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Quasi-legislative
7/23/2015 [Item 58](#)

Decision **PROPOSED DECISION OF COMMISSIONER PICKER**
(Mailed 4/17/2015)

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 DEFERRING NETWORK STUDY REQUIREMENT
ADOPTED IN DECISION 13-02-023**

Summary

This decision finds that the examination of the networks of AT&T California and Verizon California Inc. (Verizon California) ordered in this proceeding¹ should be deferred until the Commission rules on the proposed service quality rule changes and penalties under consideration in this proceeding. If adopted, the penalty mechanism provides strong motivation to telephone corporations to improve service quality to a level that meets the Commission's General Order 133-C minimum service quality measure standards [and to](#) provide safe and reliable service at reasonable rates. Consequently, the study of AT&T California's and Verizon California's networks ordered in

¹ Rulemaking 11-12-001: Assigned Commissioner Scoping Memo and Ruling, dated 9/24/12, and Decision 13-02-023, Decision Affirming Provisions of the Scoping Memo and Ruling, issued 3/6/13.

Decision 13-02-023 may not be necessary. The study requirement is therefore deferred.

1. Discussion

In Decision (D.) 13-02-023, the Commission affirmed that the then-Assigned Commissioner's Ruling requiring a study of carrier network infrastructure, facilities, policies, and practices was a necessary foundational activity within this proceeding to help gauge the condition of carrier infrastructure and facilities and ensure the facilities support a level of service consistent with public safety and customer needs.

On February 6, 2014, this proceeding was assigned to Commissioner Michael Picker. On September 24, 2014, Commissioner Picker issued his Amended Scoping Memo and Ruling. A Staff Report from the Commission's Communication's Division, covering the years 2010 through 2013, was attached to the Amended Scoping Memo and a schedule set for comments and reply comments from the parties. The staff report found that AT&T California and Verizon California Inc. (Verizon California) had not met the minimum Out of Service (OOS) restoral time measurement standard of repairing ~~out-of-service~~OOS lines within 24 hours, 90% of the time for any year during the period of 2010 through 2013.²

Based on the comments received and the results reported by the telephone companies shown in the staff report, the Commission's Communications Division issued a Report on Proposed Modifications to General Order (GO) 133-C, including a Service Quality Refunds and Fines Proposal. The parties were authorized to file and serve comments on the Staff Proposal. Opening Comments were due March 30, 2015 and Reply Comments due April 17, 2015.

² Staff Report Section IV at 13.

The Report proposes to adopt operational metrics and an “automatic” penalty mechanism for the larger telephone companies that continually do not meet minimum service quality standard measures. Specifically, these companies will be required to issue service charge refunds to customers that have been out of service for more than 24 hours and, where these companies fail to meet one or all of the applicable Commission’s minimum Service Quality measure standards for three consecutive months or more, graduated fines will be imposed. Fines start at \$500 and go up to \$50,000 per violation per day.

The staff proposal for penalties was predicated on a penalty mechanism adopted in D.01-12-021 for SBC (AT&T California’s predecessor) for failing to comply with Pub. Util. Code § 451 regarding failing to meet its obligation to provide safe and reliable service, and § 702 for failing to comply with a Commission order, the SBC/Pacific Telesis merger decision (D.93-03-067 Ordering Paragraph 2).³ This decision required SBC to improve service quality for the five years following the approval of the merger. D.01-12-021 adopted a penalty mechanism whereby SBC would be penalized \$300,000 for any month that the company did not meet an ~~out-of-service~~[OOS](#) repair interval standard that was adopted in that decision. Since that time, the Commission adopted ~~General Order~~[GO](#) 133-C with a different ~~out-of-service~~[OOS](#) repair standard.

The penalty method proposal currently under consideration in this proceeding was not based on and is not dependent on scrutinizing each telephone company infrastructure and facility decision, but rather on the quality of the service being provided to the customer, as measured by ~~General Order~~[GO](#) 133-C standards. Ensuring that adequate facilities are available and properly maintained to provide safe and reliable telephone service is the responsibility of

³ See Staff Proposal to Modify General Order 133-C, Attachment A.

the management of the telephone companies. Where service failures occur, the companies will incur refund obligations and/or fines.

