

Decision 18-07-045

July 26, 2018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation to Address
Intrastate Rural Call Completion Issues.

Investigation 14-05-012
(Filed May 15, 2014)

**ORDER MODIFYING DECISION (D.) 16-12-066,
AND DENYING REHEARING OF DECISION, AS MODIFIED**

I. INTRODUCTION

Today’s decision disposes of the Application for Rehearing of Decision (D.) 16-12-066¹ (or “Decision”) and related Motion for Stay of D.16-12-066, filed by the California Cable and Telecommunications Association (“CCTA”), Charter Fiberlink CA-CCO, LLC (“Charter), Comcast Phone of California, LLC (“Comcast), Consolidated Communications of California Company, Cox California Telecom LLC, dba Cox Communications (“Cox”), CTIA – The Wireless Association® (“CTIA”), MCImetro Access Transmission Services, Corp. (“MCImetro”), Time Warner Cable Information Services (California) (“Time Warner”), and the Small LECs² (“collectively “Rehearing Applicants”). D.16-12-066 concluded Phase 1 of the Commission’s investigation into intrastate call completion problems in California.

On May 15, 2014, the Commission opened Order Instituting Investigation (I.) 14-05-012 (or “OII”) to “begin[] a review of intrastate call completion issues in

¹ All citations to Commission decisions are to the official pdf versions which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

² The Small LECs consist of the following companies: Calavaras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., The Pondersoa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

California, particularly among call completion failures in rural areas of the state.”³ Consumer and rural carrier complaints regarding call completion failures and related service issues prompted the Commission to issue the underlying OII,⁴ which requested “comments to better understand causes of rural call completion failures, to evaluate how intrastate call completion failures can be addressed at the state level, how carriers can be encouraged to address call completion failures, what existing rules could be revised or amended, and what new rules might be adopted.”⁵

The OII explained the statutory and legal mandates authorizing the Commission’s Investigation, citing, among others, the duties of all telephone corporations to provide just and reasonable service (Pub. Util. Code § 451) and to receive, transmit, and deliver calls without discrimination or delay (Pub. Util. Code § 558).⁶ The OII also cited D.97-11-024,⁷ in reiterating that “ [t]he obligation to complete calls applies not just to Incumbent Local Exchange Carriers (“ILECS”), but equally to all carriers involved in the origination, routing, and completion of calls.”⁸

As part of the Commission’s “review of intrastate call completion issues,” the OII analyzed a survey conducted by the Commission’s Communications Division

³ OII, p. 1. “Call completion problems”, “call termination issues”, and / or “call completion failure” are used interchangeably and have the same meaning within the OII’s context. (See *ibid.*)

⁴ D.16-12-066, p. 2. Call completion issues and failures were defined in this proceeding as calls that were initiated, but not completed by a carrier, for any reason, whether from an urban to a rural area (referred to as “rural call completion problems”), or other types of calls not completed, including calls to 9-1-1, and other abbreviated dialing or short code calls that cannot access a short code such as 2-1-1 or 8-1-1, or other issues with call completion such as false disconnected messages. See D.16-12-066, p. 8; see also OII, p. 25.

⁵ OII, p. 2.

⁶ OII, pp. 2-3. Appendix D of the OII contained excerpts of further provisions in the Public Utilities Code that were relevant to call completion failures. All section references are to the Public Utilities Code, unless otherwise stated.

⁷ *Re Competition for Local Exchange Service* (1997), 76 Cal.P.U.C.2d 458,

⁸ See OII, p. 4. Specifically, “[e]ven though carriers may have a variety of call routing options and methodologies, the originating call carrier, the intermediate router and the terminating carrier are all responsible for ensuring call delivery to the end user, regardless of any financial or otherwise business decision made by the involved carriers.” *Ibid.*

(CD) that asked both rural and urban carriers to report their intrastate call completion failures.² The OII found that the “CD survey confirms the failures of call completions reported by rural California customers.”¹⁰

The OII noted the impact of call completion failures on public safety, business, economic opportunity, and security, stating:

These problems negatively affect the lives of rural telephone customers, in particular, as they may result in the loss of potential business opportunities, adversely impact customers’ lives (e.g. missed employment opportunities, appointments, notices), and possibly interfere with security and personal health and/or safety contact efforts (e.g. 911). Given the potentially adverse impact that call completion failure can have on rural Californians, we believe the Commission needs to undertake a more detailed and formal investigation of intrastate call completion failure to better understand the root causes, and to find remedies or solutions to minimize call completion failure frequency.¹¹

The OII also noted the effect of rural call completion problems on the state policy of “universal service,” stating “[r]ural call completion problems disrupt providing universal service to the rural California telephone customers.”¹² According to the OII, section 275.6 “provides for ‘rate-of-return regulation in furtherance of the state’s universal service commitment to the continued affordability and widespread availability of safe, reliable, high-quality communications services in rural areas of the state.’ ”¹³

² See OII, pp. 4-6.

¹⁰ OII, p. 6

¹¹ OII, p. 4.

¹² OII, p. 7.

¹³ Section 275.6(a) requires the Commission “to maintain the California High-Cost Fund A Administrative Committee Fund program (CHCF-A program) to provide universal service rate support to small independent telephone corporations in amounts sufficient to meet the revenue requirements established by the commission through rate-of-return regulation” in lieu of market-based pricing.” (See OII, p. 7.)

The OII explained that the Federal Communications Commission (“FCC”), in regulating interstate calls, declared it an “unjust and unreasonable practice in violation of section 201 of the [Telecommunications] Act for a carrier that knows or should know that it is providing degraded service to certain areas to fail to correct the problem or fail to ensure that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately.”¹⁴ The OII stated that the Commission would look at intrastate traffic data that service providers are required to file with the FCC, and “[i]f actual intrastate data shows a consistent call completion issue, then the Commission can take action to control and eliminate call completion failures as it pertains to intrastate carrier traffic.”¹⁵

The Commission’s review of intrastate call completion issues would also “examine actions being taken at the federal and state levels and by industry associations.”¹⁶ The results of these inquiries, the OII explained, would “be instrumental in determining whether to move forward with an OIR.”¹⁷

The OII’s Preliminary Scoping Memo listed the issues and questions to be considered in the proceeding to “include whether there is a specific need to take remedial action regarding call completion failures in light of market and technological developments.”¹⁸ The OII noted that if questions identified for comment in the text of the OII are not explicitly set forth in the Preliminary Scoping Memo’s list of issues, “parties

¹⁴ OII, p. 10, citing *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, WC Docket No. 07-135, Declaratory Ruling, 27 FCC Rcd 1351, 1355-56, para. 12 (rel. February 6, 2012) (“*2012 Declaratory Ruling*”).

¹⁵ OII, pp. 6-7.

¹⁶ OII, p. 11.

¹⁷ OII, p. 11. Specifically, the OII stated that the investigation would include obtaining intrastate call completion data from the FCC, and “[i]f actual intrastate data shows a consistent call completion issue, then the Commission can take action to control and eliminate call completion failures as it pertains to intrastate carrier traffic.” (OII, p. 7.)

¹⁸ OII, p. 45 [Ordering Paragraph (“OP”) 8].

are still expected to address those questions in their filed comments.”¹⁹ The OII also stated that “[a]fter comments are received and reviewed, the Assigned Commissioner’s Scoping Ruling will lay out the issues and procedural path in more detail.”²⁰

On May 6, 2015, the Assigned Commissioner issued a Scoping Memo and Ruling (“Scoping Memo”) that expanded the preliminary scope of the investigation “to incorporate public safety issues related to 911 calls, address concerns raised in the initial responses to question in I.14-05-012, and add further respondents.”²¹ Accordingly, the Scoping Memo ordered the scope of the investigation to also include “[a] review of 911 call completion and access issues, including but not limited to, those due to loss of dial-tone for reasons other than service cancellation.”²² The Commission took comment on the follow-up questions to existing scoped issues contained in the May 6, 2015 Scoping Memo.²³

As part of the proceeding, the Commission held numerous Public Participation Hearings (“PPHs”) and workshops.²⁴ The transcripts from the workshops were placed into the record as workshop reports.²⁵ Following some of the PPHs and workshops, the Assigned Commissioner issued several Assigned Commissioner Rulings (“ACRs”) seeking comments from the public and parties on call completion issues raised in workshops and PPHs, including “call completion and dial-tone/9-1-1 access conditions in their locations that they believe impact public safety and safe, reliable telephone

¹⁹ OII, p. 34, fn. 106.

²⁰ OII, p. 39.

²¹ Assigned Commissioner’s Scoping Memo and Ruling (May 6, 2015), p. 1.

²² Assigned Commissioner’s Scoping Memo and Ruling (May 6, 2015), p. 4 [OP 2].

²³ D.16-12-066, p. 10.

