

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 FEBRUARY 2015
PROPOSAL FOR MODIFICATIONS TO GENERAL ORDER 133-C
[PUBLIC VERSION*]**

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I. INTRODUCTION AND BACKGROUND

The Office of Ratepayer Advocates (“ORA”) hereby responds to other parties’ comments on the *Proposal for Modifications to G.O. [General Order] 133-C*¹ (“Staff Proposal”) prepared by the California Public Utilities Commission’s (“Commission”) Communications Division (“CD”). These reply comments address four key issues raised in comments:² (1) the immediate need to complete the study of AT&T’s and Verizon’s network facilities ordered in Decision (D.) 13-02-023 (“Infrastructure Study”), “a necessary foundational activity within this proceeding,”³ (2) the need to establish service outage reporting requirements that are appropriate for California’s population and environment, (3) the need for technology-neutral service quality rules (i.e., service quality standards for voice services provided via wireless and Voice over Internet Protocol (VoIP) technology in addition to wireline) to address public safety concerns implicated by major service outages⁴ and (4) the need to enforce service quality standards

¹ G.O.133-C *Rules Governing Telecommunications Services* (effective July 9, 2009) establishes “uniform minimum standards of service to be observed in the operation of public utility telephone corporations.” See Decision (D.) 09-07-019, which adopted current General Order (G.O.) 133-C, and Rule 1.1(a) at 1. Public Utilities (P.U.) Code section 216 defines a “public utility” to include “every ... telephone corporation.” (§ 216(a).) Section 234 defines a “telephone corporation” to include “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.” (§ 234(a).) Section 233 further defines a “telephone line” to include “all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.” (§ 233.) All section references are to the P.U. Code unless otherwise stated.

² ORA notes that several industry comments raise jurisdictional arguments concerning P.U. Code section 710. ORA fully addressed these arguments in opening comments, filed March 30, 2015. Silence on an issue raised in other comments and not addressed here should not be construed as assent.

³ Decision Affirming Provisions of the Scoping Memo and Ruling, February 28, 2013, D.13-12-023, Slip. Op., at 3; see also *id.*, Ordering Paragraph (O.P.) 1, at 8.

⁴ See ORA Comments (March 24, 2015) on Communications Division’s February 2015 Proposal for Modifications to General Order 133-C; see also *id.*, Appendix A (Summary of ORA’s Proposal).

(i.e., impose refunds and penalties) because competition and current “compliance programs” have failed to ensure compliance by the two largest telephone corporations.⁵

This Commission must address in this proceeding the serious safety issues and the ability of consumers to access emergency services caused by the deterioration and lack of maintenance of communication infrastructure and networks. For example, the Intrado outage that blocked thousands of 911 calls throughout the Western States, including California (discussed below) is just one example.⁶ An accident that took out 400 feet of non-redundant fiber in Mendocino County and led to the failure of emergency communications throughout the Western part of that County is another example.⁷

G.O. 133-C service quality standards are mandated by statute.⁸ They are crucial to customers to help ensure that telecommunications services provided in California work as expected (“adequate”), work *when* needed (“safety, health, comfort, and convenience”),⁹ and available to all who reside in the state (“universal”).¹⁰

As the Commission recognized in Decision (D.) 13-02-023, when it ordered the Infrastructure Study:

⁵ See Communications Division Staff Report (*California Wireline Telephone Service Quality Pursuant to General Order 133-C Calendar Years 2010 through 2013*), September 2014.

⁶ See 2014 FCC Report at <http://www.fcc.gov/document/april-2014-multistate-911-outage-report>; In the Matter of Verizon , FCC Order Fining Verizon \$3.4 million, File Nos.: EB-SED-14-00017189, EBS-14-00017676, EB-SED-14-00017373, Acct. No.: 201532100003, FRN: 0004335592, March 18, 2015; In the Matter of Intrado Communications, FCC Order Fining Intrado \$1.4 million , File No.: EB-SED-14-00017191, Acct. No.: 201532100005, FRN: 0005056759, April 6, 2015; In the Matter of CenturyLink, FCC Order Fining CenturyLink \$16 million , File No.: EB-SED-14-00017187, Acct. No.: 201532100004, FRN: 0018626853; Washington Utilities and Transport Commission Investigation Report Qwest Corporation d/b/a/ CenturyLink QC, Staff Investigation, Consumer Protection and Regulatory Services, December 2014; see also further discussion below.

