

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Program Branch**

**RESOLUTION T-17647
January 31, 2019**

R E S O L U T I O N

Resolution T-17647. Approval of PAETEC Communications, LLC (U-6097-C) Advice Letter setting forth its annual fine for failing to meet required service quality performance standards in Year 2017 pursuant to General Order 133-D.

SUMMARY

This Resolution approves the advice letter of PAETEC Communications, LLC (U-6097-C), detailing their proposed fine of \$7,920 as a result of substandard service quality performance in Year 2017, pursuant to California Public Utilities Commission (Commission) General Order (GO) 133-D. The carrier calculated its fine by applying the prescribed method for each month it failed to meet specific minimum levels for the *Answer Time* measure under GO 133-D § 3.5. Submission of the 2017 fine complies with the directions specified in Section 9.6 in the GO and is a consequence of poor performance by a facilities-based wireline carrier.

BACKGROUND

In GO 133-D, *Rules Governing Telecommunications Services*, the Commission established uniform minimum standards of service for facilities-based wireline telephone carriers to achieve in their operations as public utility telephone corporations serving California customers. These minimum standards of service include quarterly reporting of five measures by some wireline carriers and near real-time reporting of major outages by all carriers.¹

Procedural History of the General Order

In March 2011, Staff issued a report detailing substandard levels of service quality reported by carriers for 2010. In response, the Commission opened Rulemaking (R.)11-12-001 to review carriers' performance, to assess the relevancy and effectiveness of GO 133-C measures, and to determine the need for penalties for substandard performance.²

¹ See the annual data in *Quarterly Service Quality Reports* posted at <http://www.cpuc.ca.gov/General.aspx?id=1107> on the Communications Division *Telecommunications Carriers' Service Quality Reports* webpage. (Site last visited December 12, 2018.)

² The Commission approved GO 133-C in Decision 09-07-019 (July 9, 2009).

On August 29, 2016, the Commission issued Decision (D.)16-08-021 which adopted GO 133-D. GO 133-D revised and replaced portions of GO 133-C by modifying and expanding on a number of its provisions and prescribing monetary penalties for violating the five service quality standards.³ The fines apply only to carriers of traditional voice telephone service.⁴ GO 133-D became effective on August 18, 2016, with the exception of § 9 (*Fines*), which became effective January 1, 2017.

Service Quality Reporting and Standards of Performance

GO 133-D stipulates five telephone service quality measures with minimum standards that operators of public utility telephone corporations must meet: *Installation Interval*, *Installation Commitments*, *Customer Trouble Report*, *Out of Service Repair Interval*, and *Answer Time*. Each measure has an assigned Minimum Standard Reporting Level. When a carrier's performance falls below any of these minimum standards, the carrier is out of compliance and must report this information to the Commission.⁵

Under GO 133-D § 9.3, a carrier is subject to fines upon reaching "chronic failure status," which is defined as a failure to meet a Minimum Standard Reporting Level for three (3) consecutive months. Fines begin to accrue in the third month. A carrier exits "chronic failure status" when it meets the standard for two consecutive months. Until then, the carrier incurs fines for succeeding months it fails to meet the standard.

GO 133-D, § 9.6 directs any telephone corporation whose performance does not meet the minimum standards to submit annually, by February 15 of the following year, a Tier II Advice Letter. The Advice Letter should show each month during which the carrier fails to meet the minimum service quality measurement and the applicable fine.⁶ The Communications Division will then prepare a resolution that, if adopted by the Commission, instructs a telephone corporation to pay the fine to the Commission for deposit into the California General Fund. The advice letter shall contain detailed calculations with explanations of how each fine was calculated and assumptions used in the calculation.

ADVICE LETTER

PAETEC Communications, LLC (PAETEC) failed to meet the Answer Time standard for all twelve months of 2018 and neglected to file a Tier II Advice Letter (AL) by February 15, 2018.

On March 13, 2018, Staff sent a letter to PAETEC instructing the company to comply with GO 133-D and to submit a Tier II AL. On May 2, 2018, PAETEC notified Staff that the company had inadvertently over-reported its annual line count by including customers outside the scope of GO 133-D (large business customers with more than five lines). PAETEC asserted that its revised customer count fell under the minimum threshold of 5,000 lines as outlined in Section 3.5 and therefore the penalties and action plans of the Order do not apply.

³ Fines apply to facilities-based telephone corporations regulated under the Uniform Regulatory Framework that possess a franchise or a Certificate of Public Convenience and Necessity.

⁴ GO 133-D defines time division multiplexing (TDM)-based voice service as "traditional telephone service."

