



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

**FILED**  
03-01-12  
04:59 PM

Order Instituting Rulemaking to Evaluate  
Telecommunications Corporations  
Service Quality Performance and  
Consider Modification to Service Quality  
Rules.

R.11-12-001  
(Filed December 1, 2011)

**REPLY COMMENTS  
OF THE DIVISION OF RATEPAYER ADVOCATES ON ORDER  
INSTITUTING RULEMAKING TO EVALUATE TELECOMMUNICATIONS  
CORPORATIONS SERVICE QUALITY PERFORMANCE AND CONSIDER  
MODIFICATION TO SERVICE QUALITY RULES**

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March 1, 2012

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>WIRELINE SERVICE QUALITY.....</b>	<b>3</b>
	A. ALLEGED COMPETITION HAS NOT GUARANTEED WIRELINE SERVICE QUALITY .....	3
	B. THE COMMISSION SHOULD MAINTAIN AND STRENGTHEN THE GO 133-C OOS STANDARD .....	6
	1. Most of the URF Carriers Have Failed to Meet the 90%/24 Hour Standard.....	6
	a) AT&T’s Poor Performance Under the 90%/24 Hour Standard.....	8
	2. The 90%/24 Hour OOS Standard Is Not Arbitrary and Was Made Based on Sufficient Record Evidence .....	11
	3. AT&T’s Previous Standard Has Not Been Adopted by the Commission as a Measure to Ensure Adequate Service Quality .....	14
	C. THE COMMISSION SHOULD ADOPT PENALTIES FOR FAILURE TO MEET SERVICE QUALITY STANDARDS .....	15
	D. EXEMPTIONS .....	18
	E. THE COMPOSITE RELIABILITY MEASURE.....	19
	F. THE COMMISSION SHOULD REQUIRE THE CONTINUATION OF ARMIS SERVICE QUALITY REPORTING .....	21
	G. NETWORK MAINTENANCE IN EMERGENCY AND NON-EMERGENCY CONDITIONS.....	22
	H. THE COMMISSION SHOULD ADOPT STANDARDS REGARDING THE PRIORITIZATION OF CUSTOMERS FOR RESTORATION OF SERVICE .....	26
	I. GRC LEC SERVICE QUALITY PERFORMANCE .....	30
<b>III.</b>	<b>WIRELESS SERVICE QUALITY STANDARDS .....</b>	<b>33</b>
	A. THE COMMISSION SHOULD APPLY SERVICE QUALITY STANDARDS TO WIRELESS CARRIERS .....	33
	B. THE WIRELESS MARKET IS NOT COMPETITIVE, BUT RATHER, HIGHLY CONCENTRATED. ....	36
<b>IV.</b>	<b>CONCLUSION .....</b>	<b>41</b>

## I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) urges the California Public Utilities Commission (Commission) to uphold the current service quality standards that the Commission adopted in (D.) 09-07-019 (D.09-07-019 or 2009 Service Quality Decision). Furthermore, in order to provide the appropriate incentive for carriers to meet the Commission's service quality standards, DRA recommends that the Commission adopt penalties. DRA also requests the Commission to continue to require wireline carriers to provide ARMIS reports. DRA asks the Commission to adopt service quality rules for wireless carriers, albeit suitably different standards than those applicable to wireline carriers. DRA also requests that the Commission require URF and GRC LECS to conduct an audit of the status of their legacy facilities, continue to use CD's current interpretation of excludable events in GO 133-C, adopt standards regarding prioritization of OOS restoration, and use the Composite Reliability measure to identify problem exchanges.

Not surprisingly, most of the uniform regulatory framework (URF) carriers are opposed to having any service quality standards applicable to wireline retail service provided by URF carriers. In their opening comments, AT&T Communications of CA (AT&T),<sup>1</sup> Verizon California, Inc. (Verizon),<sup>2</sup> and SureWest Telephone (SureWest)<sup>3</sup> reiterated their usual theoretical arguments and insisted that service quality standards for wireline carriers are not necessary because market forces will dictate the level of service quality that consumers desire. Verizon also made the bold claim that service quality is

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<sup>1</sup> AT&T Opening Comments, at 1 (stating that [t]his intensely competitive market supports eliminating the three service quality measures in General Order 133-C ("GO 133-C") applicable to wireline retail service provided by URF carriers.").

<sup>2</sup> Verizon Opening Comments, at 4, 11 (stating that "[t]he Commission should eliminate all service quality standards for Uniform Regulatory Framework (URF) carriers and let market forces 'regulate' service quality for consumers.").

<sup>3</sup> SureWest Opening Comments, at 3 (stating that "SureWest does not believe the service quality standards adopted in D.09-07-019 are necessary for URF carriers due to the competitive environment in which they operate.").

not necessarily a priority for consumers.<sup>4</sup> Not only does the Commission need to uphold and continue to enforce the service quality standards it adopted in the 2009 Service Quality Decision, but, as the service quality performance of three of the four URF incumbent local exchange carriers (ILECs)<sup>5</sup> is well short of the Commission’s standards, it is clear that penalties need to be adopted. The Commission should reject AT&T’s, Verizon’s, and SureWest’s arguments to gut the service quality rules for URF carriers.

Wireless carriers<sup>6</sup> are also opposed to the Commission’s application of service quality rules to them despite the fact that state law requires the Commission to adopt service quality standards for all telecommunications carriers, including wireless carriers.<sup>7</sup> AT&T even pulled out its often-used (and over-used) argument that the Commission is preempted from adopting service quality rules for wireless carriers,<sup>8</sup> even though AT&T

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<sup>4</sup> Verizon Opening Comments, at 12-13, which provides: “While having a landline “out of service” undoubtedly remains an inconvenience for some, the need for quick restoration of service has been substantially reduced in importance for the great majority of customers who now have cell phones . . . There is no basis for the Commission to assume that restoring service in 24 hours is a top priority for consumers, as opposed to other quality outcomes.”

<sup>5</sup> AT&T, Verizon and Frontier all consistently missed their service quality targets since the implementation of GO 133-C. SureWest has performed much better under the Commission’s service quality standards. For example, in 2011, SureWest only missed the out-of-service restoration standard one out of twelve months. (See Consumer Group Opening Comments, at 7, Table 1.)

<sup>6</sup> See AT&T Opening Comments, at 6; Verizon Opening Comments, at 25; CTIA – The Wireless Association (CTIA) Opening Comments, at 9.

<sup>7</sup> See Public Utilities Code, § 451, which requires that telecommunications carriers to provide a level of service “...as necessary to promote the safety, health, comfort, and convenience of its patrons...and the public.”; Public Utilities Code, § 2896, which requires the Commission to ensure that telephone corporations provide customer service that includes reasonable statewide service quality standards including, but not limited to, standards regarding network technical quality, customer service, installation, repair and billing; and Public Utilities Code, § 709, which provides that one of the telecommunications policies in California is, “(h) [t]o encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.”

<sup>8</sup> AT&T Opening Comments, at 6 (stating, “[t]here is no justification or legal basis for adopting service quality standards applicable to wireless services because Section 332(c)(3) preempts state regulation over rates and entry for wireless services.”).

knows this argument is baseless and that the Commission will reject its argument here, just as it has numerous times before.<sup>2</sup>

## **II. WIRELINE SERVICE QUALITY**

### **A. Alleged Competition Has Not Guaranteed Wireline Service Quality**

DRA believes that alleged competition does not compel carriers to provide adequate service quality. Yet in their opening comments, Verizon, AT&T, and SureWest assert that market competition is the most effective way to ensure service quality.<sup>10</sup> AT&T and Verizon also argue that government regulation does not respond to consumer preference but rather, stifles innovation and increases costs.<sup>11</sup>

AT&T's, Verizon's, and SureWest's assertions do not reflect the record in the 2009 Service Quality Decision or the data the Commission has collected from the reporting requirements under GO 133-C. The March 2011 Communications Division (CD) Report on Telephone Carrier Service Quality for the Year 2010 (CD Service Quality Report) discusses how the URF carriers have not performed well under the GO 133-C standards.<sup>12</sup> The Commission imposed service quality measures on wireline telephone carriers in GO 133-C because "this Commission has a statutory duty to ensure customers receive adequate service quality pursuant to Public Utilities Code §§ 709, 2896

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<sup>2</sup> See e.g., D.06-08-034 (the Consumer Protection Initiative Decision), and D.07-07-043 (Limited English Proficiency Rules Decision); (the Limited English Proficiency Decision); D.10-10-034 (the Cramming Reporting Decision),.

<sup>10</sup> AT&T Opening Comments, at 2; Verizon Opening Comments, at 3.

<sup>11</sup> AT&T Opening Comments, at 4-5; Verizon Opening Comments, at 3-4.

<sup>12</sup> The CD Service Quality Report provides on page 4, in relevant part: "Given that the three of the five largest telephone wireline carriers in the state did not meet the Out-of-Service standard of restoring service within 24 hours 90% of the time in any month of the year, and other carriers had varying degrees of difficulty meeting this standard and the operator answer time standard, CD believes that a review of G.O. 133-C is needed. Due to the public safety aspects of having quality, reliable service, the Commission should follow –up to examine why service quality standards are not being met and what needs to be done so that wireline carrier can provide reliable service to customers."

and 2897.”<sup>13</sup> As discussed in greater detail below, the market has become even less competitive since the Commission issued the 2009 Service Quality Decision and thus the need for service quality standards has become even more apparent. DRA supports the service quality standards the Commission adopted in D.09-07-019 and agrees with the Greenlining Institute (Greenlining)<sup>14</sup> and Consumer Group<sup>15</sup> that competition has not led to the required level of service quality. As Consumer Group so eloquently stated in its opening comments:

If competition were effective, consumers would simply switch providers when their carrier cannot deliver reliable service. What may have looked like “customer loyalty” exhibited by consumers who “stood by” their carrier during an extended outage is actually a strong indicator of the lack of customer choice.<sup>16</sup>

In addition, AT&T’s, Verizon’s, and SureWest’s position that the Commission should not have any service quality standards for URF carriers disregards state law, which mandates that carriers provide “...customer service to telecommunication customers that includes, but is not limited to...reasonable statewide service quality standards, including standards regarding network technical quality, customer service, installation, repair, and billing.”<sup>17</sup> The standards set forth in GO 133-C are only the minimum service quality standards required for consumer protection as well as health and safety for telecommunications consumers in California.<sup>18</sup> These standards are critical to ensure that customers are not left without telephone service for a significant amount of time in both emergency situations and in the course of daily life. Moreover, the

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<sup>13</sup> D.09-07-019, at 3 because.

<sup>14</sup> Greenlining Opening Comments, at 5.

<sup>15</sup> Consumer Group Opening Comments, Trevor Roycroft Declaration, at 5. (Consumer Group consists of The Utility Reform Network, the Center for Accessible Technology, and the National Consumer Law Center).