⁷ See 2014 Mendocino County Broadband Outage Incident Report , at <http://www.co.mendocino.ca.us/bos/incidentreport.htm>.

⁸ Public Utilities (P.U.) Code §§ 451 and 2896.

⁹ *Ibid.*

¹⁰ § 2896.

In order to maintain acceptable levels of service quality for California customers, it is necessary to ensure that carriers have access to an adequate network of infrastructure. Without ubiquitous functional infrastructure that is adequately maintained, services provided to customers will degrade. In extreme cases, facilities failures will lead to a complete loss of service, including E911, to customers served by those facilities.[]¹¹

Specifically, “the purpose of this evaluation is to gauge the condition of the carrier infrastructure and facilities used in the provision of telecommunications services within California.”¹² This foundational activity is necessary, as the Commission found, “in order to ensure that the facilities and related practices support a level of service consistent with public safety and customer needs.”¹³

Any rules adopted by the Commission in response to the Staff Proposal should therefore be viewed as preliminary modifications to G.O. 133-C. The Commission should allow parties an opportunity to propose further modifications to G.O. 133-C upon review of the Infrastructure Study and after other material issues of fact, including specific service quality standards for voice services provided by wireless and VoIP providers, have been addressed through hearings or other evidentiary processes.

II. THE COMMISSION SHOULD CONDUCT THE INFRASTRUCTURE STUDY BY SEPTEMBER 30, 2015

Similar to ORA, parties representing the interests of consumers, communications workers, and competitive telecommunications companies, all urged the Commission to conduct the facilities infrastructure study ordered in Decision (D.) 13-02-023.¹⁴ The

¹¹ D.13-02-023, Slip. Op., at 2, Attachment A (citations omitted).

¹² D.13-02-023, Slip. Op., at 2.

¹³ *Id.*, at 2, *citing* Assigned Commissioner’s Scoping Memo and Ruling (September 24, 2012), at 2-3.

¹⁴ See Opening Comments of Center for Accessible Technology, The Greenlining Institute, and The Utility Reform Network (“Joint Consumers”) (3/30/15), at 6-7; Opening Comments of The Communications Workers of America, District 9 (“CWA”) (3/30/15), at 4; Comments of the California

Commission should adopt the Joint Consumers’ proposed deadline to have the study conducted by no later than September 30, 2015.¹⁵ As Joint Consumers stated, the “Commission has already committed to undertaking an independent examination of AT&T’s and Verizon’s facilities,”¹⁶ thus this activity should be a priority for the Commission. The original scoping memo estimated that it would be completed by the end of 2013,¹⁷ and it is therefore “long overdue.”¹⁸ ORA shares CALTEL’s concerns that “the previously-ordered physical infrastructure evaluation was never implemented...and now has apparently been discarded with little explanation or consideration of due process.”¹⁹

Moreover, ORA agrees with CALTEL that “there is a nexus between retail and wholesale service quality, and the impact of poor performance by AT&T and Verizon on competitive carriers, and on competition.”²⁰ According to CALTEL:

since CLECs rely on copper facilities owned by URF ILECs, deteriorating facilities and extended out-of-service repair times negatively impact customer choice by increasing costs of CLECs through compensating customers to restore confidence in their service. If this confidence cannot be restored, it creates an anti-competitive environment by removing CLECs as a viable alternative to the URF ILECs.²¹

Association of Competitive Telecommunications Companies (“CALTEL”) (3/30/15), at 1-2.

¹⁵ Joint Consumers (3/30/15), at 7.

¹⁶ *Ibid.*

¹⁷ See Assigned Commissioner’s Scoping Memo and Ruling (September 24, 2012), at 13.

