

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 THE OFFICE OF RATEPAYER ADVOCATES
IN SUPPORT OF ADMINISTRATIVE LAW JUDGE'S RULING
PROPOSING REVISIONS TO GENERAL ORDER 133-D, SECTION 4**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Office of Ratepayer Advocates (“ORA”) hereby replies to industry comments opposing the Administrative Law Judge’s December 29, 2015 Ruling (“ALJ Ruling”).

The ALJ Ruling properly references Pub. Util. Code section 285¹ to define which interconnected VoIP providers will be required to provide the Commission with copies of their Network Outage Reporting System (“NORS”) reports, reports they are already submitting to the Federal Communications Commission (“FCC”). NORS reports detail communications service disruptions and obtaining this information “is essential to the FCC’s goal of ensuring the reliability and security of the nation’s communications infrastructure,” which mirrors this Commission’s charge with regard to the California telecommunications network.² Public safety is at stake, and, it is the reason why both the FCC and this Commission need NORS Reports from *all* providers who offer service utilizing the telecommunications network, including interconnected VoIP, traditional wireline, and wireless providers.

Contrary to industry comments, Pub. Util. Code section 710 does not shield interconnected VoIP providers from service quality reporting requirements; the Commission has multiple jurisdictional bases to obtain, *directly from an interconnected VoIP provider*, information about its VoIP service. First, section 710 (f) expressly authorizes the Commission “to continue to monitor and discuss VoIP services,”³ and obtaining NORS data falls squarely within this authority. NORS reports provide the

¹ Pub. Util. Code § 285 is not the jurisdictional basis upon which the Commission would apply service quality reporting requirements to interconnected VoIP service providers. This section mandates the Commission to require interconnected VoIP service providers to collect and remit surcharges on their intrastate revenue to fund six of the state’s public purpose programs. The Commission’s authority to adopt the ALJ Ruling’s proposed reporting requirements for interconnected VoIP providers is explained in this Reply. All section references are to the Pub. Util. Code unless otherwise stated.

² See e.g., §§ 451, 709, and 2896.

³ § 710 (f) states in relevant part: “(f) This section does not limit the commission’s ability to continue to monitor and discuss VoIP services....”

Commission the data it needs to monitor the quality and reliability of VoIP service. Absent section 710(f), a second path forward is for the Commission to conclude, as it had tentatively done before, that interconnected VoIP providers are public utility telephone corporations.⁴ The Commission has broad authority to obtain data from public utilities (e.g., section 314). Further, nothing in section 710 alters or affects the Commission’s obligation and authority “to require telephone corporations to provide customer service to telecommunication[s] customers that includes, but is not limited to...reasonable statewide service quality standards, including but not limited to, standards regarding network technical quality, customer service, installation, repair, and billing.”⁵

The third path, which parties have extensively briefed,⁶ is for the Commission to exercise its delegated authority pursuant to federal law, Section 706(a) of the federal Telecommunications Act of 1996. This approach is consistent with Pub. Util. Code section 710 because the prohibitions in section 710(a) and (b), which prohibit the Commission from exercising regulatory jurisdiction or control over VoIP and IP enabled services, do not apply when such authority is “expressly delegated by federal law.”

Any one of these three approaches more than adequately justifies the public safety approach taken by the ALJ Ruling; all three together make that conclusion unavoidable.

II. ALJ RULING – THE PROPOSED MAJOR SERVICE OUTAGE REPORTING REQUIREMENTS

The ALJ Ruling specifically proposes to revise only the “Applicability” provision of General Order (G.O.) 133-D. G.O. 133-D, as originally proposed, states: “a. Applicability. – Applies to all facilities-based, certificated, and registered public utility

⁴ See Order Instituting Rulemaking 11-01-008, at 27.

⁵ Pub. Util. Code § 2896(c).