<sup>16</sup> Consumer Group Opening Comments, Trevor Roycroft Declaration, at 5-6.

<sup>17</sup> Public Utilities Code Section 2895(c).

<sup>18</sup> See D.09-07-019, at 3.

competitive speculations of AT&T and Verizon, in particular, should not stand in the way of the Commission's statutory duty, because these two carriers control almost the entire wireline market in California.<sup>19</sup>

Furthermore, if competition guaranteed service quality, then the URF carriers should have been able to meet the service standards set forth in GO 133-C. However, the service quality data the Commission has obtained to date pursuant to GO 133-C indicates otherwise.<sup>20</sup> As discussed in the following section, the fact that competition is not a driver for good service quality is demonstrated by the fact that in 2010, the general rate case (GRC) Local Exchange Carriers (LECs)<sup>21</sup> performed much better than the URF ILECs on the most important GO 133-C measure, the 90% of out of service phones repaired in 24 hours measure (90%/24 hours or OOS standard).

The Commission should reject AT&T's, Verizon's, and SureWest's claims that competition “. . . is the best ‘regulator’ of service quality for consumers.”<sup>22</sup> The service quality reports the Commission has received to date pursuant to GO 133-C and the results of CD's 2011 Report on Service Quality<sup>23</sup> indicate that competition has not been a sufficient “regulator” of service quality for consumers.

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<sup>19</sup> See CD's report on Market Share Analysis of Retail Communications in California 2001 through 2009, at 5.

<sup>20</sup> See Telephone Carriers' Service Quality Reports published on the Commission's website, <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/Telecommunications+Service+Quality+Reports.htm>; see also Consumer Group Opening Comments, Declaration of Trevor Roycroft, at 7.

<sup>21</sup> The GRC LECs are, collectively, Cal-Ore Telephone Co., Calaveras Telephone Company, Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., Sierra Telephone Company, Inc., The Ponderosa Telephone Co., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

<sup>22</sup> Verizon Opening Comments, at 3.

<sup>23</sup> CD Service Quality Report, at 5.

**B. The Commission Should Maintain and Strengthen the GO 133-C OOS Standard**

**1. Most of the URF Carriers Have Failed to Meet the 90%/24 Hour Standard**

AT&T, Verizon, and Frontier Communications of California (Frontier) all failed to meet the 90%/24 hour standard in 2010 and 2011.<sup>24</sup> SureWest's performance has steadily improved since the implementation of GO 133-C.<sup>25</sup> DRA agrees with the GRC LECs that the service quality standards established in D.09-07-019 are reasonable and useful for the Commission to monitor.<sup>26</sup> SureWest's improvement in meeting the 90%/24 hour standard is evidence that the standard is reasonable.

AT&T, Verizon, and SureWest object to the 90%/24 hour OOS standard, complaining that it is too stringent and that they are unable to meet this standard.<sup>27</sup> AT&T asserts that “. . . this measure is unreasonable and should be eliminated.”<sup>28</sup> SureWest claims that “the reporting standards were simply set too high.”<sup>29</sup> Verizon complains that “rigid and inflexible standards” are harmful to consumers, and distorts what it asserts are more relevant indicators received from the competitive marketplace and customer feedback.<sup>30</sup>

As previously stated, in 2010, GRC LECs performed much better than the URF ILECs on the most important GO 133-C measure – the 90% of out of service phones repaired in 24 hours measure (90%/24 hours or OOS standard). Based on this metric, it

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<sup>24</sup> See Telecommunications Carriers Service Quality Reports, <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/Telecommunications+Service+Quality+Reports.htm>

<sup>25</sup> SureWest missed the 90%/24 hour standard four out of twelve months in 2010 but only missed the standard in one month in 2011.

<sup>26</sup> GRC LECs Opening Comments, at 6.

<sup>27</sup> Frontier filed only very brief comments and did not discuss the issues DRA is addressing in its Reply Comments.

<sup>28</sup> AT&T Opening Comments, at 5.

<sup>29</sup> SureWest Opening Comments, at 4.

<sup>30</sup> Verizon Opening Comments, at 3.

appears that carriers facing the least competition and under the most regulation provide the best service quality. As Table A indicates, AT&T performs worse on the 90%/24 hour standard than any other ILECs by a significant margin. Verizon was second to last in performance on this metric, albeit a distant second.

## Percent Repaired in 24 Hours<sup>31</sup>

<b>Carrier</b>	<b>2010 Average</b>
<b>CalOre</b>	<b>100.0%</b>
<b>Calaveras</b>	<b>100.0%</b>
<b>Ducor</b>	<b>100.0%</b>
<b>Siskiyou</b>	<b>100.0%</b>
<b>Sierra</b>	<b>99.9%</b>
<b>Happy Valley</b>	<b>99.5%</b>
<b>Ponderosa</b>	<b>95.3%</b>
<b>Winterhaven</b>	<b>95.2%</b>
<b>Kerman</b>	<b>95.0%</b>
<b>Hornitos</b>	<b>94.8%</b>
<b>Volcano</b>	<b>94.7%</b>
<b>Foresthill</b>	<b>94.3%</b>
<b>Fron WC</b>	<b>93.4%</b>

<sup>31</sup> Telecommunications Carriers Service Quality Reports, <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/Telecommunications+Service+Quality+Reports.htm>; CD Service Quality Report, at 14-16.

<b>Pinnacles</b>	<b>85.8%</b>
<b>Surewest</b>	<b>84.5%</b>
<b>Frontier</b>	<b>78.3%</b>
<b>Verizon</b>	<b>75.8%</b>
<b>AT&amp;T</b>	<b>50.0%</b>

Four of the URF carriers did not meet the 90%/24 hours standard in 2010, and three of the four did not meet this standard in 2011.<sup>32</sup> As SureWest's example demonstrates, it is possible for the URF carriers to perform better on the 90%/24 hour metric, despite their arguments to the contrary.<sup>33</sup> This data should silence AT&T's and Verizon's claims that competition ensures good service quality.

**a) AT&T's Poor Performance Under the 90%/24 Hour Standard**

As the chart above demonstrates, AT&T has performed the worst on the 90%/24 hour metric by a wide margin. In its opening comments, AT&T states that in order for it to meet GO 133-C's 90%/24 hour standard, AT&T would need a mean time to repair of 11 to 13 hours.<sup>34</sup> AT&T does not fully explain how it reached this estimate, but the clear message in AT&T's opening comments is that it will not meet the Commission's 90%/24 hour standard. DRA believes that AT&T does not intend to comply with the Commission's 90%/24 hour standard as AT&T has an internal standard for mean time to repair around twice as long as the Commission's 90%/24 hour standard, and around four

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<sup>32</sup> See Telecommunications Carriers Service Quality Reports, <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/Telecommunications+Service+Quality+Reports.htm>. SureWest met the 90%/24 hour standard in 11 of 12 months in 2011.

<sup>33</sup> See AT&T Opening Comments, at 12; Verizon Opening Comments, at 12.

<sup>34</sup> AT&T Opening Comments, at 2, 5, 10, 12.

times longer than the eleven hours AT&T states it would take to meet the 90%/24 hour standard.<sup>35</sup>

AT&T also claims that it “has a comparative disadvantage because of diseconomies of scale<sup>36</sup> in OOS repair intervals.”<sup>37</sup> AT&T’s reliance on diseconomies of scale to justify its poor service quality is startling. Essentially, AT&T is arguing that it is so big that it cannot provide good service quality with regard to OOS repair intervals.<sup>38</sup> Certainly, AT&T did not set forth these arguments during its various merger proposals as it continued to grow into a bigger company.<sup>39</sup> The Commission should reject AT&T’s diseconomies of scale argument because it is not reasonable for AT&T to claim that it is providing cutting edge service and products to its customers, and yet at the same time, assert that it is so big that it should not be held to a minimum level of service quality standards.

In its opening comments, AT&T does not acknowledge that it has a legacy of failing to restore service in a timely manner. In comparison to the rest of its operating ILECs, it appears that AT&T Inc. has relegated California consumers to the bottom of the service quality “barrel.” In fact, only AT&T Mississippi has a higher mean time to repair for out-of-service reports as the following table demonstrates:

Out-of-Service Intervals (Hours) AT&T Incorporated  
Only Mississippi Does Worse Than AT&T CA

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<sup>35</sup> AT&T response to DRA data request AT&T-QOS\_2011-LEH-02\_RFI-5.

<sup>36</sup> Diseconomies of scale is defined as “the disadvantages that a business may experience due to an increase in size. These have the effect of increasing the average cost of per unit produced. Businesses can experience diseconomies of scale as they grow which leads to a reduction in efficiency and higher unit costs of production.” <http://truetobusiness.com/economics/diseconomies-of-scale>

<sup>37</sup> AT&T Opening Comments, at 10.

<sup>38</sup> AT&T Opening Comments, at 5, 10.

<sup>39</sup> See, e.g., D.97-03-067 (Pacific Bell Telephone Company’s/SBC Communications, Inc. (SBC) Merger Decision); D.05-11-028 (SBC/AT&T Merger Decision).

Source: ARMIS Preset Reports

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Average
No.											
Carolina	16.5	11.5	13.5	11.6	12.3	11.4	11.8	11.4	14.3	16.9	13.1
Nevada	14.9	11.4	13.5	12.3	12.9	15.6	18.8	15.2	15.0	19.4	14.9
So.											
Carolina	16.1	13.8	16.0	16.3	15.7	19.9	13.9	12.9	16.6	19.3	16.1
Illinois	21.9	17.5	14.9	15.1	14.8	14.2	17.1	18.1	21.5	17.3	17.2
Kentucky	16.2	15.3	15.8	16.3	16.8	14.8	15.2	15.0	17.4	40.9	18.4
Arkansas	20.6	17.9	12.5	15.6	24.8	17.7	15.5	22.7	28.1	29.8	20.5
Missouri	16.0	13.7	18.2	20.7	25.9	17.5	17.9	21.7	24.0	30.8	20.6
Georgia	25.8	18.3	16.9	18.0	17.4	20.4	17.8	17.8	22.4	32.2	20.7
Wisconsin	45.7	16.7	13.0	12.4	13.7	12.1	15.1	20.3	31.3	27.2	20.8
Ohio	45.7	15.6	15.3	16.6	17.6	16.4	15.8	23.2	22.2	29.4	21.8
Tennessee	25.5	23.2	22.5	27.6	21.2	18.8	17.8	17.0	21.2	35.2	23.0
Kansas	14.4	15.6	19.9	21.6	27.1	26.8	22.8	28.5	26.5	27.4	23.1
Florida	17.8	16.7	15.0	17.4	52.9	51.1	18.2	15.5	19.8	21.9	24.6
Indiana	49.8	22.1	15.8	16.0	15.0	17.4	15.0	24.3	35.7	39.7	25.1
Oklahoma	19.1	20.3	18.4	20.0	29.0	21.1	21.7	40.1	35.2	39.8	26.5
Texas	24.6	27.8	21.3	21.7	28.6	25.6	23.4	31.4	30.4	32.4	26.7
Connecticut	37.9	27.1	27.2	26.6	26.6	29.6	32.1	21.7	34.0	19.5	28.2
Michigan	73.5	36.6	29.1	19.6	20.4	18.0	19.1	24.6	26.6	28.5	29.6
Alabama	26.5	27.9	26.2	28.6	33.5	35.1	24.0	23.1	31.5	56.5	31.3
Louisiana	23.6	22.8	24.3	22.0	27.0	63.5	32.7	28.7	39.8	43.7	32.8
California	37.8	24.6	23.7	23.9	27.3	44.0	50.8	31.4	32.3	36.0	33.2

Mississippi 24.3 29.0 25.5 25.8 29.8 96.5 21.3 23.4 27.7 41.7 34.5

There is no disagreement that three of the four URF carriers, particularly AT&T, are not performing well under the Commission's 90%/24 hour standard. The Commission must decide what to do with this information. DRA will explain more fully below that the Commission should retain the current standard, but provide incentives for the carriers to comply with this, and the other service quality standards.

