

COM/MP6/jt2

PROPOSED DECISION

Agenda ID #14750 Rev. 1

Quasi-legislative

8/18/16 Item #52

Decision **PROPOSED DECISION OF COMMISSIONER PICKER**
(Mailed 3/22/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

DECISION ADOPTING GENERAL ORDER 133-D

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DECISION ADOPTING GENERAL ORDER 133-D**Summary**

This decision adopts revisions to General Order 133, which sets out service quality rules for California's public utility telephone corporations. Today's decision imposes automatic fines of up to \$25,000 per day for failure to meet three service quality measures: 1) Out-of-Service Repair Interval, 2) Customer Trouble Reports and 3) Answer Time for Trouble Reports and Billing and Non-billing Inquiries. Fines do not accrue until a company fails to meet prescribed standards for three consecutive months. Accrued fines may be suspended if the company makes investments designed to cure service quality deficiencies in an amount equal to twice the fine. Federally-mandated outage reports must also be submitted to the Communications Division by all carriers registered under Pub. Util. Code § 285. Other clarifying revisions are also adopted to General Order 133-D.

1. Background

In 2009, this Commission issued Decision (D.) 09-07-019 and adopted General Order (GO) 133-C, which revised the Commission's service quality rules, measures and standards for telecommunications carriers previously established under GO 133-B. In that decision, the Commission adopted five minimum service quality measures for installation, maintenance and operator answer time for local exchange telephone service. The goal of these service quality measures was to ensure that telecommunications carriers provide relevant information to the Commission so that it may adequately protect California customers and the public interest.

On December 1, 2011, the Commission opened Rulemaking 11-12-001 to review telecommunications carriers' performance in meeting GO 133-C service

quality performance standards. In addition, the Order Instituting Rulemaking stated the Commission's intention to assess whether the existing GO 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 future substandard service quality performance.

On September 24, 2012, the then-assigned Commissioner issued his scoping memo and ruling setting forth an initial schedule for this proceeding. In D.13-02-023, the Commission affirmed the determination that hearings may be required and that the largest incumbent local exchange carriers should fund an evaluation of telecommunications facilities.

On August 19, 2013, the proceeding was reassigned to Administrative Law Judge (ALJ) Maribeth A. Bushey.

On February 6, 2014, President Picker was designated the assigned Commissioner. On September 24, 2014, the assigned Commissioner issued his Amended Scoping Memo and Ruling that superseded the schedule in the previous scoping memo.

The amended scoping memo included the Staff Report from the Commission's Communications Division. Parties were allowed to file and serve comments on this Staff Report no later than October 24, 2014, and reply comments no later than November 13, 2014.

Based on the comments and reply comments, Commission Staff prepared a formal proposal. On February 2, 2015, the assigned ALJ issued a ruling distributing the formal Staff Proposal. The Staff Proposal recommended that the Commission adopt modifications to the existing service quality requirements and new reporting requirements including, but not limited to, changes in definitions,

calculating the end of a catastrophic duration, and changes to outage reporting, automatic customer refunds and carrier fines for non-compliance, and service quality rules for certificated facilities-based interconnected Voice over Internet Protocol (VoIP)¹ carriers. The ruling authorized parties to file and serve comments on the Staff Proposal.

On November 12, 2015, assigned Commissioner Picker mailed his Proposed Decision adopting General Order 133-D. Parties filed comments and reply comments. Commissioner Picker subsequently withdrew his Proposed Decision from the Commission's agenda.

On December 29, 2015, the assigned ALJ issued a ruling seeking comment on Staff's revised proposed GO 133-D, Section 4. This revision applied the Major Service Interruption Reporting obligations set out in Section 4 to entities subject

¹ Pub. Util. Code § 239(a)(1) "Voice over Internet Protocol" or "VoIP" means voice communications service that does all of the following:

(A) Uses Internet Protocol or a successor protocol to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in Internet Protocol or a successor protocol.

(B) Requires a broadband connection from the user's location.

(C) Permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(2) A service that uses ordinary customer premises equipment with no enhanced functionality that originates and terminates on the public switched telephone network, undergoes no net protocol conversion, and provides no enhanced functionality to end users due to the provider's use of Internet Protocol technology is not a VoIP service.

(b) "Internet Protocol enabled service" or "IP enabled service" means any service, capability, functionality, or application using existing Internet Protocol, or any successor Internet Protocol, that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor Internet Protocol format through a broadband connection, regardless of whether the communication is voice, data, or video.

to Public Utilities Code Section 285. Parties filed comments and reply comments on the proposal.

Attachment A is a list of parties that filed comments to the Staff Proposals.

Today's decision brings forward our Staff's comprehensive recommendations for GO 133-D for the Commission's consideration. As described above, these proposals are the result of a long and detailed process involving all interested parties. Attachment B to today's decision is GO 133-D. The primary difference between this version of GO 133-D and the version mailed in November is that the Major Service Interruption reporting obligations are extended to entities subject to Public Utilities Code Section 285. Today's Proposed Decision also differs from the November version in that a subsequent phase addressing wireless service quality is not scheduled for this proceeding.

2. Description of Staff's Recommended Changes to the GO

2.1. Changes in Definitions

2.1.1. Customer

Staff proposed to define a customer as a separate account number for voice service, or a bundle of services including voice, and includes large business (six or more lines), small business (five lines or less) and residential service. Carriers commented that customer should be defined as an "access line." Staff reasoned that the intent of the term customer was to capture the customer's out-of-service experience, regardless of the number of access lines that a customer has. The definition of customer adopted in GO 133-D excludes large business customers because the service quality measures and standards do not apply to large business customers.

The definition will be used to determine whether a facilities-based URF carrier must report service quality results, and for calculating whether a catastrophic event has affected 3% of a carrier's customers in the state. Calculating Trouble Report and Out-of-Service (OOS) restoration time results is limited to small business and residential customers in GO 133-C.

Carriers subject to reporting shall report both customer numbers and access lines for small business and residential customers on the GO 133-D report card shown in Attachment C to this decision.

2.1.2. Facilities-Based Carrier

Staff proposed that a facilities-based carrier be defined as a telephone corporation or interconnected VoIP provider that owns or controls facilities used to provide voice communication for compensation, including the line to the end-user's location. No party commented on staff's initial proposal and it is reflected in GO 133-D attached to today's decision.

The definition of facilities-based carrier removes the word "voice" and reads:

A telephone corporation or interconnected VoIP provider that owns or controls facilities used to provide communication for compensation, including the line to the end-user's location.

The definition is technology-neutral reflecting today's telecommunications market, including facilities-based interconnected VoIP providers which can use a variety of means including coaxial cable, fiber optics, and wireless technologies, to provide service to their customers. These facilities are lines that provide a connection from the service provider's facilities to the end-user.

2.1.3. Interconnected VoIP Service

Staff proposed adopting the FCC's definition of interconnected VoIP service (47 C.F.R. § 9.3), which is limited to internet protocol based voice service (VoIP). Both AT&T and ORA commented on the initial proposal and recommended using the Public Utilities Code Section 239(a)(1)(A), definition for interconnected VoIP, which includes Internet protocol (IP), or a successor protocol to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in Internet Protocol or a successor protocol. [Emphasis added.]

AT&T's and ORA's recommended Public Utilities Code Section 239(a)(1)(A) definition of interconnected VoIP service is used in GO 133-D because it is more technologically neutral than the federal definition and provides this Commission with greater flexibility in addressing voice services as technologies change.

2.1.4. Line

Staff proposed that a line be defined as:

An access line (hardwire and/or channel) which runs from the local central office, or functional equivalent (Class 4/5, Class 5 or remote), to the subscriber's premises.

Only ORA commented on staff's proposed definition and supported it. Because technologies are evolving the definition of line does not refer to specific types of central offices.

In GO 133-D in Attachment B a definition of line which better reflects today's technologies for providing voice communication services that do not always utilize a dial tone in the traditional sense is:

An access line (hardwire and/or channel) which runs from the local central office, or functional equivalent, to the subscriber's premises. A channel can be provided with or without wires.

2.1.5. Time Division Multiplexing (TDM)

Staff did not propose a definition for Time Division Multiplexing (TDM). However GO 133-D refers to TDM in Section 2.1 to specify the service measures to which GO 133-D applies. TDM is a technique that has been used for years to provide plain old telephone service, the service to which GO 133 service quality rules apply.

2.2. Changes to Existing Reporting Requirements and Addition of New Reporting Requirements

2.2.1. Duration of Catastrophic Events

Staff recommended that a catastrophic event should end when the out-of-service ticket level returns to the average level for the three consecutive months prior to the catastrophic event. The average level should be calculated by summing the actual number of out-of-service tickets for residential and small business (five lines or less) customers for the three consecutive calendar months that did not have catastrophic events prior to the declared State of Emergency divided by three.

Staff explained that identifying the specific duration of a catastrophic event is important as it defines a consistent methodology for how the carriers would determine which events are to be excluded.

AT&T, Cox and Joint Consumers submitted comments on Staff's original proposal. Joint Consumers supported staff's proposal. AT&T and Cox generally supported the proposal, but suggested that: a) only out-of-service tickets should be included, b) only include small business and residential customers, and c) base the calculation on the average of the prior three months that did not have

a catastrophic event. AT&T's suggested modifications to staff's proposal are included in Attachment B.

2.2.2. Additional Reporting and Calculation of Out-of-Service Measure Results

Staff recommended that carriers be required to provide the out-of-service measure results on an actual, unadjusted basis in addition to the current reporting, which shows results that are adjusted to exclude Sundays, federal holidays, catastrophic events, and events beyond the control of the carrier, including customer requested appointments. The purpose for having actual results reported is to provide context as to the significance that the allowable exemptions have on out-of-service restoral time results. The unadjusted results would not be used for calculating fines.

Staff also proposed that carriers be required to include in the quarterly reporting information on catastrophic events that were excluded in the out-of-service calculation results. The information includes an explanation of what the catastrophic event was, the areas affected, the total number of lines affected including small business and residential customers.

Some carriers urged the Commission to completely eliminate this standard, and the small LECs recommended changing the threshold for reporting catastrophic events for small telephone companies from 3% of carriers' lines to the greater of either 3% of a carrier's lines or 100 customers. The competitive carriers asked the Commission to adopt a separate template so that outages caused by the underlying carrier could be separated for the purpose of fines.

Reporting out-of-service repair results in an unadjusted basis provides useful information on the order of magnitude that the exemptions have on

reported results. The additional burden of reporting the unadjusted results is not significant because the carriers have this information readily available. The standard for out-of-service measure will continue to apply only to the adjusted results and assessing carrier's OOS performance for the purpose of carrier fines will also be based on adjusted results. The new template in Appendix C reflects Staff's proposal.

GO 133-D does not adopt the small LECs' position on the appropriate threshold for reporting catastrophic events. As reported in the Staff's September 2014 report, the smallest telephone company, Pinnacles, had approximately 249 customers at the end of 2013. The small LECs' proposal would require 100 customers, or 40% of Winterhaven's customer base to be without service before reporting as a catastrophic event.

2.2.3. Providers to Which Service Quality Rules Apply

Staff proposed that the GO 133-D Service Quality rules apply to any telephone corporation, common carrier, or other entity that provides voice service in California with lines, including facilities-based interconnected VoIP providers, that:

- 1) Have been granted a Certificate of Public Convenience and Necessity by the Commission, and
- 2) Are designated as an Eligible Telecommunications Carrier by either the Federal Communications Commission (FCC) or this Commission to receive federal high-cost support and/or low-income support, and/or
- 3) Are authorized to provide California LifeLine service.

Staff amended their initial proposal to leave unchanged from GO 133-C the overall applicability as set forth in Section 1.2 of that GO. In addition, Staff

proposed that Section 4, Major Service Interruption, be applicable to VoIP providers subject to Pub. Util. Code § 285.

As set forth in Pub. Util. Code § 285(c), the Commission is authorized to require interconnected VoIP service providers to collect and remit public purpose program surcharges:

(c) The commission shall require interconnected VoIP service providers to collect and remit surcharges on their California intrastate revenues in support of the following public purpose program funds:

- (1) California High-Cost Fund-A Administrative Committee Fund under Section 275.
- (2) California High-Cost Fund-B Administrative Committee Fund under Section 276.
- (3) Universal Lifeline Telephone Service Trust Administrative Committee Fund under Section 277.
- (4) Deaf and Disabled Telecommunications Program Administrative Committee Fund under Section 278.
- (5) California Teleconnect Fund Administrative Committee Fund under Section 280.
- (6) California Advanced Services Fund under Section 281.

Staff reasoned that interconnected VoIP service providers are providing significant telephone service in California and are subject to requirement to collect and remit public purpose program surcharges. Providing the Commission a copy of a report already required by the FCC is an efficient means of informing this Commission of service outages to California subscribers.

2.2.4. Require Interconnected VoIP Providers to Submit FCC Network Outage Reporting System (NORS) Reports to the Commission

Staff recommended that all entities subject to the GO, including interconnected VoIP providers, submit to the Communications Division copies of all outage reports filed with the Federal Communication Commission under the NORS.

Staff's proposal is shown in Section 4 of GO 133-D attached to today's decision as Attachment B.

The purpose of Staff's proposed changes to Section 4 are to require Interconnected VoIP providers, in the same manner as other communication providers, to submit copies of their FCC-mandated NORS reports to the Communications Division. Interconnected VoIP providers have been required to report NORS outages to the FCC since 2012, pursuant to 47 CFR 4.3(h). The FCC adopted NORS reporting for interconnected VoIP providers due to the public safety issues associated with VoIP outages. VoIP service is becoming more prevalent and is marketed as a substitute for traditional telephone service, and interconnected VoIP customers have the same need for reliable service and the ability to reach emergency services as do traditional telephone service customers. To demonstrate the need for mandatory outage reporting, the FCC's Order pointed to a number of significant VoIP outages whereby the FCC found out about the outages through the media.

Currently, facilities-based wireline and wireless telephone corporations file NORS reports with the Commission, and there is extremely limited administrative burden for interconnected VoIP providers to do the same.

**2.2.5. Reporting Outages that Affect Public Safety
(e.g. 9-1-1, Emergencies or Disasters) that
Do Not Meet the FCC's NORS Reporting
Threshold**

Staff recommended requiring that all facilities-based certificated and registered public utility telephone corporations to report zip code information (including zip + 4 if available) in the raw trouble report data reported under GO 133-D. This additional data will provide further information on location of outages.

Staff proposed to adopt a new Emergency and Disaster Reporting for all emergencies and disaster events that affect 9-1-1/Public Safety for all customers in communities of place. The proposal was based on reporting requirements similar to the FCC's NORS and GO 166 for Electric Utilities for Reporting During Emergencies and Disasters.

Carriers generally did not support this additional reporting for many reasons. They stated that the FCC NORS reports already cover rural areas, that the Commission has this information annually in ETC filings, that their network monitoring equipment cannot identify communities of place, that there is no objective reporting criteria, that there is no demonstration of how this would improve public safety, and that implementing such reporting would be costly. The carrier's positions that the current NORS reporting captures outages in small areas was not helpful and misses the point of the staff proposal – to capture outages that do not meet the NORS reporting threshold.

