

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

UTILITY CONSUMERS' ACTION NETWORK)
(UCAN))
Complainant,)
) Case No. 05-11-012
vs.)
)
COX CALIFORNIA TELECOM II, LLC dba Cox)
Communications and related entities (collectively)
"Cox"))
)
Defendants.)

**ANSWER OF COX CALIFORNIA TELCOM, LLC DBA COX
COMMUNICATIONS, TO COMPLAINT AND REQUEST FOR CEASE AND
DESIST ORDER AGAINST COX COMMUNICATIONS FOR FAILURE TO
COMPLY WITH PUBLIC UTILITIES CODE SECTION 2883 REGARDING 911
EMERGENCY SERVICE ACCESS FOR RESIDENTIAL UNITS**

Douglas Garrett
Cox California Telcom, LLC
2200 Powell St., Suite 1035
Emeryville, CA 94608
T: 510.923.6222
E: douglas.garrett@cox.com

Margaret L. Tobias
Tobias Law Office
460 Pennsylvania Ave
San Francisco, CA 94107
T: 415.641.7833
E: marg@tobiaslo.com

Esther Northrup
Cox California Telcom, LLC
5159 Federal Blvd.
San Diego, CA 92105
T: 619.266.5315
E: esther.northrup@cox.com

Dated: December 22, 2005

Pursuant to the California Public Utilities Commission Rules of Practice and Procedure (“Rules”) Rule 13.1 and service of the complaint including Instructions to Answer, dated November 22, 2005, Cox California Telcom, L.L.C., dba Cox Communications, (U 5684 C) (“Cox”) submits this response to the Complaint and Request for Cease and Desist Order Against Cox Communications for Failure to Comply with Public Utilities Code Section 2883 Regarding 911 Emergency Service Access For Residential Units (“Complaint”) filed by the Utility Consumers’ Action Network (“UCAN”).

I. INTRODUCTION

This complaint against Cox is misplaced and should be dismissed as a matter of law. UCAN raises policy issues and new, sometimes novel, interpretations of Public Utilities Code Section 2883¹ which would potentially affect all telecommunications carriers providing residential wireline voice services, but UCAN fails to make factual allegations specific to Cox. Additionally, UCAN mischaracterizes Section 2883 to allege that Cox has violated rules that do not exist. UCAN improperly seeks to expand the scope of Section 2883 and applicable rules beyond what either the Legislature intended or the Commission has previously contemplated.²

The “complaint” is void of any specific factual allegations that indicate Cox is not complying with Section 2883 and applicable Commission decisions. This is because Cox is in compliance. The true purpose of the “complaint” is to advance UCAN’s policy position on what UCAN *would like the scope* of Section 2883 to be. Indeed, UCAN filed an almost identically-worded “complaint” against SBC California,

¹ All Section references herein are to the California Public Utilities Code, unless otherwise noted.

² Section 2883 was adopted in 1994 prior to the Commission authorizing competition in the local exchange market.

Inc. (“SBC”). As in the “complaint” against Cox, the SBC “complaint” fails to include allegations specific to SBC. The Commission should not waste its valuable resources by reviewing novel policy matters in a misplaced complaint proceeding.³

Cox is complying with Section 2883 and applicable Commission rules, and therefore, the complaint against Cox (and SBC) should be dismissed.

II. ANSWER

In response to the allegations set forth in the Complaint, Cox responds as follows:

1. Responding to the first unnumbered paragraph: Cox denies that it is “Cox California Telecom, II, LLC dba Cox Communications (U-5584-C) and related entities.” Cox states it provides access to 911 emergency phone service pursuant to applicable law. On information and belief, Cox admits that the Complainant’s legal name is Utility Consumers’ Action Network (“UCAN”). The remaining allegations included in this paragraph consist of legal conclusions to which no response is required, but to the extent those conclusions are based on factual allegations, Cox denies any such allegations.

2. Responding to Paragraph 1:⁴ Cox states the allegations in the first sentence are ambiguous, vague and confusing, and that Cox consequently lacks sufficient information to admit or deny the allegations contained therein, and on that basis, Cox denies all of the allegations in the first sentence. The second sentence consists of legal conclusions to which no response is required, but to the extent those conclusions are based on factual allegations, Cox denies such allegations. Further, Cox avers that its practices are consistent with Section 2883 and other applicable law.

