

Decision ALTERNATE PROPOSED DECISION OF COMMISSIONERS FLORIO AND SANDOVAL (Mailed 7/3/2015)

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 AFFIRMING COMMISSION DIRECTION TO CONDUCT THE NETWORK EVALUATION STUDY ORIGINALLY ORDERED IN DECISION 13-02-023

1. Summary

This decision finds that the examination of the networks of AT&T California and Verizon California Inc. (Verizon California) ordered by Decision (D.) 13-02-023 in this proceeding remains necessary,¹ and directs staff to initiate this study within six months of the adoption of this decision. Reliable, high-quality telecommunications services are crucial for the health of California's economy and the safety of California citizens. As discussed below, the performance of Pacific Bell Telephone Company dba AT&T California (AT&T) and Verizon California Inc. (Verizon) has consistently failed to meet existing service quality metrics. In addition, the essential economic and safety functions performed by and through the network infrastructure and facilities of these companies are

¹ Decision 13-03-023, Decision Affirming Provisions of the Scoping Memo and Ruling issued 3/6/13; *see also* Assigned Commissioner Scoping Memo and Ruling, dated 9/24/12.

no less critical than they were when we first ordered the infrastructure evaluation over two years ago. Given our statutory responsibility for ensuring reasonable telecommunications service quality standards,² this Decision renews our commitment to the previously adopted infrastructure study, and establishes a timeline for that study's initiation.

2. Background

In 2009, Decision (D.) 09-07-019 adopted General Order (GO) 133-C, which revised Commission's service quality rules, measures and standards for telecommunications carriers, updating the rules previously established under GO 133-B. In that decision, the Commission adopted minimum service quality standards for installation, maintenance, and operator answer time for local exchange telephone service. These service quality standards were intended to ensure that telecommunications companies in California meet their statutory obligation to provide "adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities... as are necessary to promote the safety, health, comfort, and convenience of [their] patrons, employees, and the public."³ The GO 133-C standards and associated reporting requirements were designed with transparency in mind, to

² See, e.g., Public Utility Code § 2889.8, which states that "The commission periodically shall assess the reliability of the public communications network and, if necessary, develop recommendations for improvement. The assessment shall include, but not be limited to, all of the following:

- (a) An analysis of those factors that pose a risk to network reliability, including the adequacy of independent sources of reserve power.
- (b) Consideration as to whether development of reliability standards is appropriate.
- (c) Consideration as to whether procedures should be developed to notify customers about accessing other telecommunications companies in the event of a service disruption."

³ P.U. Code § 451. Unless otherwise stated, all references to state law are to the California Public Utilities Code (P.U. Code). See also D.09-07-019 Conclusion of Law (COL) 4, which states: "GO 133-C is consistent with the Commission's 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."

provide both the Commission and consumers with information on the companies' performance.⁴ Competition in the telecommunications market does not obviate the need for such service quality standards and reporting.⁵

All five of the GO 133-C standards apply to the smaller Incumbent Local Exchange Carriers (ILECs) that remain under rate-of-return regulation (commonly known as General Rate Case or GRC ILECs). In contrast, only three of the measures adopted in GO 133-C – Customer Trouble Reports, Out-of-Service Repair intervals, and Answer Time – apply to the telecommunications carriers regulated under to the Uniform Regulatory Framework (URF) adopted in D.09-07-019.⁶ The carriers subject to these three GO 133-C standards are the state's four large ILECs,⁷ and facilities-based Competitive Local Exchange Carriers (CLECs) with 5,000 or more customers.⁸

In March 2011, the Commission's Communications Division (CD) prepared a report on the quality of telephone service provided by wire line telephone companies in 2010. The report, *Telephone Carrier Service Quality for the Year 2010* (2010 Staff Report), was distributed to the Commissioners and the California Legislature and was attached to the order initiating this proceeding. The findings and conclusions in the report were based on the GO 133-C service quality measures submitted by a total of 27

⁴ D.09-07-019, Slip Op. at 4-5 (“Carriers’ performance under the adopted measures shall be evaluated at least annually and may be published on the Commission’s website to give consumers information about their carriers’ service quality performance”).

⁵ *Id.* at 13 (“While we have relied on competition to ensure that rates are ‘just and reasonable’ [D.06-08-030 ,at 33], reliance on competition in the service quality context must be tempered with an acknowledgment of our statutory duty to ensure telephone corporations provide reasonable service quality standards”).