Consumer groups supported the staff proposal, however ORA proposed a new threshold for outage reporting, from the NORS 900,000 user minutes to 90,000 user minutes. In reply comments, the consumer groups and CALTEL supported ORA's new threshold. However, as AT&T pointed out, ORA's

proposal would result in hundreds, if not thousands, of additional reports being filed. While ORA's proposal would show information for outages which affect smaller numbers of users, it does not solve the problem for which staff was seeking a solution, which was how to correlate a smaller number of users with the geographic location of small communities.

Joint Consumers proposed that zip codes could be used to identify sparsely populated areas, but they did not provide details on how zip codes would be used for real-time outage reporting. However, including in the trouble ticket raw data the billing address zip code that is associated with telephone number experiencing trouble would provide greater granularity of outage location. As trouble ticket data is compiled on a monthly basis and reported quarterly, this information does not lend itself to real time analysis and would only be useful for post-outage analysis. Until such time that more specific ways to identify outages that do not meet the NORS reporting threshold are developed, Staff proposed that carriers include zip codes for each outage in the trouble ticket raw data.

2.2.6. Method of Submitting NORS Reports

In D.09-07-019, the Commission directed the staff to initiate steps to submit a formal request to the FCC for password-protected access to all California-specific outage data. Staff did so in 2009 and to date the FCC has not acted on the request. Staff noted in its proposal that the current email method for carriers to submit NORS reports is not efficient and lacks consistency between reporting companies. Staff proposed that a secured web-based method be developed for carriers to submit reports. General Order 133-C § 4.b.ii Major Service Interruption - Reporting Procedures, states that NORS reports "...shall be filed with the CD per CD's directed method/media." Consequently CD has the

delegated authority to develop and direct carriers to use a web-based method of submitting reports.

2.2.7. Change in Answer Time Reporting

Staff recommended two changes to the reporting requirement for the Operator Answer Time service quality measure: 1) compile monthly and report quarterly, and 2) identify the answer time results by the type of calls: billing, non-billing inquiries and trouble reports.

Large carriers do not support the change in the Answer Time Reporting because there is no benefit to customers and the proposal would be costly and burdensome to implement.

Staff did not adopt the recommendations from the parties who commented on this particular proposal. Staff's September 2014 report showed that several carriers failed to meet the standard over multiple years, from 2010 to 2013. The answer time metric is important to monitor because it provides an indication on the level of service customers receive from their provider regarding reaching telephone company representatives to report outages and resolve billing disputes. Staff contended that the new reporting schedule will bring this data to the commission consistent with the other measures.

2.2.8. Change in Corrective Action Plan Submissions

Staff proposed to require telephone corporations that fail to meet any standard for two consecutive months or more to file a Corrective Action Plan.

Staff reasoned that the proposal significantly reduces the time period from two consecutive quarters to two consecutive months of not meeting any standards and would allow the Commission to understand the underlying problem regarding the carriers' performance promptly and evaluate the carriers'

plan to improve their performance. Staff stated that this change is important because it would help the Commission ensure that the carrier's proposed actions are effective in improving their performance.

AT&T opposed Staff's proposal, maintaining that changing the corrective action plan reporting from the current GO 133-C process from quarterly to monthly would not result in improved service quality. ORA contended that the existing quarterly corrective action plans are not an effective means of improving service quality for carriers with chronic service quality problems.

Staff explained that carriers that fail to meet any service quality standard for two consecutive months or more to file in the quarterly filings should be required to include a Corrective Action Plan for each month the service quality measures are not met. The Corrective Action Plans shall describe the reason(s) for missing the standard(s) and the actions the company will take to correct the causes and improve performance to a level that meets adopted standards and measures.

2.3. Customer Refunds for Service Outage

Staff initially recommended a customer refund mechanism for customers that have been out of service for more than 24 hours, whether or not the customer asked for a refund. The URF ILECs do not support the staff's refund proposal, and Verizon and Frontier commented that they currently have a refund provision their tariffs. The small LECs do not believe that a refund mechanism should be applied to them because they have the general rate case process that includes a review of service quality and therefore a refund mechanism is not needed for them. Joint Consumers supported refunds for customers without service for more than 24 hours, and ORA supported refunds as appropriate and consistent.

Staff subsequently determined that it is not necessary because companies have refund provisions in their tariffs or customer guidebooks. Therefore, telephone corporations may use their existing tariff provisions or customer guidebook provisions for customer refunds. If a carrier does not have a provision for customer refunds, that carrier should develop a refund policy and file a Tier I Advice Letter with the Commission to modify their tariff, or provide a copy of the modified customer guidebook with the refund provision identified.

2.4. Automatic Fine Proposal

Staff proposed automatic fines for certain URF carriers that fail to meet the service quality standards for: 1) Customer Trouble Reports, 2) Out-of-Service Reports or 3) Answer Time Reports.

As set forth in Section 9.1 of GO 133-D, the automatic fine proposal is applicable to facilities-based telephone corporations that offer TDM-based voice service and have been granted either a franchise or a Certificate of Public Convenience and Necessity pursuant to Public Utilities Code § 1001 or are registered pursuant to Public Utilities Code §1013, and are regulated under the Uniform Regulatory Framework adopted in D.06-08-030. For companies that offer both TDM and VoIP based services, fines apply only to TDM-based service.

The methodology for calculating the amount of the fine uses an adopted base fine that is adjusted to reflect the business size of the violating telephone company.

The large carriers generally opposed the fine proposal claiming that competition provides the biggest incentive to improve service quality, and that the fine proposal is inappropriate and unlawful because it imposes daily fines on monthly service. The small LECs do not believe that the fine mechanism should be applied to them because their operations and service quality are scrutinized in

general rate case reviews. Further opposing comments stated that penalties have little to no impact on service quality standards, will raise prices, and will not promote public safety goals.

The CLEC argue that they should not be fined on the underlying carrier's performance. Staff reasoned that the CLECs have a responsibility to provide safe and reliable service to their customers, and customers are indifferent to the underlying source of their service. CLECs have recourse against their underlying facilities-based providers that provide substandard service through contractual agreements.

Consumer advocate groups and CWA generally supported staff's fine proposal, and ORA submitted that competition has so far not resulted in improved service quality. Cox maintains that staff erred in using the Performance Incentive Plan adopted in D.08-12-032 because it was a voluntary settlement between AT&T and specific CLECs.

Staff's proposal for imposing automatic fines for chronic failure to meet service quality standards finds its roots in the penalty mechanism adopted in D.01-12-021 for Pacific Bell Telephone Company's declining service quality and failure to comply with Public Utilities Code Section 451 regarding safe and reliable service. That penalty mechanism applied a \$10,000 per day fine for each month that the company missed the adopted standard. That decision and staff's proposal are based on the principles adopted in D.98-12-075 for assessing penalties for failure to comply with commission rules, related to (but not limited to) energy utility affiliate transactions. That decision is based on Public Utilities Code Sections 2107 and 2108 regarding violations for non-compliance with this commission's rules and orders. Public Utilities Code Section 2107 provides that any public utility that violates or fails to comply with any order or decision of the

Commission is subject to a penalty of not less than \$500, or more than \$50,000 for each offense. Public Utilities Code Section 2108 counts each day of a continuing violation as a separate and distinct offense.

D.01-12-021 established a precedent for applying a daily fine for missing a monthly standard. GO 133-D applies the fine mechanism to small LECs with regards to Customer Trouble Reports, Out-of-Service, and Answer Time measures because the fine mechanism provides a strong incentive for all carriers covered by GO 133-D to maintain a level of service quality that meets our adopted standards. If the small LECs continue to meet the service quality standards, then concerns about the fine mechanism are moot.

2.4.1. Out-of-Service Reports

The Out-of-Service (OOS) standard requires that 90% of service outages are resolved by the telephone corporation within 24 hours. The calculation is performed on a monthly basis across the telephone corporation's small business and residential lines.

Out-of-Service Automatic Fine (subject to scaling)

	1 to 2 Consecutive Months of OOS Standard Not Met	3 or more Consecutive Months of OOS Standard Not Met
Fine Per Day	\$0 per day	\$25,000 per day
Days in a Month	30 days	30 days
Total Fine per Month	\$0	\$750,000

2.4.2. Answer Time for Trouble Reports and Billing and Non-Billing Inquiries Fine

The fines for Operator Answer Time will be assessed for each day that a carrier fails to meet the minimum standard of answering at least 80% of the all customer calls within 60 seconds. The fine is based on a carrier's performance for all customer calls.

The initial fine is \$500 per day, which escalates to the highest daily fine (after 12 or more consecutive months) at \$2,000 per day.

Base Answer Time Fine (subject to scaling)

	1 to 2 Consecutive Months	3 to 5 Consecutive Months	6 to 8 Consecutive Months	9 to 11 Consecutive Months	12 or More Consecutive Months
Fine Per Day	\$0	\$500	\$1,000	\$1,500	\$2,000
Days in Month	30	30	30	30	30
Base Fine per Month	\$0	\$15,000	\$30,000	\$45,000	\$60,000

2.4.3. Customer Trouble Report Fines

The automatic fines for customer trouble reports are based on company-wide customer trouble report rate of 10 reports per 100 access lines (10%). After two consecutive months of exceeding 10%, the carrier will be assessed a fine per day until the monthly average decreases to below 10%. The per-day fine amount, which is scaled based on the size of the carrier, increases based on the number of consecutive months a carrier fails to meet the 10% standard. The initial fine is \$500 per day, which escalates to the highest daily fine at \$2,000 per day after 12 or more consecutive months.

**Customer Trouble Report Automatic Fine
(subject to scaling)**

	1 to 2 Consecutive Months	3 to 5 Consecutive Months	6 to 8 Consecutive Months	9 to 11 Consecutive Months	12 or More Consecutive Months
Fine Per Day	\$0	\$500	\$1,000	\$1,500	\$2,000
Days in Month	30	30	30	30	30
Total Fine per Month	\$0	\$15,000	\$30,000	\$45,000	\$60,000

3. Discussion

Pursuant to Public Utilities Code Section 451 each public utility in California must:

Furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

The duty to furnish and maintain safe equipment and facilities that provide just and reasonable service falls squarely on California's telecommunication carriers.

We opened this rulemaking in 2011 to review telecommunications carriers' performance in meeting existing service quality performance standards and to assess whether there is a need to establish a penalty mechanism for future substandard service quality performance. As set forth above, our Communications Division Staff did a comprehensive review of GO 133-C and made a proposal for changes, including automatic fines for carriers in chronic failure status.

Today's decision for the most part adopts Staff's proposal and includes consideration of all the parties' comments on that proposal. The primary issue that remains in dispute is the imposition of fines on carriers that reach chronic failure status.

As explained above, the revised GO includes automatic fines, scaled to the size of the carrier, for three service quality standards after the carrier reaches chronic failure status. Staff's proposal is to penalize carriers that continually do

not meet the respective minimum service quality measures and standards. After two consecutive months of failing to meet the applicable standard, the carrier will be fined a specific amount per day, multiplied by 30 days.

The September 24, 2014, Staff Report showed that the largest carriers in California, AT&T Communications of California, Inc. (AT&T) and Verizon California, Inc. (Verizon), which collectively operate approximately 88% of telephone lines in California reported under GO 133-C, never met the minimum standard of repairing 90% of all out of service trouble reports within 24 hours during the 2010 to 2013 period. The Staff Report showed that for the combined years 2010 and 2011, AT&T and Verizon each needed on average up to 110 hours to repair 90% of actual outages. However, in the subsequent combined years 2012 and 2013, carriers improved their respective repair times for least 90% of their outages to 72 hours.² As explained in the Staff Report, three days without phone service and the ability to dial 9-1-1 compromises public safety.

The Staff Report noted that during the years 2010 to 2013 as required by GO 133-C, AT&T and Verizon have provided corrective action reports for each quarter they missed the adopted measures and related minimum standard. However, the actions cited have not resulted in improvements that are significant enough to meet the minimum standard for the OOS repair interval measure. The Staff Report concludes that reliance on carriers' corrective action plans has not been an effective means to improve compliance with the service quality standards set forth in GO 133-C.

² Using unadjusted data.

Staff proposed to adopt a penalty system to motivate the carriers to improve performance. Staff compared service quality measures and penalty/incentive methodologies in other states and concluded that California's service quality measures and standards were consistent with other states' standards. The Staff Report also noted that ten states assess fines and penalties for carriers that are in direct violation of their state's service quality measures and standards.

The Staff report modeled its proposed penalty methodology on D.01-12-021 where the Commission imposed per day fines on Pacific Bell Telephone Company for failing to maintain or improve service in violation of an earlier Commission decision.

Although the large carriers have argued that the penalty mechanism is not necessary because competition provides the appropriate incentive for a carrier to provide quality service, the 2010 to 2013 performance results show ongoing failure to meet the GO 133-C standards. As the Office of Ratepayer Advocates (ORA) pointed out, the continuing failure of AT&T and Verizon to meet CPUC adopted minimum service quality measures and standards demonstrates that competition has not been sufficient to ensure quality service.³

We have added an option for carriers to propose that the Commission suspend an accrued fine where a carrier agrees instead to make specific, incremental expenditures to improve service quality in an amount that is equal to two times the accrued fine. In their annual filings, carriers that incur a fine may propose for the Commission's consideration an alternative set of

³ ORA Reply at 41.

expenditures to address the service quality standard resulting in the fine, provided that the carrier demonstrates that the expenditures are incremental, directed at the service quality deficiencies leading to the fine, and in an amount that is twice the amount of the tabulated fine. This option better aligns carriers' expenditures with improving actual customer service.

The Staff proposal to impose automatic fines for chronic failure to meet service quality standards, to scale the fines to the size of the carrier, and to escalate the fine for on-going failures reasonably addresses the telecommunications service quality issues documented in the Staff report. We, therefore, adopt the revised GO 133-D attached to today's decision. This GO will supersede in all respects GO 133-C and, other than the penalty provisions, will be effective today. The penalty provisions shall become effective on January 1, 2017.

4. Extending GO 133-D Outage Reporting Requirement to Interconnected VoIP Carriers Subject to §285

As set forth above, Staff recommended that all entities subject to the GO, including interconnected VoIP providers and those subject to Pub. Util. Code § 285, submit to the Communications Division copies of all outage reports filed with the Federal Communication Commission (FCC) under the Network Outage Reporting System (NORS). The administrative burden of sending a copy of a FCC report to this Commission is trivial.

We agree with the FCC that outage reporting for interconnected VoIP providers is needed because of the public safety issues associated with VoIP outages. VoIP service is becoming more prevalent and is marketed as a substitute for traditional telephone service. Interconnected VoIP customers have

the same need for reliable service and the ability to reach emergency services as do traditional telephone service customers.

