



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

FILED

5-07-15
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

**COMMENTS OF COX CALIFORNIA TELCOM, LLC,
DBA COX COMMUNICATIONS, (U-5684-C) ON PROPOSED DECISION OF
PRESIDENT PICKER, MAILED APRIL 17, 2015**

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

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

Dated: May 7, 2015

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Pursuant to the California Public Utilities Commission’s Rule of Practice and Procedure (“Rules”), Cox California Telcom, LLC dba Cox Communications (U-5684-C) hereby submits these timely comments on the Proposed Decision of President Picker titled “Decision Deferring Network Study Requirement Adopted in Decision 13-02-023” (hereafter “Proposed Decision” or “PD”).

As detailed below, Cox recommends that the Proposed Decision be revised to ensure that it cannot be interpreted as pre-judging issues that are currently pending before the Commission.

I. The Proposed Decision Should Be Revised To Avoid Pre-Judging Issues Currently Pending Consideration by the Commission.

Decision 13-02-023 confirmed the then-Assigned Commissioner’s ruling which ordered an examination of AT&T’s and Verizon’s respective networks and the Proposed Decision proposes deferring those examinations until the Commission considers the proposed rules included in the Staff Report issued in February (“February Staff Report”). Addressing the requirements adopted D.13-02-023 that have not been completed to date is the proper procedural step for the Commission to take at this time. Cox, nonetheless, cautions the Commission against adopting a decision deferring the network examination on grounds that are not consistent with the record and that otherwise could be interpreted to pre-judge issues that are currently pending before the Commission.

While the February Staff Report proposes a refund and penalty mechanism, voluminous and detailed comments and reply comments identifying substantive errors with the proposed mechanisms have been submitted into the record. Indeed, reply comments on the February Staff Report were filed the same day as the Commission published the Proposed Decision. It would be legal error for the Commission to adopt a decision which relies only on a portion of the record (i.e. the February Staff Report) and not the full record (i.e. comments and reply comments submitted in response to the February Staff Report) compiled to date. This is especially true since comments and reply comments on the February Staff Report reflect that prior comments carriers have submitted do not appear to have been analyzed or incorporated into proposals to date.¹

¹ See Comments of Citizens Telecommunications Company of California Inc., (U 1024 C) and Frontier Communications of the Southwest Inc.(U 1026 C) to Assigned Administrative Law Judge’s Ruling for Comments on Staff Proposal For Modification to General Order 133-C, pp. 2-3 (dated March 30, 2015).

In deferring the examinations ordered in D.13-02-023, the PD refers to the February Staff Report’s proposals for operational metrics and automatic penalty mechanism “for larger telephone companies that continually do not meet minimum service quality standard measures.”² This text in the PD is not wholly accurate in that the refund and penalty mechanisms in the February Staff Report would apply to all URF carriers – regardless of size and history of compliance - required to report under GO 133-C.³ Albeit, AT&T and Verizon are the largest telephone corporations required to comply with GO 133-C and the February Staff Report states that they have continually missed GO 133-C metrics. Indeed, comments and reply comments on the February Staff Report, as well as comments filed throughout this proceeding, reflect AT&T and Verizon not meeting GO 133-C metrics, and that there is *not* an industry-wide problem.

Notably, Cox submits that the focus of Joint Consumers’ and ORA’s respective comments is AT&T’s and Verizon’s respective performances under GO 133-C, and not those of the other URF carriers.⁴ Further, other comments establish that generally *carriers other* than Verizon and AT&T have been meeting or are very close to meeting GO 133-C metrics.⁵ Since there is not sufficient evidence in the record demonstrating an industry-wide problem, it is important that the Commission not pre-judge the need for industry-wide rules.

Finally, the PD states that the proposed penalty mechanism in the February Staff Report is predicated on a prior Commission decision in which the Commission found that SBC (AT&T California’s predecessor) failed to comply with Section 451 and violated Section 702 for non-

² PD, p. 3.

