

**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.

Rulemaking 22-03-016

**COMMENTS OF
USTELECOM – THE BROADBAND ASSOCIATION
ON THE PROPOSED DECISION ADOPTING GENERAL ORDER 133-E**

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COMMENTS OF USTELECOM – THE BROADBAND ASSOCIATION

I. INTRODUCTION

USTelecom — The Broadband Association (USTelecom)¹ respectfully submits these comments in response to the Proposed Decision Adopting General Order 133-E (Decision)² to establish additional service quality and customer service requirements for telecommunications services. USTelecom members have a long track record of delivering resilient, reliable, and secure 21st century broadband internet service across California. The Decision would implicate many of the services provided by USTelecom members, including Plain Old Telephone Service (POTS), wireless service and Voice-Over-Internet Protocol (VoIP).

The requirements in the Decision are unsupported by any factual findings in the record and exceed the Public Utilities Commission’s (Commission) authority and it adopts a series of unworkable requirements that not only impose uneconomic conditions upon providers but also do

¹ USTelecom is the premier trade association representing service providers and suppliers for the communications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. Its diverse membership ranges from international publicly traded corporations to local and regional companies and cooperatives, serving consumers and businesses in every corner of the country.

²Decision Adopting General Order 133-E, Order Instituting Rulemaking Proceeding to Consider Amendments to General Order 133, Rulemaking 22-03-106 (Apr. 11, 2025) (*Decision*).

nothing to better the communications experience of Californians. The Commission should not adopt the Order as written.

II. THE CPUC SHOULD NOT EXTEND SERVICE QUALITY REQUIREMENTS

The Order determines that the occurrence of service outages necessitates further enforcement and extension of service quality requirements to Voice over Internet Protocol (VoIP) and Plain Old Telephone Service (POTS) in order to ensure that service quality standards are met. But further regulation of VoIP or POTS is unnecessary due to the competitive nature of the broadband industry. California can boast service to 99.6 percent of homes by one or more fixed broadband providers, 22.6 percent have at least two providers, and 75.1 percent – more than three quarters of homes – are served by three or more such providers how can 22% have 2 or more and 75% have 3 or more.³ This fixed broadband availability does not even encompass satellite broadband providers, of which there are three in California that provide service availability to 100 percent of California homes. Californians also have access to robust mobile and fixed wireless broadband. In fact, 99.4 percent of California homes are served by three or more mobile wireless broadband providers,⁴ in addition to fixed broadband and satellite, all of which are capable of providing voice service by way of facilities-based standalone service and over-the-top services, not to mention the providers that also provide legacy telephone service.⁵

All of this competition is in large part a result of substantial private investment. America's fixed broadband providers alone invested \$94.7.4 billion just in 2023 and a total of \$2.2 Trillion

³ CensusNBM, Report 367 Percent of Housing Units with Access to Multiple Fixed Broadband Providers at Any Speed – December 2020, <http://censusnbm.com/doc/CensusNBM%20367%20Fixed%20Providers%20at%20Any%20Speed.pdf>.

⁴ CensusNBM, Report 358 Percent of US Housing Units with Access to Multiple Wireless Broadband Providers – December 2020, <https://censusnbm.com/doc/CensusNBM%20358%20All%20Wireless%20Broadband%20Providers%20by%20State.pdf>.

⁵ See FCC, Form 477 Filers by State as of Jun. 30, 2022 (posted Jul. 30, 2023), <https://www.fcc.gov/form-477-filers-state>.

since 1996— a significant portion of which is targeted to California — in private capital to deploy and upgrade networks, including the hardest to serve remote areas.⁶ And this investment is buttressed by the substantial additional investment by the state⁷ and federal⁸ infrastructure funding targeted to California -- further extending high-speed broadband throughout California. As such, there is no need to regulate in this space, and indeed additional regulation is likely to undermine further investment.

