

**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

**OPENING COMMENTS OF CITIZENS TELECOMMUNICATIONS COMPANY OF
CALIFORNIA INC. D/B/A FRONTIER COMMUNICATIONS OF CALIFORNIA (U-
1024-C), FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC. (U-1026-C),
AND FRONTIER CALIFORNIA INC. (U-1002-C) ON THE ALTERNATIVE
PROPOSED DECISION ISSUED JUNE 22, 2016**

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Citizens Telecommunications Company of California Inc. d/b/a Frontier
Communications of California (U-1024-C), Frontier Communications of the Southwest Inc. (U-
1026-C), and Frontier California Inc. (U-1002-C) (collectively “Frontier”) provide these
comments on the Alternative Proposed Decision of Commissioner Sandoval Picker Adopting
General Order 133-D issued June 22, 2016 (the “Alternative Proposed Decision” or “APD”).
Frontier files these comments pursuant to Rule 14.3 of the Commission’s Rules of Practice and
Procedure.

I. INTRODUCTION

The APD is similar in many respects to the Proposed Decision (“PD”) issued by
Chairman Picker in this rulemaking on March 22, 2016, and therefore many of Frontier’s
comments on the PD apply with equal force to the APD.¹ Specifically, Frontier cannot support
the APD because it, like the PD, is premature: it re-adopts the existing service quality standards

¹ See, e.g., the Opening and Reply Comments of Frontier on Chairman Picker’s Proposed Decision, filed April 11, 2016, and April 18, 2016.

and imposes new penalties for failure to meet them without sufficient consideration of whether these standards remain appropriate. As Frontier and other companies have explained in previous comments, the Commission should hold workshops specifically targeted to discuss standards appropriate for today's marketplace and thereby establish a complete record. Moreover, any changes to the current GO 133-C should await the results of the Commission's pending investigation into the state of competition in the telecommunications industry (I. 15-11-007). In this docket, Frontier and other carriers have explained that the communications market is highly competitive and that competition, not regulation, best promotes service quality. Frontier recognizes that some parties do not agree the market is competitive, but the Commission need not and should not prejudge this issue by re-adopting the current standards and imposing significant penalties *before* it examines the state of competition.

Although the APD echoes the PD in many respects, it goes beyond the PD in four significant areas: it extends major service interruption reporting obligations to interconnected VoIP services; it imposes a new reporting requirement for major rural outages; it eliminates the option set forth in the PD to suspend fines in certain circumstances; and it anticipates a new phase of this proceeding to address the appropriateness of service quality standards for wireless and VoIP services. Frontier respectfully requests that the Commission reject these changes. First, imposing reporting obligations on VoIP providers and opening a new phase to impose service quality standards on VoIP services violates federal and state law. Second, new reporting requirements for major rural outages are unnecessary and would divert the resources needed to repair such outages. Third, the PD's option to suspend fines should be retained, because the PD requires that any suspension include an obligation to invest *twice* the amount of any fine in a

project that measurably improves service quality within two years. Promoting this type of investment is in the public interest.

In short, the Commission should not adopt any changes to the current GO 133-C until it holds workshops and examines the results of the Commission's pending investigation into the state of competition in the telecommunications industry (I. 15-11-007). But if the Commission chooses to amend GO 133-C, then it should reject the APD and adopt the PD with the amendments proposed by Frontier in previous comments.

II. DISCUSSION

A. The Commission Should Deny or Suspend the PD and APD

When the Commission opened this rulemaking in 2011, the threshold question it asked parties to address is: "Are the adopted GO 133-C service quality standards appropriate and reasonable? If not, should new service quality standards be adopted or should existing standards be modified or eliminated?" The APD, however, like the PD, fails to address this threshold issue. It assumes, with no analysis, that the existing standards are appropriate. In doing so, the APD fails to address the hundreds of pages of comments from the industry and declarations from expert witnesses filed in this docket over the past four years that demonstrate the current metrics are inappropriate and unreasonable. Frontier explained this point in detail in its previous filings, and incorporates these filings by reference.² For the reasons stated by Frontier and others, Frontier respectfully requests that the Commission deny or suspend the PD and APD.

Furthermore, the APD, like the PD, is silent on the proposed audits of Frontier's and AT&T's networks. Frontier understands that \$500,000 has been included in the Governor's 2016/2017 state budget for these audits since the PD was issued, and the principal purpose of the

² Opening Comments of Frontier on Chairman Picker's Proposed Decision (filed April 11, 2016).

audits was to help inform the Commission on what service quality standards should be adopted. Here, though, the APD, like the PD, proposes to re-adopt the current service quality measures (as well as penalties and additional reporting requirements) before the network audits have even begun. For this reason, too, the APD and PD are premature and should be denied or suspended.

