

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to  
Evaluate Telecommunications  
Corporations Service Quality  
Performance and Consider Modification  
to Service Quality Rules.

Rulemaking 11-12-001  
(Filed December 1, 2011)

**REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON  
COMMUNICATIONS DIVISION'S SEPTEMBER 2014 STAFF REPORT  
ON CALIFORNIA WIRELINE TELEPHONE SERVICE QUALITY**

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## I. INTRODUCTION

Pursuant to the September 24, 2014 Assigned Commissioner’s Amended Scoping Memo and Ruling (“Amended Scoping Memo”), the Office of Ratepayer Advocates (“ORA”) submits the following reply comments in response to the opening comments of the parties to this proceeding addressing the California Public Utilities Commission’s (“Commission”) Communications Division’s (“CD”) September 2014 Staff Report, California Wireline Telephone Service Quality Pursuant to General Order 133-C Calendar Years 2010 through 2013 (“Staff Report”).

The Commission has a statutory duty to ensure safe and reliable service. As such, the Commission needs to set firm service quality standards for all forms of telecommunications technology. While AT&T and Verizon argue that the Commission should eliminate its service quality standards altogether, the Commission should in fact use this rulemaking to establish end-to-end service reliability and quality standards to ensure that all Californians – regardless of the particular technology employed – have access to safe and reliable service.

Additionally, AT&T and Verizon raise jurisdictional and other legal issues in claiming that the Commission has little if any authority to adopt measures that ensure safe and reliable communications infrastructure vital to the state’s economy and to public health and safety.<sup>1</sup> AT&T and Verizon’s claim is without merit. The Commission has in the past acknowledged the complexity of this issue, however, and has not made a determination on the matter. Before making a determination, ORA requests that the Commission direct parties to participate in an additional round of briefing on these jurisdictional and legal issues. Ninety days would be a reasonable amount of time to prepare these briefs.

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<sup>1</sup> AT&T Opening Comments at pp. 13-18; Verizon Opening Comments at pp. 4-5, 19-20.

## II. PUBLIC SAFETY & RELIABILITY MUST BE THE COMMISSION'S PARAMOUNT NETWORK MANAGEMENT CONCERN

The majority of parties to this proceeding support constructive improvements in the Commission's service reliability and quality standards, including the recommendations proposed in the CD staff report.<sup>2</sup> AT&T and Verizon, on the other hand, propose eliminating the service reliability and quality metrics altogether.<sup>3</sup> This is particularly alarming as these are the two Uniform Regulatory Framework carriers that are consistently furthest from compliance with the Commission's Out of Service ("OOS") standards.<sup>4</sup>

Individual reliability and service quality metrics, and OOS metrics in particular, are vitally important from a public safety standpoint. Traffic prioritization must be done for 9-1-1 calls, FirstNet calls, and other public safety traffic. These packets must not be blocked or degraded, and must take priority over other traffic. As stated in the Order Instituting Rulemaking in this proceeding, the Commission has a statutory duty to ensure that "telecommunications carriers provide a level of service... as necessary to promote the safety, health, comfort, and convenience of its patrons ... and the public."<sup>5</sup> Thus, safety is at the core of service reliability and quality standards.

The Commission should also view service reliability and quality in a comprehensive manner as well as according to individual metrics. The public now relies on a highly integrated combination of wireline Public Switched Telephone Networks ("PSTN"), IP-enabled, and wireless networks in order to communicate for day-to-day

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<sup>2</sup> See e.g., TURN Opening Comments at pp. 4-10; Greenlining Institute and Center for Accessible Technology Opening Comments; CALTEL Opening Comments at pp. 6-7; CWA Opening Comments; Consumer Federation of American Opening Comments at pp. 2-5.

<sup>3</sup> AT&T Opening Comments at p. 20; Verizon Opening Comments at p. 4.

<sup>4</sup> CD Staff Report at pp. 16-17.

<sup>5</sup> Order Instituting Rulemaking, R.11-12-001, at p. 2 (December 12, 2011), *quoting* Pub. Util. Code § 451. The Commission additionally states in this Order that "The Commission has a statutory duty to ensure that telephone corporations provide customer service that includes reasonable statewide service quality standards including, but not limited to, standards regarding network technical quality, customer service, installation, repair and billing."

comfort and convenience purposes as well as in emergency situations. Restricting service reliability and quality monitoring and enforcement to the PSTN alone no longer fulfills the Commission's statutory mandate.<sup>6</sup> Rather, service reliability and quality in furtherance of public safety, health, comfort, and convenience must be met within the context of end-to-end connectivity rather than within the isolated PSTN segment of the current hybrid telecommunications system

Parties have previously addressed this problem as it pertains to both IP-based and wireless network segments, including in response to Commission requests to address these service reliability and quality complexities.<sup>7</sup>

The Commission has made public health and safety a central concern of its service reliability and quality objectives and should continue to do so. End-to-end, technology-neutral approaches to service reliability and quality have become increasingly important as new issues originate in the IP-based and wireless segments of the interconnected telecommunications system. These are the core concerns expressed in these reply comments.