²⁴ *Ibid.*

²⁵ See Assigned Commissioner’s Ruling Inviting Party and Public Comments Regarding Issues Raised at Public Participation Hearings and Workshops (September 8, 2016), p. 1.

service.”²⁶ The Commission also took official notice of other relevant state and federal service quality proceedings.²⁷

On January 4, 2017, the Commission issued D.16-12-066. The Decision identified key causes of call completion failures, including software driven issues, facilities and network design issues, and service issues.²⁸ The Decision also identified data gaps and analyzed suggestions to address these issues.²⁹ The Decision further identified 9-1-1 and database issues, as well as the need for local, county, and state public safety officials to have carrier contact information.³⁰

The Decision identified the need for action regarding reporting to eliminate data gaps and provided recommendations to address these issues.³¹ Specifically, the Decision identified a gap for reporting outages not triggered by customer or carrier repair tickets or by the FCC’s Network Outage Reporting System (“NORS”) reporting standard of 900,000 user minutes,³² which was an issue raised in the May 6, 2015 Scoping Memo.³³

In the Decision, the Commission declined to pursue further rules through a Rulemaking to address the problems identified in comments, at workshops, and the PPHs.³⁴ Instead, the Commission issued orders and directives to both carriers and

²⁶ See Assigned Commissioner’s Ruling Inviting Party and Public Comments Regarding Issues Raised at Public Participation Hearings and Workshops (September 8, 2016), p. 2; see also Assigned Commissioner’s Ruling Requesting Party and Public Comments Regarding Issues Raised at the Santa Cruz California Public Participation Hearing and Workshop (September 27, 2016).

²⁷ D.16-12-066, p. 2.

²⁸ See D.16-12-066, p. 2.

²⁹ *Ibid.*

³⁰ See D.16-12-066, pp. 69-77.

³¹ See D.16-12-066, pp. 138-153.

³² See D.16-12-066, pp. 150-153.

³³ See Assigned Commissioner’s Scoping Memo and Ruling (May 6, 2015), Attachment A, Question 8, p. 4.

³⁴ See D.16-12-066, p. 42. The Scoping Memo and Ruling and Various ACRs issued recited the
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Commission staff.³⁵ The Decision ordered a Phase 2 of the Investigation to explore whether the Commission should require Respondent carriers to report outages to public safety officials at the local, county, and state level.³⁶ In Phase 2, the Commission would address call completion reporting with these government agencies and ways to improve communications between carriers and first responders during emergency situations.³⁷

On February 3, 2017 Rehearing Applicants timely filed an Application for Rehearing of D.16-12-066. Rehearing Applicants allege seven legal errors in D.16-12-066: (1) the Commission unlawfully failed “to publish substantive revisions to the Proposed Decision [(“PD”)] on the ‘Escutia Table’ at least one hour prior to a vote on the PD”; (2) the Commission erred in materially changing the PD, without sufficient notice and opportunity for comment, with respect to the change in OP 20 to apply to “all respondents” rather than being limited to “Carriers of Last Resort” as recommended in the PD; (3) the Decision erred in addressing issues outside the scope of the OII, including “outages, MLTS programming, Frontier service issues, and the placement of telecommunications facilities on trees”; (4) the Commission erred by addressing issues that are beyond the scope of the Scoping Memo, including adopting requirements that pertain to tree attachment, Frontier service issues, and MLTS services; (5) OP 20’s extension of statewide outage reporting requirements to all respondents is not supported by the findings; (6) the Commission abused its discretion by adopting OP 20 because (a) the findings and text of the decision conflict with the outage reporting requirement and

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numerous issues raised in comments and at the PPHs. See Assigned Commissioner’s Scoping Memo and Ruling (May 6, 2015); see also Assigned Commissioner’s Ruling Inviting Party and Public Comments Regarding Issues Raised at Public Participation Hearings and Workshops (September 6, 2016); Assigned Commissioner’s Ruling Requesting Party and Public Comments Regarding Issues Raised at the Santa Cruz California Public Participation Hearing and Workshop (September 27, 2016).

³⁵ See D.16-12-066, pp. 3-7.

³⁶ See D.16-12-066, p. 152.

³⁷ See D.16-12-066, OPs 21 & 22, p. 183.

prior Commission decisions and (b) the Commission failed to consider all relevant factors and ultimately drew conclusions without substantial reason; and (7) the Decision unlawfully denied respondents due process because it materially expanded the requirements of the Decision to “carriers,” including non-respondent entities.³⁸

On February 10, 2017, Rehearing Applicants filed a Motion for Stay of D.16-12-066. On February 17, 2017, The Utility Reform Network (“TURN”), The Center for Accessible Technology (“CforAT”), and the County of Mendocino timely filed a joint Response opposing the Motion for Stay. On February 27, Pacific Bell Telephone Company d/b/a AT&T California (“AT&T”) filed a Response supporting the Motion.

On February 21, 2017, TURN, CForAT, and the County of Mendocino timely filed a joint Response opposing the application for rehearing.

We have reviewed each and every allegation set forth in the Application for Rehearing of D.16-12-066. With the modifications to D.16-12-066 made by this order, we are of the opinion that good cause does not exist for the granting of the rehearing application.

We modify OP 20 to eliminate the directive to Respondents to provide concurrent notice to other specified public safety agencies of outages reported pursuant to the standing data request issued by the Communications Division. The Commission intended that issue to be addressed as part of Phase 2. We also modify certain text of D.16-12-066 to make it consistent with the intent of and language in OP 20. We also modify OPs 2, 5, 6, 7, and 15 to replace the term “carriers” with “Respondents” to remove any possible ambiguity in these orders. Rehearing of D.16-12-070, as modified, is denied.

³⁸ See Rhrg. App., Specifications of Error.

II. DISCUSSION

A. **Modifications to OP 20 concerning the standing data request to all respondents did not require further notice and opportunity to comment.**

Rehearing Applicants argue that parties did not have sufficient notice and opportunity to be heard concerning changes to the Decision's OP 20 "and other more minimal changes,"³⁹ which they claim were substantive revisions requiring at least an hour's notice and further opportunity for comment.⁴⁰ Rehearing Applicants challenge the two instances in which the Commission modified OP 20; the first was reflected in the December 14, 2016 revised PD and the second occurred during the December 15, 2016 Commission voting meeting. Rehearing Applicants argue that because the Commission did not re-issue the PD or issue an alternate proposed decision ("APD") reflecting the changes to OP 20 for further comment, the Decision must be annulled in its entirety, or at a minimum, the Commission must eliminate all the changes to the Decision that were made after the December 15, 2016 business meeting commenced.⁴¹ We find no merit to these claims.

As background, the initial PD that was issued on November 15, 2016 contained three proposed ordering paragraphs that OP 20 subsequently replaced:

20. We order data to be provided by Carriers of Last Resort (COLRs) to the Commission about outages of 300,000 user minutes or more, lasting at least 30 minutes. Such

³⁹ The Rehearing Application does not specify these "other more minimal changes." Rule 16.1(c) of the Commission's Rules of Practice and Procedure states that "Applications for rehearing shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law." Because the Rehearing Application fails to satisfy this pleading requirement, the Commission need not address these unspecified "other minimal changes."

⁴⁰ Rhr. App., pp. 4-6. Specifically, Rehearing Applicants claim the changes to OP 20 and other more minimal changes should have been made available to the public, either on the Commission's website or on the Escutia table at least one hour prior to the Commission's December 15, 2016 business voting meeting. See Rhr. App. pp. 4-8, citing Pub. Util. Code section 311.5, Rule 15.3 of the CPUC's Rules of Practice and Procedure, and the "Guide to the Commission Meeting and Meeting Agenda."

⁴¹ Rhr. App., p. 6.

notice shall be provided within 120 minutes of the outage.

21. For any outage of OC3 minutes or transport outage, COLRs shall report to the Commission the number of user minutes affected by the OC3 outage.
23. We encourage all respondents to on a voluntary basis report outages of 300,000 user minutes that last 30 minutes or more, and the number of user minutes affected by an OC3 or transport outage.⁴²

The November 15, 2016 PD explained that these OPs served “to fill a current information void,” stating in part:

We determine that to meet the Commission’s duties under state law duties (sic) to ensure safe, reliable service, that calls are completed, the 9-1-1 access is available, and that service is reasonably comparable in California’s diverse regions, it is critical to fill the current information void about call failures and outages between the levels of individual calls for service and the Commission’s current limited access to FCC NORs data for large-scale outages affecting at least 900,000 user minutes and last 30 minutes. To close the data gap and provide safe, reliable, high-quality service throughout California, we order respondent COLRs to beginning within 60 days of the date of this Decision report to the Commission within 120 minutes of an outage of 300,000 user minutes that last 30 minutes or more. We direct Communications Division to develop a format for reporting to the Commission.⁴³

The November 15, 2016 PD also acknowledged the Commission’s ability to issue standing data requests to utilities as an alternative means to obtain the localized outage information the Commission was seeking through the reporting ordered in proposed OPs 20, 21, and 23. Regarding this data gathering tool, the PD stated:

⁴² November 15, 2016 PD, OPs 20, 21 & 23, pp. 150-151.