Commenting parties argue that the Commission is precluded from imposing this requirement pursuant to Public Utilities Code Section 710. Public Utilities Code Section 710 provides, in part: “The Commission shall not exercise regulatory control over Voice over Internet Protocol and Internet Protocol enabled services except as expressly delegated by federal law or as set forth in subdivision (c).”⁴

Contrary to these contentions, we are not persuaded that Section 710 prohibits the Commission from requiring VoIP providers to submit NORS reports to the Commission for the following reasons.

At the outset, the opening comments generally mischaracterize the proposed ruling as “imposing” or “extending” service quality rules to VoIP providers. This is not an accurate representation of the proposed ruling, because it is not asking VoIP providers for the extension of the existing measures,⁵ for new measures, or for new rules, but only requires VoIP providers to send a copy of the NORS reports (which they already generate for the FCC) to the CPUC.

Moreover, Section 710 contains numerous exceptions which indicate that the Commission does retain some authority over VoIP providers and facilities used to provide VoIP services. In particular, Section 710 (f) expressly provides that the Commission has the authority “to continue to monitor and discuss VoIP

⁴ Express exceptions are also contained in subdivisions (d) through (g).

⁵ There are five measures of service quality in GO-133C. They are installation interval, installation commitment, customer trouble reports, out of service, and answer time.

services.” Requiring VoIP providers to provide the NORS report falls within this exception.

However, even where the Commission does not have regulatory jurisdiction over an entity or service, the Commission has broad authority to obtain information. Such authority is not limited to public utilities or regulated entities. (See, e.g., Pub. Util. Code §§ 311; 314; Cal. Const., art. XII, § 6; Gov. Code, § 11180 and Res. ALJ-195.) Thus, we have the authority to require the NORS report even if the 710(f) exception did not apply.

Finally, we note that Section 710 only prohibits the regulation of VoIP “services.” Pursuant to the plain language and the legislative history of the statute, Section 710 is not a blanket prohibition on the regulation of facilities over which VoIP services are transported. Section 710 contains certain exceptions relating to facilities (e.g., the Commission’s authority to enforce existing requirements regarding backup power (§ 710 (c)(6)) and the Commission’s authority regarding access to support structures, including pole attachments, or to the construction and maintenance of facilities pursuant to General Orders 95 and 128 (§ 710 (c)(7)). Regardless of what services are being transported, the telecommunications network is interconnected. We do not believe that the Legislature intended to bar the Commission from ensuring a safe and reliable telecommunications network by allowing facilities that provide VoIP services to go unmonitored.

5. Communications Division – Need to Monitor, Hold Workshops and Bring Forward Needed Proposals

Our Communications Division Staff has an important role in continuously observing and evaluating developments in the telecommunications industry, including service quality performance and responses to outages, as it impacts

California consumers. In today's decision, we direct the Division to continue this essential function, using workshops with impacted stakeholders as needed, and to bring forward proposals for regulatory actions or legislative change as appropriate based on their professional judgment and experience.

Specifically, the Federal Communication Commission is currently reviewing rural outage reporting by service providers beyond traditional telephone corporations.⁶ We direct our Communications Division Staff to monitor that proceeding and determine whether more or different actions are needed to meet the unique needs of California's rural telecommunications customers. Our staff should bring forward recommendations for actions to be taken by this Commission to ensure that Californians residing or doing business in rural areas have reliable access to modern telecommunications services.

6. Comments on Proposed Decision

The proposed decision of the Assigned Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed on April 11, 2016, by the Small LECs,⁷ Cox California Telcom, LLC;⁸ ORA; California Association of Competitive

⁶ *In the Matter of Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, New Part 4 of the Commission's Rules Concerning Disruptions to Communications, The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, PS Dkt. 15-80, ET Dkt. 04-35, PS Dkt. 11-82 (FCC 16-63), Rel. May 26, 2016.*

⁷ Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, The Ponderosa Telephone Co., Kerman Telephone Company, Volcano Telephone Company,

Footnote continued on next page

Telecommunications Companies; Consolidated Communications of California; California Cable & Telecommunications Association; and AT&T with joint comments from The Utility Reform Network, Center for Accessible Technology, and The Greenlining Institute.

Reply comments were filed on April 18, 2016, by CTIA-The Wireless Association; the Small LECs; Citizens Telecommunications Company of California Inc., jointly with Frontier Communications of the Southwest Inc. and Frontier California Inc.; Cox California Telecom, LLC; Cellco Partnership dba Verizon Wireless; California Cable & Telecommunications Association; AT&T and joint comments from the Center for Accessible Technology, The Greenlining Institute, and The Utility Reform Network.

All comments have been thoroughly analyzed and considered by the Commission. Where required, clarifying changes have made to the Proposed Decision; however, today's decision reflects no substantive changes from assigned Commissioner Picker's Proposed Decision. Several persistent issues are also discussed below.

AT&T argued that setting the service quality standard as a monthly average and then imposing a fine for each day of the month⁹ violates the definition of a continuing violation found in Pub. Util. Code § 2108.¹⁰ The service quality standard is a calculated by an average daily performance over the month;

Winterhaven Telephone Company, Calaveras Telephone Company, Hornitos Telephone Company, Pinnacles Telephone Co., Sierra Telephone Company, Inc., Cal-Ore Telephone Co., The Siskiyou Telephone Company.

⁸ Correct comments were filed on April 12, 2016, by Cox California.

⁹ For ease of administration, each month is deemed to have 30 days.

¹⁰ AT&T Opening Comments at 13.

that daily average applies to each day of the month. Accordingly, where the monthly average performance fails to meet a service quality standard the violation is continuous over each day of the month as is required by Section 2108.

AT&T next, along with Cox California,¹¹ contended that the fine structure is arbitrary because carriers that miss the standard by a small margin are fined the same as carriers that miss the standard by a large margin. As required by the Commission's standards for assessing fines, the imposed fine is scaled, first, based on the number of access lines served by the telephone company, and then, second, to reflect the duration of the noncompliance. With these two significant adjustments, the overall fine is tailored to the facts of the failure to meet the service quality standards and proportionally reflects the severity of the offense.

The Small LECs renewed their proposal that the standard for reporting a catastrophic outage of 3% of access lines out of service be modified to the greater of 3% of access lines or 100 lines.¹²

The percentage standard defines a catastrophe as 3% of the lines for which a telephone corporation is responsible, not based on the number of customers for which service is lost. Even-handedly applying this standard to small and large telephone companies requires that small telephone companies, some with only a few hundred access lines, adhere to the percentage standard as well. The Small LECs proposal is an alternative standard that greatly favors the small telephone companies and would leave unreported service outages for a significant share of the lines for which a small telephone corporation is responsible. This outcome is

¹¹ Cox California Opening Comments at 3 - 4.

¹² Small LECs Opening Comments at 3 - 5.

contrary to the objectives of uniform service quality from all sized telephone companies.¹³

For Major Service Outage Reporting, Cox and CCTA stated that that the Pub. Util. Code § 710 prohibits the CPUC from requiring NORS reports to be submitted to the Commission. In contrast, ORA commented that the proposed decision risked public safety by not extending both the measures and the major outage reporting to all interconnected VoIP and wireless carriers, because millions of customers will be without minimal service quality protections.

As set forth above, submitting a copy of the NORS report to this Commission as well as the FCC is a minimal burden and will bring useful service outage information to this Commission.

Finally, several parties recommended that the proposed decision should not be adopted because it fails to take into account the network examination that the Commission ordered in D.15-08-041.¹⁴ As the Commission held in D.15-08-041, the network study and penalty mechanism serve separate and distinct purposes and that the study should not delay adoption of a penalty mechanism or service quality standards. No party has presented a persuasive showing for disturbing our previous determination.

All parties representing consumers argued that the proposed decision improperly closed this proceeding without addressing the issue of extending

¹³ The Small LECs recommendation to be exempted from the service quality standards would similarly undermine the objective of uniform service quality for all customers of California telephone corporations, regardless of access lines served. Small LECs Opening Comments at 1-3.

¹⁴ E.g., AT&T Opening Comments at 2; Citizens Reply Comments at 4.

service quality rules to wireless carriers and that doing so ignores the evidence contained in the record as well as constitutes legal error.

ORA argued that proposed decision violates Pub. Util. Code § 2896 by specifically excluding wireless telephone corporations from having to report any data on the five service quality measures in GO 133-D. ORA also argued that based on the original scoping memo in the service quality proceeding, the Commission previously intended to address the issue wireless service quality.

In their Reply Comments, both AT&T and Verizon Wireless support not addressing the issue of wireless service quality rules and point to the highly competitive nature of wireless services and their claim that the Commission lacks jurisdiction over such services.

We are not persuaded by the jurisdictional arguments of the wireless carriers; we nevertheless decline to open another phase of this proceeding to address wireless service quality.

7. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission opened this proceeding to consider revisions to GO 133-C applicable to California telecommunication carriers.
2. The Commission's Communications Division brought forward numerous proposed changes to GO 133-C, issued a staff report delineating the proposed changes, and received comments.
3. The proposed changes are summarized in the body of today's decision and are reflected in Attachment B, GO 133-D.

4. Reliable telephone service is essential for the public to access emergency services, maintain contact with family and friends, conduct business, and find employment.

5. The service quality standards in GO 133-D are necessary to ensure safe and reliable telephone service for California residents and businesses.

6. Automatic fines for chronic failure to meet service quality standards are necessary to incent carriers to adhere to the service quality standards set forth in GO 133-D.

7. Customers of all telephone corporations should receive the same standard of service.

8. The Small LECs did not justify their proposed exemption from the service quality standards.

9. An effective date of January 1, 2017, will allow for the orderly and efficient implementation of the new penalty rules set forth in Attachment B.

10. Penalties are necessary to deter carriers from violating the service quality standards set out in GO 133-D.

11. The administrative burden is trivial to send a copy of a report prepared for the FCC to this Commission as well.

12. Public safety requires that this Commission exercise its authority under Public Utilities Code Section 710(f), to “monitor and discuss VoIP services” by requiring VoIP providers to submit NORS reports to this Commission.

Conclusions of Law

1. The public interest requires that telephone corporations furnish safe and reliable service.

2. The public interest requires that telephone corporations adhere to the service quality standards in GO 133-D, and that the Commission adopt the penalty mechanism to ensure that the telephone corporations comply.

3. The penalty mechanism in GO 133-D is consistent with the Commission's standards for imposing penalties set forth in D.98-12-075 because it is based on the size of the carrier and duration of the violations.

4. The Daily Base Fine for failing to meet the Out of Service standard should be \$25,000. This Daily Base Fine should be scaled based on the carrier's access lines relative to the total number of access lines in California.

5. The Daily Base Fine for failing to meet the Customer Trouble Reports standard should be based on the number of consecutive months the carrier fails to meet the standard, increasing from \$0.0 for one or two months, up to \$2,000 per day at 12 or more consecutive months of failing to meet the standard. This Daily Base Fine should be scaled based on the carrier's access lines relative to the total number of access lines in California.

6. The Daily Base Fine for failing to meet the Answer Time standard should be based on the number of consecutive months the carrier fails to meet the standard, increasing from \$0.0 for one or two months, up to \$2,000 per day at 12 or more consecutive months of failing to meet the standard. This Daily Base Fine should be scaled based on the carrier's access lines relative to the total number of access lines in California.

7. The public interest requires that telephone corporations subject to penalties be authorized to propose alternative means to expend twice the amount of the fine to improve service quality for customers.

8. Carriers incurring a fine under GO 133-D should have the option of requesting that the fine be suspended based on an expenditure proposal for

incremental actions directed at improving compliance with the service quality standard that led to the fine in an amount that is no less than two times the incurred fine.

9. GO 133-D as set forth in Attachment B today's decision should be adopted effective today; except for the penalty provisions in Section 9 which shall become effective on January 1, 2017.

10. Public Utilities Code Section 710(f), permits this Commission to "monitor and discuss VoIP services" and this provision gives this Commission the authority to require VoIP providers to submit NORS reports to this Commission.

11. The Commission should exercise its authority under Public Utilities Code Section 710(f), to "monitor and discuss VoIP services" by requiring VoIP providers to submit NORS reports to this Commission.

12. The Communications Division staff should monitor the Federal Communications Commission's outage reporting proceeding and make recommendations for any actions needed by this Commission.

13. The Communications Division staff should continue to review and analyze carriers' service quality results and performance for the benefit of California consumers and to bring forward recommendations and proposals to this Commission.

14. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. General Order 133-D as set forth in Attachment B to today's decision is adopted effective immediately; except as to the penalty provisions in Section 9 which shall become effective on January 1, 2017.

2. Rulemaking 11-12-001 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment A

List of Parties Submitting Comments

ATTACHMENT A: List of Commenting Parties**February 2, 2015, Staff Proposal****Utility Companies**

- **AT&T**: 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, LLC f/f/a TCG San Francisco (U-5454-C); AT&T Mobility LLC (U-3060-C); AT&T Mobility Wireless Operations Holdings, Inc. (U-3021-C); Santa Barbara Cellular Systems Ltd. (U-3015-C) and New Cingular Wireless PCS LLC (U-3014-C)
- **Verizon**: Verizon California (U-1002-C)
- **CTC**: Citizens Telecommunications Company of California Inc. (U-1024-C) and Frontier southwest Inc. (U-1026-C)
- **Consolidated**: SureWest Telephone dba Consolidated Telephone (U-1015-C)
- **Small LECs**: Calaveras Telephone Company (U-1004-C), Cal-Ore Telephone Co. (U-1006-C), Ducor Telephone Company (U-1007-C), Foresthill Telephone Co. (U-1009-C), Happy Valley Telephone Company (U-1010-C), Hornitos Telephone Company (U-1011-C), Kerman Telephone Co. (U-1012-C), Pinnacles Telephone Co. (U-1013-C), The Ponderosa Telephone Co. (U-1014-C), Sierra Telephone Company, Inc. (U-1016-C), The Siskiyou Telephone Company (U-1017-C), Volcano Telephone Company (U-1019-C), Winterhaven Telephone Company (U-1021-C)
- **Cox**: Cox California Telecom, LLC d/b/a Cox Communications (U-5684-C)
- **CALTEL**: California Association of Competitive Telecommunications Companies
- **CTIA**: CTIA – The Wireless Association¹
- **CCTA**: California Cable & Telecommunications Association

Consumer Groups and the Workers Union

- **Joint Consumers**: Greenlining Institute, Center for Accessible Technology and The Utility Reform Network

¹ CTIA filed only Reply Comments.

- ORA: Office of Ratepayer Advocates
- CFC: Consumer Federation of California²
- CWA: Communications Workers of America District

November 12, 2015, Proposed Decision

The parties listed below filed Opening comments on December 2, 2015. Those that also filed Reply Comments on December 7, 2015 are designated with an asterisk.