¹⁸ Joint Consumers (3/30/15), at 7, *citing* Comments of CALTEL and Consumer Federal of America.

¹⁹ CALTEL (3/30/15), at 1.

²⁰ *Ibid.*

²¹ *Ibid.*

This rationale similarly supports the need to apply technology-neutral service quality rules so as to promote competition in advanced telecommunications services.²²

III. POOR SERVICE QUALITY AS MEASURED BY OUTAGE DATA DEMONSTRATES THE NEED FOR TECHNOLOGY-NEUTRAL SERVICE QUALITY RULES TO PROTECT ALL VOICE CUSTOMERS

Opening comments from Joint Consumers, CWA, and CALTEL provide further evidence to justify service quality rules that would hold telephone corporations accountable for the quality of service they provide to customers.²³

Specifically, CWA highlights the important relationship between qualified technicians and service quality, stating that “carriers have been steadily downsizing for five years.” “AT&T has reduced its number of employees in occupations represented by CWA by 35% since 2006 and Verizon by 49%.”²⁴ CWA’s sample evidence of deteriorated AT&T equipment supports the need for the Commission to establish rules ensuring that enough employees remain to provide adequate quality service. Investing in adequate resources to appropriately maintain communications facilities and networks is necessary to ensure consumer safety and is therefore in the public interest.

CALTEL also provides evidence indicating that an overwhelming majority of Competitive Local Exchange Carriers (CLEC) outages involve facilities leased from large Incumbent Local Exchange Carriers (ILECs) such as AT&T and Verizon; with a large portion of restoration time driven by time spent by a CLEC waiting for the large ILEC to dispatch and repair these major outages.²⁵ As CALTEL argues, this result is

²² See ORA Comments (3/30/15), at 15-18.

²³ Joint Consumers Comments (3/30/15); CWA Comments (3/30/15); CALTEL Comments (3/30/15); see also ORA Comments (3/30/15).

²⁴ CWA Comments (3/30/15), at 3.

²⁵ CALTEL Comments (3/30/15), at 3.

anti-competitive²⁶ (and would thus negatively impact the deployment of advanced telecommunications services, such as interconnected VoIP service).²⁷

While CWA and CALTEL have raised, in numerous comments and at workshops, serious material issues of fact related to AT&T's and Verizon's allocation of resources that have resulted in deteriorating infrastructure and poor repair,²⁸ these ILECs have yet to explain what they have done to address these serious allegations. Instead, they continue to dismiss the need for any service quality rules. But, the evidence in the record demonstrates that customers need service quality rules for the delivery of adequate and reliable voice services to meet their various needs including safety.²⁹

In addition to evidence in the current record, below ORA provides an analysis of outage data that indicates that poor service quality exists across technologies, thereby demonstrating the need for technology-neutral service quality standards that are enforced utilizing reporting requirements and a refund and penalty mechanism.

A. FCC Network Outage Reporting System (NORS) Reports Alone are Insufficient to Ensure the Commission Remains Adequately Informed of Major Outages

Service outages provide critical measures of service reliability and the degree of risk to public safety. The Federal Communications Commission (FCC) has established rules that require communications providers to report certain disruptions to their network depending on the type of communications technology, duration of the outage, and the number of affected users, known as Network Outage Reporting System (NORS) Reports. The FCC determined that such information is crucial to the national telecommunications infrastructure and would enable it to prevent disruptions in service that could threaten

²⁶ *Id.*, at 1.

²⁷ See ORA Comments (3/30/15), at 15-18.

²⁸ See CALTEL Comments on Amended Scoping Memo (10/ 24/14) , at 1-2; Post-Workshop Comments of the Communications Workers of America, District 9 (02/28/13), at Attachment 1.

²⁹ See e.g., ORA Comments (3/30/15), at 21-25.

homeland security, public health and safety, as well as the nation's economic well-being.³⁰ The FCC uses outage information to analyze communication vulnerabilities and shares aggregate data with service providers to help prevent future outages and preserve network integrity.