⁴³ November 15, 2016 PD, p. 132.

Cal. Pub. Util. Code section § 313 allows the Commission to require production of records from a public utility. The Commission already has the power to issue a series of post-outage data requests, or a standing request for data about any outage of 300,000 user minutes lasting 30 minutes or more.⁴⁴

However, this initial version of the PD declined to rely on data requests to gather the data the Commission needed to monitor and analyze call completion failures and outages. For public safety reasons, the PD proposed that this outage data “be systematically provided to this Commission to enable analysis of outage trends and appropriate follow-up action” through mandatory reporting from COLRs and voluntary reporting from all respondents.⁴⁵

The November 15, 2016 PD also explained the basis for proposing a reporting threshold of 300,000 user minutes, stating that it “strikes the right balance to close the data gap [to] meet Commission responsibilities, and protect public safety and communications reliability.”⁴⁶ According to the PD, the 300,000 user minute reporting threshold was approximately 3.3 times larger than the 90,000 user minute threshold suggested by Mendocino County, TURN and CforAT and three times smaller than the current 900,000 user minute threshold used by the FCC NORs standard and the General Order 133-D major service interruption standard.⁴⁷ The PD further explained that the “300,000 user minutes reflects the number of users that may trigger county-level public safety obligations under California’s Standardized Emergency Management System (SEMS)” and that “[c]arriers should not rely solely on customer calls and requests for repairs to initiate outage reporting, and should use information generated

⁴⁴ November 15, 2016 PD, p. 132.

⁴⁵ November 15, 2016 PD, p. 132.

⁴⁶ November 15, 2016 PD, p. 133.

⁴⁷ November 15, 2016 PD, pp. 132-134.

from alarms and network data to maintain situational awareness about the network and generate outage reports.”⁴⁸

The November 15, 2016 PD made clear that the 300,000 user minutes threshold for COLRs was only a starting point in the Commission’s data gathering and monitoring activities that proposed OPs 20, 21, & 23 encompassed:

The data we will gather will help us determine if the 300,000 user minute threshold hits the Goldilocks standard and is just right. We need not continue to be blinded by this data gap to determine that we should nevertheless proceed to gather more data. We do so in a reasonable fashion to protect public safety and fulfill this Commission’s responsibility.

We recognize that a reporting threshold of 300,000 user minutes of outage lasting at least 30 minutes for localized access failure outages may be too high for small rural communities outside of urban clusters as an outage in a small community of 1000 people would have to last five hours or more to be reportable. We believe 300,000 user minutes is a prudent level to start COLR reporting of outages, and direct Communications Division to monitor and analyze the reports received under the 300,000 user minute outage threshold, in conjunction with GO 133-D and other data on outages, customer complaints, and network performance, to make recommendations to the Commission about the trends observed and whether this reporting threshold merits adjustment.⁴⁹

The reporting requirement in proposed OPs 20 and 21 were mandatory “on COLRs only at this time in light of their responsibility to provide service to any customer who requests it within their service territory.”⁵⁰ “[S]uch reporting will reduce burdens of outages on local communities, counties, and the state, and not create an undue burden on COLRs

⁴⁸ November 15, 2016 PD, pp. 132-133.

⁴⁹ November 15, 2016 PD, pp. 132-134.

⁵⁰ November 15, 2016 PD, p. 134.

who have an obligation to provide safe, reliable service to all customers who request it within their territory,” the PD stated.⁵¹ For “all respondents,” the November 15, 2016 PD’s proposed OP 23 would have made the reporting requirements in proposed OPs 20 and 21 voluntary.⁵²

Parties submitted comments and reply comments on this initial PD on December 5, 2016 and December 12, 2016, respectively. Parties representing the industry generally opposed any reporting requirement as contrary to the Commission’s Service Quality Decision, D.16-08-021, because in that decision, the Commission had rejected proposals for lower outage reporting thresholds than the FCC’s current 900,000 user minutes.⁵³ The Small LECs opposed the reporting requirement on the same grounds, but proposed that if the reporting is adopted, it should be modified to account for events discovered outside of normal business hours.⁵⁴ MCImetro objected to the reporting requirement as beyond the scope of the OII, stating the “OII was scoped only to gather information.”⁵⁵ Whereas, comments from parties representing local government or consumer groups supported the lower 300,000 user minutes threshold reporting requirement.⁵⁶ CforAT also continued to support an even lower threshold of 90,000 user minutes to “provide greater accountability and ability to respond to localized emergencies.”⁵⁷

In response to comments, on December 14, 2016 (one day prior to the Commission meeting), the Assigned Commissioner released to the public a revised version of the PD that was to be discussed and voted on at the December 15, 2016

⁵¹ November 15, 2016 PD, p. 134.

⁵² See November 15, 2016 PD, OP 23, p. 151.

⁵³ See e.g., AT&T Comments (12/5/16), pp. 9-11; Comcast Comments (12/5/16), pp. 3-4; Frontier Comments (12/5/16), p. 4; Cox Comments (12/5/16), pp. 4-5.

⁵⁴ See Small LECs Comments (12/5/2016), p. 3.

⁵⁵ MCImetro Comments (12/5/2016), p. 11.

⁵⁶ See e.g., County of Mendocino Comments (12/5/16), p.3; TURN Comments (12/12/16), p. 4.

⁵⁷ See e.g., CforAT Comments (12/5/16), p. 10.

Commission meeting. In this revised PD document, the Commission replaced OPs 20, 21, and 23 with a revised proposed OP 20 that stated:

20. We direct Communications Division to issue standing data requests to all respondents to report to this Commission outages of 90,000 user minutes that last 30 minutes or more, and the number of user minutes affected by an Optical Carrier 3 (OC3) or transport outage. We further direct respondents to provide concurrent notice of such outages to the California State Warning Center of the California Office of Emergency Services, and require such reports or notice to be made as soon as possible, but no later than 60 minutes after their discovery of such outages.⁵⁸

With this revision, the Assigned Commissioner was now proposing that the Commission issue standing data requests as the method to obtain the information about “localized access failure outages” that the initial PD had proposed to obtain through mandatory reporting for COLRs and voluntary reporting for all respondents.

Revised OP 20 represented an apparent compromise between various proposals in the record. For example, the modification eliminated the mandatory reporting on COLRs and voluntary reporting on all respondents that many industry comments opposed. But, the modification to OP 20 also maintained the objective for all respondents to provide some information to fill in data gaps about localized emergencies, which the initial PD stated the Commission could obtain by issuing “a series of post-outage data requests.”⁵⁹ CforAT’s proposal to lower the reporting threshold to 90,000 user minutes was also reflected in this modified OP 20.⁶⁰

On December 15, 2016, the Commission held its business meeting where it discussed the revised PD. During that meeting, the Commission adopted additional

⁵⁸ December 15, 2016 (Rev. 1) PD, pp. 167-168.

⁵⁹ November 15, 2016 PD, p. 132.

⁶⁰ See e.g., CforAT Comments (12/5/16), p. 10.

language that permitted the Commission staff to adjust the parameters of the standing data requests ordered in OP 20, as shown below in the underlined language:

20. We direct Communications Division to issue standing data requests to all respondents to report to this Commission outages of 90,000 user minutes that last 30 minutes or more, and the number of user minutes affected by an Optical Carrier 3 (OC3) or transport outage. We delegate the authority to Communications Division to adjust the data request threshold between 90,000- 900,000 user minutes. We further direct respondents to provide concurrent notice of such outages to the California State Warning Center of the California Office of Emergency Services, and require such reports or notice to be made as soon as possible, but no later than 60 minutes after their discovery of such outages.⁶¹ (Emphasis added)

The Commission approved the Decision at its December 15, 2016 meeting.

Rehearing Applicants take issue with both the December 14, 2016 and December 15, 2016 versions of OP 20. As to the December 14, 2016 version, they claim that the Commission erred by not affording parties further opportunity to comment on the first modification to OP 20 that changed OP 20's applicability from applying only to "Carriers of Last Resort (COLRs)" to now applying to "all respondents" in the proceeding.⁶² Concerning the December 15, 2016 version that contained the modification to OP 20 that was made during the Commission's discussion of the revised PD at its business meeting, Rehearing Applicants claim that the Commission erred by not providing parties more than one hour advance notice of the following provision: "We delegate the authority to Communications Division to adjust the data request threshold

⁶¹ D.16-12-066, p. 150 [OP 20].

⁶² D.16-12-066, p. 150 [OP 20]. The November 15, 2016 Proposed Decision stated: "We order data to be provided by Carriers of Last Resort (COLRs) to the Commission about outages of 300,000 user minutes or more, lasting at least 30 minutes. Such notice shall be provided within 120 minutes of the outage."

between 90,000- 900,000 user minutes.”⁶³ The challenges to the two modifications of OP 20 are without merit.