⁶ See e.g., ORA Comments on CD’s February 2015 Proposal (3/30/15), at 9-20; Joint Consumer Comments (12/2/15), at 2-3; Reply Comments of Joint Consumers on Amended Scoping Memo, [inadvertently submitted with a caption of Reply Comments on the Staff Proposal] (11/13/14), at 2-5; Reply Comments of Joint Consumers on ALJ Ruling on Staff Proposal (4/17/15), at 15-17. Joint Consumers are the Center for Accessible Technology, the Greenlining Institute and The Utility Reform Network.

telephone corporations, including facilities-based wireline telephone corporations and facilities-based VoIP providers, that have been granted a CPCN and have been designated as either as an ETC in California, a California Lifeline provider, or both which are providing service within the State of California.”⁷ Parties filed comments and reply comments on this provision in early December 2015.

The ALJ Ruling would expand the “Applicability” of Major Service Interruption reporting to all *interconnected* VoIP providers, including those which do not have a CPCN and an ETC designation. The proposed revision states:

- a. Applicability. This section applies to:
 - i. Telephone corporations that have been granted either a franchise or a Certificate of Public Convenience and Necessity (CPCN) pursuant to Public Utilities Code §1001,
 - 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 § 285.⁸

Both versions, however, continue to require the same types of reports to be submitted to the Commission as in the current G.O. 133-C.⁹ G.O. 133-C, section 4, adopts the same major outage reporting rules as the FCC, i.e., NORS reports.¹⁰ Notably,

⁷ See President Picker’s Proposed Decision Adopting General Order 133-D (“PD”), issued November 12, 2015. Parties filed comments and reply comments on the PD in early December 2015.

⁸ See ALJ Ruling, Attachment A, Sec.4.a.

⁹ Compare G.O. 133-C with G.O. 133-D attached to PD and G.O. 133-D attached to ALJ Ruling.

¹⁰ G.O. 133-C, section 4 states in relevant part: “a. Description. The Commission adopts for its major service interruption reporting the FCC’s Part 4 rules concerning communications disruption and outages, the FCC’s Network Outage Reporting System (NORS) reporting requirements, and the annual ETC 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>.”

the FCC requires wireline, wireless, and all interconnected VoIP providers to submit major outage reports through the FCC’s NORS database.¹¹

III. THE COMMISSION NEEDS NORS DATA *NOW* TO FULFILL ITS STATUTORILY-MANDATED PUBLIC SAFETY OBLIGATIONS.

A. NORS Reports Provides the Commission with Data It Needs to Ensure Telephone Corporations Provide Safe and Reliable Service.

Pub. Util. Code section 451 requires every public utility, including telephone corporations,¹² to “furnish and maintain such adequate, efficient, just, and reasonable service...*as necessary to promote the safety*, health, comfort, and convenience of its patrons...and the public.”¹³ The underlying Order Instituting Rulemaking (“OIR”) cites section 451 several times as guidance in developing service quality measures that “ensure that telecommunications carriers provide the level of service required by P.U. Code § 451.”¹⁴ Thus, the promotion of safety – a primary consideration of section 451 – is a paramount objective of the service quality rules being developed in this rulemaking.

Moreover, section 321.1 requires the Commission to “assess and mitigate the impacts of its decision on customer, public, and employee safety, as part of each ratemaking, rulemaking, or other proceeding...” These state statutes require the Commission to ensure public safety in all of its decisions. NORS reports provide relevant public safety information the Commission needs to monitor the reliability and quality of services provided by telephone corporations, including interconnected VoIP providers.

One of the main purposes of NORS reports is to protect the public. As the FCC has noted:

¹¹ See 47 C.F.R. § 4.3.

¹² See §§ 216, 233, 234.

¹³ § 451 (emphasis added).

¹⁴ OIR 11-12-001, at 1, 12.

The fundamental purpose of [NORS reporting] is to collect information on “service disruptions that could affect homeland security, public health or safety, and the economic well-being of our Nation.”¹⁵

The FCC further discussed the importance of NORS reports:

The availability and resilience of our communications infrastructure, specifically 9-1-1, directly impacts public safety and the ability of our first responders to fulfill their critical mission. The most practical, effective way to maintain emergency preparedness and readiness is to work continuously to minimize the incidence of routine outages.¹⁶

The FCC has found that “interconnected VoIP services increasingly are viewed by consumers as a substitute for traditional telephone service.”¹⁷ As ORA previously explained, wireline subscriptions in California have decreased by about 54% from 23.5 million subscriptions in 2003 to 10.7 million subscriptions in 2013.¹⁸ VoIP subscriptions increased three-fold from 2.2 million subscriptions in 2008 to 5.7 million subscriptions in 2013. Thus, VoIP service outages are not only relevant, but they are where the people are. These outages create an increasing risk to public safety, with millions of California consumers now relying on interconnected VoIP service for their home telephone service.

