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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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 CALIFORNIA CABLE & TELECOMMUNICATIONS
ASSOCIATION ON COMMISSIONER SANDOVAL'S ALTERNATE PROPOSED
DECISION ADOPTING GENERAL ORDER 133-D**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the California Cable & Telecommunications Association (“CCTA”) submits these reply comments in response to the *Alternate Proposed Decision of Commissioner Sandoval Adopting General Order 133-D* (“APD”) released June 22, 2016.

**II. THE COMMISSION HAS NO AUTHORITY TO IMPOSE OUTAGE
REPORTING AND OTHER SERVICE QUALITY METRICS ON VOIP.**

As established in CCTA’s Opening Comments, the APD’s proposal to require interconnected VoIP providers subject to Public Utilities Code (“Pub. Util. Code”) section 285 to file outage reports, and an arbitrary subset of those VoIP providers to comply with other service quality metrics,¹ would exceed the Commission’s legal authority. Numerous commenters support this unassailable conclusion and offer detailed legal analysis explaining why the imposition of service quality rules on VoIP would violate express statutory restrictions on the Commission’s regulatory authority over VoIP services.² As Cox explains: “Section 710(a) plainly states that the Commission cannot ‘exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services’ except under express delegation of

¹ Under the APD, VoIP providers subject to the service quality metrics include those providers possessing (i) Certificates of Public Convenience and Necessity (“CPCN”), (ii) Eligible Telecommunications Carrier (“ETC”) designations, and (iii) California LifeLine service authorization. *See* APD at 13-14. These arbitrary distinctions have no basis in law given the Commission’s lack of regulatory jurisdiction over *all* VoIP services; nor would mandated reporting by an arbitrarily selected subset of VoIP providers advance the public safety goals that the Commission has identified.

² *See* CCTA Opening Comments at 2-3; Frontier Opening Comments 4-5; AT&T Opening Comments at 5-9; Cox Opening Comments at 9-12.

federal law, when expressly directed to do so by statute or as permitted in Section 710(c). None of those circumstances are present here.”³

Commenters also raise the legitimate concern that adoption of the APD’s rural outage reporting requirements would conflict with the Federal Communication Commission’s (“FCC’s”) outage reporting regime, which is currently undergoing review in an open rulemaking.⁴ Beyond raising preemption concerns,⁵ the APD risks improperly prejudging issues pending before the FCC. Cox also raises due process concerns with respect to the imposition of the outage reporting rules on VoIP providers.⁶

In contrast, parties that support regulation of VoIP as proposed in the APD fail to cite any authority that would allow the Commission to impose any form of outage reporting requirements—much less other service quality metrics—on VoIP providers. For example, Joint Consumers reassert without analysis or support that they have “previously argued that the Commission has authority to apply service quality standards to VoIP carriers”⁷—but argument is not a substitute for proper legal authority which, as CCTA and others have already shown, the Commission clearly lacks here. Similarly, while ORA asserts that the APD “correctly concludes” that Pub. Util. Code sections 710(f) and 451 support the APD’s extension of service quality requirements to VoIP providers,⁸ ORA does not—and cannot—explain how these inapposite provisions overcome Section 710(a)’s express limitations on the Commission’s jurisdiction. As Cox explains: “This approach would simply allow the Commission to circumvent Section 710(a) by adopting rules, reporting requirements, regulations applicable to VoIP service or IP-enabled service on the premise that it is in the public interest. If the Legislature wished for the Commission to have that authority, it would have included it as an exception in Section 710(c) or otherwise in Section 710.”⁹

³ Cox Opening Comments at 10.

⁴ See *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Report and Order, Further Notice Of Proposed Rulemaking, and Order On Reconsideration, PS Docket No. 15-80, 31 FCC Rcd 5817 (2016).

⁵ See e.g. CCTA Opening Comments at 9-11; CTIA Opening Comments at 3; Verizon Opening Comments at 11-12.

⁶ See Cox Opening Comments at 13-14 (noting that it is not clear that either the Order Instituting Rulemaking or the Scoping Memo was properly served on all interconnected VoIP providers).

