

COM/CJS/jt2

**ALTERNATE PROPOSED DECISION**

Agenda ID #14992 (Rev. 1)  
Alternate to Agenda ID#14750  
Quasi-legislative

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER SANDOVAL** (Mailed 6/22/2016)

**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)

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

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

This decision adopts revisions to General Order 133, in a new General Order 133-D, 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. Federally-mandated outage reports must also be submitted to the Communications Division by all carriers registered under Public Utilities Code Section 285, and telecommunication outages in rural areas must be reported. Other clarifying revisions to General Order 133-D are also adopted.

**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 and are relevant to the current regulatory environment and market, and whether there is a need to maintain a penalty mechanism for future substandard service quality performance.

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

On August 19, 2013, the proceeding was reassigned to Administrative Law Judge (ALJ) Maribeth A. Bushey, and on February 6, 2014, then Commissioner (now President) Picker was designated the assigned Commissioner after Commissioner Ferron's departure from the Commission. On September 24, 2014, assigned Commissioner Picker issued an Amended Scoping Memo and Ruling that modified the schedule set in the previous scoping memo.

The amended scoping memo included a Staff Report from the Commission's Communications Division. That report contained a discussion of carriers' performance on existing service quality measures, as well as a review of alternative approaches to monitoring telephone service quality. The Staff Report found that many of the Uniform Regulatory Framework (URF) carriers<sup>1</sup> did not

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<sup>1</sup> URF carriers have full pricing flexibility over substantially all of their rates and charges. URF carriers include Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) regulated through the Commission's uniform regulatory framework established in D.06-08-030. Verizon's wireline facilities in the state were purchased by Frontier

*Footnote continued on next page*

meet the out-of-service standard in multiple years. The two largest wireline carriers: AT&T California, Inc. and Verizon California, Inc. remained out of compliance with the General Order 133-C out-of-service standard for the years 2010-2013.<sup>2</sup>

Based on parties' comments on that report, Commission staff prepared a formal proposal for modifications to General Order 133-C. The Staff Proposal recommended: modifications to the existing service quality reporting requirements; changes in definitions within the general order; changes to outage reporting, including adoption of a methodology for determining the end of a catastrophic event; automatic customer refunds; carrier fines for non-compliance; and applying service quality rules to certificated facilities-based interconnected Voice over Internet Protocol (VoIP)<sup>3</sup> carriers. The assigned ALJ issued a ruling

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Communications in a transaction approved by the Commission in December, 2015 (D.15-12-005). The transfer of operations occurred on April 1, 2016.

<sup>2</sup> California Wireline Service Quality Pursuant to General Order 133-C, Calendar Years 2010 through 2013, CPUC, Communications Division Staff Report, September 2014. Available on the Commission's website at: <http://www.cpuc.ca.gov/General.aspx?id=1107>

<sup>3</sup> 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,

*Footnote continued on next page*

requesting comments on that proposal on February 2, 2015, and parties filed comments in March and April 2015.

On November 12, 2015, assigned Commissioner Picker mailed a Proposed Decision that would have adopted a new version of the Commission's telecommunications service quality requirements, as General Order 133-D. Commissioner Picker subsequently withdrew his Proposed Decision from the Commission's agenda after the filing of opening and reply comments.

On December 29, 2015, the assigned ALJ issued a ruling seeking comment on a specific aspect of the draft General Order proposed in the November PD. Parties filed comments and reply comments on the proposal.

On March 22, 2016, assigned Commissioner Picker issued a new proposed decision and draft General Order, which contained slight modifications from the earlier proposed decision. Parties filed comments and reply comments on the proposed decision.

Attachment A is a list of parties that filed comments to the Staff Proposal and proposed decisions.

Today's decision establishes a revised GO 133-D (Attachment B). As described above, the proposals contained in Attachment B are the result of a long and detailed process involving all interested parties. This decision and the attached GO 133-D differ from the draft versions mailed in November 2015 and March 2016 primarily in the following ways:

1. All telephone corporations that hold a CPCN or franchise, including facility providers supporting interconnected VoIP

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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.

services, and carriers designated as a federal ETC in California, and/or California LifeLine provider, shall provide data on service quality measures;

2. The reporting of Major Rural Outages will now be required of all telephone corporations that hold a CPCN or franchise; facility providers supporting interconnected VoIP services; telephone corporations designated as a federal ETC in California, and/or California LifeLine provider; and Wireless Identification Registration (WIR) holders;
3. The automatic penalty provisions no longer contain an option for suspension of carrier fines based on the submission of a “corrective action plan” describing incremental spending intended to improve service quality performance; and
4. We anticipate launching a new phase of this proceeding to examine the appropriateness of service quality standards for wireless and VoIP services.

## **2. Staff’s Recommended Changes to the General Order**

This section contains a description of recommendations made in the Staff Proposal, along with a summary of parties’ positions on each issue. We adopt most staff recommendations, with modifications as noted below.

### **2.1. 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 the definition of customer includes large business (six or more lines), small business (five lines or less), and residential service. 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.



AT&T commented that “customer” should be defined as an “access line,” and should be limited to circuit switched small business and residential customers because these two classes of customers have been the focus of GO 133-C and should remain so.<sup>4</sup>

We agree with AT&T that large business customers should not be included in the definition and that the definition adopted in this phase of the proceeding should apply to circuit-switched services.

We adopt staff’s proposed definition of customer GO 133-D, with one modification. Large business customers are excluded from the definition, and the definition applies only to circuit-switched services. 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.

We are also concerned about outages that affect critical infrastructure, whether they are large or small businesses. However these types of outages are currently outside of the scope of this proceeding and we will address them in a different proceeding.

### **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. ORA commented on staff’s proposal and recommended that the definition be:

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<sup>4</sup> Opening Comments of AT&T to Staff Proposal, March 30, 2015, at 23.

A telephone corporation, including a wireless or interconnected VoIP provider that owns or controls facilities used to provide communication for compensation, including the line to the end-user's location.<sup>5</sup>

We do not believe that it is necessary to include the change to staff's proposed definition that was recommended by ORA because wireless providers are telephone corporations. We adopt staff's proposed definition, with one small modification: the definition of facilities-based carrier adopted here removes the word "voice." As a result, the definition 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.

This definition is technology-neutral; it reflects today's telecommunications market, including facilities-based interconnected VoIP providers that have a CPCN or Franchise and use a variety of delivery media, including copper wire, coaxial cable, fiber optics, and wireless technologies, to provide network access to their customers. These facilities are lines that provide a connection from the access 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). ORA agreed with staff's proposed definition.<sup>6</sup> AT&T recommended using the Public Utilities Code Section 239 (a)(1)(A) definition for interconnected

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<sup>5</sup> ORA Opening Comments to Staff Proposal, March 30, 2015, Appendix A at A-1.

<sup>6</sup> *Ibid.*

VoIP because it is included in statute.<sup>7</sup> This definition of VoIP includes Internet protocol (IP) or a successor protocol enabling real-time, two-way voice communication that originates from, or terminates at, the user's location in Internet Protocol or a successor protocol.

We adopt AT&T's recommended Public Utilities Code Section 239(a)(1)(A) definition of interconnected VoIP service 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, supporting it.<sup>8</sup> This definition of line does not refer to specific types of central office technologies.

In this decision, we adopt a slightly modified definition of line, as follows:

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.

This definition better reflects today's technologies for providing voice communication services, which do not always utilize a dial tone in the traditional sense.

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<sup>7</sup> Opening Comments of AT&T to Staff Proposal, March 30, 2015, at 23.

<sup>8</sup> Opening Comments of the Office of Ratepayer Advocates to Staff Proposal, March 30, 2015, Appendix A at A-1.

### 2.1.5. Outage

Staff proposed to define outage as: A significant degradation in the ability of an end user to establish and/or maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. This definition is consistent with the FCC's definition of outage.<sup>9</sup>

AT&T does not recommend adopting staff's recommended definition of outage because it asserts that no evidence has been presented that this definition is needed, and recommends that the Commission should use the definition for Out of Service in GO 133-C Section 1.3: A telephone line without dial tone.<sup>10</sup> ORA agrees with staff's proposed definition.<sup>11</sup>

As discussed in the previous section that defines "line," today's technologies for providing voice communication services do not always utilize a dial tone in the traditional sense. Consequently, staff's proposed definition is technology neutral and a better fit for today's communications market, and is consistent with the FCC's definition of outage for federal reporting of network outages. We adopt staff's proposed definition of outage.

Due to the change in the definition of the term line and the adoption of the definition for outage, we believe that it is appropriate to revise the definition of Out of Service to be consistent with the purpose and intent of these new definitions. Consequently, Out of Service is defined as:

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<sup>9</sup> 47 C.F.R § 4.5(a).

<sup>10</sup> Opening Comments of AT&T to Staff Proposal, March 30, 2015, at 24.

<sup>11</sup> Opening Comments of ORA to Staff Proposal, March 30, 2015, Appendix A at A-2.

A condition whereby a customer cannot establish and/or maintain a channel of communications.

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

### **2.2.1. Duration of Catastrophic Events**

Currently, GO 133-C allows carriers to exclude outages associated with catastrophic events from their calculation of certain performance measures. The existing general order does not define the method for determining the duration of a “catastrophic event.” Staff recommended that GO 133-D should prescribe a method for identifying the end of a catastrophic event, in order to facilitate consistent measurement and reporting of outage-related measures and suggested that the end of a catastrophic event should be 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, small business (five lines or less), and large business (greater than five lines) customers for the three consecutive calendar months that did not have catastrophic events prior to the declared State of Emergency, divided by three.

AT&T, Cox, and Joint Consumers submitted comments on Staff’s proposal. Joint Consumers supported staff’s proposal.<sup>12</sup> AT&T and Cox<sup>13</sup> generally supported the proposal, but suggested the following modifications:<sup>14</sup>

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<sup>12</sup> Opening Comments of Joint Consumers to Staff Proposal, March 30, 2015, at 3.

<sup>13</sup> Reply Comments of Cox Communications to Staff Proposal, April 17, 2015, at 16.

<sup>14</sup> Opening Comments of AT&T to Staff Proposal, March 30, 2015, at 25-26.

- 1) only out-of-service tickets (and not other trouble reports) from residential and small business customers should be included in the calculation; and
- 2) the calculation of the baseline average should exclude months in which there was a catastrophic event.

The attached GO 133-D incorporates these recommendations in the calculation of average out-of-service ticket levels for the purposes of identifying the end of a catastrophic event.

### **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 will 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 customers affected, including small business and residential customers.

Verizon California<sup>15</sup> urged the Commission to completely eliminate this standard, and the small LECs<sup>16</sup> recommended changing the threshold for

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<sup>15</sup> Opening Comments of Verizon California to Staff Proposal, March 30, 2015, at 4.

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, whichever is greater.<sup>17</sup> 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.<sup>18</sup>

Reporting outage repair results on 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. For these reasons, we adopt the requirement that carriers report both adjusted and unadjusted outage numbers. The standard for out-of-service measure will continue to apply only to the adjusted results and assessing carrier's out of service performance for the purpose of carrier fines will also be based on adjusted results. The new template in Appendix C reflects this requirement.

We do not adopt the small LECs' position on the appropriate threshold for reporting catastrophic events.<sup>19</sup> As reported in the Staff's September 2014 report, the smallest telephone company, Pinnacles Telephone, had 249 customers at the end of 2013. The small LECs' proposal would require 100 customers, or 40% of Pinnacles' customer base to be without service before reporting as a catastrophic event. We therefore think this threshold unreasonable.

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<sup>16</sup> General Rate Case LECs, GRC LECs, are also referred to as the small LECs.

<sup>17</sup> Opening Comments of Small LECs to Staff Proposal, March 30, 2015, at 2-3.

<sup>18</sup> Opening Comments of CALTEL to Staff Proposal, March 30, 2015, at 2-5.

<sup>19</sup> Opening Comments of Small LECs to March 22, 2016, Proposed Decision.

### **2.2.3. Applicability of Service Quality Measures**

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 (e.g. VoIP providers required to remit universal service surcharges pursuant to Public Utilities Code §285), 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.

We adopt a modified version of staff's proposal. The service quality measures and standards apply to all telephone corporations that hold a CPCN and/or franchise, including facility providers supporting interconnected VoIP services, and those designated as a Federal ETC in California and/or a California Lifeline service provider. The service quality measures and standards do not apply to interconnected VoIP providers that are required to pay universal service surcharges pursuant to Public Utilities Code Section 285 and do not have a CPCN or Franchise, nor are designated a Federal ETC in California and/or a California Lifeline service provider.

### **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 issued a CPCN and/or franchise by the Commission or its predecessor agencies; designated a federal ETC in California



and/or California Lifeline service provider, and/or have to remit universal service surcharges pursuant to Public Utilities Code Section 285, be required to submit to the Communications Division copies of all outage reports filed with the Federal Communication Commission under the NORS at the time of their filing so that the Commission is informed of major VoIP network outages.

Pub. Util. Code § 285(c) directs the Commission to require interconnected VoIP 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.

Interconnected VoIP service providers are providing telephone service in California and the Commission should be aware of significant outages that occur in their networks. Providing the Commission a copy of a report already required by the FCC is an efficient means of informing this Commission of network outages compromising interconnected VoIP services.

AT&T, Verizon, CTIA, and Cox do not support adoption of this proposal for several reasons. They assert that there is no basis for the rules, the market is competitive, and that the CPUC is restricted from imposing service quality rules on VoIP due to Pub. Util. Code § 710.<sup>20</sup> Consumer groups and ORA support the recommendation because it is within the commission's authority under Pub. Util. Code §§ 216, 233, 234, 314 (b), 581; within the exemptions of Pub. Util. Code § 710; and is also a Commission mandate under Pub. Util. Code § 451.<sup>21</sup>

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 and access to 9-1-1. 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. For these reasons, the commission needs to be informed of these network outages where those emergency access services become unavailable. To demonstrate the need for mandatory outage reporting, the FCC's Order adopting mandatory outage reporting requirements for communication providers providing interconnected VoIP services pointed to a

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<sup>20</sup> AT&T Opening Comments to the October 2014 Staff Report at 14-20, Verizon Opening Comments to the October 2014 Staff Report at 3, 19-21, CTIA Opening Comments to the October 2014 Staff Report at 1-2, CCTA Opening Comments to the October 2014 Staff Report at 1-4 and Cox Opening at 11.

<sup>21</sup> ORA Opening Comments to the October 2014 Staff Report at 10-15, TURN Opening Comments to the October 2014 Staff Report at 6-7, CWA Opening Comments to the October 2014 Staff Report at 6, Joint Consumers Opening Comments to the October 2014 Staff Report at 6, and CFC Opening Comments to the October 2014 Staff Report at 3; ORA Opening Comments to the February 2015 Staff Proposal at 15.

number of significant VoIP outages where the FCC only learned of outages through the media.<sup>22</sup>

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

This decision adopts staff's proposal, as shown in Section 4 of GO 133-D, in Attachment B. Interconnected VoIP providers are required to submit copies of their FCC-mandated NORS reports to the Communications Division in the same manner as telephone corporations.

**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 proposed 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 reporting requirement would apply to all facilities-based telephone corporations, including: GRC LECs and facilities-based URF carriers, as well as interconnected VoIP providers that have been issued a CPCN by the Commission, designated a federal ETC in California, and/or California Lifeline service provider. 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.<sup>23</sup> These additional

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<sup>22</sup> *In the Matter of The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice over Internet Protocol Service Providers and Broadband Service Providers, Report and Order, PS Dkt. 11-82 (FCC 12-22) Rel. Feb 21, 2012, para 7.*

<sup>23</sup> For electric utilities, the Commission has already adopted analogous reporting requirements. In D.16-01-008, the Commission updated the electric utility reporting to include electric outage

*Footnote continued on next page*

reporting requirements were intended to assist the Commission in identifying localized service quality problems, especially those affecting small communities and rural areas of the state.

AT&T and Verizon, and Carriers participating in the Consolidated Opening Comments to Staff Proposal generally did not support this additional reporting, and asserted that the recommended reporting requirements are either unnecessary or infeasible. The carriers' objections to these requirements included, but were not limited to, the following:

- 1) the FCC NORS reports already cover rural areas;<sup>24</sup>
- 2) the Commission receives outage information (e.g. NORS report number, outage start and stop date, number of customers affected, 9-1-1 facilities affected, description of outage, etc.,) annually in ETC filings;<sup>25</sup>
- 3) the carriers' network monitoring equipment cannot identify communities of place;<sup>26</sup>
- 4) there are no objective reporting criteria which will provide the Commission with outage information that it seeks for outages in sparsely populated rural areas;<sup>27</sup>
- 5) staff did not demonstrate that the requirements would improve public safety;<sup>28</sup> and

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data at the local level. That decision found that "[d]istrict or division level [outage] reporting... is reasonable and in the public interest" (Decision at Conclusions of Law 1).

<sup>24</sup> AT&T California Opening Comments to Staff Proposal at 22, Verizon California Opening Comments to Staff Proposal, at 15., and Consolidated Opening Comments to Staff Proposal, at 3, March 30, 2015.

<sup>25</sup> Cox Opening Comments to Staff Proposal, March 30, 2015, at 11.

<sup>26</sup> Verizon Opening Comments to Staff Proposal, March 30, 2015, at 16.

<sup>27</sup> AT&T Opening Comments to Staff Proposal, March 30, 2015, at 28.

<sup>28</sup> Verizon Reply Comments to Staff Proposal, April 17, 2015, at 7.

6) that implementing such reporting would be costly.<sup>29</sup>

We find that the carriers' arguments miss the point of the staff proposal – to capture localized outages that do not meet the NORS reporting threshold on a close to real-time basis and not annually via the ETC annual report filing process.<sup>30</sup> Reporting to the Commission about outages in sparsely populated areas of California will provide valuable information to improve service and public safety in those communities. Such information, not available from federal reports, will aid the Commission in fulfilling its responsibility to ensure that carriers provide safe, reliable service, comply with service quality requirements, assure the continued affordability and widespread availability of high-quality telecommunications services to all Californians, consistent with California Public Utilities Code Sections 451, 2896, and 709, respectively.

Consumer groups supported the staff proposal.<sup>31</sup> However, ORA proposed that all outages, whether the customer reports the outage or the telephone corporation discovers the outage, for service providers that have more than 3,000 customers, should be reported and recommends a new threshold for outage reporting of 90,000 user-minutes, compared to the NORS threshold of

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<sup>29</sup> Cox Opening Comments to Staff Proposal, March 30, 2015, at 6.

<sup>30</sup> 47 C.F.R. § 54.313 requires all federal eligible telecommunications carriers (ETCs) receiving high-cost support to file annual reports regarding compliance with Commission rules, including, but not limited to providing for the prior calendar year, information on any outage that last at least 30 minutes in duration and affects at least ten percent of end users served in a designated service area pursuant to Title 47 C.F.R. Part 4 (Disruptions to Communications), § 4.5 (Definitions of outage, special offices and facilities, and 9-1-1 special facilities).

<sup>31</sup> Joint Consumers Opening Comments to Staff Proposal at 5, CWA Opening Comments to Staff Proposal at 2.

900,000 user-minutes.<sup>32</sup> ORA recommends requiring reporting to the Commission of any outage in California that lasts at least 30-minutes and:<sup>33</sup>

- a. Affects a Mobile Switching Center (applicable to wireless service providers only);
- b. Potentially affects at least 90,000 user-minutes (vs. NORS 900,000 user-minutes);
- c. Potentially affects at least 150 DS3 minutes (vs. NORS 1,350 minutes);
- d. Potentially affects any special offices and facilities; and
- e. Potentially affects a 9-1-1 special facility affecting at least 90,000 user-minutes (vs. NORS 900,000 user-minutes).

For service providers who have fewer than 3,000 customers, ORA recommended that the service providers report all service telephony service outages and all DS3 circuit outages that are of at least 30-minutes in duration that potentially affects 3% of their telephony customers, or 3% of the DS3 circuits that the provider has in the state.

Outage reporting for DS3 circuits reflects the FCC's 2004 requirement in 47 C.F.R. pt. 4, requiring reporting to the FCC of communications disruptions that impact major transport facilities that carry significant traffic, particularly

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<sup>32</sup> ORA Opening Comments to Staff Proposal, March 30, 2015, at 26.

<sup>33</sup> ORA Opening Comments to Staff Proposal, March 30, 2015, at 30, Table 1, 1). ORA defines the following:

- For wireless and wireline service providers, "user-minutes" refers to user-minutes of telephony service; for VoIP service providers, "user-minutes" refers to minutes of interconnected VoIP service resulting in complete loss of service.
- DS3 minutes are defined as multiplying the duration of an outage, expressed in minutes, by the number of previously operating DS3 minutes that were affected by the outage. (See 47 C.F.R §4.7(d).)
- Special Offices and Facilities are defined in 47 C.F.R §4.5(b).
- 9-1-1 Outage is defined in 47 C.F.R § 4.5(e).

data, such as DS3 circuits. DS3 outages lasting for at least 30 minutes and meet the 1,350 DS3 minute threshold were required to be reported to the FCC, reflecting the prevalence of DS3 technology as a method for transporting communication including data. We note that the FCC in May 2016 shifted the reporting metric for outages affecting transport facilities to an OC3-based metric to reflect technological evolution and industry adoption, and adjusted the reporting threshold to 667 OC3 user-minutes to reflect technological evolution and industry adoption, and adjusted the reporting threshold to 667 OC3 user-minutes.<sup>34</sup>

In reply comments to ORA's proposal, only CWA supported ORA's new threshold.<sup>35</sup> However, as AT&T pointed out, ORA's proposal would result in hundreds, if not thousands, of additional reports being filed, most of which would not be associated with the rural or sparsely populated areas that motivated the original proposal. While ORA's proposal would show information for outages affecting smaller numbers of users, it did not solve the problem for which staff was seeking a solution: how to locate and identify smaller communities that experience outages. In contrast, the Joint Consumers proposed that zip codes could be used to identify sparsely populated areas, but they did not provide details on how zip codes could be used for real-time outage reporting. Because we are specifying a new method for rural outage reporting, we do not adopt Joint Consumers' proposal at this time.

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<sup>34</sup> FCC, ET Docket No. 04-35; FCC 16-63, as reported in Federal Register/Vol. 81, No. 133/Tuesday, July 12, 2016/ Rules and Regulations 45055.

<sup>35</sup> CWA Reply Comments to Staff Proposal, April 17, 2015, at 3.

Regarding wireless carriers, the November 2015 proposed decision asked for proposals to extend the consumer protection concepts of the general order to wireless carriers.<sup>36</sup> The commission did not receive such proposals; however, AT&T, Verizon Wireless, and CTIA asserted in comments that the commission is prohibited from applying service quality rules to wireless.<sup>37</sup> The Omnibus Budget Reconciliation Act of 1993 gave states jurisdiction over terms and conditions of wireless service.<sup>38</sup> ORA strongly supports applying rules to wireless carriers as the statutes requiring the commission to promulgate rules does not distinguish between type of telephone corporation.<sup>39</sup> The commission needs information from all providers of rural communications services, including wireless carriers, and consequently includes these carriers in the rural outage rules.

#### **2.2.5.1. Discussion – Reporting Major Rural Outages**

In this decision, we adopt an alternative reporting requirement that contains elements of the ORA and Joint Consumers proposals, but is targeted to capture outages affecting rural and sparsely populated areas.

Carriers shall prepare and submit Rural Area Outage Reports on all outages of 90,000 user-minutes or more that affect rural areas of the state. Rural areas are defined as areas that the US Census Bureau has determined are not

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<sup>36</sup> Proposed Decision, filed 11-12-15, at 15.

