

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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

Rulemaking 11-12-001
(Filed December 1, 2011)

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION OF COMMISSIONER PICKER
DEFERRING NETWORK STUDY REQUIREMENT STUDY
ADOPTED IN DECISION 13-02-023**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Office of Ratepayer Advocates ("ORA") submits these comments in opposition to the April 17, 2015 Proposed Decision of President Picker, *Deferring Network Study Requirement Adopted in Decision (D.) 13-02-023* ("Proposed Decision" or "PD"). Because the PD errs in finding the study "may no longer be necessary"¹ and concluding that it should be deferred,² the effect of which impacts public safety and convenience, ORA respectfully requests that the PD be withdrawn or rejected.

ORA is concerned that adoption of the PD will result in the Commission abandoning the study altogether, thereby hindering the Commission from creating the robust and complete record it needs to properly address central issues in this rulemaking: "to assess whether the existing [General Order] G.O. 133-C service quality standards and measures meet the goals of the Commission, are relevant to the current regulatory environment and market, and whether there is a need to establish a penalty mechanism for substandard service quality performance."³

The PD seeks to "defer" an already overdue study of the "network infrastructure, facilities, policies, and practices" of AT&T California and Verizon California ("Network Infrastructure Study").⁴ Over two years ago, the Commission – affirming the September 24, 2012 scoping memo and ruling that first ordered the study and rejecting AT&T's and Verizon's arguments that the study is not needed⁵ – found the study was: "a necessary foundational activity within this proceeding to help gauge the condition of carrier infrastructure and facilities and ensure the facilities support a level of service consistent with public safety and customer needs."⁶ The PD reverses course, however, and instead finds: "depending on what, if any, of the service

¹ See PD, Finding of Fact (FOF) 4, at 5.

² See *id.*, Conclusion of Law (COL) 1, at 5.

³ See *Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modifications to Service Quality Rules* ("OIR") 11-12-001, issued Dec. 12, 2011, at 3-4.

⁴ D.13-02-023, *Slip. Op.*, Finding of Fact (FOF) 1, at 7.

⁵ *Id.*, at 4-5.

⁶ D.13-02-023, FOF 1, at 7.

quality rules changes are adopted in this proceeding, the study ordered in 2013 may no longer be necessary.”⁷

The sole reason offered by the PD, without any supporting evidence, relates to a penalty mechanism that is “currently under consideration,” but one that the PD itself does not adopt:

If adopted, the penalty mechanism provides strong motivation to telephone corporations to improve service quality to a level that meets the Commission’s General Order 133-C minimum service quality measure standards and provide safe and reliable service at reasonable rates.⁸

This language suggests that the PD assumes that a penalty mechanism serves the same purpose as the Network Infrastructure Study. It does not. As an initial matter, ORA supports modifying G.O. 133-C to include a penalty mechanism, but that should not be done in lieu of the study because *both* are necessary to ensure safe and reliable telecommunications service in California.

D.13-02-023 clearly stated and supported the purpose of the study: “to develop a picture of the current state of the carrier infrastructure to ensure that it supports, and continues to support, the service quality that meets the needs of California consumers.” Understanding the *current* state of the network is crucial given that “[o]ne possible conclusion that could be drawn from the service quality results contained in the March 2011 CD report is that existing competitive forces and minimal standards [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.”⁹ Fines and penalties, on the other hand, are *ex post facto* remedies that will not give the Commission the empirical information it needs to consider new or modified service quality rules better adapted to a 21st century communications network. This modern network, however, is still heavily dependent on a reliable wireline network.¹⁰

⁷ PD, FOF 4, at 5.

⁸ PD, at 1.

⁹ September 24, 2012 Scoping Memo and Ruling, at 6, *affirmed* by D.13-02-023.

¹⁰See e.g., FCC, *Notice of Proposed Rulemaking and Declaratory Ruling*, FCC 14-185, at ¶ 3.