³ The February Staff Report proposes exempting the Small LECs from the refund and penalty mechanisms.

⁴ Acknowledging that Joint Consumers’ comments state that there is a pattern of recurring conduct, Cox responded by showing how data in the record refutes that statement with respect to competitive local exchange carriers (“CLECs”). See Reply Comments of Cox California Telecom, LLC, dba Cox Communications, (U 5684 C) On Assigned Administrative Law Judge’s Ruling Setting Dates for Comments and Reply Comments on Staff Proposal (With Correction to Pages B-1 and B-2), dated February 2, 2015, p. 3 (dated April 17, 2015) (“Cox Reply Comments”).

⁵ Cox Reply Comments, p. 3. Cox comments reflect, “Whereas data for the ILECs show that Verizon and AT&T did not exceed 76% for the OOS metric in any given year, the data for many CLECs shows percentages generally at or well-above 84% in any given year. In fact, many CLECs [not reliance on the ILECs’ networks] have routinely exceeded the 90% threshold or were within a few percentage points of it.”⁵ Additionally, neither the September 2014 or the February 2015 Staff Reports nor the comments of consumer advocates take into account that certain CLECs may not achieve the existing OOS standard due to their reliance on the AT&T and Verizon networks.⁵ Ignoring data and facts specific to the CLECs is unfair and unreasonable. Taking this data into account, the Commission cannot adopt the Proposed Rules.” Id. (Emphasis added).

compliance with certain terms of a decision issued in the SBC-Pacific Telesis merger.⁶ While the proposal in the February Staff Report is premised on that decision among others, comments in the record reflect that those decisions do not support the Commission adopting industry-wide rules concerning refunds and penalties as proposed in the February Staff Report.⁷ As just one example, nothing in the record establishes that a carrier missing a single service quality metric by 1% for three consecutive months, equates to a violation of Section 451.

Cox strongly recommends that the Commission revise the Proposed Decision so as not to pre-judge or appear to pre-judge proposals in the February Staff Report and/or related issues identified in recently submitted comments.

II. The PD Identifies Reasonable Grounds for Deferring the Network Examinations At This Time.

The PD would defer the previously-ordered network examination of AT&T's and Verizon's respective networks until after a decision is issued on the February Staff Report.⁸ The PD defers the examination on the grounds that "engaging in a costly and time consuming examination of AT&T California's and Verizon California's networks at this time may not be necessary to achieve the overall goal of telephone companies providing service at a level that meets public safety and consumer needs."⁹ Cox agrees that this is a reasonable basis for the Proposed Decision deferring the network examination at this time.

The PD reflects that the network examination may be required under a separate Commission order, and Cox proposes that the PD be revised to state that a network examination is a method of enforcement that Staff and the Commission may utilize when concerned with a provider's compliance with GO 133-C. For example, existing 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

⁶ PD, p. 3.

⁷ See e.g. Comments of Cox California Telcom, LLC, dba Cox Communications, (U 5684 C) On Assigned Administrative Law Judge's Ruling Setting Dates for Comments and Reply Comments on Staff Proposal (With Correction to Pages B-1 and B-2), dated February 2, 2015, pp. 16-22 (dated April 17, 2015); Opening Comments of Pacific Bell Telephone Company D/B/A AT&T California (U 1001 C); AT&T Corp., f/k/a AT&T Communications of California, Inc. (U 5002 C); Teleport Communications America, f/k/a TCG San Francisco (U 5454 C); and AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U 3060 C); AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C); and Santa Barbara Cellular Systems Ltd., (U 3015 C) on Staff Proposal, pp. 9-15 (dated March 30, 2015).

⁸ PD, p. 4.

⁹ Id.

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.

Under this rule, Staff can require a carrier that misses service quality metrics to submit a corrective action report ("CAR"). As part of the CAR process, Staff and any given carrier could agree that a limited review of the carriers' network may be appropriate.