<sup>37</sup> Opening Comments of AT&T California, Verizon Wireless and CTIA to Proposed Decision, December 2, 2015.

<sup>38</sup> 47 USC 332 (c) (3) (A).

<sup>39</sup> Opening Comments of ORA to Proposed Decision, December 2, 2015, at 11-12.



within urbanized areas or in urban clusters.<sup>40</sup> These reports, described in Section 4 of GO 133-D, will be submitted to Communications Division along with other required reports.

As explained in more detail below, we adopt a rural outage reporting threshold that will apply to outages of facilities used to provide communication for compensation, including the line to the end-user's location of 30 minutes or more that potentially affect at least 90,000 user-minutes in a California rural area, defined as a non-urbanized, non-urban cluster area as defined by the U.S. Census Bureau.<sup>41</sup> As in the FCC rules under 47 C.F.R. 4.7(e)(2), user-minutes is defined as the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage.

The Communications Division February 2015 Staff Report proposed to address concerns about the lack of information about outages in sparsely populated and rural areas of California through a new GO 133-D reporting

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<sup>40</sup> <https://www.census.gov/geo/reference/urban-rural.html>. The Census Bureau identifies two types of urban areas: Urbanized Areas (UAs) of 50,000 or more people and Urban Clusters (UCs) of at least 2,500 and less than 50,000 people. The 2010 census identifies 5,476 census block groups (CBGs) in California that are a combination of solely rural and mixed rural/urban census blocks.

<sup>41</sup> The FCC requires under the NORs outage reporting standards, 47 C.F.R. 4.9(f) that "All wireline communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that:(1) Potentially affects at least 900,000 user-minutes of either telephony or paging..." Likewise, we adopt a trigger for reporting an outage of facilities used to provide communication for compensation, including the line to the end-user's location in a California rural area, defined as a non-urbanized, non-urban cluster area, but require the outage to reach only 90,000 user-minutes and be of 30 minutes in duration to be reportable to the Commission.

standard based on “communities of place.”<sup>42</sup> The Staff Report observed that the FCC’s NORS “reporting threshold level can be difficult to reach when outages are targeted or isolated (e.g. rural areas, acts of terrorism or regional natural disasters, etc.) which can result in the unavailability of 9-1-1 and where public safety is at risk.” The high NORS reporting threshold means that Public Safety Answering Points (PSAPs), the entities charged with answering 9-1-1 calls and dispatching help for fires and emergencies, are often not notified by carriers about outages that do not meet the 900,000 user-minute threshold, even when people in rural or isolated areas can’t reach 911 emergency services.

In 2014 the Communication’s Divisions Staff Report on Wireline Telephone Service quality analyze unadjusted results of service quality data for California outages to include Sundays, federal holidays, catastrophic events, widespread outages, and customer-requested appointments. The Staff found a pattern of chronic failure to timely restore outages by California’s largest carriers who serve much of California’s rural areas, as well as urbanized areas and urban clusters. The report found “Together, AT&T and Verizon repaired outages corresponding to just 53% of their combined 3.908 million unadjusted OOS repair interval reports within 24 hours during the years from 2010 to 2013.”<sup>43</sup>

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<sup>42</sup> Communications Division Staff Report Proposing Modifications to GO 133-C, pg. 7 (citing The FCC reporting threshold for NORS is 900,000 user-minutes. 47 CFR Part 4). Staff Report was published for party comment by ALJ Ruling of Feb. 2, 2015 [hereinafter “2015 Staff Report”]. Staff originally proposed ‘community of place’ as a location metric. Zip codes were used in the original proposed decision; however, this data was to be added to the quarterly metrics and so was not timely information on outages.

<sup>43</sup> California Wireline Telephone Service Quality Pursuant to G.O. 133-C, Calendar Years 2010 through 2013, September 24, 2014, at 15.

To help the Commission achieve its statutory duty under California Public Utilities Code 451 of ensuring that utilities and regulated entities provide safe, reliable service, with adequate facilities, the Staff Report proposed 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.”<sup>44</sup> It recommended that “Emergency and Disaster reporting should include outages that effect large business, small business, and residential customers of traditional wireline service and Voice over Internet Protocol (VoIP customers).”<sup>45</sup> The Staff Report asked “for specific recommendations for a practical manner to identify communities of place that will provide the Commission with information on outages in these areas.”<sup>46</sup>

ORA’s comments on the Staff Report proposed an outage reporting threshold for California 90,000 user-minutes based on a scaling of US population to California households, and recommended the schema for all of California.<sup>47</sup> Verizon opposed ORA’s proposals characterizing them as “onerous outage reporting” not proven to meaningfully improve public safety.”<sup>48</sup> Verizon commented “Competition and technological advancements have decreased the public safety risks that existed when wireline services predominated. As AT&T states in its opening comments, ‘the indisputable fact [is]that outages in

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<sup>44</sup> *Id.*, at 7.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> ORA Opening Comments to Staff Proposal, March 30, 2015, at 25-31 and Appendix B.

traditional wireline services no longer have the public safety considerations as they did years ago.”<sup>49</sup>

CforAT, Greenlining and TURN responded that “vulnerable customers are the least likely to have redundant forms of telecommunications services (e.g. wireless and wireline access) due to cost, means that levels of service quality that might be acceptable to other customers may still be inadequate to meet their needs. Thus, carriers’ arguments that service quality can be diminished because “most” customers have multiple options in an emergency completely fails to take into account the fact that the most vulnerable customers are least likely to have such resources.<sup>50</sup> CforAT, Greenlining, and TURN commented that “the Commission is obligated to ensure that reliable network access, as a mechanism for protecting public safety, is available to all, including those vulnerable customers who have have needs that are not well-served by the market.<sup>51</sup> In many rural areas of California wireless service have not been fully deployed, and in some places wireless service is absent so alternative means of communications is not available. These populations are vulnerable to outages of the available means of communication, and prompt reporting remains imperative to public safety.

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<sup>48</sup> Opening Verizon California Inc.’s (U 1002 C) Reply Comments on Staff’s Proposal to Modify General Order 133-C, April 17, 2015, at 8.

<sup>49</sup> *Id.* (citing AT&T Opening Comments at 32).

<sup>50</sup> Reply Comments of Center for Accessible Technology, the Greenlining Institute, and the Utility Reform Network on Assigned Administrative Law Judge’s Ruling setting dates for comments and reply comments on Staff Proposal, April 17, 2015, at 11.

<sup>51</sup> *Id.*

ORA noted the example of the 2014 outage that affected California and several other states as an example of the need for better outage reporting and timely notification to the Commission and PSAPs.”<sup>52</sup> ORA observed:

Subsequent to a multi-state 911 outage investigation that occurred in 2014, the Federal Communications Commission (FCC) reached a \$16 million settlement with CenturyLink, a \$1.4 million settlement with Intrado Communication and a \$3.4 million settlement with Verizon related to the companies’ failure to meet their emergency call obligation during the 911 outage. This outage lasted for over six hours resulting in over 6,600 missed 911 calls, and prevented more than 11 million people in seven states from being able to reach emergency call centers for over six hours. Consumers in nine California counties, where Verizon served emergency call centers, were unable to make calls to 911. The outage did not result from an extraordinary disaster or catastrophic event. It was due to a malfunction in Intrado’s call centers. FCC rules require companies to timely notify all affected Public Safety Answering Points (PSAPs), but Verizon failed to do so in the 2014 outage. Intrado allegedly did not inform Verizon of the outage until after it was resolved. However, Verizon acknowledged that it was responsible for complying with applicable FCC rules, regardless of any failures by its subcontractors. Verizon notified the State of California Office of Emergency Communications about the impact after Intrado informed it of the outage and agreed to the same compliance terms as Century Link and Intrado.<sup>53</sup>

We are concerned that many Californians who called 9-1-1 the night of the Intrado outage were not able to reach emergency dispatch, and about the failure of the carrier to promptly detect the outage and notify the PSAPs, the

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<sup>52</sup> ORA, Reply Comments on the Proposal for Modifications of GO 133-C, April 29, 2015, at 7.

<sup>53</sup> Id. (internal citations omitted) (citing Verizon Consent Decree including compliance terms: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db0318/DA-15-308A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0318/DA-15-308A1.pdf)).

Commission, and the FCC about the widespread outage that affected 30,000 people, 13 PSAPs, and eight counties in California.<sup>54</sup>

Complaints of poor telecommunications service quality in California's rural areas were noted in the Commission's 2015 Decision approving the transfer of Verizon's wireline service and CPUC Franchise to Frontier:

In Verizon service territories like northeast Humboldt County, the combination of the absence of broadband, the lack of cell towers and unreliable land service delivered via microwave relay towers and reflects that are subject to the vicissitudes of wind and weather, was said occasionally to have left residents without any means of communicating with the outside world for hours or even days. Of significant concern to the residents of remote areas is the lack of a means of communication in the event of an emergency such as fire or a landslide. If a landline in those areas goes down, the residents are literally left without a means of receiving emergency notification from local fire, police, or rescue services. A person who is ill or injured in such circumstances likewise has no way of summoning help from the remote agency, whether that agency is the police, the local fire department, or a 911 operator. There can be no reasonable dispute regarding these complaints of inadequate service in these regions.<sup>55</sup>

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<sup>54</sup> FCC, April 2014 Multistate Outage Report, Causes and Failures, <http://www.fcc.gov/document/april-2014-multistate-911-outage-report>, at 4. "Verizon Business is the 911 service provider for eleven counties in Northern California for 911 calls originating from AT&T Mobility and Verizon Wireless. Verizon Business subcontracts to Intrado for certain functions, including IP selective routing of 911 calls from these providers. Calls to 911 from AT&T Mobility and Verizon Wireless subscribers were affected by this outage. Verizon Business also provides an IP trial 911 network to these same PSAPs for calls originating with other providers. Calls to 911 in the trial areas from providers other than AT&T Mobility and Verizon Wireless use a different 911 network that was unaffected by the event in Intrado's network." *Id.* at 6.

<sup>55</sup> Decision Granting Application Subject to Conditions and Approving Related Settlements, (Decision 15-12-005), December 9, 2015, at 51-52.

Those outages were not captured in NORS because the 900,000 user-minute threshold was rarely, if ever, reached in the small rural area of Orleans, California in Humboldt County, though the outages affected hundreds of residents, many businesses, the Karuk tribe and its governmental responsibilities in the area, and people, governments, non-profits, and public safety officials trying to contact or respond to the residents of Orleans.

AT&T, Verizon, and CCTA argue that the Commission should not impose reporting requirements until the FCC decides in its outage reporting Further Notice of Proposed Rulemaking<sup>56</sup> whether to adopt lower NORS reporting threshold in rural areas for wireless or other carriers.<sup>57</sup> The FCC's Further Notice of Proposed Rulemaking on outage reporting proposes to "amend the part 4 reporting requirements to include wireless outages significantly affecting rural areas"<sup>58</sup> but makes no proposals to lower the federal reporting threshold for wireline outages. The FCC's query about whether to drop the threshold for reporting wireless outages would not capture wireline outages, even repeated outages that do not meet the 900,000 user-minute threshold such as those in

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<sup>56</sup> Report and Order and Further Notice of Proposed Rulemaking, and Order on Reconsideration, Amendment to Part 4 of the Commission's Rules Concerning Disruptions to Communications, New Part 4 of the Commission's Rules Concerning Disruptions to Communications, and the Proposed Extension of Part 4 of the Commission's Rules Concerning Disruptions to Communications Regarding Outage Reporting to Interconnected Voice over Internet Protocol and Broadband Internet Service Providers, (PS Docket No. 15-80, ET Docket No. 04-35, PS Docket No. 11-82 (May 26, 2016), Section E, Geography Based Wireless Outage Reporting, [hereinafter "FCC Network Outage Report and Order and FNPRM]).

<sup>57</sup> AT&T Opening Comments at 2; Verizon Opening Comments at 14; CCTA Opening Comments at 9.

<sup>58</sup> FCC Network Outage Report and Order and FNPRM, (PS Docket No. 15-80, ET Docket No. 04-35, PS Docket No. 11-82 (May 26, 2016), ¶186.

northeastern Humboldt County noted in the CPUC's Verizon Frontier Decision, D.15-12-005.

In response to the suggestion that the Commission defer action until the FCC decides whether to lower its wireless outage reporting threshold observing that Joint Consumers and CWA observe "these arguments fail to address the fact that the Commission has an independent statutory duty to protect public safety, which applies to all Californians. Accordingly, it is appropriate for the Commission to track outages that may leave thinly populated areas of the state at risk."<sup>59</sup>

We agree with the Joint Consumers and CWA that the Commission's independent statutory duty to do all things necessary, California Public Utilities Code Section 701, to fulfill its duties including promoting the safety, health, comfort, and convenience of utility and regulated entity patrons and the public under California Public Utilities Code Section 451 makes it appropriate to track outages that currently leave thinly populated areas of California at risk. California Public Utilities Code Section 2896 mandates "The commission shall require telephone corporations to provide customer service to telecommunication customers that includes, but is not limited to, all the following: ... (c) Reasonable statewide service quality standards, including, but not limited to, standards regarding network technical quality, customer service, installation, repair, and billing."

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<sup>59</sup> Reply Comments of the Center for Accessible Technology, the Communications Workers of America, the Greenlining Institute, and the Utility Reform Network, (Joint Consumers and CWA), July 18, 2016, at 2.



The 2012 Order Instituting Rulemaking that opened this proceeding cited these statutory duties of the CPUC, as well as information that raised concern about whether these duties were being fulfilled by some telephone corporations in California, as the rationale for this proceeding's work to improve service and protect public safety throughout California.<sup>60</sup> Gathering information on outages in California's rural areas furthers our statutory duty to ensure universal service. CA PU Code 709 states "The Legislature hereby finds and declares that the policies for telecommunications in California are as follows: (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians ... and (h) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

It is up to the CPUC, not the FCC or the federal government, to carry out these state-mandated duties and to determine whether the rules the outage and trouble reporting rules CPUC adopted in 2009 are sufficient to meet the service and safety needs of Californians. We cannot delegate these duties to the FCC, nor are we bound to await decisions about what rules are appropriate for federal agency role, but must instead determine what is necessary to protect safety and service quality in California. While the FCC has determined that 900,000 user-minutes is an appropriate reporting threshold for national outage reports,

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<sup>60</sup> Order Instituting Rulemaking 11-12-001, Dec. 12, 2011, at 2.

this threshold leaves many outages lasting hours or even days in California's rural areas unreported to the Commission and the FCC.

This Commission's regulation of a variety of utilities including telecommunications service providers, electric, gas, and water utilities, also gives it a perspective and range of duties the FCC does not have. The Commission needs to consider how not being able to call 911 due to a service outage or poor network quality may limit the ability of a California customer to report a natural gas leak, an electrical problem, or a water leak, or to receive medical attention, and that these problems may be bigger in areas of California with poor or no cell service.

We find ample evidence and reason in this record and through official notice pursuant to Evidence Code § 452(h) of our Decision granting transfer of Verizon's wireline infrastructure and franchise to Frontier, D.15-12-005, to adopt a reporting threshold and methodology designed to capture outages in rural areas of California that fall below the FCC's NORS reporting threshold of 900,000 user-minutes. We agree with Joint Consumers and CWA as well as ORA that California law not only authorizes the Commission to act to protect telecommunications service quality, it mandates that we do so under California Public Utilities Code Sections 451, 709, and 2896, independent of federal agencies and their separate legal responsibilities.

ORA's reply comments in response to the APD note that "all of the substantive elements of the APD's Rural Outage Reporting were part of ORA's proposal and were subject to parties' reply comments, as documented by the APD. ORA's proposal would have been much broader, applying the reporting to all areas of California. The APD simply adopted a limitation on the applicability of ORA's proposal, one that was previously suggested by ORA, as well as

changing the threshold for reporting and other small changes, leading to the Rural Outage Reporting.”<sup>61</sup>

The Joint Consumers and CWA noted that “the APD utilizes a different mechanism for the same purpose by adding a requirement for carriers to report “Major Rural Outages.” The reports required under this standard would allow the Commission to properly capture outage information in rural and sparsely populated areas.”<sup>62</sup>

The average population of rural census block groups in California is approximately 1,500. The rural population of California counties ranges from 1,175 in Alpine County, which is 100% rural, to 102,054 in San Diego County which is 3.3% rural but is the California county with the largest rural population.<sup>63</sup> California counties with populations that are over 50% rural range from 1,175 in Alpine County, to 34, 370 in Calaveras County.<sup>64</sup> Selecting a 90,000 user-minute threshold as ORA suggested, instead of a 75,000 user-minute threshold as the APD earlier suggested, and applying that trigger to facilities outages in non-urbanized, non-urban cluster areas, achieves the goals of tracking outages in a “community of place” as the Communications Division staff report suggested. It balances the burden of outages on rural communities and public safety, the cost of reporting and promptly fixing such outages, and information

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<sup>61</sup> ORA Reply Comments to APD, July 18, 2016, at 3 (internal citations omitted).

<sup>62</sup> Joint Consumers and CWA Comments at 3.

<sup>63</sup> U.S. Census, 2010 Census Urban and Rural Classification Area Criteria, Urban and Rural Population by State and County, <http://www.census.gov/geo/reference/ua/urban-rural-2010.html>.

<sup>64</sup> *Id.*

needed by the Commission to monitor such outages and compliance with California law and the Commission's rules, decisions, and orders.<sup>65</sup>

The Rural Outage Reporting metric uses the foundational methodology for NORS reporting familiar to carriers and the Commission. To trigger the 90,000 user-minute threshold, an outage of 30 minutes would need to potentially affect 3,000 customers, a population size proximate to Hoopa, California, home of the Hoopa Valley Tribe, with a population in 2010 of 3,494. A 60-minute outage would need only affect 1500 customers in a rural area, approximately the size of an average rural census block in California. This reporting threshold reflects rural population and telecommunications facility service areas in California.

For the purposes of these reporting requirements, carriers shall report areas affected by the outage by applicable census block group, and to capture "community of place" and outage location, report the city, township, unincorporated area, or Native American Reservation or Trust Land as indicated by the U.S. Census Bureau Tribal Tract Reference Maps.<sup>66</sup> Timely information about outages in sparsely populated areas of California will help the Commission identify telecommunications service quality issues in rural areas, and relationships between areas of high fire threat or electrical circuits with more frequent outage or trouble issues. This information will protect public safety and aid the Commission in achieving its constitutional and statutory duties under

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<sup>65</sup> Staff originally proposed 'community of place' as a location metric. Zip codes were used in the original proposed decision; however, this data was to be added to the quarterly metrics and so was not timely information on outages.

<sup>66</sup> U.S. Census, 2010 Census - Tribal Tract Reference Maps, <http://www.census.gov/geo/maps-data/maps/2010tribaltract.html>.

California Public Utilities Code Sections 451, 709, and 2896 to assure high quality service throughout California.

The Small LECs suggested in comments on the APD that “The Commission should provide a reasonable time for implementation of the new reporting process, including the identification of the rural areas (to be defined as areas that the Census Bureau has determined are not within urbanized areas of 50,000 or more people or urban clusters of at least 25,000 and less than 50,000 people) and the development of procedures by the carriers to comply with the new rule as adopted.”<sup>67</sup> In response to comments about the mechanism for identifying rural areas of California, we take official notice pursuant to Evidence Code Section 452(h) of the U.S. Census Bureau’s definition and maps, readily available online, that delineate urbanized areas in California of urbanized areas of 50,000 or more people or urban clusters of at least 25,000 and less than 50,000 people.<sup>68</sup> In accordance with the Small LECs comments we define California’s rural areas as non-urbanized and non-urban cluster areas as designated by the U.S. Census Bureau. The Census Bureau urban areas and urban cluster area maps and files are easily accessible online and delineate streets and boundaries, making this a standard that is known and eases implementation.

We believe that the 90,000 user-minute threshold for an outage lasting at least 30 minutes,<sup>69</sup> is close to the original intent of the earlier 75,000 user-minute

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<sup>67</sup> Small LEC Comments at 6.

<sup>68</sup> See, U.S. Census Bureau, 2010 Urban Area Reference Maps, <https://www.census.gov/geo/maps-data/maps/2010ua.html>.

<sup>69</sup> A user-minute is the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage.

threshold at 30 minutes, but more closely matches the population density of the target areas. Reporting based on this threshold will provide the Commission with useful and timely information on outages in sparsely populated areas of California. The threshold adopted here is triggered by outages in a telecommunications carriers' facilities in a non-urbanized, non-urban cluster area, and the location of facilities and communities affected balances geographic and demographic considerations with readily identifiable reporting census designations. Under ORA's 90,000 user-minute proposal, 3,000 customers would potentially have to be out of service for 30 minutes.<sup>70</sup> We believe that a reporting requirement for outages that last at least 30 minutes in duration and potentially affects 90,000 user-minutes strikes a reasonable balance between capturing the appropriate granularity and efficient reporting capabilities on outages affecting rural areas.

Wireless carriers should use the Federal Communications Commission's method, as updated by the FCC May 2016 Report and Order, for determining potential users, and applying the California rural outage reporting 90,000 user-minute threshold for a facilities outage in a California non-urbanized, non-urban cluster area as defined by the U.S. Census Bureau.<sup>71</sup> To determine if an outage meets the 90,000 user-minute threshold in a rural area, the carrier

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<sup>70</sup> ORA proposed 90,000 user-minutes based on a scaling of US population to California households, and recommended the schema for all of California. ORA Opening Comments to Staff Proposal, March 30, 2015, at 25-31 and Appendix B.

<sup>71</sup> *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, para 16.

should multiply the number of macro cell sites disabled in the outage by the average number of users service per site, which is calculated as the total number of users for the provider divided by the total number of the provider's macro cell sites. The outage must last for at least 30 minutes. We find this a necessary and prudent requirement for wireless companies with a CPUC WIR to protect public safety and universal service, consistent with our duties under California Public Utilities Code Sections 451 and 709.

Service providers reporting Major Rural Outages shall use the report template in Attachment D.

In addition to its proposal to require reporting of outages lasting for 30 minutes and affecting 90,000 user-minutes, ORA proposal to add to the reporting requirements for DS3 transport circuit outages that affect transmission of data, and to change the reporting threshold from the FCC's standard of 1,350 DS3 minutes to 150 DS3 minutes, representing a scaling to account for California's percentage of the U.S. population.<sup>72</sup> CALTEL and AT&T opposed ORA's proposal as not sufficiently supported by reasons to break out trouble reports for DS3 outages of over 150 minutes as not sufficiently supported by reasons to lower the reporting threshold for outage reporting for transport facilities such as DS3.<sup>73</sup>

In light of the FCC's May 2016 adjustment of the transport outage reporting standard from 1,350 DS3 minutes to 667 OC3 user-minutes, we decline

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<sup>72</sup> ORA Opening Comments to Staff Proposal, March 30, 2015, at 30.

<sup>73</sup> Reply Comments of AT&T on the Communications Division Staff Report, April 17, 2015, at 18; Reply Comments of the California Association of Competitive Telecommunications Companies to Assigned Administrative Law Judge's Ruling and Communications Division Staff Report, April 17, 2015, at 4.

to adopt ORA's suggestion to require reporting of outages of 150 DS3 minutes. We direct Communications Division staff to gather information on the OC3 transport facilities in California, as compared to DS3 facilities, and the relative use and deployment of OC3 or DS3 facilities in rural areas, and to make recommendations about whether any adjustments are warranted for reporting on transport outages in California.

### **2.2.6. Method of Submitting NORS Reports and Major Rural Area Outage Reports**

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." CD has the delegated authority to develop and direct carriers to use a web-based method of submitting reports.<sup>74</sup> Until such time that a secure, web-based method for submitting NORS report information and Rural Area Outage reports to the Commission exists, the service providers covered under GO 133-D shall use the current email process to submit NORS reports to the Commission.

