

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



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Order Instituting Rulemaking Proceeding
to Consider Amendments to General
Order 133

R. 22-03-016
(Filed March 17, 2022)

INITIAL COMMENTS OF THE CLOUD COMMUNICATIONS ALLIANCE

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The Cloud Communications Alliance (“Alliance”) submits these comments in response to the California Public Utility Commission (“Commission”) Order Instituting Rulemaking Proceeding to Consider Amendments to General Order 133 issued on March 23, 2022 (“OIR”). The OIR, which stems from a petition for rulemaking by the Public Advocates Office (“Cal Advocates”),¹ will assess whether to modify General Order 133-D (“GO 133-D”) by adopting service quality standards for Voice over Internet Protocol (“VoIP”), broadband, and wireless services.²

Numerous parties responding to Cal Advocates’ Petition noted that the Commission lacks the authority to impose service standards on VoIP, broadband, or wireless services, and that competition for these services is sufficiently robust to preclude the need for prescriptive government regulation.³ The Alliance concurs in those arguments.

Should the Commission nevertheless determine to adopt service quality standards, the Alliance urges the Commission to expressly confirm that the current scope of its service

¹ *Petition of the Public Advocates Office for Rulemaking to Amend General Order 133-D to Establish Minimum Service Quality Standards for all Essential Communications Services*, Petition (P.) 21-10-003, (filed October 7, 2021) (“Petition”).

² The OIR proposes to proceed in two phases. The first phase would address service quality standards for VoIP and wireless services. The second phase would address service quality metrics for broadband.

³ See OIR at 12, n.30 (listing numerous entities filing oppositions to the Cal Advocate’s Petition).

standards applies to any standards adopted in this proceeding. The Commission’s current service standards, which apply to TDM-based services, exclude services provided to “large” business customers. In light of the ready availability of sophisticated, cloud-based communications services to business of all sizes, the Commission should go further and exclude services provided to all businesses. The Commission should also confirm that, consistent with current rules, performance standards do not apply to services provided by companies that do not own or manage last mile networks.

I. Introduction

The Alliance is a trade association of wholesale and retail providers of hosted or cloud-based communications services, including Voice over Internet Protocol (“VoIP”) services, to businesses of all sizes.⁴ Many of Alliance’s 150 members provide these services to businesses in California and thus have strong interests in this proceeding. Alliance members generally do not provide last mile connections. Instead, business customers bring their own broadband connections that they purchase from unaffiliated internet service providers. These broadband connections enable Alliance members’ business customers of all sizes to access sophisticated communications-as-a-service software features and functions without having to deploy on-premises equipment like a Private Branch Exchange (“PBX”) system.

Cloud based communications services have become a highly competitive sector of the industry with dozens if not hundreds of providers vying to serve businesses of all sizes. This competition drives innovation; new product offerings; and enhanced security, resiliency and performance within the cloud environment. Although, as over-the-top service providers, Alliance members have no control over the performance of the underlying broadband connection, many

⁴ Information about the Alliance, including member companies, may be found on its website at <https://www.cloudcommunications.com/>.

offer customers strong, carrier-level service guarantees for the core network facilities over which they do have control. They do so by providing redundant connections to data centers and other measures designed to maximize uptime and reliability. Many Alliance members offer 99.999% availability for their platforms.⁵ This performance standard is available to small and large businesses. The need to offer high levels of performance is not driven by regulatory requirements but rather results from the fiercely competitive nature of the cloud communications market. A California business customer dissatisfied with its provider’s performance has ample alternatives beyond traditional local exchange carriers.