⁵ See *Appendix A* for a list of all carriers' annualized reported service quality data, 2014-2017.

⁶ General Order 133-D § 9.6, p. 16.

On June 28, 2018, Staff notified PAETEC that their proposed line count was not accurate for the reporting period. Staff instructed PAETEC to file a Tier II AL in order to comply with GO 133-D. On November 29, 2018, PAETEC submitted AL 182 with the fine calculation for the unmet *Answer Time* standard as follows:

Advice Letter	Filed By	Utility No.	Date Filed	On Daily Calendar	Proposed Fine
182	PAETEC Communications, LLC	U-6097-C	11/29/2018	12/05/2019	\$7,920

DISCUSSION

Throughout 2017, PAETEC submitted its quarterly service quality reports for *Customer Trouble Reports*, *Out of Service Repair Intervals* and *Answer Time* standards in accordance with GO 133-D, § 3.⁷ The monthly reported service quality data, compared to the Minimum Standard Reporting Levels, determines whether PAETEC is subject to fine penalties. The monthly performance results and PAETEC’s unique scaling factor determine the amount of the fine, which is described as follows:

1. 2017 Scaling Factor

GO 133-D assigns fine amounts using base values specified in §§ 9.3, 9.4, and 9.5, adjusted through a formula expressing the relative size of the carrier within the California market.⁸ The scaling factor and fine formulas are as follows:

$$(\text{Carrier's Access Lines} / \text{Total CA Access Lines}) = \text{Carrier's Scaling Factor}$$

$$(\text{Carrier's Scaling Factor}) \times (\text{Monthly Base Fine per Measure}) \times (\text{Number of Months Measure Was Not Met}) = \text{Fine}$$

2017 Working Lines and Scaling Factor for Carriers Paying Fines Under GO 133-D⁹		
Carrier	2017 Lines	Scaling Factor
PAETEC	160,822	2.4%

2. GO-133-D Standards

A. Installation Interval

⁷ URF CLECs must only report *Customer Trouble Reports*, *Out of Service Repair Intervals* and *Answer Time*, §§ 3.3, 3.4 and 3.5.

⁸ Annually, the Communications Division prepares a list of the total number of working telephone access lines in California from carriers that are subject to GO 133-D requirements. Based on carrier size relative to the number of access lines it serves at the end of June in the reporting year, a carrier receives its unique Scaling Factor, the percentage of its customers relative to all California telephone customers. The table of carriers, working lines, and the percentage of working lines served by each carrier appears as a PDF document titled *Total Number of Access Lines in California for June 2017 from Carriers Reporting Under G.O. 133-D* found under Reference Information at <http://www.cpuc.ca.gov/General.aspx?id=1107>.

⁹ Total number of GO 133-D reportable lines in California for June 2017 was 6,647,493.

The standard for *Installation Interval*, defined in § 3.1, applies only to the GRC ILECs; PAETEC is an URF CLEC.

B. Installation Commitments

The standard for *Installation Commitments*, defined in § 3.2, applies only to the GRC ILECs; PAETEC is an URF CLEC.

C. Customer Trouble Reports

The *Customer Trouble Reports* standard, defined in § 3.3, measures the number of reports a carrier receives from its customers regarding their dissatisfaction with telephone company services. The Minimum Standard Reporting Level for the *Customer Trouble Reports* measurement varies based on the number of working lines per reporting unit.¹⁰

In 2017, PAETEC met the *Customer Trouble Reports* standard of less than 6% for reporting units with 3,000 or more working lines.

2017 Reporting for <i>Customer Trouble Reports</i> , GO 133-D, § 3.3 – Reports per 100 Working Lines												
	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
PAETEC	0.05%	0.05%	0.06%	0.02%	0.04%	0.13%	0.03%	0.04%	0.03%	0.03%	0.03%	0.03%

D. Out of Service Repair Interval

The *Out of Service Repair Interval*, defined in § 3.4, measures the average interval between the time a carrier responds to an out of service trouble report and the restoration of the customer’s service. A carrier measures its average interval by taking the sum of the total number of out of service repair tickets restored within 24 hours and dividing by the total number of reports received. The Minimum Standard Reporting Level for the *Out of Service Repair Interval* is 90% of outages restored within 24 hours or less.