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<sup>74</sup> In accordance with direction contained in D.09-07-019, the Commission submitted a formal request to the FCC in 2009 for password-protected access to all California-specific outage data. *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications* Petition of the California Public Utilities Commission and the People of the State of California for Rulemaking on States' Access to the Network Outage Reporting System (NORS) Database and a Ruling Granting California Access to NORS, ET Dkt. 04-35, November 12, 2009. To date, the FCC has not acted on this request.



### **2.2.7. Change in Answer Time Reporting**

Staff recommended two changes to the reporting requirement for the Operator Answer Time 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 Answer Time Reporting. They assert that the change would not benefit customers, and that the proposal would be costly and burdensome to implement.

Staff's September 2014 report showed that several carriers failed to meet the standard over multiple years from 2010 to 2013. In staff's view, the answer time metric remains important to monitor. It provides an indication of the level of service customers receive from their provider when calling telephone company representatives to report outages and resolve billing disputes. Staff contended that the new reporting schedule will bring these data to the Commission consistent with the other measures. We concur with staff's assessment, and the attached GO 133-D contains the changes recommended by staff.

### **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 with the Communications Division, or its successor, that explains the reason(s) for the missing the standard(s) and the actions the company will take to correct its failures and improve performance to a level that meets adopted standards and measures.

Such a requirement significantly reduces the time period, from two consecutive quarters to two consecutive months, where the carrier is not meeting any standards. It will allow the Commission to recognize problematic carrier performance promptly and evaluate plans to improve performance. Staff stated that this would help the Commission ensure that any proposed remedial actions are in fact effective in improving 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.

We adopt staff's proposal. The Corrective Action Plans shall describe the reason(s) for missing the standard(s) and the remedial actions the company will take to improve performance to a level that meets adopted standards and measures, and do so within a reasonable time.

### **2.3. Customer Refunds for Service Outage**

Staff recommended a customer refund mechanism for customers who 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 in 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. Joint Consumers supported refunds for customers without service for more than 24 hours, and ORA supported appropriate and consistent refunds.

We do not adopt staff's proposal at this time because many companies have refund provisions in their tariffs or customer guidebooks. Customers for now may continue to rely on existing tariff provisions or customer guidebook provisions for customer refunds. As adopted here, GO 133-D requires carriers lacking a provision for customer refunds to develop a refund policy. Carriers that develop a new refund provision in compliance with this decision shall file a Tier I Advice Letter with the Commission modifying their tariff, or provide a copy of the modified customer guidebook with the refund provision identified.

### **3. Automatic Fine Proposal**

Staff proposed automatic fines for certain non GRC-LEC, URF ILEC carriers that fail to meet the service quality standards for: 1) Customer Trouble Reports, 2) Out-of-Service Reports, or 3) Answer Time Reports. 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 to address Pacific Bell Telephone Company's declining service quality and failure to comply with Public Utilities Code § 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.

As set forth in Section 9.1 of GO 133-D, the automatic fine proposal is applicable to facilities-based telephone corporations that offer 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, including those carriers regulated under the Uniform Regulatory Framework adopted in D.06-08-030, but does not apply to GRC LECs. For CLECs, we will only apply the penalty mechanism if the

failure to meet service quality standards was primarily due to the CLEC's action or inaction, not service or facility issues of an unaffiliated underlying carrier.

### **3.1. Party Comments on the Automatic Fine Proposal**

The large carriers generally opposed the fine proposal claiming that competition provides the biggest incentive to improve service quality, and that the 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. Other comments asserted that penalties have little to no impact on service quality standards, will raise prices, and will not promote public safety goals.

The CLECs argue that they should not be fined for the underlying carrier's performance failures.

Consumer advocate groups and CWA generally supported Staff's penalty proposal, and ORA argued 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 as a model for penalty provisions because it was a voluntary settlement between AT&T and specific CLECs.

### **3.2. Analysis of the Fine Proposal**

Pursuant to Public Utilities Code § 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 adequate and efficient service at just and reasonable prices 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 continuing and future substandard service quality performance failures. As set forth above, our Communications Division Staff did a comprehensive review of GO 133-C and proposed changes in the General Order, including automatic fines for carriers with chronic failures.

The September 24, 2014, Staff Report showed that the largest carriers in California at the time, AT&T Communications of California, Inc. (AT&T) and Verizon California, Inc. (Verizon), which collectively operate approximately 88% of telephone lines in California 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. In the subsequent combined years 2012 and 2013, carriers improved their respective repair times for at least 90% of their outages to 72 hours.<sup>75</sup> Three days without phone service and the ability to dial 9-1-1 compromises public safety.

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<sup>75</sup> Using unadjusted data.

The Staff Report noted that during the years 2010 to 2013, AT&T and Verizon have provided corrective action reports for each quarter they missed the adopted measures and related minimum standards. Despite these corrective action reports, the acknowledged failures have not resulted in improvements significant enough to meet the minimum standard for the outage repair intervals. 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, nor has whatever degree of competition there may be been sufficient to improve compliance.

Because of this, staff proposed to adopt a penalty mechanism with fines 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.

Staff's proposal is based on the principles adopted in D.98-12-075 for assessing penalties under Pub. Util. Code §§ 2107 and 2108, which authorize penalties for failure to comply with commission rules. Though D.98-12-075 is related specifically to energy utility affiliate transactions, the principles established in that decision apply more broadly to violations of 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. For customers suffering outages, the daily count is crucial.

### **3.3. Adoption of Proposed Standards and Penalty Mechanisms**

In this decision, we adopt the standards and penalties proposed by staff, and consistent with the staff recommendation, we do not apply the penalty mechanism to GRC LECs. For CLECs, as suggested by CALTEL and supported by Consumer Groups, we will only apply the penalty mechanism if the failure to meet service quality standards was primarily due to the CLEC's action or inaction, not service or facility issues of an unaffiliated underlying carrier. We find that a 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. These standards and penalties will apply to the URF ILECs including CLECs, with the CLEC exceptions discussed herein.

The Staff Report found that GRC LECs have generally met the service quality standards for all five service quality measures from 2010 to 2013.<sup>76</sup> We agree with the Small LECs that "As utilities under cost-of-service rate-of-return regulation, the Small LECs are subject to the general rate case process, which involves a detailed examination of service quality, including consideration of the GO 133-C filings from the companies, comments from subscribers at public participation hearings, and evidence presented by the utilities.<sup>77</sup> The Commission has a triennial opportunity to review the performance of the Small

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<sup>76</sup> Communications Division Staff Report, September 2014, at 26.

<sup>77</sup> Small LEC Comments on the Assigned Administrative Law Judge's Ruling Setting Dates for Comments and Reply Comments on Staff Proposal, April 17, 2015, at 1-2.

LECs through the GRCs. Accordingly, we decline to apply to GRC LECs the automatic penalty mechanism applied to URF ILECs by this Decision.

The Commission has at its disposal mechanisms to impose penalties, if needed, for failure to comply with the Commission's rules and General Orders, and can consider any such issues in the Rate-of-Return Rural LEC GRC. We also direct GRC LECs to report when outages are caused by an unaffiliated underlying carrier, and the Commission can take this fact into account when analyzing responsibility for the outage and appropriate action.

GO 133-D as adopted here applies the fine mechanism for failure to meet Customer Trouble Reports, Out-of-Service, and Answer Time standards. As noted in the tables below, carriers will incur fines after 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 of compliance with GO 133-D. Fines will continue to accrue until the carrier is in compliance with the standard for at least one month of failing to meet the applicable standard, and once incurred, fines will accrue on a daily basis. Fines will continue to accrue until the carrier is in compliance with the standard for at least one month.

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. The Office of Ratepayer Advocates (ORA) maintains that the numerous major outages in California that were a result of poor maintenance of infrastructure demonstrates that competition has not led to better service quality and reliability because there is no competitive pressure for the companies to maintain their infrastructure and improve service



quality.<sup>78</sup> 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.

Accordingly, we adopt the revised GO 133-D attached to today's decision. This GO will supersede in all respects GO 133-C. The penalty provisions shall become effective on January 1, 2017, in order to allow carriers time to develop any actions they feel are consistent with these standards and better guarantee conforming performance.

The CLEC's request to be exempted from the fine mechanism raises issues about the affect of underlying unaffiliated carrier performance and response on a CLEC's ability and timeliness in responding to outages or trouble tickets. Like other telephone carriers, 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. If a CLEC outage is due to substandard service by an underlying facilities-based carrier or a failure of facilities over which the CLEC has not direct control, CLECs have recourse against their underlying facilities-based providers through contractual agreements that track outages and other performance failures.

Since those contractual remedies may take time and may not be sufficient to incentivize timely performance by URF ILECs or unaffiliated underlying carriers that ensures the public safety of customers, facilities-based CLECs will only be subject to penalties imposed by this Decision if the failure to meet service

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<sup>78</sup> ORA Reply Comments to Staff Proposal, April 17, 2015, at 41.

quality standards was primarily due to the CLEC's action or inaction, and not primarily due to service or facility issues of an unaffiliated underlying carriers. Joint Consumers agreed with CALTEL that the CLECs should not pay the price for the ILEC's failure to meet service quality standards. They agreed with CALTEL's recommendation that the Commission implement rules to ensure that "any fines imposed on CLECS for the OOS maintenance measure only include the portion of those outages over which the CLEC has direct control."<sup>79</sup> Accordingly, CLECs shall report when outages are caused by an unaffiliated underlying carrier, and the Commission can take this fact into account when analyzing responsibility for the outage and appropriate Commission action including any penalties.

The following subsections describe the specific standards adopted in this decision, along with the associated penalty structures and amounts.

### **3.3.1. Out-of-Service Reports**

The Out-of-Service (OOS) standard adopted in this decision requires that 90% of service outages are resolved by the telephone corporation within 24 hours. The calculation of fines for failure to meet this standard will be performed on a monthly basis across the telephone corporation's small business and residential lines. Fines will be assessed once that standard is missed for three or more consecutive months

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<sup>79</sup> Reply Comments of Center for Accessible Technology, the Greenlining Institute, and the Utility Reform Network on Assigned Administrative Law Judge's Ruling setting dates for comments and reply comments on Staff Proposal, April 17, 2015, at 15.

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

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

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

The fines for failure to meet the Operator Answer Time standard will be assessed for each day that a carrier fails to meet the minimum standard of answering at least 80% of all customer calls within 60 seconds once that metric is missed for three or more consecutive months. 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)**

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

**3.3.3. Customer Trouble Report Fines**

The customer trouble reports standard requires a company-wide customer trouble report rate of no more than 10 reports per 100 access lines (10%). Carriers that fail to meet this standard for three or more consecutive months will be assessed a fine per day until the monthly average decreases to below 10%. The

per-day fine amount, 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
<b>Fine Per Day</b>	\$0	\$500	\$1,000	\$1,500	\$2,000
<b>Days in Month</b>	30	30	30	30	30
<b>Total Fine per Month</b>	\$0	\$15,000	\$30,000	\$45,000	\$60,000

**3.4. Alternative Proposal for Mandatory  
Corrective Action**

The proposed decision of the assigned office adopted Rule 9.7 (the Alternative Proposal for Mandatory Corrective Action). Rule 9.7 allows carriers to 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. ORA maintains that the Commission should not adopt the rule because it undermines the very purpose of a penalty – to deter violations.<sup>80</sup> Pub. Util. Code § 451 requires utilities to provide safe and reliable service with adequate facilities at just and reasonable rates, and penalties are separate and distinct from the costs that telephone corporations must expend to provide adequate and safe service.

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<sup>80</sup> ORA Opening Comments to President Picker’s Proposed Decision, Dec. 2, 2015, at 1.

We find that the Alternative Proposal for Mandatory Corrective Action does not require investment sufficient to cure the underlying cause that led to missing the GO 133-C standard, or create sufficient incentive to invest to prevent outages. Proposed Rule 9.7 would have allowed a carrier to request to suspend the fine and instead propose in their annual fine filing:

(T)o 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.<sup>81</sup>

This proposal allows two years between the investment and service quality improvement, even for chronic failure to meet out of service standards or chronic outages. While the project must be designed to address a service quality deficiency, proposed Rule 9 does not require that the investment resolve the deficiency that caused the outage or service failure, or prevent further violations of service quality rules.

The penalty mechanism we adopt gives the carrier incentives to prevent outages, and to take timely steps to address deficiencies and their causes. It also gives carriers a fair warning of when it is out of compliance and may be liable for a penalty if proactive corrective action is not taken. Carriers should monitor their GO 133-D compliance and take action after the first month of non-compliance so they may better serve their customers and protect public

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<sup>81</sup> Proposed Decision Adopting General Order 133-D, March 22, 2016, Proposed Rule 9.7.

safety. Creating incentives to deter outages and prolonged restoration time is imperative to public safety and California's economy and furthers the Commission's duty under Public Utilities Code Sections 451, 709, and 2896 to ensure safe reliable service, compliance with service quality, and universal service. We agree with ORA, therefore do not adopt this rule.

**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 FCC under the NORs when those reports are filed with the FCC. The administrative burden of simultaneously sending a copy of a report to the FCC and this Commission is not significant, particularly in light of the benefits to public safety and reliability resulting from increasing the Commission's ability to monitor compliance with California law and the Commission's decisions, rules, and orders.

We agree with the FCC that outage reporting for interconnected VoIP providers is needed because of the public safety issues associated with VoIP outages and the growing number of customers using VoIP. 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. Many VoIP customers may not realize that their telephone service is IP-enabled; they nevertheless rightfully have the expectation that they can reach emergency services and 9-1-1 using their phone equipment.

Commenting parties argue that the Commission is precluded from imposing this requirement pursuant to Pub. Util. Code § 710. Pub. Util. Code § 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).”<sup>82</sup>

We are not persuaded that § 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 proposal, which 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 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” to enforce backup power requirements, and our “authority relative to access to support structures, including pole attachments, or to the construction and maintenance of facilities pursuant to commission General Order 95 and General Order 128. Requiring VoIP providers to provide the NORS report falls within this exception.

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<sup>82</sup> Express exceptions are also contained in subdivisions (d) through (g).

Even where the Commission does not have regulatory jurisdiction over an IP-enabled service, the Commission has broad authority to obtain information and to assure the safe and reliable operation of the facilities over which services of whatever type travel. Such authority is not limited to public utilities or regulated entities. (See, e.g., Public Utilities 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. With the adoption of GO 133-D, we are not proposing to regulate a particular service but to assure the safe and reliable performance of facilities supporting all telecommunication services.

Section 710 prohibits only the regulation of VoIP and IP-enabled “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. As we noted, 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 remains a physical structure requiring reliable performance. 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 or facility outages supporting those services to go unnoticed and uncorrected.

Further, as we have already noted above Public Utilities Code § 451 requires that utilities:



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.

We adopt staff's recommendation and clarify that telephone corporations and interconnected VoIP providers covered by the FCC's Part 4 reporting rules will also submit those reports to the Commission simultaneously with submission to the FCC.

## **5. Next Phase of This Proceeding**

The Decision Affirming Provisions Of The Scoping Memo and Ruling stated that an immediate focus of this proceeding would be on residential basic telephone services and those parts of the telecommunications network that support those services. The decision further stated that the Commission may also make findings on issues related to other types of services and/or services provided via different technological platforms, to the extent that the record of this proceeding supports such findings.<sup>83</sup>

ORA recommends that the Commission consider adopting service quality standards for wireless and VoIP providers in this proceeding. ORA believes that wireless and VoIP technology are used to facilitate communication by telephone and that any corporation or person that owns, controls, operates, or manages the facilities that are used in voice communications are telephone corporations and are bound by the obligation to comply with reasonable statewide service quality standards adopted by the Commission. Consequently, ORA argues the Commission has jurisdiction to impose reporting requirements and adopt service

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<sup>83</sup> D.13-02-023 at 11.

quality standards for wireless and interconnected VoIP providers, citing the Commission's mandate under Public Utilities Code § 2896, which in part directs the Commission to require telephone corporations to have reasonable statewide service quality standards, including, but not limited to, standards regarding network technical quality, customer service, installation, repair and billing.<sup>84</sup>

ORA also bases its recommendation on one of the adopted telecommunications policies of the state to "encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of a process for equitable resolution of billing and service problems."<sup>85</sup> Consumer Federation agrees with ORA's position and believes that the Commission can impose service quality rules on wireless and VoIP services.<sup>86</sup>

AT&T, Verizon, and Cox believe that the Commission should not adopt ORA's recommendation for the following reasons: a) ORA provided no policy reasons why service quality standards should be adopted for wireless and VoIP services, b) federal law restricts the Commission's authority to adopt service quality requirements for wireless services, and c) the Commission lacks authority to adopt service quality standards for VoIP services.<sup>87</sup> Cox maintains that while the Commission has jurisdiction over public utilities, not all telephone corporations are public utilities.

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<sup>84</sup> ORA Comments on Staff Proposal, March 30, 2015, at 6- 8.

<sup>85</sup> Pub. Util. Code § 709(h).

<sup>86</sup> Consumer Federation Reply Comments to Staff Proposal, April 17, 2015, at 2-6.

<sup>87</sup> AT&T Reply Comments to Staff Proposal at 4-14; Verizon Reply Comments to Staff Proposal at 9-13, Cox Reply Comments to Staff Proposal at 10-16, April 17, 2015.

We note that the scope of this proceeding, as set forth in the OIR, is very broad. Further, telecommunication facilities are interconnected, regardless of particular technologies used to provide services. With the ongoing transition from traditional telephone service to wireless and VoIP technologies, and the continuing use of traditional wireline service by millions of Californians, we do not believe we can ensure service quality and public safety without looking at the network as a whole. To the extent certain types of providers/facilities are not covered by the service quality standards adopted herein, we believe we should open a subsequent phase of this proceeding to address the issues raised by ORA.

## **6. Comments on the Alternate Proposed Decision**

The alternate proposed decision of Commissioner Sandoval was mailed to the parties in accordance with Section 311(e) of the Public Utilities Code, following the filing of comments on the assigned Commissioner's proposed decision. Comments on the alternate proposed decision were filed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure on July 12, 2016, and reply comments were filed on July 18, 2016, by parties listed in Attachment A.

AT&T asserts that the proposed fine amounts are unlawful because the Alternate Proposed Decision would apply daily fines to a monthly standard.<sup>88</sup> We disagree with AT&T's assertion for several reasons. First, AT&T appears to misunderstand both the nature of the standard adopted in this decision and the calculation of fines based on that standard. AT&T incorrectly characterizes the GO 133-D standards as "monthly" standards; in fact, they are ongoing standards.

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<sup>88</sup> AT&T Opening Comments to Alternate Proposed Decision at 10.

AT&T is responsible for remaining in compliance with these standards at all times. In order to facilitate tracking and reporting of compliance with these standards, GO 133-D requires a monthly measurement and reporting interval. The tracking and reporting interval has been chosen to be consistent with the penalty mechanism that was adopted in D.01-12-021 (C.00-11-018), and ensures frequent measurement of compliance without creating a potentially undue burden on the applicable carriers to measure compliance on a more frequent basis, such as weekly or daily. Regarding the calculation of the fines, the use of a daily fine is consistent with the fact that non-compliance with the GO 133-D standards constitutes ongoing violations, as defined in Public Utilities Code Section 2108. Section 2108 specifically provides that “in case of a continuing violation each day’s continuance thereof shall be a separate and distinct violation.”

In addition, as discussed in the Communications Division’s Staff Proposal,<sup>89</sup> the proposed penalty mechanism mirrors the penalty mechanism that was adopted in D.01-12-021 (C.00-11-018) regarding AT&T’s predecessor, Pacific Bell’s, failure to provide safe and reliable service pursuant to Public Utilities Code § 451 and failure to comply with Commission rules as required by Public Utilities Code § 702. In that case, the Commission used 29.3 hours Mean Time to Repair (MTTR) for an out-of-service repair time measure, based on information that Pacific Bell provided to the FCC as a measure for its outage repair intervals. The 29.3 hour MTTR interval was an annual number for 1996.

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<sup>89</sup> Issued for Comment on February 2, 2015, in R.11-12-001.

Decision D.01-12-021 found that it was appropriate to assess penalties on a daily basis for failing to meet the measure based on the need for effective deterrence for future violations and the importance that the Commission attaches to violations of its orders. As detailed in the Communications Division Staff's Proposal, AT&T, as well as other telephone corporations, repeatedly missed the Out of Service repair standard to repair 90% of outages within 24 hours every year from 2010 through 2013. AT&T maintains that this standard of repairing 90% of outages in 24 hours is not sound, and should be scrapped or modified. This measure was litigated in R.02-12-004, adopted in D.09-07-019, and is the current CPUC rule.<sup>90</sup> The rationale for our continuation of the current penalty mechanism with daily fines for a monthly reporting interval is consistent with the rationale adopted in D.01-12-01. For all of the above mentioned reasons, we believe that the penalty mechanism is lawful and reasonable for assuring safe and reliable telecommunications services.

While AT&T believes that the current out of service standard is not appropriate, their position has consistently been that no service quality measurements are necessary due to the competitive nature of the industry and they have not provided any specific metric to replace the current metric. The company has referred to a Mean Time to Repair (MTTR) metric,<sup>91</sup> but has not recommended adopting that measure in this Rulemaking on a California industry-wide basis. Consequently, we have no record to replace the current Out-of-Service repair interval measurement.

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<sup>90</sup> Decision adopting General Order 133-C, effective July 9, 2009.

<sup>91</sup> AT&T Opening Comments to Alternate Proposed Decision, July 12, 2016, at 7.

AT&T also cites that failing to scale fines by the declining number of lines statewide overstates penalty amounts.<sup>92</sup> The penalty mechanism that we are adopting addresses the failure of certain telephone corporations to meet Commission adopted service quality standards, and is not dependent on the number of state-wide lines. As previously discussed, the penalty mechanism was modeled after the mechanism adopted in D.01-12-021, which did not scale fine amounts based on access line counts. A declining number of lines does not abrogate a telephone corporation's duty to provide safe and reliable service and comply with Commission orders and rules.

Regarding the rural outage reporting, we note that carriers regularly report to government agencies, propose projects and apply for grants and loans using GIS information.<sup>93</sup> Asking for location information appears to be a standard business practice and correlating it with outage data fits the Commission's need to have information on rural outages to monitor compliance with California law, and Commission Decisions, rules, and orders. It also promotes and the public's need to know about the reliability of its telecommunications networks crucial to the health and safety of California residents, businesses, and public safety personnel. It will also help the Commission analyze the need for and factors affecting investments in rural areas through telehealth, tele-education, and California Advanced Service Fund broadband buildout grants, as well as relationships with other regulated utility

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<sup>92</sup> AT&T Opening Comments to Alternate Proposed Decision, July 12, 2016, at 12-13.

<sup>93</sup> California carriers provide specific GIS information at the census block level for grants and loans for the FCC's Connect America Fund and the CPUC's California Advanced Services Fund, A-Fund and B-Fund.

services and facilities. The small LEC's do not believe that it is reasonable to require reporting of major rural outages within 120 minutes of discovering the outage and recommend that this reporting only be required during business hours. The small LECs propose that the reporting of major outages that are discovered after normal business hours be reported to the CPUC within 120 minutes of the start of the next business day.<sup>94</sup> We disagree. Outages occurring both outside of and within normal business hours should be reported to the Communications Division Contact, as indicated by the CD outage reporting system, and CD will coordinate with Commission staff as necessary and appropriate. Providing timely information to the Commission about communications outages is particularly important when other infrastructure and regulated utilities are experiencing outages and threats such as during a fire or wind storm.