⁶ Slip Op. at 3-5, 54, 57.

⁷ The four companies currently classified as URF ILECs are: Pacific Bell Telephone Company dba AT&T California (AT&T), Verizon California Inc., Frontier Communications, and SureWest dba as Consolidated Communications.

⁸ D.09-07-019 at 3-5, 54, 57. An URF CLEC with less than 5000 customers and authorized as a Carrier of Last Resort is required to report Customer Trouble Report, Out-of-Service Report and Answer Time.

telephone carriers: the four URF ILECs, eight URF CLECs, and 15 GRC ILECs. That staff report found two of the service quality standards to be particularly important: Trouble Reports and Out of Service restoration times. That report found that, though the smaller GRC ILECs were consistently meeting both of these standards, the larger UFR ILECs, and particularly AT&T and Verizon, were not meeting the Out of Service Restoration time standard.

The report also discussed AT&T and Verizon's response to the severe winter storms that caused widespread service outages in Southern California during the months of December 2010 and January 2011. The report recommended that the Commission open an investigation to "examine why service quality standards are not being met and what needs to be done so that wireline carriers can provide reliable service to customers."⁹ The report also recommended that the Commission consider the adoption of "penalty mechanisms for companies that consistently fail to meet one or more standards."¹⁰

Consistent with this recommendation, the Commission opened Rulemaking (R.) 11-12-001 on December 1, 2011, to review telecommunications carriers' performance in meeting GO 133-C standards. In addition, the Order Instituting Rulemaking (OIR) stated the Commission's intention to assess whether the existing GO 133-C standards meet the goals of the Commission and are relevant to the current regulatory environment and market. The prehearing conference (PHC) in this proceeding was held on March 26, 2012, and in June and July, parties filed additional information requested by the then-assigned Administrative Law Judge. The original Scoping Memo and Ruling of then-Assigned Commissioner Ferron established the proceeding's scope and a schedule for initial activities. That scope and schedule included a study to evaluate the network infrastructure of the state's two largest ILECS, AT&T and Verizon, and set a

⁹ *Telephone Carrier Service Quality for the Year 2010* (2010 Service Quality Report) at 4-5.

¹⁰ 2010 Service Quality Report at 5.

schedule for the completion of that study. On February 28, 2013, the Commission affirmed key provisions of that Scoping Memo by a unanimous vote in D.13-02-023, finding that:

[a] study of carrier network infrastructure, facilities, policies, and practices as described in the scoping memo and ruling issued on September 24, 2012, **is 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.¹¹

In adopting this decision, the Commission provided that AT&T and Verizon “shall pay the costs of a study of their network infrastructure, facilities, policies, and practices conducted by an independent consultant under a contract managed by the Commission.”¹² Because these provisions of the scoping memo were adopted by the Commission, they have the force of a formal Commission order. Though the study requirement remains in effect, to date no contractor has been identified to conduct the study, and the required funding for the study has not been collected from AT&T and Verizon.

In February 2014, upon Assigned Commissioner Ferron’s departure from the Commission, this proceeding was reassigned to Commissioner Picker. On September 24, 2014, two years to the day from the issuance of the original Scoping Memo and Ruling, Commissioner Picker issued an amended scoping memo that “supersedes the previous schedule set on September 24, 2012.”¹³ A new staff report on telecommunications service quality performance from 2011 through 2013 was attached to that amended scoping ruling, and was entered into the record of this proceeding through a ruling issued on October 6, 2014, after receipt and consideration of parties’ comments on that report.

¹¹ D.13-02-023, Finding of Fact 1 (emphasis added).

¹² D.12-02-023, Ordering Paragraph 1.2.

¹³ Assigned Commissioner’s Scoping Memo and Ruling (Amended Scoping Memo), issued September 24, 2014 in R.11-12-001, Ruling Paragraph 1.

CD staff issued a proposal for updated service quality standards for party comment on February 2, 2015. Parties filed opening and reply comments on the report on March 30 and April 17, 2015, respectively, as permitted by a ruling of the assigned ALJ.

