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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)

VERIZON CALIFORNIA INC.'S (U 1002 C) REPLY COMMENTS ON STAFF'S PROPOSAL TO MODIFY GENERAL ORDER 133-C

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Pursuant to the Assigned Administrative Law Judge's Ruling dated February 2, 2015, Verizon California Inc. (U-1002-C) ("Verizon") files these Reply Comments on the Communications Division Staff Proposed Modification to General Order 133-C ("Staff Proposal" or "Proposal").

INTRODUCTION

The comments filed by ORA, Joint Consumers,[1] CALTEL, and CWA all *assume* that the current, monopoly-era service quality standards are appropriate and, based on this assumption, argue that the Commission should conduct an audit of Verizon's and AT&T's network and support Staff's Proposal for a modified reporting regime and the imposition of automatic penalties and refunds. Despite explaining how competition has transformed voice communications in California such that customers predominantly and increasingly use wireless and VoIP telephone service, ORA would also have the Commission adopt a much more extensive and burdensome service quality reporting regime on all wireline carriers than Staff proposed, and it would extend these and monopoly-era quality standards onto wireless and VoIP providers. ORA, however, fails to demonstrate a need for its proposals, or that adoption of any of them has a connection to improved service quality. ORA's Orwellian proposals should be rejected.

In light of the highly competitive communications market and for the reasons discussed below, the Commission should also reject CALTEL, CWA and the Joint Consumers' continued calls for heavy-handed service quality regulation.

[1] The Joint Consumers' Opening Comments were submitted jointly by the Center for Accessible Technology, Greenlining and TURN.

DISCUSSION

I. THE COMMISSION SHOULD NOT CONDUCT A STUDY OF NETWORK FACILITIES

ORA, CALTEL, CWA and Joint Consumers urge the Commission to conduct the infrastructure study described in the September 2012 Scoping Memo. The Commission should reject this request.

To begin, there is no demonstrated need for a study. The only specific example cited in the September 2012 Scoping Ruling, which was the genesis of the study, is the severe winter storms of 2010–11 that caused "widespread services outages" in Southern California.[2] But Verizon explained that over 97% of its customers actually experienced no trouble whatsoever during this period; and AT&T has reported similar results.[3] Moreover, Commission Staff has taken extensive discovery on Verizon's and AT&T's performance during this period. No meaningful additional information can be gleaned from a special study of AT&T's and Verizon's facilities, especially in light of the discovery taken or that could be taken. It is thus entirely unnecessary to hire an independent contractor to conduct a study to obtain such information.

Moreover, the Commission can eliminate or adopt revised standards without such a study. Indeed, an infrastructure study cannot provide information useful to a determination of the adequacy of the existing service quality metrics or generic rules that apply to all carriers. A study of the physical condition of network facilities using technical engineering standards may, for example, find problems with a particular cable

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2 September 2012 Scoping Memo at 3.

3 *See* Verizon's January 31, 2012 Opening Comments on Order Instituting Rulemaking at 27, footnote 63, *citing* Verizon's G.O. 133-C Report (troubles per 100 lines) for January 2011; se also AT&T's February 19, 2013 Opening Comments at 1-2 (reporting an average in-service rate of better than 99.5%.)

run in Verizon or AT&T's network, but this information says very little about customer service quality. Instead, the Commission should eliminate or adopt revised metrics before undertaking a costly infrastructure study because elimination or adoption of revised metrics may show that a study is unnecessary.

As Verizon has previously explained, a strong indicator of network health is the level of trouble reports.[4] Verizon reports fewer troubles than the GO-133C standard. For example, in 2014, Verizon's monthly trouble rate ranged from .8 to 1.7 per 100 lines, far below the 6 in 100 line standard in GO-133C and AT&T reports a healthy network too.[5] An infrastructure study—which takes only a snapshot of the network at one period of time—cannot provide better information of the state of the network than customers' reports of trouble.

In sum, there is no need to conduct an infrastructure study of AT&T's and Verizon's networks to address whether to eliminate or revise generic standards applicable to all carriers.