We recognize that some Small LECs serve areas with limited or no cell service, and that during a major outage they might have difficulty accessing alternative means to report an outage. In light of these issues for small GRC LECs we adjust the reporting time to 180 minutes after discovering an outage covered by this Decision.

AT&T, CTIA, and others object to the proceeding remaining open for analysis of wireless and interconnected VoIP issues relevant to this proceeding. They believe that there is no rationale for adopting service quality standards for these services because the record does not show the need, the market is

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<sup>94</sup> Comments of the Small LECs, July 12, 2016, at 6-7.

competitive, and the CPUC lacks jurisdiction.<sup>95</sup> These arguments are premature. This proceeding has contemplated looking at potential service quality rules or standards for telecommunications facilities supporting different technological platforms in a future phase of this proceeding, or in a successor proceeding, as appropriate.<sup>96</sup> It is well within the scope of this proceeding to consider the public safety implications regarding the reliability of these facilities and their impact upon Californians and their businesses, and we intend to examine them.

Regarding the network examination and commenters who advocate for delaying this Decision until it is completed,<sup>97</sup> we have already addressed this issue. In D.15-08-041 Affirming the Commission Direction to conduct the Network Evaluation Study, we stated that “[T]his decision in no way precludes, and is not intended to delay, the Commission’s consideration of a penalty mechanism or other more immediate activities in this proceeding.”

In addition to considering all the comments submitted in this record, this decision makes small technical changes in response to comments.

## **7. Assignment of Proceeding**

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

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<sup>95</sup> AT&T Opening Comments to Alternate Proposed Decision, July 12, 2016, at 4-6; Frontier Opening Comments to Alternate Proposed Decision, July 12, 2016, at 4; Verizon Wireless Opening Comments to Alternate Proposed Decision, July 12, 2016, at 5-7; Cox California Opening Comments to Alternate Proposed Decision, July 12, 2016, at 10; CTIA Opening Comments to Alternate Proposed Decision, July 12, 2016, at 4; CCTA Opening Comments to Alternate Proposed Decision at 2-3.

<sup>96</sup> Assigned Commissioner’s Scoping Memo and Ruling, dated September 24, 2012, at 8.

<sup>97</sup> AT&T Opening Comments to Alternate Proposed Decision at 8, Cox Opening Comments to Alternate Proposed Decision at 1.



**Findings of Fact**

1. Reliable telephone service, whatever the technology used, is essential for the public to access emergency services, maintain contact with family and friends, conduct business, including the provision of utility service and other critical infrastructure service, and find employment.

2. The Commission opened this proceeding to assess the performance of California telecommunications carriers in complying with the standards established in GO 133-C, and to consider revisions to those standards.

3. Several telecommunications carriers subject to GO 133-C have failed to meet existing service quality standards, either occasionally or chronically. The September 24, 2014, Staff Report showed that the largest carriers in California, AT&T and Verizon, which collectively operated approximately 88% of telephone lines in California reported under GO 133-C, failed to meet the minimum standard of repairing 90% of all out of service trouble reports within 24 hours for every month between 2010 and 2013. 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.

4. The service quality standards adopted in this decision as GO 133-D are necessary to ensure safe and reliable telephone service for California residents, businesses, energy and water utilities, public safety agencies and their personnel.

5. It is reasonable to apply the service quality standards adopted in this decision to all facilities-based telecommunications carriers, including those that provide facilities supporting interconnected VOIP that have a CPCN or franchise, have been designated as a Federal ETC in California and/or provide California Lifeline service.

6. The filing of corrective action reports by AT&T and Verizon (now Frontier) has not resulted in improvements to their performance sufficient to meet service quality standards. The September 24, 2014, Staff Report showed that between the years 2010 to 2013, AT&T and Verizon provided corrective action reports for each quarter they missed the adopted measures and related minimum standard.

7. Automatic fines for non GRC LEC, URF carrier chronic failure to meet service quality standards for three consecutive months provide an incentive for carriers to adhere to the service quality standards set forth in GO 133-D, and promote reliable service by incentivizing action to proactively ensure reliability and compliance with service quality standards.

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

9. It is reasonable to subject CLECs to penalties imposed by this Decision only if the failure to meet service quality standards was due to the CLEC's action or inaction, and not primarily due to service or facility issues of an unaffiliated underlying carriers.

10. As utilities under cost-of-service rate-of-return regulation, the Small LECS are subject to the general rate case process which involves detailed examination of compliance with GO 133-D. It is reasonable to decline to apply to GRC LECS the automatic penalty mechanism applied to URF ILECs by this Decision in light of the Commission's triennial opportunity to review performance of GRC LECS through their General Rate Case filings and proceedings.

11. Currently, facilities-based wireline and wireless telephone corporations file NORS reports with the Commission.

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

13. Interconnected VoIP providers have been required to provide NORS reports to the FCC since 2012, pursuant to 47 CFR 4.3 (h).

14. 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.

15. The administrative burden entailed in sending a copy of a report prepared for the FCC simultaneously to this Commission is minimal in light of the corresponding public safety benefit and duty of the Commission to monitor and discuss VoIP services.

16. Providing the Commission with a copy of a report already required by the FCC is an efficient means of informing this Commission of network outages compromising interconnected VoIP services.

17. It is reasonable to require all carriers, including carriers providing interconnected VoIP services, to provide the Commission with copies of FCC NORS reports.

18. Public safety requires this Commission to identify and monitor prolonged outages in all parts of the state, including both urban and rural areas.

19. Existing NORS reports do not provide sufficient information to identify and monitor outages that primarily affect rural and sparsely populated areas of California.

20. It is reasonable to define rural areas in California as areas that the US Census Bureau has determined are not within urbanized areas or in urban clusters.

21. It is reasonable and not unduly burdensome in light of the benefits to public safety and monitoring compliance with statutory duties to provide reliable service throughout California to require telephone corporations that have a CPCN and/or franchise, or have been designated as a Federal ETC in California and/or as a California Lifeline service provider; interconnected VoIP providers; and WIR holders to report on outages in rural areas that meet the 30 minute/90,000 user-minute threshold defined in GO 133-D.

22. It is reasonable to require Rural Outage Reports to identify the Location/ Areas, and community of place affected by outage such as the County, city, township, unincorporated areas, or Native American Reservation or Trust Land as indicated by the U.S. Census Bureau Tribal Tract Reference Maps, etc., identifying the, census block group affected, specific census block(s) if available.

23. The scope of this proceeding anticipated looking at developing service quality standards for various carrier technology platforms.

24. Although many customers continue to use traditional telephone services, there is an ongoing transition from such services to other technologies which may be wireline, wireless, and VoIP services.

25. Public safety issues associated with the transition and the future use of new technologies remain of concern to this Commission.

26. It is reasonable to initiate a phase of this proceeding that looks at what service quality measures and standards, if any, should be adopted for facilities supporting the provision of wireless and VoIP services.

27. A Scoping Ruling should be issued at a later date that sets forth the issues to be addressed and the associated timeline.

28. It is reasonable for URF carriers and GRC ILECs and CLECs to 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 shall 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.

### **Conclusions of Law**

1. The public interest requires that telephone service corporations provide safe and reliable service under Public Utilities Code Section 451, reflect the state's "universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians," and adhere to "reasonable statewide service quality standards" under Public Utilities Code Section 2896, and adhere to California law and the Commission's Decisions, rules, and order, and their applicable tariffs.

2. The public interest and achievement of the standards and rules set forth in Public Utilities Code Sections 709, 2896, and 451 requires that telephone corporations adhere to the service quality standards in GO 133-D.

3. The public interest requires that the service quality standards adopted in this decision apply to all facilities-based telecommunications carriers, that have a CPCN or franchise, including those that provide facilities supporting interconnected VOIP, or have been designated as a Federal ETC in California and/or California Lifeline service provider.

4. Requiring filing of California rural outage reports with the Commission is an appropriate means to gather and monitor information on outages in California's non-urbanized and non-urban cluster areas, and to ensure provision of reliable service, compliance with service quality, and universal service, and appropriately balances the reporting burden on telecommunications carriers with the burden of outages on rural communities, public safety, the economy,

and network reliability, consistent with California Public Utilities Code Sections 451, 709, 2896.

5. Public Utilities Code Sections 2107 and 2108 authorize the Commission to impose penalties on any public utility that violates or fails to comply with a Commission rule or order.

6. 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.

7. The Daily Base Fine for failing to meet the Out of Service standard should be \$25,000, assessed after the third consecutive month of failure to meet this standard. The first two months of failure to meet the Out of Service standard will not receive a monetary penalty. This Daily Base Fine should be scaled based on the carrier's access lines relative to the total number of access lines in California.

8. 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, to \$500 for the third consecutive month of failure, 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. The Daily Base Fine will be assessed after the third consecutive month of failure to meet this standard. The first two months of failure to meet the Customer Trouble Reports standard will not receive a monetary penalty.

9. 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, to \$500 for the third consecutive month of failure, 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. The Daily Base Fine will be assessed after the third consecutive month of failure to meet this standard. The first two months of failure to meet the Customer Trouble Reports standard will not receive a monetary penalty.

10. The Commission has broad authority under the state constitution, as well as Sections 311 and 314 of the Public Utilities Code, to obtain information and assure the safe and reliable operation of facilities. Such authority is not limited to public utilities or regulated entities.

11. Public Utilities Code Section 710(f), permits this Commission to "monitor and discuss VoIP services."

12. The reporting requirements adopted in this decision are consistent with the Commission's authority under state law, and are not prohibited under Public Utilities Code Section 710.

13. Another phase of this proceeding should be opened to examine the need for service quality standards for wireless and VoIP services.

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

**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. Another phase in Rulemaking 11-12-001 shall examine the need for service quality standards for wireless and Voice over Internet Protocol service. A Scoping Ruling will be issued at a later date that sets forth the issues to be addressed and the associated timeline.

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 Association<sup>1</sup>
- CCTA: California Cable & Telecommunications Association

**Consumer Groups and the Workers Union**

- Joint Consumers: Greenlining Institute, Center for Accessible Technology and The Utility Reform Network
- ORA: Office of Ratepayer Advocates
- CFC: Consumer Federation of California<sup>2</sup>
- CWA: Communications Workers of America District

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<sup>1</sup> CTIA filed only Reply Comments.

<sup>2</sup> CFC filed only Reply Comments.

**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 California<sup>3</sup>
- California Cable & Telecommunications Association (CCTA)\*
- CTIA – The Wireless Association\*

**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)\*

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

**March 22, 2016, Proposed Decision**

The parties listed below filed Opening Comments on April 11, 2016. Those that also filed Reply Comments on April 18, 2016 are designated with an asterisk.

**Utility Companies**

- AT&T California (U-1001-C)\*
- Citizens Telecommunications Company of California (U-1024-C), Frontier California (U-1002-C), and Frontier Communications of the Southwest (U-1026-C)\*<sup>4</sup>
- Consolidated Communications of California (U-1015-C)
- Cox California Telecom (U-5684-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)
- Verizon Wireless (U-3001-C)\*<sup>5</sup>
- California Association of Competitive Telecommunications Companies (CALTEL)
- California Cable & Telecommunications Association (CCTA)\*

**Consumer Groups**

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

**June 22, 2016, Alternate Proposed Decision**

The parties listed below filed Opening Comments on July 12, 2016. Those that also filed Reply Comments on July 18, 2016 are designated with an asterisk.

**Utility Companies**

- AT&T California (U-1001-C)\*
- Citizens Telecommunications Company of California (U-1024-C), Frontier California (U-1002-C), and Frontier Communications of the Southwest (U-1026-C)
- SureWest Consolidated Communications of California (U-1015-C)

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<sup>4</sup> Frontier only filed reply comments.

<sup>5</sup> Verizon Wireless only filed reply comments.

- Cox California Telecom (U-5684-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)\*
- Verizon Wireless (U-3001-C)

**Consumer Groups and Associations**

- CTIA, The Wireless Association\*
- California Cable & Telecommunications Association (CCTA)\*
- California Association of Competitive Telecommunications Companies (CALTEL)
- Office of Ratepayer Advocates (ORA)\*
- Center for Accessible Technology, Greenling Institute and The Utility Reform Network (Joint Consumers)\*
- CWA, Communication Workers of America

**(End of Attachment A)**

**Attachment B**

**General Order 133-D**

# GO 133-D

XX/XX/xxx

**Date of Issuance X/XX/20XX**

## **General Order 133-D**

### **Public Utilities Commission of the State of California**

#### **Rules Governing Telecommunications Services**

**Effective immediately, except for section 9, which shall become effective  
January 1, 2017**

## **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., now Frontier, a carrier or its predecessor 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. Outage: A significant degradation in the ability of an end user to establish and/or maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.
- s. Out of Service – A condition whereby a customer cannot establish and/or maintain a channel of communications.
- t. Small Business Customer -- small business customers are those that purchase five or fewer lines.
- u. Telephone Company/Utility – A public utility telephone corporation providing public telephone service as further defined by Public Utilities 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 Public Utilities 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. The service measures established are as follows:

<b><i>Service Measure</i></b>	<b><i>Type of Service</i></b>
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 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. This measure also applies to those interconnected VoIP providers that have a CPCN or franchise, or have been designated as a federal ETC in California, and/or provide California LifeLine.

- a. Description. Service affecting and out of service trouble reports from residential and business customers 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 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. This measure also applies to those interconnected VoIP providers that have a CPCN or franchise, have been designated as a federal ETC in California, and/or California LifeLine provider.
- 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 fewer) customers for the three consecutive calendar months that did not have catastrophic events prior to the declared State of Emergency divided by three.

GRC LECS and CLECs shall report when outages are caused by an unaffiliated underlying carrier, and the Commission can take this fact into account when analyzing responsibility for the outage, the extent of any penalties for a CLEC or underlying carrier, and appropriate action.

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 the 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](http://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 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. This measure also applies to those interconnected VoIP providers that have a CPCN or franchise, have been designated as a federal ETC in California, and/or California LifeLine provide.

- 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. **SERVICE INTERRUPTION REPORTING**

- a. Applicability. This section applies to:
  - i. Telephone corporations including interconnected VoIP providers that have been granted either a franchise or a Certificate of Public Convenience and Necessity (CPCN) pursuant to Public Utilities Code § 1001, or have been designated as a federal ETC in California, and/or a California LifeLine provider.
  - 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.

#### 4.1 Major Service Interruptions

- a. 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>
- b. 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 voice services using multiple technologies, 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.
- c. Confidentiality. Major Service Interruption reports submitted to the Commission pursuant to these rules shall be treated as confidential in accordance with Public Utilities Code § 583 and General Order 66-C.

## 4.2 Rural Area Outage Reporting

The Commission adopts a modification of the NORS reporting format for rural outages in California and directs the carriers identified in Section 4 (a) to provide reports to the Commission as specified in Section 4 (b). Reports shall be filed with CD per CD's directed method/media. This modification defines outages of facilities outages in non-urbanized, non-urban cluster areas as the target for reporting and applies a lower threshold of 90,000 user-minutes for a 30 minute outage to the methodology used for the FCC's user-minute calculation.

### a. Definitions:

(1) A rural outage is an outage that occurs in a rural area defined as a non-urbanized, non-urban cluster area as defined by the U.S. Census Bureau, and lasts at least 30 minutes and potentially affects 90,000 user-minutes.

Wireless carriers should use the FCC's 2016 method for calculating potential users, and use the new methodology the FCC adopted in May 2016 when it becomes effective. To determine if an outage meets the 90,000 user-minute threshold in a rural area, the carrier should multiply the number of macro cell sites disabled in the outage by the average number of users serviced per site, which is calculated as the total number of users for the provider divided by the total number of the provider's macro cell sites. The outage must last for at least 30 minutes.

(2) Rural areas of California are defined as areas that the US Census Bureau has determined are not within urbanized areas or urban clusters.<sup>1</sup>

### b. Types of Outage Reports and Reporting Timelines

(1) Notification Report: Within 120 minutes of discovering an outage of at least 30 minutes in duration, but for GRC LECs only the timeline to provide notice of the outage is within 180 minutes of discovering an outage meeting the reporting standard of at least 30 minutes in duration.

(2) Initial Report: No later than 72 hours after discovering the outage.

(3) Final Report: No later than 30-days after discovering the outage.

(4) Withdrawn Report: Filed as soon as practicable after determining that the outage did not meet the Major Rural Outage reporting threshold.

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<sup>1</sup> <https://www.census.gov/geo/reference/urban-rural.html>. The Census Bureau identifies two types of urban areas: Urbanized Areas (UAs) of 50,000 or more people and Urban Clusters (UCs) of at least 2,500 and less than 50,000 people.

- c. Report Format. Attachment D is the Major Rural Area Outage Report Template that contains the following fields:
    - (1) Company Name and Utility Number assigned by the Commission;
    - (2) Report Number. Year (YY) Utility number (UUUU), and five digit consecutive number for a calendar year beginning with the number 00001. Each calendar year reports shall begin with the number 00001. (e.g. 17-uuuu00001);
    - (3) Report Type, as described above;
    - (4) Date and time that the outage began in hours and minutes (24 hour clock);
    - (5) Estimated date and time in hours and minutes for the outage to be repaired;
    - (6) Actual date and time in hours and minutes that the outage was repaired;
    - (7) Type(s) of Service Affected: wireline, wireless, VoIP;
    - (8) Location/Areas affected by outage (County, city, township, unincorporated areas, or Native American Reservation or Trust Land as indicated by the U.S. Census Bureau Tribal Tract Reference Maps, etc.), census block group affected, specific census block (s) if available;
    - (9) Cause of outage;
    - (10) Explanation of steps taken to restore service;
    - (11) Description of steps that were, or will be taken to prevent similar types of outages from occurring in the future; and
    - (12) Name, title, and contact information (telephone number and email address) of the person submitting the report.
  - d. Confidentiality: Rural Area Outage reports submitted to the Commission pursuant to these rules shall be treated as confidential in accordance with Public Utilities 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, Franchise, 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 shall 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 non-GRC LEC facilities-based local exchange telephone corporations that 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, including those carriers regulated under the Uniform Regulatory Framework (URF) adopted in D.06-08-030. For companies that offer voice service through multiple technologies, the fines only apply to traditional wireline telephone service. The automatic penalty provisions of these rules do not apply to GRC LECs as their compliance will be reviewed in the GRC process. For CLECs, the penalty provisions of this General Order will be imposed only if the failure to meet service quality standards was due to the CLEC's action or inaction, and not primarily due to service

or facility issues of an unaffiliated underlying carriers, and GRCs should file outage and non-compliance reports that explain whether an underlying unaffiliated carrier was primarily responsible for the non-compliance.

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 30<sup>th</sup> 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**

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

	<b>1 to 2 Consecutive Months</b>	<b>3 to 5 Consecutive Months</b>	<b>6 to 8 Consecutive Months</b>	<b>9 to 11 Consecutive Months</b>	<b>12 or More Consecutive Months</b>

<b>Fine Per Day</b>	\$0	\$500	\$1,000	\$1,500	\$2,000
<b>Days in Month</b>	30	30	30	30	30
<b>Base Fine per Month</b>	\$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**

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

- 9.6 Advice Letter Tabulating Fine. 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.

## 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
<b>Installation Interval</b> Min. standard = 5 bus. days	Total # of business days												
	Total # of service orders												
	Avg. # of business days												
<b>Installation Commitment</b> Min. standard = 95% commitment met	Total # of installation commitments												
	Total # of installation commitment met												
	Total # of installation commitment missed												
	% of commitment met												
<b>Customers</b>	Acct # for voice or bundle, res+bus												
<b>Customer Trouble Report</b>													
<b>Min. Standard</b>	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											
<b>Adjusted Out of Service Report</b> 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												
<b>Unadjusted Out of Service Report</b>	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)												
<b>Refunds</b>	Number of customers who received refunds												
	Monthly amount of refunds												
<b>Answer Time</b> (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)

**Attachment D**

**Major Rural Outage Reporting Template**

**California Public Utilities Commission  
Rural Outage Reporting Template  
General Order 133-D**

Alternate Proposed Decision  
subject to modification, see CPUC web page

**Company Name:**  
**Utility Number:**  
**Report Number:**

**Report Type (Check box that applies):**

Notification:  
Initial:  
Final:  
Withdrawn:


**Date and Time Outage began in Hours and Minutes:**

**Estimated Repair Date and Time in Hours and Minutes:**

**Actual Repair Date and Time in Hours and Minutes:**

**Description of How Outage Was Discovered:**

**Type(s) of Service(s) Affected:**

Wireline  
Interconnected VoIP  
Wireless  
PSAP


**Location/Areas Affected: County, City/Township, unincorporated area, Native Reservation or Trust Land:**

**Location/Areas Affected: Census block group (CB if available):**

**Cause of Outage:**

**Explanation of Steps to Repair Outage:**

**Describe What Steps Will be Taken to Prevent Similar Types of Outages:**

**Name, position, telephone number and email address for person submitting this report:**

REDLINED VERSION

COM/CJS/~~ar~~9jt2

## ALTERNATE PROPOSED DECISION

Agenda ID #14992 (Rev. 1)

Alternate to Agenda ID#14750

Quasi-~~l~~egislative

Decision ALTERNATE PROPOSED DECISION OF COMMISSIONER SANDOVAL (Mailed 6/22/2016)

### 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)

### ALTERNATE DECISION ADOPTING GENERAL ORDER 133-D

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

This decision adopts revisions to General Order 133, in a new General Order 133-D, 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. Federally-mandated outage reports must also be submitted to the Communications Division by all carriers registered under Public Utilities Code [§Section 285](#), and telecommunication outages in rural areas must be reported. Other clarifying revisions to General Order 133-D are also adopted.

**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 and are relevant to the current regulatory environment and market, and whether there is a need to maintain a penalty mechanism for future substandard service quality performance.

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

On August 19, 2013, the proceeding was reassigned to Administrative Law Judge (ALJ) Maribeth A. Bushey, and on February 6, 2014, then Commissioner (now President) Picker was designated the assigned Commissioner after Commissioner Ferron's departure from the Commission. On September 24, 2014, assigned Commissioner Picker issued an Amended Scoping Memo and Ruling that modified the schedule set in the previous scoping memo.

The amended scoping memo included a Staff Report from the Commission's Communications Division. That report contained a discussion of carriers' performance on existing service quality measures, as well as a review of alternative approaches to monitoring telephone service quality. The Staff Report found that many of the Uniform Regulatory Framework (URF) carriers<sup>1</sup> did not meet the out-of-service standard in multiple years. The two largest wireline

<sup>1</sup> URF carriers have full pricing flexibility over substantially all of their rates and charges. URF carriers include Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) regulated through the Commission's uniform regulatory framework established in D.06-08-030. Verizon's wireline facilities in the state were purchased by Frontier Communications in a transaction approved by the Commission in December, 2015 (D.15-12-005). The transfer of operations occurred on April 1, 2016.

carriers: AT&T California, Inc. and Verizon California, Inc. remained out of compliance with the General Order 133-C out-of-service standard for the years 2010-2013.<sup>2</sup>

Based on parties' comments on that report, Commission staff prepared a formal proposal for modifications to General Order 133-C. The Staff Proposal recommended: modifications to the existing service quality reporting requirements; changes in definitions within the general order; changes to outage reporting, including adoption of a methodology for determining the end of a catastrophic event; automatic customer refunds; carrier fines for non-compliance; and applying service quality rules to certificated facilities-based interconnected Voice over Internet Protocol (VoIP)<sup>3</sup> carriers. The assigned ALJ issued a ruling requesting comments on that proposal on February 2, 2015, and parties filed comments in March and April 2015.

