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

In the Matter of the Joint Application of
Frontier Communications Corporation,
Frontier Communications of America, Inc. (U
5429 C), Verizon California Inc. (U 1002 C),
Verizon Long Distance, LLC (U 5732 C), and
Newco West Holdings LLC for Approval of
Transfer of Control Over Verizon California
Inc. and Related Approval of Transfer of
Assets and Certifications.

Rulemaking 15-03-005

NOTICE OF EX PARTE COMMUNICATION

Pursuant to Commission Rule of Practice and Procedure 8.4, the Office of Ratepayer Advocates ("ORA"), The Utility Reform Network ("TURN"), The Greenlining Institute ("Greenlining"), the Center for Accessible Technology ("CforAT"), and Communications Workers of America ("CWA"), jointly give notice of the following ex parte communications.

On May 4, 2015, Ana-Maria Johnson (ORA), Regina Costa (TURN), Paul Goodman (Greenlining), Melissa Kasnitz (CforAT), and Jamie Mauldin (CWA) met with the following:

- Niki Bawa, Advisor to Commissioner Peterman, from 11:15am to 11:45am; and
- Jessica Hecht, Telecommunications, Water, and Transportation Advisor to Commissioner Florio, from 2pm to 2:30 pm.

On May 5, 2015, the same parties met with Lester Wong, Advisor to Commissioner Randolph from 3pm to 3:40pm. All of the meetings were at the Commission offices in San Francisco and initiated by the above-listed parties.

These meetings were held in order to discuss a Proposed Decision issued in a separate docket, Rulemaking 11-12-001.¹ However, during the course of the discussions, the parties identified the possible precedential effect that Proposed Decision could have on this application. Specifically, Ms. Mauldin discussed some relevant language contained in the Proposed Decision which has the potential to allow carriers, including potentially the Applicants in this proceeding, to argue that an inspection of a carrier's network is not necessary to achieve an overall goal of providing service which meets public safety standards and consumer needs.

Additionally, the parties served the attached *ex parte* letter regarding R.11-12-001 on all the Commissioners and their advisors on May 7, 2015. The attached letter also addresses the potentially prejudicial issues discussed above.

¹ R.11-12-001 is categorized as a quasi-legislative proceeding; as such, in accordance with Rule 8.3(a), *ex parte* communications in that proceeding are allowed without restriction or reporting requirement.

Dated May 7, 2015

/s/

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Commissioner Mike Florio
Commissioner Carla J. Peterman
Commissioner Liane M. Randolph
Commissioner Catherine J. Sandoval
California Public Utilities Commission
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May 7, 2015

RE: R.11-12-001(Service Quality), Opposition to President Picker's April 17, 2015 Proposed Decision to Defer and Possibly Abandon the Infrastructure Study of California's Telecommunications Network Ordered in Decision (D.) 13-02-023

Dear Commissioners:

The Office of Ratepayer Advocates ("ORA"), The Utility Reform Network ("TURN"), The Greenlining Institute ("Greenlining"), the Center for Accessible Technology ("CforAT"), Communications Workers of America, District 9 ("CWA"), and Consumer Federation of California ("CFC") (collectively the "Public Interest Parties") oppose the April 17, 2015 Proposed Decision of Commissioner Picker ("PD"). The PD errs by failing to demonstrate with substantial evidence in the record a reasonable basis to modify or reverse Commission Decision (D.) 13-02-023. In D.13-02-023, the Commission ordered its Communication's Division ("CD") to oversee a study of California's telecommunications network infrastructure as a "necessary foundational activity" in its Service Quality Rulemaking proceeding, R.11-12-001.

However, the PD would "defer" this important, independent study of the "network infrastructure, facilities, policies, and practices" of AT&T California and Verizon California ("Network Infrastructure Study")¹ and finds that this study "may no longer be necessary."² The PD concludes that "if it is determined that the network examination is

¹ *Decision Affirming Provisions of the Scoping Memo and Ruling*, D.13-12-023, Ordering Paragraph (OP) 1 and 2, at 8.

