

Decision **PROPOSED DECISION OF COMMISSIONER PICKER**
(Mailed 4/17/2015)

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)

**DECISION DEFERRING NETWORK STUDY REQUIREMENT
ADOPTED IN DECISION 13-02-023**

Summary

This decision finds that the examination of the networks of AT&T California and Verizon California Inc. (Verizon California) ordered in this proceeding¹ should be deferred until the Commission rules on the proposed service quality rule changes and penalties under consideration in this proceeding. If adopted, the penalty mechanism provides strong motivation to telephone corporations to improve service quality to a level that meets the Commission's General Order 133-C minimum service quality measure standards and provide safe and reliable service at reasonable rates. Consequently, the study of AT&T California's and Verizon California's networks ordered in

¹ Rulemaking 11-12-001: Assigned Commissioner Scoping Memo and Ruling, dated 9/24/12, and Decision 13-03-023, Decision Affirming Provisions of the Scoping Memo and Ruling, issued 3/6/13.

Decision 13-02-023 may not be necessary. The study requirement is therefore deferred.

1. Discussion

In Decision (D.) 13-02-023, the Commission affirmed that the then-Assigned Commissioner's Ruling requiring a study of carrier network infrastructure, facilities, policies, and practices was a necessary foundational activity within this proceeding to help gauge the condition of carrier infrastructure and facilities and ensure the facilities support a level of service consistent with public safety and customer needs.

On February 6, 2014, this proceeding was assigned to Commissioner Michael Picker. On September 24, 2014, Commissioner Picker issued his Amended Scoping Memo and Ruling. A Staff Report from the Commission's Communication's Division, covering the years 2010 through 2013, was attached to the Amended Scoping Memo and a schedule set for comments and reply comments from the parties. The staff report found that AT&T California and Verizon California Inc. (Verizon California) had not met the minimum Out of Service restoral time measurement standard of repairing out-of-service lines within 24 hours, 90% of the time for any year during the period of 2010 through 2013.²

Based on the comments received and the results reported by the telephone companies shown in the staff report, the Commission's Communications Division issued a Report on Proposed Modifications to General Order 133-C, including a Service Quality Refunds and Fines Proposal. The parties were

² Staff Report Section IV at 13.

authorized to file and serve comments on the Staff Proposal. Opening Comments were due March 30, 2015 and Reply Comments due April 17, 2015.

The Report proposes to adopt operational metrics and an “automatic” penalty mechanism for the larger telephone companies that continually do not meet minimum service quality standard measures. Specifically, these companies will be required to issue service charge refunds to customers that have been out of service for more than 24 hours and, where these companies fail to meet one or all of the applicable Commission’s minimum Service Quality measure standards for three consecutive months or more, graduated fines will be imposed. Fines start at \$500 and go up to \$50,000 per violation per day.

The staff proposal for penalties was predicated on a penalty mechanism adopted in D.01-12-021 for SBC (AT&T California’s predecessor) for failing to comply with Pub. Util. Codes § 451 regarding failing to meet its obligation to provide safe and reliable service and § 702 for failing to comply with a Commission order, the SBC/Pacific Telesis merger decision (D.93-03-067 Ordering Paragraph 2).³ This decision required SBC to improve service quality for the five years following the approval of the merger. D.01-12-021 adopted a penalty mechanism whereby SBC would be penalized \$300,000 for any month that the company did not meet an out-of-service repair interval standard that was adopted in that decision. Since that time, the Commission adopted General Order 133-C with a different out-of-service repair standard.

The penalty method proposal currently under consideration in this proceeding was not based on and is not dependent on scrutinizing each telephone company infrastructure and facility decision, but rather on the quality

³ See Staff Proposal to Modify General Order 133-C, Attachment A.

of the service being provided to the customer, as measured by General Order 133-C standards. Ensuring that adequate facilities are available and properly maintained to provide safe and reliable telephone service is the responsibility of the management of the telephone companies. Where service failures occur, the companies will incur refund obligations and/or fines.

Since we are considering changes to our service quality rules that if adopted in part or in whole, will provide telephone corporations with strong motivations to improve service and meet the minimum service quality measurement standards, we believe that engaging in a costly and time consuming examination of AT&T California's and Verizon California's networks at this time may not be necessary to achieve the overall goal of telephone companies providing service at a level that meets public safety and consumer needs. Consequently, we defer moving forward with the network examination until after a decision is issued regarding the Staff's General Order 133-C Modifications proposal. If it is determined that such a study is necessary, we will direct through a separate order that it be resumed.

2. Comments on Proposed Decision

The proposed decision of the assigned Commissioner in this matter was mailed to parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____. Reply comments were filed on _____ by _____.

3. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. A study of carrier network infrastructure, facilities, policies, and practices was ordered on February 28, 2013.
2. On September 24, 2014, Commissioner Picker issued his Amended Scoping Memo and Ruling.
3. The penalty and fine mechanism currently under consideration in this proceeding is based on operational outcomes, not detailed examination of network facilities.
4. Depending on what, if any, of the service quality rule changes are adopted in this proceeding, the study ordered in 2013 may no longer be necessary.

Conclusions of Law

1. The study ordered in 2013 should be deferred until after the Commission acts on the Staff's Proposed Modifications to General Order 133-C.
2. If it is determined that the network examination is necessary, it should be directed under a separate Commission order.

O R D E R

IT IS ORDERED that:

1. The requirement for a study of carrier network infrastructure, facilities, policies, and practices that was ordered by the Commission in Decision 13-02-023, is deferred until after a decision is issued on the Staff's Proposed Modifications to General Order 133-C.
2. Rulemaking 11-12-001 remains open pending the resolution of issues identified in the original Order Instituting Rulemaking and the Amended Scoping Memo dated September 24, 2014.

This order is effective today.

Dated _____, at San Francisco, California.