The FCC utilizes NORS reports to seek ways to minimize the incidence of outages, which is no different than the Commission’s purpose here. The Commission opened this rulemaking to address serious concerns with significant outages affecting hundreds of thousands of Californians during the 2010/2011 winter rainstorms, as

¹⁵ *Notice of Proposed Rulemaking, Second Report and Order and Order on Reconsideration*, In re Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications, PS Docket No. 15-80, , released Mar. 30, 2015 (“NORS NPRM”), ¶11 (citation omitted).

¹⁶ *Report and Order*, In re 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, PS Docket No. 11-82, released Feb. 21, 2012, ¶ 3 (extending NORS reporting requirements to VoIP service providers).

¹⁷ *Id.*, ¶ 69 (citations omitted).

¹⁸ See ORA Comments (March 30, 2015), at 21.

detailed in the March 2011 Staff Report and in various hearings and letters to the Commission.¹⁹ NORS reports are an important data source for the Commission, which the FCC recognizes states need, stating: “Granting states access to NORS data on a confidential basis could advance compelling state interests in protecting public health and safety in an efficient manner.”²⁰

B. The Commission Should Not Wait for the FCC to Conclude Its Proceeding on States’ Access to the NORS Database Because Such Access Could Be Conditioned Upon Requirements and Restrictions the Commission Opposes.

CCTA argues against the ALJ Ruling, asserting the Commission should wait for the FCC to issue its order regarding whether to grant states access to the FCC’s NORS database.²¹ Similarly, Comcast contends “the Commission should refrain from seeking NORS Reports until the FCC has an opportunity to conclude its proceeding, and establish necessary safeguards with respect to sharing carriers’ confidential information with state governments.”²²

In the FCC’s NORS proceeding, industry commentators argued that states’ access to the NORS database should be conditioned upon requirements and restrictions beyond state confidentiality laws and rules (e.g., Pub. Util. Code section 583 and G.O. 66-C). This Commission is explicitly on record as opposed to any additional conditions in comments to the FCC, stating, “[c]ontrary to various industry comments, the FCC need not adopt any of the conditions, restrictions, requirements, or prerequisites discussed in paragraphs 52 and 53 of the *NPRM*, or any other additional recommendations, in order to

¹⁹ See OIR 11-12-001, at 7-9, fn.3, and Attachment A.

²⁰ See *Notice of Proposed Rulemaking, Second Report and Order and Order on Reconsideration*, June 16, 2015, In re Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications, PS Docket No. 15-80; New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, ET Docket No. 04-35 (“NORS NPRM”), at ¶ 51 (discussing the Commission’s petition seeking access to NORS reports).

²¹ CCTA (1/22/16), at 1.

²² Comcast (1/22/16), at 7-8.

adequately safeguard the NORS data...the FCC already has adequate processes in place to protect confidential data maintained in other confidential FCC databases (i.e., Form 477 and North American Numbering Plan Administrator [“NANPA”]). The FCC has granted states direct access to those databases and California has successfully maintained the confidentiality of that data.”²³

It is unclear whether, when, or on what conditions the FCC will grant states direct access to the NORS database; indeed, the Commission’s petition for direct access to NORS has been pending since 2009.²⁴ It is imperative that the Commission proceed with obtaining the NORS reports directly from service providers, as it had done when the Commission adopted G.O. 133-C.²⁵ The need for a reliable public telephone network exists today. The Commission should not wait for the FCC to issue its decision or to conclude its proceeding. The Commission has a current statutory obligation to enforce reasonable statewide service quality standards pursuant to Pub. Util. Code section 2896(c), an obligation it must carry out.