1. The Commission did not err in changing OP 20 to apply to “all respondents”.

Contrary to Rehearing Applicants’ claim, the Commission acted lawfully in applying the standing data request order in OP 20 to all respondents in the proceeding because the initial November 15, 2016 PD intended for the Commission to gather the same outage data from both COLRs and all respondents, with the only difference being the means to obtain the data.⁶⁴ In the November 15, 2016 PD, proposed OP 20 sought outage data through mandatory reports triggered at 300,000 user minutes; whereas proposed OP 23 sought the same outage data through voluntary reports triggered at 300,000 user minutes.⁶⁵ Parties, including Rehearing Applicants, commented on these proposed orders. Thus, Rehearing Applicants are wrong that they did not receive notice and opportunity to be heard on this issue.

⁶³ See Rhr. App., p. 6.

⁶⁴ The OII named the following entities to be included as Respondents, and thus, parties to the OII: “all carriers that are eligible to draw support from CHCF-A or California High Cost Fund B (CHCF-B), including: Calaveras Telephone Company, California-Oregon Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, the Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, the Volcano Telephone Company, and Winterhaven Telephone Company, AT&T California, Verizon of California (includes three (3) companies: Contel, GTE and MCI Metro Access), Frontier Communications of California (includes Citizens and Frontier SouthWest), Cox California Telecom (Cox Communications), and SureWest Communications (“SureWest”). (OII, pp. 39-40). Among the other parties were: The California Cable and Telecommunications Association (“CCTA”), Charter Fiberlink CA-CCO, LLC (“Charter”), Comcast Phone of California LLC (“Comcast California”), Consolidated Communications of California Company (“CCC”), Cox California Telecom, LLC dba Cox Communications (“Cox Communications”), CTIA, MCImetro Access Transmission Services Corp. (“MCImetro”), Time Warner Cable Information Services (California) LLC (“TWCIS California”), who jointly filed the application for rehearing of D.16-12-066, with the small LECs, who were also on the service list for the OII. (See Service List for the OII.) Thus, these respondents were aware that the Commission could have included them in any determinations in this proceeding.

⁶⁵ November 15, 2016 PD, OP 20 and 21, pp. 150-151.

Moreover, the limitation to COLRs only pertained if the Commission adopted the proposal for mandatory reporting of outages triggered at 300,000 user minutes. It did not. In response to comments, the Assigned Commissioner modified OP 20 to now obtain the same data from all respondents through data requests, as reflected in the December 14, 2016 revised PD.

Because the modification did not constitute a substantive change nor was it an alternate to the PD, pursuant to section 311(e), no opportunity for additional comments was legally required. Indeed, the modification did not “materially [change] the resolution of a contested issue” or constitute “any substantive addition to the findings of fact, conclusions of law, or ordering paragraph,” and thus, did not constitute “an alternate” to the PD. (See Pub. Util. Code, § 311(e). Rather, in substance, the modified OP 20 carried out the same purpose of the November 15, 2016 OPs 20, 21, and 23 – to fill in data gaps with localized outage information triggered by a lower threshold than the current 900,000 user minutes.

Furthermore, even assuming that the change was substantive, Rule 14.1(d) of the Commission’s Rules of Practice and Procedure specifically notes: “A substantive revision to a proposed decision or draft resolution is not an ‘alternate’ if the revision does no more than make changes suggested in prior comments on the proposed decision or draft resolution, or in a prior alternate to the proposed decision or draft resolution.”⁶⁶ The Decision makes clear that the modifications to OP 20 were made “[i]n response to comments,”⁶⁷ as discussed *supra*. As explained, CforAT’s comments submitted prior to the initial PD had proposed that the Commission lower its reporting threshold to 90,000 user minutes. Thus, it was lawful for the Commission to modify OP 20’s standing data

⁶⁶ See e.g., *Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill IX and Decision 01-09-060 -- Order Denying Rehearing of Decision (D.) 06-07-030* [D. 07-01-020] (2007) p. 11 (slip op.).

⁶⁷ D.16-12-066, p. 165.

request order to authorize Commission staff to issue a data request concerning outages that fall within the parameters of 90,000 and 900,000 user minutes.

Accordingly, Rehearing Applicant's due process claim fails and rehearing is denied on this issue.

2. The modification made at the business meeting on December 15, 2016 was lawful.

Rehearing Applicants argue that the Commission must nullify the Decision in its entirety, or at a minimum the Commission must eliminate the changes to the Decision made during the Commission's December 15, 2016 business meeting. They claim that section 311.5, Rule 15.3, and the "Guide to Commission Meeting and Meeting Agenda" ("Commission Meeting Guide")⁶⁸ read together required the Commission to have provided parties at least one hour notice of the additional language to OP 20 involving the Communications Division's authority "to adjust the data request threshold between 90,000- 900,000 user minutes." In addition, Rehearing Applicants assert that with the addition of this language the Commission was required to issue an alternate decision or to re-issue the PD for further comments.⁶⁹ As with their due process allegations concerning the first modification to OP 20, this argument also fails for several reasons.

First, this modification did not "materially [change] the resolution of a contested issue" or constitute "any substantive addition to the findings of fact, conclusions of law, or ordering paragraph," and thus, did not constitute "an alternate" to the PD. (See Pub. Util. Code, § 311(e).) Rather, the modification merely authorized Communications Division staff to adjust the threshold of the data request authorized in OP 20, as modified on December 14, 2016, in response to comments to the PD. As with the first modification contained in the revised PD, this second modification was

⁶⁸ The Commission Meeting Guide can be found at: <http://docs.cpuc.ca.gov/published/report/117551.htm>.

⁶⁹ See Rhr. App., p. 7.

consistent with the Commission’s intent to obtain more localized outage information. Therefore, since the modification did not amount to an alternate, the opportunity for further comments on this modification was not legally required. Consistent with Rule 14.1(d) of the Commission’s Rules of Practice and Procedure, the revision did no more than make changes suggested in prior comments on the proposed decision because the Decision makes clear that the modifications to OP 20 were made “[i]n response to comments.”⁷⁰ See above discussion, *supra*, concerning the first modification to OP 20 in the December 14, 2016 revised PD.

Second, Rehearing Applicants’ reliance on section 311.5, Rule 15.3, and the Commission Meeting Guide is misplaced. There is nothing in the plain language of section 311.5 or Rule 15.3 that supports or discusses Rehearing Applicants’ purported “one-hour” advance notice requirement for changes made to a PD during a Commission meeting. If that were the case, the Commission would be barred from making any changes to a proposed decision during a Commission business meeting. To the contrary, “when the Commission adopts a version of a PD that has been revised after the receipt of comments, it exercises its statutory authority to ‘modify, or set aside the proposed decision or any part of the decision.’”⁷¹

Here, the Decision summarizes the comments submitted in response to the November 15, 2016 PD.⁷² It makes clear that modifications to OP 20 were made in response to comments, stating:

In response to comments, this Decision directs the Commission’s Communications Division to issue a standing

⁷⁰ D.16-12-066, p. 165.

⁷¹ *Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans -- D07-11-051 Order Modifying D.06-07-029 and Denying Rehearing of Decision as Modified [D.07-11-051]* (2007), p. 7 (slip op.); see also *Order Granting Limited Rehearing On The Rate Cap Issue, Modifying Decision 14-06-051, Denying Rehearing Of Modified Decision In All Other Respects, And Denying Related Petition For Modification [D.15-08-027]* (2015), pp. 2-5 (slip op.) [alteration of PD during Commission meeting could be appropriate].

⁷² See D.16-12-066, pp. 154-166.

data request to respondents to require reporting to the Commission and to the California Warning Center of the California Office of Emergency Services regarding outages of 90,000 user minutes lasting for 30 minutes, including information about user minutes affected by OC3 or transport outages. This data request and reporting is adopted to protect public safety and enable the Commission to perform its duties to ensure safe, reliable service including 9-1-1 access under CA PU Codes 313, 451, 701, and other California law.⁷³

Thus, in this particular case, there is no basis for Rehearing Applicants' one-hour advance notice requirement concerning changes to a PD made at a Commission meeting.

Express language in the Commission Meeting Guide undermines Rehearing Applicant's alleged one-hour rule. The Commission Meeting Guide contemplates that Commissioners or Commission Division Directors may propose changes to a proposed decision *during* the Commission meeting, stating:

In addition, Commissioners or Commission Division Directors may suggest changes to agenda items at the meeting. If adopted, they will be incorporated into the Commission's decision.⁷⁴

Rehearing Applicants' reliance on the Commission Meeting Guide is thus unavailing.

Further, the data collection issue raised in OP 20 was not a new issue raised for the first time in the PD. Parties had sufficient opportunity to comment on it during the proceeding. For instance, in comments on the September 27, 2016 ACR, which the Decision references, TURN, CforAT, and the County of Mendocino each separately argued that the Commission should adopt a lower outage reporting threshold of 90,000.⁷⁵ In particular, the Decision cites the County of Mendocino's Comments on the ACR, which argued that the "threshold of 90,000 user minutes is appropriate for rural counties,

⁷³ D.16-12-066, pp. 165-166.