1. AT&T and Verizon Have Not Been Implementing Adequate Monitoring, Notification, and Reporting of Outages as Required by the FCC

Subsequent to a multi-state 911 outage investigation that occurred in 2014, the Federal Communications Commission (FCC) reached a \$16 million settlement with CenturyLink, a \$1.4 million settlement with Intrado Communication and a \$3.4 million settlement with Verizon related to the companies' failures to meet their emergency call obligation during the 911 outage. This outage lasted for over six hours resulting in over 6,600 missed 911 calls, and prevented more than 11 million people in seven states from being able to reach emergency call centers for over six hours.³¹ Consumers in nine California counties, where Verizon served emergency call centers, were unable to make calls to 911. The outage did not result from an extraordinary disaster or catastrophic event. It was due to a malfunction in Intrado's call centers. FCC rules require companies to timely notify all affected Public Safety Answering Points (PSAPs), but Verizon failed to do so in the 2014 outage. Intrado allegedly did not inform Verizon of the outage until after it was resolved. However, Verizon acknowledged that it was responsible for complying with applicable FCC rules, regardless of any alleged failures by its subcontractors. Verizon notified the State of California Office of Emergency Communications about the impact after Intrado informed it of the outage and agreed to the same compliance terms as CenturyLink and Intrado.³²

³⁰ See <http://www.fcc.gov/document/time-warner-penalized-11m-network-outage-reporting-violations>

³¹ See http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0406/DOC-332853A1.pdf

³² See details on Verizon Consent Decree including compliance terms: http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0318/DA-15-308A1.pdf

This is not the first time that Verizon had entered into a consent decree with the FCC regarding outage reporting. In July 2007, Verizon entered into a consent decree with the FCC after the FCC's investigation found that Verizon Wireless was not in compliance with FCC's regulations regarding reporting of network outages. Verizon agreed to make a voluntary contribution in the amount of \$1.4 million to the U.S. Treasury. The FCC required Verizon to establish and maintain an FCC reporting training program for employees responsible for gathering, analyzing and reporting network outages.³³

After a similar investigation in March 2012, the FCC entered into another consent decree with Verizon Wireless (Cellco Partnership dba Verizon Wireless). Verizon Wireless agreed to make a voluntary contribution in the amount of \$110,000 to the U.S. Treasury and the FCC required Verizon Wireless to file compliance reports, as well as establish and maintain an FCC outage reporting training program for its employees responsible for analyzing and reporting network outages.³⁴

In March 2011, the FCC entered into a consent decree with AT&T after the FCC's investigation for possible violation of the FCC's regulations on reporting of network outages.³⁵ AT&T agreed to make a voluntary contribution in the amount of \$1.8 million to the U.S. Treasury. The FCC required AT&T to implement a compliance plan, including designating a compliance officer, implement remedial measures to improve the accuracy and timeliness of its outage reporting process, implement a network outage reporting training program, disclose non-compliance and identify late-filed outage reports.

FCC Chairman Tom Wheeler stated "Americans need to be confident that the service they use to reach first responders is reliable and accessible in their time of need,"

³³ See https://apps.fcc.gov/edocs_public/attachmatch/FCC-07-124A1.pdf

³⁴ See https://apps.fcc.gov/edocs_public/attachmatch/DA-12-392A1.pdf

³⁵ See https://apps.fcc.gov/edocs_public/attachmatch/DA-11-402A1.pdf

and “[p]roviders have a responsibility to ensure that Americans can use 911 to call for help any time. When a company fails to live up to its obligations, it will be held accountable.”³⁶ The aforementioned FCC actions indicate the following issues with solely relying on the FCC’s outage reports:

- 1) Not all reporting entities are disclosing all reportable outages in their submissions of the FCC Network Outage Reporting System (NORS) reports to the CPUC;
- 2) Reporting entities do not have adequately trained personnel to monitor, measure and report outages (based on the consent decrees);
- 3) The documentation of outages in the FCC NORS reports might not be accurate, such as accounting of outage durations, number of affected users, causes, root causes of the outages and application of best practices to prevent outages from recurring; and
- 4) The monetary and compliance plans (per the consent decrees) did not deter repetitive non-compliance throughout the years.