Assigned Commissioner Picker issued a proposed decision (PD) on April 17, 2015, that recommended deferring the network evaluation. That PD stated that

[i]f 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 Decision 13-02-023 may not be necessary.¹⁴

3. Discussion

As noted above, the study requirement ordered by the Commission in D.13-02-023 was intended to be a "foundational activity" in this proceeding. One purpose of the study was to provide the Commission and parties with a factual record on which to determine whether the existing GO 133-C standards remain relevant and appropriate for determining whether telecommunications providers in general, and AT&T and Verizon in particular, are providing service that meets the statutory requirements in P.U. Code Section 451. That provision requires all utilities to provide "adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities... necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."¹⁵ As described below, the reasons cited for initiating the network infrastructure study in 2012 (the URF ILECs substandard performance on one or more service quality standards) remain unchanged. Given this, both the public interest and the integrity of the regulatory

¹⁴ Proposed Decision of Commissioner Picker, issued April 17, 2015 at 1-2.

¹⁵ Public Utilities Code Section 451. Public Utilities Code Sections 709, 2896, and 2897 establish additional, specific service quality and related obligations for telecommunications carriers.

process are best served by the expeditious completion of the network infrastructure study consistent with D.13-02-023. For that reason this Decision reaffirms our commitment to conducting that study, and directs staff to report on progress towards its completion within six months.

3.1. Need for the Study Has Not Lessened.

As noted above, this proceeding was initiated as a result of some URF ILECs' failure to meet current GO 133-C standards. In D.09-07-019, which adopted the current GO 133-C standards, the Commission concluded that, as a matter of law,

GO 133-C is consistent with the Commission's 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.¹⁶

In the context of this finding, any substandard performance on GO 133-C measures suggests that the underperforming companies are not in compliance with statutory service quality requirements. In initiating this proceeding, the Commission cited concerns raised in the staff report released in early 2011, which showed that the large URF ILECs were not meeting those service quality standards. The extent and length of the 2010 service outages in AT&T and Verizon territory, particularly those that accompanied winter rain and flooding in the Los Angeles area, also raised questions about the ability of existing network infrastructure to provide the quality of service required by statute, especially during storm or other emergency conditions. Such outages may interfere with ability of individuals and businesses to contact emergency services and medical personnel, and adversely affect the health and safety of customers.

Based on these findings and concerns, the Commission initiated this rulemaking, and found in D.13-02-023 that a study of network infrastructure was necessary to ensure

¹⁶ D.09-07-019, Conclusion of Law (COL) 4.

that existing network facilities support a level of service consistent with public safety and customer needs. As demonstrated in the more recent service quality report documenting performance on these same measures in 2010-2013, the performance of the largest carriers (AT&T and Verizon) remains below the adopted standards in the areas identified four years ago.¹⁷

Given the absence of significant improvement in the carriers' performance during the pendency of this proceeding, there is no evidence on which to conclude that the ordered study is no longer needed. Indeed, the carriers' poor performance suggests that there may be more systemic problems at root. Recent outages in 911 service documented by the FCC and others highlight the need to closely monitor the reliability and performance of the communications network, and suggest a need to maintain some redundancy in communications facilities in case of a network failure or unforeseen emergency.¹⁸ The fact that some customers are reported to be satisfied by the services of their telecommunications providers, or may file fewer specific trouble reports, does not demonstrate that the underlying network infrastructure is sufficient to ensure customer

¹⁷ In the Report attached to the September 24, 2014 Scoping Memo, the Communications Division documented these poor results:

For the URF ILECs and CLECs, the results are problematic in general for OOS repair interval and Answer Time measures. ... For all four reporting years, AT&T failed to meet the standard for the OOS repair interval measures and Verizon failed to meet the standards for both the OOS repair interval and Answer Time measures.

"California Wireline Telephone Service Quality Pursuant to General Order 133-C, Calendar Years 2010 through 2013," at 26.

¹⁸ See, for example, the FCC report, *April 2014 Multistate 911 Outage: Cause and Impact Report*, released in October 2014 on the causes and impacts of a single software coding error in a Colorado facility that resulted in a loss of 911 service for more than 11 million people in six states (including California) for up to six hours, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-330012A1.pdf; see also 2014 Mendocino County Broadband Outage Incident Report, at <http://www.co.mendocino.ca.us/bos/incidentreport.htm>, where Mendocino County officials report that an accident that destroyed 400 feet of ILEC aerial fiber optic cable led to the loss of almost every type of communication - telephone, Internet, cellular, and 911 services - for an estimated eight (8) communities situated along the Mendocino County coastline for up to forty-five (45) hours, while a wildfire was burning through that portion of the County.

satisfaction, much less public safety, in the event of damage caused by an emergency situation such as an earthquake, storm, or wildfire.

