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R. 11-12-001

Filed December 1, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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

**COMMENTS OF COX CALIFORNIA TELCOM, LLC, DBA COX  
COMMUNICATIONS, ON ADMINISTRATIVE LAW JUDGE'S RULING,  
DATED MAY 18, 2012**

Pursuant to the Commission's Rules of Practice and Procedure ("Rules") and the Administrative Law Judge's email, dated May 25, 2012, extending the date by which to file comments, Cox California Telcom, L.L.C., *dba* Cox Communications (U-5684-C) ("Cox") submits these comments on responses submitted on June 14, 2012, to the Administrative Law Judge's Ruling requiring telephone corporations to provide data ("ALJ Ruling").

**I. Existing GO 133-C Service Measures Should Not Be Revised Or Expanded.**

Certain responses of the consumer groups to the ALJ Ruling are useful with respect to the Commission determining the scope of this proceeding as they support the Commission narrowly tailoring the scope to address clearly-identified service quality issues, as compared to a wide-range of issues that are not directly related to measuring service quality under the current regulatory framework.

Consistent with Cox's comments on the Order Instituting Rulemaking in this proceeding, DRA and the Consumer Groups<sup>1</sup> both appear to acknowledge that existing GO 133-C standards are adequate and that only carriers that consistently underperform under GO 133-C should be subject to further reporting and/or penalties. The Consumer Groups, for example, state that GO 133-C standards "might be a reasonable set of reporting requirements for companies that have a

<sup>1</sup> The Utility Reform Network, Center for Accessible Technology, The National Consumer Law Center and Communications Workers of America, District 9 filed jointly and referred to as "Consumer Groups" herein.

demonstrated commitment to providing good service quality. . . .”<sup>2</sup> Indeed, Cox has demonstrated such commitment as it has met or exceeded the current service quality measures (other than three instances in the initial 2010 reporting period),<sup>3</sup> and thus, should not be subject to additional measures or reporting due to other carriers’ performances.

DRA also suggests a framework that would have the Commission take steps to address underperforming carriers. For example, DRA states that technical standards may be an important resource “particularly when a carrier’s service quality performance is consistently below GO 133-C” and the Commission could implement audits of “underperforming carriers.”<sup>4</sup> Similarly, in the context of collecting metrics for static, noise and uncompleted/dropped calls, while DRA notes that if any given carrier’s service quality is “significantly below” the measures in GO 133, then monitoring of this type of data may aid the Commission in performing audits.<sup>5</sup>

Generally, the framework that the Consumer Groups and DRA refer to is already in place under existing GO 133-C, Rule 7. This rule expressly grants Staff the authority to work with carriers who underperform by routinely failing to satisfy the current service quality measurements. GO 133-C, Rule 7 states:

Commission staff may investigate any reporting unit that does not meet a minimum standard reporting level and any major service interruption. Staff may recommend the Commission institute a formal investigation into a carrier’s performance and alleged failure to meet the reporting service level for six or more consecutive months. Staff may require carriers with two or more measures below the reporting service level in one year or one measure below the industry average to meet with staff and present proposals to improve performance and to report monthly if poor performance continues. This section does not apply to Section 5, Wireless Coverage Maps. (Emphasis added).

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<sup>2</sup> Consumer Groups Response, p. 5.

<sup>3</sup> See Cox Opening Comments on OIR, p. 4 (dated January 31, 2012).

<sup>4</sup> DRA Response, p. 2.

<sup>5</sup> Id., p. 3.

While there have been numerous suggestions for more measures,<sup>6</sup> more reporting and more data, Cox respectfully submits that the Commission must find that existing rules in GO 133-C, for which reporting just commenced two years ago, are in fact reasonable and provide the Commission with all appropriate measurements and remedies. Moreover, the existing rules do not unnecessarily burden carriers that have demonstrated a commitment to service quality.

**II. The Consumer Groups Have Not Demonstrated That Additional Reporting, Service Measures or Other Requirements Are Either Directly Related to Alleged Service Quality Problems or Would Improve Service Quality.**

The Consumer Groups, DRA and Consumer Federation of California (“CFC”) generally propose that the Commission should collect more data, via ARMIS reports, a Commission-designed survey or otherwise, on the basis that the collection of more data would assist the Commission and consumers. Yet, these parties’ comments do not actually demonstrate how more data would in fact assist either consumers or the Commission.<sup>7</sup> A reasonable and prudent approach for the Commission in this proceeding is to ensure that both new rules are narrowly crafted to and the extension of existing rules to additional regulated entities address explicit problems.