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<sup>6</sup> Pub. Util. Code § 451.

<sup>7</sup> For instance, concerning IP-based service quality, CalTel has filed NRRI's 2012 report addressing SQ repercussions of the IP network. *See* CalTel, Response of The California Association of Competitive Telecommunications Companies on the Administrative Law Judge's Ruling Requiring Telecommunications Corporations to Provide Data (June 14, 2012).

Concerning wireless service quality, ORA filed comments in response to a Commission Ruling asking about SQ metrics for problems typically more pronounced in wireless and VoIP voice communications than in PSTN communications. *See* Comments of the Division of Ratepayer Advocate in Response to May 18, 2012, Administrative Law Judge's Ruling, July 13, 2012, at p. 2-5.

The potential metrics included in the Ruling's included: a) line static and noise, b) incomplete calls, and c) disrupted or dropped calls. *Id.*

ORA, and other parties cited in ORA's July 13, 2012, response raised additional wireless service quality issues including: 1) signal strength, 2) voice quality, and 3) data speeds. *Id.*

CALTEL's June 14, 2012, Response to Ruling, at pp. 6-7, also addressed routing and signaling problems and voice quality related metrics for feedback, crosstalk, and other measurable noise characteristics.

**A. In Order to Ensure Public Safety & Reliability Needs are Being Met, the Commission Must Adopt Technology-Neutral End-to-End Service Quality Standards**

A key component of meeting the statutory mandate to ensure safe and reliable service is establishing end-to-end service reliability and quality standards. Currently, there are no Commission service reliability and quality standards to address wireless and VoIP services. With the increase in consumer migration from wirelines to wireless and VoIP services,<sup>8</sup> consumers risk facing unreliable service, including a lack of access to public safety and emergency care services. At a minimum, the Commission should ensure that networks are designed, operated, and maintained to prioritize public safety traffic and 9-1-1 services. As the Consumer Federation of California aptly states:

wireless and VOIP customers have the right to the same regulatory protections and service quality standards enjoyed by California wireline customers.<sup>2</sup>

Adequate service reliability and quality standards must ensure that end-to-end service is being provided. The provision of IP-enabled voice services involve various companies and services including network and service providers. For example, in providing its VoIP service, Vonage relies upon the broadband internet access service that is provided to the customer by a broadband service provider. A delay or outage in the broadband provider's network, much of which is the same network used for traditional wireline service, affects the end user's VoIP service. This can occur even if Vonage's VoIP network is performing flawlessly. The importance of end-to-end performance of communication infrastructure is further illustrated in the 1999 Wireless Communications and Public Safety Act, which was enacted to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-

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<sup>8</sup> CD Staff Report at p. 4.

<sup>2</sup> Consumer Federation of California Opening Comments at p. 3; *see also* Communications Workers of American Opening Comments at pp. 6-7 ("The Commission should strive to protect all California voice customers and provide technology-neutral service quality standards in light of this rapid transition.").

end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs."<sup>10</sup>

An end-to-end view of service necessarily requires development and implementation of service quality and reliability standards for all of the technological platforms over which a given communication may transmit, particularly broadband. Broadband is increasingly the transmission platform of today and certainly the future. Establishing service reliability and quality standards for broadband internet access service is a critical piece of ensuring reliable end-to-end service.

The Commission should also adopt TURN's suggestions to impose service reliability and quality reporting requirements and standards for wireless carriers including metrics such as call success rate, service coverage, voice quality, call drop-out rates, average throughput speeds, and enhanced, standardized maps that allow side-by-side comparisons among wireless carriers.<sup>11</sup> Parties opposing the adoption of service reliability and quality standards for interconnected and over the top VoIP and wireless services do not provide any information or analysis demonstrating that VoIP and wireless service quality meet consumer expectations or the Commission's goals of ensuring consumer protection, safety, and reliability. As more and more services will rely on a broadband internet access service connection – including voice, data, video, and public safety – it is essential that service reliability be viewed on an end-to-end basis.