On November 12, 2015, assigned Commissioner Picker mailed a Proposed Decision that would have adopted a new version of the Commission's

<sup>2</sup> California Wireline Service Quality Pursuant to General Order 133-C, Calendar Years 2010 through 2013, CPUC, Communications Division Staff Report, September 2014. Available on the Commission's website at: <http://www.cpuc.ca.gov/General.aspx?id=1107>

<sup>3</sup> Pub. Util. Code § 239(a)(1) "Voice over Internet Protocol" or "VoIP" means voice communications service that does all of the following:<sup>1</sup>

(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.<sup>1</sup>

(B) Requires a broadband connection from the user's location.<sup>1</sup>

(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.<sup>1</sup>

(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.<sup>1</sup>

(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.

telecommunications service quality requirements, as General Order 133-D. Commissioner Picker subsequently withdrew his Proposed Decision from the Commission's agenda after the filing of opening and reply comments.

On December 29, 2015, the assigned ALJ issued a ruling seeking comment on a specific aspect of the draft General Order proposed in the November PD. Parties filed comments and reply comments on the proposal.

On March 22, 2016, assigned Commissioner Picker issued a new proposed decision and draft General Order, which contained slight modifications from the earlier proposed decision. Parties filed comments and reply comments on the proposed decision.

Attachment A is a list of parties that filed comments to the Staff Proposal and proposed decisions.

Today's decision establishes a revised ~~draft~~ GO 133-D (Attachment B). As described above, the proposals contained in Attachment B are the result of a long and detailed process involving all interested parties. This decision and the attached GO 133-D differ from the draft versions mailed in November 2015 and March 2016 primarily in the following ways:

- ~~1. Major Service Interruption reporting obligations are extended to entities subject to Public Utilities Code Section 285;~~ All telephone corporations that hold a CPCN or franchise, including facility providers supporting interconnected VoIP services, and carriers designated as a federal ETC in California, and/or California LifeLine provider, shall provide data on service quality measures;
- ~~2. The reporting of Major Rural Outages will now be required of most telecommunications carriers~~ all telephone corporations that hold a CPCN or franchise; facility providers supporting interconnected VoIP services; telephone corporations designated as a federal ETC in California, and/or California

LifeLine provider; and Wireless Identification Registration (WIR) holders;

3. ~~3.~~ The automatic penalty provisions no longer contain an option for suspension of carrier fines based on the submission of a “corrective action plan” describing incremental spending intended to improve service quality performance; and
4. ~~4.~~ We anticipate launching a new phase of this proceeding to examine the appropriateness of service quality standards for wireless and VoIP services.

## 2. Staff’s Recommended Changes to the General Order

This section contains a description of recommendations made in the Staff Proposal, along with a summary of parties’ positions on each issue. We adopt most staff recommendations, with modifications as noted below.

### 2.1. 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 the definition of customer includes large business (six or more lines), small business (five lines or less), and residential service. 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.

AT&T commented that “customer” should be defined as an “access line,” and should be limited to circuit switched small business and residential customers because these two classes of customers have been the focus of G.O.GO 133-C and should remain so.<sup>4</sup>

<sup>4</sup> Opening Comments of AT&T to Staff Proposal, March 30, 2015, p.at 23.

We agree with AT&T that large business customers should not be included in the definition and that the definition [adopted in this phase of the proceeding](#) should apply to circuit-switched services.

We adopt staff's proposed definition of customer GO 133-D, with one modification. Large business customers are excluded from the definition, and the definition applies only to circuit-switched services. 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.

We are also concerned about outages that affect critical infrastructure, whether they are large or small businesses. However, these types of outages are currently outside of the scope of this proceeding and we will address them in a different proceeding.

### 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. ORA commented on staff's proposal and recommended that the definition be:

A telephone corporation, including a wireless or interconnected VoIP provider that owns or controls facilities used to provide communication for compensation, including the line to the end-user's location.<sup>5</sup>

We do not believe that it is necessary to include the change to staff's proposed definition that was recommended by ORA because wireless providers are telephone corporations. We adopt staff's proposed definition, with one small

<sup>5</sup> ORA Opening Comments to Staff Proposal, March 30, 2015, Appendix A-page at A-1.

modification: the definition of facilities-based carrier adopted here removes the word “voice.” As a result, the definition 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.

This definition is technology-neutral; it reflects today’s telecommunications market, including facilities-based interconnected VoIP providers ~~who~~that have a CPCN or Franchise and use a variety of delivery media, including copper wire, coaxial cable, fiber optics, and wireless technologies, to provide network access to their customers. These facilities are lines that provide a connection from the access 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). ORA agreed with staff’s proposed definition.<sup>6</sup> AT&T recommended using the Public Utilities Code Section 239 (a)(1)(A) definition for interconnected VoIP because it is included in statute.<sup>7</sup> This definition of VoIP includes Internet protocol (IP) or a successor protocol enabling real-time, two-way voice communication that originates from, or terminates at, the user’s location in Internet Protocol or a successor protocol.

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

<sup>6</sup> *Ibid.*

<sup>7</sup> Opening Comments of AT&T to Staff Proposal, March 30, 2015, p. at 23.

#### 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, supporting it.<sup>8</sup> This definition of line does not refer to specific types of central office technologies.

In this decision, we adopt a slightly modified definition of line, as follows:

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.

This definition better reflects today's technologies for providing voice communication services, which do not always utilize a dial tone in the traditional sense.

#### 2.1.5. Outage

Staff proposed to define outage as: A significant degradation in the ability of an end user to establish and/or maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. This definition is consistent with the FCC's definition of outage.<sup>9</sup>

AT&T does not recommend adopting staff's recommended definition of outage because [it asserts that](#) no evidence has been presented that this definition is needed, and recommends that the Commission should use the definition for

<sup>8</sup> Opening Comments of the Office of Ratepayer Advocates to Staff Proposal, March 30, 2015, Appendix A, [page at](#) A-1.

<sup>9</sup> 47 C.F.R § 4.5(a).



Out of Service in G.O.GO 133-C Section 1.3: A telephone line without dial tone.<sup>10</sup> ORA agrees with staff's proposed definition.<sup>11</sup>

As discussed in the previous section that defines "line," today's technologies for providing voice communication services do not always utilize a dial tone in the traditional sense. Consequently, staff's proposed definition is technology neutral and a better fit for today's communications market, and is consistent with the FCC's definition of outage for federal reporting of network outages. We adopt staff's proposed definition of outage.

Due to the change in the definition of the term line and the adoption of the definition for outage, we believe that it is appropriate to revise the definition of Out of Service to be consistent with the purpose and intent of these new definitions. Consequently, Out of Service is defined as:

A condition whereby a customer cannot establish and/or maintain a channel of communications.

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

### 2.2.1. Duration of Catastrophic Events

Currently, GO 133-C allows carriers to exclude outages associated with catastrophic events from their calculation of certain performance measures. The existing general order does not define the method for determining the duration of a "catastrophic event." Staff recommended that GO 133-D should prescribe a method for identifying the end of a catastrophic event, in order to facilitate consistent measurement and reporting of outage-related measures and suggested that the end of a catastrophic event should be 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

<sup>10</sup> Opening Comments of AT&T to Staff Proposal, March 30, 2015, p-at 24.

<sup>11</sup> Opening Comments of ORA to Staff Proposal, March 30, 2015, Appendix A, page at A-2.

actual number of out-of-service tickets for residential, small business (five lines or less), and large business (greater than five lines) customers for the three consecutive calendar months that did not have catastrophic events prior to the declared State of Emergency, divided by three.

AT&T, Cox, and Joint Consumers submitted comments on Staff's proposal. Joint Consumers supported staff's proposal.<sup>12</sup> AT&T and Cox<sup>13</sup> generally supported the proposal, but suggested the following modifications:<sup>14</sup>

- 1) only out-of-service tickets (and not other trouble reports) from residential and small business customers should be included in the calculation; and
- 2) the calculation of the baseline average should exclude months in which there was a catastrophic event.

The attached GO 133-D incorporates these recommendations in the calculation of average out-of-service ticket levels for the purposes of identifying the end of a catastrophic event.

### 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 will not be used for calculating fines.

<sup>12</sup> Opening Comments of Joint Consumers to Staff Proposal, March 30, 2015, p-at 3.

<sup>13</sup> Reply Comments of Cox Communications to Staff Proposal, April 17, 2015, p-at 16.

<sup>14</sup> Opening Comments of AT&T to Staff Proposal, March 30, 2015, pp-at 25-26.

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 customers affected, including small business and residential customers.

Verizon California<sup>15</sup> urged the Commission to completely eliminate this standard, and the small LECs<sup>16</sup> 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, whichever is greater.<sup>16,17</sup> 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.<sup>17,18</sup>

Reporting outage repair results on 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. For these reasons, we adopt the requirement that carriers report both adjusted and unadjusted outage numbers. The standard for out-of-service measure will continue to apply only to the adjusted results and assessing carrier's out of service performance for the purpose of carrier fines will also be based on adjusted results. The new template in Appendix C reflects this requirement.

We do not adopt the small LECs' position on the appropriate threshold for reporting catastrophic events.<sup>19</sup> As reported in the Staff's September 2014 report,

<sup>15</sup> Opening Comments of Verizon California to Staff Proposal, March 30, 2015, p. at 4.

<sup>16</sup> General Rate Case LECs, GRC LECs, are also referred to as the small LECs.

<sup>16,17</sup> Opening Comments of Small LECs to Staff Proposal, March 30, 2015, pp. at 2-3.

<sup>17,18</sup> Opening Comments of CAL TEL CALTEL to Staff Proposal, March 30, 2015, pp. at 2-5.

<sup>19</sup> Opening Comments of Small LECs to March 22, 2016, Proposed Decision.

the smallest telephone company, ~~Winterhaven~~Pinnacles Telephone, had ~~approximately 244249~~ customers at the end of 2013. The small LECs' proposal would require 100 customers, or 40% of ~~Winterhaven's~~Pinnacles' customer base to be without service before reporting as a catastrophic event. We therefore think this threshold unreasonable.

### 2.2.3. Applicability of Service Quality Measures

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 (e.g. VoIP providers required to remit universal service surcharges pursuant to Public Utilities Code §285), 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.

We adopt a modified version of staff's proposal. The service quality measures and standards apply to ~~those~~all telephone corporations that hold a CPCN and/or franchise, including facility providers supporting interconnected VoIP providers that have a CPCN, have been services, and those designated as a Federal ETC in California and/or ~~provide a~~California Lifeline service provider. The service quality measures and standards do not apply to interconnected VoIP providers that are required to pay universal service surcharges pursuant to Public Utilities Code ~~§285.~~Section 285 and do not have a CPCN or Franchise, nor are designated a Federal ETC in California and/or a California Lifeline service provider.

#### 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 issued a CPCN and/or franchise by the Commission or its predecessor agencies; ~~have been~~ designated a federal ETC in California and/or ~~provide~~ California Lifeline service provider, and/or have to remit universal service surcharges pursuant to Public Utilities Code §Section 285, be required to submit to the Communications Division copies of all outage reports filed with the Federal Communication Commission under the NORS at the time of their filing so that the Commission is informed of major VoIP network outages.

Pub. Util. Code § 285(c) directs the Commission to require interconnected VoIP 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.

Interconnected VoIP service providers are providing telephone service in California and the Commission should be aware of significant outages that occur in their networks. Providing the Commission a copy of a report already required by the FCC is an efficient means of informing this Commission of network outages compromising interconnected VoIP services.

~~Telephone corporations~~ AT&T, Verizon, CTIA, and Cox do not support adoption of this proposal for several reasons. They assert that there is no basis for the rules, the market is competitive, and that the CPUC is restricted from imposing service quality rules on VoIP due to Pub. Util. Code § 710.<sup>1820</sup> Consumer groups and ORA support the recommendation because it is within the commission's authority under Pub. Util. Code §§ 216, 233, 234, 314 (b), 581; within the exemptions of Pub. ~~U-ti~~ Util. Code § 710; and is also a Commission mandate under Pub. Util. Code ~~3~~ § 451.<sup>1921</sup>

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 and access to 9-1-1. 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

<sup>18,20</sup> AT&T Opening Comments to the October 2014 Staff Report at pp-14-20, Verizon Opening Comments to the October 2014 Staff Report at pp-3, 19-21, CTIA Opening Comments to the October 2014 Staff Report at pp-1-2, CALTEL Opening Comments to the October 2014 Staff Report at p-7, 2, CCTA Opening Comments to the October 2014 Staff Report at p-1-4 and Cox Opening at p-11.

<sup>19,21</sup> ORA Opening Comments to the October 2014 Staff Report at pp-10-15, TURN Opening Comments to the October 2014 Staff Report at pp-6-7, CWA Opening Comments to the October 2014 Staff Report at p-6, Joint Consumers Opening Comments to the October 2014 Staff Report at p-6, and CFC Opening Comments to the October 2014 Staff Report at p-3; ORA Opening Comments to the February 2015 Staff Proposal at p-15.

the ability to reach emergency services as do traditional telephone service customers. For these reasons, the commission needs to be informed of these network outages where those emergency access services become unavailable. To demonstrate the need for mandatory outage reporting, the FCC's Order adopting mandatory outage reporting requirements for communication providers providing interconnected VoIP services pointed to a number of significant VoIP outages where the FCC only learned of outages through the media.<sup>2022</sup>

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

This decision adopts staff's proposal, as shown in Section 4 of GO 133-D, in Attachment B. Interconnected VoIP providers are required to submit copies of their FCC-mandated NORS reports to the Communications Division in the same manner as telephone corporations.

#### **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 proposed 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 reporting requirement would apply to all facilities-based telephone corporations, including: (GRC LECs and facilities-based URF carriers), as well as interconnected VoIP providers ~~which~~<sup>that</sup> have been issued a CPCN by the Commission, designated a federal ETC in California, and/or ~~provide~~ California Lifeline service provider. The

<sup>2022</sup> *In the Matter of The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice over Internet Protocol Service Providers and Broadband Service Providers*, Report and Order, PS Dkt. 11-82 (FCC 12-22) Rel. Feb 21, 2012, para 7.

proposal was based on reporting requirements similar to the FCC's NORS and GO 166 for Electric Utilities for Reporting During Emergencies and Disasters.<sup>2423</sup> These additional reporting requirements were intended to assist the Commission in identifying localized service quality problems, especially those affecting small communities and rural areas of the state.

Carriers AT&T and Verizon, and Carriers participating in the Consolidated Opening Comments to Staff Proposal generally did not support this additional reporting, and asserted that the recommended reporting requirements are either unnecessary or infeasible. The carriers' objections to these requirements included, but were not limited to, the following:

- 1) the FCC NORS reports already cover rural areas,<sup>2224</sup>
- 2) the Commission receives outage information (e.g. NORS report number, outage start and stop date, number of customers affected, 9-1-1 facilities affected, description of outage, etc.) annually in ETC filings,<sup>2325</sup>
- 3) the carriers' network monitoring equipment cannot identify communities of place,<sup>2426</sup>
- 4) there are no objective reporting criteria which will provide the Commission with outage information that it seeks for outages in sparsely populated rural areas,<sup>2527</sup>
- 5) staff did not demonstrate that the requirements would improve public safety,<sup>2628</sup> and

<sup>2423</sup> For electric utilities, the Commission has already adopted analogous reporting requirements. In D.16-01-008, the Commission updated the electric utility reporting to include electric outage data at the local level. That decision found that "[d]istrict or division level [outage] reporting... is reasonable and in the public interest" (Decision at Conclusions of Law 1).

<sup>2224</sup> AT&T California Opening Comments to Staff Proposal, p. at 22, Verizon California Opening Comments to Staff Proposal, p. at 15., and Consolidated Opening Comments to Staff Proposal, p. 3, at 3, March 30, 2015.

<sup>2325</sup> Cox Opening Comments to Staff Proposal, March 30, 2015, p. at 11.

<sup>2426</sup> Verizon Opening Comments to Staff Proposal, March 30, 2015, p. at 16.

<sup>2527</sup> AT&T Opening Comments to Staff Proposal, March 30, 2015, p. at 28.

<sup>2628</sup> Verizon Reply Comments to Staff Proposal, April 17, 2015, p. at 7.



6) that implementing such reporting would be costly.<sup>2729</sup>

We find that the carriers' arguments miss the point of the staff proposal – to capture localized outages that do not meet the NORS reporting threshold on a close to real-time basis and not annually via the ETC annual report filing process.<sup>2830</sup> Reporting to the Commission about outages in sparsely populated areas of California will provide valuable information to improve service and public safety in those communities. Such information, not available from federal reports, will aid the Commission in fulfilling its responsibility to ensure that carriers provide safe, reliable service, comply with service quality requirements, assure the continued affordability and widespread availability of high-quality telecommunications services to all Californians, consistent with California Public Utilities Code Sections 451, 2896, and 709, respectively.

Consumer groups supported the staff proposal.<sup>2931</sup> However, ORA proposed that all outages, whether the customer reports the outage or the telephone corporation discovers the outage, for service providers that have more than 3,000 customers, should be reported and recommends a new threshold for outage reporting of 90,000 user -minutes, compared to the NORS threshold of 900,000 user -minutes.<sup>3032</sup> ~~ORA's recommendation is that~~ recommends requiring

<sup>27,29</sup> Cox Opening Comments to Staff Proposal, March 30, 2015, ~~p.~~at 6.

<sup>28,30</sup> 47 C.F.R. § 54.313 requires all federal eligible telecommunications carriers (ETCs) receiving high-cost support to file annual reports regarding compliance with Commission rules, including, but not limited to providing for the prior calendar year, information on any outage that last at least 30 minutes in duration and affects at least ten percent of end users served in a designated service area pursuant to Title 47 C.F.R. Part 4 (Disruptions to Communications), § 4.5 (Definitions of outage, special offices and facilities, and 9-1-1 special facilities).

<sup>29,31</sup> Joint Consumers Opening Comments to Staff Proposal, ~~p.~~at 5, CWA Opening Comments to Staff Proposal, ~~p.~~at 2.

<sup>30,32</sup> ORA Opening Comments to Staff Proposal, March 30, 2015, ~~p.~~at 26.

[reporting to the Commission of any outage in California](#) that lasts at least 30-~~minutes~~ and:<sup>3433</sup>

- a. Affects a Mobile Switching Center (applicable to wireless service providers only);
- b. Potentially affects at least 90,000 user -minutes (vs. NORS 900,000 user -minutes);
- c. Potentially affects at least 150 DS3 minutes (vs. NORS 1,350 minutes);
- d. Potentially affects any special offices and -facilities; and
- e. Potentially affects a 9-~~1-1~~ special facility affecting at least 90,000 user -minutes (vs. NORS 900,000 user -minutes).

For service providers who have fewer than 3,000 customers, ORA recommended that the service providers report all service telephony service outages and all DS3 circuit outages that are of at least 30-~~minutes~~ in duration that potentially affects 3% of their telephony customers, or 3% of the DS3 circuits that the provider has in the state.

[Outage reporting for DS3 circuits reflects the FCC's 2004 requirement in 47 C.F.R. pt. 4, requiring reporting to the FCC of communications disruptions that impact major transport facilities that carry significant traffic, particularly data, such as DS3 circuits. DS3 outages lasting for at least 30 minutes and meet the 1,350 DS3 minute threshold were required to be reported to the FCC, reflecting the prevalence of DS3 technology as a method for transporting communication](#)

<sup>34</sup>~~33~~ ORA Opening Comments to Staff Proposal, March 30, 2015, ~~p~~-at 30, Table 1, 1). ORA defines the following:<sup>1</sup>

For wireless and wireline service providers, "user -minutes" refers to user -minutes of telephony service; for VoIP service providers, "user -minutes" refers to minutes of interconnected VoIP service resulting in complete loss of service.<sup>1</sup>

DS3 minutes are defined as multiplying the duration of an outage, expressed in minutes, by the number of previously operating DS3 minutes that were affected by the outage. (See 47 C.F.R §4.7(d).)<sup>1</sup>

Special Offices and Facilities are defined in 47 C.F.R §4.5(b).<sup>1</sup>

9-~~1-1~~ Outage is defined in 47 C.F.R § 4.5(e).

including data. We note that the FCC in May 2016 shifted the reporting metric for outages affecting transport facilities to an OC3-based metric to reflect technological evolution and industry adoption, and adjusted the reporting threshold to 667 OC3 user-minutes to reflect technological evolution and industry adoption, and adjusted the reporting threshold to 667 OC3 user-minutes.<sup>34</sup>

In reply comments to ORA's proposal, only CWA supported ORA's new threshold.<sup>3235</sup> However, as AT&T pointed out, ORA's proposal would result in hundreds, if not thousands, of additional reports being filed, most of which would not be associated with the rural or sparsely populated areas that motivated the original proposal. While ORA's proposal would show information for outages affecting smaller numbers of users, it ~~does~~did not solve the problem for which staff was seeking a solution: how to locate and identify smaller communities that experience outages. In contrast, the Joint Consumers proposed that zip codes could be used to identify sparsely populated areas, but they did not provide details on how zip codes could be used for real-time outage reporting. Because we are specifying a new method for rural outage reporting, we do not adopt Joint Consumers' proposal at this time.

Regarding wireless carriers, the November 2015 proposed decision asked for proposals to extend the consumer protection concepts of the general order to wireless carriers.<sup>3336</sup> ~~In response, the~~The commission did not receive such proposals; however, AT&T, Verizon Wireless, and CTIA ~~commented~~asserted in comments that the commission is prohibited from applying service quality rules

<sup>34</sup> FCC, ET Docket No. 04-35; FCC 16-63, as reported in Federal Register/Vol. 81, No. 133/Tuesday, July 12, 2016/ Rules and Regulations 45055.

<sup>3235</sup> CWA Reply Comments to Staff Proposal, April 17, 2015, p-at 3.

<sup>3336</sup> Proposed Decision, filed 11-12-15, p-at 15.

to wireless.<sup>3437</sup> The Omnibus Budget Reconciliation Act of 1993 gave states jurisdiction over terms and conditions of wireless service.<sup>38</sup> ORA strongly supports applying rules to wireless carriers as the statutes requiring the commission to promulgate rules does not distinguish between type of telephone corporation.<sup>3539</sup> The commission needs information from all providers of rural communications services, including wireless carriers, and consequently includes these carriers in the rural outage rules.

#### 2.2.5.1. Discussion – Reporting Major Rural Outages

In this decision, we adopt an alternative reporting requirement that contains elements of the ORA and Joint Consumers proposals, but is targeted to capture outages affecting rural and sparsely populated areas.

Carriers shall prepare and submit Rural Area Outage Reports on all outages of ~~75,000 user minutes or more that affect rural areas of the state. Rural areas are defined as areas that the US Census Bureau has determined are not within urbanized areas or in urban clusters.~~<sup>36</sup> 90,000 user-minutes or more that affect rural areas of the state. Rural areas are defined as areas that the US Census Bureau has determined are not within urbanized areas or in urban clusters.<sup>40</sup>

These reports, described in Section 4 of GO 133-D, ~~will be submitted to Communications Division along with other required reports. We believe that the 30-minute/75,000 user minutes provides us with better information on outages in~~

<sup>3437</sup> Opening Comments of AT&T California, Verizon Wireless and CTIA to Proposed Decision, December 2, 2015.

<sup>38</sup> 47 USC 332 (c) (3) (A).

<sup>3539</sup> Opening Comments of ORA to Proposed Decision, December 2, 2015, pp.at 11-12.

<sup>3640</sup>

<https://www.census.gov/geo/reference/urban-rural.html><https://www.census.gov/geo/reference/urban-rural.html>. The Census Bureau identifies two types of urban areas: Urbanized Areas (UAs) of 50,000 or more people and Urban Clusters (UCs) of at least 2,500 and less than 50,000 people. The 2010 census identifies 5,476 census block groups (CBGs) in California that are a combination of solely rural and mixed rural/urban census blocks.