III. THE STANDARDS AND ASSOCIATED PENALTIES ARE PUNITIVE AND ARE NOT BASED ON EVIDENCE IN THE RECORD

Commission orders, including resolutions, must contain specific findings that support the conclusions reached and actions ordered. Pub. Util. Code § 1757(a)(3). These findings must be supported by “substantial evidence in light of the whole record.” Pub. Util. Code § 1757(a)(4); *Pedro v. City of Los Angeles*, 229 Cal.App.4th 87, 99 (2014) (Evidence will not be considered “substantial” unless it constitutes “evidence that a rational trier of fact could find to be reasonable, credible, and of solid value.”). The Proposed Decision fails to make findings sufficient to justify its penalty provisions, and it fails to support its findings with substantial evidence in light of the whole record. The fine structure outlined in the Proposed Decision creates an uneconomic situation for providers that is not just punitive but is also unsupported by factual findings in the record, and only serves to chill additional investment in the telecommunications network and raise prices for customers. The Proposed Decision compounds its lack of evidentiary support by advancing “arbitrary

⁶ See *2023 Broadband Capex Report*, USTelecom (Oct. 18, 2024), <https://ustelecom.org/research/2023-ustelecom-broadband-capex-report/>

⁷ See Press Release, Off. Gov. Gavin Newsom, Governor Newsom Signs Historic Broadband Legislation to Help Bridge Digital Divide (Jul. 20, 2021), <https://www.gov.ca.gov/2021/07/20/governor-newsom-signs-historic-broadband-legislation-to-help-bridge-digital-divide/>.

⁸ See *The Infrastructure Investment and Jobs Act Will Deliver for California*, <https://www.whitehouse.gov/wp-content/uploads/2021/08/CALIFORNIA-The-Infrastructure-Investment-and-Jobs-Act-State-Fact-Sheet.pdf> (noting that California will receive a minimum allocation of \$100 million); see also *Coronavirus Capital Projects Fund*, U.S. Department of the Treasury, Allocations for States, District of Columbia, and Puerto Rico, <https://home.treasury.gov/system/files/136/Allocations-States.pdf> (providing over \$540 million to California) and *Coronavirus State and Local Fiscal Recovery Funds*, U.S. Department of the Treasury, Allocation for States, <https://home.treasury.gov/system/files/136/fiscalrecoveryfunds-statefunding1-508A.pdf> (providing over \$27 billion for California, with broadband infrastructure being an eligible expense).

and capricious” reasoning, which amounts to an abuse of discretion. Pub. Util. Code § 1757(a)(5); see also *Woodbury*, supra, 108 Cal.App.4th at 438 (arbitrary and capricious actions constitute an “abuse of discretion”); *Zuehlsdorf*, supra, 148 Cal.App.4th 249, 256 (actions “not supported by a fair or substantial reason” are also arbitrary and capricious); *San Pablo Bay Pipeline Co. LLC v. Public Utilities Comm’n*, 221 Cal.App.4th 1436, 1460 (2013) (“The abuse of discretion standard can be restated as whether the Commission exceeded the bounds of reason.”).⁹

The Commission is proposing fines for failure to provide (a) a live assist to a customer for 90 percent of customer service calls within 60 seconds, and (b) an option to speak to a live representative within the first ten seconds of connection being made for any chat bot or automated system.¹⁰ Increasing penalties and fees for providers increases the cost of providing service at a time when the Commission has issued a request for comments¹¹ on its Home Broadband Adoption Report¹² in an effort to improve adoption and affordability efforts in the state seems illogical. Indeed the California legislature has expressed its own desire to address affordability in the state writ large¹³ and has introduced two pieces of legislation to specifically address broadband affordability.¹⁴ With such an emphasis on adoption and affordability policy, why would the Commission seek to raise the cost of service for providers making it even harder for them to address adoption and affordability.

⁹ The Proposed Decision also violates the excessive fines clauses of both the U.S. and California constitutions. See U.S. Const. amend VIII (imposing “limits on] the government’s power to extract payments . . . as punishment for some offense.”); Cal. Const. art. I, § 17 (“Cruel or unusual punishment may not be inflicted or excessive fines imposed.”). The PD also violates principles of substantive due process protected under the Fourteenth Amendment of the U.S. Constitution. The Eighth Amendment’s prohibition against excessive fines applies to the states. *Timbs v. Indiana*, 139 S.Ct. 682, 691-692 (2019).