II. BACKGROUND

A. Substandard Service Quality Results and Concerns Over Network Degradation Due to Deferred or No Maintenance Prompted the Commission to Open this Rulemaking

Four years ago, the Commission opened this Rulemaking, (R.) 11-12-001, on CD's recommendation to "address carriers' compliance issues and to re-evaluate the existing service quality measures and standards" of G.O. 133-C.¹¹ CD had found, in its *March 2011 Staff Report: Telephone Carrier Service Quality Report* ("2011 Staff Report"),¹² "substandard results reported in the GO 133-C service quality reports filed by carriers in 2010," specifically noting AT&T and Verizon had failed to restore service within G.O. 133-C's Out-of-Service ("OOS") repair interval measure for all of year 2010.¹³ The 2011 Report also found significant shortcomings with G.O. 133-C, such as allowing exemptions for service outages caused by "catastrophic events."¹⁴

For example, the 2011 Staff Report found that AT&T and Verizon did not report a major outage event resulting from a series of severe rainstorms in December 2010 and January 2011, which caused 250,000 Southern California customers to lose telecommunications services for various periods of time.¹⁵ Because of the significant impact of these outages, the California Senate Energy, Utilities and Commerce Committee had held an informational hearing to ascertain information regarding the carriers' service restoration efforts.¹⁶ CD reported that while 50% of the affected customers had service restored within four days, many customers remained without service for ten days, and some for as long as 30 days.¹⁷

¹¹ See *Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modifications to Service Quality Rules* ("OIR") 11-12-001, issued Dec. 12, 2011, at 3.

¹² The OIR included the Staff Report as "Attachment A."

¹³ See *id.*, at 2-3, 6-9.

¹⁴ See *ibid.* G.O. 133-C defines "catastrophic event" as: "an event where there is a declaration of a state of emergency by a federal or state authority, and a widespread service outage (an outage affecting at least 3% of the carrier's customers in the state) are circumstances beyond the carrier's control." See *id.*, fn. 1, at 3-4.

¹⁵ See *id.*, at 2-3, 6-9.

¹⁶ See *id.*, at 7-8.

¹⁷ See *id.*, at 8.

According to the OIR, the Commission received letters from many parties concerning CD's 2011 Staff Report. Letters from non-carriers suggested that network degradation due to deferred/no maintenance was the cause of extended outages during the December 2010 and January 2011 rain storms, as well as AT&T and Verizon's inability to meet the repair goal in 2010.¹⁸ Competitive carriers also argued that "deteriorating facilities and extended out-of-service repair times negatively impact customer choice by increasing costs of CLECs through compensating customers to restore confidence in their service. If confidence cannot be restored, it creates an anti-competitive environment by removing CLECs as a viable alternative to the URF ILECs."¹⁹

B. Conducting the Network Infrastructure Study Furthers the Commission's Commitment to Public Safety

The risk to public safety is apparent when the communications network fails.²⁰ The Commission pledged to make safety its highest priority in all the industries it regulates:

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.²¹

ORA applauds the Commission for adopting guiding principles on safety policy, stating it will "be accountable for the oversight of safety in the industries [it] regulates."²² In ordering the Network Infrastructure Study, the Commission recognized that service quality, including the state and reliability of telecommunications infrastructure, was an issue that implicated public

¹⁸ OIR, at 9.

¹⁹ OIR, at 11.

²⁰ See FCC, *Report and Order*, In the Matter of the Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Providers and Broadband Internet Service Providers, 27 F.C.C.R. 2650 (2012) ¶ 16, 20, 30, 67.

²¹ 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).

²² See the Commission Safety Policy Statement (http://www.cpuc.ca.gov/NR/rdonlyres/967047D4-19CE-45B1-8766-057F1D7FF1CD/0/VisionZero4Final621014_5_2.pdf)

safety.²³ The Federal Communications Commission has held that emergency calls made to 911 are dependent on the reliability of the telecommunications network generally.²⁴ Deteriorating network infrastructure, which may cause, contribute to, or prolong service outages, thus jeopardizes safety.

The 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.”²⁵

III. FACTUAL, LEGAL, AND PROCEDURAL ERRORS IN THE PD

The PD commits factual and legal errors in seeking to reverse D.13-02-023, which unequivocally ordered the Network Infrastructure Study to be conducted. The PD’s attempt to condition the study upon subsequent Commission action on CD’s proposed penalty mechanism directly conflicts with D.13-02-023. The PD is also procedurally improper in that it attempts to predetermine the penalty issue when the Commission has yet to consider the entire record on this issue.

A. The Network Infrastructure Study and Penalty Mechanism Serve Different Purposes

The PD commits factual error by suggesting that the need for the Network Infrastructure Study could be met by the adoption of a penalty mechanism.²⁶ From the inception of R.11-12-001, adoption of a penalty mechanism was an issue to be considered separate and apart from the

²³ See D.13-02-023, p. 7, Finding of Fact 1; First Scoping Memo, at 12-13.