II. The Commission Should Confirm that the Scope of General Order 133 Excludes Business Services and “Resellers”

A. Current Rules Exclude Services to “Large” Businesses and Resellers

The Commission’s adoption of service standards to date has always been restricted to services provided to residential consumers and very small businesses. In its 2009 Order adopting certain service standards in GO 133-C, the Commission excluded services provided to businesses with six or more lines due to the competition for this market segment.⁶ The 2009 Order also excluded “resellers,” which it defined as a company that “does not own its own transmission lines.”⁷ In that 2009 Order, the Commission recognized that “some degree of control over the

⁵ See, e.g., 8x8, *The XCaaS advantage*, <https://www.8x8.com/products/plans-and-pricing> (last visited May 9, 2022); SkySwitch, *Market-Leading Reliability*, <https://skyswitch.com/reseller-program/> (last visited May 9, 2022); Business VOIP, Vonage, *Unify your communications experience with Vonage Business Communications*, <https://vonage.businessvoip.io/?gclid=725ee5860e1a1a2be51587d267efad7e&gclsrc=3p.ds&msclkid=725ee5860e1a1a2be51587d267efad7e> (last visited May 9, 2022); RingCentral, *Stay connected, always*, <https://www.ringcentral.com/solutions/small-business.html> (last visited May 9, 2022).

⁶ *Order Instituting Rulemaking on the Commission’s Own Motion into the Service Quality Standards for All Telecommunications Carriers and Revisions to General Order 133-B*, Decision Adopting General Order 133-C and Addressing Other Telecommunications Service Quality Reporting Requirements, D.09-07-019 at 38 (July 16, 2009) (“2009 Order”).

⁷ 2009 Order at 58.

underlying network facilities is a critical component in a carrier’s ability to affect service quality.”⁸

These limitations were carried forward in the Commission’s 2016 Order updating service metrics and adopting GO 133-D, the current iteration of the Commission’s service standards. The 2016 Order adopting GO 133-D excluded businesses with six or more lines “because the service quality measures and standards do not apply to large business customers.”⁹ The service metrics established in GO 133-D also applied only to facilities-based providers, which were redefined as “[a] telephone corporation or interconnected VoIP provider that owns or controls facilities used to provide communication for compensation, including the line to the end-user’s location.”¹⁰ The 2016 Order mentioned interconnected VoIP providers because GO 133-D required them to submit outage reports that had been filed with the Federal Communications Commission (“FCC”).¹¹ VoIP providers were not subject to service standards. Thus, purely over-the-top interconnected VoIP providers were not considered facilities-based because they did not have “lines that provide a connection from the service provider’s facilities to the end-user.”¹²

B. The Commission Should Exclude Services to All Business Customers

The Commission should not only confirm that the current exclusion for services provided to “large” businesses applies to any standards that may be adopted for VoIP services but should

⁸ *Id.*

⁹ *Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules*, Decision Adopting General Order 133-D, D.16-08-021 at 5 (Aug. 18, 2016) (“2016 Order”). General Order 133-D defines a “customer” as “a separate account number for voice service, or a bundle of services including voice, and includes small business (5 lines or less) and residential customers.” GO 133-D § 1.3(g). The Commission defined a “line” as “[a]n access line (hardware and/or channel that runs from the local central office, or functional equivalent, to the subscriber’s premises.” GO 133-D § 1.3(n).

¹⁰ GO 133-D at 6, § 1.3(i) (defining facilities-based).

¹¹ GO 133-D at 24.

¹² *Id.*

go further and exclude services to businesses of all sizes. There appears to be no effort to impose service standards on large businesses. The OIR does not purport to revise the current exclusion for large businesses and the Cal Advocates' proposed standards in its petition apply only to residential and small businesses.¹³ To avoid any ambiguity, the Commission should expressly confirm that the current exclusion for businesses with six or more lines applies to any new or revised standards adopted in this proceeding.

The Commission, however, should go further and exclude services to all business customers, regardless of size. The 6-line demarcation no longer reflects the current market for business services. Any business with a broadband wireline or wireless connection now has access to sophisticated, software-based communications platforms housed in the cloud and available as apps to desktop computers, smart phones, or IP-enabled softphones. Pricing is typically based on a per user (e.g., employee) basis much like business software is licensed on a per user basis. Cloud providers generally offer service tiers priced on a per user basis, and the services available in that tier do not change as the number of users increases or decreases. Many providers offer a basic tier of services for very low per user monthly rates. The same competitive alternatives are as readily available to businesses with fewer than 6 lines than those above that number, rendering the existing regulatory demarcation irrelevant.