⁷ Joint Consumers Opening Comments at 5 (citing Joint Consumers Opening Comments on Nov. 12, 2015 Proposed Decision Adopting General Order No. 133-D at 4).

⁸ ORA Opening Comments at 2.

⁹ Cox Opening Comments at 12.

Although not discussed in its opening comments, ORA also proposes new conclusions of law based on Pub. Util. Code sections 2896 and 2897 (relating to service quality standards for telephone corporations), Pub. Util. Code sections 233 and 234 (relating to the definition of telephone lines and telephone corporations), and on Section 706 of the federal Telecommunications Act of 1996.¹⁰ However, as discussed below, none of these sections overcome the jurisdictional limitations of Section 710(a) or provide the Commission with authority to impose outage reporting or other service quality standards on VoIP services.

Section 2896 authorizes the Commission to “require *telephone corporations* to provide customer service to telecommunication customers,” including “[r]easonable statewide service quality standards.” But as CCTA and other commenters have explained, the Commission has never found VoIP providers to be “telephone corporations,” and Section 710 would plainly foreclose such a conclusion.¹¹ In this regard, it is significant that the Legislature adopted Section 710 nearly *20 years after* Section 2896, and could have included—but chose not to include—an exception authorizing service quality regulation of VoIP services under Section 2896.¹² By making Section 710 applicable to “services” – not “service providers” – the Legislature also expressed its intent to limit the Commission’s regulatory jurisdiction over *all* VoIP services, even those provided by certificated entities.¹³

Nor does Section 706 of the 1996 Act provide a legal foundation for the APD’s proposals. As CCTA explained in earlier comments, that limited grant of federal authority—to the extent it applies at all to state commissions—cannot confer independent rulemaking authority

¹⁰ ORA argues that interconnected VoIP carriers operate, control, or manage “telephone lines” as defined in Pub. Util. Code section 233, that they are “telephone corporations” as defined in Pub. Util. Code § 234, and that Pub. Util. Code §§ 2896 and 2897 mandate that the Commission ensure that telephone corporations, including wireless and interconnected VoIP telephone corporations, provide customer service that meets reasonable statewide service quality standards. ORA also claims that Section 706(a) of the 1996 Act provides the express statutory authority required by Pub. Util. Code § 710(a) for the Commission to require interconnected VoIP providers to meet service quality standards pursuant to Pub. Util. Code § 2896. *See* ORA Opening Comments at A-2–A-3.

¹¹ In fact, the Commission *declined* to make such a finding in a decision adopted shortly after Section 710. *See* D.13-02-022, Decision Closing Rulemaking 11-01-008, mimeo at 4 (Feb. 28, 2013).

¹² CCTA Reply Comments on Proposed Decision at 3-4 (April 18, 2016).

¹³ The Legislature was well aware that several entities with Certificates of Public Convenience and Necessity offer both traditional landline and IP-enabled services. Rather than making the application of Section 710 turn on the regulatory status of the service provider, however, the statute was deliberately structured to focus on the nature of the service. *See* Senate Energy, Utilities and Communications Committee, analysis SB 1161 (2011-2012 Reg. Sess.) as amended March 26, 2012 (Hearing Apr. 17, 2012) at 3, 7.

in contravention of express statutory limitations adopted by a state legislature.¹⁴

III. **OTHER EVIDENTIARY AND PROCEDURAL DEFICIENCIES ALSO SUPPORT REJECTION OF THE APD’S PROPOSED RURAL OUTAGE REPORTING REQUIREMENTS.**

A number of commenters correctly argue that the record does not support a need for separate rural outage reporting requirements—especially in light of the FCC’s comprehensive Network Outage Reporting System (“NORS”) reporting system for outages nationwide.¹⁵ In fact, as Cox points out, ORA’s proposal for rural reporting included mathematical and other errors and, upon close examination, does not support the need for a separate rural reporting requirement.¹⁶ The Small ILECs also note (as did CCTA) that there are inadequate findings of fact and conclusions of law to justify the rural outage reporting proposal. Indeed, the only finding of fact on this topic in the APD is that the administrative burden of sending a copy of the *existing* FCC NORS report to the Commission is reasonable;¹⁷ however, this finding clearly does not support the APD’s proposal of a *new* reporting mechanism with thresholds that are inconsistent with the FCC’s.¹⁸ Cox also raises procedural deficiencies, pointing out that APD’s definition of “rural areas” appears to have been improperly adopted from ORA’s first comments on President Picker’s PD.¹⁹