~~sparsely populated areas. Under ORA's 90,000-user minute proposal, 3,000 customers would potentially have to be out of service for 30 minutes. We believe that a reporting requirement for outages that last at least 30 minutes in duration and potentially affect 75,000-user minutes strikes a reasonable balance between capturing the appropriate granularity and efficient reporting capabilities on outages affecting rural areas.~~<sup>37</sup>-D, will be submitted to Communications Division along with other required reports.

As explained in more detail below, we adopt a rural outage reporting threshold that will apply to outages of facilities used to provide communication for compensation, including the line to the end-user's location of 30 minutes or more that potentially affect at least 90,000 user-minutes in a California rural area, defined as a non-urbanized, non-urban cluster area as defined by the U.S. Census Bureau.<sup>41</sup> As in the FCC rules under 47 C.F.R. 4.7(e)(2), user-minutes is defined as the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage.

The Communications Division February 2015 Staff Report proposed to address concerns about the lack of information about outages in sparsely populated and rural areas of California through a new GO 133-D reporting

<sup>41</sup> The FCC requires under the NORs outage reporting standards, 47 C.F.R. 4.9(f) that "All wireline communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that:(1) Potentially affects at least 900,000 user-minutes of either telephony or paging..." Likewise, we adopt a trigger for reporting an outage of facilities used to provide communication for compensation, including the line to the end-user's location in a California rural area, defined as a non-urbanized, non-urban cluster area, but require the outage to reach only 90,000 user-minutes and be of 30 minutes in duration to be reportable to the Commission.

standard based on “communities of place.”<sup>42</sup> The Staff Report observed that the FCC’s NORS “reporting threshold level can be difficult to reach when outages are targeted or isolated (e.g. rural areas, acts of terrorism or regional natural disasters, etc.) which can result in the unavailability of 9-1-1 and where public safety is at risk.” The high NORS reporting threshold means that Public Safety Answering Points (PSAPs), the entities charged with answering 9-1-1 calls and dispatching help for fires and emergencies, are often not notified by carriers about outages that do not meet the 900,000 user-minute threshold, even when people in rural or isolated areas can’t reach 911 emergency services.

In 2014 the Communication’s Divisions Staff Report on Wireline Telephone Service quality analyze unadjusted results of service quality data for California outages to include Sundays, federal holidays, catastrophic events, widespread outages, and customer-requested appointments. The Staff found a pattern of chronic failure to timely restore outages by California’s largest carriers who serve much of California’s rural areas, as well as urbanized areas and urban clusters. The report found “Together, AT&T and Verizon repaired outages corresponding to just 53% of their combined 3.908 million unadjusted OOS repair interval reports within 24 hours during the years from 2010 to 2013.”<sup>43</sup>

To help the Commission achieve its statutory duty under California Public Utilities Code 451 of ensuring that utilities and regulated entities provide safe, reliable service, with adequate facilities, the Staff Report proposed a new “Emergency and Disaster Reporting for all emergencies and disaster events that

<sup>42</sup> Communications Division Staff Report Proposing Modifications to GO 133-C, pg. 7 (citing The FCC reporting threshold for NORS is 900,000 user-minutes. 47 CFR Part 4). Staff Report was published for party comment by ALJ Ruling of Feb. 2, 2015 [hereinafter “2015 Staff Report”]. Staff originally proposed ‘community of place’ as a location metric. Zip codes were used in the original proposed decision; however, this data was to be added to the quarterly metrics and so was not timely information on outages.

<sup>43</sup> California Wireline Telephone Service Quality Pursuant to G.O. 133-C, Calendar Years 2010 through 2013, September 24, 2014, at 15.

affect 9-1-1/Public Safety for all customers in communities of place.”<sup>44</sup> It recommended that “Emergency and Disaster reporting should include outages that effect large business, small business, and residential customers of traditional wireline service and Voice over Internet Protocol (VoIP customers).”<sup>45</sup> The Staff Report asked “for specific recommendations for a practical manner to identify communities of place that will provide the Commission with information on outages in these areas.”<sup>46</sup>

ORA’s comments on the Staff Report proposed an outage reporting threshold for California 90,000 user-minutes based on a scaling of US population to California households, and recommended the schema for all of California.<sup>47</sup> Verizon opposed ORA’s proposals characterizing them as “onerous outage reporting” not proven to meaningfully improve public safety.”<sup>48</sup> Verizon commented “Competition and technological advancements have decreased the public safety risks that existed when wireline services predominated. As AT&T states in its opening comments, ‘the indisputable fact [is]that outages in traditional wireline services no longer have the public safety considerations as they did years ago.”<sup>49</sup>

CforAT, Greenlining and TURN responded that “vulnerable customers are the least likely to have redundant forms of telecommunications services (e.g. wireless and wireline access) due to cost, means that levels of service quality that might be acceptable to other customers may still be inadequate to meet their needs. Thus, carriers’ arguments that service quality can be diminished because

<sup>44</sup> Id., at 7.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> ORA Opening Comments to Staff Proposal, March 30, 2015, at 25-31 and Appendix B.

<sup>48</sup> Opening Verizon California Inc.’s (U 1002 C) Reply Comments on Staff’s Proposal to Modify General Order 133-C, April 17, 2015, at 8.

<sup>49</sup> Id. (citing AT&T Opening Comments at 32).

“most” customers have multiple options in an emergency completely fails to take into account the fact that the most vulnerable customers are least likely to have such resources.<sup>50</sup> CforAT, Greenlining, and TURN commented that “the Commission is obligated to ensure that reliable network access, as a mechanism for protecting public safety, is available to all, including those vulnerable customers who have needs that are not well-served by the market.<sup>51</sup> In many rural areas of California wireless service have not been fully deployed, and in some places wireless service is absent so alternative means of communications is not available. These populations are vulnerable to outages of the available means of communication, and prompt reporting remains imperative to public safety.

ORA noted the example of the 2014 outage that affected California and several other states as an example of the need for better outage reporting and timely notification to the Commission and PSAPs.”<sup>52</sup> ORA observed:

Subsequent to a multi-state 911 outage investigation that occurred in 2014, the Federal Communications Commission (FCC) reached a \$16 million settlement with CenturyLink, a \$1.4 million settlement with Intrado Communication and a \$3.4 million settlement with Verizon related to the companies’ failure to meet their emergency call obligation during the 911 outage. This outage lasted for over six hours resulting in over 6,600 missed 911 calls, and prevented more than 11 million people in seven states from being able to reach emergency call centers for over six hours. Consumers in nine California counties, where Verizon served emergency call centers, were unable to make calls to 911. The outage did not result from an extraordinary disaster or catastrophic event. It was due to a malfunction in Intrado’s call centers. FCC rules require companies to timely notify all affected Public Safety Answering Points (PSAPs),

<sup>50</sup> Reply Comments of Center for Accessible Technology, the Greenlining Institute, and the Utility Reform Network on Assigned Administrative Law Judge’s Ruling setting dates for comments and reply comments on Staff Proposal, April 17, 2015, at 11.

<sup>51</sup> Id.

<sup>52</sup> ORA, Reply Comments on the Proposal for Modifications of GO 133-C, April 29, 2015, at 7.



but Verizon failed to do so in the 2014 outage. Intrado allegedly did not inform Verizon of the outage until after it was resolved. However, Verizon acknowledged that it was responsible for complying with applicable FCC rules, regardless of any failures by its subcontractors. Verizon notified the State of California Office of Emergency Communications about the impact after Intrado informed it of the outage and agreed to the same compliance terms as Century Link and Intrado.<sup>53</sup>

We are concerned that many Californians who called 9-1-1 the night of the Intrado outage were not able to reach emergency dispatch, and about the failure of the carrier to promptly detect the outage and notify the PSAPs, the Commission, and the FCC about the widespread outage that affected 30,000 people, 13 PSAPs, and eight counties in California.<sup>54</sup>

Complaints of poor telecommunications service quality in California's rural areas were noted in the Commission's 2015 Decision approving the transfer of Verizon's wireline service and CPUC Franchise to Frontier:

In Verizon service territories like northeast Humboldt County, the combination of the absence of broadband, the lack of cell towers and unreliable land service delivered via microwave relay towers and reflects that are subject to the vicissitudes of wind and weather, was said occasionally to have left residents without any means of communicating with the outside world for hours or even days. Of significant concern to the residents of remote areas is the lack of a means of communication in the event of an emergency such as fire

<sup>53</sup> Id. (internal citations omitted) (citing Verizon Consent Decree including compliance terms: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db0318/DA-15-308A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0318/DA-15-308A1.pdf)).

<sup>54</sup> FCC, April 2014 Multistate Outage Report, Causes and Failures, <http://www.fcc.gov/document/april-2014-multistate-911-outage-report>, at 4. "Verizon Business is the 911 service provider for eleven counties in Northern California for 911 calls originating from AT&T Mobility and Verizon Wireless. Verizon Business subcontracts to Intrado for certain functions, including IP selective routing of 911 calls from these providers. Calls to 911 from AT&T Mobility and Verizon Wireless subscribers were affected by this outage. Verizon Business also provides an IP trial 911 network to these same PSAPs for calls originating with other providers. Calls to 911 in the trial areas from providers other than AT&T Mobility and Verizon Wireless use a different 911 network that was unaffected by the event in Intrado's network." *Id.* at 6.

or a landslide. If a landline in those areas goes down, the residents are literally left without a means of receiving emergency notification from local fire, police, or rescue services. A person who is ill or injured in such circumstances likewise has no way of summoning help from the remote agency, whether that agency is the police, the local fire department, or a 911 operator. There can be no reasonable dispute regarding these complaints of inadequate service in these regions.<sup>55</sup>

Those outages were not captured in NORS because the 900,000 user-minute threshold was rarely, if ever, reached in the small rural area of Orleans, California in Humboldt County, though the outages affected hundreds of residents, many businesses, the Karuk tribe and its governmental responsibilities in the area, and people, governments, non-profits, and public safety officials trying to contact or respond to the residents of Orleans.

AT&T, Verizon, and CCTA argue that the Commission should not impose reporting requirements until the FCC decides in its outage reporting Further Notice of Proposed Rulemaking<sup>56</sup> whether to adopt lower NORS reporting threshold in rural areas for wireless or other carriers.<sup>57</sup> The FCC's Further Notice of Proposed Rulemaking on outage reporting proposes to "amend the part 4 reporting requirements to include wireless outages significantly affecting rural

<sup>55</sup> Decision Granting Application Subject to Conditions and Approving Related Settlements, (Decision 15-12-005), December 9, 2015, at 51-52.

<sup>56</sup> Report and Order and Further Notice of Proposed Rulemaking, and Order on Reconsideration, Amendment to Part 4 of the Commission's Rules Concerning Disruptions to Communications, New Part 4 of the Commission's Rules Concerning Disruptions to Communications, and the Proposed Extension of Part 4 of the Commission's Rules Concerning Disruptions to Communications Regarding Outage Reporting to Interconnected Voice over Internet Protocol and Broadband Internet Service Providers, (PS Docket No. 15-80, ET Docket No. 04-35, PS Docket No. 11-82 (May 26, 2016), Section E, Geography Based Wireless Outage Reporting, [hereinafter "FCC Network Outage Report and Order and FNPRM]).

<sup>57</sup> AT&T Opening Comments at 2; Verizon Opening Comments at 14; CCTA Opening Comments at 9.

areas”<sup>58</sup> but makes no proposals to lower the federal reporting threshold for wireline outages. The FCC’s query about whether to drop the threshold for reporting wireless outages would not capture wireline outages, even repeated outages that do not meet the 900,000 user-minute threshold such as those in northeastern Humboldt County noted in the CPUC’s Verizon Frontier Decision, D.15-12-005.

In response to the suggestion that the Commission defer action until the FCC decides whether to lower its wireless outage reporting threshold observing that Joint Consumers and CWA observe “these arguments fail to address the fact that the Commission has an independent statutory duty to protect public safety, which applies to all Californians. Accordingly, it is appropriate for the Commission to track outages that may leave thinly populated areas of the state at risk.”<sup>59</sup>

We agree with the Joint Consumers and CWA that the Commission’s independent statutory duty to do all things necessary, California Public Utilities Code Section 701, to fulfill its duties including promoting the safety, health, comfort, and convenience of utility and regulated entity patrons and the public under California Public Utilities Code Section 451 makes it appropriate to track outages that currently leave thinly populated areas of California at risk. California Public Utilities Code Section 2896 mandates “The commission shall require telephone corporations to provide customer service to telecommunication customers that includes, but is not limited to, all the following: ... (c) Reasonable statewide service quality standards, including, but not limited to, standards

<sup>58</sup> FCC Network Outage Report and Order and FNPRM, (PS Docket No. 15-80, ET Docket No. 04-35, PS Docket No. 11-82 (May 26, 2016), ¶186.

<sup>59</sup> Reply Comments of the Center for Accessible Technology, the Communications Workers of America, the Greenlining Institute, and the Utility Reform Network, (Joint Consumers and CWA), July 18, 2016, at 2.

regarding network technical quality, customer service, installation, repair, and billing.”

The 2012 Order Instituting Rulemaking that opened this proceeding cited these statutory duties of the CPUC, as well as information that raised concern about whether these duties were being fulfilled by some telephone corporations in California, as the rationale for this proceeding’s work to improve service and protect public safety throughout California.<sup>60</sup> Gathering information on outages in California’s rural areas furthers our statutory duty to ensure universal service. CA PU Code 709 states “The Legislature hereby finds and declares that the policies for telecommunications in California are as follows: (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians ... and (h) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

It is up to the CPUC, not the FCC or the federal government, to carry out these state-mandated duties and to determine whether the rules the outage and trouble reporting rules CPUC adopted in 2009 are sufficient to meet the service and safety needs of Californians. We cannot delegate these duties to the FCC, nor are we bound to await decisions about what rules are appropriate for federal agency role, but must instead determine what is necessary to protect safety and service quality in California. While the FCC has determined that 900,000 user-minutes is an appropriate reporting threshold for national outage reports,

<sup>60</sup> Order Instituting Rulemaking 11-12-001, Dec. 12, 2011, at 2.

this threshold leaves many outages lasting hours or even days in California's rural areas unreported to the Commission and the FCC.

This Commission's regulation of a variety of utilities including telecommunications service providers, electric, gas, and water utilities, also gives it a perspective and range of duties the FCC does not have. The Commission needs to consider how not being able to call 911 due to a service outage or poor network quality may limit the ability of a California customer to report a natural gas leak, an electrical problem, or a water leak, or to receive medical attention, and that these problems may be bigger in areas of California with poor or no cell service.

We find ample evidence and reason in this record and through official notice pursuant to Evidence Code § 452(h) of our Decision granting transfer of Verizon's wireline infrastructure and franchise to Frontier, D.15-12-005, to adopt a reporting threshold and methodology designed to capture outages in rural areas of California that fall below the FCC's NORS reporting threshold of 900,000 user-minutes. We agree with Joint Consumers and CWA as well as ORA that California law not only authorizes the Commission to act to protect telecommunications service quality, it mandates that we do so under California Public Utilities Code Sections 451, 709, and 2896, independent of federal agencies and their separate legal responsibilities.

ORA's reply comments in response to the APD note that "all of the substantive elements of the APD's Rural Outage Reporting wer part of ORA's proposal and were subject to parties' reply comments, as documented by the APD. ORA's proposal would have been much broader, applying the reporting to all areas of California. The APD simply adopted a limitation on the applicability of ORA's proposal, one that was previously suggested by ORA, as well as

changing the threshold for reporting and other small changes, leading to the Rural Outage Reporting.”<sup>61</sup>

The Joint Consumers and CWA noted that “the APD utilizes a different mechanism for the same purpose by adding a requirement for carriers to report “Major Rural Outages.” The reports required under this standard would allow the Commission to properly capture outage information in rural and sparsely populated areas.”<sup>62</sup>

The average population of rural census block groups in California is approximately 1,500. The rural population of California counties ranges from 1,175 in Alpine County, which is 100% rural, to 102,054 in San Diego County which is 3.3% rural but is the California county with the largest rural population.<sup>63</sup> California counties with populations that are over 50% rural range from 1,175 in Alpine County, to 34,370 in Calaveras County.<sup>64</sup> Selecting a 90,000 user-minute threshold as ORA suggested, instead of a 75,000 user-minute threshold as the APD earlier suggested, and applying that trigger to facilities outages in non-urbanized, non-urban cluster areas, achieves the goals of tracking outages in a “community of place” as the Communications Division staff report suggested. It balances the burden of outages on rural communities and public safety, the cost of reporting and promptly fixing such outages, and information needed by the Commission to monitor such outages and compliance with California law and the Commission’s rules, decisions, and orders.<sup>65</sup>

<sup>61</sup> ORA Reply Comments to APD, July 18, 2016, at 3 (internal citations omitted).

<sup>62</sup> Joint Consumers and CWA Comments at 3.

<sup>63</sup> U.S. Census, 2010 Census Urban and Rural Classification Area Criteria, Urban and Rural Population by State and County, <http://www.census.gov/geo/reference/ua/urban-rural-2010.html>.

<sup>64</sup> Id.

<sup>65</sup> Staff originally proposed ‘community of place’ as a location metric. Zip codes were used in the original proposed decision; however, this data was to be added to the quarterly metrics and so was not timely information on outages.

The Rural Outage Reporting metric uses the foundational methodology for NORS reporting familiar to carriers and the Commission. To trigger the 90,000 user-minute threshold, an outage of 30 minutes would need to potentially affect 3,000 customers, a population size proximate to Hoopa, California, home of the Hoopa Valley Tribe, with a population in 2010 of 3,494. A 60-minute outage would need only affect 1500 customers in a rural area, approximately the size of an average rural census block in California. This reporting threshold reflects rural population and telecommunications facility service areas in California.

For the purposes of these reporting requirements, carriers shall report areas affected by the outage by applicable census block group, and to capture “community of place” and outage location, report the city, township, unincorporated area, or Native American Reservation or Trust Land as indicated by the U.S. Census Bureau Tribal Tract Reference Maps.<sup>66</sup> Timely information about outages in sparsely populated areas of California will help the Commission identify telecommunications service quality issues in rural areas, and relationships between areas of high fire threat or electrical circuits with more frequent outage or trouble issues. This information will protect public safety and aid the Commission in achieving its constitutional and statutory duties under California Public Utilities Code Sections 451, 709, and 2896 to assure high quality service throughout California.

The Small LECs suggested in comments on the APD that “The Commission should provide a reasonable time for implementation of the new reporting process, including the identification of the rural areas (to be defined as areas that the Census Bureau has determined are not within urbanized areas of 50,000 or more people or urban clusters of at least 25,000 and less than 50,000 people) and

<sup>66</sup> U.S. Census, 2010 Census - Tribal Tract Reference Maps,  
<http://www.census.gov/geo/maps-data/maps/2010tribaltract.html>.

the development of procedures by the carriers to comply with the new rule as adopted.”<sup>67</sup> In response to comments about the mechanism for identifying rural areas of California, we take official notice pursuant to Evidence Code Section 452(h) of the U.S. Census Bureau’s definition and maps, readily available online, that delineate urbanized areas in California of urbanized areas of 50,000 or more people or urban clusters of at least 25,000 and less than 50,000 people.<sup>68</sup> In accordance with the Small LECs comments we define California’s rural areas as non-urbanized and non-urban cluster areas as designated by the U.S. Census Bureau. The Census Bureau urban areas and urban cluster area maps and files are easily accessible online and delineate streets and boundaries, making this a standard that is known and eases implementation.

We believe that the 90,000 user-minute threshold for an outage lasting at least 30 minutes,<sup>69</sup> is close to the original intent of the earlier 75,000 user-minute threshold at 30 minutes, but more closely matches the population density of the target areas. Reporting based on this threshold will provide the Commission with useful and timely information on outages in sparsely populated areas of California. The threshold adopted here is triggered by outages in a telecommunications carriers’ facilities in a non-urbanized, non-urban cluster area, and the location of facilities and communities affected balances geographic and demographic considerations with readily identifiable reporting census designations. Under ORA’s 90,000 user-minute proposal, 3,000 customers would potentially have to be out of service for 30 minutes.<sup>70</sup> We believe that a reporting

<sup>67</sup> Small LEC Comments at 6.

<sup>68</sup> See, U.S. Census Bureau, 2010 Urban Area Reference Maps, <https://www.census.gov/geo/maps-data/maps/2010ua.html>.

<sup>3769</sup> A user-minute is the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage.

<sup>70</sup> ORA proposed 90,000 user-minutes based on a scaling of US population to California households, and recommended the schema for all of California. ORA Opening Comments to Staff Proposal, March 30, 2015, at 25-31 and Appendix B.



requirement for outages that last at least 30 minutes in duration and potentially affects 90,000 user-minutes strikes a reasonable balance between capturing the appropriate granularity and efficient reporting capabilities on outages affecting rural areas.

Wireless carriers should use the Federal Communications Commission's method, as updated by the FCC May 2016 Report and Order, for determining potential users, and applying the ~~75,000~~California rural outage reporting 90,000 user -minute threshold.<sup>38</sup> for a facilities outage in a California non-urbanized, non-urban cluster area as defined by the U.S. Census Bureau.<sup>71</sup> To determine if an outage meets the ~~75,000~~90,000 user -minute threshold in a rural area, the carrier should multiply the number of macro cell sites disabled in the outage by the average number of users service per site, which is calculated as the total number of users for the provider divided by the total number of the provider's macro cell sites. The outage must last for at least 30 minutes. We find this a necessary and prudent requirement for wireless companies with a CPUC WIR to protect public safety and universal service, consistent with our duties under California Public Utilities Code Sections 451 and 709.

Service providers reporting Major Rural Outages shall use the report template in Attachment D.

In addition to its proposal to require reporting of outages lasting for 30 minutes and affecting 90,000 user-minutes, ORA proposal to add to the reporting requirements for DS3 transport circuit outages that affect transmission of data,

<sup>38,71</sup> *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, para 16.*

and to change the reporting threshold from the FCC's standard of 1,350 DS3 minutes to 150 DS3 minutes, representing a scaling to account for California's percentage of the U.S. population.<sup>72</sup> CALTEL and AT&T opposed ORA's proposal as not sufficiently supported by reasons to break out trouble reports for DS3 outages of over 150 minutes as not sufficiently supported by reasons to lower the reporting threshold for outage reporting for transport facilities such as DS3.<sup>73</sup>

In light of the FCC's May 2016 adjustment of the transport outage reporting standard from 1,350 DS3 minutes to 667 OC3 user-minutes, we decline to adopt ORA's suggestion to require reporting of outages of 150 DS3 minutes. We direct Communications Division staff to gather information on the OC3 transport facilities in California, as compared to DS3 facilities, and the relative use and deployment of OC3 or DS3 facilities in rural areas, and to make recommendations about whether any adjustments are warranted for reporting on transport outages in California.

#### **2.2.6. Method of Submitting NORS Reports and Major Rural Area Outage Reports**

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." CD has the delegated authority

<sup>72</sup> ORA Opening Comments to Staff Proposal, March 30, 2015, at 30.

<sup>73</sup> Reply Comments of AT&T on the Communications Division Staff Report, April 17, 2015, at 18; Reply Comments of the California Association of Competitive Telecommunications Companies to Assigned Administrative Law Judge's Ruling and Communications Division Staff Report, April 17, 2015, at 4.

to develop ~~for~~ and direct carriers to use a web-based method of submitting reports.<sup>3974</sup> Until such time that a secure, web-based method for submitting NORS report information and Rural Area Outage reports [to the Commission](#) exists, the service providers covered under GO 133-D shall use the current email process to submit NORS reports to the Commission.