The fine structure is as follows:

Base <i>Out of Service Repair Interval</i> Fine, GO 133-D, Section 9.3		
	1 or 2 Consecutive Months Standard Not Met	3 or more Consecutive Months Standard Not Met
Fine Per Day	\$0 per day	\$25,000 per day
Days in a Month (for all months)	30 days	30 days
Base Fine per Month	\$0	\$750,000 per month

PAETEC reported the following results for the *Out of Service Repair Interval* standard for 2017:

2017 Reporting for <i>Out of Service Repair Interval</i> , GO 133-D, Section 3.4 – 90% minimum	

¹⁰ According to GO 133-D § 3.3(c), the Minimum Standard Reporting Levels for the *Customer Trouble Reports* standard are as follows: Six trouble reports per 100 working lines (6%) for reporting units with 3,000 or more working lines, eight reports per 100 working lines (8%) for reporting units with 1,001-2,999 working lines, and 10 reports per 100 working lines (10%) for reporting units with 1,000 or fewer working lines.

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
PAETEC	100%	100%	100%	100%	100%	100%	100%	100%	88%	50%	75%	93%

PAETEC failed to meet the minimum standard in September, October and November of 2017; the third consecutive month of November put PAETEC in “chronic failure status”. PAETEC noted an exemption in its 4th Quarter filing for the month of October due to a California Disaster Declaration declared as a result of wildfires in multiple counties served by PAETEC.¹¹ As a result, under GO 133-D § 3.4(b), PAETEC avoided chronic failure status and any applicable fines.¹²

E. Answer Time for Trouble Reports and Billing and Non-Billing Inquiries

The *Answer Time* standard, defined in § 3.5, measures the amount of time it takes for an operator to answer the phone when customers call a business office for billing and non-billing inquiries or a repair office for trouble reports. The value is calculated as an average answer time of a sample of the answering interval of calls to business and repair offices that is representative of the reported period.

The Minimum Standard Reporting Level for *Answer Time* is 80% of calls answered by an operator within 60 seconds when speaking to a live agent, or 80% of calls answered within 60 seconds when speaking to a live agent after completing an interactive voice response or automatic response unit system.

¹¹ FEMA-4344-DR California Disaster Declaration as of 10/15/2017, <https://www.fema.gov/disaster/4344>.

¹² Under Section 3.4(b), a carrier may exclude months when a catastrophic event occurs, such as a declared state of emergency, which affects its ability to achieve the minimum standard(s). A catastrophic event ends when the trouble ticket level returns to the average level three months prior to the catastrophic event. PAETEC referenced two Emergency Proclamations in its 4th quarter filing, one on October 15, 2017 (wildfires), and another on December 4, 2017 (California Wildfires, Flooding, Mudflows, And Debris Flows, FEMA DR-4353).

The fine structure is as follows:

	Base Answer Time Fine, GO 133-D, Section 9.5				
	1 or 2 Consecutive Months	3 to 5 Consecutive Months	6 to 8 Consecutive Months	9 to 11 Consecutive Months	12 or More Consecutive Months
Fine Per Day	\$0 per day	\$500 per day	\$1,000 per day	\$1,500 per day	\$2,000 per day
Days in a Month (for all months)	30 days	30 days	30 days	30 days	30 days
Base Fine per Month	\$0	\$15,000	\$30,000	\$45,000	\$60,000

PAETEC's results are as follows:

	2017 Reporting for Answer Time, GO 133-D Section 3.4 – 80% minimum											
	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
PAETEC	64.40%	60.09%	<u>73.86%</u>	<u>54.92%</u>	<u>75.97%</u>	<u>64.72%</u>	<u>60.66%</u>	<u>55.14%</u>	<u>34.75%</u>	<u>57.36%</u>	<u>72.96%</u>	<u>74.51%</u>

PAETEC failed to meet the standard from January through December of 2017, entered “chronic failure status” beginning in March and incurred fines for substandard performance for the remainder of the year. Staff agrees with the proposed fine calculated as follows:

Months	Calculation	Fine
March – May	(2.4%) x (\$15,000) x (3 months)	\$1,080.00
June – August	(2.4%) x (\$30,000) x (3 months)	\$2,160.00
September – November	(2.4%) x (\$45,000) x (3 months)	\$3,240.00
December	(2.4%) x (\$60,000) x (1 month)	\$1,440.00
TOTAL		\$7,920.00

3. Total Fine Amount

Based on the scaling factor of 2.4% and the number of months in which PAETEC failed to meet the *Answer Time* standard, the total fine for PAETEC's service quality performance in Year 2017 is as follows:

Service Quality Standard	PAETEC (U-6097-C)
Out of Service Repair Interval	\$0
Customer Trouble Reports	\$0
Answer Time	\$7,920
TOTAL	\$7,920

SAFETY CONSIDERATIONS

Failure to meet GO 133-D service quality standards limits customers' ability to contact E 9-1-1 services and seriously restricts public safety personnel from communicating with each other in daily emergencies or major disasters.