**A. The Commission Should Not Adopt or Extend ARMIS Reporting Requirements.**

By way of background, when the FCC moved to price-cap regulation for the larger ILECs in the 1990s, the FCC adopted ARMIS reporting applicable to those carriers to “monitor

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<sup>6</sup> For example, the Consumer Groups summarize their proposal for new measures, many of which would apply only to the URF ILECs. However, the Consumer Groups have not shown that its proposed measures would remedy an existing problem or that the measures are not duplicative of existing law. For example, the Consumer Groups propose a measure for customer appointments met and a penalty for any missed installation appointment. Yet, California Civil Code § 1722 includes a standard for service appointments and allows consumers to recover up to \$600.00 if service is not commenced during the specified service period.

<sup>7</sup> DRA notes that the Commission has used ARMIS reports in adopting other decisions and cites to decisions that were adopted under the New Regulatory Framework when AT&T (formerly Pacific Bell) and Verizon (formerly GTE) operated under a completely different regulatory regime. DRA also cites to the Commission decision adopting current GO 133-C, but the Commission directed the ILECs to submit ARMIS reporting until 2011, and thereby concluded, such reporting was not necessary thereafter.

the ‘theoretical concern’ that price cap carriers might reduce service quality or network investment to increase short-term profits.”<sup>8</sup> Starting in approximately 2000, the FCC started eliminating and reducing the scope of ARMIS reporting for the ILECs, as the FCC concluded in 2001, for example, that the reports were “redundant,” had “clearly outlived their usefulness” or “were no longer relevant to any policy analysis.”<sup>9</sup> While ILECs are no longer subject to price-cap regulation and they are not required to submit ARMIS reports, it is nonetheless important to note that the FCC never required competitive carriers like Cox to file ARMIS reports. Consequently, proposals to simply extend ARMIS reporting to competitive carriers lack any reasonable legal or policy basis.

Instead of identifying a problem that exists with a proposed solution directly related to such alleged problem, the consumer groups’ requests for more reporting are generic in nature and not wholly accurate. DRA, for example, reflects that the FCC suspended ARMIS reporting for ILECs and during the last approximate six years of little to no reporting, “service quality of URF and other carriers has suffered.”<sup>10</sup> First, and perhaps most important, DRA’s comments are not applicable to competitive carriers and reflect *only on the ILECs*. For example, in support of its statement that service quality suffered, DRA cites to data reported only by SureWest, Verizon, AT&T and Frontier – the “URF ILECs.”<sup>11</sup> While it utilizes the term “URF Carriers” throughout, DRA’s response make clear that DRA is referring to the “URF ILECs,” as there are references only to AT&T, Verizon, SureWest and Frontier.<sup>12</sup> Second, there is no data showing that service quality fell during the last six years for the URF ILECs or any other category of carrier. Third, since service quality reporting under GO 133-C just commenced in January 2010,

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<sup>8</sup> FCC 08-203, ¶ 8.

<sup>9</sup> Id., ¶ 4.

<sup>10</sup> DRA Response, p. 7.

<sup>11</sup> Id., p. 7, fn. 11.

<sup>12</sup> See DRA Response, p. 7, fn. 11, 9, 10.

it would be difficult if not impossible to correlate a connection between the lack of ARMIS reporting by ILECs and service quality data reporting under GO 133-C.

Because its response is drafted in terms of the ILECs only, DRA provided no substantive support for its suggestion to *extend* ARMIS reporting to all “facilities-based and broadband providers.”<sup>13</sup> While the Consumer Groups do not expressly advocate for the adoption of ARMIS reporting, they do note that if ARMIS reporting is adopted, it should “applied to the baseline performance penalties and the service guarantees.”<sup>14</sup> However, the FCC required only price-cap ILECs to submit ARMIS reports in the past, and as such, there is no record or basis that ARMIS reporting could or should be extended to non-ILECs.