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[4] 2012 Verizon Reply Comments at 23 ("In fact, carriers are already required to provide monthly Trouble Report data to the Commission under today's rules — data which DRA concedes provides a 'strong indicator of the health of the telephone network.' Hence DRA's assertion that the Commission has "no knowledge" of wireline network reliability is nothing more than baseless hyperbole which DRA's own comments contradict. Nor is there any need for an audit to uncover 'exchanges with possible service problems [that] are hidden by system-wide averages,' as DRA suggests, since carriers are already required to report monthly Trouble Reports on an exchange or wire center basis, whichever is smaller, under G.O. 133C today. This data provides the Commission with ample information to monitor the reliability of the wireline network without the need for a costly audit." (footnotes omitted)).

[5] *See* http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/Telecommunications+Service+Quality+Reports.htm.

II. THE COMMISSION SHOULDN'T ADDRESS AUTOMATIC PENALTIES UNTIL THE FIRST AND MOST IMPORTANT STEP—REVISED METRICS—HAS BEEN COMPLETED

Regulatory proponents continue to advocate for penalties and automatic refunds, despite the lack of any evidence that automatic penalties or refunds[6] can result in improved service quality. Verizon has demonstrated repeatedly that there is no causal connection between penalties and improved service quality. As noted in opening, Verizon California service quality is better in California than in two other states which impose penalties.[7]

More importantly, imposing penalties without first considering revising existing unreasonable metrics prejudges the outcome of the threshold issue in this proceeding. The Commission should not address automatic penalties until the first and most important step—revised metrics—has been completed.

III. ORA'S PROPOSALS SHOULD BE DENIED, AS THEY ARE INCONSISTENT WITH CALIFORNIA'S POLICY TO REDUCE REGULATION IN RELIANCE ON COMPETITION

ORA makes clear its desire for the Commission to regulate all communication providers and technologies, including wireless and VoIP. It also urges the Commission to establish additional and more onerous reporting requirements. As Verizon has explained in its previous comments, these proposals to regulate all providers and all technologies, including the Internet, are unlawful and contrary to California's pro-competitive and pro-investment policies. The Commission must reject them here.

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[6] In opening comments, Verizon stated that it provides automatic refunds pursuant to Tariff Rule 26. In fact, Verizon provides automatic refunds for out-of-service conditions but not pursuant to Tariff Rule 26.

[7] Verizon Opening Comments at 9.

ORA tries to make the case that because there is intense competition and consumers have fled landline service to wireless and VoIP,[8] the Commission should extensively regulate wireless and VoIP service quality. But this "regulate because there is competition" conclusion is contrary to logic and exactly the opposite conclusion that CA law and policy dictates. First, as Verizon explained in opening comments, this Commission has long recognized that "[a]s competitive markets evolve … traditional economic regulation should recede,"[9] and over the past twenty years the Commission has reduced the regulation of incumbent local exchange carriers ("ILECs") given the emergence and continued growth of competition.[10] Competitive markets, by promoting product and service differentiation, "produce the optimal level of service quality" and give consumers greater choices.[11] Carriers have every incentive to deliver excellent service quality for all their customers because the penalty for not doing so is the loss of customers to competitors. Despite the success of wireless and VoIP service as a result of no or light regulation on these technologies, ORA would extend onto wireless and VoIP heavy-handed and extensive regulation. ORA in effect asks the Commission to substitute its choice (more regulatory requirements) for those of consumers (voting with their feet).

ORA's proposal to regulate all technologies is also harmful to consumer welfare because, as Verizon and AT&T experts have explained, service quality regulations cause carriers to deviate from the service consumers value. This often results in increased

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[8] *See* ORA Opening Comments at 21-25.

[9] D.94-09-065, 56 Cal. PUC 2d 117, at Conclusion of Law 2.

[10] *See, e.g.,* D.06-08-030, adopting the Uniform Regulatory Framework, eliminating many vestiges of monopoly regulation.

[11] *See* Eisenach Declaration (at ¶¶ 7-25) attached to Verizon's 2012 Opening Comments in this docket.

prices to achieve standards consumers do not value while inducing carriers to operate inefficiently.[12]

IV. ORA'S FACTUAL STATEMENTS RELATED TO THE PUBLIC SAFETY RISKS ARE MISLEADING

ORA interposes a safety argument for expanding service quality requirements on wireline carriers and imposing them on wireless and VoIP providers. Noting that "there are more than 40 million subscriptions to wireless and VoIP services in California,"[13] ORA argues that extreme and vibrant competition has put "[p]ublic safety and consumer protection . . . at risk." But ORA's factual support for the proposition that safety is at risk does not hold up to scrutiny. Indeed, it appears that ORA manipulates the two examples it gives to provide a misleading sense of risk. More importantly, ORA fails to explain how its proposal for extensive new reports and regulations would have prevented in any way the circumstances it describes in those examples.