²⁴ *Report and Order*, In the Matter of the Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Providers and Broadband Internet Service Providers, 27 F.C.C.R. 2650 (2012) ¶ 16, 20, 30, 67.

²⁵ 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.

²⁶ See PD, FOF 3, 4 and COL 1, at 5.

issue that triggered the need for the study. The Commission found the study to be necessary even as it was also contemplating the adoption of a penalty mechanism.²⁷ As explained above, the Network Infrastructure Study is needed to provide the foundation upon which new or modified service quality rules can be adopted. Fines and penalties will not give the Commission the concrete empirical information on the existing network that it needs to make an informed decision on what those new or modified rules should be. The evidence in the record demonstrates that new, more comprehensive service quality standards are needed to ensure that the wireline network going forward provides safe and reliable service to California consumers.²⁸

1. The Network Infrastructure Study, as D.13-02-023 Found, Is Necessary to Determine if the Existing Network Infrastructure Provides Adequate and Reliable Service.

The Proposed Decision mistakenly defers the Infrastructure Study, reasoning that the application of potential fines and penalties will provide “strong motivations to improve service and meet the minimum service quality measurement standards...” thereby negating the need for study.²⁹ This contradicts the order in D.13-02-023, stating that the study is a “necessary foundational activity” in order for the Commission to determine whether the network infrastructure of AT&T and Verizon, who control most of the telecommunications network, are reliable and adequate enough to provide a level of service consistent with the requirements of section 451 (“safety, health, comfort, and convenience”).³⁰

D.13-02-023 affirmed the provisions of the scoping memo and ruling issued in this proceeding on September 24, 2012 (“Scoping Memo”).³¹ The Scoping Memo considered the Commission’s responsibility with regards to telecommunications service quality, including the “responsibility to ensure that services overseen by this Commission are provided in a manner

²⁷ See Sept. 24, 2012 Scoping Memo and Ruling (“Scoping Memo”), at 3, 12-13.

²⁸ See OIR, Attachment A, March 2011 Staff Report, at 13-14.

²⁹ PD, at 4.

³⁰ See § 451; see also D.13-02-023, FOF 1, at 7.

³¹ See D.13-02-023, at 1. D.13-02-023 also included the September 24, 2012 Scoping Memo as an attachment.

consistent with public safety.”³² The Scoping Memo noted that “according to CD staff, service disruptions apparently caused by infrastructure failures have already been experienced in some (especially rural) parts of the state.”³³ In order to determine the actions needed to carry out the Commission’s duties, the Scoping Memo posed a number of inquiries regarding the condition of telecommunications networks, including:

Are telecommunications facilities being appropriately maintained to ensure quality service? ...

What actions are AT&T and Verizon taking to ensure that their facilities are maintained at a level that ensures customers receive quality service? ...

What company business practices (including but not limited to investment planning, procedures for handling of problem tickets, and repair prioritization guidelines) affect the service quality experienced by customers receiving residential basic telephone service, as well as other types of customers? ...

What best practices and engineering and design standards could improve the service quality and reliability of telecommunications services?³⁴

How would any penalty mechanism answer these questions? It would not and could not. Rather, answers to these inquiries would be found in the Network Infrastructure Study.³⁵ For that reason, the Commission ordered it as a preliminary step – “a necessary foundational activity” – and one that was not conditioned on the Commission’s consideration of a penalty mechanism.

2. An Examination of Network Infrastructure Is Necessary to Determine if the Commission Should Adopt, Modify, or Eliminate Service Quality Rules.

In fulfilling the Commission’s duties over service quality and public safety, one of the activities that the Scoping Memo ordered was a “[d]etermination of the need for new or modified service quality standards and the development of those standards...to support Commission

³² Sept. 24, 2012 Scoping Memo, at 5-6.

³³ *Id.*, at 12, n.13.

³⁴ See *id.*, at 8-10. The Scoping Memo contains many more in-depth questions.

³⁵ See e.g., September 24, 2012 Scoping Memo, at 11-13.

requirements to provide adequate service quality and support public safety.”³⁶ This is another important purpose of the Infrastructure Study: to assess the telecommunications infrastructure in order to determine whether new or modified standards are needed. While a penalty, if set appropriately, is an important enforcement tool to motivate compliance with *existing* service quality standards, they do not address the question of which new or modified standards are needed.