### 2.2.7. Change in Answer Time Reporting

Staff recommended two changes to the reporting requirement for the Operator Answer Time 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 Answer Time Reporting. They assert that the change would not benefit customers, and that the proposal would be costly and burdensome to implement.

Staff's September 2014 report showed that several carriers failed to meet the standard over multiple years from 2010 to 2013. In staff's view, the answer time metric remains important to monitor. It provides an indication of the level of service customers receive from their provider when calling telephone company representatives to report outages and resolve billing disputes. Staff contended that the new reporting schedule will bring these data to the ~~commission~~[Commission](#) consistent with the other measures. We concur with staff's assessment, and the attached GO 133-D contains the changes recommended by staff.

<sup>3974</sup> In accordance with direction contained in D.09-07-019, the Commission submitted a formal request to the FCC in 2009 for password-protected access to all California-specific outage data. *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications* Petition of the California Public Utilities Commission and the People of the State of California for Rulemaking on States' Access to the Network Outage Reporting System ("NORS") Database and a Ruling Granting California Access to NORS, ET Dkt. 04-35, November 12, 2009. To date, the FCC has not acted on this request.<sup>1</sup>

### 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 with the Communications Division, or its successor, that explains the reason(s) for the missing the standard(s) and the actions the company will take to correct its failures and improve performance to a level that meets adopted standards and measures.

Such a requirement significantly reduces the time period, from two consecutive quarters to two consecutive months, where the carrier is not meeting any standards. It will allow the Commission to recognize problematic carrier performance promptly and evaluate plans to improve performance. Staff stated that this would help the Commission ensure that any proposed remedial actions are in fact effective in improving 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.

We adopt staff's proposal. The Corrective Action Plans shall describe the reason(s) for missing the standard(s) and the remedial actions the company will take to improve performance to a level that meets adopted standards and measures, and do so within a reasonable time.

### 2.3. Customer Refunds for Service Outage

Staff recommended a customer refund mechanism for customers who 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 in 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. Joint Consumers supported refunds for customers without service for more than 24 hours, and ORA supported appropriate and consistent refunds.

We do not adopt staff's proposal at this time because many companies have refund provisions in their tariffs or customer guidebooks. Customers for now may continue to rely on existing tariff provisions or customer guidebook provisions for customer refunds. As adopted here, GO 133-D requires carriers lacking a provision for customer refunds to develop a refund policy. Carriers that develop a new refund provision in compliance with this decision shall file a Tier I Advice Letter with the Commission modifying their tariff, or provide a copy of the modified customer guidebook with the refund provision identified.

### **3. Automatic Fine Proposal**

Staff proposed automatic fines for certain non GRC-LEC, URF ILEC carriers that fail to meet the service quality standards for: 1) Customer Trouble Reports, 2) Out-of-Service Reports, or 3) Answer Time Reports. 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 to address Pacific Bell Telephone Company's declining service quality and failure to comply with Public Utilities Code § 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.

As set forth in Section 9.1 of GO 133-D, the automatic fine proposal is applicable to facilities-based telephone corporations that offer 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 ~~Pub. Util.~~Public Utilities Code § 1013, ~~and are including those carriers~~ regulated under the Uniform Regulatory Framework adopted in D.06-08-030-08-030, but does not apply to GRC LECs. For CLECs, we will only apply the penalty mechanism if the failure to meet service quality standards was primarily due to the CLEC's action or inaction, not service or facility issues of an unaffiliated underlying carrier.

### 3.1. Party Comments on the Automatic Fine Proposal

The large carriers generally opposed the fine proposal claiming that competition provides the biggest incentive to improve service quality, and that the 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. Other comments asserted that penalties have little to no impact on service quality standards, will raise prices, and will not promote public safety goals.

The CLECs argue that they should not be fined for the underlying carrier's performance failures.

Consumer advocate groups and CWA generally supported Staff's penalty proposal, and ORA argued 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 as a model for penalty provisions because it was a voluntary settlement between AT&T and specific CLECs.

### 3.2. Analysis of the Fine Proposal

Pursuant to Public Utilities Code § 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 adequate and efficient service at just and reasonable prices 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 continuing and future substandard service quality performance failures. As set forth above, our Communications Division Staff did a comprehensive review of GO 133-C and proposed changes in the General Order, including automatic fines for carriers with chronic failures.

The September 24, 2014, Staff Report showed that the largest carriers in California at the time, AT&T Communications of California, Inc. (AT&T) and Verizon California, Inc. (Verizon), which collectively operate approximately 88% of telephone lines in California 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. In the subsequent combined years 2012 and 2013, carriers improved their respective repair times for at least 90% of their outages to 72 hours.<sup>4075</sup> 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, AT&T and Verizon have provided corrective action reports for each quarter they missed the adopted measures and related minimum standards. Despite these corrective action reports, the acknowledged failures have not resulted in improvements significant enough to meet the minimum standard for the outage repair intervals. 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, nor has whatever degree of competition there may be been sufficient to improve compliance.

Because of this, staff proposed to adopt a penalty mechanism with fines 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.

Staff's proposal is based on the principles adopted in D.98-12-075 for assessing penalties under Pub. Util. Code §§ 2107 and 2108, which authorize penalties for failure to comply with commission rules. Though D.98-12-075 is

<sup>4075</sup> Using unadjusted data.



related specifically to energy utility affiliate transactions, the principles established in that decision apply more broadly to violations of 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. ~~Pub. Util.~~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. For customers suffering outages, the daily count is crucial.

### 3.3. Adoption of Proposed Standards and Penalty Mechanisms

In this decision, we adopt the standards and penalties proposed by staff, and consistent with the staff recommendation, we do not apply the penalty mechanism to GRC LECs. For CLECs, as suggested by CALTEL and supported by Consumer Groups, we will only apply the penalty mechanism if the failure to meet service quality standards was primarily due to the CLEC's action or inaction, not service or facility issues of an unaffiliated underlying carrier. We find that a 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. These standards and penalties will apply to the URF ILECs, ~~as well as to the CLECs and small LECs~~ including CLECs, with the CLEC exceptions discussed herein.

The Staff Report found that GRC LECs have generally met the service quality standards for all five service quality measures from 2010 to 2013.<sup>76</sup> We agree with the Small LECs that "As utilities under cost-of-service rate-of-return

<sup>76</sup> Communications Division Staff Report, September 2014, at 26.

regulation, the Small LECs are subject to the general rate case process, which involves a detailed examination of service quality, including consideration of the GO 133-C filings from the companies, comments from subscribers at public participation hearings, and evidence presented by the utilities.<sup>77</sup> The Commission has a triennial opportunity to review the performance of the Small LECs through the GRCs. Accordingly, we decline to apply to GRC LECs the automatic penalty mechanism applied to URF ILECs by this Decision.

The Commission has at its disposal mechanisms to impose penalties, if needed, for failure to comply with the Commission's rules and General Orders, and can consider any such issues in the Rate-of-Return Rural LEC GRC. We also direct GRC LECs to report when outages are caused by an unaffiliated underlying carrier, and the Commission can take this fact into account when analyzing responsibility for the outage and appropriate action.

GO 133-D as adopted here applies the fine mechanism for failure to meet Customer Trouble Reports, Out-of-Service, and Answer Time standards. As noted in the tables below, carriers will incur fines after ~~two consecutive~~ 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 of compliance with GO 133-D. Fines will continue to accrue until the carrier is in compliance with the standard for at least one months of failing to meet the applicable standard, and once incurred, fines will accrue on a daily basis. ~~For each standard, no penalty will be assessed until a carrier is out of compliance for more than two consecutive months, after which fines~~ Fines will continue to accrue until the carrier is in compliance with the standard for at least one month.

<sup>77</sup> Small LEC Comments on the Assigned Administrative Law Judge's Ruling Setting Dates for Comments and Reply Comments on Staff Proposal, April 17, 2015, at 1-2.

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. The Office of Ratepayer Advocates (ORA) maintains that the numerous major outages in California that were a result of poor maintenance of infrastructure demonstrates that competition has not led to better service quality and reliability because there is no competitive pressure for the companies to maintain their infrastructure and improve service quality.<sup>4178</sup> 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, ~~reasonable~~reasonably addresses the telecommunications service quality issues documented in the Staff report.

Accordingly, we adopt the revised GO 133-D attached to today's decision. This GO will supersede in all respects GO 133-C. The penalty provisions shall become effective on January 1, 2017, in order to allow carriers time to develop any actions they feel are consistent with these standards and better guarantee conforming performance.

~~With reference to the small LECs, we note that if those companies continue to meet the service quality standards, then concerns about the fine mechanism are moot. For this reason, the small LECs objections to the fine mechanism are not persuasive.~~

The CLEC's request to be exempted from the fine mechanism ~~is also not persuasive~~raises issues about the affect of underlying unaffiliated carrier performance and response on a CLEC's ability and timeliness in responding to outages or trouble tickets. Like other telephone carriers, the CLECs have a

<sup>4178</sup> ORA Reply Comments to Staff Proposal, April 17, 2015, ~~p~~at 41.

responsibility to provide safe and reliable service to their customers, and customers are indifferent to the underlying source of their service. If a CLEC outage is due to substandard service by an underlying facilities-based carrier or a failure of facilities over which the CLEC has not direct control, CLECs have recourse against their underlying facilities-based providers through contractual agreements that track outages and other performance failures.

Since those contractual remedies may take time and may not be sufficient to incentivize timely performance by URF ILECs or unaffiliated underlying carriers that ensures the public safety of customers, facilities-based CLECs will only be subject to penalties imposed by this Decision if the failure to meet service quality standards was primarily due to the CLEC's action or inaction, and not primarily due to service or facility issues of an unaffiliated underlying carriers. Joint Consumers agreed with CALTEL that the CLECs should not pay the price for the ILEC's failure to meet service quality standards. They agreed with CALTEL's recommendation that the Commission implement rules to ensure that "any fines imposed on CLECS for the OOS maintenance measure only include the portion of those outages over which the CLEC has direct control."<sup>79</sup> Accordingly, CLECs shall report when outages are caused by an unaffiliated underlying carrier, and the Commission can take this fact into account when analyzing responsibility for the outage and appropriate Commission action including any penalties.

The following subsections describe the specific standards adopted in this decision, along with the associated penalty structures and amounts.

<sup>79</sup> Reply Comments of Center for Accessible Technology, the Greenlining Institute, and the Utility Reform Network on Assigned Administrative Law Judge's Ruling setting dates for comments and reply comments on Staff Proposal, April 17, 2015, at 15.

### 3.3.1. Out-of-Service Reports

The Out-of-Service (OOS) standard adopted in this decision requires that 90% of service outages are resolved by the telephone corporation within 24 hours. The calculation of fines for failure to meet this standard will be performed on a monthly basis across the telephone corporation's small business and residential lines. Fines will be assessed once that standard is missed for three or more consecutive months

#### 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
<b>Fine Per Day</b>	\$0 per day	\$25,000 per day
<b>Days in a Month</b>	30 days	30 days
<b>Total Fine per Month</b>	\$0	\$750,000

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

The fines for failure to meet the Operator Answer Time standard 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 once that metric is missed for three or more consecutive months. 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

### 3.3.3. Customer Trouble Report Fines

The customer trouble reports standard requires a company-wide customer trouble report rate of no more than 10 reports per 100 access lines (10%). Carriers that fail to meet this standard for ~~two~~ three or more consecutive months will be assessed a fine per day until the monthly average decreases to below 10%. The per-day fine amount, 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

### 3.4. Alternative Proposal for Mandatory Corrective Action

The proposed decision of the assigned office adopted Rule 9.7 (the Alternative Proposal for Mandatory Corrective Action). Rule 9.7 allows carriers to 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. ORA maintains that the ~~commission~~Commission should not adopt the rule because it undermines the very purpose of a penalty – to deter violations.<sup>4280</sup> Pub. Util. Code § 451 requires utilities to provide safe and reliable service with adequate facilities at just and reasonable rates, and penalties are separate and distinct from the costs that telephone corporations must expend to provide adequate and safe service.

We find that the Alternative Proposal for Mandatory Corrective Action does not require investment sufficient to cure the underlying cause that led to missing the GO 133-C standard, or create sufficient incentive to invest to prevent outages. Proposed Rule 9.7 would have allowed a carrier to request to suspend the fine and instead propose in their annual fine filing:

(T)o 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.<sup>81</sup>

This proposal allows two years between the investment and service quality improvement, even for chronic failure to meet out of service standards or chronic

<sup>4280</sup> ORA Opening Comments to President Picker's Proposed Decision, Dec. 2, 2015, p. at 1.

<sup>81</sup> Proposed Decision Adopting General Order 133-D, March 22, 2016, Proposed Rule 9.7.

outages. While the project must be designed to address a service quality deficiency, proposed Rule 9 does not require that the investment resolve the deficiency that caused the outage or service failure, or prevent further violations of service quality rules.

The penalty mechanism we adopt gives the carrier incentives to prevent outages, and to take timely steps to address deficiencies and their causes. It also gives carriers a fair warning of when it is out of compliance and may be liable for a penalty if proactive corrective action is not taken. Carriers should monitor their GO 133-D compliance and take action after the first month of non-compliance so they may better serve their customers and protect public safety. Creating incentives to deter outages and prolonged restoration time is imperative to public safety and California's economy and furthers the Commission's duty under Public Utilities Code Sections 451, 709, and 2896 to ensure safe reliable service, compliance with service quality, and universal service. We agree with ORA, therefore do not adopt this rule.

#### **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)~~FCC under the ~~Network Outage Reporting System (NORS)~~ when those reports are filed with the FCC. The administrative burden of simultaneously sending a copy of a report to the FCC and this Commission is not significant, particularly in light of the benefits to public safety and reliability resulting from increasing the Commission's ability to



monitor compliance with California law and the Commission's decisions, rules, and orders.

We agree with the FCC that outage reporting for interconnected VoIP providers is needed because of the public safety issues associated with VoIP outages and the growing number of customers using VoIP. 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. Many VoIP customers may not realize that their telephone service is IP-enabled; they nevertheless rightfully have the expectation that they can reach emergency services and 9-1-1 using their phone equipment.

Commenting parties argue that the Commission is precluded from imposing this requirement pursuant to Pub. Util. Code § 710. Pub. Util. Code § 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)."<sup>4382</sup>

We are not persuaded that § 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 proposal, which only requires VoIP providers to send a copy of the NORS reports (which they already generate for the FCC) to the CPUC.

<sup>43\_82</sup> Express exceptions are also contained in subdivisions (d) through (g).

Moreover, Section 710 contains numerous exceptions which indicate that the Commission does retain 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” to enforce backup power requirements, and our “authority relative to access to support structures, including pole attachments, or to the construction and maintenance of facilities pursuant to commission General Order 95 and General Order 128. Requiring VoIP providers to provide the NORS report falls within this exception.

Even where the Commission does not have regulatory jurisdiction over an IP-enabled service, the Commission has broad authority to obtain information and to assure the safe and reliable operation of the facilities over which services of whatever type travel. Such authority is not limited to public utilities or regulated entities. (See, e.g., Public Utilities 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. With the adoption of GO 133-D, we are not proposing to regulate a particular service but to assure the safe and reliable performance of facilities supporting all telecommunication services.

Section 710 prohibits only the regulation of VoIP and IP-enabled “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. As we noted, 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 remains a physical structure requiring reliable performance. 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 or facility outages supporting those services to go unnoticed and uncorrected.

Further, as we have already noted above Public Utilities Code § 451 requires that utilities:

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.

We adopt staff's recommendation and clarify that telephone corporations and interconnected VoIP providers covered by the FCC's Part 4 reporting rules will also submit those reports to the Commission simultaneously with submission to the FCC.

## 5. Next Phase of This Proceeding

The Decision Affirming Provisions Of The Scoping Memo and Ruling stated that an immediate focus of this proceeding would be on residential basic telephone services and those parts of the telecommunications network that support those services. The decision further stated that the Commission may also make findings on issues related to other types of services and/or services provided via different technological platforms, to the extent that the record of this proceeding supports such findings.<sup>4483</sup>

<sup>4483</sup> D.13-02-023, p. 023 at 11.

ORA recommends that the Commission consider adopting service quality standards for wireless and VoIP providers in this proceeding. ORA believes that wireless and VoIP technology are used to facilitate communication by telephone and that any corporation or person that owns, controls, operates, or manages the facilities that are used in voice communications are telephone corporations and are bound by the obligation to comply with reasonable statewide service quality standards adopted by the Commission. Consequently, ORA argues the Commission has jurisdiction to impose reporting requirements and adopt service quality standards for wireless and interconnected VoIP providers, citing the Commission's mandate under Public Utilities Code § 2896, which in part directs the Commission to require telephone corporations to have reasonable statewide service quality standards, including, but not limited to, standards regarding network technical quality, customer service, installation, repair and billing.<sup>4584</sup>

ORA also bases its recommendation on one of the adopted telecommunications policies of the state to "encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of a process for equitable resolution of billing and service problems."<sup>4685</sup> Consumer Federation agrees with ORA's position and believes that the Commission can impose service quality rules on wireless and VoIP services.<sup>4786</sup>

AT&T, Verizon, and Cox believe that the Commission should not adopt ORA's recommendation for the following reasons: a) ORA provided no policy reasons why service quality standards should be adopted for wireless and VoIP services, b) federal law restricts the Commission's authority to adopt service

<sup>4584</sup> ORA Comments on Staff Proposal, March 30, 2015, pp-at 6-8.

<sup>4685</sup> Pub. Util. Code § 709(h).

<sup>4786</sup> Consumer Federation Reply Comments to Staff Proposal, April 17, 2015, pp-at 2-6.

quality requirements for wireless services, and c) the Commission lacks authority to adopt service quality standards for VoIP services.<sup>4887</sup> Cox maintains that while the Commission has jurisdiction over public utilities, not all telephone corporations are public utilities.

~~Given~~We note that the scope of this proceeding ~~anticipated looking at developing service quality standards for various voice technology platforms,~~ as set forth in the OIR, is very broad. Further, telecommunication facilities are interconnected, regardless of particular technologies used to provide services. With the ongoing transition from traditional telephone service to wireless and VoIP ~~services~~technologies, and ~~given the continued public safety issues, we believe that it is time to look at what~~the continuing use of traditional wireline service by millions of Californians, we do not believe we can ensure service quality and public safety without looking at the network as a whole. To the extent certain types of providers/facilities are not covered by the service quality standards, if any, as distinct from reporting obligations, should be adopted for wireless and VoIP services in adopted herein, we believe we should open a subsequent phase of this proceeding. ~~A Scoping Ruling will be issued at a later date that sets forth the issues to be addressed and the associated timeline to address the issues raised by ORA.~~

## **6. Assignment of Proceeding**

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

## **6. ~~7.~~ Comments on the Alternate Proposed Decision**

The alternate proposed decision of Commissioner Sandoval ~~in this matter~~ was mailed to the parties in accordance with Section 311(e) of the Public Utilities

<sup>4887</sup> AT&T Reply Comments to Staff Proposal, ~~pp. at~~ 4-14; Verizon Reply Comments to Staff Proposal, ~~pp. at~~ 9-13, Cox Reply Comments to Staff Proposal, ~~pp. at~~ 10-16, April 17, 2015.

Code, following the filing of comments on the assigned Commissioner's proposed decision. ~~Comments are allowed under Rule 14.3 pursuant to.~~ Comments on the alternate proposed decision were filed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. ~~Comments on the alternate proposed decision were filed on \_\_\_\_\_, on July 12, 2016,~~ and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_. July 18, 2016, by parties listed in Attachment A.

AT&T asserts that the proposed fine amounts are unlawful because the Alternate Proposed Decision would apply daily fines to a monthly standard.<sup>88</sup> We disagree with AT&T's assertion for several reasons. First, AT&T appears to misunderstand both the nature of the standard adopted in this decision and the calculation of fines based on that standard. AT&T incorrectly characterizes the GO 133-D standards as "monthly" standards; in fact, they are ongoing standards. AT&T is responsible for remaining in compliance with these standards at all times. In order to facilitate tracking and reporting of compliance with these standards, GO 133-D requires a monthly measurement and reporting interval. The tracking and reporting interval has been chosen to be consistent with the penalty mechanism that was adopted in D.01-12-021 (C.00-11-018), and ensures frequent measurement of compliance without creating a potentially undue burden on the applicable carriers to measure compliance on a more frequent basis, such as weekly or daily. Regarding the calculation of the fines, the use of a daily fine is consistent with the fact that non-compliance with the GO 133-D standards constitutes ongoing violations, as defined in Public Utilities Code Section 2108. Section 2108 specifically provides that "in case of a continuing

<sup>88</sup> AT&T Opening Comments to Alternate Proposed Decision at 10.

violation each day's continuance thereof shall be a separate and distinct violation."

In addition, as discussed in the Communications Division's Staff Proposal,<sup>89</sup> the proposed penalty mechanism mirrors the penalty mechanism that was adopted in D.01-12-021 (C.00-11-018) regarding AT&T's predecessor, Pacific Bell's, failure to provide safe and reliable service pursuant to Public Utilities Code § 451 and failure to comply with Commission rules as required by Public Utilities Code § 702. In that case, the Commission used 29.3 hours Mean Time to Repair (MTTR) for an out-of-service repair time measure, based on information that Pacific Bell provided to the FCC as a measure for its outage repair intervals. The 29.3 hour MTTR interval was an annual number for 1996.

Decision D.01-12-021 found that it was appropriate to assess penalties on a daily basis for failing to meet the measure based on the need for effective deterrence for future violations and the importance that the Commission attaches to violations of its orders. As detailed in the Communications Division Staff's Proposal, AT&T, as well as other telephone corporations, repeatedly missed the Out of Service repair standard to repair 90% of outages within 24 hours every year from 2010 through 2013. AT&T maintains that this standard of repairing 90% of outages in 24 hours is not sound, and should be scrapped or modified. This measure was litigated in R.02-12-004, adopted in D.09-07-019, and is the current CPUC rule.<sup>90</sup> The rationale for our continuation of the current penalty mechanism with daily fines for a monthly reporting interval is consistent with the rationale adopted in D.01-12-01. For all of the above mentioned reasons, we believe that the penalty mechanism is lawful and reasonable for assuring safe and reliable telecommunications services.

<sup>89</sup> Issued for Comment on February 2, 2015, in R.11-12-001.

<sup>90</sup> Decision adopting General Order 133-C, effective July 9, 2009.

While AT&T believes that the current out of service standard is not appropriate, their position has consistently been that no service quality measurements are necessary due to the competitive nature of the industry and they have not provided any specific metric to replace the current metric. The company has referred to a Mean Time to Repair (MTTR) metric,<sup>91</sup> but has not recommended adopting that measure in this Rulemaking on a California industry-wide basis. Consequently, we have no record to replace the current Out-of-Service repair interval measurement.

AT&T also cites that failing to scale fines by the declining number of lines statewide overstates penalty amounts.<sup>92</sup> The penalty mechanism that we are adopting addresses the failure of certain telephone corporations to meet Commission adopted service quality standards, and is not dependent on the number of state-wide lines. As previously discussed, the penalty mechanism was modeled after the mechanism adopted in D.01-12-021, which did not scale fine amounts based on access line counts. A declining number of lines does not abrogate a telephone corporation's duty to provide safe and reliable service and comply with Commission orders and rules.