Utility Companies

- AT&T California*
- Cox Communications*
- California Association of Competitive Telecommunications Companies (CALTEL)
- Frontier Communications (Citizens Telecommunications Company of California and Frontier Communications of the Southwest)
- SureWest (dba Consolidated Communications)
- Small LECs (Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company)*
- Verizon Wireless (Cellco Partnership)
- Verizon California³
- California Cable & Telecommunications Association (CCTA)*
- CTIA – The Wireless Association*

² CFC filed only Reply Comments.

³ Note that the wireline entity (excluding Verizon Enterprise) has been approved for acquisition by Frontier Communications as of Dec. 2015.

Consumer Groups

- Office of Ratepayer Advocates (ORA)*
- Center for Accessible Technology, Greenling Institute and The Utility Reform Network (Joint Consumers)*

December 29, 2015, Proposed Decision (*denotes Reply Comments Only)

Utility Companies; January 22, 2016

- CCTA, California Cable and Telecommunications Association
- Comcast Phone of California (U 5698 C)
- Cox California Telecom (U 5684 C)
- CTIA – the Wireless Association
- Verizon California Inc. (U 1002 C)

Consumer Groups; February 12, 2016

- Office of Ratepayer Advocates (ORA)*
- Center for Accessible Technology, Greenling Institute and The Utility Reform Network (Joint Consumers)*

(End of Attachment A)

Attachment B

New GO 133-D

XX/XX/xxx

Date of Issuance X/XX/2009

General Order 133-D
Public Utilities Commission of the State of California
Rules Governing Telecommunications Services

Effective _____, 2016, except for Section 9 which is effective July 1, 2016

1. GENERAL

1.1 Intent.

- a. Purpose. The purpose of these rules is to establish uniform minimum standards of service to be observed in the operation of public utility telephone corporations.
- b. Limits of Order. These rules do not cover the subjects in the filed tariff rules of telephone utilities.
- c. Absence of Civil Liability. The establishment of these rules shall not impose upon utilities, and they shall not be subject to, any civil liability for damages, which liability would not exist at law if these rules had not been adopted.
- d. These rules may be revised in scope on the basis of experience gained in their application and as changes in technology, the telecommunications market, or technology may require.

1.2 Applicability. These rules are applicable to all public utility telephone corporations providing service within the State of California, except as otherwise noted.

1.3 Definitions.

- a. Business Office – A centralized service group which receives small business and/or residential customer requests for new installations or changes in existing service. This also includes billing center inquiries.
- b. Central Office Entity – A group of lines using common-originating equipment or under stored program control.
- c. CLEC: A *Competitive Local Exchange Carrier* (CLEC), per Pub.Util. Code § 234, § 1001, and Decision 95-07-054, provides local telephone services in the service territories formerly reserved for Incumbent Local Exchange Carriers (ILECs), in competition with ILECs, and must obtain a Certificate of Public Convenience and Necessity (CPCN) from the Commission.

- d. COLR: A *Carrier of Last Resort* (COLR) is required to serve upon request all customers within its designated service areas. Pursuant to Decision 96-10-066, a carrier seeking to be a COLR needs to file a notice of intent (NOI) with the Commission in order to have access to high cost fund subsidies. Once designated a COLR, the carrier must get the Commission's approval to opt out of its obligation to serve.
- e. Commission – In the interpretation of these rules, the word “Commission” shall be construed to mean the Public Utilities Commission of the State of California.
- f. Commitment – The date agreed to by a customer and a utility for the completion of requested work.
- g. Customer – A customer is a separate account number for voice service, or a bundle of services including voice, and includes small business (5 lines or less) and residential customers.
- h. ETC: *Eligible Telecommunications Carrier* (ETC) - A telecommunications carrier that has been designated by the Commission, pursuant to 47 USC § 214 (e) (2) as eligible to receive federal lifeline and/or high cost Universal Service support. Designated ETCs must file annual recertification advice letters to continue to be eligible for federal high cost fund support.
- i. Facilities-based Carriers: A telephone corporation or interconnected VoIP provider that owns or controls facilities used to provide communications for compensation, including the line to the end-user's location. A local exchange carrier providing service solely by resale of the ILEC's local exchange services is not a facilities-based carrier. By Commission Decision (D.) 95-12-057, facilities-based carriers must file an environmental assessment report and undertake mitigation efforts addressing any adverse environmental impacts associated with their construction activities under their CPCN.
- j. GRC ILECs: A *General Rate Case Incumbent Local Exchange Carrier* (GRC ILECs) is designated a COLR in its franchise territories per D.96-10-066, the decision where the Commission first spelled out what is meant by basic telephone service for purposes of Universal Service funding and updated by D.14-01-036, and is regulated through cost-of-service reviews by the Commission per General Order 96 B.
- k. Installation – The provision of telephone service at the customer's request.
- l. ILEC - An *ILEC* is a certificated local telephone company such as Pacific Bell Telephone Company (now d/b/a AT&T California) and Verizon California Inc., which used to be the exclusive local telephone service

provider in a franchise territory established before the Telecommunications Reform Act of 1996. See Pub.Util. Code § 234 and § 1001.

- m. Interconnected VoIP Provider - An interconnected VoIP provider is a company which provides a VoIP service that does all of the following:
- (A) Uses Internet Protocol or a successor protocol to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in Internet Protocol or a successor protocol.
 - (B) Requires a broadband connection from the user's location.
 - (C) Permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

A service that uses ordinary customer premises equipment with no enhanced functionality that originates and terminates on the public switched telephone network, undergoes no net protocol conversion, and provides no enhanced functionality to end users due to the provider's use of Internet Protocol technology is not a VoIP service.

"Internet Protocol enabled service" or "IP enabled service" means any service, capability, functionality, or application using existing Internet Protocol, or any successor Internet Protocol, that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor Internet Protocol format through a broadband connection, regardless of whether the communication is voice, data, or video. (PU Code § 239)

- n. Line – An access line (hardwire and/or channel) which runs from the local central office, or functional equivalent, to the subscriber's premises. A channel can be provided with or without wires.
- o. Local Exchange – A telecommunications system providing service within a specified area within which communications are considered exchange messages except for those messages between toll points per D.96-10-066.
- p. Minimum Standard Reporting Level – A specified service level of performance for each measure and each reporting unit.
- q. NDIEC: A *Non-Dominant Inter-Exchange Carrier* (NDIEC) or long distance carrier (IEC/IXC) is only required to register with the Commission before providing long distance telephone services in California, per Pub.Util. Code § 1013.
- r. Out of Service – A telephone line without dial tone.
- s. Small Business Customer -- small business customers are those that purchase five or fewer lines.

- t. TDM – Time division multiplexing. For the purposes of the GO, TDM refers to traditional telephone service.
 - u. Telephone Company/Utility – A public utility telephone corporation providing public telephone service as further defined by Pub. Util. Code §§ 216 and 234.
 - v. Trouble Report – Any oral or written notice by a customer or customer’s representative to the telephone utility which indicates dissatisfaction with telephone service, telephone qualified equipment, and/or telephone company employees.
 - w. URF Carrier – A utility that is a wireline carrier that has full pricing flexibility over all or substantially all of its rates and charges. A Uniform Regulatory Framework (URF) carrier includes any ILEC that is regulated through the Commission’s URF, as established in Decision 06-08-030, as modified from time to time by the Commission, and includes CLECs and IECs.
 - x. URF ILECs – URF ILECs are distinguished from GRC ILECs in that they are currently granted pricing flexibility through D.06-08-030, which may be modified from time to time.
 - y. Wire Center – A facility composed of one or more switches (either soft switch or regular switch) which are located on the same premises and which may or may not utilize common equipment. In the case of a digital switch, all remote processors that are hosted by a central processor are to be included in the central office wire center.
 - z. Wireless Carrier. A *Wireless Carrier* (a Commercial Mobile Radio Service provider under Federal Communications Commission regulations) is a carrier or licensee whose wireless network is connected to the public switched telephone network (PSTN). Per Commission decision (D.94-10-031), wireless carriers are required to file a wireless identification registration with the Director of the Communications Division within the Commission.
- 1.4 Information available to the Public. The public utility telephone corporation shall maintain, available for public inspection at its main office in California, copies of all reports submitted to this Commission in compliance with these rules. These copies shall be held available for two years. The public utility telephone corporation shall identify the location and telephone number of its main office in California in its White Pages directory and/or on its Internet website and shall provide information on how to contact it. A copy of these reports will also be maintained and be available for public inspection at the Commission’s San Francisco and Los Angeles offices. Copies shall also be made available to interested parties for a nominal fee to cover the cost of

processing and reproduction. The availability shall be limited to reports provided by the local serving company.

- 1.5 Location of Records. All reports required by these rules shall be kept and made available to representatives, agents, or employees of the Commission upon reasonable notice.
- 1.6 Reports to the Commission. The public utility telephone corporation shall furnish to the Commission, at such times and in such form as the Commission may require, the results or summaries of any measurements required by these rules. The public utility telephone corporation shall furnish the Commission with any information concerning the utility's facilities or operations which the Commission may request and need for determining quality of service.
- 1.7 Deviations from any of these Rules. In cases where the application of any of the rules incorporated herein results in undue hardship or expense to the public utility telephone corporation, it may request specific relief by filing a formal application in accordance with the Commission's Rules of Practice and Procedure, except that where the relief requested is of minor importance or temporary in nature, the Commission may accept an application and showing of necessity by letter.
- 1.8 Revision of Rules. Public utility telephone corporations subject to these rules and other interested parties may individually or collectively file with this Commission a petition for rulemaking pursuant to Pub. Util. Code § 1708.5 for the purpose of amending these rules. The petition shall conform to the requirements of Rule 6.3 of the Commission's Rules of Practice and Procedure.

2. STANDARDS OF SERVICE

- 2.1 General. These rules establish minimum standards and uniform reporting levels for the installation, maintenance, and operator answer time for local exchange telephone service based on TDM. The service measures established are as follows:

<i>Service Measure</i>	<i>Type of Service</i>
Installation Interval	Installation
Installation Commitments	Installation
Customer Trouble Reports	Maintenance
Out of Service Repair Interval	Maintenance
Answer Time	Operator Services

- 2.2 Description of Reporting Levels. These levels have been established to provide customers information on how carriers perform. Minimum

standard reporting levels are established for each of the service measures. Minimum standard reporting levels are applicable to each individual reporting unit.

3. MINIMUM TELEPHONE SERVICE MEASURES

3.1 Installation Interval – Applies to GRC ILECs.

- a. Description. Installation interval measures the amount of time to install basic telephone service from the day and hour the customer requests service until it is established. When a customer orders basic service he/she may request additional features, such as call waiting, call forwarding, etc. If an additional feature is included in a basic service installation, the installation interval should only reflect the basic service installation. Installation interval applies to residential and small business customers (those that purchase five or fewer lines).
- b. Measurement. The average interval measured by summing each installation interval, expressed in business days, between the date the service order was placed and the date the service becomes operational during the current reporting period, divided by the total service orders during the reporting period. This amount excludes all orders having customer requested appointments (CRS) later than the utility's commitment dates.
- c. Minimum Standard Reporting Level. Business Days. Five Business Days is the minimum standard.
- d. Reporting Unit. Exchange or wire center, whichever is smaller. Wire centers with fewer than 100 lines should be combined with other central offices within the same location. A remote switching unit with fewer than 100 lines should also be added to its host switch. All reporting carriers shall submit the raw data included in the report.
- e. Reporting Frequency. The interval shall be compiled monthly and reported quarterly for all reporting units.

3.2 Installation Commitments – Applies to GRC ILECs.

- a. Description. Requests for establishment of basic telephone services. Commitments will not be considered missed when resulting from customer actions. Installation commitments apply to residential and small business customers (those that purchase five or fewer lines).
- b. Measurement. Monthly count of the total commitments and the commitments missed. Commitments met, expressed as a percentage, will equal total commitments minus missed commitments divided by total commitments.

- c. Minimum Standard Reporting Level. 95% commitments met.
 - d. Reporting unit. Exchange or wire center, whichever is smaller. A wire center with fewer than 100 lines should be combined with other central offices within the same location. A remote switching unit with fewer than 100 lines should also be added to its host switch. All reporting carriers shall submit the raw data included in the report.
 - e. Reporting Frequency. Compiled monthly and reported quarterly.
- 3.3 Customer Trouble Reports – Applies to TDM-based voice services offered by GRC ILECs and facilities-based URF Carriers with 5,000 or more customers and to any URF Carrier with fewer than 5,000 customers that is a COLR. Trouble reports apply to residential and business customers.
- a. Description. Service affecting, and out of service trouble reports, from customers and users of telephone service relating to dissatisfaction with telephone company services. Reports received will be counted and related to the total working lines within the reporting unit in terms of reports per 100 lines.
 - b. Measurement. Customer trouble reports received by the utility will be counted monthly and related to the total working lines within a reporting unit.
 - c. Minimum Standard Reporting Level. Report number of trouble reports per 100 working lines (excluding terminal equipment reports). Six trouble reports per 100 working lines for reporting units with 3,000 or more working lines, eight reports per 100 working lines for reporting units with 1,001-2,999 working lines, and 10 reports per 100 working lines for reporting units with 1,000 or fewer working lines.
 - d. Reporting Unit. Exchange or wire center, whichever is smaller. A wire center with fewer than 100 lines should be combined with other central offices within the same location. A remote switching unit with fewer than 100 lines should also be added to its host switch. URF CLECs that do not have exchanges or wire centers shall report at the smallest reporting unit. All reporting carriers shall submit the raw data included in the report.
 - e. Reporting Frequency. Compiled monthly, reported quarterly.
- 3.4 Out of Service Repair Intervals – Applies to TDM-based voice services offered by GRC ILECs, facilities-based URF Carriers with 5,000 or more customers, and to any URF Carrier with fewer than 5,000 customers that is a COLR.

- a. Description. A measure of the average interval, in hours and minutes from the time of the reporting carrier's receipt of the out of service trouble report to the time service is restored for residential and small business customers.
- b. Measurement. Commitment is measured by taking the total number of the repair tickets restored within less than 24 hours divided by the total outage report tickets. In addition, the system average outage duration is measured by summing each repair interval, expressed in clock hours and minutes, between the time the customer called to report loss of service and when the customer regains dial tone, divided by the total outage report tickets. These measurements include only residential and small business customer tickets.

Carriers shall submit both the adjusted and unadjusted out of service data.

The adjusted measurements exclude repair tickets when maintenance is delayed due to circumstances beyond the carrier's control. Typical reasons for delay include, but are not limited to: outage caused by cable theft, third-party cable cut, lack of premise access when a problem is isolated to that location, absence of customer support to test facilities, or customer's requested appointment. Deferred maintenance or lack of available spares are not circumstances beyond a carrier's control. Changed appointments shall be reported separately by identifying the number of such appointments and the time, in hours and minutes, associated with these appointments.

A catastrophic event, 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. A catastrophic event ends when the trouble ticket level returns to the average level three months prior to the catastrophic event. The average level is calculated by summing the actual number of out-of-service tickets for residential and small business (5 lines or less) customers for the three consecutive calendar months that did not have catastrophic events prior to the declared State of Emergency divided by three.