3. The Infrastructure Study Is Needed to Address the Limitations of Existing Service Quality Standards.

Existing service quality standards have limitations. For example, current rules under G.O. 133-C regarding the reporting of outages in California allow carriers to report only a subset of outages: outages that are reported by customers (excluding all other outages discoverable by a carrier) and outages that carriers deem reportable and within their control. While these reports provide important information on some outages, they are not comprehensive. The service quality reports required by GO 133-C do not provide any information on: (1) the conditions of carriers’ networks and infrastructure; (2) causes of major outages that are discovered by carriers (other than those reported by customers); (3) service providers’ application of best practices (protocols that could reduce impacts from outages and/or prevent outages from occurring); (4) adequate personnel resources, and (5) resiliency of the network, including identification of critical network points that can disrupt the network (this can assist in determining specific segments of a network that need special attention or on-site back up equipment, power, etc.). The Network Infrastructure Study is thus critical to investigate the causes of outages that are not otherwise reported under the current G.O. 133-C rules; outages that could be directly related to the conditions of the network infrastructure.

B. The Proposed Decision Commits Legal Error by Reversing D.13-02-023 without Substantial Evidence to Support Its Findings

The PD commits legal error because it reverses D.13-02-023, without providing any evidence to support its assumptions about the penalty mechanism, as described above. On the other hand, the Commission arrived at its findings, conclusions, and orders in D.13-02-023 after

³⁶ *Id.*, at 7.

receiving extensive evidence, including from CD's reports, extensive letters or comments filed on CD's reports, the OIR, the Scoping Memo and Ruling. D.13-02-023 made a finding that the Network Infrastructure Study was necessary to fulfill its responsibility to ensure adequate service quality and public safety, and did not condition the completion of the study on any subsequent Commission action related to the separate issue of penalties:

A study of carrier network infrastructure, facilities, policies, and practices as described in the scoping memo and ruling issued on September 24, 2012, is a *necessary foundational activity* within this proceeding to help gauge the condition of carrier infrastructure and facilities and ensure the facilities support a level of service consistent with public safety and customer needs.³⁷

The PD, however, does not provide any evidence to support that the study is no longer a “necessary foundational activity.” Rather, it cites to a penalty mechanism that has not been defined nor adopted by the Commission. However, Commission decisions must be based on findings that are supported by substantial evidence in the record.³⁸ The PD's findings are thus erroneous.

In justifying its conclusion to defer to study, the PD also argues that it is the responsibility of the telephone companies to ensure “that adequate facilities are available and properly maintained to provide safe and reliable telephone service. Where service failures occur, the companies will incur refund obligations and / or fines.”³⁹ The PD does not acknowledge the Commission's attendant statutory obligations to ensure these companies fulfill their duties.⁴⁰ To the extent the PD suggests that the Commission bears no responsibility to ensure safe and reliable telephone service, it is wrong. As the Commission notes in its Safety Policy, it will “continually assess and reduce the safety risk posed by the companies [the Commission]

³⁷ D.13-02-023, at 7, Finding of Fact 1 (emphasis added).

³⁸ See Cal. Pub. Util. Code § 1757.1(a)(4).

³⁹ PD, at 4.

⁴⁰ See e.g., §§ 2101, 2896, 2897.

regulates,” and “hold companies (and their extended contractors) accountable for safety of their facilities and practices.”⁴¹

C. The Proposed Decision Errs by Predetermining that the Penalty Mechanism Upon which it Relies is Sufficient and Will Be Adopted by the Commission

The Proposed Decision commits procedural error by predetermining that the Commission will find that new standards are not needed, even though the record suggests the opposite. The penalty mechanism cited by the PD relates to the one proposed by CD in its *Proposal for Modifications to G.O. 133-C*, released for comment on February 2, 2015. This PD was issued on the same day that parties filed reply comments. As such, CD’s proposal, and the penalty mechanism therein, remains just a *proposal*. The PD here does not adopt it. Rather, it presumes that the Commission will adopt CD’s Proposal in whole or in part, without providing any analysis or findings to reach that conclusion.