Regarding the rural outage reporting, we note that carriers regularly report to government agencies, propose projects and apply for grants and loans using GIS information.<sup>93</sup> Asking for location information appears to be a standard business practice and correlating it with outage data fits the Commission's need to have information on rural outages to monitor compliance with California law, and Commission Decisions, rules, and orders. It also promotes and the public's

<sup>91</sup> AT&T Opening Comments to Alternate Proposed Decision, July 12, 2016, at 7.

<sup>92</sup> AT&T Opening Comments to Alternate Proposed Decision, July 12, 2016, at 12-13.

<sup>93</sup> California carriers provide specific GIS information at the census block level for grants and loans for the FCC's Connect America Fund and the CPUC's California Advanced Services Fund, A-Fund and B-Fund.



need to know about the reliability of its telecommunications networks crucial to the health and safety of California residents, businesses, and public safety personnel. It will also help the Commission analyze the need for and factors affecting investments in rural areas through telehealth, tele-education, and California Advanced Service Fund broadband buildout grants, as well as relationships with other regulated utility services and facilities. The small LEC's do not believe that it is reasonable to require reporting of major rural outages within 120 minutes of discovering the outage and recommend that this reporting only be required during business hours. The small LECs propose that the reporting of major outages that are discovered after normal business hours be reported to the CPUC within 120 minutes of the start of the next business day.<sup>94</sup> We disagree. Outages occurring both outside of and within normal business hours should be reported to the Communications Division Contact, as indicated by the CD outage reporting system, and CD will coordinate with Commission staff as necessary and appropriate. Providing timely information to the Commission about communications outages is particularly important when other infrastructure and regulated utilities are experiencing outages and threats such as during a fire or wind storm.

We recognize that some Small LECs serve areas with limited or no cell service, and that during a major outage they might have difficulty accessing alternative means to report an outage. In light of these issues for small GRC LECs we adjust the reporting time to 180 minutes after discovering an outage covered by this Decision.

AT&T, CTIA, and others object to the proceeding remaining open for analysis of wireless and interconnected VoIP issues relevant to this proceeding.

<sup>94</sup> Comments of the Small LECs, July 12, 2016, at 6-7.

They believe that there is no rationale for adopting service quality standards for these services because the record does not show the need, the market is competitive, and the CPUC lacks jurisdiction.<sup>95</sup> These arguments are premature. This proceeding has contemplated looking at potential service quality rules or standards for telecommunications facilities supporting different technological platforms in a future phase of this proceeding, or in a successor proceeding, as appropriate.<sup>96</sup> It is well within the scope of this proceeding to consider the public safety implications regarding the reliability of these facilities and their impact upon Californians and their businesses, and we intend to examine them.

Regarding the network examination and commenters who advocate for delaying this Decision until it is completed,<sup>97</sup> we have already addressed this issue. In D.15-08-041 Affirming the Commission Direction to conduct the Network Evaluation Study, we stated that “[T]his decision in no way precludes, and is not intended to delay, the Commission’s consideration of a penalty mechanism or other more immediate activities in this proceeding.”

In addition to considering all the comments submitted in this record, this decision makes small technical changes in response to comments.

## **7. Assignment of Proceeding**

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

<sup>95</sup> AT&T Opening Comments to Alternate Proposed Decision, July 12, 2016, at 4-6; Frontier Opening Comments to Alternate Proposed Decision, July 12, 2016, at 4; Verizon Wireless Opening Comments to Alternate Proposed Decision, July 12, 2016, at 5-7; Cox California Opening Comments to Alternate Proposed Decision, July 12, 2016, at 10; CTIA Opening Comments to Alternate Proposed Decision, July 12, 2016, at 4; CCTA Opening Comments to Alternate Proposed Decision at 2-3.

<sup>96</sup> Assigned Commissioner’s Scoping Memo and Ruling, dated September 24, 2012, at 8.

<sup>97</sup> AT&T Opening Comments to Alternate Proposed Decision at 8, Cox Opening Comments to Alternate Proposed Decision at 1.

## Findings of Fact

1. Reliable telephone service, whatever the technology used, is essential for the public to access emergency services, maintain contact with family and friends, conduct business, including the provision of utility service and other critical infrastructure service, and find employment.

2. ~~1-~~The Commission opened this proceeding to assess the performance of California telecommunications carriers in complying with the standards established in GO 133-C, and to consider revisions to ~~GO 133-C applicable to California telecommunication carriers~~ those standards.

3. ~~2-~~Several telecommunications carriers subject to GO 133-C have failed to meet existing service quality standards, either occasionally or chronically. The September 24, 2014, Staff Report showed that the largest carriers in California, AT&T and Verizon, which collectively operated approximately 88% of telephone lines in California reported under GO 133-C, failed to meet the minimum standard of repairing 90% of all out of service trouble reports within 24 hours for every month between 2010 and 2013. 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, including the provision of utility service and other critical infrastructure service, and find employment.~~

4. ~~5-~~The service quality standards adopted in this decision as GO 133-D are necessary to ensure safe and reliable telephone service for California residents-

~~and~~, businesses, energy and water utilities, public safety agencies and their personnel.

5. It is reasonable to apply the service quality standards adopted in this decision to all facilities-based telecommunications carriers, including those that provide facilities supporting interconnected VOIP that have a CPCN or franchise, have been designated as a Federal ETC in California and/or provide California Lifeline service.

6. The filing of corrective action reports by AT&T and Verizon (now Frontier) has not resulted in improvements to their performance sufficient to meet service quality standards. The September 24, 2014, Staff Report showed that between the years 2010 to 2013, AT&T and Verizon provided corrective action reports for each quarter they missed the adopted measures and related minimum standard.

7. ~~6-~~Automatic fines for non GRC LEC, URF carrier chronic failure to meet service quality standards ~~are necessary incentives~~ for three consecutive months provide an incentive for carriers to adhere to the service quality standards set forth in GO 133-D-D, and promote reliable service by incentivizing action to proactively ensure reliability and compliance with service quality standards.

8. ~~7-~~An effective date of January 1, ~~2017,~~ 2017 for penalty rules, will allow for the orderly and efficient implementation of the new penalty rules set forth in Attachment B.

~~8. Penalties for non-compliance are necessary to deter carriers from violating the~~

9. It is reasonable to subject CLECs to penalties imposed by this Decision only if the failure to meet service quality standards set out in GO 133-D was due to the CLEC's action or inaction, and not primarily due to service or facility issues of an unaffiliated underlying carriers.

10. As utilities under cost-of-service rate-of-return regulation, the Small LECS are subject to the general rate case process which involves detailed examination of compliance with GO 133-D. It is reasonable to decline to apply to GRC LECS the automatic penalty mechanism applied to URF ILECs by this Decision in light of the Commission's triennial opportunity to review performance of GRC LECS through their General Rate Case filings and proceedings.

11. Currently, facilities-based wireline and wireless telephone corporations file NORS reports with the Commission.

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

~~13. 9. The administrative burden entailed in sending a copy of a report prepared for the FCC simultaneously to this Commission is reasonable.~~ Interconnected VoIP providers have been required to provide NORS reports to the FCC since 2012, pursuant to 47 CFR 4.3 (h).

~~14. 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.

~~15. The administrative burden entailed in sending a copy of a report prepared for the FCC simultaneously to this Commission is minimal in light of the corresponding public safety benefit and duty of the Commission to monitor and discuss VoIP services.~~

16. Providing the Commission with a copy of a report already required by the FCC is an efficient means of informing this Commission of network outages compromising interconnected VoIP services.

17. It is reasonable to require all carriers, including carriers providing interconnected VoIP services, to provide the Commission with copies of FCC NORS reports.

18. Public safety requires this Commission to identify and monitor prolonged outages in all parts of the state, including both urban and rural areas.

19. Existing NORS reports do not provide sufficient information to identify and monitor outages that primarily affect rural and sparsely populated areas of California.

20. It is reasonable to define rural areas in California as areas that the US Census Bureau has determined are not within urbanized areas or in urban clusters.

21. It is reasonable and not unduly burdensome in light of the benefits to public safety and monitoring compliance with statutory duties to provide reliable service throughout California to require telephone corporations that have a CPCN and/or franchise, or have been designated as a Federal ETC in California and/or as a California Lifeline service provider; interconnected VoIP providers; and WIR holders to report on outages in rural areas that meet the 30 minute/90,000 user-minute threshold defined in GO 133-D.

22. It is reasonable to require Rural Outage Reports to identify the Location/ Areas, and community of place affected by outage such as the County, city, township, unincorporated areas, or Native American Reservation or Trust Land as indicated by the U.S. Census Bureau Tribal Tract Reference Maps, etc., identifying the, census block group affected, specific census block(s) if available.

23. ~~11.~~ The scope of this proceeding anticipated looking at developing service quality standards for various carrier technology platforms.

~~24. 12. There~~ Although many customers continue to use traditional telephone services, there is an ongoing transition from ~~traditional telephone service to such services to other technologies which may be wireline, wireless, and VoIP services, although many customers remain on traditional telephone service, and there are public safety issues associated with the transition.~~

25. Public safety issues associated with the transition and the future use of new technologies remain of concern to this Commission.

26. It is reasonable to initiate a phase of this proceeding that looks at what service quality measures and standards, if any, should be adopted for facilities supporting the provision of wireless and VoIP services.

~~27. 13. It is time to look at what service quality measures and standards, if any, should be adopted for wireless and VoIP services.~~ A Scoping Ruling should be issued at a later date that sets forth the issues to be addressed and the associated timeline.

28. It is reasonable for URF carriers and GRC ILECs and CLECs to 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 shall 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.

### **Conclusions of Law**

1. The public interest requires that telephone service corporations ~~furnish~~ provide safe and reliable service under Public Utilities Code Section 451, reflect the state's "universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians," and adhere to "reasonable statewide service quality

standards” under Public Utilities Code Section 2896, and adhere to California law and the Commission’s Decisions, rules, and order, and their applicable tariffs.

2. The public interest and achievement of the standards and rules set forth in Public Utilities Code Sections 709, 2896, and 451 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-D.

3. The public interest requires that the service quality standards adopted in this decision apply to all facilities-based telecommunications carriers, that have a CPCN or franchise, including those that provide facilities supporting interconnected VOIP, or have been designated as a Federal ETC in California and/or California Lifeline service provider.

4. Requiring filing of California rural outage reports with the Commission is an appropriate means to gather and monitor information on outages in California’s non-urbanized and non-urban cluster areas, and to ensure provision of reliable service, compliance with service quality, and universal service, and appropriately balances the reporting burden on telecommunications carriers with the burden of outages on rural communities, public safety, the economy, and network reliability, consistent with California Public Utilities Code Sections 451, 709, 2896.

5. Public Utilities Code Sections 2107 and 2108 authorize the Commission to impose penalties on any public utility that violates or fails to comply with a Commission rule or order.

6. ~~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.



7. ~~4.~~The Daily Base Fine for failing to meet the Out of Service standard should be ~~\$25,000.~~25,000, assessed after the third consecutive month of failure to meet this standard. The first two months of failure to meet the Out of Service standard will not receive a monetary penalty. This Daily Base Fine should be scaled based on the carrier's access lines relative to the total number of access lines in California.

8. ~~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 the meet the standard, increasing from \$0.0 for one or two months, to \$500 for the third consecutive month of failure, 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. The Daily Base Fine will be assessed after the third consecutive month of failure to meet this standard. The first two months of failure to meet the Customer Trouble Reports standard will not receive a monetary penalty.

9. ~~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 the meet the standard, increasing from \$0.0 for one or two months, to \$500 for the third consecutive month of failure, 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. The Daily Base Fine will be assessed after the third consecutive month of failure to meet this standard. The first two months of failure to meet the Customer Trouble Reports standard will not receive a monetary penalty.

~~7. 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. The Commission has broad authority under the state constitution, as well as Sections 311 and 314 of the Public Utilities Code, to obtain information and assure the safe and reliable operation of facilities. Such authority is not limited to public utilities or regulated entities.

11. 8. 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 simultaneously with their submission to the FCC.~~

12. 9. The reporting requirements adopted in this decision are consistent with the Commission ~~should exercise its's~~ authority under state law, and are not prohibited under Public Utilities Code Section ~~710(f), to "monitor and discuss VoIP services" by requiring VoIP providers to submit NORS reports to this Commission regarding outages impacting the facilities supporting those services.~~710.

13. 10. Another phase of this proceeding should be opened to examine the need for service quality standards for wireless and VoIP services.

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

**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. Another phase in Rulemaking 11-12-001 shall examine the need for service quality standards for wireless and Voice over Internet Protocol service. A Scoping Ruling will be issued at a later date that sets forth the issues to be addressed and the associated timeline.

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 Association<sup>1</sup>
- CCTA: California Cable & Telecommunications Association

**Consumer Groups and the Workers Union**

- Joint Consumers: Greenlining Institute, Center for Accessible Technology and The Utility Reform Network
- ORA: Office of Ratepayer Advocates
- CFC: Consumer Federation of California<sup>2</sup>
- CWA: Communications Workers of America District

<sup>1</sup> CTIA filed only Reply Comments.

<sup>2</sup> CFC filed only Reply Comments.

**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~~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 California<sup>3</sup>
- California Cable & Telecommunications Association (CCTA)\*
- CTIA – The Wireless Association\*

**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~~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)\*

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

### **March 22, 2016, Proposed Decision**

The parties listed below filed Opening Comments on April 11, 2016. Those that also filed Reply Comments on April 18, 2016 are designated with an asterisk.

#### **Utility Companies**

- AT&T California (U-1001-C)\*
- Citizens Telecommunications Company of California (U-1024-C), Frontier California (U-1002-C), and Frontier Communications of the Southwest (U-1026-C)\*<sup>4</sup>
- Consolidated Communications of California (U-1015-C)
- Cox California Telecom (U-5684-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)
- Verizon Wireless (U-3001-C)\*<sup>5</sup>
- California Association of Competitive Telecommunications Companies (CALTEL)
- California Cable & Telecommunications Association (CCTA)\*

#### **Consumer Groups**

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

### **June 22, 2016, Alternate Proposed Decision**

The parties listed below filed Opening Comments on July 12, 2016. Those that also filed Reply Comments on July 18, 2016 are designated with an asterisk.

#### **Utility Companies**

- AT&T California (U-1001-C)\*
- Citizens Telecommunications Company of California (U-1024-C), Frontier California (U-1002-C), and Frontier Communications of the Southwest (U-1026-C)
- SureWest Consolidated Communications of California (U-1015-C)
- Cox California Telecom (U-5684-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.

<sup>4</sup> Frontier only filed reply comments.

<sup>5</sup> Verizon Wireless only filed reply comments.

(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)\*

- Verizon Wireless (U-3001-C)

#### **Consumer Groups and Associations**

- CTIA, The Wireless Association\*
- California Cable & Telecommunications Association (CCTA)\*
- California Association of Competitive Telecommunications Companies (CALTEL)
- Office of Ratepayer Advocates (ORA)\*
- Center for Accessible Technology, Greenling Institute and The Utility Reform Network (Joint Consumers)\*
- CWA, Communication Workers of America

**(End of Attachment A)**



**Attachment B**

**General Order 133-D**

~~New~~ **GO 133--D**

XX/XX/xxx

**Date of Issuance X/XX/20XX**

**General Order 133--D**

**Public Utilities Commission of the State of California**

**Rules Governing Telecommunications Services**

**Effective immediately, except for section 9, which shall become effective  
January 1, 2017**

**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., now Frontier, a carrier or its predecessor 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. Outage: A significant degradation in the ability of an end user to establish and/or maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.
- s. Out of Service – A condition whereby a customer cannot establish and/or maintain a channel of communications.
- t. Small Business Customer – small business customers are those that purchase five or fewer lines.
- u. Telephone Company/Utility – A public utility telephone corporation providing public telephone service as further defined by Public Utilities 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 Public Utilities 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. The service measures established are as follows:

<b><i>Service Measure</i></b>	<b><i>Type of Service</i></b>
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.
- 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).
  - 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.
  - 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 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~~ This measure also applies to those interconnected VoIP providers that have a CPCN or franchise, or have been designated as a federal ETC in California, and/or provide California LifeLine.
- a. Description. Service affecting, and out of service trouble reports, from residential and business 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 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. [This measure also applies to those interconnected VoIP providers that have a CPCN or franchise, have been designated as a federal ETC in California, and/or California LifeLine provider.](#)
- 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 fewer) customers for the three consecutive calendar months that did not have catastrophic events prior to the declared State of Emergency divided by three.

GRC LECS and CLECs shall report when outages are caused by an unaffiliated underlying carrier, and the Commission can take this fact into account when analyzing responsibility for the outage, the extent of any penalties for a CLEC or underlying carrier, and appropriate action.

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 the 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](http://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 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. [This measure also applies to those interconnected VoIP providers that have a CPCN or franchise, have been designated as a federal ETC in California, and/or California LifeLine provide.](#)

- 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. SERVICE INTERRUPTION REPORTING

- a. Applicability. This section applies to:
- i. Telephone corporations including interconnected VoIP providers that have been granted either a franchise or a Certificate of Public Convenience and Necessity (CPCN) pursuant to Public Utilities Code § 1001, or have been designated as a federal ETC in California, and/or a California LifeLine provider.
  - 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.

#### 4.1 Major Service Interruptions

- a. 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>
- b. 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 voice services using multiple technologies, 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.
- c. Confidentiality. Major Service Interruption reports submitted to the Commission pursuant to these rules shall be treated as confidential in accordance with Public Utilities Code § 583 and General Order 66-C.

#### 4.2 Rural Area Outage Reporting

The Commission adopts a modification of the NORS reporting format for rural outages in California and directs the carriers identified in Section 4 (a) to provide reports to the Commission as specified in Section 4 (b). Reports shall be filed with CD per CD's directed method/media. This modification defines ~~rural area~~ outages of facilities outages in non-urbanized, non-urban cluster areas as the target for reporting and applies a lower threshold of ~~reporting to the user-90,000 user-minutes for a 30 minute outage to the methodology used for the FCC's user-minute calculation.~~

##### a. Definitions:

~~a.~~(1) A rural outage is an outage that occurs in a rural area defined as a non-urbanized, non-urban cluster area as defined by the U.S. Census Bureau, and lasts at least 30- minutes and potentially affects ~~75,000~~90,000 user -minutes.

Wireless carriers should use the FCC's 2016 method for calculating potential users, and use the new methodology the FCC adopted in May 2016 when it becomes effective. To determine if an outage meets the ~~75,000~~90,000 user -minute threshold in a rural area, the carrier should multiply the number of macro cell sites disabled in the outage by the average number of users ~~serviceserved~~ per site, which is calculated as the total number of users for the provider divided by the total number of the provider's macro cell sites. The outage must last for at least 30 minutes.

~~a.~~(2) Rural areas of California are defined as areas that the US Census Bureau has determined are not within urbanized areas or urban clusters.<sup>1</sup>

##### b. Types of Outage Reports and Reporting Timelines:

~~b.~~(1) Notification Report: Within 120 minutes of discovering an outage of at least 30 minutes in duration, but for GRC LECs only the timeline to

<sup>1</sup> <https://www.census.gov/geo/reference/urban-rural.html>. The Census Bureau identifies two types of urban areas: Urbanized Areas (UAs) of 50,000 or more people and Urban Clusters (UCs) of at least 2,500 and less than 50,000 people.

provide notice of the outage is within 180 minutes of discovering an outage meeting the reporting standard of at least 30 minutes in duration.

~~b.~~(2) Initial Report: No later than 72 hours after discovering the outage.

~~b.~~(3) Final Report: No later than 30-~~day~~-days after discovering the outage.

~~b.~~(4) Withdrawn Report: Filed as soon as practicable after determining that the outage did not meet the Major Rural Outage reporting threshold.

c. Report Format: Attachment D is the Major Rural Area Outage Report Template that contains the following fields:

~~e.~~(1) Company Name and Utility Number assigned by the Commission;

~~e.~~(2) Report Number. Year (YY) Utility number (UUUU), and five digit consecutive number for a calendar year beginning with the number 00001. Each calendar year reports shall begin with the number 00001. (e.g. 17-~~uuuu~~00001);

~~e.~~(3) Report Type, as described above;

~~e.~~(4) Date and time that the outage ~~discovered~~began in hours and minutes (24 hour clock);

~~e.~~(5) Estimated date and time in hours and minutes ~~of repair~~for the outage to be repaired;

~~e.~~(6) ~~Date~~Actual date and time in hours and minutes that the outage was repaired;

~~e.~~(7) ~~Elapsed time in hours and minutes for outage to be repaired~~;

~~e.~~(8) Type(s) of Service Affected: ~~Wireline~~wireline, wireless, ~~interconnected~~-VoIP;

~~e.~~(9) Location/Areas affected by outage (County, city, township, unincorporated areas, ~~etc.~~)or Native American Reservation or Trust Land as indicated by the U.S. Census Bureau Tribal Tract Reference Maps, etc.), census block group affected, specific census block (s) if available;

~~e.~~(10) Cause of outage;

~~e.~~(11) Explanation of steps taken to restore service;

~~e.~~(12) Description of steps that were, or will be taken to prevent similar types of outages from occurring in the future; and

~~e.~~(13) Name, title, and contact information (telephone number and email address) of the person submitting the report.

d. Confidentiality: Rural Area Outage reports submitted to the Commission pursuant to these rules shall be treated as confidential in accordance with Public Utilities 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, [Franchise](#), 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~~shall 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 non-GRC LEC facilities-based local exchange telephone corporations that 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~~including those carriers regulated under the Uniform Regulatory Framework (URF) adopted in D.06-08-030. For companies that offer voice service through multiple technologies, the fines only apply to traditional wireline telephone service. The automatic penalty provisions of these rules do not apply to GRC LECs as their compliance will be review in the GRC process. For CLECs, the penalty provisions of this General Order will be imposed only if the failure to meet service quality standards was due to the CLEC's action or inaction, and not primarily due to service or facility issues of an unaffiliated underlying carriers, and GRCs should file outage and non-compliance reports that explain whether an underlying unaffiliated carrier was primarily responsible for the non-compliance.

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 30<sup>th</sup> 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**

	<b>1 to 2 Consecutive Months of OOS Standard Not Met</b>	<b>3 or more Consecutive Months of OOS Standard Not Met</b>
<b>Fine Per Day</b>	\$0 per day	\$25,000 per day
<b>Days in a Month (for all months)</b>	30 days	30 days
<b>Base Fine per Month</b>	\$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
<b>Fine Per Day</b>	\$0	\$500	\$1,000	\$1,500	\$2,000
<b>Days in Month</b>	30	30	30	30	30
<b>Base Fine per Month</b>	\$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
<b>Fine Per Day</b>	\$0	\$500	\$1,000	\$1,500	\$2,000
<b>Days in Month</b>	30	30	30	30	30
<b>Base Fine per Month</b>	\$0	\$15,000	\$30,000	\$45,000	\$60,000

- 9.6 Advice Letter Tabulating Fine. ~~The performance of any~~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.

#### **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**



Attachment D

**Major Rural Outage Reporting Template**

Document comparison by Workshare Compare on Tuesday, August 16, 2016  
2:08:31 PM

Input:	
Document 1 ID	file:///d:/jvt2/Desktop/WSC R1112001 Sandoval Alternate Comment Dec on Service Quality and Revisions to GO 133-D 6-22-16.docx
Description	WSC R1112001 Sandoval Alternate Comment Dec on Service Quality and Revisions to GO 133-D 6-22-16
Document 2 ID	file:///d:/jvt2/Desktop/WSC R1112001 Sandoval APD Rev. 1 8-15-16.docx
Description	WSC R1112001 Sandoval APD Rev. 1 8-15-16
Rendering set	Standard

Legend:	
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	<u>Moved to</u>
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	Format change
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	678
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Moved to	16
Style change	0
Format changed	0
Total changes	1646