IV. SECTION 710(f) EXPRESSLY AUTHORIZES THE COMMISSION “TO CONTINUE TO MONITOR AND DISCUSS INTERCONNECTED VOIP SERVICES,” AND REQUIRING REPORTS FROM INTERCONNECTED VOIP PROVIDERS FALLS SQUARELY WITHIN THIS AUTHORITY.

Industry comments misinterpret Pub. Util. Code section 710(f).²⁶ Section 710(f) states:

²³ See Amendments to Part 4 the Commission’s Rules Concerning Disruptions to Communications, PS Docket No. 15-80, New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, ET Docket No. 04-35, CPUC Reply Comments (July 31, 2015), at 1-2.

²⁴ The CPUC’s Petition requesting direct access to the NORS database has been pending since November 2009 and parties last filed comments on the FCC’s NPRM in July 2015. Previous to that, parties last filed comments on the CPUC’s Petition in March 2010. The significant delay in FCC action on this issue makes it unclear when the FCC will issue a decision and conclude the proceeding.

²⁵ See *Decision Adopting General Order 133-C and Addressing Other Telecommunications Service Quality Reporting Requirements*, D.09-07-019, Rulemaking 12-12-004.

²⁶ See Verizon (1/22/16) at 1-2; Comcast (1/22/16) at 4-6; Cox (1/22/16) at 2-4; CTIA (1/22/16) at 3, 7-8; CCTA (1/22/16) at 1-2.

*(f) This section does not limit the commission’s ability to continue to monitor and discuss VoIP services, to track and report to the Federal Communications Commission and the Legislature, within its annual report to the Legislature, the number and type of complaints received by the commission from customers, and to respond informally to customer complaints, including providing VoIP customers who contact the commission information regarding available options under state and federal law for addressing complaints.*²⁷

The statutory language here is plain and unambiguous. The intent of section 710(f) manifestly includes the Commission “*continu[ing]* to monitor” VoIP services generally, in addition to the specific uses to which that monitoring can be put. The ALJ ruling requiring all interconnected VoIP providers subject to section 285 to provide the Commission copies of their NORS reports is a reasonable and appropriate means to monitor VoIP services, specifically as it relates to the availability of service to consumers and their access to 9-1-1 and public safety services.

Additionally, the use of the term “continue” indicates that the Commission always had authority to obtain data from interconnected VoIP providers related to their services. This has been the case, regardless of whether the Commission has previously exercised its authority over interconnected VoIP providers. Every interconnected VoIP provider “owning, controlling, operating, or managing any telephone line for compensation within this state” is a “public utility” “telephone corporation” subject to the Commission’s jurisdiction and control.²⁸ Section 710 did not affect the definition of a telephone corporation; it merely narrowed the Commission’s jurisdiction with respect to VoIP services *unless* federal law delegates such authority, state law directs the Commission to exercise such authority, or the Commission’s activity falls within

²⁷ § 710(f) (emphasis added).

²⁸ See §§ 216, 233, 234; see also OIR 11-01-008, at 27; see also ORA Comments (3/30/15), at 9-10, 12-13.

section 710's enumerated exceptions, i.e., section 710(c)-(f). All three categories of exceptions exist here, as explained above and below.

V. THE COMMISSION ALSO HAS AUTHORITY TO OBTAIN NOR'S REPORTS FROM INTERCONNECTED VOIP PROVIDERS PURSUANT TO ITS BROAD AUTHORITY TO GATHER DATA FROM PUBLIC UTILITIES.

As established above, interconnected VoIP providers are and remain public utility telephone corporations, even with the enactment of section 710. Therefore, as public utilities, they are subject to the Commission's broad grant of authority with respect to data gathering.

The California Legislature gave the Commission plenary powers to monitor utility operations in California. In that regard, section 314 authorizes the Commission and its staff to "inspect the accounts, books, papers, and documents of any public utility," as well as those of the utility's subsidiaries and affiliates.