COMMENTS

In compliance with Public Utility Code § 311(g), the Commission emailed a notice letter on December 28, 2018 informing all parties on the carrier service list of the availability of this Resolution for public comments at the Commission's website www.cpuc.ca.gov. The notice letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at this same website. Communications Division did not receive any comments or reply comments on this resolution.

CONCLUSIONS

Staff recommends Commission approval of AL 182 for PAETEC's Year 2017 GO 133-D fine according to the calculations discussed in this Resolution. The total amount of the 2017 fine payable from PAETEC is \$7,920.

FINDINGS

1. GO 133-D, § 9.6 directs any telephone corporation whose performance does not meet the minimum standards to submit annually by February 15 of the following year a Tier II Advice Letter that shows each month during which the carrier failed to meet a minimum service quality measurement and the applicable fine.
2. PAETEC met the *Customer Trouble Report* and *Out of Service Interval* standards in 2017.
3. On November 29, 2018, PAETEC Communications, LLC (U-6097-C), filed an advice letter with a proposed fine of \$7,920 for *Answer Time* standards.
4. PAETEC's total fine for 2017 for GO 133-D service quality deficiencies is \$7,920.

Service Quality Standard	PAETEC (U-6097-C)
Out of Service Repair Interval	\$0
Customer Trouble Reports	\$0
Answer Time	\$7,920
TOTAL	\$7,920

5. PAETEC should pay the assessed fine, based on its respective failure to meet the minimum GO 133-D service quality standards for *Answer Time*.
6. Staff reviewed PAETEC's advice letter and accepts the proposed fine calculation as correct based upon the methodology defined in GO 133-D, § 9.3.
7. PAETEC should remit the fine to the Commission within 30 days of this Resolution's adoption date. The Commission will deposit the fine payments into the California General Fund.
8. On December 28, 2018, the Commission emailed a draft of this Resolution to all parties on the carrier service list for public comments.

THEREFORE, IT IS ORDERED that:

1. The California Public Utilities Commission approves the advice letter from PAETEC Communications, LLC (U-6097-C), for service quality fines under GO 133-D for Year 2017 totaling \$7,920.
2. The telephone corporation shall pay the assessed fine by check or money order made out to the California Public Utilities Commission within 30 days of this Resolution's adoption date.
3. The telephone corporation shall write on the face of the check or money order:

“For deposit to the State of California General Fund, per Resolution T-17647.”

4. The telephone corporations shall mail or deliver payment to:

California Public Utilities Commission
Fiscal Office
505 Van Ness Avenue, Room 3000
San Francisco, CA 94102
5. The California Public Utilities Commission shall deposit the fine payment into the California General Fund.

This Resolution is effective today.

I hereby certify that the California Public Utilities Commission adopted this Resolution at its regular meeting on _____. The following Commissioners approved it:

ALICE STEBBINS
Executive

Director

Appendix

Annualized GO 133-C and GO 133-D Reported Service Quality Results, 2014 - 2017

T Y P E	Company Name	Utility Number	2014			2015			2016			2017												
			Installation Interval (days)	Installation Commitment	Customer Trouble Reports	Out of Service Repair Interval	Average Time	Installation Interval (days)	Installation Commitment	Customer Trouble Reports	Out of Service Repair Interval	Average Time	Installation Interval (days)	Installation Commitment	Customer Trouble Reports	Out of Service Repair Interval	Average Time							
URF ILEC	AT&T California	U-1001-C	Exempt	Exempt	1.45%	60%	79%	Exempt	Exempt	1.39%	65%	88%	Exempt	Exempt	1.50%	56%	82%	Exempt	Exempt	1.72%	48%	81.5%		
	Frontier Citizens	U-1024-C			0.88%	82%	74%			0.86%	77%	71%			0.78%	83%	70%			0.82%	65%	71%		
	Frontier Southwest	U-1026-C			1.15%	83%	74%			0.97%	88%	71%			1%	84%	70%			1.1%	75%	71%		
	Surewest/Consolidated	U-1015-C			1.28%	93%	89%			0.77%	86%	53%			0.85%	87%	71%			0.79%	93%	77%		
	Verizon/Frontier California	U-1002-C			0.98%	68%	64%			0.90%	73%	72%			0.77%	57%	56%			0.82%	63%	71%		
URF CLEC	ACN Communications	U-6342-C			1.08%	5%	63%			0.72%	3%	60%			1.12%	5%	64%			1.17%	5%	58%		
	Advanced Telecom	U-6083-C			0.65%	70%	--			--	--	--			--	--	--			--	--	--		
	Astound	U-6184-C			2.27%	94%	48%			--	--	--			--	--	--			--	--	--		
	AT&T Corporation	U-5002-C			1.52%	76%	80%			1.60%	72%	71%			2.45%	75%	--			1.65%	52%	91%		
	Time Warner Cable	U-6674-C			--	--	--			--	--	--			0.51%	91%	94%			8.10	99%	70%	85%	93%
	Charter Fiberlink	U-6878-C			--	--	--			--	--	--			--	--	--			5.58	98%	4.19%	72%	73%
	Bright House	U-6995-C			--	--	--			--	--	--			--	--	--			2.73	95%	25%	64%	80%
	Cox California	U-5684-C			2.30%	92%	--			1.70%	89%	86%			1.70%	88%	--			1.46%	95%	93%		
	Electric Lightwave	U-5377-C			0.92%	73%	--			--	--	--			--	--	--			--	--	--		
	Paelec Communications	U-6097-C			0.94%	94%	64%			0.96%	95%	56%			0.98%	94%	--			0.4%	94%	62%		
GRU ILEC	Sonic Telecom	U-7002-C	0.93%	59%	62%	0.13%	43%	78%	0.34%	56%	82%	0.42%	48%	94%										
	Telcape Communications	U-6589-C	4.40%	40%	61%	3.19%	25%	60%	--	--	--	--	--	--										
	Calaveras Telephone	U-1004-C	1.18	100%	0.43%	100%	--	2.21	100%	0.29%	100%	--	1.46	100%	0.19%	100%	--	1.37	100%	0.12%	98%	--		
	Cal-Ore Telephone	U-1006-C	2.39	97%	1.67%	95%	--	2.15	99%	1.94%	95%	--	1.96	98%	1.82%	98%	--	2.11	97%	1.33%	100%	--		
	Frontier West Coast	U-1020-C	2.22	98%	0.72%	83%	74%	2.31	98%	0.68%	84%	--	--	--	--	--	--	--	--	--	--			
	Ducor Telephone	U-1007-C	1.93	100%	0.86%	95%	--	0.22	100%	0.89%	98%	--	2.4	100%	0.13%	99%	--	0.14	100%	0.2%	99%	--		
	Foresthill Telephone	U-1009-C	1.49	100%	0.99%	98%	--	1.5	100%	1.06%	99%	--	1.54	100%	1.14%	95%	98%	1.83	97%	1.44%	93%	--		
	Happy Valley Telephone	U-1010-C	2.66	99%	1.33%	94%	75%	2.74	100%	3.05%	95%	85%	2.8	100%	1.11%	92%	--	3.0	100%	1.60%	94%	--		
	Horaitos Telephone	U-1011-C	4.07	96%	2.53%	95%	75%	2.89	99%	4.82%	94%	85%	2.72	100%	3.39%	92%	--	3.32	100%	2.7%	94%	--		
	Kerman Telephone	U-1012-C	3.52	99%	0.90%	99%	--	2.86	100%	0.76%	97%	--	1.95	98%	1.54%	97%	99%	1.60	98%	1.03%	93%	--		
	Pinnacles Telephone	U-1013-C	0.52	100%	0.16%	100%	--	0.71	100%	0.50%	100%	--	0.45	100%	0.24%	100%	--	1.14	100%	0.80%	100%	95%		
	Ponderosa Telephone	U-1014-C	2.36	100%	0.79%	93%	--	2.51	100%	0.68%	97%	--	2.27	100%	1.28%	91%	--	2.32	99%	1.47%	98%	--		
	Sierra Telephone	U-1016-C	1.08	100%	0.58%	98%	91%	1	100%	0.65%	98%	--	0.96	99%	0.82%	98%	88%	2.16	99%	0.9%	99%	93%		
Siskiyou Telephone	U-1017-C	0.93	100%	0.31%	98%	--	0.91	100%	0.26%	100%	--	0.74	100%	0.25%	100%	--	0.70	100%	0.04%	98%	--			
Volcano Telephone	U-1019-C	1.02	100%	0.54%	95%	92%	1.3	100%	0.30%	89%	90%	1.44	100%	0.29%	76%	83%	1.20	100%	0.8%	71%	85%			
Winterhaven Telephone	U-1021-C	1.96	100%	1.99%	96%	76%	2.18	100%	1.89%	98%	89%	3.17	100%	1.82%	98%	--	3.29	98%	2.52%	98%	--			

Reported data is In Compliance or Out of Compliance