**2. The 90%/24 Hour OOS Standard Is Not Arbitrary and Was Made Based on Sufficient Record Evidence**

AT&T and Verizon claim that the 90%/24 hour standard was instituted arbitrarily and with an inadequate record.<sup>40</sup> AT&T's and Verizon's argument has no merit. The Commission addressed this issue directly in the 2009 Service Quality Decision:

We are aware that Pub. Util. Code § 321.1 states that it is the intent of the legislature for the Commission to generally assess the economic effects or consequences of its decisions. Consistent with that intent, the assigned Commissioner and ALJ requested comments in 2003 on the costs and benefits of the proposed measures. Few carriers provided specific or conclusive cost information either in 2003 or 2007 comments. We do not believe a lack of definitive cost information bars us from revising GO 133-B here.<sup>41</sup>

The Commission deliberated on the costs and benefits of the measures it adopted in the 2009 Service Quality Decision and concluded that "[t]he incremental benefits of GO 133-C outweigh its incremental costs."<sup>42</sup> D.09-07-019 considered and gave no weight to complaints by carriers that the standards were arbitrary and lacked a cost

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<sup>40</sup> AT&T Opening Comments, at 5; Verizon Opening Comments, at 4.

<sup>41</sup> D.09-07-019 at 33.

<sup>42</sup> D.09-07-019, Conclusion of Law 13.

benefit analysis. The Commission also explicitly stated in the 2009 Service Quality Decision that the record in that proceeding was sufficient for adopting the GO 133-C standards, including the 90%/24 hour standard. The Commission provided, in relevant part:

Consistent with our statutory obligations, the record before us, and the intent of this OIR, we adopt GO 133-C, which revises and replaces GO 133-B's nine service quality measures with a minimum set of five service quality measures for carriers that provide local exchange service. These five measures...reflect our acknowledgment of parties' comments and proposals for minimum service quality measures...<sup>43</sup>

As the Commission recognized in the 2009 Service Quality Decision, parties have had ample opportunities to provide cost studies on the 90%/24 hour standard. This standard was originally recommended by TURN in 2003 in Rulemaking (R.) 02-12-004, the service quality docket.<sup>44</sup> On March 7, 2003, the Commission requested comments on the cost and benefit of service quality standards in R.02-12-004 yet no parties filed any cost studies in response.<sup>45</sup> Moreover, in comments responsive to the March 30, 2007 assigned commissioner's ruling (ACR), two years before the issuance of the 2009 Service Quality Decision, TURN proposed a service guarantee based on a 24 hour standard.<sup>46</sup> That proposal included automatic customer credits for customers out of service repairs that took over 24 hours at the rate of \$10 per day.<sup>47</sup> TURN's proposal was certainly a

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<sup>43</sup> D.09-07-019, [at p. 22-23](#) (emphasis added).

<sup>44</sup> Opening Comments of the Utility Reform Network to R.02-12-004, April 1, 2003, at 28.

<sup>45</sup> R.02-12-004, Assigned Commissioner's and Administrative Law Judge's Ruling Denying in Part and Granting in Part Motion to Suspend, March 7, 2003. This ruling provided, in relevant part: "We narrow and modify the request for comments to four issues: 1) adoption of measures for specific services proposed in Exhibit A to Attachment 1 of the Order Instituting Rulemaking (OIR); 2) **parties' cost/benefit analyses for adoption of those measures**; . . ." (March 7, 2003 Ruling, at 1 (emphasis added).)

<sup>46</sup> R.02-12-004, March 30, 2007 ACR, at 2.

<sup>47</sup> Clearly, it was possible for the carriers to do so because AT&T submitted proprietary cost information

more costly proposition for the carriers than the current standard. Again, no carriers filed any cost studies in response to TURN's 2007 proposal.

Despite all of these opportunities and requests to provide cost studies, not one carrier provided a cost study relating to an out of service interval standard. It is misleading for AT&T and Verizon to allege that the Commission adopted the 2009 Service Quality Decision arbitrarily and with an inadequate record. The rulemaking was opened in 2002 and AT&T and Verizon had seven years to provide cost studies in that proceeding. Even a direct Commission request for cost studies in the 2002 rulemaking, and TURN's 2003 and 2007 proposals did not galvanize AT&T and Verizon to provide cost studies.<sup>48</sup> If AT&T and Verizon were concerned about the costs of implementing a 90%/24 hour standard, then they should have provided cost benefit analyses when the measure was proposed. They failed to do so and AT&T and Verizon cannot now in good faith claim that the record in R.02-12-004 was inadequate when they themselves bear direct responsibility for the absence of cost studies in the record. Moreover, the Commission has made it clear in D.09-07-019 and many other decisions that cost studies are not required in order for the Commission to adopt consumer protection regulations for telecommunications carriers.<sup>49</sup>

For these reasons, DRA asks the Commission to reject AT&T's and Verizon's claims that the 90%/24 hour standard adopted in the 2009 Service Quality Decision was made arbitrarily and without sufficient record evidence.

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in 2007 in response to DRA's and TURN's proposals on business office answer times in the same proceeding. See R.02-12-004, Opening Comments of The Utility Reform Network On Scoping Memo Issues, May 14, 2007, at 15.

<sup>48</sup> See Declaration of Yanira Koester for Pacific Bell, June 15, 2007.

<sup>49</sup> See, e.g., D.06-03-013 (the Consumer Protection Initiative Decision); D.07-07-043 (Limited English Proficiency Rules Decision); D.10-10-034 (the Cramming Reporting Decision).

### **3. AT&T's Previous Standard Has Not Been Adopted by the Commission as a Measure to Ensure Adequate Service Quality**

AT&T claims it was unfair for the Commission to institute the 90%/24 hour standard in the 2009 Service Quality Decision, a standard stricter than the standard the Commission adopted in 2001 in D.01-12-021, which AT&T alleges “fulfills its obligations under Section 451 of the California Public Utilities Code.”<sup>50</sup> DRA disagrees with AT&T’s interpretation of the Commission’s rationale for adopting the service quality standards for AT&T in D.01-12-021.

The 2001 standards were a specific response to AT&T’s violation of its merger agreement to maintain or improve service quality. In other words, the Commission adopted service quality standards in D.01-12-021 as a direct reaction to AT&T’s violation of a major provision of D.97-03-067, the Commission’s decision approving Pacific Bell Telephone Company’s merger with SBC Communications, Inc.<sup>51</sup> The repair intervals contained in D.01-12-021<sup>52</sup> were tied to AT&T’s lackluster post merger performance of 29.3 hours to repair service, which clearly did not provide an adequate level of service quality. In D.01-12-021, the Commission stated:

Also, we find that Pacific’s increase between 1996 and 2000 in the mean time to restore service to residential customers violates Ordering Paragraph (OP) 2 of Decision (D.) 97-03-067, which requires Pacific to “maintain or improve its service quality over the five years following the merger” of Pacific with SBC Communications, Inc. (SBC). In violating OP 2, Pacific also violates § 702.<sup>53</sup>

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<sup>50</sup> AT&T Opening Comments, at 12.

<sup>51</sup> D.01-12-021, at 1. The Commission also found that Pacific Bell violated Public Utilities Code Section 451. Through various mergers, SBC and Pacific Bell are now AT&T.

<sup>52</sup> D.01-12-021.

<sup>53</sup> D.01-12-021, at 3 (stating “[t]he standards reflect data reported by Pacific for 1996, the last full calendar year before the merger with SBC”).

The Commission emphasized in D.09-07-019 that the service quality measures it adopted in that decision superseded any prior service quality measures, including those adopted for AT&T in D.01-12-027.<sup>54</sup>

DRA requests that the Commission reject AT&T's claim that the repair interval outage standard the Commission adopted in D.01-12-021 fulfills the Commission's obligation to ensure adequate service quality pursuant to applicable law.

### **C. The Commission Should Adopt Penalties for Failure to Meet Service Quality Standards**

DRA believes that penalties for failure to meet the Commission's service quality standards are critical in order for the carriers to comply with those standards. Consequences are necessary in order to spur the carriers into action. CD reached the same conclusion in its March, 2011 Service Quality Report, stating that "a penalty mechanism should be included for substandard service quality performance."<sup>55</sup> DRA also agrees with Consumer Group, which notes that "the current standards are insufficient and toothless given that there is no downside for the carriers if they fail to meet the standards."<sup>56</sup> CALTEL also recommends that the Commission reconsider and adopt "significant penalties for poor performance",<sup>57</sup> even though some of its members might end up paying fines.<sup>58</sup> Greenlining also makes a strong case for enforcing GO 133-C with penalties, providing:

The current remedies have been insufficient incentive for carriers to meet the GO 133-C standards. Carriers apparently do not take the service standards seriously, most likely because they have no incentive to do so. As a result, the GO

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<sup>54</sup> D.09-07-019, at 6.

<sup>55</sup> CD Service Quality Report, March, 2011, at 13.

<sup>56</sup> TURN Opening Comments, at 5.

<sup>57</sup> CALTEL Opening Comments, at 16.

<sup>58</sup> CALTEL Opening Comments, at 17.

133-C remedies have been insufficient to ensure that carriers provide the required level of service.<sup>59</sup>

Clear and enforceable penalties will show the carriers that the Commission is serious about improving service quality in California.