B. The Commission Should Reject the APD

If the Commission chooses to amend GO 133-C at this time, then it should reject the APD and adopt the PD with the amendments proposed by Frontier in its previous comments.

As the APD explains (at page 6), it differs from the PD primarily in four different ways. First, it extends major service interruption reporting obligations to entities subject to Public Utilities Code Section 285, which requires interconnected VoIP providers to collect and remit surcharges for certain public purpose programs. Section 285, however, does not give the Commission any jurisdiction over VoIP providers; indeed, the Legislature made clear in subsection (b) that the “sole purpose” of Section 285 is to require the Commission to impose surcharges. And no other provision of state law grants the Commission the power to impose reporting requirements on VoIP providers or the power to fine such providers if they fail to comply with such requirements. Indeed, Public Utilities Code Section 710(a) expressly prohibits the Commission from regulating VoIP: “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.” Federal law does not require or expressly delegate power to the Commission to

impose such reporting requirements, nor does any provision of Section 710(c). Accordingly, this proposed requirement violates state law.³

This proposal also violates federal law. The FCC confirmed in its *Open Internet Order* the FCC's "longstanding conclusion" that broadband services are jurisdictionally interstate for regulatory purposes. *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, *Report and Order on Remand*, FCC 15-24 (rel. March 12, 2015), at ¶ 431, *aff'd USTA v. FCC*, No. 15-1063 (D.C. Cir. June 14, 2016). VoIP services are broadband services, and given that such services are interstate, the Commission does not have jurisdiction over them.

The APD (at page 21) also imposes a new reporting requirement for "major rural outages." Specifically, it would require companies to report outages (1) that last at least 30 minutes and potentially affect 75,000 user minutes and (2) that occur in "rural areas" of the state, which are defined as areas the Census Bureau has determined are not within urbanized areas or in urban clusters. Urbanized areas include 50,000 or more people; urban clusters have at least 2,500 people and less than 50,000 people. Initial notifications must be filed within 120 minutes of discovery; initial reports are due within 72 hours of discovery; and final reports are due within 30 days.

This requirement must be rejected – it is unnecessary and it would divert resources needed to repair outages as quickly as possible. Specifically, the people who are needed to identify the cause of and repair these minor outages are the same people that would be required to supply the information required by the new reporting requirements; Frontier respectfully

³ Section 710(f) provides that the Commission may "continue to monitor and discuss VoIP service" and to "respond informally" to customer complaints, including providing VoIP customers who contact the commission information regarding available options under state and federal law for addressing complaints. This is a very limited grant of authority – it does not give the Commission the power to require VoIP providers to submit reports under threat of penalty.

submits that its employees should focus on repairing the outage, not on filing reports. Frontier will, of course, continue to notify Staff and cooperate with and answer Staff's questions about outages that do not meet the NORS-reporting threshold on a case-by-case basis. Frontier will also continue its practice of notifying and working with impacted local and state agencies of significant outages.

If, however, the Commission elects to adopt a new reporting requirement for these types of outages, then it should adopt a more informal process. For example, an informal process could require carriers to report outages that last at least 30 minutes and potentially affect 75,000 user minutes and that occur in "rural areas" of the state via an e-mail to Staff within a "reasonable time" after an outage is identified via an e-mail to a designated Staff member. Thereafter, if Staff has follow-up questions, it can ask them and the carrier shall respond within a reasonable time. Such an informal process would allow Staff and the carriers to work cooperatively based on the unique circumstances of any particular outage.

The APD also eliminates the option set forth in the PD to suspend fines in certain circumstances. This option, however, which is set forth in Section 9.7 of the PD's proposed GO-133D, should be retained, because it requires that any suspension include an obligation to invest *twice* the amount of any fine in a project that measurably improves service quality within two years:

9.7 Alternative Proposal for Mandatory Corrective Action

In support of a request to suspend the fine, carriers may propose, in their annual fine filing, to invest no less than twice the amount of their annual fine in a project(s) which improves service quality in a measurable way within 2 years. The proposal must demonstrate that 1) twice the amount of the fine is being spent, 2) the project(s) is an incremental expenditure with supporting financials (e.g. expenditure is in excess of the existing construction budget and/or staffing base), 3) the project(s) is designed to

address a service quality deficiency and, 4) upon the project(s) completion, the carrier shall demonstrate the results for the purpose proposed.

Carriers are encouraged to review their service quality results to find appropriate target projects to invest funds.

This option is in the public interest and should remain.

