cox, regardless of the underlying technology, the Parties agree that the Commission will have authority to address and resolve inquiries and complaints that it receives related to those services.

E. With respect to basic service and LifeLine service that it provides, regardless of the underlying technology, Cox will comply with General Order 96-B (or its successor) with respect to the rules therein governing detariffing such services, withdrawing such service and/or modifying rates for such service, unless there are any Commission decision(s) and/or other change(s) in laws applicable to ETCs, in which case, Cox will comply with such decision(s) and laws. If any such rules require Cox to file an application, then Cox will serve a copy of such application on TURN and Greenlining.

F. The Parties agree that for purposes of the Commission considering Cox's Application under 47 U.S.C. § 214(e)(2), Cox operates as a common carrier as it offers basic service and LifeLine services to the public on a nondiscriminatory basis. The Parties agree that

Cox is a common carrier with respect to its basic service and LifeLine service because it holds itself out to serve indifferently all potential users.

G. The Commission has jurisdiction to receive and act on ETC designations in California. The Parties agree that Cox's Application includes all requisite information and is consistent with the requirements set forth in Resolution T-17002. Based on facts specific to Cox as set forth in its Application and the commitments Cox has agreed to herein, each Party stipulates that the Commission has the jurisdiction to designate Cox as an ETC.

H. Each Party agrees that designating Cox as ETC is consistent with Resolution T-17002, Commission Decisions regarding LifeLine and basic service, including D.10-11-033 and D.12-12-038, the Commission's universal service goal to achieve 95% penetration rate for phone service in low-income households, Public Utilities Code Section 285 (requiring providers of interconnected VoIP service to collect and remit public policy program surcharges on their California intrastate revenues), and Public Utilities Code Section 710.

I. Each Party agrees that it is in the public interest to designate Cox as an ETC in California, so that it may receive eligible USF and California LifeLine support and continue to provide LifeLine service to eligible customers in its service areas.

J. Cox will not oppose the Commission's instituting a rulemaking or oppose any party that petitions the Commission to institute a rulemaking to address issues such as those posed in the Scoping Memo regarding VoIP and IP-enabled service offerings and those not resolved in this proceeding; provided however, if the Commission institutes such a rulemaking, no Party will be prohibited from participating in such proceeding in any manner it may deem appropriate.

K. TURN and Greenlining each agree that the issues that each such party respectively raised in this proceeding have been addressed for the purpose of settlement and each of these parties supports the Commission granting Cox an ETC designation.

L. The Parties agree that the Commission's adoption of this Settlement should not be construed as an admission or waiver by any Party regarding any fact, matter of law, or issue thereof that pertains to the subject of this Settlement. In accordance with the Commission's Rules of Practice and Procedure, Rule 12.5, the Parties intend that the Commission's adoption of this Settlement be binding on each Party, including its legal successors, predecessors, assigns, partners, joint ventures, shareholders, members, representatives, agents, attorneys, parent or

subsidiary companies, affiliates, officers, directors, and/or employees. Adoption of this Settlement does not constitute approval of, or precedent regarding, any principle in any future proceeding, unless the Commission expressly provides otherwise.

III. General.

A. Reasonable and in the Public Interest. The Parties agree to use their best efforts to obtain Commission approval of the Agreement. The Parties will request that the Commission approve the Agreement without change and find the Agreement to be reasonable, consistent with the law and in the public interest. The Parties will take no action in opposition to this Agreement.

B. Entire Agreement. All rights and remedies of the Parties are limited to those available before the Commission. This Settlement Agreement is being presented as integrated package such that Parties are agreeing to this Settlement Agreement as a whole, as opposed to agreeing to specific elements to this Settlement Agreement. If the Commission adopts this Settlement Agreement with modifications, all Parties must consent to the modifications or any Party may void this Settlement Agreement, but only after such Party provides the other Parties to the agreement with the opportunity to meet and confer in good faith regarding the proposed modifications.

C. Counterparts. This Settlement Agreement may be executed in one or more counterparts, and each of which when so executed and delivered will be an original and all of which together will constitute one and the same instrument.

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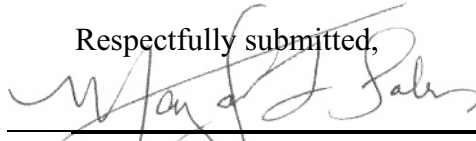
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IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the Effective Date.

Dated: May 30, 2013

Respectfully submitted,



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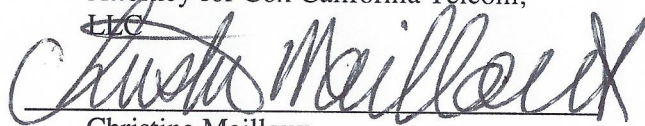
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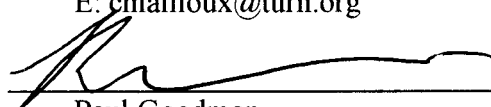
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