Verizon is opposed to penalties it believes that “market forces provide powerful incentives for carriers to deliver high service quality, and that penalizing carriers based on arbitrary and unworkable regulatory standards is unnecessary and counterproductive.”<sup>60</sup> Verizon also contends that it would be unfair to impose penalties just on wireline carriers because “wireline voice providers are but one subset of the many different types of providers competing in the communications market.”<sup>61</sup>

AT&T argues that penalties have little or no impact on improving service quality. AT&T analyzed the historical performance of the AT&T ILECs to conclude that the existence of penalties did not improve the AT&T ILECs’ performance from 2004 through 2009.<sup>62</sup> If AT&T had looked back a little farther in its history, it would have found a more illustrative example that proves that penalties, or even the threat of penalties, are an effective driver of service quality. In 2000, AT&T CA came to the rescue when its Illinois affiliate ILEC faced fines running into the tens of millions of dollars for not meeting its 90% repaired in 24 hour standard. AT&T CA sent its own maintenance staff to Illinois from late September to the middle of December 2000. The AT&T parent company stated that this movement of service and supervisory personnel was an advantage of the scale and scope of the combined SBC companies.<sup>63</sup> This should concern the Commission because, as the chart below shows, AT&T’s service quality performance

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<sup>59</sup> Greenlining Opening Comments, at 7.

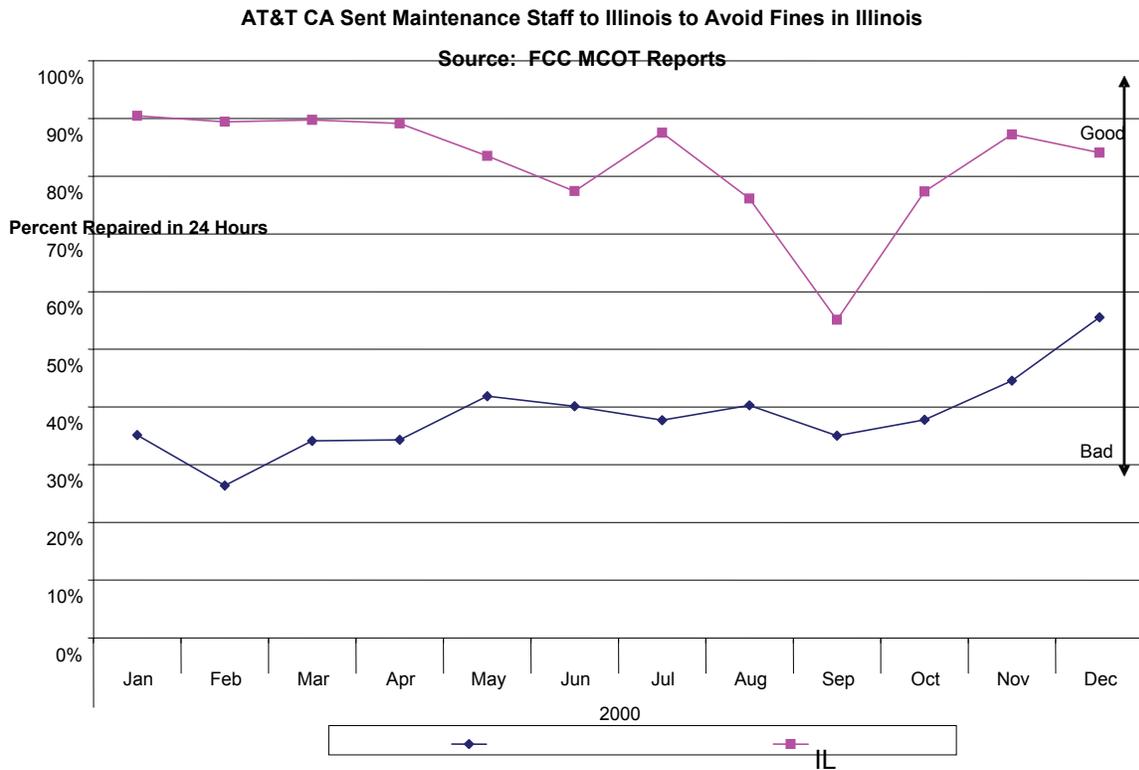
<sup>60</sup> Verizon Opening Comments, at 18.

<sup>61</sup> Verizon Opening Comments, at 18.

<sup>62</sup> Aron Declaration, ¶¶ 119-120.

<sup>63</sup> Ed Whitacare at an Investor Teleconference Dec. 19, 2000.

was much worse in California than in Illinois during this time period. As discussed in DRA’s opening comments, Illinois faced up to \$30 million in penalties for this level of performance, which DRA suspects is why AT&T sent California workers to meet the standards in Illinois.



The Commission only has a historical record of how AT&T responds to penalties as Verizon and other carriers have not been subject to penalties for violations of service quality rules. However, this example demonstrates that penalties can and do work. The Commission should adopt penalties for violations of the service quality standards if carriers in order to give carriers the appropriate incentive to comply with the Commission’s service quality standards.

#### **D. Exemptions**

DRA asks the Commission to continue to use CD's current interpretation of excludable events in GO 133-C, and not a broad interpretation, as the carriers have proposed, which would essentially render the service quality rules meaningless.

AT&T opposes CD's interpretation of the exemption language in GO 133-C that limits these exclusions to the specific areas named in the declared state of emergency.<sup>64</sup> Rather, AT&T's interpretation of the 2009 Service Quality Decision is that the OOS standard would not apply at all "during months associated with declared states of emergencies."<sup>65</sup> AT&T points to the need to bring staff from other parts of the state to deal with these emergencies, concluding that the Commission should exclude results for the entire state when catastrophic events occur.<sup>66</sup>

As discussed in DRA's Opening Comments, exemptions are only proper for exchanges in counties that are under a state of emergency. Interpreting the GO 133-C exemption language to apply exemptions to the entire state is completely inappropriate as disasters are declared on a county by county basis and state-wide disasters are very rare.<sup>67</sup>

Verizon supports exemptions including those for customer requested appointments.<sup>68</sup> While DRA is not opposed to Verizon's exemption proposal, it is important that the accounting for customer-requested appointments not be used to pad carrier performance results. DRA believes that exemptions for customer requested appointments should be calculated by eliminating from the OOS interval the delay caused by the customer. The OOS interval should start on the customer requested time and date.

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<sup>64</sup> AT&T Opening Comments, at 16.

<sup>65</sup> AT&T Opening Comments, at 16.

<sup>66</sup> AT&T Opening Comments, at 16.

<sup>67</sup> Of course, if such a state-wide disaster was declared, it would be entirely appropriate for a carrier to apply the exemption to the entire state.

<sup>68</sup> Verizon Opening Comments, at 19.

This is preferential to eliminating the results altogether as it will more accurately reflect carrier performance.

SureWest also supports exemptions, and states that “further exclusions should be made for instances in which a utility is affected by events beyond the control of utility management to the extent that the event has affected the carrier in an unusual way.”<sup>69</sup> SureWest’s proposal is very vague and would leave much room for multiple interpretations. Essentially, a carrier would have the flexibility to determine whether an event is “beyond the control of utility management” and whether the event “has affected the carrier in an unusual way.” This Commission should reject SureWest’s proposal as it would give carriers far too much flexibility and would afford them the an opportunity to avoid complying with the Commission’s service quality rules.

Consumer Group raised the important issue that states of emergency should not continue *ad infinitum* and that there must be a firm end date for states of emergencies. DRA supports TURN’s recommendation because without an end date to declared states of emergencies, carriers could use exemptions long after the actual catastrophic event’s effects have subsided. The end date of any state of emergency should be when trouble ticket rates return back to normal.<sup>70</sup>

#### **E. The Composite Reliability Measure**

AT&T refers to a new measure, “Composite Reliability”, in several places in its opening comments and accompanying Declaration of Debra Aron.<sup>71</sup> While AT&T does not advocate for the Commission to adopt the Composite Reliability measure, DRA believes it has value if it is applied on an “exchange” basis. The Declaration of Debra Aron defines the Composite Reliability measure as follows:

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<sup>69</sup> SureWest Opening Comments, at 5.

<sup>70</sup> Consumer Group Opening Comments, at 33.

<sup>71</sup> AT&T Opening Comments, at 7, 9, 10; Declaration of Debra Aron, at 38, 41, 42, 58, 59.

Multiplying together the OOS repair interval and the number of OOS trouble reports as a percentage of lines yields the number of hours each line in the network is out of service on average in a year. I call this number the “Composite Reliability,” because it is a composite of the likelihood that a line will go out of service, and the duration of the outage if an outage occurs, and therefore is a measure of the overall, average reliability that a customer can expect from his line in a given year.<sup>72</sup>

AT&T reasons it has diseconomies of scale for repair intervals, but “economies of scale associated with reliability measured as trouble and OOS events as a percent of lines.”<sup>73</sup> Thus, according to what AT&T stated in its opening comments and accompany declaration of Debra Aron, AT&T’s trouble report rates should be low.<sup>74</sup> Under AT&T’s rationale, factoring in those low trouble report rates with the out-of-service intervals (trouble report rate \* out-of-service interval) provides a Composite Reliability measure that large carriers should do well on.<sup>75</sup> AT&T states that this measure yields the number of hours, on average, each customer is out of service in a year.<sup>76</sup> DRA notes that under its own Composite Reliability measure, AT&T scores worse than the other URF carriers.<sup>77</sup>

DRA believes the Composite Reliability measure would not be a good indicator of service quality for a company as a whole (on a system-wide basis), because exchanges with service quality problems, for example, outages, are lost in the system-wide average. However, the Composite Reliability measure would be a good tool to use on an exchange basis to identify problem areas. DRA recommends that the Commission use the

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<sup>72</sup> Declaration of Debra Aron, at 38, ¶ 81.

<sup>73</sup> AT&T Opening Comments, at 9.

<sup>74</sup> Indeed, AT&T’s Trouble Report rate met the Commission’s service quality standards in every month in 2010 and 2011.

<sup>75</sup> AT&T Opening Comments, at 9.

<sup>76</sup> AT&T Opening Comments, at 9, 29; Declaration of Debra Aron at 38.

<sup>77</sup> See Appendix B.

Composite Reliability measure to identify problem exchanges, as it has done for downtown Los Angeles as demonstrated in Appendix B. The map in Appendix B shows that customers in South Central Los Angeles and Compton are out of service for three to five in only a six month period.