² PD, Finding of Fact (FOF) 4, at 5 ["Depending on what, if any, of the service quality rule changes are adopted in this proceeding, the study ordered in 2013 may no longer be necessary."]; see also *id.*, Conclusion of Law (COL) 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."]; see also *id.*, Ordering Paragraph (OP) 1 ["The requirement for a study of carrier 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."].

necessary, it should be directed under a separate Commission order.”³ But, the Commission already found the study to be necessary in D.13-02-023 and ordered AT&T and Verizon to pay for its cost.⁴

The PD reverses D.13-02-023 on the sole basis that the Commission is “considering changes to our service quality rules that if adopted in whole or in part, will provide telephone corporations with strong motivations to improve service and meet the minimum service quality standards.”⁵ The “changes” to the service quality rules to which the PD refers relate to a “penalty and fine mechanism” that was proposed by CD⁶ and subject to recent comments by the parties. Parties submitted reply comments on CD’s proposal, including several industry replies opposing the penalty mechanism,⁷ on the same day that President Picker issued the PD. The PD does not adopt a penalty mechanism, however. Rather, the PD finds that “[d]epending on what, if any, of the service quality rule changes are adopted in this proceeding, the study ordered in 2013 may no longer be necessary.”⁸ The PD does not cite to any new evidence to support overturning D.13-02-023’s finding that conducting the study is “a necessary foundational activity in this proceeding.”²

While Public Interest Parties support CD’s proposal to add a penalty and fine mechanism to General Order 133-C, a penalty mechanism is not a reasonable substitute for the Network Infrastructure Study. Each serves a different purpose.

The study is meant to be the first step to “help gauge the condition of carrier infrastructure and facilities to ensure the facilities support a *level of service consistent with public safety and customer needs*.”¹⁰ The study would provide the Commission with the necessary information to properly determine the “level of service” needed today, to answer a key question in this rulemaking:

³ PD, COL 2, at 5.

⁴ D.13-02-023, FOF 1, at 7; *see also id.*, COL 1-3, at 7-8; *see also id.*, OP 1.2.

⁵ PD, at 4.

⁶ PD, at 3-4; *see also id.*, FOF 3, at 5.

⁷ *See e.g.*, Reply Comments of Pacific Bell Telephone Company dba AT&T California, et al. on Staff Proposal, at 25; Verizon California Inc.’s Reply Comments on Staff Proposal to Modify General Order 133-C, at 4-5; Reply Comments of Cox California Telecom, LLC, dba Cox Communications on Assigned Administrative Law Judge’s Ruling Setting Dates for Comments and Reply Comments on Staff Proposal, at 6; Reply Comments by Citizens Telecommunications Company of California and Frontier Communications of the Southwest, Inc. to Assigned Administrative Law Judge’s Ruling for Comments on Staff Proposal for Modifications to General Order 133-C, at 3.

⁸ PD, FOF 4, at 5.

² D.13-02-023, FOF 1, at 7.

¹⁰ *Ibid* (emphasis added).

Are the adopted G.O. [General Order] 133-C service quality standards appropriate and reasonable? If not, should new service quality standards be adopted or should existing standards be modified or eliminated?¹¹

D.13-02-023 affirmed the underlying Scoping Memo, which noted that one possible conclusion is that competitive forces and the minimal standards contained in G.O. 133-C “are not sufficient to provide the service quality the Commission is required to ensure, and the level of public safety the Commission is committed to upholding.”¹² The Commission needs the study to obtain empirical, baseline data to update G.O. 133-C to further its statutory mandate to ensure that the wireline network – upon which nearly all communications services rely, regardless of the technology used to provide those services – is reliable and resilient.

Penalties are undoubtedly an important tool to motivate compliance with service quality standards. But, they do not address the threshold question of *which standards* should apply today, so that performance can *then* be appropriately measured, monitored, and enforced. Once the Commission has evaluated the findings from the Network Infrastructure Study, it would then be better positioned to determine these new standards.