³ If the Commission wants to address UCAN’s novel policy proposals, it should do so through a rulemaking proceeding requested by UCAN and not through complaint proceedings.

⁴ All paragraph references hereafter are to the Complaint, unless otherwise noted.

3. Responding to Paragraph 2: To the extent the first sentence in this paragraph references Paragraph 1, Cox denies such allegations on the same basis as set forth in its response to Paragraph 1. With respect to the second sentence, Cox avers that it lacks sufficient information to admit or deny the allegation that “many consumers in recent years have dispended with having both landline and wireless phone service,” and on that basis, Cox denies such allegation. With respect to the third sentence, Cox admits that Section 2883 applies to “local telephone corporations” and requires them to provide warm line service under certain conditions. Cox denies it has failed or refused to comply with Section 2883. Cox denies each and every remaining allegation in this paragraph.

4. Responding to Paragraph 3: With respect to the first sentence, Cox denies that prompt Commission intervention is necessary on the grounds that Cox has not violated applicable law. Further, Cox admits “an emergency affecting large geographical regions can strike at any time.” Cox denies each and every remaining allegation in the first sentence. With respect to the second sentence, Cox states that this sentence is vague and confusing, and that it consequently lacks sufficient information to admit or deny the allegations contained therein, and on that basis, Cox denies all of the allegations in the second sentence.

5. Responding to Paragraph 4: Cox denies each and every allegation in this paragraph.

6. Responding to Paragraph 5: On information and belief, Cox admits that information about Complainant is accurate.

7. Responding to Paragraph 6: Cox denies it is a corporation. Cox admits the remaining allegations included in this paragraph.

8. Responding to Paragraph 7: On information and belief, Cox admits that information about Complainant's representatives is accurate.

9. Responding to Paragraph 8: Cox admits such allegations.

10. Responding to Paragraph 9: Cox admits such allegations.

11. Responding to Paragraph 10: Cox admits it is certified as a competitive local exchange carrier and provides services to residential and business customers within its service territory in California.

12. Responding to Paragraph 11: Cox admits it markets and sells its services and denies each and every other allegation in this paragraph.

13. Responding to Paragraph 12: To the extent these allegations purport to define the requirements set forth in Section 2883, Cox states that this paragraph does not accurately reflect such code section and that such section speaks for itself.

14. Responding to Paragraph 13: The first sentence includes allegations which purport to define the requirements set forth in Sections 2895-2897, and Cox avers that such code sections speak for themselves. The second sentence of this paragraph consists of legal conclusions to which no response is required, but to the extent those conclusions are based on factual allegations, Cox denies such allegations.

15. Responding to Paragraph 14: This paragraph consists of legal conclusions to which no response is required, but to the extent those conclusions are based on factual allegations, Cox denies such allegations.

16. Responding to Paragraph 15: To the extent these allegations purport to define the requirements set forth in Section 2883, Cox states that this paragraph does not accurately reflect such code section and such section speaks for itself. To the extent this

paragraph consists of legal conclusions, no response is required, but to the extent those conclusions are based on factual allegations, Cox denies such allegations.

17. Responding to Paragraph 16: The allegations in this paragraph are ambiguous, vague and confusing, and Cox consequently lacks sufficient information to admit or deny the allegations contained therein, and on that basis, denies each of the allegations contained therein.

18. Responding to Paragraph 17: The first sentence is vague, confusing and uncertain, and Cox consequently lacks sufficient information to admit or deny the allegations contained therein, and on that basis, denies each of the allegations contained therein. To the extent allegations in this paragraph purport to describe FCC requirements, FCC documents or any events occurring at any FCC meeting, Cox avers such documents and comments made by speakers at any such actual events speak for themselves. Cox avers that it lacks sufficient information to admit or deny such allegations, and on that basis, denies each of the allegations contained therein.

19. Responding to Paragraph 18: With respect to the first sentence, Cox admits that to provide warm line service there must be a corresponding telephone number. To the extent that the allegations in this paragraph include legal conclusions, no response is required, but to the extent those conclusions are based on factual allegations, Cox denies those and any other allegations. Further, the allegations in this paragraph are vague and confusing, and Cox consequently lacks sufficient information to admit or deny the allegations contained therein, and on that basis, denies each of the allegations contained therein.