**F. The Commission Should Require the Continuation of ARMIS Service Quality Reporting**

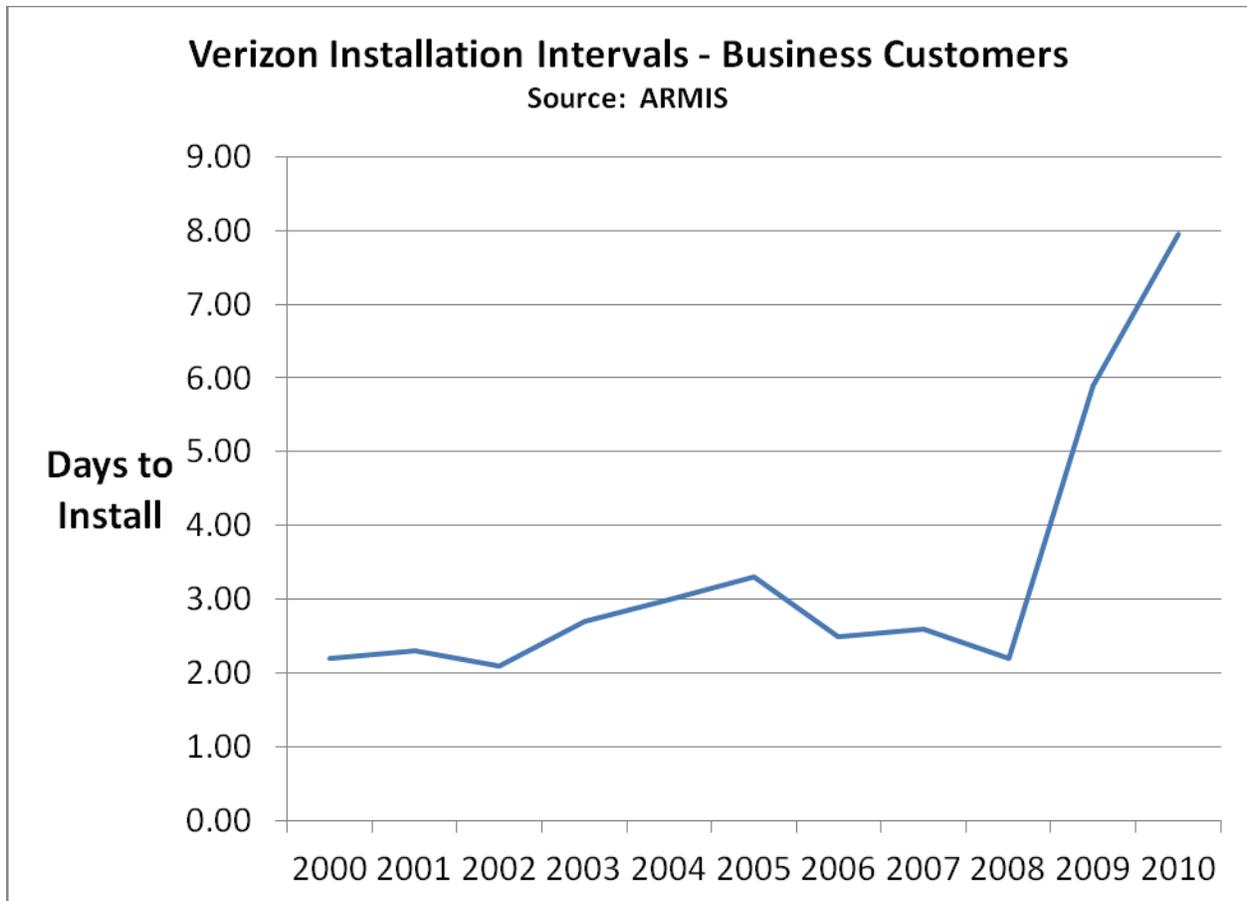
When carriers have so few measures to report as required by GO 133-C service quality in other areas unreported areas may suffer. AT&T claims that the 90% standard would “de-prioritize” tickets not closed within 24 hours.<sup>78</sup> The Commission should be on alert for other service quality areas that carriers may de-prioritized in their to meet the GO 133-C requirements.

As DRA discussed in its opening comments, it is important for the Commission to retain Automatic Reporting Management Information System (ARMIS) service quality reporting for a more complete picture of overall service quality than provided by current GO 133-C measures.<sup>79</sup> Therefore, it is essential for the Commission to continue to require service quality reporting that expired on December 31, 2011. While there are no “standards” associated with these ARMIS measures, as discussed in DRA’s Opening Comments, the ARMIS reports provide a wealth of service quality information as well as a historical perspective on current service quality performance. To illustrate an example of the type of data that ARMIS reports provide, below is a chart illustrating Verizon installation intervals for business customer from 2000 to 2010 that is based on ARMIS data.

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<sup>78</sup> AT&T Opening Comments, at 10.

<sup>79</sup> See DRA Opening Comments, at 26-31.



ARMIS reporting may incent carriers to maintain a higher level of service quality than they would if these measures were unreported. DRA urges the Commission to require wireline carriers to provide ARMIS data to the Commission.

**G. Network Maintenance in Emergency and non-Emergency Conditions**

The Commission has an obligation pursuant to Public Utilities Code Section 2896 to ensure that carrier investments on network improvements and maintenance are targeted to enhance service quality. Section 2896 provides that the telecommunications network infrastructure must sustain required “reasonable statewide service quality standards, including, but not limited to, standards regarding network technical quality, customer

service, installation, repair, and billing.”<sup>80</sup> DRA is concerned that carriers may not have the incentives to maintain service reliability for low profit margin basic services as carriers shift investment into network serving their high end offerings. This could have real consequences for low-end service customers, especially those with health vulnerabilities. DRA believes that the Commission should investigate this issue and intervene if it finds that carriers are not appropriately investing and maintaining their networks to ensure consumers are receiving adequate service quality. DRA also supports CALTEL’s audit proposal, discussed more fully below, as a starting point for discussion, because it would help ensure that carriers are investing appropriately to maintain an adequate level of service quality.

AT&T believes that the Commission has no role in monitoring whether carriers are appropriately investing and maintaining their networks. AT&T states in its Opening Comments that it “ . . . already employs the best engineering and design standards for preventing or mitigating the effects of outages due to storms and other disruptions that are cost-effective for AT&T’s network . . .”<sup>81</sup> AT&T also discusses its multifaceted network surveillance system, including surveillance of the pressure system for underground cables that notoriously failed during the Southern California winter storms of 2010 to 2011, but does not suggest any possible solutions for the problem of obsolete and under-pressurized buried cable that continues to be a network vulnerability.<sup>82</sup> The underlying message in AT&T’s opening comments is that it has ruled out any solutions to improve service quality as not cost-effective, and that AT&T believes that the Commission should not take any further action concerning network investment and maintenance.

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<sup>80</sup> Public Utilities Code Section 2896(c).

<sup>81</sup> AT&T Opening Comments, at 27.

<sup>82</sup> AT&T Opening Comments, at 27.

DRA disagrees with AT&T's position and asks the Commission to examine whether there are other design or engineering standards that the carriers could use to prevent or mitigate the effects of service outages. CALTEL's audit proposal suggests that an auditor assess those ILECs with low service quality performance for compliance with specific Telecordia/Bell Core standards that cover both loop and transport network plant of various types.<sup>83</sup> DRA agrees that CALTEL's recommendation is a good starting point for the Commission to assess network investment problems, and their impacts on service quality, especially inadequate investment in plant serving basic service customers.

Verizon also claims no problem exists with regard to the rulemaking's question as to "whether there are cost-effective engineering and design standards available that would prevent or better mitigate the effects of outages due to storms and other disruptions."<sup>84</sup> Verizon asserts:

These questions assume a problem that does not exist. Market forces provide powerful incentives for carriers to design, upgrade, and maintain their networks to avoid outages.<sup>85</sup>

Assuming that effective competition exists and that market pressure incentives translate into company action to maintain its networks, then according to Verizon's position, significant network outage problems should not occur. Of course, we know that network outage problems can and do occur,<sup>86</sup> so Verizon's argument does not stand to reason.

Furthermore, Verizon customers experience different levels of service quality according to the service they are using. For example, the service quality for FiOS

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<sup>83</sup> CALTEL, Opening Comments, at 21. CALTEL includes Telecordia/Bell standards GR-3108, GR-2834, FR-METALLIC-01, GR-421, GR-3163, and FR-SONET-01.

<sup>84</sup> R. 11-12-001, question no. 14, at 14.

<sup>85</sup> Verizon, Opening Comments, at 26. Verizon's response is a composite answer to questions 14 through 17, all of which concern wireline network design, engineering, and maintenance.

<sup>86</sup> See CD Service Quality Report, at 11-12).

customers is well above Commission OOS standards whereas the service quality for Core (non-FiOS) customers is well below the standard.<sup>87</sup> This is a real-world problem that the Commission should address in this proceeding, especially because Verizon is reluctant to do so. The Commission has a special role to play in order to ensure that investments and expenditures enhance service quality, and do so in an equitable way.

DRA believes that ILECs should not be the sole arbiters of what network service quality functions will be prioritized as the specifics of network upgrade and maintenance is the subject of conflicting business strategy, technological, competitive, and public interest forces. Clearly these decisions can affect both retail and wholesale customers, along with wholesale customers' end-users. CALTEL, for example, complains of AT&T last-mile facilities failures and of AT&T's clear abuse of its wholesale *force majeure* declaration during the 2010 to 2011 winter storms.<sup>88</sup>

In its opening comments, CALTEL presents an "audit proposal"<sup>89</sup> that DRA supports in terms of its broad concept, although details still need to be worked out. The audit would be triggered by an ILEC's GO 133-C OOS performance falling below a specified threshold and the audit would examine compliance with Telecordia/Bell Core standards.<sup>90</sup> Under CALTEL's proposal, the Commission would then be able to review audit findings and specify corrective actions.

DRA asks the Commission to consider CALTEL's proposal as such audits could provide the Commission with the necessary transparency and accountability from the carriers on the preventive, network maintenance contribution to OOS performance. However, DRA would like to have a better understanding of how Telecordia would

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<sup>87</sup> See DRA Opening Comments, at 22-23.

<sup>88</sup> CALTEL Opening Comments, at 19, 4. CALTEL notes that under *Force Majeure Event Notifications*, AT&T avoids payment of CLEC performance remedies, while CLECs have had to provide credits and other remediation to their own customers to compensate for the service interruptions, at 14-15.

<sup>89</sup> CALTEL Opening Comments, at 20-22.

<sup>90</sup> CALTEL Opening Comments, at 20-22.

conducts the audits, including what standards they would use for both retail- and wholesale-related plant, and how and where such audits would be focused, e.g. in response to a major network failure versus proactively.

In its opening comments, DRA recommended that the Commission require URF and GRC LECS to conduct an audit of the status of their legacy facilities.<sup>21</sup> Only through a comprehensive audit can the Commission gain any clear and broad understanding of the current status of the telecommunications network in California. DRA's proposed audit is important not only to flag problematic areas, but also because it would provide the Commission with a baseline of the state of the telecommunications network in California. Having this baseline is critical in having a future understanding of whether the carriers are adequately maintaining their networks.