⁷⁴ Commission Meeting Guide, p. 2.

⁷⁵ See D.16-12-066, p. 143; see also TURN Comments (10/4/16), pp. 4 & 15; CforAT Comments (10/4/16), p. 19; and County of Mendocino Comments (10/4/16), pp. 10-14.

as this would mean that an outage for a community of 300 households would require reporting in five hours; and a community of 1000 households would require reporting in 1.5 hours.”⁷⁶ County of Mendocino argued that all telephone companies, both wireless and wireless “should be required to report such outages, as households vary in which technology they use.”⁷⁷

The Decision also cites to carriers’ comments: “Carriers AT&T California, CTIA, Comcast, and CCTA argued in their comments on the September 2016 ACR for continued reliance on the FCC’s NORS reporting standard of an outage of 900,000 user minutes, lasting at least 30 minutes.”⁷⁸ In response, the Decision reasons that the FCC’s standard, “may not be responsive to California’s needs and does not supplant the authority of this Commission to adopt appropriate rules to enforce California law, including requirements for safe and reliable service with adequate facilities under section 451.”⁷⁹ Thus, parties had sufficient notice and opportunity to be heard concerning all iterations of OP 20.

Accordingly, the modifications to OP 20 did not trigger the requirement for the Commission to issue a new proposed decision or an alternate decision for further comment.

B. The record and findings support OP 20.

Rehearing Applicants claim that the record does not support the findings that were the basis for adopting OP 20.⁸⁰ This claim lacks merit.

The findings in the Decision that support OP 20, include, but are not limited to Finding of Facts (“FOFs”) 1, 25-30, 33-36, and 38. For example, FOF 1 states:

⁷⁶ D.16-12-066, p. 146; see also County of Mendocino Comments (10/4/16), p. 11.

⁷⁷ D.16-12-066, p. 146, citing Mendocino County Comments (10/4/16), pp. 10-11.

⁷⁸ D.16-12-066, p. 146; see also AT&T California Comments (10/4/2016), pp. 4-5; CTIA Comments (10/4/2016), pp. 2-4, Comcast Comments, (10/7/16), p. 5; and CCTA Comments (10/7/16), pp. 3-4.

⁷⁹ D.16-12-066, p. 148.

⁸⁰ See Rhrng. App., p. 14-16

“FCC data revealed that in California, some carriers have notable gaps between attempted calls and completed calls, and Communications Division along with the Consumer Protection and Enforcement Division should seek data under California law to identify and analyze such gaps.”⁸¹

FOFs 25-30, 33, and 35 relate to the Commission’s determination regarding the public safety implications that arise from the data gap in the Commission’s current outage reporting system under GO 133-D. These findings explain how to fill that data gap by collecting more localized outage data through data requests asking about outages that affected less than the current 900,000 user minutes threshold. They also express the need to provide this information to other public safety agencies.⁸²

FOFs 34 and 37 are findings regarding the significance of collecting information about OC3 or transport outages. FOF 34 states: “Reports of OC3 (data) outages may not reflect the number of voice customers affected downstream by that outage, obscuring the impact of data or transport outages on safe, reliable service, including voice service.”⁸³ FOF 37 states: “Collecting information about outages of user minutes resulting from OC3 or transport outages is important and reasonable because an outage of a single OC3 or transport line can result in the outage of hundreds, thousands, even tens of thousands of user minutes, particularly if there is no diverse routing or redundant path to serve those users.”⁸⁴

FOF 38 provides the Commission’s finding regarding the underlying basis for the different reporting thresholds of 300,000 and 90,000 user minutes:

300,000 user minutes reflects the number of users that may trigger county-level public safety obligations under California’s Standardized Emergency Management Systems (SEMS), detailed in California Code of Regulations (CCR)

⁸¹ D.16-12-066, p. 166.

⁸² D.16-12-066, p. 170.

⁸³ D.16-12-066, p. 171.

⁸⁴ D.16-12-066, p. 172.

Title 19, § 2401, while 90,000 user minutes reflects local outages which may require a city or county response and awareness by Cal OES and the Commission. Receiving timely information about such outages is critical to enabling this Commission to ensure that carriers provide service in compliance with California law, and this Commission's Decisions, rules, and Orders.⁸⁵

These FOFs, as well as the discussion in the Decision, are supported by the record. For example, the record evidence supports the Commission's observations that GO 133-D reporting left a significant unfilled data gap as to outages where no repair tickets are generated, and for outages that fall below the federal reporting threshold in NORS. The Decision notes that "because the GO 133-D reporting is at the statewide level, reporting can obscure localized problems, even those that generate frequent repair problems."⁸⁶ Parties' comments during the proceeding raised the problem regarding this specific data gap.⁸⁷ Moreover, the parties' comments brought the Commission's attention to problems regarding the August 2014 Mendocino outage.⁸⁸ These comments highlighted the lack of reports of service restoration in response to repair tickets, and thus, the Commission determined that "[t]he exact number of Californians who lost phone service in the 2014 Mendocino outage is not known to this Commission because of the data gap in NORS reporting and the repair ticket thresholds set in [General Order] GO 133.D."⁸⁹

The Decision took note of the data gap regarding repair tickets problems arising from the Frontier transition from Verizon California. Parties raised these

⁸⁵ D.16-12-066, p. 172.

⁸⁶ D.16-12-066, p. 138.

⁸⁷ See e.g., County of Mendocino Comments (10/4/16), pp. 10-11.

⁸⁸ See e.g., County of Mendocino Comments (10/4/16).

⁸⁹ D.16-12-066, pp. 138-139.

problems in comments and during the workshops and public participation hearings.²⁰

Based on this record, the Commission concluded:

Following Frontier's transition from Verizon California, Frontier admitted that its call center did not enter repair tickets for some customers, the repair time standard under GO 133-C never began for those customers. . . . These practices circumvent GO 133-D, making it difficult for the Commission to analyze compliance with service quality standards, even when the Commission can see local data, because no data are generated if no repair tickets are started, even when there's a widespread outage.²¹

The record also supports the Commission's explanation regarding the NORS data gap that would result "if the voice outage affects fewer than the NORS threshold of 900,000 user minutes for an outage lasting at least 30 minutes."²² In response, AT&T California, CTIA, Comcast, the California Cable & Telecommunications Association all argued in their comments that "the Commission should defer to the FCC to set national outage standards and only require reporting based on the national thresholds the FCC sets."²³ Whereas, TURN, CforAT, and the County of Mendocino argued in their comments that the Commission should adopt a lower outage reporting threshold of 90,000 user minutes.²⁴

Based on the above, the record and the findings support OP 20, which addresses the data gap issue, and provides for a monitoring mechanism for acquiring important information regarding call completion problems from all those involved, including the Rehearing Applicants.

²⁰ See e.g., TURN Comments (10/4/16), pp. 15-31.

²¹ D.16-12-066, p. 139.

²² *Ibid.*

²³ D.16-12-066, pp. 142-143; see also fn. 78, *supra*.

²⁴ See D.16-12-066, p. 143; see also fn. 75, *supra*.

C. Rehearing Applicants raise valid confidentiality concerns with respect to the order requiring concurrent notice of outages to other public safety agencies, which is an issue that should be addressed in phase 2.

Rehearing Applicants raise valid confidentiality concerns with respect to the OP 20 requirement that respondents “provide concurrent notice of such outages to the California State Warning Center of the California Office of Emergency Services, and require such reports or notice to be made as soon as possible, but no later than 60 minutes after their discovery of such outages.”²⁵ Pursuant to General Order 133-D, the Commission deems outage reports to be confidential. Since the data that respondents would be providing to the Commission pursuant to the data request in OP 20 would contain similar outage information, the Decision should have addressed how to maintain the confidentiality of this data. Because the Decision ordered Phase 2 of this proceeding to address “call completion reporting and improving communications between carriers and first responders during emergency situation,” this requirement falls within the scope of Phase 2. Therefore, OP 20 should be modified to eliminate this requirement, as noted below.

D. The Decision’s text should be modified to be consistent with OP 20.

It appears that with the modifications to OP 20, the Commission inadvertently failed to update text in the Decision. Thus, to make the text of the Decision consistent with OP 20’s intent and language, we modify the Decision accordingly, as reflected in the ordering paragraphs below.

²⁵ Rhr. App., pp. 19-20.

E. The Issues Regarding Outages, MLTS Programming, Frontier Service Issues, Requirements for Future Transfers and Mergers, and the Placement of Telecommunications Facilities on Trees All Fell Within the Scope of the Rural Call Completion OII, as Properly Amended by the Scoping Memo.

1. The OII focused on investigating rural call completion issues within the broader context of reviewing “intrastate call completion issues in California.”