20. Responding to Paragraph 19: With respect to the first sentence, Cox admits it has back-up power in its network that provides uninterrupted power for its telephone service in the event commercial electric power is disrupted. Cox denies each and every other allegation in the first sentence. The second sentence includes legal conclusions to which no response is required, but to the extent those conclusions are based on factual allegations, Cox denies those and any other allegations.

21. Responding to Paragraph 20: With respect to the first sentence, Cox denies that there is a material problem as Cox is in compliance with applicable law. Cox avers that it lacks sufficient information to admit or deny the remaining allegations included in this paragraph, and on that basis, denies all such allegations.

22. Responding to Paragraph 21: With respect to the first sentence, Cox denies that prompt Commission intervention is necessary on the grounds that Cox is not in violation of applicable law. Also with respect to the first sentence, Cox admits “an emergency affecting large geographical regions can strike at any time,” but Cox denies each and every other allegation in the first sentence in this paragraph. Cox states the allegations in the second sentence are ambiguous, vague and confusing, and on that basis Cox denies each and every allegation in the second sentence. The third and fourth sentences include legal conclusions to which no response is required, but to the extent those conclusions are based on factual allegations, Cox denies those and any remaining allegations.

III. REQUEST FOR RELIEF

1-5. These paragraphs include UCAN’s conclusions and requests for relief to which no response is required, but to the extent those conclusions are based on factual

allegations, Cox denies those and any remaining allegations. By way of further answer, Complainant is not entitled to relief prayed for or any other relief.

IV. AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim on which relief may be granted by the Commission.

2. The Complaint is ambiguous, vague and confusing and fails to provide sufficient notice or information to allow Cox to defend against the allegations and requested relief.

3. Cox has acted in accordance with its statutory and regulatory obligations with respect to providing access to 911 services in its service territory in California.

4. Cox has acted in accordance with its statutory and regulatory obligations with respect to the Complaint.

5. The relief sought by the Complaint is barred by the doctrine of laches.

6. The Complaint seeks relief that is beyond what the Commission may grant in an adjudicatory proceeding.

V. CORRESPONDENCE

Any correspondence concerning this matter should be addressed to the following:

Douglas Garrett
Cox Communications
2200 Powell St., Suite 1035
Emeryville, CA 94608
T: 510.923.6222
E: douglas.garrett@cox.com

Esther Northrup
Cox Communications
5159 Federal Blvd.
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Tobias Law Office
460 Pennsylvania Ave
San Francisco, CA 94107
T: 415.641.7833
E: marg@tobiaslo.com

VI. CONCLUSION

The Complaint is defective and cannot be amended to state a proper claim against Cox. Cox requests that the Commission deny both the Complaint and the relief sought by Complainant and dismiss the Complaint.

Date: December 22, 2005

Respectfully submitted,
Cox California Telcom, LLC
dba Cox Communications

/s/ Margaret L. Tobias

Margaret L Tobias
Its Attorneys

Douglas Garrett
Cox California Telcom, LLC
2200 Powell St., Suite 1035
Emeryville, CA 94608
T: 510.923.6222
E: douglas.garrett@cox.com

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460 Pennsylvania Ave
San Francisco, CA 94107
T: 415.641.7833
E: marg@tobiaslo.com

Esther Northrup
Cox California Telcom, LLC
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San Diego, CA 92105
T: 619.266.5315
E: esther.northrup@cox.com

PROOF OF SERVICE

I, Margaret L Tobias, the undersigned, hereby declare that, on December 22, 2005, I caused a copy of the foregoing:

ANSWER OF COX CALIFORNIA TELCOM, LLC DBA COX COMMUNICATIONS, TO COMPLAINT AND REQUEST FOR CEASE AND DESIST ORDER AGAINST COX COMMUNICATIONS FOR FAILURE TO COMPLY WITH PUBLIC UTILITIES CODE SECTION 2883 REGARDING 911 EMERGENCY SERVICE ACCESS FOR RESIDENTIAL UNITS

in the above-captioned proceeding, to be served as follows:

Via hand-delivery and email to Administrative Law Judge Thorson

Via United States Mail, postage prepaid, to the following:

Michael Shames
Alan Mansfield.
Utility Consumers' Action Network (UCAN)
3100 5th Ave. Suite B
San Diego, CA 92103

Via Email Service to the following parties: mshames@ucan.org

Dated: December 22, 2005 at San Francisco, California.

/s/ Margaret L. Tobias

Margaret L. Tobias