¹⁰ See *Id.* at p.142.

¹¹ Assigned Commissioner’s Ruling Requesting Comments on Strategies to Address the Home Broadband Adoption Gap, Rulemaking 20-02-008 (Apr. 16, 2025).

¹² Home Broadband Adoption Report, California Public Utilities Commission (April 16, 2025).

¹³ “Speaker Robert Rivas Announces New Assembly Actions Targeting Biggest Cost Drivers for Californians,” Press Release (Apr.23, 2025), <https://speaker.asmdc.org/press-releases/20250423-speaker-robert-rivas-announces-new-assembly-actions-targeting-biggest-cost>

¹⁴ See AB353 (Boerner) and SB 716 (Durazo), both of which passed out of their respective committees in April 2025.

Likewise, raising the cost of providing service does not encourage further investment in the network, thereby undermining efforts by providers to close the digital divide. If a provider is spending its capital on additional compliance measures and fines, it cannot spend those same dollars to further invest in the network. In Executive Order N-73-20, Governor Newsom directed California state agencies “to pursue a minimum broadband speed goal of 100 megabits per second download speed to guide infrastructure investments and program implementation to benefit all Californians.”¹⁵ Much of the desired progress in next-generation communications infrastructure that will enable all Californians to have high-speed connections will come directly from the investments of private companies in California infrastructure. Therefore, diverting funding intended for infrastructure and spending it instead on additional compliance measures or fines, all of which will have dubious incremental benefits to customers, will work at cross-purposes with the state’s goals. It will reduce the capital available for investment either in unserved areas or in creating the competitive environment that the state seeks to foster.

Furthermore, tightening of enforcement on legacy providers at a time when legacy providers are either currently in the process of using their own capital to overbuild their own legacy networks with next generation fiber infrastructure, or that are in the process of being overbuilt with government subsidies because these areas are considered unserved or underserved is contrary to the state’s goals. In California, approximately 5% of customers subscribe to legacy POTS. The costs of these copper networks are exorbitant to maintain, yet the Decision seeks to punish those service providers further by fining them and taking away the very capital needed to modernize their networks so that consumers have access to more and better service, further chaining the provider and the customer to outdated technology. Indeed, the CPUC has initiated a separate proceeding to consider

¹⁵ Exec. Order No. N-73-201 at (1) available at <https://www.gov.ca.gov/wp-content/uploads/2020/08/8.14.20-EO-N-73-20.pdf>.

reforms to Carrier of Last Resort (COLR) obligations in a supposed effort to update old legacy rules.¹⁶ Likewise, the California Assembly is considering a bill to modernize networks with a goal of ultimately moving consumers to better, more affordable technologies.¹⁷ Thus, enacting further penalties on legacy providers at this time is inconsistent with the spirit of that effort to modernize how networks in California are governed.

The Commission should instead focus on encouraging the deployment of forward-looking technologies. USTelecom members throughout California are committed to deploying fiber as legacy services increasingly become inadequate to meet California's future-looking broadband goals. The Commission should be careful not to do anything that would require ILECs to devote further resources to legacy copper networks that cannot meet modern communications needs; using resources like this would undoubtedly delay the very fiber deployments that ILECs are working to build and that the Commission has otherwise encouraged.

Additionally, the imposition of such specific timeframes for a provider to respond to a customer (as described herein) or face penalties is not only unrealistic, but the timeframes themselves are also not based on any evidentiary finding. Service providers have every incentive to ensure that their customers remain satisfied with their service. It is good customer service that retains customers, particularly given the highly competitive telecommunications marketplace. Service providers are the firsthand experts in not only how long it takes to respond to a customer's specific request, but how to manage customer satisfaction in this regard. USTelecom members have been providing service in the state for many years and while there is some customer churn, many customers have stayed with the same provider for decades even though they have a growing number of choices. The Decision violates due process by introducing new metrics for evaluating service quality without providing the

¹⁶ Order Instituting Rulemaking Proceeding to Consider Changes to the Commission's Carrier of Last Resort Rules, CPUC, Rulemaking 24-06-012 (Jun. 28, 2024).