When quarterly reporting includes a delay for one or more months or if a catastrophic event or widespread outages affects a carrier's adjusted reporting, the carrier shall provide supporting information as to why the month should be excluded and work papers which explain the event, the date(s), the areas affected, the total number of residential and small business lines affected, and how the adjusted figure was calculated.

- c. Minimum Standard Reporting Level. Based on adjusted results, 90% of all out of service trouble reports within 24 hours is the set minimum standard. Both the percentage of outages meeting the 24-hour standard and the actual system-wide average outage duration should be reported.
- d. Reporting Unit. Reporting is at the state-wide level. However, carriers shall submit with the report the underlying data at the exchange or wire center level, whichever is smaller, that supports the information being reported. A wire center with fewer than 100 lines should be combined with other central offices within the same location. A remote switching unit with fewer than 100 lines should also be added to its host switch. URF CLECs that do not have exchanges or wire centers shall report at the smallest reporting unit.

All reporting carriers shall submit the raw data used to generate the report. Raw data should include zip code (zip+4) of the billing address associated with the line and type of allowable adjustments which were excluded according to section (b.). Instructions for submitting data can be found in the Communications Division pages of the Commission's web site. www.cpuc.ca.gov.

- e. Reporting Frequency. Compiled monthly and reported quarterly for those reporting units.

3.5 Answer Time for trouble reports and billing and non-billing inquiries applies to TDM-based voice services provided by GRC ILECs, facilities-based URF Carriers with 5,000 or more customers, and any URF Carrier with fewer than 5,000 customers that is a COLR.

- a. Description. A measurement of time for the operator to answer within 60 seconds 80% of calls to the business office for billing and non-billing inquiries and to the repair office for trouble reports. This measurement excludes any group of specialized business account representatives established to address the needs of a single large business customer or a small group of such customers. A statistically valid sample of the answering interval is taken to obtain the percentage of calls answered within 60 seconds. A customer must be presented with the option on an interactive voice response (IVR) or automatic response unit (ARU) system to speak with a live agent, preferably in the first set of options.
- b. Measurement. An average answer time of a sample of the answering interval on calls to the business office and repair office that is representative of the measurement period.

- c. Minimum Standard Reporting Level. 80% answered within 60 seconds when speaking to a live agent or 80% answered within 60 seconds when speaking to a live agent after completing an IVR or ARU system. If measurement data of average answer time is used, it will be converted to the percent answered within 60 seconds.
- d. Reporting Unit. Each traffic office serving 10,000 or more lines and handling calls to the business office for billing and non-billing inquiry calls and to the repair office for trouble report calls.
- e. Reporting Frequency. Compiled monthly and reported quarterly for percent answered within 60 seconds.

4. MAJOR SERVICE INTERRUPTION

- a. Applicability. This section applies to:
 - i. Telephone corporations that have been granted either a franchise or a Certificate of Public Convenience and Necessity (CPCN) pursuant to Public Utilities Code §1001,
 - ii. Telephone corporations that are registered under Public Utilities Code §1013,
 - iii. Telephone corporations that are registered with this Commission pursuant to Wireless Identification Registration (WIR) process, and
 - iv. Any entity subject to Public Utilities Code § 285.
- b. Description. The Commission adopts for its major service interruption reporting the Federal Communications Commission's (FCC) Part 4 rules concerning communications disruption and outages, the FCC's Network Outage Reporting System (NORS) reporting requirements, and the annual ETC (Eligible Telecommunications Carrier) outage report, as modified by FCC over time. The FCC's Part 4 rules and NORS user manual can be found at the following FCC website link:
<http://www.fcc.gov/pshs/services/cip/nors/nors.html>
- c. Reporting Procedures:
 - (i) Written reports are normally satisfactory. In cases where large numbers of customers are impacted or that are otherwise of great severity, a telephone report should be made promptly. For those entities that offer both TDM-based and VoIP services, provide NORS reports for all service types.
 - (ii) Concurrent reports shall be submitted to the Communications Division (CD) and the Office of Ratepayer Advocates (ORA) or their successor divisions when the carrier files its reports with FCC's NORS system.

Carriers shall submit a report to the Commission when the communication disruption or outage meets the FCC's reporting threshold and that disruption or outage involves communications in California, regardless of whether the affected communications in California independently meet the FCC's reporting threshold. Reports shall be filed with the CD per CD's directed method/media.

- (iii) Final NORs reports shall be made confirming that service has been restored.
- (iv) ETCs, concurrent with their FCC filing, shall submit the annual outage report that provides detailed information on any outage lasting at least 30 minutes and potentially affecting 10% of their customers in a designated service area.

d. Confidentiality. Major Service Interruption reports submitted to the Commission pursuant to these rules shall be treated as confidential in accordance with Pub. Util. Code § 583 and General Order 66-C.

5. WIRELESS COVERAGE MAPS— Applies to all facilities based telephone corporations that are wireless carriers, and have been granted a CPCN or a WIR.

5.1 Description: Wireless coverage maps shall show where wireless phone users generally may expect to receive signal strength adequate to place and receive calls when outdoors under normal operating conditions.

5.2 Requirements. Wireless carriers shall provide coverage maps on their websites and at retail locations.

- a. Wireless carriers shall provide coverage maps in printable format on their websites and in a printable or pre-printed format at retail locations that customers can take with them. Wireless carrier representatives at retail locations shall implement procedures to make available during a sales transaction coverage maps depicting approximate wireless service coverage applicable to the wireless service rate plan(s) being sold.
- b. Wireless carriers shall provide coverage maps depicting approximate wireless service coverage applicable to the wireless service offered rate plan(s). All coverage maps shall include a clear and conspicuous disclosure of material limitations in wireless service coverage depiction and wireless service availability.

6. RECORDS AND REPORTS

6.1 Reporting Units. Service measurements shall be maintained by reporting units. Reporting units are exchange, central office entity, wire center, traffic office, trouble report service office, or business office as required.

The reporting unit for each service measure is defined in Section 3.

- 6.2 Reporting Requirements. Reports shall be made to the Communications Division of the Commission within 45 days of the end of the reporting quarter, for all reporting units. Service interruption shall be reported when it is considered a major interruption as defined in Section 4. See the Communications Division pages of the Commission's web site for reporting instructions.

Reports to the Commission of performance not meeting the reporting level shall state the levels of service for each service measure and the months being reported. Reports on reporting units for two or more consecutive months shall also include a description of the performance at the reported level, a corrective action plan which includes the specific action being taken to improve service, and the estimated date of completion of the improvements.

- 6.3 Retention of Records. Quarterly summary records of service measurements for each reporting unit shall be retained for three years. All major service interruption reports shall be retained for three years. All summary records shall be available for examination by Commission representatives during the retention period and special summaries of service measurements may be requested by the Commission.
- 6.4 Commission Staff Reports. The staff may compile and post the minimum service standards and the performance of each carrier on the Commission's website.

7. STAFF INVESTIGATIONS AND ADDITIONAL REPORTING REQUIREMENTS

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.

Carriers that fail to meet any standard for two consecutive months or more shall file with the Communications Division, or its successor, a Corrective Action Plan for each month that the service quality measures are not met that explains the reason(s) for missing the standard(s) and the actions that the company will take to correct the causes and improve performance to a level that meets adopted measures and standards.

8. REFUNDS

URF carriers and GRC ILECs shall utilize their existing tariff or customer guidebook provisions for customer refunds. If a carrier does not have a tariff or guidebook provision for customer refunds, the carriers should develop a refund policy and file with the Commission a Tier 1 Advice Letter to describe the refund policy, identify where the policy can be found, and modify the tariff or customer guidebook as appropriate.

All carriers shall report the number and total amount of refunds by month. This data should be compiled monthly and reported quarterly in a separate form filed with the quarterly service quality reports.

9. FINES

- 9.1 General. Applies to facilities-based telephone corporations that offer TDM-based voice service and have been granted either a franchise or a Certificate of Public Convenience and Necessity (CPCN) pursuant to Public Utilities Code § 1001 or are registered pursuant to Public Utilities Code §1013, and are regulated under the Uniform Regulatory Framework (URF) adopted in D.06-08-030. For companies that offer both TDM and VoIP based services, fines apply only to TDM-based service.

A carrier will begin incurring a fine for these measures when it reaches a “chronic failure status,” which is failure to meet the minimum standard for three consecutive months. No fines will be assessed for missing the first two months.

A carrier in chronic failure status will be fined a specific amount for each day that it failed to meet the minimum monthly standard. The fine does not end and restart when the calendar reporting year ends and a new year begins. A carrier exits chronic failure status after it meets the standard for two consecutive months. However, until the carrier exits chronic failure status, the carrier will continue to incur fines for any succeeding months that it failed to meet the standard.

The fine will be assessed based on the size of the carrier relative to the number of access lines in California at the end of June of the applicable year. The June 30th total California line count will be posted on the Communications Division’s web page for each year of calculation. The formula to scale the fines follows:

$$(\text{Carrier's Access Lines} / \text{Total CA Access Lines in June}) = \text{Carrier's Scaling Factor}$$

$$(\text{Carrier's Scaling Factor}) \times (\text{Monthly Base Fine per Measure}) \times (\text{Number of Months Measure Was Not Met}) = \text{Fine}$$

For example, if a carrier were 24% of total access lines, the scaling factor of .24 would be applied to the monthly base fine for the number of months that the carrier was in chronic status. A carrier will exit chronic failure status when it meets the standard for two consecutive months.

- 9.2 Dispute Resolution. If CD staff determines that the calculation(s) in the advice letter is (are) incorrect, staff will attempt to clarify the terms and calculations with carrier. If the dispute is resolved, the carrier shall file a supplemental advice letter with corrected terms and calculations. If staff continues to disagree with the carriers' calculations, staff shall reject the supplemental advice letter.

The carrier (or a protesting party, or a third party, if applicable) may request Commission review of the advice letter disposition in accordance with GO 96B § 7.7.1. In the event staff disputes the advice or the carrier requests commission review, staff will prepare and place on the Commission's meeting agenda a proposed resolution, and will serve it on the requester and all others on whom the request was served.

- 9.3 Out of Service (OOS) Repair Interval Fine. Carriers must meet the minimum OOS measure on a monthly basis. Initially, if a carrier does not meet this standard for three (3) consecutive months, it will be assessed a fine based on adjusted results, beginning in the third month, and will be considered to be in chronic failure status.

The base daily fine amount for OOS is \$25,000. For the purpose of calculating the fine, a month consists of 30 days.

For example, if a carrier that had 60% of total access lines initially failed to meet the standard for three consecutive months, the fine for the third, and each subsequent month, would be \$750,000 per month X the carrier's scaling factor of .6, for a total of \$450,000 per month. Table 1 is a summary of the base fine for failure to meet the OOS standard.

Table 1: Base Out Of Service Fine

	1 to 2 Consecutive Months of OOS Standard Not Met	3 or more Consecutive Months of OOS Standard Not Met
Fine Per Day	\$0 per day	\$25,000 per day
Days in a Month (for all months)	30 days	30 days
Base Fine per Month	\$0	\$750,000

- 9.4 **Customer Trouble Reports (CTR) Fine.** The fines for customer trouble reports shall be based on company-wide CTR results. Once it reaches chronic status, a carrier receiving 10 or more customer trouble reports per 100 access lines (10%) for its entire service territory will be assessed a fine.

The fine amount will be increased based on the number of consecutive months a carrier fails to meet the 10% standard. The initial fine is \$500 per day, which will escalate to the highest daily fine of \$2,000 per day after 12 or more consecutive months. Table 2 illustrates the progression.

Table 2: Base Customer Trouble Report Fine

	1 to 2 Consecutive Months	3 to 5 Consecutive Months	6 to 8 Consecutive Months	9 to 11 Consecutive Months	12 or More Consecutive Months
Fine Per Day	\$0	\$500	\$1,000	\$1,500	\$2,000
Days in Month	30	30	30	30	30
Base Fine per Month	\$0	\$15,000	\$30,000	\$45,000	\$60,000

- 9.5 **Answer Time for Trouble Reports and Billing and Non-billing Inquiries Fine.** The fines for Operator Answer Time will be assessed on a carrier for each day that it fails to meet the minimum standard of answering at least 80% of the all customer calls within 60 seconds.

The initial base fine is \$500 per day, which will escalate to the highest daily fine of \$2,000 per day. Table 3 illustrates the progression.

Table 3: Base Answer Time Fine

	1 to 2 Consecutive Months	3 to 5 Consecutive Months	6 to 8 Consecutive Months	9 to 11 Consecutive Months	12 or More Consecutive Months
Fine Per Day	\$0	\$500	\$1,000	\$1,500	\$2,000
Days in Month	30	30	30	30	30
Base Fine per Month	\$0	\$15,000	\$30,000	\$45,000	\$60,000

- 9.6 **Advice Letter Tabulating Fine.** The performance of any telephone corporation that does not meet the minimum standards shall submit annually, by February 15 of the following year, a Tier II Advice Letter that

shows by month each Service Quality measurement that it did not meet the minimum standards and the applicable fine.

The advice letter shall contain detailed calculations using MS Excel spreadsheets (or a format specified by the Communications Division) with explanations of how each fine was calculated and assumptions used in the calculation. CD will prepare a resolution for the Commission annually, and if the resolution is adopted, then fines shall be payable to the California Public Utilities Commission for deposit to the California General Fund.

The minimum annual fine shall be no lower than the registration fee for a CPCN.

9.7 Alternative Proposal for Mandatory Corrective Action

In support of a request to suspend the fine, carriers may propose, in their annual fine filing, to invest no less than twice the amount of their annual fine in a project (s) which improves service quality in a measurable way within 2 years. The proposal must demonstrate that 1) twice the amount of the fine is being spent, 2) the project (s) is an incremental expenditure with supporting financials (e.g. expenditure is in excess of the existing construction budget and/or staffing base), 3) the project (s) is designed to address a service quality deficiency and, 4) upon the project (s) completion, the carrier shall demonstrate the results for the purpose proposed.

Carriers are encouraged to review their service quality results to find appropriate target projects to invest funds.

10. **FORM**

The attached form is a template for reporting GO 133-D Service Quality Standards. The staff may change this form as necessary. Additional information can be found on the Commission's website.