Since we are considering changes to our service quality rules that if adopted in part or in whole, will provide telephone corporations with strong motivations to improve service and meet the minimum service quality measurement standards, we believe that engaging in a costly and time consuming examination of AT&T California's and Verizon California's networks at this time may not be necessary to achieve the overall goal of telephone companies providing service at a level that meets public safety and consumer needs. Consequently, we defer moving forward with the network examination until after a decision is issued regarding the Staff's ~~General Order~~ GO 133-C Modifications proposal. If it is determined that such a study is necessary, we will direct through a separate order that it be resumed.

2. Comments on Proposed Decision

The proposed decision (PD) of the assigned Commissioner in this matter was mailed to 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 29, 2015. Reply comments were filed on by May 7, 2015.

AT&T California supported the PD's conclusion that the Study should be deferred pending the Commission's actions on the metrics and penalties. AT&T California went further and argued that the Commission could even rescind the call for the Study because the Staff Report stated that carriers reporting GO 133-C results are consistently meeting the metric measuring reports of trouble within

their networks, which proves the networks are not in the state of disrepair as asserted by opponents to the PD.

Verizon California urged the Commission to rescind the Study because it cannot provide information useful to determine the adequacy of the existing OOS or answer time service quality metrics or generic rules that apply to all carriers, which is the purpose of this rulemaking. Verizon California argued that the Study could only provide limited information regarding why Verizon California or AT&T California does not meet those metrics. Verizon California explained that the Study would attempt to determine the strength or health of the network infrastructure, but the September 2014 Staff Report on Wireline Service Quality (at 9), concluded that “[b]oth URF Carriers and GRC ILECs consistently met the minimum standards established in the Customer Trouble Report measure.” Finally, Verizon California stated that deferring or rescinding the Study has nothing to do with the penalties that might be adopted because there is no causal connection between penalties and improved service quality and that Verizon California’s service quality is better in California than in two other states that impose penalties.

California Association of Competitive Telecommunications Companies (CALTEL) urged that the PD be withdrawn or rejected. CALTEL first observed that the PD does not mention that the Study has already been deferred for over two years, nor does it discuss why it was never implemented as ordered.

Second, CALTEL disagreed with the PD’s assertion that the Study would be “costly and time-consuming,” and that it would require “scrutinizing each telephone company infrastructure and facility decision.” The Study that CALTEL and other parties advocate for relies on statistically-valid sampling and third-party consultant expertise to provide the Commission with sorely-needed

information about the physical condition of AT&T California and Verizon California's wireline facilities.

Cox California Telcom, LLC supported the PD, with revisions to clarify that the Commission is not pre-judging issues that are currently pending, such as the proposed refund and penalty mechanism set forth in the February Staff Report.

The Office of Ratepayer Advocates (ORA) opposed the PD and first noted that the Commission opened this proceeding on the Communications Division's recommendation to "address carriers' compliance issues and to re-evaluate the existing service quality measures and standards" of GO 133-C based on a 2011 Staff Report that found "substandard results reported in the GO 133-C service quality reports filed by carriers in 2010," and specifically noted that AT&T California and Verizon California had failed to restore service within GO 133-C's OOS repair interval measure for all of year 2010.

ORA argued that conducting the Study furthers the Commission's commitment to public safety given that service quality, including the state and reliability of telecommunications infrastructure, is an issue that implicated public safety, as recognized by the Commission. ORA also noted factual, legal, and procedural errors in the PD. ORA argued that the PD committed factual error by suggesting that the need for the Study could be met by the adoption of a penalty mechanism, legal error by reversing D.13-02-023 without substantial evidence to support its findings, and procedural error by predetermining that the penalty mechanism upon which it relies is sufficient and will be adopted by the Commission.

The Joint Consumer and Labor Groups⁴ urge the Commission to reject the PD on five grounds. First, the PD contains factual errors in that it first assumes that a penalty mechanism is a substitute for the Network Infrastructure Study that was previously ordered by the Commission, and then further assumes that the Commission will adopt the penalty mechanism proposed by staff. The Joint Consumer and Labor Groups argue that the penalty mechanism is no substitute for the infrastructure study because it will be applied after harm has occurred, as an incentive for carriers to improve service quality.