Finally, the APD anticipates a new phase of this proceeding to address the appropriateness of service quality standards for wireless and VoIP services. As discussed above, the APD's proposal to extend service interruption reporting obligations to VoIP providers violates state and federal law, and the proposal to (possibly) impose service quality standards on VoIP likewise conflicts with the law and must be rejected.⁴

C. The Commission Should Adopt the PD with Amendments

If the Commission chooses to amend the existing service quality rules, then it should reject the APD and adopt the PD with the amendments Frontier proposed in its previous filing. These amendments are summarized here:

First, the date on which the automatic penalty provisions take effect should be extended from July 1, 2016, to one year after GO 133-D takes effect. This will allow companies sufficient time to retain additional employees, if needed, and to evaluate and modify existing processes and procedures.

Second, for the out-of-service repair standard,⁵ the PD would assess the full penalty upon a carrier even if that carrier achieved 89% of repairs within 24 hours. This result is not justified – a carrier that meets this metric 89% of the time in a given month should not be required to pay the same as it would if it met the metric only 60% of the time. Frontier respectfully requests that

⁴ To be clear, Frontier agreed to certain service quality reporting measures for VoIP as set forth in D. 15-12-005, and will abide by them.

⁵ This standard requires a carrier to repair out-of-service troubles within 24 hours 90% of the time.

the PD be amended to include an additional scaling factor that reduces a carrier's fine as the carrier's performance improves. Specifically, if a carrier's performance for a month in which a fine is incurred is less than 70%, it should pay the entire share of its scaled base fine; if its performance is between 70-79%, it should pay 50%; and if its performance is between 80-89%, it should pay 25%. Frontier believes this is a more equitable mechanism that will further encourage carries to meet this metric.

Third, the Commission should add a sentence to proposed GO 133-D that would expressly reserve to the Commission or Staff the power to waive or reduce any fine upon a showing of good cause. In this way, the Commission or Staff would have the flexibility to address circumstances unique to a particular carrier. Frontier suggests that the following sentence be added to the end of the second paragraph in Section 9.1 of the proposed GO 133-D, at page B13: "The Commission or Staff may waive or reduce any fine otherwise assessable under this Section upon a showing of good cause." For example, in Decision 15-12-005, where the Commission approved the recent transaction between Verizon and Frontier, ORA, TURN, CETF and Frontier entered into a settlement agreement that was approved by the Commission under which Frontier agreed to a host of conditions, including service quality reporting requirements that go beyond what is required by current rules and "benchmarks" for endeavoring to achieve the current service quality metrics over a 2-year period. Frontier submits that these commitments and agreed-upon benchmarks constitute "good cause" for a temporary deviation of any new service quality rules. Thus, a "good cause" exception will give the Commission flexibility in dealing with unique circumstances on a carrier-specific basis.

Fourth, the base fines for each of the standards should be reduced annually in proportion to the reduction in total access lines. For example, the base fine for the out-of-repair standard is

\$750,000 per month, and a percentage of this base fine is allocated to a carrier based on the carrier's share of total California access lines. But access lines have declined significantly over the years and continue to decline, and the base fine attributable to, say, 10 million access lines should not be the same as the base fine attributable to 5 million access lines. Accordingly, the base fine for each standard should be reduced each year to reflect the percentage decline in access lines from the previous year. (If, for example, access lines declined by 5%, the \$750,000 base fine for out-of-service would decline by 5%.)

Finally, the PD imposes new or different reporting obligations that are costly, unnecessary, and will take time to implement. These include (a) excluding large business customers from reports, which would require Frontier to make system and customer tracking changes; (b) providing unadjusted out-of-service results; (c) providing detailed information on catastrophic events that result in outages to at least 3% of a carrier's customers; (d) providing raw data used to generate outage reports including zip codes of associated billing addresses; and (e) reporting on the number and total amount of refunds paid to customers for outages. As Frontier and others have explained in previous filings, these new or different obligations are not necessary and should be eliminated. Alternatively, the PD should be amended so that any new reporting obligations do not take effect until July 1, 2017 to ensure that carriers have sufficient time to implement them. Also, the PD should be amended to ensure that any new data required to be provided, such as the raw data used to generate reports, remains confidential.

In this regard, the "Service Quality Reporting Template" set forth in Attachment C should be amended to strike the row entitled, "Unadjusted out of Service Report." Unadjusted results are not made public today and should not be in the future. The Commission receives the raw data as confidential today and will continue to receive it, and there is no value in making

such results public. The PD and proposed GO 133-D expressly recognize that certain adjustments are necessary and appropriate, and therefore the *adjusted* data is what should be reported on the template.

III. CONCLUSION

For the reasons set forth above and in Frontier's previous comments, Frontier requests that the Commission deny or suspend the APD and PD or, alternatively, adopt the PD with the amendments proposed by Frontier.

Respectfully submitted,

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