¹⁷ See AB470 (McKinnor) which passed out of the Assembly Communications and Conveyance Committees in April 2025.

parties the opportunity to comment on those new metrics, and by assessing penalties for events beyond the carriers' control.¹⁸ For the Commission to presume to know better and set short unrealistic times to respond that are not based on any fact or experience is not only punitive it is an abuse of the Commission's discretion to do so without providing any evidence in the record to support the conclusion which is in violation of state law.¹⁹ There is no basis in evidentiary fact for the response times indicated, making such action arbitrary and in violation of law. In fact, the record shows that in a myriad of circumstances the requirements in the Decision would have adverse consequences for service providers and not improve consumer experience or drive further investment.²⁰

IV. FEDERAL LAW PREEMPTS CPUC REGULATION OF VOIP

Additionally, federal law preempts CPUC regulation of VoIP. CPUC regulation would conflict with federal law because federal law occupies the field of regulation of inherently interstate communications services like VoIP. The Federal Communications Commission (FCC) has consistently rejected any attempt to regulate VoIP as a traditional telephone service and has preempted state commissions from regulating over-the-top VoIP as a public utility, including through

¹⁸ "Due process requires that parties be given notice and opportunity to be heard. There must be due notice and an opportunity to be heard, and the procedure must be consistent with the essentials of a fair trial, and the Commission must act upon the evidence and not arbitrarily." D.06-04-075 at 43–44 (citing *R.R. Com. of Cal. v. Pac. Gas & Elec. Co.*, 302 U.S. 388, 393 (1938)).

¹⁹ See Cal. Pub. Util. Code § 1757.1(a)(1), (4) (reviewing court may set aside a Commission decision that is an "abuse of discretion" or is "not supported by the [factual] findings"); see also *Securus Techs., LLC v. Pub. Util. Comm'n*, 88 Cal. App. 5th 787, 803 (2023) (court will consider "whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support" and "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute") (citation and internal quotation marks omitted).

²⁰ See e.g., Response of USTelecom – The Broadband Association on the Order Instituting Rulemaking Proceeding to Consider Amendments to General Order 133 (Sep. 3, 2024); Comments of CTIA on Phase One Staff Proposal (Sep. 3, 2024); Comments of the California Broadband and Video Association on Administrative Law Judge's Ruling Issuing Staff Proposal.

entry regulation.²¹ And the Eighth Circuit determined that attempted state regulation of fixed, interconnected VoIP service is preempted by federal law.²²

USTelecom has explained multiple times²³ that the CPUC’s proposed regulations are preempted because they conflict with federal law²⁴ and that CPUC regulation is also preempted because federal law occupies the field of regulation in this area.²⁵ This is primarily because unlike separable “local” and “long-distance” traditional telephone services,²⁶ VoIP cannot readily be separated into intrastate and interstate components.²⁷ As the FCC explained in preempting states from imposing “traditional ‘telephone company’ regulations” even as to intrastate VoIP services,²⁸ there is no “plausible approach to separating [VoIP services] into interstate and intrastate components for purposes of enabling dual federal and state regulations to coexist without ‘negating’ federal policy and rules.”²⁹ The Eighth Circuit upheld the FCC’s preemption of such intrastate VoIP

²¹ See e.g., Vonage Holdings Corporation Petition for Declaratory Ruling Concerning and Order of the Minnesota Public Utilities Commission, 19 FCC Rcd 22404 ¶ 1 & n. 78 (2004) (“Vonage Order”), aff’d, *Minnesota PUC v. FCC*, 483 F.3d 570 (8th Cir. 2007); *Pulver Ruling*, 19 FCC Rcd 3307 (2004).