The Joint Consumer and Labor Groups next specify three legal errors in the PD: (1) it does not acknowledge that the Commission has the legislatively-confirmed authority to study infrastructure carriers used to provide VoIP service; (2) it ignores that the Commission has a Constitutional and statutory duty to ensure safe and reliable telephone service; and (3) it reverses the Commission's decision in D.13-02-023 without citing to any changed facts or circumstances justifying that reversal.

The Joint Consumer and Labor Groups next argue that the Study is necessary to obtain accurate information regarding the adequacy of AT&T California and Verizon California's networks, to properly determine the adequacy of current and potential future service quality rules, to provide to the Federal Communications Commission (FCC) important, empirical information that would enhance the effort to refine federal copper retirement rules and improve the FCC's understanding of the condition of the networks operated by California's largest wireline carriers.

⁴ Center for Accessible Technology, Communications Workers of America, District 9, Consumer Federation of California, The Greenlining Institute and The Utility Reform Network.

The Joint Consumer and Labor Groups fourth basis for opposing the PD is that it ignores the Commission's obligation to protect public safety and lives are at risk when there are network failures. The Joint Consumer and Labor Groups point out that many seniors and those with disabilities rely on the fact that they can call for help in an emergency.

Finally, the Joint Consumer and Labor Groups argued that the PD could prejudice other proceedings such as the recently-filed Verizon California and Frontier joint application for approval of transfer of control, which will involve transfer of two million lines. Before the Commission can authorize transferring those lines, the Joint Consumer and Labor Groups contended, the Commission must know the physical condition of the lines.

AT&T California replied in opposition to ORA and Joint Consumer and Labor Groups and stated that these groups mischaracterized the PD as "reversing" the Commission's prior decision calling for the Study. AT&T California argued that the PD is only "deferring" the Study because the ultimate service quality rules that are adopted, and the possibility of penalties, may affect the need for the Study.

AT&T California contended that the PD set forth legally sufficient factual findings because if penalties are adopted, it is possible the Study would be unnecessary, and if the Commission at some point in the future decides to order an examination, nothing in the PD stops it from doing so.

AT&T California next disputed that ORA, Joint Consumer and Labor Groups, and CALTEL mistaken conclusion that AT&T California and Verizon California's performance metrics are so poor that the Study must be done. AT&T California argued that these parties relied on a few photographs of isolated

conditions, which AT&T California concluded do not demonstrate systemic disrepair.

Verizon California replied in support of the PD and explained that the PD is consistent with D.13-02-023 by charting a logical path forward: adopt new rules, monitor the performance of carriers under the new rules, and assess the need for a study based on the performance of carriers under the new rules. Then, if service quality is not at a level that meets the Commission's GO 133-C minimum service quality measure standards and provide safe and reliable service at reasonable rates, reinstate the Study. Verizon California also argued that the network study is beyond the scope the proposed Verizon California and Frontier transaction.

All comments and reply comments have been given full consideration and, where appropriate, clarifying revisions have been made to the PD. As so clarified, the Commission should adopt the PD.

3. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. A study of carrier network infrastructure, facilities, policies, and practices was ordered on February 28, 2013.
2. On September 24, 2014, Commissioner Picker issued his Amended Scoping Memo and Ruling.
3. The penalty and fine mechanism currently under consideration in this proceeding is based on operational outcomes, not detailed examination of network facilities.

4. Depending on what, if any, of the service quality rule changes are adopted in this proceeding, the study ordered in 2013 may no longer be necessary.

Conclusions of Law

1. The study ordered in 2013 should be deferred until after the Commission acts on the Staff's Proposed Modifications to ~~General Order~~[GO](#) 133-C.

2. If it is determined that the network examination is necessary, it should be directed under a separate Commission order.

O R D E R

IT IS ORDERED that:

1. The requirement for a study of carrier network infrastructure, facilities, policies, and practices that was ordered by the Commission in Decision 13-02-023, is deferred until after a decision is issued on the Staff's Proposed Modifications to General Order 133-C.

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

This order is effective today.

Dated _____, at San Francisco, California.

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