Rehearing Applicants allege the Decision addresses issues outside the scope of the OII.²⁶ These issues include “outages, outage reporting, MLTS programming and notice issues,²⁷ Frontier service issues, requirements concerning future transfers and mergers, and the placement of telecommunications facilities on trees.”²⁸ As explained below, there is no merit to this argument because the scope of the OII was broad, encompassing “a review of intrastate call completion issues in California, particularly call completion failures in rural areas of the state.”²⁹ These issues fall squarely within the scope of the OII because all of them directly relate to causes or effects of intrastate call completion failures.

It was proper for the Commission to consider these issues in the Decision because they were issues raised in comments submitted in response to the May 6, 2015 Assigned Commissioner’s Scoping Memo and Ruling (“Scoping Memo”) and further ACR Rulings that sought further comment on issues raised and discussed at PPHs or

²⁶ Rhr. App., pp. 8-13.

²⁷ MLTS (Multi-line Telephone System) programming and notice issues refer to short code problems, “where a customer dials an established short code such as 2-1-1 to connect to social services; or to 8-1-1 to ask for utility lines to be marked for digging to prevent line breaks and protect public safety; yet is unable to reach that service as the calling path has not been correctly programmed.” (D.16-12-066, p. 11.)

²⁸ Rehearing Applicants argue the Commission must eliminate all corresponding findings of facts, conclusions of law, and ordering paragraphs: OPs 5-8, 11-13, 15-16, 19-20, 23, and 25; Findings of Fact: 5-38; and Conclusions of Law: 7, 10-13, 18-19, and 23-26. (Rhr. App., pp. 8-13.)

²⁹ OII, p. 2.

workshops.¹⁰⁰ These issues were in the scope of the proceeding. Thus, in addressing these issues in the Decision, the Commission proceeded in a manner consistent with the OII's stated purposes.

In Phase 1 of the proceeding, the Commission was focused on improving the Commission's visibility into the various problems that customers and carriers have with respect to calls being completed. As the OII stated,

A call completion failure can happen at any point, including at the calling party's equipment interconnection with interexchange carrier switches, the intermediate provider's transmission network, terminating switches and lines, and the called party's equipment.... However, for the purpose of this Order Instituting Investigation (OII), we are primarily concerned with call completion failures that prevent successful termination of voice communications from callers, typically from an urban telephone network to a rural telephone customer.¹⁰¹

While the Commission's primary focus was on rural call completion failures, the OII also made clear that the Commission's overall goal was to determine how "*all Californians* can send and receive phone calls without discrimination or delay."¹⁰²

For example, the Commission explained that "[g]iven the potentially adverse impact that call completion failure can have on rural Californians, we believe the Commission needs to undertake a more detailed and formal investigation of intrastate call completion failure to better understand the root causes, and to find remedies or solutions to minimize call completion failures."¹⁰³ The OII listed a broad range of call completion

¹⁰⁰ See *Assigned Commissioner's Scoping Memo and Ruling* (May 6, 2015); see also *Assigned Commissioner's Ruling Requesting Party and Public Comments Regarding Issues Raised at the Santa Cruz, California Public Participation Hearing and Workshop* (September 27, 2016).

¹⁰¹ OII, p. 25.

¹⁰² OII, p. 2 (emphasis added).

¹⁰³ OII, p. 4.

failure “symptoms,”¹⁰⁴ but noted that this was not an exhaustive list.¹⁰⁵ The OII also provided probable causes of call completion failures categorized into three main categories: technical, environmental, and financial,¹⁰⁶ noting that “in any call completion failure occurrence one or any combination of these causes may be present.”¹⁰⁷

The Preliminary Scoping Memo contained in the OII reiterated the OII’s broad investigatory goal, with an emphasis on rural call completion issues: “The issues to be considered in this proceeding relate to the review of intrastate call completion failures in California, particularly in rural areas of the state.”¹⁰⁸ The questions posed in the Preliminary Scoping Memo were generally phrased to solicit feedback on a multitude of call completion-related issues, including but not limited to tracking and reporting of call completion failures, metrics for call completion, FCC actions, and the need for further state legislation and/or rules.¹⁰⁹

The language in the OII’s OP 8 further reflects a broad scope: “The issues and questions to be considered in this proceeding are defined in the Preliminary Scoping Memo herein, and *include whether there is a specific need to take remedial action regarding call completion failures in light of market and technological developments.*”¹¹⁰

Notably, the OII evinced the Commission’s intent to allow amending the issues in the OII based on comments received in response to the OII’s Preliminary Scoping Memo, stating:

Comments directed to the issues identified *may include whether to amend the issues* and how to prioritize the issues to be resolved; how to procedurally address these issues; the

¹⁰⁴ OII, pp. 25-27.

¹⁰⁵ OII, p. 25, fn. 77.

¹⁰⁶ See OII, pp. 27-30.

¹⁰⁷ OII, p. 30.

¹⁰⁸ OII, p. 33.

¹⁰⁹ See e.g., OII, pp. 34-36.

¹¹⁰ OII, p. 45, OP 8 (emphasis added).

proposed separation of certain issues into different tracks; and the proposed timeline for resolving the issues identified.¹¹¹

The OII also put all respondents on notice of the “potentially far-reaching effects of this proceeding,” by providing service of the OII to “a wide range of potentially interested parties, including: 1) all certificated California telephone carriers and wholesalers with either a CPCN or a WIR; and 2) individuals and entities on the service lists for Rulemaking (R.) 01-08-002, R.11-11-007, and R.11-12-001.”¹¹²

In comments on the Preliminary Scoping Memo, Hypercube noted that “[t]he impact of call completion problems is broad.” Hypercube explained,

Consumers and providers suffer when call completion failures become excessive, and public safety can be jeopardized. As an active participant in industry efforts to address call completion problems, HyperCube is keenly aware that consumers in California are affected by unacceptable failures, delays, and errors in the completion of calls to rural areas. Although the precise extent of rural call completion problems has not yet been fully determined, the problems are clearly significant enough that action is warranted. HyperCube greatly appreciates the Commission’s commitment to seek out answers and solutions to the fundamental problem of call completion.¹¹³

Hypercube further stated that “further monitoring and reporting requirements, on top of those recently adopted by the Federal Communications Commission (“FCC”),[] might shed a little additional light on the scope of the rural call completion issues, but will do nothing to actually identify or address specific causes of call failures, delays, or

¹¹¹ OII, p. 39; see also OII, p. 37 (“After considering any comments on the preliminary scoping memo, the assigned Commissioner will issue a Scoping Memo that, among other things, will make a final category determination; this determination is subject to appeal as specified in Rule 7.6(a).”).

¹¹² OII, p. 40 (citations omitted).

¹¹³ Hypercube Comments (7/21/14), p. 2.

errors.”¹¹⁴ Hypercube argued the Commission “should focus on adopting a mechanism that will enable affected carriers to quickly resolve problems, as they arise, rather than merely report them after the fact.”¹¹⁵ In reply comments, the Small LECs stated “Hypercube's proposals for an industry alert and response system to enable call completion problems to be identified and addressed on a real-time basis and for test lines to be available to carriers to facilitate analysis of call completion problems merit serious consideration.”¹¹⁶

As demonstrated by explicit language in the OII, and comments submitted in response to the OII’s preliminary questions that raised public safety as an issue, the Commission intended for the scope of the OII to be more comprehensive with respect to addressing call completion failures, rather than narrowly focused only on rural call completion issues.

2. The Amended Scoping Memo and subsequent Assigned Commissioner Rulings sought comment on issues that were consistent with the OII’s broad scope to investigate “intrastate call completion failures in California.”

Rehearing Applicants argue that “[t]he Decision attempts to avoid the OII’s narrow scope by relying on the Scoping Memo.”¹¹⁷ They allege the OII limited the scope of the proceeding to the issues identified in the OII’s Preliminary Scoping Memo, which they claim was limited to “a specific call completion phenomenon unique to call termination in rural areas served by rural telephone companies.”¹¹⁸ As explained above, explicit text in the OII showed the investigation had a broader scope to address call completion issues generally. Moreover, nothing in the OII stated that the Commission

¹¹⁴ *Ibid.*

¹¹⁵ Hypercube Comments (7/21/14), p. 2.

¹¹⁶ Small LECs Reply Comments (8/9/14), pp. 2-3.

¹¹⁷ Rhr. App., p. 10.

¹¹⁸ Rhr. App., p. 9.

intended for its investigation to be limited to the issues in the OII's Preliminary Scoping Memo. Indeed, express language in the OII, discussed above, demonstrates the Commission's intent for the Assigned Commissioner to issue a subsequent "Scoping Memo and Ruling" that would set forth the issues to be considered in the proceeding.¹¹⁹

The "Preliminary Scoping Memo" contained in the OII was simply a starting point. In the OII, the Commission stated that "[c]omments directed to the issues identified may include whether to amend the issues and how to prioritize the issues to be resolved."¹²⁰ It further stated that "[a]fter comments are received and reviewed, the Assigned Commissioner's Scoping Ruling will lay out the issues and procedural path in more detail."¹²¹ That process is consistent with Rule 7.3 of the CPUC Rules of Practice and Procedure: "The assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and *issues to be addressed*."¹²²

Rehearing Applicants' reliance on *Southern California Edison v. Public Utilities Com.* ("Edison") (2006) 140 Cal.App.4th 1085 is unavailing in supporting their claim that the proceeding's scope was governed by the OII's Preliminary Scoping Memo. Unlike here, the Court in *Edison* found the Commission failed to proceed in a manner required by law because the prevailing wage proposal being challenged was beyond the scope of issues identified in the final scoping memo. Thus, the Commission was found to have violated its own rules by considering the new issue, and three business days was deemed a legally insufficient time period for the parties to respond to the new proposals.¹²³ None of those facts are present here.

