BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules.	Rulemaking 11-12-001

OPENING COMMENTS OF AT&T CALIFORNIA (U 1001 C) ON THE JANUARY 29, 2013 PROPOSED DECISION

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Pacific Bell Telephone Company d/b/a AT&T California ("AT&T") hereby submits its opening comments on the January 29, 2013 Proposed Decision ("PD") of Commissioner Ferron.

I. Introduction

Wireline service quality and the health of the wireline network in California are important matters. AT&T is committed to the successful conclusion of this proceeding's review of wireline service quality, as demonstrated by its submission of substantial amounts of data and information in this proceeding and, more recently, its active participation in the January 31, 2013 workshop.

There is, however, no demonstrated need for the sweeping, expensive third-party study contemplated by the PD. The evidence demonstrates that AT&T's network remains in good health. AT&T has continued to consistently meet the Commission's General Order ("GO") 133-C standards for trouble reports, has met the GO 133-C standard for speed-of-answer for each quarter in 2012, and has steadily decreased its Mean-Time-To-Restore ("MTTR") over the last two years. And while AT&T as well as other carriers have had difficulty satisfying the new 90%-in-24-hour repair standard for out-of-service conditions set forth in GO 133-C, effective beginning in 2010, that is because the new standard is vastly more onerous than the repair standards that historically applied in California and is flawed as a measure of customer service and network reliability. The evidence contained in the four rounds of comments submitted by AT&T in this proceeding, including declarations from an expert witness, Dr. Debra Aron, and an AT&T witness, Ms. Betsy Farrell, shows that AT&T's network performs well, with an average in-service rate of better than 99.95%.[1] Both the PD and the scoping memo fail to discuss this

[1] *See* Aron Reply Dec. ¶¶ 16-17, 26, 27 & Figures 4, 5, & 9 (filed Mar. 1, 2012).

evidence, and the conclusion that a third-party study is necessary is not supported by the facts set forth in the record. Consequently, the PD commits legal error in ordering such a study.

In addition, there is no basis to conclude that an expensive third-party study is required to "gauge the condition of carrier infrastructure and facilities." PD at 4. Much of the data that would be the subject of the study has already been provided in discovery conducted last year in this proceeding and is provided to the Commission as the underlying data for AT&T's GO 133-C results that are submitted on a quarterly basis. The Commission, its Staff, and the parties are capable of analyzing any additional information requested of AT&T. In short, the PD fails to explain why a third party must be retained – at AT&T and Verizon's expense – to gather data, review documents, and conduct an evaluation.

While the evidence presented in this proceeding does not support the conclusion that a third-party study is necessary, in the event the Commission decides to proceed with such a study, AT&T nonetheless desires to continue contributing to the development of the most efficient, productive framework for the evaluation, as reflected in its participation at the workshop and in its forthcoming post-workshop comments. For such a framework to exist, it must be appropriately tailored. In particular, there is no evidence that a third-party study, as a foundational matter, should extend beyond a factual evaluation of AT&T's service quality results for voice telecommunications services and the state of its network supporting these services. The scoping memo's suggestion of a broader study, encompassing such matters as investment policies and practices, puts the cart before the horse and assumes, without foundation, that there is some reason for the Commission to engage in micromanagement of such matters. AT&T's evidence shows its service quality has remained well within reasonable and adequate levels, but if the Commission needs more information as a foundational matter, any third-party study should

be tailored to assist the Commission in determining whether there is, in fact, any service quality problem that warrants further attention by the Commission. The evaluation should not undertake a broad examination of AT&T's management decisions with respect to topics such as investment in the network – areas the Commission long ago decided it would not review.

Finally, while AT&T agrees that hearings may be necessary in this proceeding, the PD should not base its conclusion that there may be a need for hearings on unsubstantiated allegations of discrimination. The unsubstantiated accusations of discrimination made by TURN *et al.* do not support the conclusion that hearings may be required. Those accusations lack any factual basis in the record and were not identified in the scoping memo as the basis for the determination that hearings may be necessary.[2] While hearings may ultimately be warranted on other issues, the Commission should adopt the approach of the scoping memo and permit parties to file a motion requesting hearings if the party contends there is a genuine dispute regarding facts material to the purposes for which this proceeding was initiated. The PD should not incorporate unsubstantiated factual allegations that were not included in the scoping memo as the basis for hearings, and its conclusion regarding hearings should be revised to make it consistent with the scoping memo.

II. There Is No Basis in the Record Justifying the Third-Party Study.

The PD concludes that "[a] study of carrier network infrastructure, facilities, policies, and practices," as described in the scoping memo, "is a necessary foundational activity within this proceeding to help gauge the condition of carrier infrastructure and facilities and ensure the facilities support a level of service consistent with public safety and customer needs." PD at 4.