First, it asserts that in early August 2014 parts of Mendocino County experienced an outage that lasted 45 hours impacting about 17,400 residents. According to ORA, the user minutes affected amounted to 783,000, below the FCC's outage reporting threshold of 900,000, and therefore ORA calls for reporting outages based on a new threshold of 90,000 user minutes. ORA suggests that the August 2014 outage was not reported "to the FCC and the Commission," and that "9-1-1 special facilities" were not notified. ORA goes on to claim that this outage was "exempted from being reported by a traditional wireline [sic], under the current service quality rules as it would have been characterized

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12 *See* Eisenach Declaration at ¶ 94; Aron 2102 Declaration at ¶¶ 14-16.

13 ORA Opening Comments at 23.

as 'circumstances beyond the carrier's control.'"[14] But ORA has it all wrong. *This outage was reported to the FCC and the CPUC by AT&T, the wireline carrier, as the number of user minutes affected well exceed the FCC's threshold*. It also was reported to the FCC, the Office of Emergency Services and the CPUC by Verizon Wireless.

Moreover, the calculation of the wireline reporting threshold is not as ORA states in footnote 77 of its opening comments. ORA claims that the number of affected minutes was 783,000 by using the following formula: 30-minutes outage * 17,400 affected users.[15] But ORA's calculation is simply wrong. A wireline outage affecting 15,000 users (represented by assigned telephone numbers) would be reportable in 60 minutes (15,000 x 60 = 900,000). By ORA's numbers, an outage affecting 17,400 wireline users would have been reportable in under 52 minutes. In other words, the obligation to report was triggered within the first hour of this outage – and in fact, impacted carriers *did report* once the outage reached their applicable FCC-mandated reporting thresholds.

ORA fails to explain in the least how service quality regulations would in any way have avoided this outage or reduced public safety risk. As ORA states, this was a hit and run accident that "took out 400' of aerial AT&T fiber optic cable."[16] How exactly would reporting this type of outage — even if it had been reported instantaneously — have prevented a hit and run accident outside a service provider's control? How exactly would outage reporting in these circumstances reduce public safety risk? ORA has no answer to these questions.

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[14] *Id*. at 24.

[15] *See* ORA Op. Cm. at 24, n. 77. This calculation equates to 522,000. Apparently, ORA multiplied 45 x 17,400, which does equate to 783,000. But the outage lasted 45 hours, which is 2700 minutes (45 x 60).

[16] ORA Opening Comments at 24.

Second, ORA attempts to illustrate why the Commission should impose quality regulations on wireless and VoIP by providing a misleading example related to an April 2014 outage. ORA claims that Americans were at risk of not being able to reach emergency services through dialing 9-1-1 and that about 71% of failed calls were VoIP and wireless, while 29% were wireline calls and thereby pushes for regulating wireless and VoIP service quality. But the April 2014 outage did not occur on wireless or VoIP providers' facilities, and Verizon Business did, in fact, report that outage to the FCC and the Commission. Thus the proposed regulations for wireless and VoIP providers are entirely misdirected. Moreover, ORA has no basis for claiming that its or any other service quality proposals, had they been in place, would have done anything to prevent the purported software coding error that caused the outage.

ORA's two examples of why the Commission should expand service quality requirements on wireline companies and impose them on wireless and VoIP services are unavailing.

Public safety is an important concern that Verizon takes seriously. But nothing in the opening comments demonstrates that increased or more onerous outage reporting can meaningfully improve public safety. 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 same potential public safety considerations as they did years ago."[17] Thus the Commission should not be tempted to

[17] AT&T Opening Comments at 32.

impose burdensome requirements on unproven alleged public safety benefits of service quality proposals without careful examination.

V. ORA'S PROPOSAL TO IMPOSE SERVICE QUALITY METRICS AND REPORTING REQUIREMENTS ON WIRELESS AND VOIP SERVICES SHOULD BE REJECTED

A. THERE SHOULD BE NO REGULATION OF WIRELESS SERVICE QUALITY.

ORA argues that the Commission is obligated to adopt service quality metrics and reporting requirements for wireless carriers, citing to PU Code Section 2896. This is not a new argument. ORA and consumer groups raised similar arguments previously, but the Commission rejected them in Decision 09-07-019,[18] and correctly concluded that no wireless quality standards were needed at that time. In its 2007 comments, for example, TURN argued that the Commission was *required* by the Public Utilities Code to adopt quality standards for wireless carriers.[19] But by declining to adopt wireless quality standards in Decision 09-07-019, the Commission implicitly rejected this argument and should do so again.[20] Public Utilities Code section 2896 requires that carriers provide customer service that includes "reasonable" service quality standards. This section does not require the Commission to mandate service quality standards, and the Commission is well within its authority to determine that it is reasonable to permit market forces to drive wireless quality for consumers.

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[18] D.09-07-019, *mimeo* at 58 ("Accordingly, we decline to adopt TURN's recommendation. Wireless carriers, VoIP and IP-enabled carriers (including cable) are exempt from service quality standards.").

[19] TURN Opening Comments in R.02-12-004 at 2-3 (*citing* Pub. Util. Code §§ 709, 2896, and 2897) (filed May 14, 2007).

[20] D.09-07-019, mimeo at 58 ("Accordingly, we decline to adopt TURN's recommendation. Wireless carriers, VoIP and IP-enabled carriers (including cable) are exempt from service quality standards.").

Indeed, there is no demonstrated need for regulating wireless service quality. The wireless market is highly competitive and wireless carriers compete aggressively based on quality.[21] Providers have built (or lost) their reputations based on service quality. Multiple independent sources already track and report on relative service quality levels.[22] And customers respond, punishing providers who lag on service quality and forcing them to invest to keep pace. This existing and intense competition in the wireless market in California is far more effective in ensuring that providers deliver high service quality to their customers than new regulations.

ORA's proposal to regulate wireless quality is also out of synch with not only the staff proposal upon which this cycle of comments relate, but with each and every staff report submitted in the proceeding and the OIR, none of which propose to regulate wireless quality. In its Proposal, Staff does not propose to regulate wireless service quality at this time and in fact specifically defers consideration of applying to wireless its emergency and disaster reporting proposal to another phase or other proceeding.[23] And with the exception of one general question, the OIR, and the Staff Report attached to the OIR, do not even mention wireless service quality, let alone identifies any problem or

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[21] *See* 2012 Eisenach Declaration at ¶ 104, Figure 21.

[22] J.D. Power & Associates, for example, offers ratings on traditional mobile phones; smartphones; business wireless ratings; non-contract wireless ratings; wireless call quality ratings; wireless customer care ratings; wireless network quality ratings; wireless purchase experience ratings; and wireless retail sales experience ratings. *See* http://www.jdpower.com/telecom. See also, Phone Scoop, http://www.phonescoop.com, Consumer Reports, Root Coverage, a partnership between CNET and Root Wireless offering granular coverage maps, http://www.cnet.com/search/?query=root+wireless, and MyRatePlan, http://www.myrateplan.com/wireless.

[23] *See* Staff Proposal at 8 ("The Emergency and Disaster reporting for wireless providers will be deferred to another phase of this proceeding or a separate future proceeding.").

issue that warrants new regulation on wireless carriers.

Accordingly, there is no basis for the Commission to consider imposing service quality reporting standards on wireless carriers. The Commission should not devote its limited resources to considering ORA's repeated calls to impose new regulations that are unnecessary and potentially harmful to wireless consumers. Needless regulation would only disrupt the ongoing efforts of wireless providers to serve their customers.

B. The Commission Cannot Regulate VoIP.

1. Section 706(a) does not confer jurisdiction to regulate VoIP service quality.

Section 706(a)[24] does not delegate or grant to states authority to regulate VoIP. Although ORA argues otherwise,[25] Section 706(a) provides that "each State commission with Regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely bases of advanced telecommunications capability" by utilizing "price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." But the DC Circuit has held that Section 706(a) is limited. The Court found that Section 706(a) must be read in conjunction with the rest of the Communications Act, and that "any regulations must be designed to achieve a particular purpose: to 'encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.'"[26]

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[24] 47 U.S.C. §1302(a).

[25] ORA Opening Comments at 9-21.

[26] *Verizon v. FCC*, 740 F.3d 623, 640 (D.C. Cir. 2014).

ORA fails to explain how regulating VoIP service quality can reasonably be said to "encourage" advanced telecommunications capability deployment in California or "promote competition." In fact, the opposite is true, as Verizon and others have repeatedly explained. Accordingly, Section 706(a) cannot reasonably be interpreted as conferring state jurisdiction to regulate VoIP service.

Indeed, ORA's call for regulation of VoIP to "promote competition" cannot be reconciled with its explanation of the vibrancy of competition in California in Section IV of its opening comments. ORA explains the "growing trend of California customers subscribing to wireless and VoIP voice services."[27] It notes that "VoIP subscriptions increased three-fold from 2.2 million subscriptions in 2008 to 5.7 million subscriptions in 2013."[28] But this is competition, and it has flourished in the absence of service quality regulation, not because of it. Arguing that imposing service quality regulations in California promotes broadband deployment or competition in light of this competition and phenomenal growth in VoIP subscriptions stretches logic to the snapping point. Moreover, Section 706(a) talks to regulatory forbearance, not the heavy-handed regulatory regime ORA proposes in its comments. In short, Section 706(a) provides no basis for the Commission's exercise of jurisdiction over VoIP service quality.

2. <u>§ 710 prohibits regulation of VoIP.</u>

P.U. Code § 710 prohibits the Commission from regulating interconnected VoIP and IP-enabled services. ORA states that § 710(a) has an exception that allows regulation of IP-enabled services "as required or expressly delegated by federal law."[29]

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27 ORA Opening Comments at 21.

28 *Id*.

29 *Id* at 18.

ORA's argument is that the delegation of authority under Section 706(a) allows the Commission to regulate VoIP. ORA is wrong. As shown above, Section 706(a) does not provide the Commission jurisdiction to regulate VoIP service quality. A general delegation to encourage deployment of advanced services and promote competition is not an express delegation to impose service quality regulations.

ORA also states that VoIP service providers are telephone corporations and, as such, are subject to the full panoply of regulations imposed on wireline companies, including service quality reporting requirements and standards.[30] This too is not a new argument. SED, then CPSD, raised this argument in R.11-01-008. Citing to § 710(a), the Commission rejected CPSD's request to deem VoIP providers as telephone corporations.[31]

In short, the Commission cannot impose service quality requirements on VoIP service because the Legislature has prohibited the Commission from regulating VoIP service under most circumstances, including service quality. [32]

VI. THE COMMISSION SHOULD REJECT CWA'S PROPOSAL TO REQUIRE INCREASED STAFFING LEVELS

The Commission should reject CWA's proposal to create incentive mechanisms to force carriers to increase staffing levels. Like all the proposals of regulatory

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30 *Id*. at 12.

31 Decision 13-02-022 at 3. Public Utilities Code § 710 provides that "[t]he commission *shall not* exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services." The September 2014 Staff Report in this proceeding has it right, "none of the exceptions to § 710 explicitly address the CPUC's jurisdiction over service quality."

32 *See* Communication Division Staff Report on Wireline Service Quality (September 2014) at 21. ORA also claims that § 710(f) is a basis to impose reporting requirements on VoIP. Verizon explained why this is not so in its opening comments (at 13-14).

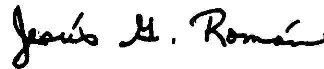
proponents, CWA also presumes existing metrics are reasonable, when they are not. CWA would also have the Commission micromanage carrier personnel decisions, something that to Verizon's knowledge would be unprecedented and could have unintended consequences. CWA's proposal should be rejected.

CONCLUSION

For the foregoing reasons, the Commission should not conduct an infrastructure study and should reject ORA, CALTEL, CWA and the Joint Consumers' continued calls for heavy-handed service quality regulation. Instead, the Commission should adopt Verizon's proposal set forth in its October 24, 2014 opening comments (at 14-15).

April 17, 2015

Respectfully submitted,



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