These concerns are not alleviated by recent increases in the use of wireless and voice over internet protocol (VoIP) technology as a platform for communications. Those services, like traditional (landline) telephone service, are often dependent on ILEC wires and other facilities to transmit calls. This makes it particularly troubling that parties to this proceeding have alleged that both AT&T and Verizon are not maintaining their existing legacy facilities.¹⁹ This claim, if true, would affect voice communications made through all three platforms (wireless, VoIP, and landline).²⁰ Moreover, the evolution of the communications network toward an all-IP, all broadband and often fiber-based platform (and its existence today in a hybrid state) potentially means fewer interconnection points and a flatter network. Such a situation could magnify the impact of smaller, local failures, a phenomenon which has been observed in the electric transmission system as well as in telecommunications.²¹

In addition, the transition to IP-enabled technologies highlights the increasingly complex relationship between voice, data, and video services on what P.U. Code 2889.8 recognizes as “the public communications network,” the infrastructure that supports services ranging from residential voice service to broadband access, from ATM withdrawals and point-of-sale transactions to emergency response. More even than

¹⁹ See, e.g., CWA Post Workshop Comments, February 28, 2013, at 7 (“This data will show that the carriers are not rehabilitating cable, but rather shifting rehabilitation trained employees to repairing trouble tickets only”). See also TURN’s Emergency Motion Urging The Commission To Take Immediate Action To Protect Verizon Customers And Prevent Further Deterioration Of Verizon’s Landline Network (Emergency Motion) filed on March 17, 2014 at 1. This motion has not yet been addressed.

²⁰ This may be what happened in Mendocino. See County’s cover letter to the Commission covering its Broadband Outage Incident Report, *supra* (“telephone, Internet, cellular, and 911 services went down for thousands of residents of Mendocino County”).

²¹ See, e.g., FCC 911 Outage Report, *supra*, at 19 (“Sometimes ‘innovation’ leads to lower operating costs through efficiencies made possible by consolidating operations into fewer facilities. However, such consolidation can greatly multiply the impact from a single or dual point of failure”).

two years ago, an assessment of the reliability of that public communications network remains vital to meeting the goals of this proceeding, as well as the public safety and other obligations of this Commission. Simply put, the Commission needs empirical data about the state of the network as it is deployed today, and as it is likely to exist tomorrow.

As a result, neither the carriers' recent service quality performance nor the apparent increase in competition among landline, VoIP, and wireless providers supports a decision to delay or defer the ordered network infrastructure study. No evidence has been presented in this proceeding to change our conclusion in D.13-02-023 that the network infrastructure study is needed.

3.1.1. The Potential for Adoption of Penalties Does Not Justify the Deferral of Network Evaluation

Service quality standards and penalties such as those proposed by staff earlier this year have not yet been adopted, and until the Commission adopts a decision requiring penalties for underperformance on existing standards, none will be in place. As a result, it is unclear at best what standards and penalties, if any, could apply in the future, making it premature to find that standards and penalties could obviate the need for the network study.

3.1.2. The Adoption of Penalties Would Not Eliminate the Need for the Study

One purpose of the ordered study was to provide “valuable information that will assist parties and the Commission in addressing the issues within the scope” of this proceeding.²² Two main elements in the scope of the proceeding are to determine whether “existing service quality standards and reporting requirements [are] reasonable, appropriate, and/or sufficient to ensure that California consumers receive adequate

²² Scoping Memo of Commission Ferron, dated September 24, 2012, at 12, as affirmed by the Commission in D.13-02-023.

service and support public safety,” and if it is found that standards should be modified or changed, to develop new standards.²³

The application of a penalty mechanism may help to improve service quality results, but a penalty mechanism alone, even if related to meaningful metrics and standards, would not prevent the damage that could be caused by a network failure, nor would it fully compensate customers for problems caused by such a network failure. Because of the central importance of network infrastructure in supporting emergency services, both to assist individual customers and to coordinate public sector response to a broader emergency, a communications failure could undermine public health and safety, which are core concerns of this Commission. The proposed study of critical network infrastructure and operation was ordered to identify vulnerabilities and potential problems so they can be addressed before an actual failure. It was intended to be “foundational” because it would provide empirical data on the condition of network infrastructure, as well as on carrier infrastructure policies and procedures. This would facilitate an examination of the quality of existing communications services, and potentially inform the development of new and improved metrics to measure service quality. As a result, we find that a penalty structure alone is not an adequate substitute for the network infrastructure study ordered in D.13-02-023, and does not provide a basis for deferring the study.