(End of Attachment B)

Attachment C

Service Quality Standards Reporting Template

**California Public Utilities Commission
Service Quality Standards Reporting
General Order No. 133-D**

Company Name: _____

U#: _____

Report Year: _____

Reporting Unit Type: Total Company Exchange Wire Center

Reporting Unit Name: _____

Measurement (Compile monthly, file quarterly)		Date filed (05/15/yy)			Date filed (08/15/yy)			Date filed (11/15/yy)			Date filed (02/15/yy)		
		1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Installation Interval Min. standard = 5 bus. days	Total # of business days												
	Total # of service orders												
	Avg. # of business days												
Installation Commitment Min. standard = 95% commitment met	Total # of installation commitments												
	Total # of installation commitment met												
	Total # of installation commitment missed												
	% of commitment met												
Customers	Acct # for voice or bundle, res+bus												
Customer Trouble Report													
Min. Standard	6% (6 per 100 working lines for units w/ ≥ 3,000 lines)	Total # of working lines											
		Total # of trouble reports											
		% of trouble reports											
	8% (8 per 100 working lines for units w/ 1,001 - 2,999 lines)	Total # of working lines											
		Total # of trouble reports											
		% of trouble reports											
	10% (10 per 100 working lines for units w/ ≤ 1,000 lines)	Total # of working lines											
		Total # of trouble reports											
		% of trouble reports											
Adjusted Out of Service Report Min. standard = 90% within 24 hrs	Total # of outage report tickets												
	Total # of repair tickets restored in ≤ 24hrs												
	% of repair tickets restored ≤ 24 Hours												
	Sum of the duration of all outages (hh:mm)												
	Avg. outage duration (hh:mm)												
	Indicate if catastrophic event is in month												
Unadjusted Out of Service Report	Total # of unadjusted outage report tickets												
	Total # of all repair tickets restored in ≤ 24hrs												
	% of all repair tickets restored ≤ 24 Hours												
	Sum of the duration of all outages (hh:mm)												
	Avg. unadjusted outage duration (hh:mm)												
Refunds	Number of customers who received refunds												
	Monthly amount of refunds												
Answer Time (Trouble Reports, Billing & Non-Billing) Min. standard = 80% of calls ≤ 60 seconds to reach live agent (w/ a menu option to reach live agent)	Total # of calls for TR, Billing & Non-Billing												
	Total # of call seconds to reach live agent												
	% ≤ 60 seconds												

Primary Utility Contact Information

Name: _____

Phone: _____

Email: _____

Date Adopted: 7/28/09
 Date Revised: 12/08/09 (Corrects typographical errors)
 Date Revised: 05/04/10 (Added new lines and changed terms to reflect requirements of G.O.133-C)
 Date Revised: 09/15/15 (Added new rows to reflect requirements of G.O. 133-D)

REDLINED VERSION

COM/MP6/jt2

PROPOSED DECISION

Agenda ID #14750 [Rev. 1](#)

Quasi-legislative

8/18/16 [Item #52](#)

Decision **PROPOSED DECISION OF COMMISSIONER PICKER (Mailed
3/22/2016)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

DECISION ADOPTING GENERAL ORDER 133-D

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DECISION ADOPTING GENERAL ORDER 133-D**Summary**

This decision adopts revisions to General Order 133, which sets out service quality rules for California's public utility telephone corporations. Today's decision imposes automatic fines of up to \$25,000 per day for failure to meet three service quality measures: 1) Out-of-Service Repair Interval, 2) Customer Trouble Reports and 3) Answer Time for Trouble Reports and Billing and Non-billing Inquiries. Fines do not accrue until a company fails to meet prescribed standards for three consecutive months. Accrued fines may be suspended if the company makes investments designed to cure service quality deficiencies in an amount equal to twice the fine. Federally-mandated outage reports must also be submitted to the Communications Division by all carriers registered under Pub. Util. Code § 285. Other clarifying revisions are also adopted to General Order 133-D.

1. Background

In 2009, this Commission issued Decision (D.) 09-07-019 and adopted General Order (GO) 133-C, which revised the Commission's service quality rules, measures and standards for telecommunications carriers previously established under GO 133-B. In that decision, the Commission adopted five minimum service quality measures for installation, maintenance and operator answer time for local exchange telephone service. The goal of these service quality measures was to ensure that telecommunications carriers provide relevant information to the Commission so that it may adequately protect California customers and the public interest.

On December 1, 2011, the Commission opened Rulemaking 11-12-001 to review telecommunications carriers' performance in meeting GO 133-C service

quality performance standards. In addition, the Order Instituting Rulemaking stated the Commission's intention to assess whether the existing GO 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 future substandard service quality performance.

On September 24, 2012, the then-assigned Commissioner issued his scoping memo and ruling setting forth an initial schedule for this proceeding. In D.13-02-023, the Commission affirmed the determination that hearings may be required and that the largest incumbent local exchange carriers should fund an evaluation of telecommunications facilities.

On August 19, 2013, the proceeding was reassigned to Administrative Law Judge (ALJ) Maribeth A. Bushey.

On February 6, 2014, President Picker was designated the assigned Commissioner. On September 24, 2014, the assigned Commissioner issued his Amended Scoping Memo and Ruling that superseded the schedule in the previous scoping memo.

The amended scoping memo included the Staff Report from the Commission's Communications Division. Parties were allowed to file and serve comments on this Staff Report no later than October 24, 2014, and reply comments no later than November 13, 2014.

Based on the comments and reply comments, Commission Staff prepared a formal proposal. On February 2, 2015, the assigned ALJ issued a ruling distributing the formal Staff Proposal. The Staff Proposal recommended that the Commission adopt modifications to the existing service quality requirements and new reporting requirements including, but not limited to, changes in definitions,

calculating the end of a catastrophic duration, and changes to outage reporting, automatic customer refunds and carrier fines for non-compliance, and service quality rules for certificated facilities-based interconnected Voice over Internet Protocol (VoIP)¹ carriers. The ruling authorized parties to file and serve comments on the Staff Proposal.

On November 12, 2015, assigned Commissioner Picker mailed his Proposed Decision adopting General Order 133-D. Parties filed comments and reply comments. Commissioner Picker subsequently withdrew his Proposed Decision from the Commission's agenda.

On December 29, 2015, the assigned ALJ issued a ruling seeking comment on Staff's revised proposed GO 133-D, Section 4. This revision applied the Major Service Interruption Reporting obligations set out in Section 4 to entities subject to Public Utilities Code Section 285. Parties filed comments and reply comments on the proposal.

Attachment A is a list of parties that filed comments to the Staff Proposals.

¹ Pub. Util. Code § 239(a)(1) "Voice over Internet Protocol" or "VoIP" means voice communications service that does all of the following:¹

(A) Uses Internet Protocol or a successor protocol to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in Internet Protocol or a successor protocol.¹

(B) Requires a broadband connection from the user's location.¹

(C) Permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.¹

(2) A service that uses ordinary customer premises equipment with no enhanced functionality that originates and terminates on the public switched telephone network, undergoes no net protocol conversion, and provides no enhanced functionality to end users due to the provider's use of Internet Protocol technology is not a VoIP service.¹

(b) "Internet Protocol enabled service" or "IP enabled service" means any service, capability, functionality, or application using existing Internet Protocol, or any successor Internet Protocol, that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor Internet Protocol format through a broadband connection, regardless of whether the communication is voice, data, or video.

Today's decision brings forward our Staff's comprehensive recommendations for GO 133-D for the Commission's consideration. As described above, these proposals are the result of a long and detailed process involving all interested parties. Attachment B to today's decision is GO 133-D. The primary difference between this version of GO 133-D and the version mailed in November is that the Major Service Interruption reporting obligations are extended to entities subject to Public Utilities Code Section 285. Today's Proposed Decision also differs from the November version in that a subsequent phase addressing wireless service quality is not scheduled for this proceeding.

2. Description of Staff's Recommended Changes to the GO

2.1. Changes in Definitions

2.1.1. Customer

Staff proposed to define a customer as a separate account number for voice service, or a bundle of services including voice, and includes large business (six or more lines), small business (five lines or less) and residential service. Carriers commented that customer should be defined as an "access line." Staff reasoned that the intent of the term customer was to capture the customer's out-of-service experience, regardless of the number of access lines that a customer has. The definition of customer adopted in GO 133-D excludes large business customers because the service quality measures and standards do not apply to large business customers.

The definition will be used to determine whether a facilities-based URF carrier must report service quality results, and for calculating whether a catastrophic event has affected 3% of a carrier's customers in the state.

Calculating Trouble Report and Out-of-Service (OOS) restoration time results is limited to small business and residential customers in GO 133-C.

Carriers subject to reporting shall report both customer numbers and access lines for small business and residential customers on the GO 133-D report card shown in Attachment C to this decision.

2.1.2. Facilities-Based Carrier

Staff proposed that a facilities-based carrier be defined as a telephone corporation or interconnected VoIP provider that owns or controls facilities used to provide voice communication for compensation, including the line to the end-user's location. No party commented on staff's initial proposal and it is reflected in GO 133-D attached to today's decision.

The definition of facilities-based carrier removes the word "voice" and reads:

A telephone corporation or interconnected VoIP provider that owns or controls facilities used to provide communication for compensation, including the line to the end-user's location.

The definition is technology-neutral reflecting today's telecommunications market, including facilities-based interconnected VoIP providers which can use a variety of means including coaxial cable, fiber optics, and wireless technologies, to provide service to their customers. These facilities are lines that provide a connection from the service provider's facilities to the end-user.

2.1.3. Interconnected VoIP Service

Staff proposed adopting the FCC's definition of interconnected VoIP service (47 C.F.R. § 9.3), which is limited to internet protocol based voice service (VoIP). Both AT&T and ORA commented on the initial proposal and recommended using the Public Utilities Code Section 239(a)(1)(A), definition for interconnected VoIP, which includes Internet protocol (IP), or a successor

protocol to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in Internet Protocol or a successor protocol.

[Emphasis added.]

AT&T's and ORA's recommended Public Utilities Code Section 239(a)(1)(A) definition of interconnected VoIP service is used in GO 133-D because it is more technologically neutral than the federal definition and provides this Commission with greater flexibility in addressing voice services as technologies change.

2.1.4. Line

Staff proposed that a line be defined as:

An access line (hardwire and/or channel) which runs from the local central office, or functional equivalent (Class 4/5, Class 5 or remote), to the subscriber's premises.

Only ORA commented on staff's proposed definition and supported it. Because technologies are evolving the definition of line does not refer to specific types of central offices.

In GO 133-D in Attachment B a definition of line which better reflects today's technologies for providing voice communication services that do not always utilize a dial tone in the traditional sense is:

An access line (hardwire and/or channel) which runs from the local central office, or functional equivalent, to the subscriber's premises. A channel can be provided with or without wires.

2.1.5. Time Division Multiplexing (TDM)

Staff did not propose a definition for Time Division Multiplexing (TDM). However GO 133-D refers to TDM in Section 2.1 to specify the service measures to which GO 133-D applies. TDM is a technique that has been used for years to

provide plain old telephone service, the service to which GO 133 service quality rules apply.

2.2. Changes to Existing Reporting Requirements and Addition of New Reporting Requirements

2.2.1. Duration of Catastrophic Events

Staff recommended that a catastrophic event should end when the out-of-service ticket level returns to the average level for the three consecutive months prior to the catastrophic event. The average level should be calculated by summing the actual number of out-of-service tickets for residential and small business (five lines or less) customers for the three consecutive calendar months that did not have catastrophic events prior to the declared State of Emergency divided by three.

Staff explained that identifying the specific duration of a catastrophic event is important as it defines a consistent methodology for how the carriers would determine which events are to be excluded.

AT&T, Cox and Joint Consumers submitted comments on Staff's original proposal. Joint Consumers supported staff's proposal. AT&T and Cox generally supported the proposal, but suggested that: a) only out-of-service tickets should be included, b) only include small business and residential customers, and c) base the calculation on the average of the prior three months that did not have a catastrophic event. AT&T's suggested modifications to staff's proposal are included in Attachment B.

2.2.2. Additional Reporting and Calculation of Out-of-Service Measure Results

Staff recommended that carriers be required to provide the out-of-service measure results on an actual, unadjusted basis in addition to the current reporting, which shows results that are adjusted to exclude Sundays, federal

holidays, catastrophic events, and events beyond the control of the carrier, including customer requested appointments. The purpose for having actual results reported is to provide context as to the significance that the allowable exemptions have on out-of-service restoral time results. The unadjusted results would not be used for calculating fines.

Staff also proposed that carriers be required to include in the quarterly reporting information on catastrophic events that were excluded in the out-of-service calculation results. The information includes an explanation of what the catastrophic event was, the areas affected, the total number of lines affected including small business and residential customers.

Some carriers urged the Commission to completely eliminate this standard, and the small LECs recommended changing the threshold for reporting catastrophic events for small telephone companies from 3% of carriers' lines to the greater of either 3% of a carrier's lines or 100 customers. The competitive carriers asked the Commission to adopt a separate template so that outages caused by the underlying carrier could be separated for the purpose of fines.

Reporting out-of-service repair results in an unadjusted basis provides useful information on the order of magnitude that the exemptions have on reported results. The additional burden of reporting the unadjusted results is not significant because the carriers have this information readily available. The standard for out-of-service measure will continue to apply only to the adjusted results and assessing carrier's OOS performance for the purpose of carrier fines will also be based on adjusted results. The new template in Appendix C reflects Staff's proposal.

GO 133-D does not adopt the small LECs' position on the appropriate threshold for reporting catastrophic events. As reported in the Staff's September

2014 report, the smallest telephone company, ~~Winterhaven~~[Pinnacles](#), had approximately 249 customers at the end of 2013. The small LECs' proposal would require 100 customers, or 40% of Winterhaven's customer base to be without service before reporting as a catastrophic event.

2.2.3. Providers to Which Service Quality Rules Apply

Staff proposed that the GO 133-D Service Quality rules apply to any telephone corporation, common carrier, or other entity that provides voice service in California with lines, including facilities-based interconnected VoIP providers, that:

- 1) Have been granted a Certificate of Public Convenience and Necessity by the Commission, and
- 2) Are designated as an Eligible Telecommunications Carrier by either the Federal Communications Commission (FCC) or this Commission to receive federal high-cost support and/or low-income support, and/or
- 3) Are authorized to provide California LifeLine service.

Staff amended their initial proposal to leave unchanged from GO 133-C the overall applicability as set forth in Section 1.2 of that GO. In addition, Staff proposed that Section 4, Major Service Interruption, be applicable to VoIP providers subject to Pub. Util. Code § 285.

As set forth in Pub. Util. Code § 285(c), the Commission is authorized to require interconnected VoIP service providers to collect and remit public purpose program surcharges:

(c) The commission shall require interconnected VoIP service providers to collect and remit surcharges on their California intrastate revenues in support of the following public purpose program funds:

- (1) California High-Cost Fund-A Administrative Committee Fund under Section 275.

- (2) California High-Cost Fund-B Administrative Committee Fund under Section 276.
- (3) Universal Lifeline Telephone Service Trust Administrative Committee Fund under Section 277.
- (4) Deaf and Disabled Telecommunications Program Administrative Committee Fund under Section 278.
- (5) California Teleconnect Fund Administrative Committee Fund under Section 280.
- (6) California Advanced Services Fund under Section 281.

Staff reasoned that interconnected VoIP service providers are providing significant telephone service in California and are subject to requirement to collect and remit public purpose program surcharges. Providing the Commission a copy of a report already required by the FCC is an efficient means of informing this Commission of service outages to California subscribers.