[2] *See* Scoping Memo at 4.

That finding, however, is not supported by any evidence in the record and is flawed for a number of reasons. Consequently, it would be legal error for the Commission to reach such a conclusion.

1. The evidence shows that AT&T's network continues to perform well.

The evidence presented by AT&T – none of which is addressed by the scoping memo or the PD – demonstrates that AT&T's network continues to perform well. Apart from outages caused by extreme weather events in 2010, AT&T's service quality has been consistent with prior years, and consistent with the historical performance of other large carriers in other states. AT&T's average monthly in-service rate has generally been better than 99.95%, climbing to over 99.98% in six of the last eight months of 2011.[3] At the same time, AT&T's MTTR has steadily decreased over the last two years.[4] And AT&T consistently met the Commission's standard for monthly trouble reports in *every* month of 2010 and 2011.[5] Furthermore, the GO 133-C reports submitted by AT&T on February 15, 2013 show that AT&T met the GO 133-C standards for trouble reports and the standard for speed of answer for every quarter in 2012.

Some commentors have suggested that service quality is declining because, while carriers were generally able to meet the Commission's service quality standards in 2009, they have had difficulty meeting the new 90%-in-24-hours standard for out-of-service ("OOS") conditions. But that is not an apples-to-apples comparison, because the standards were changed. As AT&T has demonstrated, the new 90%-in-24-hours OOS standard effectively requires AT&T to have a

[3] *See* Aron Reply Dec. ¶¶ 16-17, 26, 27 & Figures 4, 5 & 9 (filed Mar. 1, 2012).
[4] *Id.* at ¶ 12 & Figure 3.
[5] *Id.* at ¶ 20 & Figure 6.

MTTR of 13 hours or better – which is vastly more onerous than the 29.3 hour standard for initial OOS tickets that applied to AT&T prior to GO 133-C.[6]

Moreover, the outages caused by the winter storms of 2010 plainly were an anomaly that does not establish the need for the study contemplated by the PD. These storms were not normal seasonal weather patterns, but resulted in the wettest December in 121 years and the second wettest December since recordkeeping began in 1877 in the southern part of the State.[7] The Governor declared a state of emergency in twelve counties, including heavily-populated counties such as Los Angeles. However, while AT&T experienced a large increase in the number of incoming trouble reports, its outage rate rose only to about 2.6%.[8] The fact that, in the face of an historic 121-year event, AT&T's outages remained so low and it quickly restored service to normal levels is a testament to the quality of its network and its robust maintenance and repair practices, not evidence that a sweeping study of carrier network infrastructure, facilities, policies, and practices is warranted.

The Commission is required to weigh the evidence in the record and set out its findings in its decision, sufficient to "afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily, as well as . . . serve to help the commission avoid careless or arbitrary action."[9] The PD fails to discuss, much less weigh, the evidence regarding the need for a study and fails to set

[6] *See* Aron Dec. ¶ 84 (filed Jan. 31, 2012). In adopting the new GO 133-C standard, the Commission mistakenly assumed it was equivalent to the prior 29.3 hour mean-time-to-repair standard. *See Order Instituting Rulemaking on the Commission's Own Motion into the Service Quality Standards for All Telecommunications Carriers and Revisions to General Order 133-B*, Decision 09-07-019, at 78-79.
[7] Farrell Reply Dec. ¶ 34 (filed Mar. 1, 2012).
[8] *Id.* at ¶ 33.
[9] *Greyhound Lines, Inc. v. Public Utils. Comm'n* (1967), 65 Cal.2d 811, 813. *See also* Cal. Pub. Utils. Code § 1757.1 (decision must be supported by the findings).

forth findings sufficient to support its conclusion that a study is necessary. As a result, the conclusion to require such a study constitutes legal error.

2. A third-party study is not necessary to obtain any information needed by the Commission.

Even if the Commission required additional information regarding AT&T's service quality and the condition of its facilities, there is no evidence that a third-party audit or study is necessary to obtain such data. AT&T maintains detailed information and data regarding its network and regarding service quality. This type of data is submitted with AT&T's quarterly submission of its GO 133-C results, and data of this type has already been provided in discovery conducted in this proceeding.

If the Commission requires additional data, it can request such information from AT&T, and the parties and Staff can review and analyze that information. The Commission Staff has a long history of working with carriers to monitor and evaluate various service quality issues. This includes detailed review of service quality data and compliance with the Commission's service quality standards, as well as physical walk-out audits, conducted by the Safety and Enforcement Division, of compliance with the Commission's standards related to outside plant facilities (the GO 95 and GO 128 standards for outside aerial and underground plant). There is no evidence, however, supporting the PD's conclusion that a third-party study is necessary to gather data regarding AT&T's network.