ORA’s Proposal, as discussed in opening comments, addresses these serious issues.³⁷ For instance, the Commission should establish its own outage rules that meet the requirements of California’s population and environment. The FCC NORS outage reporting requirements are triggered by a large threshold (900,000 user minutes, which is an equivalent of an outage lasting for 30 minutes affecting 30,000 users). While this threshold may be an appropriate standard for the FCC to monitor outages at the national level, it does not adequately capture outages that affect California’s population in the various locations and service territories. Thus, the Commission should adopt the California-specific threshold recommended by ORA for carriers to measure and report outages.³⁸

³⁶ See http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0406/DOC-332853A1.pdf

³⁷ See ORA Comments (3/30/15).

³⁸ See *id.*, at 25-35.

B. Analysis of Major Outages Shows that Many Are Preventable

1. Wireline and Wireless Major Outages

According to AT&T, “California consumers would be better served by the Commission acting in areas universally recognized as critical to address public safety, such as the monitoring and analysis of major outages.”³⁹ California consumers would be better served if the Commission exercised its statutory authority to ensure that major outages do not occur in the first place, as outage data shows that many outages are preventable with adequate maintenance. In other words, these outages are primarily within the telephone corporation’s control because they are not caused by extreme weather or other natural forces.

Despite the CPUC’s continued focus on public health and safety, it has not established specific standards, reporting requirements and/or enforcement mechanisms to address major service outages. Instead, under the current service quality rules, telephone corporations simply provide copies of the FCC NORS reports to the CPUC.⁴⁰ Moreover, this reporting requirement is limited to facilities-based certificated and registered public telephone corporations. Accordingly, interconnected VoIP service providers are currently not required to submit FCC NORS reports to the CPUC.

ORA analyzed a sub-set of the FCC’s NORS major outage reports for the period between July 2010 and December 2012 pertaining to the major ILECS’ wireline *and* wireless services in California. The underlying data is included in Appendices A to D. The results provide evidence of poor practices in maintaining and repairing facilities and networks. The majority of both wireline and wireless major outages did not result

³⁹ AT&T Comments (3/30/15), at 1.

⁴⁰ NORS are produced in an email format in an unusable fashion. The Commission has had a petition pending before the FCC for the last four years seeking access to the FCC NORS database. See Petition of the California Public Utilities Commission and the People of the State of California for Rulemaking on States’ Access to the Network Outage Reporting System (NORS) Database and a Ruling Granting California Access to NORS, ET Docket No. 04-35 (Nov. 12, 2009).

from catastrophic events or causes beyond the carriers' control. These outages could have been prevented if adequate infrastructure maintenance and protocols of best practices were in place to ensure that service providers were implementing measures to monitor equipment and network performance, and ensure that networks employ redundancy where feasible.

ORA also analyzed business outages reported in the FCC NORS Reports and referenced below as outages affecting DS3 services. A DS3 connection offers businesses a faster broadband connection that can deliver symmetrical speeds. Having a reliable DS3 connection is critical for businesses to support their day-to-day operations and offer consumers reliable service. While ORA primarily focused its analysis on outages affecting California residential consumers, ORA also provides aggregate data on outages affecting California businesses. The FCC's NORS reporting threshold for business outages using DS3 services is 1,350 DS3 minutes, which is equivalent to a 30 minute outage affecting 45 DS3 circuits. As referenced in ORA's opening comments, adopting an appropriate threshold for reporting business outages in California will provide the Commission with more relevant information to ensure businesses, along with residential customers, have safe and reliable service.⁴¹

Appendices E and G contain ORA's analysis of AT&T FCC NORS reports related to wireline and wireless major outages in California, respectively.

Appendices F and H contain ORA's analysis of Verizon FCC NORS reports related to wireline and wireless major outages in California, respectively.

⁴¹ ORA Comments (3/30/15), at 30, Appendix A, at A-4, and Appendix B, at B-2 to B-4.