Instead, parties such as AT&T and Verizon argue that the Commission lacks authority to develop service reliability and quality standards for interconnected and over-the-top VoIP and present an unsupported claim that market competition is a better driver of providing quality service.<sup>12</sup>

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<sup>10</sup> Public Law 106-81 (Oct. 26, 1999) (Findings and Purpose).

<sup>11</sup> TURN Opening Comments at p. 7.

<sup>12</sup> Verizon Opening Comments at pp. 6-9; AT&T Opening Comments at pp. 7-11.

There is no merit to these arguments. The Commission has the statutory authority to ensure safe and reliable service.<sup>13</sup> The argument that market competition guarantees service reliability and quality because consumers can simply switch to a different provider when experiencing sub-par service, is irrelevant where all service providers are held to minimal or non-existent standards, and thus, could all provide poor levels of service. The communications infrastructure is vital to the state's economy and to public health and safety. Service reliability and quality outcomes matter a great deal and minimum standards should be established, measured, and tracked whether a communications service is subject to competition or not. As long as appropriate performance, reliability, and reporting standards are in place, the Commission will be able to determine if quality end-to-end service is being provided by all market participants and that calls or packets will transit these networks in a way that is seamless to the customer.

Similarly, California Cable & Telecommunications Association's argument that adopting service reliability and quality rules for VoIP would not be in the public interest because traditional standards "do not fit the Internet Protocol environment,"<sup>14</sup> in fact presents a rationale for developing service quality standards tailored for newer technologies. Consumers who are migrating to IP enabled services should not be left without the protections afforded by service reliability and quality standards.

As the CD Staff Report recommends, the Commission should update the current G.O. 133-C service quality standards to address voice communications services regardless of the types of technological platform that delivers the service. This will not only improve consumer protection and service reliability, but will also further a

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<sup>13</sup> Pub. Util Code § 451.

<sup>14</sup> CCTA Opening Comments at pp. 1 and 2; Citizens Telecommunications Company of California, Inc. and Frontier Communications of Southwest Opening Comments at p. 3.

regulatory environment in which all carriers and service providers receive equal or similar regulatory treatment.<sup>15</sup>

**B. Jurisdictional Issues Should be Fully Addressed in Additional Briefing**

The Commission has the duty and authority to set service reliability and quality standards on an end-to-end basis across all forms of technologies. Yet, AT&T, Verizon, and other parties representing the commercial interests of carriers in this proceeding, make the incorrect, self-interested claim that Public Utilities Code Section 710 prohibits the Commission from setting service reliability and quality standards for VoIP and IP-enabled services.<sup>16</sup> Section 710 has a number of contingencies and exceptions, including that the Commission may set service quality standards, or other regulations, for VoIP if granted authority to do so by the Federal Communications Commissions (“FCC”).<sup>17</sup> The FCC has in fact granted such authority to the Commission.<sup>18</sup> Thus, the Commission is in no way prohibited from setting service reliability and quality standards.

Further, AT&T claims that the Commission is preempted from regulating wireless service by a provision in the Federal Communications Act. The provisions cited to is intended to preempt state jurisdiction regarding the *siting* of telecommunication facilities, but does not restrict the Commission’s authority to address service quality.<sup>19</sup>

These complex legal and jurisdictional issues touch on California Public Utility Code provisions, past Commission precedent, federal laws and regulations, subsequent

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<sup>15</sup> See Frontier Opening Comments at p. 4 (“Many customers have chosen to drop their landline service completely and instead choose wireless, VoIP or cable alternatives for their basic service. These newer technologies compete directly with Frontier, but the providers of such services generally are not required to follow the same service quality rules, thereby creating a competitive disadvantage for Frontier and other providers.”).

<sup>16</sup> Verizon Opening Comments at pp. 4-5, 19; AT&T Opening Comments at p. 14-15; California Cable & Telecommunications Association at pp. 2-4.

<sup>17</sup> Pub. Util. Code § 710; see also TURN Opening Comments at pp. 7-8 (discussing the Commission’s retention of authority under Section 710 exceptions).

<sup>18</sup> See 47 U.S.C. § 1302(a).

<sup>19</sup> AT&T Opening Comments at pp. 15-18.



FCC decisions, and additional case-law developed since Section 710 was codified. Thus, this issue warrants additional briefing by the parties to this proceeding to ensure that the ALJ, Assigned Commissioner, and the Commission have the confidence borne of a full record on which to make a decision. Fully addressing this multifaceted issue in response to comments on CD's Staff Report is insufficient; the Commission itself has previously acknowledged the complexity of this regulatory issue.<sup>20</sup>

As described above, the Commission should direct parties to fully address these jurisdictional issues through briefing in this proceeding. Ninety days would be a reasonable amount of time to prepare these briefs.