Moreover, the existing record in this proceeding provides a sufficient basis for the Commission to decide whether the existing GO 133-C measures should be modified, which is the original question posed by this rulemaking. *See* Order Instituting Rulemaking at 3-4. Instead of addressing this issue and the record evidence, the PD proposes a third-party evaluation without any clear objective, without identifying what additional information the Commission

seeks that could not be provided by the parties directly to the Commission for review, and without any basis to conclude that the benefit of such an evaluation will outweigh its costs. In these circumstances, the PD's conclusion that a third-party study is necessary is factually erroneous.

3. There is no evidence that a study of investment, staffing, or related policies and practices is a necessary foundational activity.

Even if some study of the condition of AT&T's network and service quality were a "necessary foundational activity" as the PD concludes (at 4), there is no evidence that a study of other policies and practices, such as investment and staffing policies and practices, also is such a necessary foundational activity.

The Order initiating this proceeding was based upon a Communications Division ("CD") report regarding the quality of telephone service provided by wireline telephone corporations in 2010. The report discussed the failure of some carriers to meet the new GO 133-C service quality standards and the outages experienced by AT&T and Verizon in Southern California during the winter storms of December 2010 and January 2011. Order Instituting Rulemaking at 2-3. As a result, the Commission opened the rulemaking "to review telecommunications carriers' performance in meeting GO 133-C service quality performance standards in 2010" and to assess whether those GO 133-C standards should be modified. *Id.* at 3-4. As noted above, the evidence presented by AT&T demonstrates that its overall network quality remains consistently high. If the Commission nevertheless chooses to delve deeper into the status of AT&T's service quality and its network, any third-party study should be tailored to assist the Commission in determining whether there is, in fact, any service quality problem that warrants further attention by the Commission.

The broader study contemplated by the scoping memo that includes among other things an evaluation of investment policies and procedures (*see* Scoping Memo at 12) is not a necessary foundational activity. If a study of AT&T's service quality and the state of its network reveals that both have remained adequate over time, then a broader study of other issues is not necessary at all, much less foundational. As the Commission has stated in the past, "[a]ssuming that a utility is responsibly meeting its obligation to serve, the Commission does not micromanage the utility in its carrying out of its obligations and responsibilities and financial management practices."[10]

Indeed, far from foundational, such micromanagement would contradict decades of Commission policy. For example, the Commission has previously rejected proposals to require a utility to maintain specific staffing levels, because the Commission is "not prepared to micromanage the utilities."[11] The Commission also has specifically "decline[d] to interfere with the network investment plans of ILECs."[12] Its current regulatory framework is built upon the premise that "[i]nstead of imposing regulatory hurdles, we should let technology and the newly competitive markets decide what type of telecommunications infrastructure should be built," and the Commission's policy "leaves it up to telecommunication providers to make their own

[10] *Order Instituting Investigation into the Ratemaking Implications for Pacific Gas and Electric Company*, Decision 03-12-035, at 30.
[11] *Joint Application of Pacific Enterprises*, Decision 98-03-073, 1998 WL 211974, at *63-*64. *See also Benjamin-Sohal v. Pacific Bell*, Decision 98-04-021, 1998 WL 1750054, at *3 (dismissing complaint challenging carrier's use of "spotters" to indentify employee misconduct, because the complaint is "in reality, a dispute over labor and employment issues, and as such, fails to state a claim over which this Commission has jurisdiction"); *Complaint of Mission Coalition Organization v. P.T. & T. Co*., Decision No. 79778, 1972 WL 30001, at *5 (the Commission "does not have jurisdiction over labor-management relations of Pacific [Telephone & Telegraph Co.] which would include employment practices").
[12] *Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*, Decision 08-11-033, 2008 WL 4948603, at *5-*6.

investment decisions, including the type of technology they should employ."[13] In light of this long-standing policy, there is no factual or legal basis to conclude that a broad study of AT&T's investment and/or staffing decision-making is necessary or foundational – particularly when the evidence shows that AT&T continues to meet its obligation to serve. In fact, such a study would contradict the Commission's decisions cited above that state the Commission will not review investment decisions and will not micromanage AT&T.

As noted above, the Commission's decisions must contain sufficient findings and conclusions to support the Commission's ultimate finding.[14] The PD's failure to explain why investment and/or staffing decisionmaking should be subject to a third-party evaluation constitutes legal error, particularly in light of the Commission's prior policies.