2.2.4. Require Interconnected VoIP Providers to Submit FCC Network Outage Reporting System (NORS) Reports to the Commission

Staff recommended that all entities subject to the GO, including interconnected VoIP providers, submit to the Communications Division copies of all outage reports filed with the Federal Communication Commission under the NORS.

Staff's proposal is shown in Section 4 of GO 133-D attached to today's decision as Attachment B.

The purpose of Staff's proposed changes to Section 4 are to require Interconnected VoIP providers, in the same manner as other communication providers, to submit copies of their FCC-mandated NORS reports to the Communications Division. Interconnected VoIP providers have been required to

report NORS outages to the FCC since 2012, pursuant to 47 CFR 4.3(h). The FCC adopted NORS reporting for interconnected VoIP providers due to the public safety issues associated with VoIP outages. VoIP service is becoming more prevalent and is marketed as a substitute for traditional telephone service, and interconnected VoIP customers have the same need for reliable service and the ability to reach emergency services as do traditional telephone service customers. To demonstrate the need for mandatory outage reporting, the FCC's Order pointed to a number of significant VoIP outages whereby the FCC found out about the outages through the media.

Currently, facilities-based wireline and wireless telephone corporations file NORS reports with the Commission, and there is extremely limited administrative burden for interconnected VoIP providers to do the same.

**2.2.5. Reporting Outages that Affect Public Safety
(e.g. 9-1-1, Emergencies or Disasters) that
Do Not Meet the FCC's NORS Reporting
Threshold**

Staff recommended requiring that all facilities-based certificated and registered public utility telephone corporations to report zip code information (including zip + 4 if available) in the raw trouble report data reported under GO 133-D. This additional data will provide further information on location of outages.

Staff proposed to adopt a new Emergency and Disaster Reporting for all emergencies and disaster events that affect 9-1-1/Public Safety for all customers in communities of place. The proposal was based on reporting requirements similar to the FCC's NORS and GO 166 for Electric Utilities for Reporting During Emergencies and Disasters.

Carriers generally did not support this additional reporting for many reasons. They stated that the FCC NORS reports already cover rural areas, that the Commission has this information annually in ETC filings, that their network monitoring equipment cannot identify communities of place, that there is no objective reporting criteria, that there is no demonstration of how this would improve public safety, and that implementing such reporting would be costly. The carrier's positions that the current NORS reporting captures outages in small areas was not helpful and misses the point of the staff proposal – to capture outages that do not meet the NORS reporting threshold.

Consumer groups supported the staff proposal, however ORA proposed a new threshold for outage reporting, from the NORS 900,000 user minutes to 90,000 user minutes. In reply comments, the consumer groups and CALTEL supported ORA's new threshold. However, as AT&T pointed out, ORA's proposal would result in hundreds, if not thousands, of additional reports being filed. While ORA's proposal would show information for outages which affect smaller numbers of users, it does not solve the problem for which staff was seeking a solution, which was how to correlate a smaller number of users with the geographic location of small communities.

Joint Consumers proposed that zip codes could be used to identify sparsely populated areas, but they did not provide details on how zip codes would be used for real-time outage reporting. However, including in the trouble ticket raw data the billing address zip code that is associated with telephone number experiencing trouble would provide greater granularity of outage location. As trouble ticket data is compiled on a monthly basis and reported quarterly, this information does not lend itself to real time analysis and would only be useful for post-outage analysis. Until such time that more specific ways

to identify outages that do not meet the NORS reporting threshold are developed, Staff proposed that carriers include zip codes for each outage in the trouble ticket raw data.

2.2.6. Method of Submitting NORS Reports

In D.09-07-019, the Commission directed the staff to initiate steps to submit a formal request to the FCC for password-protected access to all California-specific outage data. Staff did so in 2009 and to date the FCC has not acted on the request. Staff noted in its proposal that the current email method for carriers to submit NORS reports is not efficient and lacks consistency between reporting companies. Staff proposed that a secured web-based method be developed for carriers to submit reports. General Order 133-C § 4.b.ii Major Service Interruption - Reporting Procedures, states that NORS reports "...shall be filed with the CD per CD's directed method/media." Consequently CD has the delegated authority to develop and direct carriers to use a web-based method of submitting reports.

2.2.7. Change in Answer Time Reporting

Staff recommended two changes to the reporting requirement for the Operator Answer Time service quality measure: 1) compile monthly and report quarterly, and 2) identify the answer time results by the type of calls: billing, non-billing inquiries and trouble reports.

Large carriers do not support the change in the Answer Time Reporting because there is no benefit to customers and the proposal would be costly and burdensome to implement.

Staff did not adopt the recommendations from the parties who commented on this particular proposal. Staff's September 2014 report showed that several carriers failed to meet the standard over multiple years, from 2010 to 2013. The

answer time metric is important to monitor because it provides an indication on the level of service customers receive from their provider regarding reaching telephone company representatives to report outages and resolve billing disputes. Staff contended that the new reporting schedule will bring this data to the commission consistent with the other measures.

2.2.8. Change in Corrective Action Plan Submissions

Staff proposed to require telephone corporations that fail to meet any standard for two consecutive months or more to file a Corrective Action Plan.

Staff reasoned that the proposal significantly reduces the time period from two consecutive quarters to two consecutive months of not meeting any standards and would allow the Commission to understand the underlying problem regarding the carriers' performance promptly and evaluate the carriers' plan to improve their performance. Staff stated that this change is important because it would help the Commission ensure that the carrier's proposed actions are effective in improving their performance.

AT&T opposed Staff's proposal, maintaining that changing the corrective action plan reporting from the current GO 133-C process from quarterly to monthly would not result in improved service quality. ORA contended that the existing quarterly corrective action plans are not an effective means of improving service quality for carriers with chronic service quality problems.

Staff explained that carriers that fail to meet any service quality standard for two consecutive months or more to file in the quarterly filings should be required to include a Corrective Action Plan for each month the service quality measures are not met. The Corrective Action Plans shall describe the reason(s) for missing the standard(s) and the actions the company will take to correct the

causes and improve performance to a level that meets adopted standards and measures.

2.3. Customer Refunds for Service Outage

Staff initially recommended a customer refund mechanism for customers that have been out of service for more than 24 hours, whether or not the customer asked for a refund. The URF ILECs do not support the staff's refund proposal, and Verizon and Frontier commented that they currently have a refund provision their tariffs. The small LECs do not believe that a refund mechanism should be applied to them because they have the general rate case process that includes a review of service quality and therefore a refund mechanism is not needed for them. Joint Consumers supported refunds for customers without service for more than 24 hours, and ORA supported refunds as appropriate and consistent.

Staff subsequently determined that it is not necessary because companies have refund provisions in their tariffs or customer guidebooks. Therefore, telephone corporations may use their existing tariff provisions or customer guidebook provisions for customer refunds. If a carrier does not have a provision for customer refunds, that carrier should develop a refund policy and file a Tier I Advice Letter with the Commission to modify their tariff, or provide a copy of the modified customer guidebook with the refund provision identified.

2.4. Automatic Fine Proposal

Staff proposed automatic fines for certain URF carriers that fail to meet the service quality standards for: 1) Customer Trouble Reports, 2) Out-of-Service Reports or 3) Answer Time Reports.

As set forth in Section 9.1 of GO 133-D, the automatic fine proposal is applicable to facilities-based telephone corporations that offer TDM-based voice service and have been granted either a franchise or a Certificate of Public

Convenience and Necessity pursuant to Public Utilities Code § 1001 or are registered pursuant to Public Utilities Code §1013, and are regulated under the Uniform Regulatory Framework adopted in D.06-08-030. For companies that offer both TDM and VoIP based services, fines apply only to TDM-based service.

The methodology for calculating the amount of the fine uses an adopted base fine that is adjusted to reflect the business size of the violating telephone company.

The large carriers generally opposed the fine proposal claiming that competition provides the biggest incentive to improve service quality, and that the fine proposal is inappropriate and unlawful because it imposes daily fines on monthly service. The small LECs do not believe that the fine mechanism should be applied to them because their operations and service quality are scrutinized in general rate case reviews. Further opposing comments stated that penalties have little to no impact on service quality standards, will raise prices, and will not promote public safety goals.

The CLEC argue that they should not be fined on the underlying carrier's performance. Staff reasoned that the CLECs have a responsibility to provide safe and reliable service to their customers, and customers are indifferent to the underlying source of their service. CLECs have recourse against their underlying facilities-based providers that provide substandard service through contractual agreements.

Consumer advocate groups and CWA generally supported staff's fine proposal, and ORA submitted that competition has so far not resulted in improved service quality. Cox maintains that staff erred in using the Performance Incentive Plan adopted in D.08-12-032 because it was a voluntary settlement between AT&T and specific CLECs.

Staff's proposal for imposing automatic fines for chronic failure to meet service quality standards finds its roots in the penalty mechanism adopted in D.01-12-021 for Pacific Bell Telephone Company's declining service quality and failure to comply with Public Utilities Code Section 451 regarding safe and reliable service. That penalty mechanism applied a \$10,000 per day fine for each month that the company missed the adopted standard. That decision and staff's proposal are based on the principles adopted in D.98-12-075 for assessing penalties for failure to comply with commission rules, related to (but not limited to) energy utility affiliate transactions. That decision is based on Public Utilities Code Sections 2107 and 2108 regarding violations for non-compliance with this commission's rules and orders. Public Utilities Code Section 2107 provides that any public utility that violates or fails to comply with any order or decision of the Commission is subject to a penalty of not less than \$500, or more than \$50,000 for each offense. Public Utilities Code Section 2108 counts each day of a continuing violation as a separate and distinct offense.

~~Decision D.~~01-12-021 established a precedent for applying a daily fine for missing a monthly standard. GO 133-D applies the fine mechanism to small LECs with regards to Customer Trouble Reports, Out-of-Service, and Answer Time measures because the fine mechanism provides a strong incentive for all carriers covered by GO 133-D to maintain a level of service quality the meets our adopted standards. If the small LECs continue to meet the service quality standards, then concerns about the fine mechanism are moot.

2.4.1. Out-of-Service Reports

The Out-of-Service (OOS) standard requires that 90% of service outages are resolved by the telephone corporation within 24 hours. The calculation is

performed on a monthly basis across the telephone corporation's small business and residential lines.

Out-of-Service Automatic Fine (subject to scaling)

	1 to 2 Consecutive Months of OOS Standard Not Met	3 or more Consecutive Months of OOS Standard Not Met
Fine Per Day	\$0 per day	\$25,000 per day
Days in a Month	30 days	30 days
Total Fine per Month	\$0	\$750,000

2.4.2. Answer Time for Trouble Reports and Billing and Non-Billing Inquiries Fine

The fines for Operator Answer Time will be assessed for each day that a carrier fails to meet the minimum standard of answering at least 80% of the all customer calls within 60 seconds. The fine is based on a carrier's performance for all customer calls.

The initial fine is \$500 per day, which escalates to the highest daily fine (after 12 or more consecutive months) at \$2,000 per day.

Base Answer Time Fine (subject to scaling)

	1 to 2 Consecutive Months	3 to 5 Consecutive Months	6 to 8 Consecutive Months	9 to 11 Consecutive Months	12 or More Consecutive Months
Fine Per Day	\$0	\$500	\$1,000	\$1,500	\$2,000
Days in Month	30	30	30	30	30
Base Fine per Month	\$0	\$15,000	\$30,000	\$45,000	\$60,000

2.4.3. Customer Trouble Report Fines

The automatic fines for customer trouble reports are based on company-wide customer trouble report rate of 10 reports per 100 access lines (10%). After two consecutive months of exceeding 10%, the carrier will be

assessed a fine per day until the monthly average decreases to below 10%. The per-day fine amount, which is scaled based on the size of the carrier, increases based on the number of consecutive months a carrier fails to meet the 10% standard. The initial fine is \$500 per day, which escalates to the highest daily fine at \$2,000 per day after 12 or more consecutive months.

**Customer Trouble Report Automatic Fine
(subject to scaling)**

	1 to 2 Consecutive Months	3 to 5 Consecutive Months	6 to 8 Consecutive Months	9 to 11 Consecutive Months	12 or More Consecutive Months
Fine Per Day	\$0	\$500	\$1,000	\$1,500	\$2,000
Days in Month	30	30	30	30	30
Total Fine per Month	\$0	\$15,000	\$30,000	\$45,000	\$60,000

3. Discussion

Pursuant to Public Utilities Code Section 451 each public utility in California must:

Furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

The duty to furnish and maintain safe equipment and facilities that provide just and reasonable service falls squarely on California's telecommunication carriers.

We opened this rulemaking in 2011 to review telecommunications carriers' performance in meeting existing service quality performance standards and to

assess whether there is a need to establish a penalty mechanism for future substandard service quality performance. As set forth above, our Communications Division Staff did a comprehensive review of GO 133-C and made a proposal for changes, including automatic fines for carriers in chronic failure status.

Today's decision for the most part adopts Staff's proposal and includes consideration of all the parties' comments on that proposal. The primary issue that remains in dispute is the imposition of fines on carriers that reach chronic failure status.

As explained above, the revised GO includes automatic fines, scaled to the size of the carrier, for three service quality standards after the carrier reaches chronic failure status. Staff's proposal is to penalize carriers that continually do not meet the respective minimum service quality measures and standards. After two consecutive months of failing to meet the applicable standard, the carrier will be fined a specific amount per day, multiplied by 30 days.

The September 24, 2014, Staff Report showed that the largest carriers in California, AT&T Communications of California, Inc. (AT&T) and Verizon California, Inc. (Verizon), which collectively operate approximately 88% of telephone lines in California reported under GO 133-C, never met the minimum standard of repairing 90% of all out of service trouble reports within 24 hours during the 2010 to 2013 period. The Staff Report showed that for the combined years 2010 and 2011, AT&T and Verizon each needed on average up to 110 hours to repair 90% of actual outages. However, in the subsequent combined years 2012 and 2013, carriers improved their respective repair times for least 90% of

their outages to 72 hours.² As explained in the Staff Report, three days without phone service and the ability to dial 9-1-1 compromises public safety.

The Staff Report noted that during the years 2010 to 2013 as required by GO 133-C, AT&T and Verizon have provided corrective action reports for each quarter they missed the adopted measures and related minimum standard. However, the actions cited have not resulted in improvements that are significant enough to meet the minimum standard for the OOS repair interval measure. The Staff Report concludes that reliance on carriers' corrective action plans has not been an effective means to improve compliance with the service quality standards set forth in GO 133-C.

Staff proposed to adopt a penalty system to motivate the carriers to improve performance. Staff compared service quality measures and penalty/incentive methodologies in other states and concluded that California's service quality measures and standards were consistent with other states' standards. The Staff Report also noted that ten states assess fines and penalties for carriers that are in direct violation of their state's service quality measures and standards.

The Staff report modeled its proposed penalty methodology on D.01-12-021 where the Commission imposed per day fines on Pacific Bell Telephone Company for failing to maintain or improve service in violation of an earlier Commission decision.