2. Interconnected VoIP Major Outages

ORA analyzed a sub-set of FCC NORS reports from Comcast and Time Warner Cable (TWC) obtained in their merger application pending before this Commission.⁴²

In a recent order from the FCC⁴³ dated August 2014, the FCC required TWC to pay a civil penalty of \$1.1 million and implement a three-year compliance plan for failing to file a substantial number of reports pertaining to a series of reportable wireline and VoIP network outages.

TWC provided incomplete data in its FCC NORS outage reports that affected voice services in California in 2014.

Appendix I contains ORA's analysis of Comcast and TWC FCC NORS reports related to VoIP service major outages in California.

IV. "COMPETITION" HAS NOT PROVIDED THE SERVICE QUALITY PROTECTIONS MANDATED BY LAW

AT&T and Verizon claim that service quality rules are not needed given competition in the communications market due to growth in voice service options such as wireless services.⁴⁴ As shown by the outage data analysis above, competition has not led to better service quality and reliability. Indeed, poor service quality is an indication that competition in the California telecommunications market is not robust. Californians have been suffering from numerous major outages as a result of poor maintenance of infrastructure by some of the major service providers serving wireline, wireless, and interconnected VoIP customers. Some of the major service providers have failed to maintain their infrastructure simply because there is no competitive pressure for them to do so.

⁴² See A.14-04-013 et. al., Declaration of Dr. Ayat Osman, Exhibit 2 to Brief of the Office of Ratepayer Advocates (Dec. 10, 2014).

⁴³ See <http://www.fcc.gov/document/time-warner-penalized-11m-network-outage-reporting-violations>

⁴⁴ See AT&T Comments (3/30/15), at 9-11; Verizon California Comments (3/30/15), at 9.

The underlying Assigned Commissioner’s Scoping Memo and Ruling, which the Commission affirmed in D.13-02-023, noted that competitive forces and minimal service quality standards may be not be sufficient to ensure the service quality protections mandated by sections 451 and 2896:

The Commission has a statutory duty to ensure that telephone corporations provide customer service that meets reasonable statewide service quality standards including, but not limited to standards regarding network technical quality, customer service, installation, repair and billing. (D.09-07-019 *at* 12, Pub. Util. Code § 2896.) The Commission also has a responsibility to ensure that services overseen by the Commission are provided in a manner consistent with public safety....*One possible conclusion that could be drawn from the service quality results contained in the March 2011 CD report is that existing competitive forces and minimal standards are not sufficient to provide the service quality the Commission is required to ensure, and the level of public safety the Commission is committed to upholding.*⁴⁵

The analysis above supports this conclusion.

As customers move to adopt other technologies for voice services, such as wireless and interconnected VoIP, there is little reason to believe that they would expect anything less than the same level of service quality, reliability, and access to public safety assistance as with “traditional” wireline service.

V. A REFUND AND PENALTY MECHANISM IS NECESSARY TO ENSURE COMPLIANCE WITH SERVICE QUALITY MANDATES

A. Refunds and Penalties Should Apply Equally to All Telephone Corporations.

A number of parties oppose the adoption of refunds and penalties applicable to some carriers, but not others. For example, Cox notes that General Rate Case (GRC) LECs would be exempted from refunds and fines because they routinely meet the service

⁴⁵ Assigned Commissioner’s Scoping Memo and Ruling (September 24, 2012), at 5-6, *affirmed by* D.13-02-023 (emphasis added).

measures, while other carriers with similar compliance histories would be subject to the refunds and fines.⁴⁶ Cox views this application of the penalties to be discriminatory and burdensome on some carriers, but not others.

In opening comments, ORA urged revision of the Staff Proposal so that all telephone corporations would be subject to refunds and fines.⁴⁷ All carriers should follow the same rules regardless if the company is currently meeting or not meeting service quality standards. Carriers that are routinely in compliance with service quality standards would not have to pay refunds or fines. Thus, the application of a refund and penalty mechanism would not be burdensome on carriers routinely in compliance.