¹¹⁹ OII, p. 39.

¹²⁰ OII, p. 39.

¹²¹ OII, p. 39.

¹²² Rule 7.3 of Commission's Rules of Practice and Procedure (emphasis added).

¹²³ *Southern California Edison v. PUC*, 140 Cal.App.4th 1085, 1106 (2006).

As explained above, the OII made clear that the Preliminary Scoping Memo in the OII would be superseded by a scoping memo issued by the Assigned Commissioner after comments on the OII were received and reviewed. In contrast to the facts in *Edison*, the issues here concerning outages, outage reporting, MLTS programming and notice issues,¹²⁴ Frontier service issues, requirements concerning future transfers and mergers, and the placement of telecommunications facilities on trees all fell within the scope of public safety issues related to call failures that the Amended Scoping Memo sought to address.¹²⁵

Issued on May 6, 2015, the Assigned Commissioner's Scoping Memo and Ruling amended the Preliminary Scoping Memo in the OII in order "to incorporate public safety issues related to 911 calls, address concerns raised in the initial response to questions in I.14-05-012, and add further respondents."¹²⁶ This Amended Scoping Memo explained the need to now include "911 call completion and access due to loss of dial-tone for reasons other than service cancellation," stating:

On May 15, 2014, the Commission opened I.14-05-01. The initial scope of this proceeding related to a review of intrastate call completion failures in California, particularly in rural areas of the state.

Since issuance of this Order Instituting Investigation (OII), a number of 911 outages and investigations have occurred, including: 1) an inquiry by the Federal Communications Commission's Public Safety and Homeland Security Bureau

¹²⁴ MLTS (Multi-line Telephone System) programming and notice issues refer to short code problems, "where a customer dials an established short code such as 2-1-1 to connect to social services; or to 8-1-1 to ask for utility lines to be marked for digging to prevent line breaks and protect public safety; yet is unable to reach that service as the calling path has not been correctly programmed." D.16-12-066, p. 11.

¹²⁵ See e.g. D.16-12-066, pp. 138-153 (discussion of outages and outage reporting); 58-66 (discussion of MLTS programming and notice issues on call completion); 77-95 (discussion of Frontier service issues causing call completion issues), 94-95 (requirements concerning future transfers and mergers that could prevent call completion issues); and pp. 106-110 (discussion of telecommunications facilities contributing to call completion issues).

¹²⁶ Assigned Commissioner's Scoping Memo and Ruling, issued May 6, 2015, p. 1.

into the circumstances of a multi-state 911 outage on April 9 and 10, 2014, which resulted in a Consent Decree between the FCC's Enforcement Bureau and Verizon, and a fine of \$3.4 million; 2) the recent 911 outage in the Napa area after the August 24, 2014 earthquake ; and 3) reports of extended 911 outages associated with loss of dial-tone after rainstorms in December 2014 and in 2015.

Based on a review of parties' comments and replies to the questions posed in I.14-05-012, consideration of the requirements of Public Utilities Code (Pub. Util.) §§ 451 and 2883, as well as recent 911 outages, the Assigned Commissioner determined that the scope of the current proceeding shall be expanded to include a review of 911 call completion issues in California.

In order to develop a robust and complete record, and address the 911 issue as well as clarify the existing scoped issues regarding call completion failures, I require all respondents / parties to I.14-05-012 to file comments answering the questions presented in Attachment A to this ruling within 30 days of the issuance date of this decision; and file replies within 45 days of the issuance date of this ruling.¹²⁷

Rehearing Applicants and other parties filed comments and replies in response to the May 6, 2015 Amended Scoping Memo's "Follow-up Questions to Existing Scoped Issues."¹²⁸ Follow-up questions included, but were not limited to, the following:

- What lessons might the Commission learn about call completion problems in California or elsewhere, establishing accountability for them, preventing them, and gathering data on them?
- Should service outages or loss of dial-tone other than for disconnection be treated as call completion failures and so

¹²⁷ Assigned Commissioner's Scoping Memo and Ruling, issued May 6, 2015, pp. 1-3 (citations omitted).

¹²⁸ Assigned Commissioner's Scoping Memo and Ruling, issued May 6, 2015, Attachment A.

reported as such? If so, what should be the threshold number of minutes loss of such dial-tone loss should be deemed a call completion failure?

- Is the Network Outage Reporting Standard (NORs) reporting threshold of 900,000 user minutes sufficient to identify issues and potential harms with loss of dial-tone for reasons other than disconnection and loss of access to 911 by individual customers or small communities? If not, what should be the threshold for to report intrastate call completion failures including lack of dial-tone and 911 access for reasons other than disconnection?
- What reporting and alarming methodologies do you have in place between your network operations facilities and those of third parties?
- Are existing Public Utilities Code Sections regarding 911 calls being enforced, without regard to the technology used to place and complete 911 calls?
- In light of the FCC's proceeding No. 14-72 regarding 911 outages in multiple states, what additional Commission actions are needed to ensure that 911 calls in California are completed?¹²⁹

No party objected to the scope of issues in the May 6, 2015 Scoping Memo and Ruling.¹³⁰

Following a series of PPHs and workshops, which the OII authorized the Assigned Commissioner or the Assigned Administrative Law Judge to hold,¹³¹ the

¹²⁹ *Ibid.*

¹³⁰ Indeed, comments from Comcast, one of the Rehearing Applicants here, had acknowledged that the scope of this proceeding was governed by the OII and May 6, 2015 Scoping Memo. See e.g., Comcast Comments on September 27, 2016 ACR (October 7, 2016) [“As an initial matter, the list of questions presented in Section I of the 9/27 ACR expands the scope of this proceeding beyond the issues presented in the Order Instituting Investigation (“OIR”) (issued May 21, 2014) and Scoping Memo and Ruling (issued May 6, 2015).”]

¹³¹ OII, p. 38 (The Assigned Commissioner and the assigned Administrative Law Judge (ALJ) were authorized “to set other dates in the proceeding or modify those below as necessary.... The determination of the need for further procedural measures, including discovery, technical workshops, and/or evidentiary hearings will be made in one or more rulings issued by the Assigned Commissioner or assigned ALJ.”).

Assigned Commissioner issued two rulings requesting public comment on further follow-up questions related to the various call completion issues raised during the PPH and workshops.¹³² The first ACR, issued September 8, 2016, invited “the public and the parties to comment on the hearing and workshop transcripts and to contribute any additional experiences or evidence regarding call completion and dial tone /9-1-1 access conditions in their locations they believe impact public safety and safe, reliable telephone service.”¹³³

In the September 27, 2016 ACR, the Assigned Commissioner requested comments regarding issues raised at the September 20, 2016 Santa Cruz PPH and Workshop, which included monitoring call completion failures, false disconnected messages, inability to place collect calls over VoIP- based phones services, pole and line safety, dial tone and emergency 9-1-1 access issues,¹³⁴ software driven outages (related to the Verizon to Frontier transition), service issues (concerning Frontier call centers), customer reporting tools, and other issues.¹³⁵ Many of these issues were raised in earlier PPH’s, and reflected in the September 6, 2016 Assigned Commissioner’s Ruling, which also sought comments on the issues raised then.¹³⁶ Accordingly, the Commission proceeded in a manner consistent with the May 5, 2016 Amended Scoping Memo in

¹³² See Assigned Commissioner’s Ruling Inviting Party and Public Comments Regarding Issues Raised at Public Participation Hearings and Workshops, issued September 6, 2016; see also Assigned Commissioner’s Ruling Requesting Party and Public Comments Regarding Issues Raised at the Santa Cruz California Public Participation Hearing and Workshop, issued September 27, 2016.

¹³³ Assigned Commissioner’s Ruling Inviting Party and Public Comments Regarding Issues Raised at Public Participation Hearings and Workshops, issued September 6, 2016, p. 2.

¹³⁴ Dial tone and emergency 9-1-1 access issues included reporting, emergency response, emergency telephone notification system (ETNS), accurate address database, network resiliency, route diversity and redundancy, and telephone company emergency contact information for public safety officials.

¹³⁵ See Assigned Commissioner’s Ruling Requesting Party and Public Comments Regarding Issues Raised at the Santa Cruz California Public Participation Hearing and Workshop, issued September 27, 2016.