While ORA supports many of the provisions of CD’s Staff Proposal, ORA and other parties also proposed many substantive changes to the Staff Proposal in comments filed on March 30 and reply comments filed on April 17, 2015.⁴² Some parties urged complete rejection of the Staff Proposal.⁴³ Other parties proposed a variety of substantive changes to the Staff Proposal.⁴⁴ The Commission has not yet ruled on the Staff Proposal or on the changes proposed by parties, so the Staff Proposal cannot be a basis to modify or reverse a final Commission decision.

⁴¹ See the Commission Safety Policy Statement, found at http://www.cpuc.ca.gov/NR/rdonlyres/967047D4-19CE-45B1-8766-057F1D7FF1CD/0/VisionZero4Final621014_5_2.pdf.

⁴² See Comments of ORA on Communications Division’s February 2015 Proposal for Modifications to General Order 133-C, filed March 30, 2015, at 26-35 and Appendices A & B. ORA’s Proposal included such changes from the Staff Proposal as applying the penalty mechanism to all carriers (as opposed to exempting General Rate Case Local Exchange Carriers) and stricter metrics for a number of standards.

⁴³ See e.g., Verizon California Inc.’s Opening Comments on Staff Proposal to Modify General Order 133-C, filed March 30, 2015, at 1; 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 (with Correction to Pages B-1 and B-2), Dated February 2, 2015, filed March 30, 2015, at 2-4.

⁴⁴ See e.g. Comments of the California Association of Competitive Telecommunications Companies to Assigned Administrative Law Judge’s Ruling and Communications Division Staff Report, filed March 30, 2015, at 2-6; Opening Comments of the Communications Workers of America, District 9, on Proposed Modifications to General Order 133-C, filed March 30, 2015, at 2-3.

1. The Proposed Decision Makes a Substantive Decision Based on an Incomplete Record.

The Proposed Decision was issued on April 17, 2015. There were twelve different reply comments on the Staff Proposal also filed on this date. These filings constituted hundreds of pages of comments, as well as extensive evidence in appendices. The reply comments provided ample evidence of the problems with existing standards in G.O. 133-C. For example, ORA provided an extensive analysis of major outage data in California of AT&T and Verizon wireline and wireless services and Comcast VoIP service, demonstrating that many of the outages were caused by events within the carriers' control and may have been prevented with adequate maintenance or repair.⁴⁵

Yet, the PD states, “[s]ince we are considering changes to our service quality rules that *if adopted in part or in whole*, will provide strong motivations to improve service and meet the minimum service quality measurement standards, we believe 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.”⁴⁶ First, this statement suggests that it doesn’t matter what the Commission ultimately adopts from the Staff Proposal, anything will result in “strong motivations.” It is not reasonable for the PD to leap to this conclusion because the Commission has not acted on the Staff Proposal and it is possible that the Commission rejects the penalty mechanism altogether, as AT&T and Verizon have argued. In that case, G.O. 133-C as it exists, without a penalty mechanism, would continue to apply. As CD has acknowledged, the current compliance programs are not working. Therefore, the current G.O. 133-C standards are not meeting public safety and consumer needs.

2. The Commission Needs Information About Carriers’ Policies And Practices To Determine Appropriate Fines And Penalties

Parties to this proceeding have presented evidence in numerous comments, pleadings, and at workshops demonstrating that AT&T’s and Verizon’s allocation of resources have

⁴⁵ See Reply Comments of ORA on Communications Division’s February 2015 Proposal for Modifications to General Order 133-C, filed April 17, 2015, at 10-41 and Appendices A to D.

⁴⁶ Proposed Decision, at 4 (emphasis added).

resulted in deteriorating infrastructure and poor repair.⁴⁷ The record in this proceeding shows the alarming condition of the network and its continued degradation.⁴⁸ Communications Workers of America (CWA), District 9 technicians who work for the carriers are often unable to perform a repair because the network facilities are deteriorated, as explained and shown in the photos attached to **Exhibit 1**, Public Interest Parties May 7, 2015 Ex Parte Letter.

Significantly, AT&T and Verizon have continued to demonstrate poor OOS performance years after previous reprimands, consent decrees and paying significant voluntary contributions in response to Federal Communications Commission enforcement actions, as discussed below. One explanation for continued substandard service quality results is that these companies have accepted a certain level of voluntary contributions, akin to fines and penalties, as the cost of doing business. The Network Infrastructure Study would provide the Commission information on the policies and practices of AT&T and Verizon to better determine whether the Staff Proposal's penalty mechanism would indeed be a sufficient motivation for carriers to comply with any new service quality standards the Commission may adopt.

a) AT&T Continued Substandard Service Quality Even After Agreeing to Pay \$1.8 Million for Allegedly Violating Outage Reporting Requirements.

