

APPENDIX A

From: BERRY, MARK [<mailto:mb2861@att.com>]
Sent: Friday, June 21, 2013 3:39 PM
To: Sukhov, Michael
Subject: AT&T Response to June 6 and June 14 Letters Regarding Data Request CAB-LEP-13-01

Dear Michael,

I am writing to respond to your letters dated June 6 and June 14, 2013 regarding Data Request CAB-LEP-13-01 (hereinafter "Data Request"). The Data Request seeks certain Voice over Internet Protocol ("VoIP") information, purportedly for the purpose of preparing Limited English Proficient ("LEP") data required by CPUC Resolution CSID-003 (see your letters of 3/14/13 regarding CLC 5002 5/24/13 regarding LEC 1001). As explained further below, AT&T continues to believe the Data Request, to the extent it seeks to compel the production of VoIP data, is overbroad, unduly burdensome, and legally improper.

As the Commission itself has recognized,

The Commission's authority [to compel the production of data], of course, is not without its limits. Inquiries of Commissioners, Commission officers, and its staff must have some rational relationship to public utility regulation. (Resolution ALJ-195, p. 3.)

Accordingly,

Commission staff information requests directed to utilities and other respondents must be rationally related to public utility regulation, as vested in the Commission by the state constitution and statutes or delegated to the Commission by federal law or federal agency order. (Resolution ALJ-195, p. 6.)

Contrary to these principles, the VoIP information sought is not "rationally related to public utility regulation." *First*, and by the very terms of the rules themselves, VoIP services are not regulated by the Commission's LEP rules. The LEP rules apply only to "telecommunications services" (see D.08-10-016, App. B.), and as explained in AT&T's prior objection, VoIP is an interstate, information service. VoIP is not a telecommunications service. *Second*, because it is an interstate, information service, the Commission is preempted and prohibited by the FCC from regulating VoIP service. *Third*, Public Utilities Code section 710 plainly and clearly prohibits the Commission from regulating VoIP services, so information requests relating to VoIP services cannot, as a matter of law, "be rationally related to public utility regulation."

The exception to section 710 cited in your letter, subsection 710(f), does not grant the Commission authority to compel the production of VoIP data. That subsection, in pertinent part, only permits the Commission to "continue to monitor and discuss VoIP services." "Monitoring" means watching, not investigating. The Commission is free to use staff resources to monitor developments regarding VoIP services, and "discuss" those developments, but cannot investigate or legally compel the production of VoIP data. Investigation of VoIP services, and the compelled production of VoIP data, have no "rational relationship" to the Commission's authority to regulate. As courts have recognized, attempts to investigate outside an agency's authority may even violate the Fourth Amendment of the United States

Constitution. (See, e.g., Brovelli v. Superior Court, 56 Cal.2nd 524, 529 (1961) and cases cited therein.)

Accordingly, AT&T continues to object to the production of VoIP-related information, and requests a “meet and confer” session with Division staff pursuant to Resolution ALJ-195 (see p. 6) to attempt to resolve this matter. This issue is appropriate for such a “meet and confer” session because it has not previously been resolved by Commission precedent.

Sincerely,

Mark Berry

Director

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