B. The Penalties and the Underlying Metrics Are Reasonable.

AT&T argues that penalties should not be based on the metrics proposed by the Staff Proposal, because these metrics – especially the out-of-service (“OOS”) metrics – are flawed and arbitrary. AT&T asserts that the new G.O. 133-C OOS standard adopted in 2009 was actually much stricter than the prior standard. AT&T claims that it is unreasonable to expect that AT&T and Verizon could “suddenly improve their service performance.” However, the GRC ILECs consistently met the OOS standards in the period between 2010 and 2013. The URF ILECs besides AT&T and Verizon were able to establish compliance soon after 2009.⁴⁸ Compliance with the OOS standards appears to be reasonable to most carriers besides AT&T and Verizon. And, AT&T has had six years to comply with this standard.

⁴⁶ See Cox Comments (3/30/15), at 15; see also Frontier Comments (3/30/15), at 4.

⁴⁷ See ORA Comments (3/30/15), at 4.

⁴⁸ See Staff Report, Attachment A to Assigned Commissioner’s Amended Scoping Memo and Ruling (09/24/14), at 10.

C. Competition and Existing Compliance Methods Have Not Been Effective in Addressing Service Outages

Verizon argues that a refund or penalty mechanism is not needed because competition in the telecommunications marketplace provides consumers with the option of switching carriers as a response to sub-standard service.⁴⁹ Cox notes that the Commission has numerous existing tools to address long-term poor performance of carriers, and therefore should not adopt a refund or penalty mechanism.⁵⁰ As previously discussed, competition and existing corrective tools have not been effective in addressing the chronic failure of carriers to meet out-of-service (OOS) standards. As the Staff Report notes, AT&T and Verizon provided corrective action reports for every quarter in years 2010-2013 in which the companies failed to achieve one or more of the minimum service quality standards.⁵¹ Faced with this evidence, the Staff Report reasonably concludes that corrective action plans are not an effective means of improving the service quality performance of carriers with chronic shortcomings. Corrective action plans constitute the most significant existing tools to bring corrective action. Neither the existing corrective tools nor competition have been effective over more than three years in establishing minimum service quality standards among some carriers. Refunds and penalties – which most carriers will be able to avoid with their current efforts – are a reasonable incentive mechanism.

D. The Physical Harms of Service Outages Are Not Ameliorated by Alternative Voice Services

AT&T mischaracterizes D.01-12-021, arguing that this decision does not provide guidance regarding the imposition of the Staff Report proposed penalties because it fails to recognize the “dramatic competitive and technological changes that have taken place

⁴⁹ See Verizon Comments (3/30/15), at 8-9.

⁵⁰ See Cox Comments (3/30/15), at 16.

⁵¹ See Staff Report, at 16-17.

over the last 15 years since the ORA complaint leading to D.01-12-021.”⁵² In D.01-12-021, the Commission held that the size of a penalty should be proportionate to the severity of an offense, identifying four factors to consider: physical harm, economic harm, harm to the regulatory process and the number and scope of the violations.⁵³ The Staff Proposal notes that “failure to meet the adopted minimum standards for service quality is a violation of § 451 and could result in physical harm to customers because ‘if customers have no dial tone, they do not have access to 911 services or to the other emergency contacts.’”⁵⁴

AT&T claims that because more customers today have access to alternative lines to reach emergency services, such as second lines and wireless, service outages are ameliorated with regard to physical harm. AT&T provides only one part of the Commission’s response to this argument, that the “assertion is speculative and not supported by any evidence.”⁵⁵ AT&T further claims that the telecommunications environment has completely changed and the record clearly establishes that alternative phone lines are ubiquitous and ameliorate any physical harm resulting from loss of access to emergency services. However, the Commission found that alternative communications access to emergency services provided no amelioration to the severity of an offense with regard to physical harm and stated:

Moreover, Pacific does not claim to provide faster, better repair service to customers who do not have second lines or cellular phones. The fact that some customers may be less inconvenienced than others by Pacific’s slow repair service neither excuses nor mitigates the failure to perform repairs promptly.⁵⁶

⁵² AT&T Comments (3/30/15), at 9.