#### **H. The Commission Should Adopt Standards Regarding the Prioritization of Customers for Restoration of Service**

DRA requests that the Commission adopt standards regarding prioritization of out-of-service ("OOS") repair work. Under the current rules, carriers decide who will have his/her service restored in what order, which leads to inequitable prioritization of OOS repair work. Parties' opening comments on prioritization of OOS repairs between classes of customers emphasized, both intentionally and unintentionally, the need for stronger Commission consumer protections for basic telephone customers in this particular area. DRA agrees with Consumer Group's observation that AT&T's and Verizon's basic telephone service customers are treated as "second-class citizens" under those carriers' "segmented approach to service quality."<sup>92</sup> The OOS prioritization practices of the mid-sized ILECs, Frontier and SureWest, indicate that a more equitable method of prioritizing OOS repair work is indeed practical. Also, the Opening Comments of CALTEL, along with the Consumer Group's Declaration of Trevor Roycroft, raise concerns about

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<sup>21</sup> DRA Opening Comments, at 7.

<sup>22</sup> Consumer Group Opening Comments, at 3.

potential restoration of service prioritization problems for CLEC customers who depend on ILEC last-mile facilities, which may merit Commission investigation.<sup>93</sup>

While the mid-sized URF ILECs, Frontier and SureWest, do a better job of meeting GO 133-C restoration of service interval standards than their larger counterparts, these carriers also state that they address out of service requests on a first-come first-served basis without favoring preferred customers, after they have addressed federally mandated and other emergency response priorities.<sup>94</sup> SureWest's Opening Comments provide that it does not prioritize repairs according to customer classes, it generally dispatches repair crews according to the sequence of receipt of the trouble tickets, it gives top priority to health, safety and emergency response, and it prioritizes OOS repairs "over less significant trouble reports (e.g. static on the line) in order to meet the GO 133-C 24-hour back in service requirement."<sup>95</sup> The mid-sized carriers have thus integrated GO 133-C's spirit of recognizing and prioritizing the health and safety value of essential communications services even for residential basic service customers served by copper wire. AT&T and Verizon apparently need some additional Commission direction.

AT&T describes the prioritization of OOS restoration process but avoids any discussion of the shortcomings of this process as experienced by basic service customers. The Declaration of Betsy Farrell sets forth AT&T's repair dispatch prioritization as follows:

AT&T prioritizes repair dispatches as follows: (1) E911, FAA, and other TSP services; (2) optical circuits; (3) DS3 circuits; (4) DS1 circuits; (5) U-Verse facilities; (6) DS0 circuits; (7) Business OOS; (8) DSL Repair; (9) Residence

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<sup>93</sup> CALTEL Opening Comments, at 25; Consumer Group Opening Comments, Attachment A, at 25, 34.

<sup>94</sup> Frontier did not address prioritization of OOS restoration in their brief Opening Comments in this proceeding, but did furnish information on the topic in their responses to DRA data requests as discussed in DRA's Opening Comments, at 23-24.

<sup>95</sup> SureWest, Opening Comments, at 6-7.

OOS; (10) Business service-Affecting; and (11) Residence Service-Affecting.<sup>96</sup>

The prioritization of U-Verse in rank five, above Residential OOS in rank nine, reflects the “second-class” status of basic residential service customers and their health and safety in AT&T’s corporate universe. The Commission therefore should determine in specify this rulemaking that household communications access to medical and emergency services is a priority for all customers, regardless of whether they want, have access to, or can afford the more expensive bundled services.

The discussion in Verizon’s opening comments of repair prioritization does not admit to any adverse impact on OOS restoration for its core voice customers.<sup>97</sup> As shown by Verizon’s disparities in restoration of service intervals for core voice and FiOS customers in 2011, which were cited in DRA’s Opening Comments, the core voice customers’ restoration of service consistently takes much longer than the Commission’s GO 133-C 90% restoration within twenty-four hours standard, while the FiOS customers enjoy rapid response times.<sup>98</sup> Verizon opposes “any additional requirements regarding prioritization,” and maintains in its Opening Comments that, “[r]equiring carriers to devote finite resource [sic] to meeting rigid and inflexible regulatory standards would preclude carriers from managing their business to prioritize repairs that are clearly desirable from a consumer (and common-sense) perspective.”<sup>99</sup> Verizon provides no proof to support its claim that consumers prefer that the carriers themselves determine how to prioritize repairs, and DRA thinks it is highly unlikely that consumers would agree with the carriers’ position given that the service quality results are so far below Commission standards for core voice customers. Finally, the alleged resource drain on

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<sup>96</sup> AT&T, Opening Comments, Declaration of Betsy Farrell, at 9.

<sup>97</sup> Verizon Opening Comments, at 23-24.

<sup>98</sup> DRA Opening Comments, at 22-23. The data was provided in Verizon’s confidential response to TURN’s January 3, 2011 data request “TURN\_SQ\_DR1\_1.18.”

<sup>99</sup> Verizon Opening Comments, at 23.

Verizon is not at all credible when Frontier and SureWest outperform Verizon with their OOS repair times, while providing their core voice customers equitable treatment with respect to OOS repair prioritization, as discussed earlier in this section.

Verizon cites Public Utilities Code Section 453(c) in a footnote to support its position that the law “does not require equal service quality results for all customers.”<sup>100</sup> However, Public Utilities Code Section 453(c) states that no public utility shall establish “any **unreasonable** difference as to ... service ... as between localities or as between classes of service.”<sup>101</sup> Evidently, Verizon does not find the great disparities between the way it handles repairs for core voice customers and FiOS customers “unreasonable.” DRA disagrees with Verizon, and considers it unreasonable to treat customers differently based on the type of and how many services customers purchase.

DRA also acknowledges the importance of equitable treatment for CLECs and their customers in the prioritization of OOS restoration of service. As CALTEL states in its Opening Comments, CLEC trouble reports should be handled in parity with the ILECs’ own customers.<sup>102</sup> As a matter of policy, DRA agrees that the notion of competition in the telecommunications markets, either as a “fig leaf” or as reality, requires ILECs to treat trouble reports for CLEC customers in a manner equal to the ILECs own customers. This is particularly important when “the majority of CLEC service outages involve ‘last-mile’ facilities leased from an URF ILEC.”<sup>103</sup>

For the aforementioned reasons, DRA asks the Commission to adopt standards regarding prioritization of OOS restoration of service to ensure that the most critical services are restored first and to also ensure that there is no disparate treatment among different customers.

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<sup>100</sup> Verizon Opening Comments, at 23.

<sup>101</sup> Public Utilities Code, § 453(c) (emphasis added).

<sup>102</sup> CALTEL, Opening Comments, at 25.

<sup>103</sup> Id. at 4.

## I. GRC LEC Service Quality Performance

DRA believes that the GRC LECs should continue to strive to achieve to same standard service quality that they currently provide. The GRC LECs state that “[i]t therefore seems that DRA believes that Small LECs should embark on a path toward spending less on their network until such time as service quality becomes unacceptable.<sup>104</sup>” DRA disagrees with the GRC LECs and would not wish for any customer to receive substandard service quality. DRA’s point was that the actual service quality performance of these carriers is excellent and far from unacceptable. According to the CD Service Quality Report,<sup>105</sup> the GRC LECs met the Commission’s GO 133-C service quality standards in 2010. These carriers also met the standards for trouble report rates, out of service intervals, operator answering times, installation intervals, and installation commitments.

One standard that was included in GO 133-C only for the GRC LECs was the installation interval standard in days. The GO 133-C standard is five days to install telephone service. As shown in the chart below only one carrier took five days to install telephone service, and that was only in a single month. These carriers do an excellent job of installing phone service quickly.

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<sup>104</sup> Comments of GRC ILECs at 5.

<sup>105</sup> CD Service Quality Report, at 9.

## GRC LECS Installation Time (in days) for 2010

Standard: 5 Days to Install Source GO 133-C Reports

Company	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Average
Calaveras	1.0	0.2	0.6	0.4	0.7	0.7	1.5	0.4	1.6	0.8	1.0	0.7	0.8
Cal Ore	1.0	1.0	1.1	1.0	1.1	1.0	1.0	1.6	1.0	1.0	1.3	1.2	1.1
Ducor	0.1	0.0	0.0	0.1	0.0	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Foresthill	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Happy Valley	1.5	3.0	1.0	1.7	3.5	3.0	1.8	4.5	1.3	3.2	2.1	1.2	2.3
Hornitos	1.6	3.5	3.0	2.0	1.6	4.2	2.3	3.6	1.8	1.8	1.0	1.5	2.3
Kerman	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.4	1.0	1.0
Pinnacle	0.0	1.0		1.0	3.0	1.0	1.0	0.5	0.5	1.0		1.0	1.0
Ponderosa	1.7	1.3	2.1	1.6	1.9	1.9	1.7	1.5	1.4	2.1	1.8	1.9	1.7
Sierra	0.3	0.5	0.4	0.4	0.3	0.5	0.4	0.4	0.5	0.5	0.5	0.4	0.4
Siskiyou		0.4		1.0	1.1	0.4	3.0	0.8	0.1	0.0	1.4		0.9
Volcano	1.9	1.7	2.4	2.3	1.5	1.8	1.6	2.6	2.0	2.0	5.0	2.4	2.3
Wintervaven	2.1	4.2	1.5	1.5	1.3	2.1	1.8	1.8	1.0	2.1	1.9	0.4	1.8

Another area the GRC LECs excel in is in trouble report rates, exceeding the GO 133-C standard consistently, as the following table shows for 2010.

## Trouble Report Rates

Source: GO 133-C Reports

	Unit/Exchange Size	GO 133-C Trouble Report Rate Standard (max)	Company Average
<b>Calaveras</b>	Units w/ $\geq$ 3,000 lines)	<b>6%</b>	0.2%
<b>Cal Ore</b>	Units w/ $\leq$ 1,000 lines	<b>10%</b>	1.7%
<b>Ducor</b>	Units w/ 1,001 - 2,999 lines	<b>8%</b>	0.9%
<b>Foresthill</b>	Units w/ $\geq$ 3,000 lines)	<b>6%</b>	1.4%
<b>Happy Valley</b>	Units w/ $\leq$ 1,000 lines	<b>10%</b>	1.8%
<b>Kerman</b>	Units w/ $\geq$ 3,000 lines)	<b>6%</b>	1.6%
<b>Pinnacle</b>	Units w/ $\leq$ 1,000 lines	<b>10%</b>	1.6%
<b>Ponderosa</b>	Units w/ 1,001 - 2,999 lines	<b>8%</b>	1.1%
	Units w/ $\leq$ 1,000 lines	<b>10%</b>	1.2%

<b>Sierra</b>	Units w/ $\geq$ 3,000 lines)	<b>6%</b>	0.8%
<b>Siskiyou</b>	Units w/ $\leq$ 1,000 lines	<b>10%</b>	0.3%
<b>Volcano</b>	Units w/ $\leq$ 1,000 lines	<b>10%</b>	0.0%
<b>Winterhaven</b>	Units w/ $\geq$ 3,000 lines)	<b>6%</b>	3.4%

It is ironic that the 2009 Service Quality Decision found that “[f]ewer measures will apply to URF ILECs and CLECs since the competitive markets these entities operate in provide greater external pressure to ensure service quality and customer satisfaction.”<sup>106</sup> With the excellent service quality that customers of GRC LECs now enjoy, costly large scale expenditures purportedly to improve service quality are unwarranted. Gold plating by the GRC LECs is not warranted, especially since their excellent service quality is subsidized largely by Californians who are receiving poorer service quality. Instead, DRA advocates for these carriers to maintain the current level of service quality.