¹³⁶ See Assigned Commissioner’s Ruling Inviting Party and Public Comments Regarding Issues Raised at Public Participation Hearings and Workshops (September 6, 2016).

addressing public safety issues tied to call completion failures that could be affected by outages, MLTS programming, Frontier service issues, requirements for future transfers and mergers, and the placement of telecommunications facilities on trees.

Rehearing Applicants acknowledge that during the PPHs the public raised issues of “211 dialing, collect calls, pole and line safety, tree mortality, and 911 emergency response.”¹³⁷ They, however, contend that “the Commission took no steps to add these issues to the scope of the OII.”¹³⁸ The Commission did not need to add these issues to the scope of the OII because, as discussed above, they all fell within the OII’s broad scope “to review intrastate call completion failures in California,” as further defined by the May 6, 2015 Amended Scoping Memo.

F. The directives to “carriers” in Ordering Paragraphs 2, 5, 6, 7, and 15 should be modified to apply to “respondents”.

Rehearing Applicants contend that the directives to “carriers” in OPs 2, 5, 6, 7 and 15 are “void for vagueness because they purport to apply to the undefined category of ‘carriers.’”¹³⁹ This argument has merit. Thus, we modify these ordering paragraphs to replace the term “carriers” with the term “respondents” as reflected in the ordering paragraphs. With these modifications, rehearing of D.16-12-066, as modified, on this issue should be denied.

G. Rehearing Applicants’ Motion for Stay Is Moot.

In its Motion for Stay, Rehearing Applicants ask for a stay pending the resolution of their Application for Rehearing. With the disposition of this rehearing application, the Motion for Stay is now moot. Thus, the motion is dismissed as moot.

¹³⁷ Rhrh. App., p. 3.

¹³⁸ Rrhg. App., p. 3.

¹³⁹ Rhrh. App., p. 21.

III. CONCLUSION

We modify D.16-12-066 for the reasons discussed above. Otherwise, good cause does not exist for the granting of the application for rehearing of D.16-12-066, as modified. Therefore, we deny rehearing of the Decision, as modified.

THEREFORE, IT IS ORDERED that:

1. D.16-12-066 is modified as follows:

Ordering Paragraph 20 is modified to read as follows:
 We direct Communications Division to issue standing data requests to all respondents to report to this Commission outages of 90,000 user minutes that last 30 minutes or more, and the number of user minutes affected by an Optical Carrier 3 (OC3) or transport outage. We ~~delegate~~ authorize ~~the authority to~~ Communications Division to adjust the data request threshold between 90,000- 900,000 user minutes. ~~We further direct respondents to provide concurrent notice of such outages to the California State Warning Center of the California Office of Emergency Services, and require such reports or notice to be made as soon as possible, but no later than 60 minutes after their discovery of such outages.~~

2. Text in D.16-12-066 is modified as follows to make it consistent with the intent and language of OP 20:

On pp. 5-6, the following passage is modified as follows:

~~“We direct Communications Division to prepare and make available to carriers within 90 days of the adoption of this Decision a format for reporting outages of 90,000 300,000 user minutes that last 30 minutes or more, and the number of user minutes affected by an OC3 or transport outage. Carriers of last resort shall submit reports of such outages beginning within 120 days following the adoption of this Decision, and are encouraged to voluntarily report any such outages that occur sooner than that date.”~~

On p. 6, the following passage is modified as follows:

~~“We direct Communications Division to prepare and make available to carriers within 90 days of the adoption of this Decision a format for reporting outages of 90,000 300,000 user minutes that last 30 minutes or more, and the number of user minutes affected by an OC3 or transport outage. Carriers of last resort shall submit reports of such outages beginning within 120 days following the adoption of this Decision, and are encouraged to voluntarily report any such outages that occur sooner than that date.”~~

“We direct Communications Division to issue standing data requests to all respondents requiring reporting of outages of 90,000 user minutes that last 30 minutes or more, and the number of user minutes affected by an OC3 or transport outage, as soon as possible,

but no later than 60 minutes after learning of such an outage, ~~and also require that respondents concurrently notify the State Warning Center of California Office of Emergency Services (Cal OES) of such outages.~~”

On p. 146, insert “through data requests” as follows:

We determine that additional reporting through data requests about outages to the Commission ~~and local, county, and state Office of Emergency Services contacts~~ is necessary to do so.

On p. 150, replace “COLRs” and “COLRS” with “Respondents” as follows:

Requiring Respondents ~~COLRS~~ to provide this outage information to the Commission will fill in some of the information gap about the prevalence and distribution of such outages.

On p. 150, the following passage is modified as follows:

To close the data gap and provide safe, reliable, high-quality service throughout California, we order Communications Division to issue a standing data request to respondents ~~COLRS to beginning within 60 days of the date of this Decision~~ report to the Commission an outage of 90,000-300,000 ~~90,000-300,000~~ user minutes that last 30 minutes or more ~~within 120 minutes~~. We authorize Communications Division to adjust the data request threshold between 90,000- 900,000 user minutes. We direct Communications Division to develop a format for reporting to the Commission.

On p. 151, the following passage is modified as follows:

“The Commission already has the power to issue a series of post-outage data requests, or a standing data request for data about any outage ~~of 300,000 user minutes lasting 30 minutes or more.~~”

On p. 151, delete the following text from the discussion:

“Rather than relying on data requests, we direct that this outage data be systematically provided to the Commission to enable an analysis of outage trends and appropriate follow-up action.”

On p. 151, the following passage is modified as follows:

“Requiring Communications Division to issue data requests to Respondents ~~COLRS~~ to report to the Commission outages affecting 300,000 user minutes and lasting at least 30 minutes [hereinafter “localized access failure outages”] threshold strikes the right balance to close the data gap and meet Commission responsibilities to protect public safety and communications reliability.”

On p. 152, the following passage is modified as follows:

“We believe ~~90,000~~300,000 user minutes is a prudent level to start ~~the standing data request~~~~COLR reporting of outages~~, and direct Communications Division to monitor and analyze the ~~data~~reports received under the ~~90,000~~300,000 user-minute outage threshold in conjunction with GO 133-D and other data on outages, customers complaints, and network performance, and NORS data, to make recommendations to the Commission about trends and whether this ~~data request reporting~~ threshold merits adjustment.”

On p. 152, the following passage is modified as follows:

“~~We impose this outage report duty on COLRs only at this time in light of their responsibility to provide service to any customer who requests it within their service territory. We conclude that issuing such data requests reporting~~ will reduce burdens of outages on local communities, counties, and the state, and not create an undue burden on Respondents ~~COLRs~~ who have an obligation to provide safe, reliable service to all customers who request it within their territory.”

3. FOF 29 is modified to read as follows:

“A standing data request from Communications Division to require respondents to report to the Commission outages of 90,000 user minutes that last 30 minutes or more, and the number of user minutes affected by an OC3 or transport outage, ~~with concurrent notice to the California Warning Center of the California Office of Emergency Services~~ is consistent with this Commission’s duty to assure safe and reliable service and to protecting public safety.”

4. OP 2 is modified to replace the term “Carriers” with “Respondents” as follows:

Respondents~~Carriers~~ that experience call completion problems going forward shall submit an itemized report to the Communications Division on a quarterly basis beginning April 1, 2017, about call completion problems.

5. OP 5 is modified to replace the term “Carriers” with “Respondents” as follows:

Within thirty days from the issuance of this decision, we direct Respondents ~~carriers~~ to commence educating their Multi-line Telephone System customers about steps to enable short code access.

6. OP 6 is modified to replace the term “Carriers” with “Respondents” as follows:

Within thirty days from the issuance of this decision, we order carriers who program Multi-line Telephone System (MLTS) systems to commence such programming on behalf of their customer or provide MTLTS systems (whether premise, cloud, or centrex-based) to enable short codes, with an opt-out for customers for short codes except for 9-1-1, 8-1-1, 2-1-1, and 7-1-1 in light of the public safety and health services available upon reaching these short codes. Respondents~~Carriers~~ shall maintain the proper underlying call directions to complete the call to the proper agency or short code destination.

7. OP 7 is modified to replace the term “Carriers” with “Respondents” as follows:

By the end of the first quarter of 2017, Respondents ~~carriers~~ shall hold a meet and confer with the 2-1-1 coalition and the 8-1-1 coalition, as described herein to discuss short code access and education.

8. OP 15 is modified to replace the term “Carriers” with “Respondents” as follows:

By June 30, 2017, Respondent carriers shall meet and confer with California's federally-recognized tribes and County Office of Emergency Services offices to determine if action is needed to make residential addresses visible to the 9-1-1 database, including assigning a unique address by mutual agreement in areas where all households currently have the same address.

9. Rehearing of D.16-12-066, as modified, is hereby denied.
10. The Motion for Stay is denied as moot.
11. Investigation (I.) 14-05-012 remains open.

This order is effective today.

Dated July 26, 2018, at Sacramento, California

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners