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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)

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

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Pursuant to the Commission's February 2, 2015 Ruling Setting Dates for Comments and Reply Comments on Staff Proposal, Center for Accessible Technology (CforAT), The Greenlining Institute (Greenlining), and The Utility Reform Network (TURN) (collectively, Joint Consumers) file these reply comments.

I. INTRODUCTION

In their Opening Comments, various carriers oppose recommendations set forth in the Staff Proposal currently under review for a number of reasons, but none of them can get around the clear fact that the largest carriers in California, who are jointly responsible for the substantial majority of wireline facilities and calls, have failed over the long term to meet the service quality metrics that are currently in place, and that the efforts made under the existing regulatory structure to bring them into compliance with the existing metrics have not been successful. This is the setting in which the staff recommendations have been made, and the carriers' records of noncompliance are not reasonably in dispute.

AT&T and Verizon are not providing service within the current service quality standards, while other carriers are demonstrating full or near-full compliance. While the noncompliant

carriers have the right to make arguments about the appropriateness of the standards and seek to change them going forward, they cannot reasonably argue that the metrics currently in place can be ignored without consequence. The carriers are subject to the existing regulatory framework, and must comply with existing requirements; they are not justified in using their non-compliance to argue for a change in the regulatory structure. Yet AT&T and Verizon repeatedly hold up their very failures as a basis for reducing their obligations to provide adequate service quality for their wireline customers. The Staff Report appropriately concludes that additional steps are needed to move these carriers toward compliance; this move toward increased compliance, rather than reduced standards, is the correct path toward ensuring reasonable service quality standards for California consumers.

II. THE ARGUMENTS BY VARIOUS CARRIERS IN OPPOSITION TO THE STAFF REPORT PROPOSALS ARE FLAWED

A. The Fact that Small Carriers Have Generally Met Service Quality Standards Does Not Prohibit the Commission From Imposing Industry-Wide Rules.

A number of smaller carriers argue that the Commission cannot impose changes to industry-wide service quality rules because there is no evidence that the smaller carriers have failed to meet current service quality standards.[1] However, in making this argument, the smaller carriers neglect to acknowledge the fundamental nature of the Commission's regulatory power. Under the California Constitution, the Commission has the power to establish industry-wide rules.[2]

The small carriers' argument is analogous to arguing that because only a small number of drivers have gotten into accidents as a result of driving too fast, it is inappropriate to implement a speed limit that applies to all drivers. The Staff Proposal's recommendations are not a

[1] Surewest Opening Comments at p. 2; s*ee also* Calaveras Telephone Opening Comments at p. 1.
[2] Cal. Const. Art. XII, § 6.

punishment for the small carriers' past conduct—rather, they are an appropriate incentive for AT&T and Verizon to meet, and for small carriers to continue to meet, the GO-133-C standards. Accordingly, the Commission should reject small carriers' argument that their compliance with the current service quality standards prohibits the Commission from imposing industry-wide changes.

B. Failure to Meet Service Quality Standards Demonstrates Problems with Service Quality

It hardly seems notable to say that carriers' long-term and ongoing failure to meet service quality standards and metrics serves as meaningful evidence that service quality is problematic; nevertheless AT&T and Verizon attempt to argue that there is no linkage between the two, and that their failure to comply demonstrates a problem with the standard rather than with carrier compliance.[3] Their arguments do not stand up to scrutiny. AT&T asserts (with Latin, presumably to seem more important) that the Staff Proposal is unjustified in finding flaws with the carrier's service quality performance simply because it fails to meet service quality standards, as mandated by the Commission in GO 133-C, the Commission's rules for telecommunications service quality. In fact, failure to meet existing service quality standards is the best evidence available for inadequate service quality.

AT&T seeks to argue that GO 133-C standards are not a useful mechanism for establishing appropriate levels of service quality. This is very different from its unfounded assertion that the record in this proceeding affirmatively establishes that the GO 133-C standards are somehow illegitimate.[4] The existing standards, adopted appropriately through Commission processes, currently govern carrier obligations. The record in this proceeding is clear that AT&T has failed in this obligation. While no carrier is prevented from arguing for a change in

[3] AT&T Opening Comments at p. 5; Verizon Opening Comments at pp. 2-3.
[4] See AT&T Opening Comments at p. 5.

standards, an ongoing record of non-compliance with valid service quality rules "ipse dixit"[5] means that a carrier is not meeting its obligations with regard to service quality.

C. Verizon's Claim that the Staff Proposal is "Premature" is Incorrect.

Verizon states its belief that the Staff Proposal is "premature," pointing to an alleged failure on the part of staff to address the "threshold" issue of whether service quality standards should be maintained.[6] Joint Consumers note, however, that the threshold question was explored in detail in the September 2014 Staff Report, which clearly illustrated the appropriateness of the current standards.[7] Following an extensive review of California carrier performance, and the service quality monitoring and practices in other states, the staff concluded:

> . . . Staff remains concerned with AT&T's and Verizon's service quality because they are the two largest carriers in the telecommunications industry and the two carriers with the highest number of reported working telephone lines in California. For all four reporting years, AT&T failed to meet the standard for the OOS repair interval measures and Verizon failed to meet the standards for both the OOS repair interval and Answer Time measures.
>
> Communications Division staff believes that it is important to continue monitoring the service quality performance of the wireline telephone carriers that are required to report under G.O. 133-C. Despite the decrease in the number working lines due to the migration to alternative technologies, there are California customers who rely heavily on wireline service, especially if it is the only available technology to access needed 9-1-1 services during times of an emergency.
>
> The Commission can meet its obligation under P.U. Code Section 451 to ensure that safe and reliable service is provided at reasonable rates if the telephone corporations are motivated to meet the minimum telephone service quality measures and standards adopted by the Commission.[8]

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[5] Latin for "he, himself, said it", which Wikipedia defines as " a term used to identify and describe a sort of arbitrary dogmatic statement, which the speaker expects the listener to accept as valid." *See* http://en.wikipedia.org/wiki/Ipse_dixit .

[6] Verizon Opening Comments at p. 1.

[7] "California Wireline Telephone Service Quality Pursuant to General Order 133-C Calendar Years 2010 through 2013," September, 2014.

[8] *Id.* at p. 26.

The Staff Proposal is not premature as suggested by Verizon, but reflects a reasoned analysis of the existing standards as well as carrier performance in California, and the approaches to ensuring high quality services in other states. The Commission should reject Verizon's argument.

D. Contrary to AT&T's Claim, the Failure of AT&T and Verizon to Comply with the Out of Service ("OOS") Metric does Not Invalidate the Metric.

AT&T states that the penalty mechanism in the Staff Proposal is flawed because "the OOS service metric that has been failed for the last four years, since its implementation, has been proved to be flawed over and over by both companies. . ."[9] However, the failure of AT&T and Verizon to comply with the measure says nothing about the appropriateness of the metric. Again, non-compliance with a service quality standard is evidence of failure by the carrier subject to the standard, not evidence of a problem with the standard itself, particularly because other carriers are able to meet their service quality obligations. In fact, the ongoing failure by AT&T and Verizon demonstrates that these carriers have not taken the necessary measures to comply.

AT&T's relies on its witness Dr. Aron, to put forward a theory that larger companies face "diseconomies of scale" associated with compliance. This is not an argument that the standard itself is flawed. Moreover, as discussed above, and as discussed extensively in TURN witness Dr. Roycroft's March 31, 2012 Reply Declaration, the performance of AT&T and Verizon in segments of their business where they face higher levels of competition shows that these carriers are capable of providing rapid service restoration—including for business customers who are

[9] AT&T Opening Comments at p. 17.

served over legacy copper facilities.[10] Dr. Roycroft again refuted Dr. Aron's theories in his November 13, 2014 Reply Declaration.[11]

Joint Consumers have shown that compliance is possible with proper dedication by a carrier. Ultimately, the performance of these companies with regard to metrics such as OOS restoration depends on dispatch priorities and the availability of sufficient staff.[12] As noted by CWA in its March 30, 2015 Comments:

> . . .[T]here is a direct connection between staffing and service quality issues. Currently, the carriers do not employ enough qualified technicians to perform all the work required to meet minimum service quality standards. The carriers have been steadily downsizing for five years. Indeed, AT&T has reduced its number of employees in occupations represented by CWA by 35% since 2006 and Verizon by 49%. It is not surprising that service quality has suffered as a result.[13]

Failure to comply is evidence that carriers are not dedicating sufficient resources to restoring service following an outage. Given the continuing refusal of these companies to commit sufficient resources to ensure that high-quality service is provided to consumers, the Staff Proposal appropriately introduces economic incentives for compliance.

E. AT&T's Arguments Regarding Mean Time to Repair (MTTR) Have No Merit.

As was the case with earlier filings, AT&T raises the issue of mean time to repair (MTTR), and alleges again that the current OOS standard of 90% restored within 24 hours is at

[10] Roycroft January 31, 2012 Declaration, ¶¶86-91.
[11] "To prepare this Reply Declaration I have reviewed the September 2014 Staff Report and the opening comments filed by various parties in response to the Assigned Commissioner's Amended Scoping Memo and Ruling. AT&T's Comments include a supporting declaration from Dr. Debra Aron. Dr. Aron also filed a Declaration in this proceeding on January 31, 2012. My review of Dr. Aron's 2014 Declaration finds that it covers much of the same ground that was addressed in her 2012 Declaration. As a result, my 2012 Reply Declaration addresses many issues that Dr. Aron raises in her new declaration." (Roycroft Reply Declaration, November 13, 2014, ¶1, footnotes omitted.)
[12] *Id.* and Roycroft Reply Declaration, March 31, 2012, ¶¶111-112.
[13] CWA Opening Comments at p. 3.

odds with previous standards, and would require at MTTR of 8-12 hours.[14] AT&T points to Dr. Aron's 2014 Declaration, which restates arguments that Dr. Aron had previously advanced in 2012.[15] Dr. Aron argues that larger carriers have a disadvantage in meeting OOS restoration times.[16] She states that for AT&T to meet the Commission's OOS restoration standard, that AT&T would have to reduce OOS restoration, the "mean time to repair" (MTTR), well below 24 hours—she projects that AT&T would have to achieve MTTR between 11 and 13 hours.[17]

While Dr. Aron's projection may seem to suggest an insurmountable obstacle for AT&T, there is no question that other carriers are capable of delivering MTTR in similar intervals. For example, Dr. Roycroft pointed out that SureWest had MTTR of 12.75 hours.[18] However, Dr. Aron also argues that AT&T faces a natural disadvantage in restoring OOS conditions, which makes the Commission's OOS restoration standard inefficient. As TURN[19] has previously discussed, Dr. Aron's conclusion regarding natural disadvantages faced by AT&T is based on a flawed regression analysis, which was discussed in detail in Dr. Roycroft's 2012 declaration.[20] Dr. Roycroft also demonstrated in his reply declaration that where it suits AT&T (in markets where it faces competition), it regularly restores service in 24 hours or less, as do other carriers. While Dr. Aron argues that it would be undesirable to require a larger carrier to deliver MTTR

[14] AT&T Opening Comments, p. 6.
[15] AT&T cites Dr. Aron's 2014 Declaration at ¶67. This portion of Dr. Aron's 2014 Declaration is identical to her 2012 Declaration, ¶84-85.
[16] Aron 2014 Declaration, ¶54, Aron 2012 Declaration, ¶¶84-85.
[17] Aron Declaration, ¶84.
[18] SureWest 4th Quarter 2011 service quality report.
[19] Throughout this proceeding, the groups filing here as Joint Consumers have filed joint documents in various combinations; in the 2012 comments that included the declaration of Dr. Roycroft, TURN was joined by CforAT and the National Consumer Law Center. While Dr. Roycroft is correctly referred to as TURN's witness, the various consumer groups collectively support his evidence.
[20] Roycroft 2012 Reply Declaration, ¶¶113-128.

between 11 and 13 hours, Dr. Roycroft pointed out that large carriers regularly deliver MTTR at levels which AT&T and Dr. Aron assert are impossible.[21]

It is also notable that in her 2012 declaration, AT&T witness Ms. Farrell discussed AT&T's efforts to meet the GO 133-C OOS restoration standard. While Ms. Farrell pointed to AT&T making progress with regard to the Commission's objective, she concluded that "despite all of the strategies and additional resources that AT&T has dedicated to this measurement, it has been unable to achieve the GO 133-C standard."[22] Dr. Roycroft explained, however, that there was one strategy that AT&T had not pursued with regard to meeting the OOS restoration standard. AT&T has not hired a single additional full-time installation or repair employee to meet any GO 133-C standard.[23] As discussed in CWA's March 30, 2015 opening comments, AT&T and Verizon continue to downsize the number of technicians who are responsible for maintaining outside plant.[24] Thus, AT&T's renewed statements to the effect that OOS restoration in 24 hours or less is not reasonable are based on that company's ongoing reductions in service personnel.

F. Service Quality Set at "Market-Based" Levels is Insufficient to Meet the Statutory Requirement to Provide Reliable Service to Retail Customers.

1. Uneven Competition Fosters Uneven Service Quality

Verizon raises testimony that was filed by that company in 2012 regarding the role of competition in governing service quality, and Verizon asserts that competitive markets "produce the optimal level of service quality."[25] Joint Consumers do not dispute that competition, where it

[21] Roycroft 2012 Reply Declaration, ¶79.
[22] Farrell 2012 Declaration, ¶11.
[23] Roycroft 2012 Reply Declaration, ¶111, citing AT&T response to TURN Set 5, request 5-33. Ms. Farrell presented information on AT&T West Region core installation and maintenance personnel, stated on a "per 10k access line" basis.
[24] CWA Opening Comments at p. 3.
[25] Verizon Opening Comments at p. 5.

exists, is capable of leading to high levels of service quality. For example, in the enterprise market, where large business customers face numerous choices from facilities-based providers capable of delivering the same technology platform, carriers like Verizon are compelled to deliver high quality service, including rapid service restoration. For Verizon's Internet Dedicated Services, Verizon commits to a four (4) hour time-to-repair (TTR):

> TTR Service Level Standard Scope. Calculation of Customer's TTR Service Level will be based on the time taken to restore service to a circuit following an event that results in the outage of a circuit. The TTR Service Level Standard for Internet Dedicated Services is *4 hours*. The TTR time starts when a trouble ticket is opened by Verizon or the Customer after the outage of a circuit other than for outages associated with the exceptions stated below, and concludes with the restoration of the affected circuit.[26]

Thus, where Verizon faces competition, it is capable of delivering high levels of service quality. And while the above example relates to Verizon's enterprise-oriented services TURN's witness Dr. Roycroft provided evidence that Verizon was also capable of delivering high levels of service quality associated with services offered over copper facilities to business customers, or delivered over fiber to residential FiOS customers.[27]

Dr. Roycroft previously addressed Verizon's now-reasserted claim that existing levels of competition will inevitably deliver the appropriate levels of service quality. As was discussed in detail in TURN's 2012 filings, Verizon and AT&T discriminate against customers served by legacy facilities.[28] This discrimination is a result of uneven competition, which is reflected in the carrier's investment decisions.[29] AT&T and Verizon prioritize better service quality for those consumers that reside in areas where the carriers have upgraded their facilities, and for those customers who subscribe to the advanced services. Those customers who live in the "wrong"

[26] http://www.verizonenterprise.com/terms/us/products/internet/sla/
[27] Roycroft Reply Declaration, March 31, 2012, ¶110.
[28] Roycroft Declaration, January 31, 2012, ¶¶34-38.
[29] Roycroft Declaration, January 31, 2012, ¶¶11-18.

location (i.e., areas where the URF carriers have not deployed advanced network facilities), or who make the "wrong" choice by not purchasing the advanced service offerings, must make due with inferior service quality.[30] Yet this outcome is not inevitable, and is not linked to the actual facilities providing service. Dr. Roycroft presented evidence, based on discovery responses from Verizon, showing that Verizon is capable of delivering far superior OOS restoration times to business customers served over legacy facilities, clearly indicating the impact of competition on service quality performance, and also illustrating the lack of competition for residential customers that continue to be served over legacy facilities.[31] These facts indicate that large carriers like AT&T and Verizon are capable of delivering a much higher level of OOS restoration than the level that they offers residential customers served on their legacy platforms.

2. Not All Services Are Genuinely Competitive

As has been noted in a review of competition in the context of the pending proposal to merge Comcast and Time Warner Cable, a customer's competitive options the day before he or she obtains service from a carrier are not the same as the options once service is initiated, due to contracts, cancellation fees, and the general difficulty of changing services. While not all of these factors apply in every circumstance, for the average residential customer, the process of changing services is sufficiently burdensome that the market is not an adequate cure-all.[32]

3. Some Vulnerable Customers Need More Protection than the Market will Provide

Carriers argue that any level of service quality set by a competitive market somehow will be the optimal level, but some customers, even in a competitive market, need greater protection; this is particularly true where service quality implicates important issues of public safety. For

[30] Roycroft Declaration, January 31, 2012, ¶70.
[31] Roycroft Reply Declaration, March 31, 2012, ¶110.
[32] Greenlining Opening Comments on OIR at pp. 8-11.

service quality, and particularly reliability, market levels (even if the market were truly competitive) may not be sufficient.

This is particularly the case for vulnerable customers who rely on continuously-available access to the telecommunications network for safety. For example, many seniors and telecommunications customers with disabilities are only able to live independently because they can count on the idea that assistance in an emergency is just a phone call away. For these customers, any amount of time in which they do not have network access places them at direct risk, even more than for other customers. This fact, in conjunction with the fact that such 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.[33]

The Commission's role is to ensure that service quality meets the needs of all telecommunication customers, not just those whose service needs are average. The market may be effective in meeting average needs, but 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.

[33] See, e.g. AT&T Opening Comments at p. 3 (using the fact that fewer customers now rely solely on wireline service to argue that the consequences of service outages are less significant, without recognizing the potential severity of consequences for those vulnerable customers who still do rely solely on wireline telecommunications); *Id.* at p. 10 (noting the "greatly reduced" but not nonexistent segment of consumers who rely on residential wireline service); CCTA Opening Comments at p. 4; Verizon Opening Comments at p. 6, note 12.

4. AT&T's "Ever-Shrinking" Slice Argument Misses the Mark.

AT&T states that imposing standards on a "small (and ever-shrinking) slice of the communications marketplace will distort competition.[34] Similarly, Verizon, pointing to the decrease in ILEC switch access lines, states that the industry has undergone a "significant transformation," that make the proposed standards uncalled for.[35] As discussed above, a significant number of Californians continue to rely on legacy services, including many of the most vulnerable customers. Ensuring that those consumers receive high quality services is essential for public safety.[36] However, the carriers' criticism misses the mark for yet another reason; the Staff Proposal appropriately expands the scope of reporting to include interconnected VoIP services. By extending reporting requirements to interconnected VoIP providers, any potential distortion of the market is avoided, and the Staff Proposal takes an appropriately forward-looking perspective that enables the Commission's timely collection of data on service performance for the growing VoIP technology.

G. Penalties for Failure to Meet Standards are Appropriate

1. Rebuttal to Verizon's Arguments Regarding Service Quality Penalties

Verizon reasserts arguments made by its witness Dr. Eisenach regarding service quality penalties, namely, that service quality penalties have no impact on service quality.[37] However, this evidence was previously rebutted by TURN witness Dr. Roycroft, demonstrated that when faced with service quality penalties, carriers respond in both the business and residential market with higher levels of service.[38] Verizon also states that penalty mechanisms are "anachronistic in

[34] AT&T Opening Comments at p. 1.
[35] Verizon Opening Comments at p. 1.
[36] Staff Report, September 2014, p. 26.
[37] Verizon Opening Comments at p. 8.
[38] Roycroft Reply Declaration, March 31, 2012, ¶¶76-80 and ¶133.

today's competitive marketplace."[39] However, as discussed in Dr. Roycroft's 2012 Declaration, carriers like AT&T and Verizon regularly agree to pay compensation when service is substandard, specifically in markets with higher levels of competition.[40] Joint Consumers have identified examples showing that penalties continue to be part of service guarantees today.[41]

2. AT&T's Arguments Regarding Alleged "Flaws" in Staff's Proposed Penalty Mechanism Have No Merit.

AT&T alleges that the Staff Report provides "no justification for concluding that penalties are needed to incent improved performance. Joint Consumers presume that staff has considered the substantial evidence previously provided by Dr. Roycroft, showing, among other factors, the impact of penalty mechanisms on the performance of firms operating in markets that are more competitive, as well as regulated AT&T operations in other states.[42] As noted above, Dr. Roycroft has also pointed to the use of self-enforcing penalty mechanisms in markets where competition is present, through service level agreements.[43]

The Staff Report's recommendation to consider a penalty/incentive mechanism is appropriate given the ongoing OOS restoration problems exhibited by California's two largest ILECs. While Dr. Aron criticizes this recommendation and argues that: "CD Staff has provided no evidence that automatic penalties have any statistically measurable effect on any service quality metric in the states where they exist," she ignores the reality of competitive markets and basic economics. Penalties for performance failure do in fact work, which is precisely the reason

[39] Verizon Opening Comments at p. 9.
[40] Roycroft Reply Declaration, March 31, 2012, ¶¶78-79.
[41] See, for example, https://www22.verizon.com/wholesale/solutions/solution/OHS.html which specifies a refund of one month's charges for any outage that is not restored in one hour.
[42] For TURN's previous evidence, see Dr. Roycroft's January 31, 2012 Declaration; Dr. Roycroft's March 31, 2012 Reply Declaration; and Dr. Roycroft's November 13, 2014 Reply Declaration.
[43] Roycroft Reply Declaration, March 31, 2012, ¶¶76-80.

that service level agreements offered by AT&T and Verizon to business and wholesale customers include monetary penalties for performance shortfalls.[44]

Externally applied penalties ara also effective. Dr. Roycroft previously discussed the response of AT&T Illinois to service quality penalties, i.e., given penalty mechanisms, AT&T Illinois performance exceeds that of AT&T California.[45]

AT&T finds fault with the penalty methodology in the Staff Proposal, arguing that staff overlooked the extreme weather activity associated with extended outages that occurred in late 2010 and early 2011. However, AT&T fails to appreciate that the proposed penalty mechanism is designed to forgive non-compliance over limited periods of time. Because the Staff Proposal includes no penalty for non-compliance for 1-2 consecutive months, carriers have the opportunity to recover from unique events without triggering further action.

3. AT&T's Arguments Opposing the Penalty Mechanism Are Based on Faulty Assumptions.

In Section V of their Opening Comments, AT&T asks the Commission to make several egregious mistakes in order to reach the carrier's preferred conclusions.[46] First, AT&T's discussion of the purported flaws in the penalty mechanism asks the Commission to accept AT&T's distorted perspective of the penalty mechanism itself—in fact, the Staff Proposal forgives short-term non-compliance which might be associated with unique circumstances, such as adverse weather. Next, AT&T asks that the Commission ignore the extensive evidence that has been presented regarding AT&T and Verizon's ability to provide high-quality service where they face higher levels of competition. Only by ignoring that evidence could the Commission arrive at the erroneous conclusion that these carriers face "diseconomies" relating to compliance.

[44] Roycroft Reply Declaration, November 13, 2014, ¶15.
[45] Roycroft Reply Declaration, March 31, 2012, ¶133.
[46] AT&T Opening Comments at pp. 17-21.

Finally, AT&T asks the Commission to ignore actions taken by AT&T and Verizon with regard to staffing that all but ensure that dispatch priorities will fail to deliver adequate OOS restoration to basic service customers who are not served on these carriers' advanced service platforms. The Commission should not accept AT&T's argument regarding alleged flaws in the penalty methodology contained in the Staff Proposal. Rather, the Commission should accept that the proposed penalty mechanism will provide a balanced and appropriate set of incentives that will result in improved performance.

4. The Commission Should Adopt CALTEL's Recommendations Regarding Fines.

CALTEL recommends 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."[47] Joint Consumers agree. CLECs should not pay the price for ILECs' failures to meet service quality standards.

III. RESPONSE TO LEGAL ARGUMENTS

A. The Commission Has the Authority to Impose Service Quality Rules

Cox, among other carriers, argues that Public Utilities Code Section 710 prohibits the Commission from imposing service quality rules, including reporting requirements, on VoIP carriers.[48] "In any event, subjecting any service quality rules (including outage reports) on any facilities-based VoIP service provider is unlawful and contravenes the express restrictions of Public Utilities Code Section 710."[49] These arguments fail to acknowledge the Commission's authority under Section 706 of the 1996 Telecommunications Act. Given this authority, Cox's attempt to draw a distinction between the Commission's ability to "monitor" VoIP services and

[47] CALTEL Opening Comments at p. 5.
[48] Cox Opening Comments at p. 7.
[49] CCTA Opening Comments at p. 3.

the Commission's ability to "track and report" or "track and collect" information regarding VoIP services is irrelevant.

1. The Commission Has the Authority to Impose Service Quality Rules for for VoIP Service Under Public Utilities Code section 710, Subdivision (a).

Section 710 of the Public Utilities Code gives the Commission jurisdiction and control over IP-enabled services when that jurisdiction or control is "required or expressly delegated by federal law."[50] As noted by Joint Consumers in their reply comments on the Amended Scoping Memo:

> *Verizon v. FCC*, 740 F.3d 623, 638 (D.C. Cir. 2014) addressed Section 706(a) of the 1996 Telecommunications Act (Section 706) concerning advanced telecommunications incentives. In that case, the D.C. Circuit determined that Section 706 was a grant of authority to the FCC **and to state commissions** to take concrete steps that promote competition in broadband.[51] The court found that that Congress, in passing the 1996 Telecommunications Act, most likely relied on the FCC's continued oversight of broadband facilities.[52] "[T]he legislative history suggests that Congress may have, somewhat presciently, viewed that provision [Section 706(a)] as an affirmative grant of authority to the Commission whose existence would become necessary **if other contemplated grants of statutory authority were unavailable**."[53] The Court also quoted a Senate Report's description of section 706 as a "'necessary fail-safe' 'intended to ensure that one of the primary objectives of the [Act]--to accelerate deployment of advanced telecommunications capability—is achieved.'"[54] Thus, *Verizon* underscores the fact that Section 706 expressly delegates authority to the states to take concrete steps that will promote broadband competition. While Appellants contended that "Congress would not be expected to grant both the FCC and state commissions the regulatory authority to encourage the deployment of advanced telecommunications capabilities," the court reasoned that "Congress has granted

[50] Pub. Util. Code § 710, subd. (a).
[51] 740 F.3d at 637-640.
[52] "To the contrary, … when Congress passed section 706(a) in 1996, it did so against the backdrop of the Commission's long history of subjecting to common carrier regulation the entities that controlled the lastmile facilities over which end users accessed the Internet. Indeed, one might have thought, as the Commission originally concluded, that Congress clearly contemplated that the Commission would continue regulating Internet providers in the manner it had previously." 740 F.3d at 639.
[53] *Id*. (emphasis added).
[54] 740 F.3d at 639 (citation omitted).

> regulatory authority to state telecommunications commissions on other occasions, and we see no reason to think that it could not have done the same here."[55]

The CPUC may invoke Section 706 to create technology-neutral rules for all telephone services, including VoIP, because Section 706 does not distinguish between the delegation to the FCC and to state commissions. Accordingly, the CPUC has the authority to promote competition by monitoring market concentration and the state of competition, monitoring broadband service quality and consumer protection and imposing relevant rules if needed; and adopting strong reporting requirements so that states may assist federal agencies in monitoring and promoting the deployment of advanced services.[56]

2. NORS Reports Are The Most Efficient Means for Carriers to Report Data.

Cox also objects to the Staff Proposal's recommendation that the Commission require that VoIP carriers provide the Commission with the NORS reports that interconnected VoIP providers submit to the FCC.[57] As discussed above, Section 706 gives the Commission express authority to collect information about VoIP services in order to monitor and promote the deployment of advanced services. Even if Cox is correct, and the Commission cannot require carriers to submit their NORS reports, the Commission has authority under Section 710(f) to order carriers to provide the **data** contained in those NORS reports. Given this fact, it appears that the most efficient method for the Commission to collect that data is by obtaining copies of the carriers' NORS reports, rather than requiring carriers to provide the same data in some other format.

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[55] *Id*.
[56] *Id*.
[57] Cox Opening Comments at pp. 7-8.

B. AT&T's "Arbitrary and Capricious" Argument

AT&T asserts that the Commission has not "adequately considered all relevant factors," thus arguing that the Staff Proposal is "arbitrary and capricious."[58] Joint Consumers strongly disagree with AT&T on this matter. The record in this proceeding is extensive. The Commission has had the opportunity to review substantial amounts of data regarding ILEC operations, some of which clearly demonstrates that the state's two largest ILECs have not been in compliance with performance standards which other ILECs in the state meet on a regular basis.[59] While AT&T and Verizon have attempted to explain away this performance shortfall with theory of "diseconomies of scale," TURN witness Dr. Roycroft has demonstrated that the service quality performance of these firms will reflect management decisions; Dr. Roycroft also clearly illustrated with data from the carriers themselves that they are showed they were capable of delivering high levels of service performance for both business customers served over legacy facilities, and all customers served on the carrier's next generation platforms.[60] Of course, in addition to the evidence presented by Dr . Roycroft, the Commission also has its own collected data showing incontrovertible evidence of non-compliance by Verizon and AT&T with the Commission's OOS restoration standards, as well as the Staff Report, which explores the data further, and evaluates practices in other states. Overall, the extensive record in this proceeding provides a strong foundation on which to adopt the Staff Proposal's recommended service quality standards and penalties.

[58] AT&T Opening Comments at p. 2.
[59] *See, e.g.,* Staff Report, September 2014, pp. 2-3.
[60] Roycroft Declaration, January 31, 2012, ¶¶32-38.

C. AT&T's Allegation of "Unlawful" Penalties

AT&T advances an argument that the Staff Proposal violates the law because it proposes daily fines for failure to meet GO 133-C's monthly standards,.[61] In making this argument, AT&T ignores the very clear discussion and examples provided in the Staff Report. The Staff Report explicitly establishes the daily penalties will be applied on a monthly basis, thus avoiding any conflict. Additionally, it is important to note that the carriers are given ample leeway with regard to compliance. The Staff Proposal recommends that no penalty be assessed for violation of 1-2 consecutive months, and sets penalties beginning with violations lasting at least three months, then escalating based on both the number of consecutive months where non-compliance is observed, and for the duration of outages.[62] This mechanism would provide appropriate performance incentives, as it permits brief periods of non-compliance, such as that might arise due to unique problems (for example, to temporary factors such as extreme weather), while establishing a backstop penalty mechanism for the type of year-over-year noncompliance that has been observed for AT&T and Verizon.

IV. REPORTING REQUIREMENTS ARE APPROPRIATE

All of the carriers express various concerns about increased reporting, but reporting on service quality is necessary to ensure that adequate service is provided along the designated metrics and to allow the enforcement mechanisms to be implemented if necessary. While Joint Consumers support increased reporting, we recognize that it may be appropriate to allow carriers with a history of compliance to provide data less frequently as those with a history of non-compliance. In its Opening Comments, Cox suggests an incentive mechanism that would allow reduced reporting for carriers that meet the Commission's service quality metrics for a period of

[61] AT&T Opening Comments at p. 8.
[62] Staff Report, September 2014, p. A-8.

two consecutive years.[63] Joint Consumers generally support the idea of an incentive mechanism for carriers that comply with the Commission's service quality metrics. However, we oppose any rules which would relieve carriers from their obligation to provide service quality data to the Commission. Joint Consumers are open to a discussion regarding reduced frequency of data reporting. For example, the Commission could permit carriers that meet all of the service quality metrics for 8 consecutive quarters to report their data annually rather than quarterly.

V. PARTY COMMENTS SUPPORT THE NEED FOR AN EXAMINATION OF CARRIER FACILITIES

CALTEL notes that it "remains disappointed that the previously-ordered physical infrastructure evaluation was never implemented by Commission staff, and now has apparently been discarded with little explanation or consideration of due process."[64] Joint Consumers share this disappointment. As CWA points out, the Verizon and AT&T facilities are often in terrible condition, and the record in this proceeding provides extensive evidence that both Verizon and AT&T are allowing their facilities to deteriorate.[65] The recent photos of poorly maintained AT&T plant confirm that the Commission should not delay any further in implementing the investigation ordered in D.13-02-023.[66] As noted in Joint Consumers Opening Comments on the Staff Proposal, the infrastructure evaluation is long-overdue, and the Commission should undertake the evaluation immediately.

VI. CONCLUSION

As set forth above and in our opening comments, Joint Consumers continue to support the Staff Proposal's recommendations, particularly with regard to the applicability of the requirements, refunds and fines, and reporting requirements. Joint Consumers request that the

[63] Cox Opening Comments at p. 26.
[64] CALTEL Opening Comments at p. 1.
[65] CWA Opening Comments, p. 3-4.
[66] *Id.* at Attachment A.

recommendations be adopted with the modifications proposed, and that the Commission move forward with its previously ordered and long-delayed examination of provider facilities.

Respectfully submitted,

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