### **III. THE COMMISSION SHOULD ADOPT THE RECOMMENDATIONS IN CD'S STAFF REPORT AND IN THE OPENING COMMENTS OF THE CONSUMER ADVOCATES**

The Commission should adopt the recommendations made in CD's Staff Report, as well as many of the recommendations made by the various consumer advocates in the opening comments. The Commission should establish technology-neutral standards. Further, "technological-neutrality" should not be used to claim that no service reliability and quality standards are needed. Rather, technology-neutral standards should correctly be applied as meaning that appropriate measurement and reporting standards should be crafted for all technology platforms.

#### **A. Multiple Parties Support the CD Staff Report Recommendation to Require Raw, Unadjusted Data**

Multiple parties support CD Staff's recommendation to require carriers to submit raw, unadjusted data.<sup>21</sup> TURN emphasizes that the Commission must require consistent and standardized reporting using a uniform methodology that is applied in the same manner by each carrier. TURN's suggestion for using a similar approach to the

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<sup>20</sup> See e.g., D.06-06-010 at p. 3.

<sup>21</sup> Turn Opening Comments at p. 10; ORA Opening Comments at p.3.

New York Department of Public Service, Office of Telecommunication guidelines on service quality measurements should be adopted.<sup>22</sup>

**B. Multiple Parties Support the Adoption of the CD Staff Report Recommendations Regarding Outage Reporting Exceptions**

Multiple parties agree that the Commission should tighten outage reporting exceptions to prevent data manipulation or abuse by the carriers.<sup>23</sup> For instance, the Greenlining Institute and the Center for Accessible Technology (“CforAT”) explain that with regard to catastrophic events and widespread outages, “the Commission should set clear standards for defining the beginning, conclusion, and duration of these events.”<sup>24</sup>

TURN also argues that the FCC’s Network Outage Reporting System (“NORS”) reporting threshold should be revised to address the concern that significant outages could go unreported. Additionally, TURN supports the CD Staff Report’s recommendation for a clear definition of a catastrophic event’s beginning and ending time.<sup>25</sup> ORA agrees.

The Commission should adopt TURN’s additional recommendations regarding emergency response related reporting . Specifically, TURN suggests that the Commission should require carriers to prepare an emergency response plan and provide that plan to the Commission.<sup>26</sup> TURN also recommends that carriers and service providers should provide the Commission with a report following a catastrophic or wide

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<sup>22</sup> TURN Opening Comments at p. 6.

<sup>23</sup> CALTEL (“retail Catastrophic Events and wholesale Force Majeure exemption should not be eliminated, the Commission must not allow carriers to game the system and abuse these privileges ... the process should be changed so that invocation of a proposed exemption is no longer self-executing. A carrier may propose and exemption, but should also provide the Communication Division with sufficient information to conclude that the geographic scope and duration were truly caused by factors that were out of the carrier's control.”); Consumer Federation of California Opening Comments at p. 2; Communication Workers of American at pp. 5-6.

<sup>24</sup> Greenlining Institute and Center for Accessible Technology Opening Comments at p. 4.

<sup>25</sup> TURN Opening Comments at p. 8.

<sup>26</sup> *Id.* at p. 10.

spread outage supported with data and information on how the emergency response plan was implemented. Furthermore, TURN recommends that these reports be made public.<sup>27</sup>

In contrast, the Commission should reject the arguments made by the parties representing the commercial interest of carriers. For instance, Cox opposes Staff's recommendation to define when a catastrophic event begins and ends, arguing that the timing of such a catastrophic event is too difficult to measure.<sup>28</sup>

A carrier must not be allowed to self-determine when it is required to report an outage. Doing so effectively renders the reporting requirements meaningless. The CD Staff Report and parties' comments in this proceeding have shown that there is sufficient reason to believe that the carriers are currently gaming the reporting requirements by excluding the reporting of certain outages. Therefore, the Commission should hold a workshop to develop a consistent calculation methodology.

**C. Multiple Parties Support the CD Staff Report's Recommendations Regarding Modifications to the OOS Repair Intervals**

The Commission should reject the arguments made by a minority of commenters that the Staff Report does not support modifying the OOS repair measure. Cox attempts to argue that the issue only pertains to AT&T and Verizon not meeting the service quality standards and that therefore, the Commission need not require all carriers to meet revised service reliability and quality metrics.<sup>29</sup> While the Staff Report undoubtedly shows that AT&T and Verizon have failed to meet the standards set by the Commission, this is not a basis for the Commission to impose different standards for different carriers. The Commission should set uniform standards that require all carriers to strive for a high level of service reliability and quality. While Cox correctly states that there should be enforcement actions taken against carriers who fail to meet service reliability and quality

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<sup>27</sup> *Id.* at p. 10.