3.2. The Infrastructure Study is Consistent With the Commission’s Larger Goals and Policies

A network infrastructure study is also consistent with the Commission’s goals and policies, and with recent activities we have required of utilities in other industries, such as electricity, gas, and transportation. In recent years, the Commission has renewed its focus on safety, and has taken actions consistent with this focus. For example, the Commission has ordered gas utilities to assess the condition and safety of their infrastructure such as

²³ Scoping Memo of Commissioner Ferron, at 10.

transmission pipelines and distribution systems, and to make improvements to their facilities to enhance the safety of California citizens. Similarly, the Commission has recently required gas utilities to upgrade gas transmission systems that did not accommodate industry standard inspection techniques and to install automatic shutoff valves to provide a more immediate response in the event of a pipeline failure or other emergency. Both electric and gas utilities are now required to include risk assessment analyses in their GRC applications, and to find ways to mitigate those risks.²⁴ Like electric and gas systems, telecommunications network infrastructure can have a direct impact on public safety.²⁵ A reliable public communications network is also key to other state goals, such as energy and water resource management and conservation,²⁶ and rural call completion.²⁷ An examination of this critical infrastructure is consistent with our focus on and responsibility for public safety, and remains a specific obligation of the Commission under P.U. Code § 2889.8.

3.3. Failure to Conduct the Ordered Study May Undermine the Integrity of the Regulatory Process.

In D.13-02-023, the Commission found, explicitly and by a unanimous vote, that a study of communications network infrastructure should be conducted, and provided for staff and funding to make the study possible. More than two years after that decision, three of the Commissioners who voted for D.13-02-023 are still on the Commission, but

²⁴ See D.14-12-025, Decision Adopting a Risk-Based Decision-Making Framework Into the Rate Case Plan.

²⁵ See, e.g., 2014 Mendocino County Broadband Outage Incident Report, *supra*.

²⁶ See generally the materials related to Commission's programs relating to the "Water/Energy Nexus, at <http://www.cpuc.ca.gov/PUC/energy/Energy+Efficiency/Water-Energy+Nexus+Programs.htm>. In addition, the Governor's April 1, 2015 Executive Order B-29-15 requires (at paragraph 17) that the State implement 'water-use monitoring software, irrigation system timing and precision technology, and on-farm precision technology' in its quest to conserve water - all of which require a reliable telecommunications system.

²⁷ See I.14-05-012.

the request for proposals (RFP) has not been disseminated nor a contractor chosen, and AT&T and Verizon have not yet provided the funding for the contractor. To the contrary, the incumbents' opposition to this process has been vociferous. At the same time, Verizon has announced that it is selling all of its in-State landlines to a smaller company, Frontier Communications, and the state of the Verizon California network remains unclear even as Verizon seeks approval for the transfer.²⁸ In other words, the ordered network study remains necessary, and the specific data to be collected is relevant to this proceeding as well as several others.²⁹

It is reasonable and appropriate to reconsider Commission decisions in light of changes of circumstances or new evidence. In this instance, however, no new evidence has been provided to ameliorate the concerns that motivated the study when first ordered, and circumstances in the industry have only escalated the importance of those concerns. Given the absence of relevant circumstances or new evidence, we find that it would not be appropriate to further defer the ordered study. Further delay could undermine the integrity of the regulatory process by suggesting that if enough time passes without action on a Commission order, that order can be disregarded. This could create an incentive for those who do not support a particular decision to delay or attempt to thwart the implementation of that decision in the hope that doing so would enable them to avoid compliance indefinitely. Such an outcome could undermine future Commission decisions and weaken the due process protections provided in our formal Commission proceedings. The regulatory process is best served when decisions are made based on relevant evidence, and are implemented expeditiously.

²⁸ See A.15-03-005.

²⁹ As noted above, the state of the network infrastructure may also affect the provision of other public utility services dependent on a changing public communications network, including water, gas and electricity *See generally* R.13-12-011.