Finally, several parties raise significant practical issues with the proposed rural reporting regime that provide additional reasons it should not be adopted. For example, Verizon notes that segregating outages by rural or urban areas is not practicable given that network operators cannot

¹⁴ See CCTA Reply Comments on Proposed Decision at 4-5, note 17 (April 18, 2016). By its own terms, Section 706(a) applies to the FCC “and each State commission *with regulatory jurisdiction* over telecommunications services.” 47 U.S.C. § 1302(a) (emphasis added). Thus, whatever role Congress may have envisioned for state commissions under Section 706(a), it must be limited by the jurisdiction granted to those commissions by their respective legislatures. It follows that Section 706(a) cannot “expressly delegate[]” responsibilities under federal law for services that would defeat Section 710’s express prohibition on the Commission “exercising jurisdiction or control” over those same services.

¹⁵ See, e.g., Verizon Opening Comments from 13-14; Frontier Opening Comments at 5-6; Cox Opening Comments at i.

¹⁶ See Cox Opening Comments at 13-14 (noting that “ORA did not demonstrate the current reporting threshold for NORS reports of 900,000 user minutes would not adequately capture outages in sparsely-populated rural areas” and that [r]ather than showing that current reporting requirements are not adequate, [ORA’s] examples described reportable incidences that were reported by the given carrier under the existing rules”).

¹⁷ APD at 36.

¹⁸ See Small LECs Opening Comments at 5-7.

¹⁹ Cox Opening Comments at 14; see also CCTA Opening Comments at 13, note 65.

segregate their networks and radio frequency coverage by rural, suburban, or urban labels.²⁰ As another example, Cox highlights that “There is nothing in the record that suggests, let alone demonstrates, that the US Census Bureau definitions would in fact provide reports for ‘rural and sparsely populated areas’ as the Alternate PD proposes.”²¹

IV. THE APD’S PROPOSED NEXT PHASE TO CONSIDER IMPOSING SERVICE QUALITY MEASURES ON VOIP SERVICES WOULD BE UNLAWFUL.

The majority of comments correctly oppose opening a new phase to consider imposing service quality standards on VoIP and wireless. As AT&T notes: “A new phase of the proceeding to address the imposition of service quality regulations upon VoIP providers would be pointless because California law flatly prohibits the Commission from imposing service quality requirements upon VoIP providers.”²²

The limited comments that support such a new phase (offered by Joint Consumers and CWA) do not provide any legal basis for such action. Joint Consumers merely ask for clarification as to “next steps” in the proceeding, and request that the APD set an initial schedule for Phase 2.²³ And although CWA argues that that “[t]here is no reasonable basis” to exclude VoIP customers from the protections provided by service quality standards,²⁴ CWA ignores that the express judgment of the California Legislature not only provides such a “reasonable basis” but in fact *prohibits* the Commission from taking such action.

V. CONCLUSION

For all of these reasons, the Commission should reject the APD’s proposed unlawful (i) extension of outage reporting requirements to interconnected VoIP providers, (ii) creation of a new rural outage reporting mechanism in conflict with the FCC’s NORS procedures, and (iii) extension of other service quality metrics and penalties to VoIP providers that hold CPCNs, are designated as ETCs or provide LifeLine service. Additionally, the Commission should not commence a new phase of the proceeding to consider service quality rules for VoIP providers.

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²⁰ See Verizon Opening Comments at 14.

²¹ Cox Opening Comments at 14.

²² AT&T Opening Comments at 6.

²³ See Joint Consumers Opening Comments at 5-6.

²⁴ See CWA Opening Comments at 4-5.

Respectfully submitted this 18th day of July 2016,

/s/

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