A proper penalty mechanism would correspond to these new standards. The penalty mechanism cited by the PD, however, appears to only relate to the *existing* minimal standards in G.O. 133-C.¹³ This approach predetermines that the Commission will find that new standards are not needed, but evidence in the record, as described below, suggests the opposite.

The PD also takes an approach that appears to be inconsistent with the Commission’s pledge to make safety its highest priority:

The California Public Utilities Commission has a long and important history regulating the industries responsible for *building* and *maintaining* services that are key to our daily lives and prosperity – electricity, natural gas, *telecommunications*, rail and water....Safety is a top priority, and we need to strengthen and improve our safety and enforcement programs.¹⁴

The Public Interest Parties applaud the Commission for recognizing the importance of safety in *all* industries the Commission regulates, including telecommunications. The

¹¹ Order Instituting Rulemaking (OIR), R.11-12-001, at 13.

¹² Scoping Memo (9/24/12), at 6, *affirmed* by D.13-02-023.

¹³ See PD, at 2-3, *citing* CD’s Proposal for Modifications to G.O. 133-C (Feb. 2, 2015).

¹⁴ See President Picker’s OP-Ed piece in The Sacramento Bee, January 14, 2015, found at <http://www.sacbee.com/opinion/op-ed/soapbox/article6538761.html> (last visited 4/29/15)(emphasis added).

Scoping Memo clearly articulated the connection between safety and the Network Infrastructure Study: "In order to maintain acceptable levels of service quality for California customers, it is necessary to ensure that carriers have access to and adequate network of infrastructure. Without ubiquitous functional infrastructure that is adequately maintained, services provided to customers will degrade. In extreme cases, facilities failures will lead to a complete loss of service, including E911, to customers served by those facilities. As part of our review of the factors that may affect service quality, Communications Division *shall* oversee an examination of carriers' facilities."¹⁵

We hope that President Picker will reconsider these issues, withdraw his PD, and move quickly to fulfill the requirements of D.13-02-023. The Network Infrastructure Study should be conducted now. The Public Interest Parties urge the Commissioners to tour AT&T's and Verizon's facilities with CWA's members so that they may see firsthand the real urgency for this study.¹⁶

BACKGROUND

Every telephone corporation must "furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities,...as necessary to promote the safety, health, comfort, and convenience of its patrons...and the public."¹⁷ But, it is the Commission's statutory duty to ensure that these telephone companies fulfill their statutory obligations by providing reliable telephone service.¹⁸ Reliable telephone service depends upon networks that are adequately maintained, which includes having sufficient and highly trained workforce capable of repairing and maintaining network facilities.¹⁹

The Service Quality proceeding was triggered in large part by the failure of AT&T and Verizon to adequately maintain their networks, resulting in approximately 250,000 customers in the greater Los Angeles area losing service for an extended period of time in late 2010 through early 2011.²⁰ The outages were the subject of an informational hearing under the auspices of the California Senate Energy, Utilities and Commerce Committee, on February 4, 2011. The testimony at this hearing made it abundantly clear that the wireline networks operated by AT&T and Verizon were degrading due to business decisions on the part of both companies not to maintain and repair aging plant and, at the same time, to reduce the number of skilled personnel assigned to maintenance and

¹⁵ R.11-12-001, September 24, 2012 Scoping Memo, at 12 (emphasis added); *affirmed* by D.13-02-023, at 3 and FOF 1, at 7.

¹⁶ We encourage any Commissioner, Commissioner's staff, or member of CD to contact CWA's counsel to request a tour of the carriers' facilities.

¹⁷ Pub. Util. Code § 451; *see also* OIR, at 2. All section references are to the Public Utilities Code unless otherwise stated.

¹⁸ § § 2101, 2896, 2897.

¹⁹ *See* R.11-12-001, CWA Post-Workshop Comments, at 2-3, February 28, 2012.