Indeed, there are numerous existing methods that Staff and the Commission today can utilize to ensure that carriers which routinely miss GO 133-C metrics improve their performance. Those include:

- Informally investigating a carrier for not complying with service quality measures;
- Requiring a carrier to submit CARs and to report monthly;
- Utilizing the NORS reports to identify problems underlying poor performance of a given carrier, determining what if any actions the FCC has taken and identifying best practices for such carrier;
- Reviewing consumer complaints submitted to the Consumer Affairs Bureau to determine if there is a trend of non-compliance;
- Inspecting carrier's records which they are required to keep;
- Requiring, as part of a corrective action report, a carrier to meet additional staffing levels;
- Upon the recommendation of Staff, instituting a formal investigation for a carrier failing to meet the minimum reporting service level for six or more consecutive months.¹⁰

¹⁰ GO 133-C, Rule 7. This rule states in its entirety, "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).

Since the record in this proceeding does not include evidence of an *industry-wide problem* but does establish that adopting the operational metrics and penalty mechanism in the February Staff Report would impose significant burdens and costs on carriers that do satisfy or are close to satisfying GO 133-C metrics, the Proposed Decision should reflect that a network examination is one method that the Commission may consider with respect to carriers that routinely do not meet GO 133-C metrics.

III. Conclusion.

Subject to the Commission adopting the proposed revisions to findings of fact and conclusions of law set forth in Attachment 1, Cox supports the Commission adopting the Proposed Decision.

Dated: May 7, 2015

Respectfully submitted,

/s/ Margaret L. Tobias

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

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

Attachment 1
Proposed Revisions to Findings of Fact and Conclusions of Law

Findings of Fact

1. Decision 13-02-023 requires a study of carrier AT&T California's and Verizon California's respective network infrastructures, facilities, policies, and practices was ordered on February 28, 2013.
2. On September 24, 2014, Commissioner Picker issued his Amended Scoping Memo and Ruling which included Attachment A Staff Report. Parties filed comments and reply comments in response to the Amended Scoping Memo, including the Staff Report, on October 24, 2014 and November 13, 2014, respectively.
3. The penalty and fine mechanism currently under consideration in this proceeding is based on operational outcomes, not detailed examination of network facilities. An ALJ Ruling, dated February 2, 2015, solicited comments on the Communications Division's proposed modifications to General Order 133-C, including a Service Quality Refunds and Fines Proposal ("Staff's Proposed Modifications to General Order 133-C"). In response, comments were submitted on March 30, 2015, and reply comments were filed on April 17, 2015.
4. When the Commission adopted Decision 13-02-023, it anticipated that the study of AT&T's and Verizon's respective networks would be a foundational activity in this proceeding. However, there has been a significant passage of time since that order was issued and the proposal in Staff's Proposed Modifications to General Order 133-C is not premised on a detailed examination of either AT&T's or Verizon's respective networks.
5. 4. Depending on what, if any, of the service quality rule changes are adopted in this proceeding, the specific study ordered in 2013 may no longer be necessary.

Conclusions of Law

1. The study ordered in 2013 should be deferred until after the Commission acts on the Staff's Proposed Modifications to General Order 133-C.
2. The decision to defer the network examinations ordered in Decision 13-02-023 is not intended to and does not address the merits of the proposals in Staff's Proposed Modifications to General Order 133-C.
3. 2. If it is determined that the network examination required by D.13-02-023 is necessary, it should will be directed under a separate Commission order. Additionally, under existing GO 133-C, Rule 7, a network examination could be conducted pursuant to a corrective action report submitted by a given carrier.

ORDER

IT IS ORDERED that:

1. The requirement for a study of AT&T California's and Verizon California's earlier respective network infrastructure, facilities, policies, and practices that was ordered by the Commission in

Decision 13-02-023, is deferred until after a decision is issued on the Staff's Proposed Modifications to General Order 133-C.

2. Rulemaking 11-12-001 remains open pending the resolution of issues identified in the original Order Instituting Rulemaking and the Amended Scoping Memo dated September 24, 2014.