### **III. Wireless Service Quality Standards**

#### **A. The Commission Should Apply Service Quality Standards to Wireless Carriers**

It is essential that the Commission apply service quality rules to wireless carriers. The law requiring the Commission to adopt service quality standards does not differentiate between wireline carriers and wireless carriers - all are “telephone

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<sup>106</sup> D.09-07-019, at 32

corporations” under the Public Utilities Code.<sup>107</sup> Moreover, there is no reason for wireless customers to receive substandard service quality compared to their wireline customer counterparts.

Both SureWest and the GRC LECs state in their opening comments that “wireless carriers, especially those seeking to participate in the LifeLine program as providers of basic telephone service, should be held to the same regulatory requirements as other carriers, including reporting under G.O. 133-C.”<sup>108</sup> Consumer Group and Greenlining also support the application of service quality standards to wireless carriers.<sup>109</sup>

Verizon contends that competition and available sources of information obviate Commission service quality reporting for wireless carriers.<sup>110</sup> Similarly, CTIA states that “the highly competitive nature of the wireless industry has resulted not only in self-imposed service quality standards on the industry, but has resulted in a multitude of sources of all types of information about wireless services for consumers.”<sup>111</sup> DRA disagrees with Verizon and CTIA, and agrees with TURN that “[w]ireless carrier claims regarding call quality, data speeds, service reliability and coverage are difficult for consumers to evaluate, short of purchasing service from a carrier and testing the product in multiple locations.”<sup>112</sup> Public Utilities Code Sections 2896 and 2897 require the Commission to ensure that consumers have access to sufficient information when choosing service providers, and these code provisions are not limited to wireline carriers.

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<sup>107</sup> See Public Utilities Code, §§ 233 and 234.

<sup>108</sup> SureWest Opening Comments, at 7; GRC LECs Opening Comments, at 9.

<sup>109</sup> Consumer Group Opening Comments, at 6-7; Greenlining Opening Comments at 12-13.

<sup>110</sup> Verizon Opening Comments, at 25.

<sup>111</sup> CTIA Opening Comments, at 1-2.

<sup>112</sup> Consumer Group Opening Comments, at 50.

AT&T claims that federal law pre-empts the Commission from imposing service quality standards on wireless services.<sup>113</sup> DRA firmly disagrees with AT&T and asserts that the Commission has very clear authority over terms and conditions of service for wireless service providers, including regulations concerning service quality.<sup>114</sup> The Commission has a long history of regulating terms and conditions for wireless carriers, including the Cingular Decision,<sup>115</sup> the Cramming Reporting Rules, and the Limited English Proficiency Rules.<sup>116</sup> The Commission's imposition of service quality reporting by the wireless carriers are would be consistent with those previous actions. And, while it is correct that states may not regulate wireless rates and entry, imposition of service quality standards does not constitute rate or entry regulation.<sup>117</sup> Accordingly, the Commission should disregard AT&T's claim that the Commission does not have the authority to regulate wireless service quality.

DRA's proposal for wireless carriers to provide their own California-specific service quality information and accurate engineering level maps on their websites is reasonable and DRA believes it could be provided at a low cost. Moreover, service quality performance results for all wireline and wireless service providers should be prominently publicized on the Commission's website so that consumers would benefit from being able to compare service quality results across the full spectrum of available carriers. DRA's proposal for wireless service quality reporting is well within Commission precedent and authority.

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<sup>113</sup> AT&T Opening Comments, at 25, citing Section 332(c)(3) (emphasis added). DRA observes that neither Verizon nor CTIA made this argument in its opening comments.

<sup>114</sup> 42 U.S.C. § 332(c)(3)(A); see also Public Utilities Code §§ 451, 709(h), 2896, 2897.

<sup>115</sup> D.04-09-062.

<sup>116</sup> See D.04-09-062 (Cingular Decision); D.07-07-043 (Limited English Proficiency Rules Decision); D.10-10-034 (Cramming Reporting Decision); and D.09-07-019 (2009 Service Quality Decision, stating on page 93, Ordering Paragraph 6, "6. All wireless public utility telephone corporations shall be subject to the wireless coverage map requirements contained in General Order 133-C, effective 90 days after the issuance of this Decision."

<sup>117</sup> See 47 U.S.C. 332(c)(3).

**B. The Wireless Market is Not Competitive, but Rather, Highly Concentrated.**

It has become increasingly clear that the wireless market is not a fully competitive market. If there had been any lingering doubts about this fact, those doubts were quashed when the Federal Communications Commission (FCC) issued a draft order finding AT&T's proposed merger with T-Mobile to be anti-competitive and when the United States Justice Department sued AT&T to block the same merger.<sup>118</sup>

AT&T, Verizon, and CTIA claim that the wireless market is so competitive that each wireless company has to provide excellent service quality in order to survive, rendering Commission-mandated service quality reporting unnecessary.<sup>119</sup> This argument has no merit. While there a wide range of products and service configurations for each carrier, there are only four national wireless carriers to choose from for those services. Rather than a competitive market, the wireless market is more akin to an oligopoly, comparable to the American auto industry before the successful introduction of foreign cars. Certainly the FCC and the Department of Justice have recognized that there is a lack of competition in the wireless marketplace.<sup>120</sup> Apparently, the wireless carriers do not want to acknowledge this fact.

The FCC has found that the wireless telephone industry is highly concentrated as the following chart illustrates:

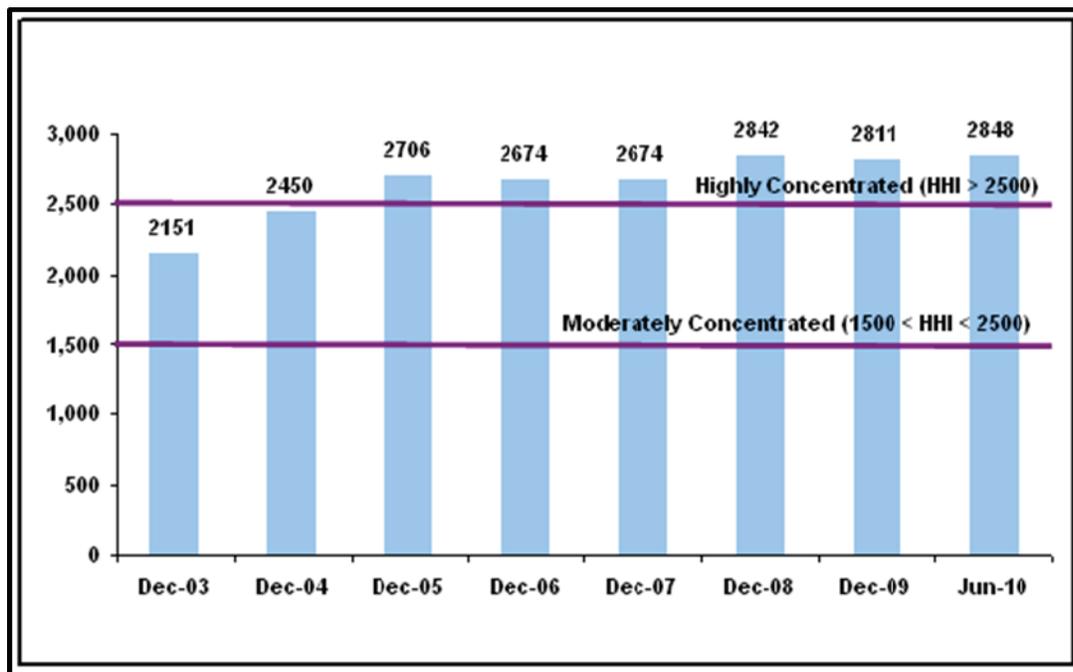
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<sup>118</sup> See FCC Order DA 11-1966 issued in WT-Docket No. 11-65 Dismissal Without Prejudice of AT&T's Applications for Transfer of Control of T-Mobile USA, Inc. [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-11-1955A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1955A1.pdf); Complaint filed by the Department of Justice against AT&T and T-Mobile, August 31, 2011, case 1:11-cv-01560, <http://www.justice.gov/opa/documents/Justice-ATT-TMobile-Complaint.pdf>

<sup>119</sup> AT&T Opening Comments, at 6. Verizon Opening Comments, at 25. CTIA Opening Comments, at 4.

<sup>120</sup> See FCC Fifteenth Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services., June 27, 2011. U.S. v. AT&T T-Mobile and Deutsche Telekom AG, Case: 1:11-cv-02560, in the U.S. District Court of the District of Columbia; Complaint filed by the Department of Justice against AT&T and T-Mobile, August 31, 2011, case 1:11-cv-01560, <http://www.justice.gov/opa/documents/Justice-ATT-TMobile-Complaint.pdf>