²⁰ OIR, at 7.

repair.²¹ These contentions were supported by the results of CD's staff report analyzing service quality data for 2010. The report showed that AT&T and Verizon had failed to meet Out of Service Restoral requirements for all of 2010, and that the outage data submitted by these carriers did not include the extensive outages addressed at the legislative hearing.²²

The Service Quality Rulemaking, R.11-02-001, posed the following question:

Should the Commission hire a network consultant to:
a) review and evaluate the service quality results; b) to evaluate and monitor telecommunications carrier's infrastructure, investments and manpower to improve service quality; and c) to help the Commission determine "best practices"? If so how should they be funded and who should administer the contract(s)?²³

The September 24, 2012 Assigned Commissioner's Scoping Memo and Ruling ("Scoping Memo") stated:

In order to maintain acceptable levels of service quality for California customers, it is necessary to ensure that carriers have access to an adequate network of infrastructure. Without ubiquitous functional infrastructure that is adequately maintained, services provided to customers will degrade. In extreme cases, facilities failures will lead to a complete loss of service, including E911, to customers served by those facilities.²⁴

The Scoping Memo noted, "according to CD staff, service disruptions apparently caused by infrastructure failures have already been experienced in some (especially rural) parts of the state."²⁵ The Scoping Memo found that an independent examination of the facilities of AT&T and Verizon should be conducted and stated that it is a "necessary foundational activity" in the proceeding.

²¹ Informational Hearing, *Telephone Service Outages and Infrastructure Needs*, Senate Energy Utilities and Communications Committee, February 4, 2011, Testimony of CWA; and Testimony of Richard Jalkut, CEO TelePacific, audio available at <http://media.senate.ca.gov/SenEnergyUtil20110204>; see also, Post-Workshop Comments of The Utility Reform Network (TURN) and the California Association of Competitive Telecommunications Companies (CALTEL), February 28, 2013, at 2, 16-17; CWA, District 9 Post-Workshop Comments, February 28, 2013, at 2, 6, 8 and Attachment 1; and March 2011 Communications Division Staff Report (Attachment to R.11-12-001), at 7 and 12.

²² OIR, at 6-7.

²³ OIR, at 12.

²⁴ Scoping Memo (September 24, 2012) at 12.

²⁵ *Id.*, fn 13, at 12.

²⁶ D.13-02-023, FOF 1, at 7.

²⁷ See FCC's February 26, 2015 Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, at ¶ 391 (defining "public switched network" as "the network that includes any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use[s] the North American Numbering Plan, or Public IP addresses"), found at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf.

²⁸ Post-Workshop Comments of The Utility Reform Network (TURN) and the California Association of Competitive Telecommunications Companies (CALTEL), February 28, 2013, at 2, 16-17; CWA, District 9 Post-Workshop Comments, February 28, 2013, at 2, 6, 8 and Attachment 1; and March 2011 Communications Division Staff Report (Attachment to OIR), at 7 and 12.

²⁹ *Ibid.*

on wireline transport,³⁰ so there are significant ramifications to the entire communications network when wireline facilities are damaged or poorly maintained.

The Network Infrastructure Study was supposed to provide the foundation upon which the Commission would consider new or modified service quality rules. Fines and penalties will not give the Commission the concrete information it needs today to make an informed judgment about whether the network as it exists provides safe and reliable service to California consumers. By definition, a penalty mechanism (if adopted) would take effect well after the harm had occurred. Penalties alone, however, are not sufficient to ensure safe and reliable communications services.

For example, on the energy side, the Commission has been clear that its duty to protect public safety means that it must know what is in the ground.³¹ The telecommunications network is equally important for public safety. While a failure in the telecommunications network may not create an immediate or apparent harm as with gas pipeline failures, lives are nonetheless at risk when there are network failures. Many seniors and those with disabilities rely on the fact that they can call for help in an emergency. If their service goes down, their risk of harm increases.