²² *Charter Advanced Services (MN), LLC v. Lange*, 903 F.3d 715, 718, 719 (8th Cir. 2018) (application for rehearing en banc denied; petition for certiorari pending sub nom. *Dan M. Lipschultz et al. v. Charter Advanced Services (MN), LLC, et al.*, Case No. 18-1386).

²³ See e.g., Response of USTelecom – The Broadband Association on the Order Instituting Rulemaking Proceeding to Consider Amendments to General Order 133 (Sep. 3, 2024) at 5-8.

²⁴ See *Fidelity Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 153 (1982) (holding that state law is preempted where it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of” a federal regulatory framework).

²⁵ *Oneok, Inc. v. Leajet, Inc.*, 5757 U.S. 373, 377 (2015).

²⁶ Cf. *Ivy Broad. Co. v. AT&T Co.*, 391 F.2d 486, 490-91 (2d Cir. 1968).

²⁷ See *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570, 578 (8th Cir. 2007); *Universal Service Contribution Methodology et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7544-45, ¶ 53 (2006) (recognizing that it is difficult for some interconnected VoIP providers to separate their traffic on a jurisdictional basis and asserting that “it would be reasonable for us to treat the interconnected VoIP traffic as 100% interstate for USF purposes”).

²⁸ Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling*, 19 FCC Rcd 22404, para. 1 (2007).

²⁹ *Id.* para. 23; see *id.* paras. 32, 46 (explaining that this “practical inseverability” exists for all VoIP services, including those offered by cable companies).

regulation and, later, reaffirmed that preemption in the context of a cable VoIP service.³⁰ Thus, state regulation of VoIP of the sort the CPUC contemplates is not permissible.

While the Commission has previously expressed that it disagrees with this interpretation of the law with respect to states' limited jurisdiction over VoIP, it has provided a full year for implementation.³¹ Indeed implementing new requirements on VoIP would be a large undertaking and so burdensome that in a separate proceeding before the Commission, the Cloud Communications Alliance (CCA) and the Cloud Voice Alliance (CVA) (jointly CCA-CVA) have asked the FCC to provide clarity on this Commission's interpretation of the *Vonage* case (upon which the CPUC's arguments rely) and therefore California's jurisdiction to regulate VoIP service and has filed a Petition for Declaratory Ruling with the FCC seeking such clarification.³² CCA-CVA also asked this Commission to defer implementing licensing requirements on VoIP until the FCC has had a chance to act on that Petition.³³ USTelecom supports CCA-CVA's request and asks that this Commission defer action in this proceeding until the matter of California's jurisdiction has been clarified by the FCC. The matter of whether or not the CPUC has jurisdiction to regulate VoIP in the way that it is proposed here has relevance to all proposed decisions of the Commission that concern VoIP, and therefore the Commission should take no further action until the issue is resolved.

V. CONCLUSION

For the reasons stated above, the CPUC should not further regulate VoIP or POTS as described in the Decision. It would harm consumers, deter competition for voice services, and impermissibly conflict with federal law. The robust competition that already exists in California

³⁰ See *Minnesota Pub. Utils. Comm'n*, 483 F.3d at 578-82; *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715, 720 (8th Cir. 2018).

³¹ See *Decision* at p.150.

³² See Petition for Declaratory Ruling Regarding State Regulatory Framework for Interconnected Voice Services Established by the California Public Utilities Commission in Decision 24-11-003, Cloud Communications Alliance and Cloud Voice Alliance, WC Docket No. _____ (Jan. 27, 2025).

³³ See Cloud Communications Alliance's Comments Requesting Deferral of Phase II Proceeding Pending FCC Determination of Petition for Declaratory Ruling, Rulemaking 22-08-008 (Feb.7, 2025).

negates the need to add regulation. Notwithstanding its opposition to the Decision, USTelecom appreciates the opportunity to submit this response, and our members look forward to continuing to work with the CPUC in their commitment to providing reliable voice and high-speed broadband connectivity to all Californians.

Respectfully submitted,

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