III. The PD Should Not Rely on Unsubstantiated Accusations of Discrimination as the Basis for Hearings.

While AT&T does not contest the PD's conclusion that hearings may be necessary, it does disagree with the PD's stated reasons for that conclusion. The PD suggests that it seeks to confirm the scoping memo's finding regarding the possible need for hearings, but in doing so it improperly adds new and unsupported factual allegations that are not identified in the scoping memo as a basis for hearings. In particular, the PD concludes that hearings may be necessary after noting (at 1-2) that The Utility Reform Network, the Center for Accessible Technology, and

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[13] *Matter of Alternative Regulatory Frameworks for Local Exchange Carriers*, Decision 97-06-090, 1997 WL 448720, *20-*21. *See also Re Alternative Regulatory Frameworks for Local Exchange Carriers*, Decision 89-10-031 (finding that eliminating the review of investment decisions, where they had to be justified in regulatory proceedings, would benefit ratepayers and the economy by encouraging the ILECs to "to aggressively pursue new technologies and services to take fuller advantage of the economies of scale and scope inherent in the local exchange network," and that the NRF framework was sufficient to ensure "prudent investment decisions"); *In re Pacific Telesis Group*, Decision 97-03-067, 1997 WL 406220, at *27-28 ("We will not gauge the cost-effectiveness of investment by the absolute level of dollars spent nor will we mandate a specific spending level.").

[14] *See* Cal. Pub. Utils. Code § 1757.1 (decision must be supported by the findings); *Greyhound Lines*, 65 Cal.2d 811; *California Motor Transport Co. v. Public Utils. Comm'n* (1963), 59 Cal.2d 270, 273-74 (Commission must set forth "findings of the basic facts upon which the ultimate finding is based," to "enable the reviewing court to determine whether the commission has acted arbitrarily").

the National Consumer Law Center (collectively, "TURN") submitted joint comments suggesting there may be material issues of fact in dispute regarding whether AT&T and Verizon "are engaged in service quality discrimination favoring customers subscribing to the carriers' enhanced service offerings" and "whether AT&T's and Verizon's investment practices and policies discriminate in favor of those enhanced services." TURN's suggestion, however, provides no basis for concluding that hearings may be necessary in this proceeding.

TURN's suggestion is both nonsensical (because AT&T continues to rely on its outside cable facilities, recognizing the critical role this infrastructure plays in supporting both the company's traditional wireline services, as well as AT&T's emerging technologies and advanced services)[15] and entirely speculative. There is not a shred of evidence in the record to support TURN's contentions, much less enough evidence to show there is some genuine dispute of material fact that may require hearings. Nor is TURN's unsupported accusation of discrimination the proper focus of this proceeding.

As a result, the PD's conclusion regarding hearings should be revised to make it consistent with the scoping memo. In particular, the scoping memo provided (at 14) that "the specific subjects appropriate for hearings are more appropriately determined after the issuance of a report on AT&T and Verizon facilities," and "if any parties wish to request evidentiary hearings after distribution of the Evaluation Report, they may file a motion requesting hearings." This approach would appropriately place the burden on any party seeking hearings to demonstrate that there is a genuine dispute regarding a fact material to the Commission's ultimate decision in this proceeding.

[15] *See* Aron Dec. ¶ 29 (filed Jan. 31, 2012).

IV. Conclusion

For the reasons explained above, the Proposed Decision should be modified as shown in the redlined version of the Findings of Fact and Conclusions of Law attached hereto as Appendix A.

Dated at San Francisco, California, this 19th day of February, 2013.

Respectfully submitted,

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APPENDIX A

Findings of Fact

1. A study of carrier network infrastructure, facilities, policies, and practices as described in the scoping memo and ruling issues on September 24, 2012, is not a necessary foundational activity within this proceeding to help gauge the condition of carrier infrastructure and facilities and ensure the facilities support a level of service consistent with public safety and customer needs.

2. While h~~H~~earings ultimately may be needed in ~~order to build a full record on the issues within~~ this proceeding, no party has yet demonstrated the existence of a genuine dispute regarding facts material to the Commission's ultimate decision. As a result, a determination as to whether hearings are necessary, and if so upon what factual issues, shall be made in response to motions requesting hearings as provided in the scoping memo and ruling.

Conclusions of Law

~~1. The Commission has the authority to require AT&T and Verizon to share equally the costs of a study as described in the scoping memo and ruling in this proceeding.~~

~~2. It is reasonable to require AT&T and Verizon to pay the costs of a study of their network infrastructure, facilities, policies, and practices as described in the scoping memo and ruling, not to exceed $1.5 million, in order to ensure a complete record on which to base a decision in this proceeding.~~