<sup>28</sup> Cox Opening Comments at pp. 4-7.

<sup>29</sup> Cox Opening Comments at pp. 3-4.

standards,<sup>30</sup> relying on enforcement actions alone, while allowing other carriers to meet less stringent standards, fails to ensure safe and reliable service for consumers. Moreover, there is ample record evidence demonstrating that there is a need to address wireless service reliability and quality overall.<sup>31</sup>

AT&T argues that OOS alone does not provide a sufficient basis to assess overall service reliability and quality, but then proposes melding the OOS metric with other service reliability and quality factors.<sup>32</sup> This would ostensibly provide a more comprehensive metric, but also likely make AT&T appear closer to compliance with standards in an overall manner by submerging its poor OOS performance with other metrics in which AT&T has appeared to be in compliance in recent years.<sup>33</sup>

As stated above, and discussed more fully in opening comments, OOS is a critical component of ensuring reliable telecommunications service and thus access to emergency services and information. Thus, the Commission should adopt CD's recommendations regarding OOS repair intervals.

#### **D. Multiple Parties Support the CD Staff Report Recommendation for A Penalty Mechanism**

Multiple parties, along with ORA, support the recommendation to establish a penalty mechanism for carriers and service providers who fail to meet service reliability and quality standards. The Commission should adopt the recommendation of the Greenlining Institute and the Center for Accessible Technology to establish penalties for

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<sup>30</sup> Cox Opening Comments at p. 5.

<sup>31</sup> See footnote 7 *supra*; Opening Comments of the Division of Ratepayer Advocates, R.11-12-001 (January 31, 2012); Reply Comments of the Division of Ratepayer Advocates on Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules, R.11-12-001 (March 1, 2012); TURN, Center for Accessible Technology and the National Consumer Law Center, Comments in R.11-12-001 (Jan. 31, 2012) (Confidential Version), Appendix A: Declaration of Trevor R. Roycroft, PhD.

<sup>32</sup> AT&T Opening Comments at p. 11.

<sup>33</sup> See AT&T Opening Comments at p. 11 (“In contrast to focusing only on the OOS measure, looking at this measure in conjunction with other measures leads to the conclusion that quality service is being provided by AT&T and service quality has not deteriorated.”).

repeated failures to meet service reliability and quality standards and to impose penalties in addition to any compensation paid to consumers.<sup>34</sup>

Merely rebating the daily charge for the period of time that a customer is out of service does not create a meaningful deterrent. Penalties must be real and represent more than a dismissible “cost of doing business.” Similarly, penalties should be scaled to the size of the carrier in order to create effective economic deterrents for larger companies.<sup>35</sup>

#### **E. Multiple Parties Agree on the Need to Complete the Previously Ordered Infrastructure Study**

Multiple parties – including ORA – agree that the infrastructure study ordered in D.13-02-023 is still needed and should be conducted.<sup>36</sup> The ordered infrastructure study will reveal existing issues within California’s telecommunications infrastructure and assist in determining if additional service quality standards are needed. However, various issues can be dealt with in the interim while the Commission awaits the results of the infrastructure study.

#### **IV. CONCLUSION**

The Commission’s paramount focus in revising and setting new service reliability and quality standards should be to ensure safe and reliable service. The statutory mandate to achieve safe and reliable service applies regardless of the particular technology being used. As such, the Commission should adopt the recommendations made in CD’s Staff Report, in addition to the recommendations made by ORA and other parties.<sup>37</sup>

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<sup>34</sup> Greenlining/CAT Opening Comments at p. 3. *See also* TURN Opening Comments at pp. 6-7 (“Penalties should be returned to all customers in the form of rebates.”).

<sup>35</sup> TURN Opening Comments at p. 6; Greenlining Institute and Center for Accessible Technologies Opening Comments at p. 3.

<sup>36</sup> *See e.g.*, CALTEL Opening Comments; Consumer Federation of California Opening Comments at pp. 4-5.

<sup>37</sup> The parties who support the CD Staff Report as well as making additional recommendations for service quality metrics are: The Office of Ratepayer Advocates, the Consumer Federation of California; The Utility Reform Network; The Greenlining Institute and Center for Accessible Technology; and the Communications Workers of America.

Finally, the Commission should order briefing on the jurisdictional issues raised by AT&T and Verizon.

Respectfully submitted,

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