Although the large carriers have argued that the penalty mechanism is not necessary because competition provides the appropriate incentive for a carrier to provide quality service, the 2010 to 2013 performance results show ongoing failure to meet the GO 133-C standards. As the Office of Ratepayer Advocates

² Using unadjusted data.

(ORA) pointed out, the continuing failure of AT&T and Verizon to meet CPUC adopted minimum service quality measures and standards demonstrates that competition has not been sufficient to ensure quality service.³

We have added an option for carriers to propose that the Commission suspend an accrued fine where a carrier agrees instead to make specific, incremental expenditures to improve service quality in an amount that is equal to two times the accrued fine. In their annual filings, carriers that incur a fine may propose for the Commission's consideration an alternative set of expenditures to address the service quality standard resulting in the fine, provided that the carrier demonstrates that the expenditures are incremental, directed at the service quality deficiencies leading to the fine, and in an amount that is twice the amount of the tabulated fine. This option better aligns carriers' expenditures with improving actual customer service.

The Staff proposal to impose automatic fines for chronic failure to meet service quality standards, to scale the fines to the size of the carrier, and to escalate the fine for on-going failures reasonably addresses the telecommunications service quality issues documented in the Staff report. We, therefore, adopt the revised GO 133-D attached to today's decision. This GO will supersede in all respects GO 133-C and, other than the penalty provisions, will be effective today. The penalty provisions shall become effective on ~~July~~ January 1, ~~2016~~ 2017.

4. Extending GO 133-D Outage Reporting Requirement to Interconnected VOIP Carriers Subject to §285

As set forth above, Staff recommended that all entities subject to the GO, including interconnected VoIP providers and those subject to Pub. Util. Code § 285, submit to the Communications Division copies of all outage reports filed

³ ORA Reply at 41.

with the Federal Communication Commission (FCC) under the Network Outage Reporting System (NORS). The administrative burden of sending a copy of a FCC report to this Commission is trivial.

We agree with the FCC that outage reporting for interconnected VoIP providers is needed because of the public safety issues associated with VoIP outages. VoIP service is becoming more prevalent and is marketed as a substitute for traditional telephone service. Interconnected VoIP customers have the same need for reliable service and the ability to reach emergency services as do traditional telephone service customers.

Commenting parties argue that the Commission is precluded from imposing this requirement pursuant to Public Utilities Code Section 710. Public Utilities Code Section 710 provides, in part: “The Commission shall not exercise regulatory control over Voice over Internet Protocol and Internet Protocol enabled services except as expressly delegated by federal law or as set forth in subdivision (c).”⁴

Contrary to these contentions, we are not persuaded that Section 710 prohibits the Commission from requiring VoIP providers to submit NORS reports to the Commission for the following reasons.

At the outset, the opening comments generally mischaracterize the proposed ruling as “imposing” or “extending” service quality rules to VoIP providers. This is not an accurate representation of the proposed ruling, because it is not asking VoIP providers for the extension of the existing measures,⁵ for new measures, or for new rules, but only requires VoIP providers to send a copy of the NORS reports (which they already generate for the FCC) to the CPUC.

⁴ Express exceptions are also contained in subdivisions (d) through (g).

⁵ There are five measures of service quality in GO-133C. They are installation interval, installation commitment, customer trouble reports, out of service, and answer time.

Moreover, Section 710 contains numerous exceptions which indicate that the Commission does retain some authority over VoIP providers and facilities used to provide VoIP services. In particular, Section 710 (f) expressly provides that the Commission has the authority “to continue to monitor and discuss VoIP services.” Requiring VoIP providers to provide the NORS report falls within this exception.

However, even where the Commission does not have regulatory jurisdiction over an entity or service, the Commission has broad authority to obtain information. Such authority is not limited to public utilities or regulated entities. (See, e.g., Pub. Util. Code §§ 311; 314; Cal. Const., art. XII, § 6; Gov. Code, § 11180 and Res. ALJ-195.) Thus, we have the authority to require the NORS report even if the 710(f) exception did not apply.

Finally, we note that Section 710 only prohibits the regulation of VoIP “services.” Pursuant to the plain language and the legislative history of the statute, Section 710 is not a blanket prohibition on the regulation of facilities over which VoIP services are transported. Section 710 contains certain exceptions relating to facilities (e.g., the Commission’s authority to enforce existing requirements regarding backup power (§ 710 (c)(6)) and the Commission’s authority regarding access to support structures, including pole attachments, or to the construction and maintenance of facilities pursuant to General Orders 95 and 128 (§ 710 (c)(7)). Regardless of what services are being transported, the telecommunications network is interconnected. We do not believe that the Legislature intended to bar the Commission from ensuring a safe and reliable telecommunications network by allowing facilities that provide VoIP services to go unmonitored.

5. Communications Division – Need to Monitor, Hold Workshops and Bring Forward Needed Proposals

Our Communications Division Staff has an important role in continuously observing and evaluating developments in the telecommunications industry, including service quality performance and responses to outages, as it impacts California consumers. In today’s decision, we direct the Division to continue this essential function, using workshops with impacted stakeholders as needed, and to bring forward proposals for regulatory actions or legislative change as appropriate based on their professional judgment and experience.

Specifically, the Federal Communication Commission is currently reviewing rural outage reporting by service providers beyond traditional telephone corporations.⁶ We direct our Communications Division Staff to monitor that proceeding and determine whether more or different actions are needed to meet the unique needs of California’s rural telecommunications customers. Our staff should bring forward recommendations for actions to be taken by this Commission to ensure that Californians residing or doing business in rural areas have reliable access to modern telecommunications services.

6. ~~5-~~Comments on Proposed Decision

The proposed decision of the Assigned Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. ~~Comments were filed on _____, and reply comments were filed on _____ by _____.~~

⁶ In the Matter of Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications, New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, The Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, PS Dkt. 15-80, ET Dkt. 04-35, PS Dkt. 11-82 (FCC 16-63), Rel. May 26, 2016.

Comments were filed on April 11, 2016, by the Small LECs,⁷ Cox California Telcom, LLC;⁸ ORA; California Association of Competitive Telecommunications Companies; Consolidated Communications of California; California Cable & Telecommunications Association; and AT&T with joint comments from The Utility Reform Network, Center for Accessible Technology, and The Greenlining Institute.

Reply comments were filed on April 18, 2016, by CTIA-The Wireless Association; the Small LECs; Citizens Telecommunications Company of California Inc., jointly with Frontier Communications of the Southwest Inc. and Frontier California Inc.; Cox California Telcom, LLC; Cellco Partnership dba Verizon Wireless; California Cable & Telecommunications Association; AT&T and joint comments from the Center for Accessible Technology, The Greenlining Institute, and The Utility Reform Network.

All comments have been thoroughly analyzed and considered by the Commission. Where required, clarifying changes have made to the Proposed Decision; however, today's decision reflects no substantive changes from assigned Commissioner Picker's Proposed Decision. Several persistent issues are also discussed below.

AT&T argued that setting the service quality standard as a monthly average and then imposing a fine for each day of the month⁹ violates the definition of a continuing violation found in Pub. Util. Code § 2108.¹⁰ The service quality standard is a calculated by an average daily performance over the month;

⁷ Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, The Ponderosa Telephone Co., Kerman Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company, Calaveras Telephone Company, Hornitos Telephone Company, Pinnacles Telephone Co., Sierra Telephone Company, Inc., Cal-Ore Telephone Co., The Siskiyou Telephone Company.

⁸ Correct comments were filed on April 12, 2016, by Cox California.

⁹ For ease of administration, each month is deemed to have 30 days.

¹⁰ AT&T Opening Comments at 13.

that daily average applies to each day of the month. Accordingly, where the monthly average performance fails to meet a service quality standard the violation is continuous over each day of the month as is required by Section 2108.

AT&T next, along with Cox California,¹¹ contended that the fine structure is arbitrary because carriers that miss the standard by a small margin are fined the same as carriers that miss the standard by a large margin. As required by the Commission's standards for assessing fines, the imposed fine is scaled, first, based on the number of access lines served by the telephone company, and then, second, to reflect the duration of the noncompliance. With these two significant adjustments, the overall fine is tailored to the facts of the failure to meet the service quality standards and proportionally reflects the severity of the offense.

The Small LECs renewed their proposal that the standard for reporting a catastrophic outage of 3% of access lines out of service be modified to the greater of 3% of access lines or 100 lines.¹²

The percentage standard defines a catastrophe as 3% of the lines for which a telephone corporation is responsible, not based on the number of customers for which service is lost. Even-handedly applying this standard to small and large telephone companies requires that small telephone companies, some with only a few hundred access lines, adhere to the percentage standard as well. The Small LECs proposal is an alternative standard that greatly favors the small telephone companies and would leave unreported service outages for a significant share of the lines for which a small telephone corporation is responsible. This outcome is

¹¹ Cox California Opening Comments at 3 - 4.

¹² Small LECs Opening Comments at 3 - 5.

contrary to the objectives of uniform service quality from all sized telephone companies.¹³

For Major Service Outage Reporting, Cox and CCTA stated that that the Pub. Util. Code § 710 prohibits the CPUC from requiring NORS reports to be submitted to the Commission. In contrast, ORA commented that the proposed decision risked public safety by not extending both the measures and the major outage reporting to all interconnected VoIP and wireless carriers, because millions of customers will be without minimal service quality protections.

As set forth above, submitting a copy of the NORS report to this Commission as well as the FCC is a minimal burden and will bring useful service outage information to this Commission.

Finally, several parties recommended that the proposed decision should not be adopted because it fails to take into account the network examination that the Commission ordered in D.15-08-041.¹⁴ As the Commission held in D.15-08-041, the network study and penalty mechanism serve separate and distinct purposes and that the study should not delay adoption of a penalty mechanism or service quality standards. No party has presented a persuasive showing for disturbing our previous determination.

All parties representing consumers argued that the proposed decision improperly closed this proceeding without addressing the issue of extending service quality rules to wireless carriers and that doing so ignores the evidence contained in the record as well as constitutes legal error.

¹³ The Small LECs recommendation to be exempted from the service quality standards would similarly undermine the objective of uniform service quality for all customers of California telephone corporations, regardless of access lines served. Small LECs Opening Comments at 1-3.

¹⁴ E.g., AT&T Opening Comments at 2; Citizens Reply Comments at 4.

ORA argued that proposed decision violates Pub. Util. Code § 2896 by specifically excluding wireless telephone corporations from having to report any data on the five service quality measures in GO 133-D. ORA also argued that based on the original scoping memo in the service quality proceeding, the Commission previously intended to address the issue wireless service quality.

In their Reply Comments, both AT&T and Verizon Wireless support not addressing the issue of wireless service quality rules and point to the highly competitive nature of wireless services and their claim that the Commission lacks jurisdiction over such services.

We are not persuaded by the jurisdictional arguments of the wireless carriers; we nevertheless decline to open another phase of this proceeding to address wireless service quality.

7. ~~6.~~ Assignment of Proceeding

Michael Picker is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission opened this proceeding to consider revisions to GO 133-C applicable to California telecommunication carriers.
2. The Commission's Communications Division brought forward numerous proposed changes to GO 133-C, issued a staff report delineating the proposed changes, and received comments.
3. The proposed changes are summarized in the body of today's decision and are reflected in Attachment B, GO 133-D.
4. Reliable telephone service is essential for the public to access emergency services, maintain contact with family and friends, conduct business, and find employment.

5. The service quality standards in GO 133-D are necessary to ensure safe and reliable telephone service for California residents and businesses.

6. Automatic fines for chronic failure to meet service quality standards are necessary to incent carriers to adhere to the service quality standards set forth in GO 133-D.

7. Customers of all telephone corporations should receive the same standard of service.

8. The Small LECs did not justify their proposed exemption from the service quality standards.

9. 7. An effective date of ~~July~~January 1, ~~2016,2017~~, will allow for the orderly and efficient implementation of the new penalty rules set forth in Attachment B.

10. 8. Penalties are necessary to deter carriers from violating the service quality standards set out in GO 133-D.

11. 9. The administrative burden is trivial to send a copy of a report prepared for the FCC to this Commission as well.

12. 10. Public safety requires that this Commission exercise its authority under Public Utilities Code Section 710 (f), to “monitor and discuss VoIP services” by requiring VoIP providers to submit NORS reports to this Commission.

Conclusions of Law

1. The public interest requires that telephone ~~service~~ corporations furnish safe and reliable service.

2. The public interest requires that telephone corporations adhere to the service quality standards in GO 133-D, and that the Commission adopt the penalty mechanism to ensure that the telephone corporations comply.

3. The penalty mechanism in GO 133-D is consistent with the Commission's standards for imposing penalties set forth in D.98-12-075 because it is based on the size of the carrier and duration of the violations.

4. The Daily Base Fine for failing to meet the Out of Service standard should be \$25,000. This Daily Base Fine should be scaled based on the carrier's access lines relative to the total number of access lines in California.

5. The Daily Base Fine for failing to meet the Customer Trouble Reports standard should be based on the number of consecutive months the carrier fails to meet the standard, increasing from \$0.0 for one or two months, up to \$2,000 per day at 12 or more consecutive months of failing to meet the standard. This Daily Base Fine should be scaled based on the carrier's access lines relative to the total number of access lines in California.

6. The Daily Base Fine for failing to meet the Answer Time standard should be based on the number of consecutive months the carrier fails to meet the standard, increasing from \$0.0 for one or two months, up to \$2,000 per day at 12 or more consecutive months of failing to meet the standard. This Daily Base Fine should be scaled based on the carrier's access lines relative to the total number of access lines in California.

7. The public interest requires that telephone corporations subject to penalties be authorized to propose alternative means to expend twice the amount of the fine to improve service quality for customers.

8. Carriers incurring a fine under GO 133-D should have the option of requesting that the fine be suspended based on an expenditure proposal for incremental actions directed at improving compliance with the service quality standard that led to the fine in an amount that is no less than two times the incurred fine.

9. GO 133-D as set forth in Attachment B today's decision should be adopted effective today; except for the penalty provisions in Section 9 which shall become effective on ~~July~~January 1, ~~2016~~2017.

10. Public Utilities Code Section 710(f), permits this Commission to "monitor and discuss VoIP services" and this provision gives this Commission the authority to require VoIP providers to submit NORS reports to this Commission.

11. The Commission should exercise its authority under Public Utilities Code Section 710(f), to "monitor and discuss VoIP services" by requiring VoIP providers to submit NORS reports to this Commission.

12. The Communications Division staff should monitor the Federal Communications Commission's outage reporting proceeding and make recommendations for any actions needed by this Commission.

13. The Communications Division staff should continue to review and analyze carriers' service quality results and performance for the benefit of California consumers and to bring forward recommendations and proposals to this Commission.

14. ~~12.~~ This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. General Order 133-D as set forth in Attachment B to today's decision is adopted effective immediately; except as to the penalty provisions in Section 9 which shall become effective on ~~July~~January 1, ~~2016~~2017.

2. Rulemaking 11-12-001 is closed.

This order is effective today.

Dated _____, at San Francisco, California.