Some hospitals in California use automated dialing systems to contact nurses, doctors, and other hospital employees during staffing shortages. In the event of a large natural disaster, hazardous material spills, or other wide-spread public safety emergency, this automated dialing system contacts every one of the health care workers and instructs them to come to the hospital to help. An outage that causes the hospital's communications system to fail – because the phone company's lines to the hospital are not properly maintained – would be detrimental. The hospital would not be able to make the necessary “all hands on deck” call, creating the risk that large numbers of injured would arrive at the emergency room with no medical staff to treat them.

It is thus vital that the Commission know the condition of the network by conducting the Network Infrastructure Study. This would provide the Commission with the information necessary to determine the right service quality standards and reporting requirements needed to ensure that telecommunications facilities are built and maintained in a manner consistent with public safety and public convenience.³²

2) Legal Error: The PD Attempts to Reverse Final Commission Decision 13-02-023 Without Making Findings that are Supported by Substantial Evidence.

³⁰ See, e.g., FCC's November 21, 2014 Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-185, at ¶ 3. CLECs rely on legacy copper facilities to provide broadband service; see also Comments of CALTEL on the OIR, January 31, 2012, at 2-3 (describing CLEC's use of bonded copper pairs to provide high-speed service).

³¹ See e.g., D.15-04-021, COL 25, 28, at 296.

³² See §§ 451, 2896.

The PD commits legal error because it conflicts with D.13-02-023, a final Commission decision. The PD contains no findings supported by substantial evidence to support its contention that the study is no longer necessary. It does not address D.13-02-023's finding of fact that an independent examination of AT&T's and Verizon's networks is a "necessary foundational activity," fundamental to crafting revised service quality rules. D.13-02-023 thus continues to govern the scope of this proceeding.

The PD also appears to suggest that the obligation to ensure safe and reliable telephone service falls solely upon the telephone corporation. The PD states, "ensuring that adequate facilities are available and properly maintained to provide safe and reliable telephone service is the responsibility of the management of the telephone companies."³³ The Commission, however, also has the attendant duty to ensure that these telephone companies comply with this obligation. P.U. Code section 2896 mandates that the Commission "ensure that telephone corporations provide customer service that meets reasonable statewide service quality standards including, but not limited to, standards regarding network technical quality, customer service, installation, repair, and billing."³⁴

3) The Network Infrastructure Study Should be Conducted Now so that the Commission May Move Quickly to Address the Current Threats to Public Safety by the Deteriorating Network Infrastructure of AT&T and Verizon

As TURN's Emergency Motion demonstrated, AT&T and Verizon are using the deteriorating network as an opportunity to move customers from a copper network to IP, fiber, and wireless networks that rely on public power (and which offer new opportunities for "upselling" basic service subscribers to more expensive packages and bundles).³⁵ However, the copper network, if properly maintained, is fully functional during power outages because it has its own power source.³⁶ The FCC has recognized the carriers' efforts to engage in this "de facto" copper retirement and proposed rules prohibiting this practice.³⁷ The FCC views states as a partner in its efforts to ensure reliable public communications services. The infrastructure study ordered in D.13-02-023 furthers this national effort.

The record in this proceeding shows the appalling condition of the network and its continued degradation.³⁸ CWA technicians who work for the carriers are often unable to

³³ PD, at 4.

³⁴ Scoping Memo, at 5, *citing* D.09-07-019, at 12 and § 2896.

³⁵ See Emergency Motion of The Utility Reform Network Urging the Commission to Take Immediate Action to Protect Verizon Customers and Prevent Further Deterioration of Verizon's Landline Network (Mar. 17, 2014), at 8-21.

³⁶ See *ibid.*

³⁷ See FCC's November 21, 2014 Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-185, at ¶¶ 17-19, 53, 116, found at https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-185A1.pdf.