### Average Herfindahl-Hirschman Index for Mobile Wireless Carriers<sup>121</sup>



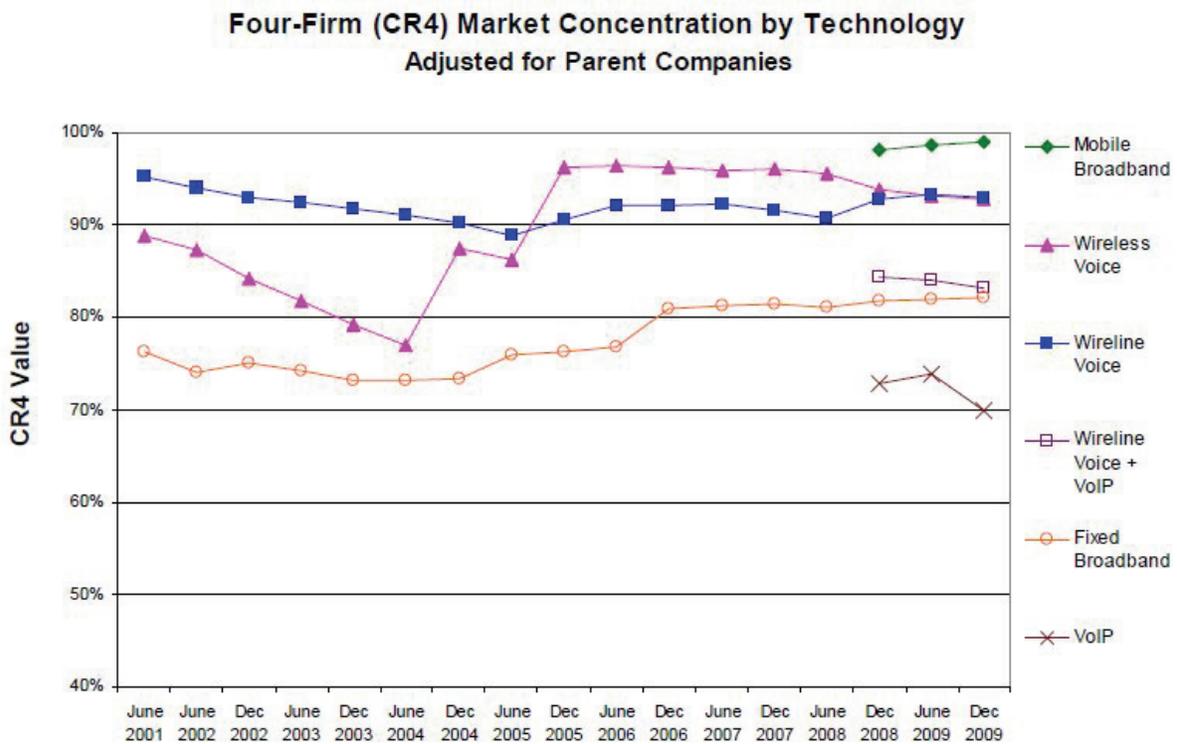
A moderately concentrated wireless industry would have a Herfindahl-Hirschman Index (HHI) level between 1500 and 2500. A highly concentrated wireless industry would have an HHI level greater than 2500. As the FCC's chart indicates, the wireless industry has been highly concentrated with an HHI level greater than 2500 since December, 2005.

According to the CD report titled Market Share Analysis of Retail Communications in California, 2001 through 2009 (CD Market Share Analysis), as of December 2009, AT&T and Verizon owned 87% of traditional voice market, 64% of the wireless voice market, 74% of mobile broadband market, 68% of total voice market

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<sup>121</sup> FCC Fifteenth Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services., June 27, 2011, at 17.

(wireline, wireless and VoIP), and 66% of all connections (all technology modes) in the market in California.<sup>122</sup> CD calculated market concentration using the Four-Firm Concentration Ratio (CR4).<sup>123</sup> The CR4 ratio is the summation of the percentage market shares of the four largest firms in a given market. High CR4 ratios indicate a concentrated market. CD notes that a concentrated market would generally include CR4 ratios more than 40% and a highly concentrated market would be scores between 70-80%.<sup>124</sup> CD's chart below displays CR4 data by technology.<sup>125</sup>



CD's analysis shows that the wireless market is far from competitive and that provision of telecommunications services is highly concentrated. The report found that all technologies are concentrated, and that "...wireless concentration exceeds that of

<sup>122</sup> CD Market Share Analysis, at 8.

<sup>123</sup> CD Market Share Analysis, at 13.

<sup>124</sup> CD Market Share Analysis, at 5.

<sup>125</sup> CD Market Share Analysis, at 13.

wireline and peaks near 100% following merger activity.”<sup>126</sup> Even fixed and mobile broadband are more concentrated since 2004, despite the steady chorus from the industry that the wireless industry is “intensely competitive therefore not in need of regulation.”<sup>127</sup>

Moreover, Verizon and AT&T, the two most dominant wireless carriers, do not rank highly in national surveys such as the *Consumer Reports'* annual wireless customer satisfaction survey released December 2011. This further demonstrates that the wireless market is not competitive. In fact, the *Consumer Reports* survey ranked AT&T the worst in customer satisfaction for the second year in a row. Surprisingly, regional and prepaid carriers topped the survey and ranked higher than any of the four national carriers.<sup>128</sup> The small, regional carriers are not even in a position to compete with their larger counterparts by mere market share numbers,<sup>129</sup> yet, they performed the best in service quality over their much larger competitors. This shows that AT&T and Verizon are simply wrong when they claim that the wireless market is competitive and as a result, wireless carriers must provide excellent service quality or else they will not stay in business.

In the most recent report by the Government Accountability Office (GAO) on wireless competition dated July 10, 2010, the GAO noted the effects consolidation and was concerned about the increase in HHI for the wireless market, which is a strong indicator of a more concentrated market and less competition.<sup>130</sup> In noting that

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<sup>126</sup> CD Market Share Analysis, at 14.

<sup>127</sup> AT&T Opening Comments, at 2.

<sup>128</sup> [http://money.cnn.com/2011/12/06/technology/att\\_worst\\_carrier/index.htm](http://money.cnn.com/2011/12/06/technology/att_worst_carrier/index.htm), December 6, 2011; “Report: AT&T Worst in Customer Satisfaction for 2nd Year in a Row”, December 7, 2011, <http://www.dailytech.com/Report+ATT+Worst+in+Customer+Satisfaction+for+2nd+Year+in+a+Row/article23462.htm>

<sup>129</sup> See DRA’s reply comments filed August 29, 2011 on the AT&T/T-Mobile Merger, <http://docs.cpuc.ca.gov/efile/CM/144454.pdf>, at p. 15.

<sup>130</sup> *Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry*, GAO-10-779, July 10, 2010, <http://www.gao.gov/assets/310/308167.pdf>

consolidation in the wireless industry has made it more challenging for small and regional carriers to compete, the GAO report states:

Through their growing share of the overall wireless market, large national wireless carriers have been able to exploit significant economies of scale. While these economies of scale can facilitate the continued growth of the top carriers, they can also create challenges to the growth and competitiveness of small and regional carriers. In particular, small and regional carriers, as well as other stakeholders, noted their difficulties in securing subscribers, network investments such as chipsets, and handsets.<sup>131</sup>

Finally, the strongest evidence that the wireless market is not competitive, but instead dominated by AT&T and Verizon, is their control of the markets for backhaul/special access, roaming and handsets. The two ILECs exclude other companies by limiting their access to popular handsets, roaming agreements and backhaul agreement, or by offering only unfavorable terms for roaming or backhaul access.<sup>132</sup> This further erodes the myth of wireless competition, as described in more detail below.<sup>133</sup>

- a) *Backhaul* – ARMIS data shows that AT&T and Verizon together collect about 81% of all special access revenues within their service territories. ILECs, mainly AT&T and Verizon, together provide over 90% of backhaul and other special access services nationwide, with independent backhaul providers accounting for only about 10%.<sup>134</sup> This situation is costly for companies competing with AT&T and Verizon, such as T-Mobile, who told the FCC in May 2010 that “in areas where ILECs continues to enjoy a monopoly, backhaul costs remain unreasonably high.”<sup>135</sup>

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<sup>131</sup> *Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry*, GAO-10-779, 7/10/2010, p.17 (citations omitted).

<sup>132</sup> Letter from Sen. Al Franken to the FCC on rejecting the ATT merger, [http://franken.senate.gov/files/letter/110726\\_Letter\\_DOJ\\_FCC\\_ATT\\_TMobile\\_Merger.pdf](http://franken.senate.gov/files/letter/110726_Letter_DOJ_FCC_ATT_TMobile_Merger.pdf)

<sup>133</sup> DRA’s Reply Comments filed August 29, 2011 in CPUC proceeding I.11-06-009, AT&T/T-Mobile Merger, <http://docs.cpuc.ca.gov/efile/CM/144454.pdf>

<sup>134</sup> Sprint Nextel Petition to Deny, at 39, filed with the FCC in AT&T/T-mobile Merger Docket WT No. 11-65.

<sup>135</sup> Letter from Kathleen O’Biren, Vice President T-Mobile, to Marlene H. Dortch, FCC, Re Ex Parte Communication: *Special Access Rates for Price Cap Local Exchange Carriers* WC Dkt. No. 05-25 (May

- b) *Roaming* – According to the regional and prepaid carriers, AT&T has a history of denying smaller carriers roaming agreements. AT&T is especially unwilling to offer 3G and 4G roaming, which forces the small carriers to remain on outdated networks and handsets, and is especially problematic for the GSM roaming market. In instances where AT&T provided 3G GSM roaming agreements to smaller carriers, AT&T was reluctant and the service was provided at unreasonably high prices, after severe delays, or only in conjunction with anti-competitive conditions.<sup>136</sup>
- c) *Handsets* – AT&T and Verizon engage in anti-competitive activities that harm consumer and cause poorer service quality. These activities include handset exclusivity arrangements, lengthy contracts (often 2-year minimum), high early-termination fees on contracts, lack of handset portability (between services/carriers/applications), and switching consumers' costs (e.g., by requiring consumers to repurchase applications).<sup>137</sup>

The Commission should reject carrier claims that the wireless market is sufficiently competitive and that wireless carriers do not need service quality standards, but rather, will rely on market forces to encourage them to provide good service quality to their customers. It is clear that the wireless market is not competitive and is highly concentrated. Therefore, it is critical for that the Commission to adopt service quality standards for wireless carriers.

#### IV. CONCLUSION

For the reasons set forth above, DRA recommends that the Commission make changes to GO 133-C as discussed herein. Specifically, DRA recommends that the Commission do the following:

- Maintain its current service quality standards.

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6, 2010)

<sup>136</sup> DRA's reply comments filed August 29, 2011 in CPUC proceeding I.11-06-009, AT&T/T-Mobile Merger, <http://docs.cpuc.ca.gov/efile/CM/144454.pdf>, at pages 7-8 and footnotes 20, 21, 22 and 23. Also see Sen. Al Franken's letter, [http://franken.senate.gov/files/letter/110726\\_Letter\\_DOJ\\_FCC\\_ATT\\_TMobile\\_Merger.pdf](http://franken.senate.gov/files/letter/110726_Letter_DOJ_FCC_ATT_TMobile_Merger.pdf)

<sup>137</sup> DRA's comments filed August 22, 2011 in response to ALJ's request for additional information in CPUC's AT&T/T-Mobile Merger proceeding, <http://docs.cpuc.ca.gov/efile/RESP/142037.pdf>, at p. 12-13

- Adopt penalties to enforce the service quality standards.
- Require carriers to provide ARMIS data to the Commission.
- Require URF and GRC LECS to conduct an audit of the status of their legacy facilities.
- Continue to use CD's current interpretation of excludable events in GO 133-C.
- Adopt standards regarding prioritization of OOS restoration of service.
- Use the Composite Reliability measure to identify problem exchanges.
- Adopt service quality standards for wireless carriers.

Respectfully submitted,

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March 1, 2012