⁵³ See *id.*, at 10, *citing* D.98-12-075 and D.01-12-021.

⁵⁴ Staff Proposal, Attachment A, at A-3, *citing* D.01-12-021, at 32.

⁵⁵ AT&T Comments (3/30/15), at 10, *citing* D.01-12-021, at 44.

⁵⁶ D.01-12-021, Slip. Op., at 44.

E. The Refund Mechanism Can Complement Carriers' Existing Refund Mechanisms

A number of parties argue that refunds as proposed by staff are not needed, as they already have a refund mechanism. Parties argue that staff should have analyzed or adopted existing refund mechanisms. The proposed refund mechanism can co-exist and complement carriers' existing refund mechanisms. Some carriers have an automatic refund mechanism.⁵⁷ However, other carriers require that a customer request a refund. The Staff Proposal would establish an automatic refund if certain criteria were met. This is a more effective incentive to avoid service outages than a refund that must be requested by customers, as it is likely that most customers will not seek the refund.

Additionally, several parties' refund mechanism applies a pro-rata credit of the monthly service fee for each day a customer is without service.⁵⁸ Staff proposes a more generalized refund policy, with a less granular determination of days without service. No party claims that a change to this refund policy is administratively burdensome. Application of a generalized refund policy for all carriers is appropriate and consistent with how OOS metrics are generalized for all carriers.

F. The Refund Mechanism Is Based on the Failure to Provide Service

Verizon mischaracterizes the refund mechanism in order to portray it as a damage award. Verizon cites a statement in the Staff Proposal to claim that the refund mechanism provides a refund to a customer based on the failure to provide timely installations and repairs.⁵⁹ Verizon claims that it is inappropriate to refund a portion of the monthly recurring charges based on failure to meet installations and repairs commitments and intervals. Verizon characterizes such a mechanism not as a refund, but as damages.

⁵⁷ See Verizon Comments (3/30/15), at 9; see also Cox Comments (3/30/15), at 23, fn. 61.

⁵⁸ See Verizon Comments (3/30/15), at 9-10; see also Cox Comments (3/30/15), at 23, fn. 61.

⁵⁹ See Verizon Comments (3/30/15), at 10, *citing* Staff Proposal, Attachment A, at A-1.

However, the refund is not based on the failure to provide installations and repairs. As clearly demonstrated by the actual methodology of the refund, the refund is based on the failure to provide service. The operative mechanism that determines the size of the refund is the number of days that a customer is “without telephone service.”⁶⁰ The failure to provide installation or repair is not the operative mechanism upon which the refund is based. The proposed refund mechanism is a refund for telephone service not delivered – it is not an award of damages.

VI. CONCLUSION

The record in this proceeding provides a sufficient basis for the Commission to adopt the recommendations in the Staff Proposal (as modified by ORA),⁶¹ as well as to take additional steps to protect telecommunications consumers in California.⁶² Poor service quality in the provision of voice service is not limited to the technology used to facilitate that service, as demonstrated above. Accordingly, the Commission should exercise its broad statutory authority over telephone corporations, including wireless and VoIP providers, to adopt and enforce service quality standards and reporting requirements so that their customers enjoy the same statutorily required “service quality” protections as wireline voice customers. ORA’s technology-neutral proposal serves to address this inequitable result and to further California’s stated telecommunications policy to promote the “widespread availability of *high quality* telecommunications services to all Californians.”⁶³ Therefore, the Commission should adopt ORA’s Proposal in lieu of the Staff Proposal and conduct the infrastructure study by no later than

⁶⁰ See Staff Proposal, Attachment A, at A-6.

⁶¹ See ORA Comments (3/30/15).

⁶² See ORA Comments (3/30/15).

⁶³ § 709(a), emphasis added.

September 30, 2015. This will enable the Commission to adequately and comprehensively address all issues in the scoping memo, as affirmed in D.13-02-023.⁶⁴

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⁶⁴ See Assigned Commissioner's Scoping Memo and Ruling (September 24, 2012), at 11-12.