³⁸ CWA Post-Workshop Comments, February 28, 2012, at Attachment 1; CWA Opening Comments on Proposed Modifications to GO 133-C, March 30, 2015, at Attachment 1.

perform a repair because the network facilities are so deteriorated.³⁹ If technicians are unable to perform repairs due to the condition of the network, the carriers cannot provide safe and reliable service. Decision 13-02-023 ensured the study would not only look at the condition of the network, but also the “actions are AT&T and Verizon taking to ensure that their facilities are maintained at a level that ensures customers receive quality service.”⁴⁰ Currently, the carriers’ actions prohibit the ability to provide safe and reliable service to its customers by allowing the network to deteriorate to a point where repairs are impossible.

Ensuring that the wireline copper network is properly maintained is particularly important for rural areas. Neither Verizon, nor AT&T, have deployed fiber to the home or the curb in their rural territories and wireless service is spotty, at best. Verizon and AT&T are Carriers of Last Resort and the Commission is obligated to ensure that both carriers provide reliable service to their customers. There is evidence in the record showing that the telephone plant in rural areas is not adequately maintained. The study is necessary to understand the state of the networks serving rural customers.

Furthermore, relying on carriers to self-report provides a limited and inaccurate picture of their operations. CWA members openly discussed at the 2012 workshop that trouble tickets and other reports are often withheld or “fudged.”⁴¹

4) The PD Could Have a Precedential Effect in Other Proceedings

The PD states, “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.”⁴² This broad language has the potential to set a negative precedent for other proceedings before the Commission. For example, Verizon and Frontier recently filed a Joint Application for Approval of Transfer of Control Over Verizon California seeking approval of the sale and transfer to Frontier of certain assets held by Verizon California, and Verizon LD’s customer accounts in Verizon California’s

³⁹ Attached hereto as “Attachment A” are photos from CWA members depicting the poor or deteriorating state of some network facilities.

⁴⁰ D.13-02-023, Attachment A, Scoping Memo and Ruling, at 8.

⁴¹ TURN and CALTEL, Post Workshop Comments, February 28, 2012, at 6-7 (“As the CWA representatives and network technicians attending the workshop pointed out, trouble tickets in and of themselves do not always provide complete information about outages. For example, a trouble ticket is generated when a customer calls the carrier to report a problem. There may be situations where a handful of customers call in generating a handful of trouble tickets, but the telephone company has records showing that thousands of lines are out.”).

⁴² PD, at 4.

service territory.⁴³ The operations that would be transferred include approximately 2 million lines used to provide voice services.⁴⁴

Given this proposed transfer of control in that application, it is absolutely paramount to conclude an investigation of the physical network to determine whether Verizon bears responsibility for the neglect of the network before the transfer is approved. If the study ordered in this proceeding is not completed by the time this application is decided, then the Commission must not preclude an investigation into the state of Verizon's networks. The language contained in the PD, if approved, could allow the carriers to argue that an investigation into the network is "not...necessary to achieve the overall goal of...providing service at a level that meets public safety and consumer needs." This is a dangerous precedent that could have far-reaching effects on future Commission actions.

CONCLUSION

At the April 9, 2015 Commission meeting, every Commissioner emphasized a commitment to ensure safety on the part of *all utilities* as the highest priority of this Commission. The Public Interest Parties applaud the Commission for making clear its commitment to safety and urge the Commission to approach safety issues related to telecommunications in a manner consistent with its approach to gas pipelines – to physically examine facilities *and* to impose penalties to motivate utilities to adequately maintain those facilities. These activities are complimentary; one cannot substitute for the other.

The Network Infrastructure Study would better position the Commission to ensure safe and reliable telephone service by identifying weaknesses in the network so that new standards may be adopted. Neither competitive forces nor the minimal standards currently in G.O. 133-C have been sufficient to meet public safety and convenience needs. The Public Interest Parties urge the Commission to expeditiously complete the study ordered in D.13-02-023, so that the Commission may develop the evidentiary record upon which new service quality standards can and should be adopted.

⁴³ A.15-03-005; Joint Application for Approval of Transfer of Control Over Verizon California Inc. and Related Approval of Transfer of Assets and Certifications.

⁴⁴ *Id.*, at 1-2.

Sincerely,

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ATTACHMENT A

CWA Photos of Deteriorated Network Facilities



