3.4. Conclusion

As discussed above, no new evidence has been provided in this proceeding (or elsewhere) to show that either the concerns that led the Commission to order an examination of carrier infrastructure, policies, and procedures have been resolved, or that circumstances have changed in a way that suggests those earlier concerns may safely be set aside. At the same time, the health and reliability of the communications network continues to have a direct impact on the ability of Californians to access emergency services and protect the safety of the public. Further deferral of this study would be inconsistent with the Commission's policy to enhance safety, as well as with our recent actions to identify and proactively address possible safety risks, and specifically to examine and improve utility infrastructure, in all the industries we oversee.

For these reasons, we reaffirm our commitment to conduct the study ordered in D.13-02-023 and commence it within a time certain. We direct appropriate Commission staff to begin efforts as soon as feasible to obtain the funding and funding authority necessary for this study. Within three months of the adoption of this decision, staff shall provide a status report to the full Commission on progress towards the funding of this study. Within six months of that initial status report, staff shall provide an updated status report to the Commission on the availability of funding, as well as the anticipated schedule for commencing and completing the network study by the approved vendor, as ordered by the Commission in D.13-02-023 and affirmed by this decision.

4. Comments on Proposed Decision

The PD 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. AT&T, Verizon, Citizens Telecommunications Company of California Inc. (Frontier), and the Office of Ratepayer Advocates (ORA), the Greenlining Institute, The Utility Reform Network (TURN), and Center for Accessible Technology (CforAT) (jointly) filed opening comments on the alternate proposed decision (APD) on July 23, 2015. Reply comments

were filed on July 28, 2015, by AT&T, ORA, Communications Workers of America District 9, the California Association of Competitive Telecommunications Companies (CalTel), and TURN, CforAT, and Greenlining, jointly (the Joint Consumers).

In their comments, AT&T and Verizon assert that the previously ordered study is not necessary, and advocate for the adoption of the original PD. Both companies cite their compliance with a second existing service quality measure, Trouble Reports, as evidence that their service quality is adequate and their infrastructure is healthy.³⁰ AT&T specifically states that the APD “cites the wrong measure for its conclusion” and argues that “based on the APD’s own logic, but referring to the correct measure, the network study should not proceed at this time.”³¹ Verizon asserts that the APD improperly relies on facts and incidents that are not directly related to the AT&T and Verizon network, in its discussion of the need for the study.³² The arguments of AT&T and Verizon appear to misunderstand both the logic of the APD’s conclusion that the study should take place as planned, and the role of the Commission in determining “appropriate measures” of service quality.

The APD discusses in detail several reasons for moving forward with the planned study. First and foremost, the APD notes that the Commission has already ordered the study, and that under the Commission’s administrative procedures, new evidence should be required to support a change to that determination. In claiming that the 2014 staff Report provides such new evidence, AT&T ignores the fact that that most recent study shows a similar pattern of compliance and non-compliance on existing service quality measures as the previous staff service quality studies on which D.13-02-023 was based. The findings of the 2014 study do not constitute new evidence; rather they confirm the patterns noted in D.13-02-023 in support of the study.

³⁰ AT&T Opening Comments on alt at 2.

³¹ AT&T Opening Comments on alt at 2.

³² Verizon Opening Comments on the APD at 1-2.

In addition, only by completely discounting one of service quality measures currently in place (and that a recent staff proposal on potential penalties would retain, with additional consequences) can AT&T and Verizon argue that this study constitutes new evidence of the health of their networks. AT&T and Verizon's arguments assume both that the trouble reports measure alone is sufficient evidence of the health of the network, and that the Out of Service measure is irrelevant to conclusions about network health. The APD discusses in detail the reasons why any measure of past service quality, in and of itself, does not guarantee the continuing health of the network (see discussion in Section 3.1.2, above). In fact, the study is intended to be a foundational task in evaluating whether those measures are indeed correlated with the objective health of the network. The comments of AT&T and Verizon either misunderstand or simply fail to address the fact that new evidence obviating the need for the study has not been provided within this proceeding, and that the evidence that they cite to justify a deferring the study is neither new, complete, nor sufficient to support a change of the earlier decision.

In addition, in claiming that only one service quality measurement is sufficient to determine the health of the network infrastructure and disregarding other measures, AT&T and Verizon are implicitly asking the Commission to defer to the regulated entities on the standards that those entities should meet, and to overturn another existing Commission decision, D.09-06-019, which adopted the current service quality measurements and standards. These measurements and benchmarks remain in place until or unless the Commission formally re-evaluates them in the context of a proceeding. At this point, the staff proposal to adopt penalties for failure to meet service quality standards, which was released for party comment in this proceeding on February 2, 2015, would slightly modify but retain an Out of Service standard, and would impose a penalty for chronic failure to meet that standard. In fact, it is likely that AT&T and Verizon's current performance would trigger a penalty under the Out of Service standard if the existing staff proposal is adopted. To summarize, all existing service measures and

standards remain in place at this time, and cannot be simply disregarded at the regulated entity's request.