As noted, there are hundreds of over-the-top VoIP providers serving small business customers in California. According to the latest FCC telephone service report released in March and covering services through 2019, there were 423 interconnected VoIP providers in California and 357 of those were over-the-top providers.¹⁴ VoIP providers served more than 4 million

¹³ Petition, Attach. A, Proposed Service Quality Metrics and Standards Additions to General Order 133, at A-1 to A-5 (applying proposed new standards to “residential and small business customers.”).

¹⁴ Federal Communications Commission, Table S2. Number of Providers Reporting Voice Subscriptions - State,

business subscriptions, nearly 2 million of which were served by over-the-top providers as of December 30, 2019, the latest numbers available from the FCC.¹⁵ Often these providers are very localized, serving small businesses within a relatively small geographic area. Many of the providers are resellers that rely on cloud-based communications platforms of wholesale providers, such as Alliance member SkySwitch. These resellers emphasize direct contact and personalized services to small businesses and readily serve customers with fewer than 6 access lines or users. Apart from resellers, numerous national cloud providers using their own proprietary platforms compete for very small business customers. In sum, sufficient competition to vitiate the need for regulatory intervention now exists for small businesses of all sizes.

In addition to being unnecessary, the 6-line demarcation has become impracticable. Cloud-based services are highly scalable. The number of users can be readily increased or decreased by the business customer itself using communications management tools offered as part of the service. Through a few keystrokes, a business can add or subtract “lines” (*i.e.*, users) in a matter of minutes. In this environment, requiring cloud-based providers to report (or not report) compliance with performance metrics as customer usage expands and contracts around an arbitrary demarcation of 6 lines would be unnecessarily burdensome. The Alliance thus respectfully urges the Commission to exclude services provided to businesses of any size from any service standards it may set in this proceeding.

https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.fcc.gov%2Fsites%2Fdefault%2Ffiles%2Fvts_state_table_2.xlsx&wdOrigin=BROWSELINK (last visited May 6, 2022).

¹⁵ Federal Communications Commission, Table S1. Voice Subscriptions (in Thousands) - State, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.fcc.gov%2Fsites%2Fdefault%2Ffiles%2Fvts_state_table_1.xlsx&wdOrigin=BROWSELINK (last visited May 6, 2022).

C. The Commission Should Confirm that Service Standards Do Not Apply to Resellers

As noted, the current service standards do not apply to providers that do not own or control last mile connections. The Commission should maintain this exclusion for any service standards adopted in this proceeding. Although over-the-top service providers have the ability to control their platforms, they have no ability to control or repair outages or service degradation caused by the broadband connections to the business customer's premises provided by unaffiliated third parties. This lack of control over the last mile connection has been the basis for historically excluding resellers.

The Cal Advocates' Petition creates some confusion around the continued applicability of the reseller exclusion. On the one hand, the proposals in the Petition did not purport to revise the existing definition of "Facilities-Based Carriers" in GO 133-D, and its proposed new standards would apply to interconnected VoIP services "offered by [General Rate Case] Iles and *facilities-based* Carriers."¹⁶ The Petition creates some ambiguity, however, by proposing to apply IP-based service standards on "Communications Service Providers" that include "non-facilities-based" providers.¹⁷ The OIR is silent on the question. To prevent ambiguity, the Commission should expressly confirm that any new standards would apply only to facilities-based providers that own or control last mile connections consistent with current rules and the definition of facilities-based in GO 133-D.

¹⁶ Petition, Attach. A at A-1 to A-5; Attach. B (proposing to only revise the existing definition of "TDM" in GO 133-D) (emphasis added).

¹⁷ Petition at 2, n.4.

CONCLUSION

For the reasons set forth above, the Alliance respectfully urges the Commission to exclude businesses of all sizes from any service equality metrics adopted in this proceeding and to confirm that any such metrics and reporting do not apply to non-facilities based providers.

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Respectfully submitted,

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