In March 2011, the FCC entered into a consent decree with AT&T after the FCC's investigations for possible violation of the FCC's regulations on reporting of network outages.⁴⁹ AT&T agreed to make a voluntary contribution in the amount of \$1.8 million to the U.S. Treasury. The FCC required AT&T to implement a compliance plan, including designating a compliance officer, implement remedial measures to improve the accuracy and timeliness of its

⁴⁷ See CALTEL Comments on Amended Scoping Memo, filed Oct. 24, 2014), at 1-2; Post-Workshop Comments of the Communications Workers of America, District 9, filed February 28, 2013, at Attachment 1; 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, filed Mar. 17, 2014, at 10-21 and Attachment 1; Supplement to the 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, filed Apr. 15, 2014, at 1-3 and Attachment A.

⁴⁸ See 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.

⁴⁹ See https://apps.fcc.gov/edocs_public/attachmatch/DA-11-402A1.pdf

outage reporting process, implement a network outage reporting training program, disclose non-compliance and identify late-filed outage reports. Despite paying this significant voluntary contribution, AT&T continues to demonstrate non-compliance with OOS minimum standards in California, as demonstrated by the most recent data available in 2013.⁵⁰

**b) Verizon Continued Substandard Service Quality
Even after Paying Significant Voluntary
Contributions**

In July 2007, Verizon entered into a consent decree with the FCC after the FCC's investigation found that Verizon Wireless was not in compliance with FCC's regulations regarding reporting of network outages. Verizon agreed to make a voluntary contribution in the amount of \$1.4 million to the U.S. Treasury. The FCC required Verizon to establish and maintain an FCC reporting training program for employees responsible for gathering, analyzing and reporting network outages.⁵¹

After a similar investigation in March 2012, the FCC entered into another consent decree with Verizon Wireless (Cellco Partnership dba Verizon Wireless). Verizon Wireless agreed to make a voluntary contribution in the amount of \$110,000 to the U.S. Treasury and the FCC required Verizon Wireless to file compliance reports, as well as establish and maintain an FCC outage reporting training program for its employees responsible for analyzing and reporting network outages.⁵² Although these issues involved Verizon Wireless, the Commission should be aware of them as it considers recommendations by parties to apply G.O. 133-C penalties to all telephone corporations.

The aforementioned payments, akin to penalties and fines, did not provide "strong motivation" for subsequent compliance with OOS minimum standards, as Verizon Wireline continues to demonstrate poor OOS metrics throughout 2013.⁵³ And, just last month, the FCC entered into a consent decree with Verizon regarding its non-compliance with 911 outage procedures and assessed a fine of \$3.4 million.⁵⁴

⁵⁰ See Staff Report, at 13-17.

⁵¹ See https://apps.fcc.gov/edocs_public/attachmatch/FCC-07-124A1.pdf

⁵² See https://apps.fcc.gov/edocs_public/attachmatch/DA-12-392A1.pdf

⁵³ See Staff Report, at 13-17.

⁵⁴ See http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0318/DA-15-308A1.pdf.

These FCC examples point out the importance of setting appropriate fine and penalty amounts that will have a discernable impact on carriers' business decisions so that they comply with service quality standards.

IV. CONCLUSION

Recently, the Commission stated that public safety is one of its highest priorities. As explained above, the condition of telecommunications networks directly impacts public safety. The PD appears to take an approach that is inconsistent with the Commission's commitment to safety by further delaying a necessary study that would provide the Commission with important information about the current state of the telecommunications network, in order to update its service quality rules. The record demonstrates that the current standards in G.O. 133-C have serious shortcomings, wherein the two largest carriers have had difficulty meeting even *minimal* service quality standards. While the evidence of extensive outages and deteriorating infrastructure supports the need to adopt more comprehensive service quality standards, the Commission cannot determine *which* standards to adopt until it completes the Network Infrastructure Study. Decision 13-02-023 still governs this proceeding because the PD commits factual, legal, and procedural errors in attempting to overturn D.13-02-023's finding that the study is a "necessary foundational activity in this proceeding" without any basis in fact or law.

Respectfully submitted,

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