The argument that the APD relies on irrelevant facts and events in support of the study is also misplaced. The APD does not rely on the noted examples of 911 and other recent telecommunications failures; it does not need to do so. The study has already been ordered, and evidence is required to support a change to that determination, not to re-argue the original determination. The recent telecommunications issues in the APD are merely examples of situations that may occur without warning and would not be detected in advance through retrospective service quality measures or penalties for substandard performance. Other arguments against the study, such as the claim that it is unnecessary due to the declining share of wireline phone service in the overall telecommunications market, are irrelevant to this Commission's statutory duty to ensure healthy infrastructure providing safe and reliable service, and generally reargue points made and dismissed before the adoption of D.13-03-023. For these reasons, we find that the arguments of AT&T and Verizon about their alleged performance are not persuasive.

Frontier Communications filed comments on the APD for the limited purpose of commenting on the APD's reference to that company's pending Application (A.15-03-005) to purchase some California assets of Verizon. Frontier argues that the service quality proceeding and associated study have no bearing on that ongoing proceeding. Frontier further suggests that if the infrastructure study does occur, it should be phased to delay the review of Verizon facilities until after the acquisition. In its reply comments, California Workers of America supports adoption of the APD, but also supports the Frontier request for phased implementation of the resulting study.

As noted by CalTel, Frontier's arguments are contradictory.³³ If this proceeding and the ordered study have no bearing on A.15-03-005, there should be no need to delay the study of Verizon's facilities until that application is resolved. In fact, the reference to

³³ CalTel Reply Comments at 5.

that proceeding in the APD is just one example of an ongoing proceeding that could potentially be informed by the previously ordered study. But the study was ordered before that acquisition was contemplated, and is not directly related to the outcome of that proceeding.

The comments of ORA, the Joint Consumer Parties, and CalTel support the APD, and address some of the arguments made by AT&T, Verizon, and Frontier in favor of their positions, as noted above.

All comments and reply comments have been given full consideration and, where appropriate, clarifying revisions have been made to the PD.

5. 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. The Commission ordered a study of telecommunications network infrastructure, facilities, policies, and practices in D.13-02-023, on February 28, 2013.

2. No new factual evidence suggests that the concerns that led to the adoption of that decision no longer apply.

3. The ordered study is consistent with Commission the Commission's responsibility for ensuring and enhancing public safety.

4. Communications network architecture plays an important role in ensuring public access to emergency services, including 911.

5. The ordered study is consistent with the Commission's focus on the safety of Californians, and recent actions to assess and enhance the safety of utility infrastructure

6. A penalty and fine mechanism, even if adopted, does not fulfill the same role as the ordered study, and so does not provide an adequate reason for deferring the study.

Conclusions of Law

1. The ordered study is consistent with the Commission's responsibility under state law, including P.U. Code § 451, to ensure that utilities provide a quality of service sufficient to support the safety, health, comfort, and convenience of Californians.

2. The ordered study is consistent with the Commission's responsibility under P.U. Code § 2889.8 to assess the reliability of the public communications network.

3. The order to conduct the study of network infrastructure, facilities, policies, and practices, adopted by this Commission in 2013, remains in effect, despite the delay in the study's initiation.

4. The network study ordered in D.13-02-023 should be conducted expeditiously.

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, remains in place and is herewith reaffirmed.

2. Staff and parties to this proceeding, including Pacific Bell Telephone Company dba AT&T California and Verizon California Inc., shall take all actions necessary for the expeditious completion of study ordered in Decision 13-02-023.

3. Commission staff shall provide a status report to the Commission within three months of the adoption of this decision on progress towards the funding of this study. Staff shall provide an updated status report to the Commission on the availability of funding, as well as the anticipated schedule for commencing and completing the network study, within six months of that initial status report.

4. Rulemaking 11-12-001 remains open pending the resolution of issues identified in the Order Instituting Rulemaking and the Scoping Memos, and the completion of the study ordered in Decision 13-02-023.

This order is effective today.

Dated _____, at San Francisco, California.