Moreover, the Commission adopted the current version of GO 133-C approximately three years ago and in doing so determined the current measures are appropriate with respect to the carriers for which it has jurisdiction. Suggestions for new reporting for certificated carriers based on the generic argument that the Commission has authority to adopt service quality measures pursuant to the California Public Utilities Codes must necessarily be rejected.<sup>15</sup> Further, generic requests for ARMIS reporting that are (1) not supported by at least a baseline discussion of the actual reporting requirements included in the ARMIS report that the Commission is being asked to adopt, (2) the problem the proposed reporting requirement would address (i.e. how it would improve any alleged service quality problems) and (3) the impact on carriers (in terms of burdens and costs, among others) are insufficient and should not be included in the scoping memo. Finally, the Commission may only adopt regulations for the regulated services that certificated entities provide. As such, general requests that service quality reporting

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<sup>13</sup> Id., p. 5.

<sup>14</sup> Consumer Groups Response. p. 6.

<sup>15</sup> See, Id., p. 5.

be extended to “broadband” providers must be rejected as the Commission does not have jurisdiction to regulate broadband services, such as Internet access, or broadband providers.<sup>16</sup>

**B. Current GO 133-C Service Quality Measures Are Sufficient and The Commission Should Not Adopt Proposals To Collect Data Based on Customer Perceptions.**

CFC and the Consumer Groups suggest that the Commission adopt an approach whereby service quality would be based on “customer perceptions”<sup>17</sup> or customer surveys, and Cox recommends that the Commission reject these proposals as described below.

Cox certainly appreciates its customers’ opinions and works hard to provide superior customer service. That hard work has paid off in that for nine consecutive years, residential telephone service provided by Cox and its affiliates has received highest honors in J.D. Power and Associates’ Customer Satisfaction Survey in the West (which includes California). Additionally, since 1996, the Cox affiliated family-of-companies have received 27 J.D. Power and Associate honors for their telephone, video and Internet services.

Indeed, there are already numerous public sources for consumers to learn about carriers’ services and the quality of those services. In fact, in D. 09-07-019, the Commission expressly considered and rejected proposals for a customer survey when it adopted the current GO 133-C, including a Commission-conducted survey. The Commission correctly concluded that there are a number of existing surveys and the Commission should not conduct a survey that simply

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<sup>16</sup> See *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33; *Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10; *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242; *Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 (rel. Sept. 23, 2005).

<sup>17</sup> See CFC Response, p. 2; Consumer Groups Response, p. 4.

mirrors existing surveys and does not add any valuable data.<sup>18 19</sup> While some parties are again suggesting that the Commission adopt a customer survey, their comments do not show that the Commission’s prior conclusions on this matter were unreasonable and/or otherwise require re-consideration. California’s fully competitive telecommunications marketplace enables consumers to “vote with their feet,” and thus, they are able to switch to a superior performing carrier should the need arise.

**III. Conclusion.**

The submissions in this proceeding to date do not demonstrate that there is an explicit problem with either GO 133-C generally or the performance of all the regulated carriers required to report under GO 133-C. Rather, the OIR and the comments to date show that there was a significant, natural disaster that resulted in extended outage periods for some carriers and that some carriers may not be consistently meeting the measures at this point in time. Based on these circumstances, adopting additional measures, new reporting requirements and/or customer surveys is not a narrowly-tailored response to issues identified to date. Further, requests for additional measures and reporting on the basis that the data “may” be helpful in the future is not a sufficient or proper basis for imposing new regulatory requirements that are burdensome and costly for carriers to implement. This is especially true with respect to carriers that are currently meeting GO 133-C measures.

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<sup>18</sup> D.09-07-019, p. 20.

<sup>19</sup> The Commission also concluded it should not expend resources duplicating efforts that were then being undertaken by the FCC. Id.

Dated: July 13, 2012

Respectfully submitted,

/s

Douglas Garrett  
Cox Communications  
3732 Mt. Diablo Blvd., Suite 358  
Lafayette, CA 94549  
T: 925.310.4494  
E: douglas.garrett@cox.com

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Margaret L. Tobias  
Tobias Law Office  
460 Pennsylvania Avenue  
San Francisco, CA 94107  
T: 415.641.7833  
E: marg@tobiaslo.com  
Attorney for Cox Communications

Esther Northrup  
Cox Communications  
5651 Copley Drive  
San Diego, CA 92111  
T: 858.836.7308  
E: esther.northrup@cox.com

Marcie Evans  
Cox Communications  
5651 Copley Drive  
San Diego, CA 92111  
T: 858.836.7313  
E: Marcie.evans@cox.com