Even if interconnected VoIP providers are not "telephone corporations" (which they are), they are in most cases the affiliate of a certificated "telephone corporation," as needed to secure interconnection rights, pole attachments, and telephone numbers. Section 314 and related sections nonetheless allow the Commission to take testimony under oath of utility and utility affiliate employees, and to conduct evidentiary hearings. Section 314(b) reads:

(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business that is a *subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation* ... with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.

A recent ruling in Investigation (I.)15-11-007, confirms that "[s]ection 314...specifically extends the Commission's data gathering authority to utility

subsidiaries and affiliates,”²⁹ including VoIP or broadband affiliates, reasoning as follows:

In Resolution ALJ-195, the Commission affirmed that this statute authorized the Commission “to obtain information from non-regulated persons and entities.” In listing statutory provisions providing authority to obtain information, the Commission stated, “these provisions reflect the longstanding, broad, and settled authority granted by the People and the Legislature of California to obtain information from public utilities, *and those who deal with them*, in furtherance of informed public utility regulation”.³⁰

Thus it is evident that the Legislature intended to confer the authority needed by the Commission and its staff to perform its oversight or monitoring duties.

Further, section 581 states, “[e]very public utility shall furnish to the commission in such form and detail as the commission prescribes all tabulations, computations, and all other information required by it to carry into effect any of the provisions of this part, and shall make specific answers to all questions submitted by the commission.”

(Emphasis added). In short, rather than grant limited authority over the utilities it regulates, the Legislature intended the CPUC to be free to obtain whatever information it needs to regulate the utilities that are subject to its jurisdiction. Sections 582 and 584 expand upon the requirements of section 581 by mandating that utilities provide maps, franchises, reports, books, accounts, and papers that document and pertain to its business, in the form the Commission prescribes.

²⁹ *Ruling on Pending Motions and Issues Discussed at January 20, 2016 Prehearing Conference*, Feb. 4, 2016, *In re Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions raised in the Limited Rehearing of Decision 08-09-042*, Investigation (I.) 15-11-007, at 7.

³⁰ *Id.*, (emphasis added), as quoted in *Ruling on Pending Motions and Issues Discussed at January 20, 2016 Prehearing Conference*, Feb. 4, 2016, *supra*, at 7-10 (citations omitted)(emphasis added).

VI. FEDERAL LAW PROVIDES ADDITIONAL AND SPECIFIC AUTHORITY FOR NORS REPORTING TO THIS COMMISSION.

CTIA and Verizon incorrectly argue that Section 706(a) of the federal Telecommunications Act of 1996 provides no authority to the Commission to regulate VoIP, both citing a Legislative Counsel Opinion.³¹

Section 706(a) (codified at 47 USC § 1302(a)) states, in relevant part:

The Commission and each State commission with regulatory jurisdiction over telecommunications services *shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans* (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, *measures that promote competition* in the local telecommunications market, or other regulating methods that *remove barriers* to infrastructure investment. (Emphasis added.)

The most recent and authoritative decision on Section 706(a) interprets the statute as a concurrent grant to both state commissions and the FCC.³²

Section 706(a) in fact echoes Pub. Util. Code section 709, which directs the Commission to assure “the continued affordability and widespread availability of high-quality telecommunications services to all Californians,” and to “encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need...”³³ Regular outage reporting creates the visibility into the network necessary to achieve these statutory goals.

CTIA’s and Verizon’s arguments in their interpretation of Section 706(a) rely on the Legislative Counsel Opinion, which opines that Section 706(a) may, consistent with

³¹ See Verizon Opening Comments, pp. 2-3; Comments of CTIA, pp. 5-6. Both comments attach Legislative Counsel Opinion, *Public Utilities Commission: Regulatory Jurisdiction over Voice Over Internet Protocol and Internet Protocol Enable Services - #1503952*, June 15, 2015.

³² See *Verizon v. FCC*, 740 F.3d 623, 638 (D.C. Cir. 2014).

³³ § 709.

its explicit language, only “be exercised within the agency’s existing subject matter jurisdiction,” and that this Commission lacks such jurisdiction. The Legislative Counsel Opinion concedes that section 706(a) is a delegation of authority to the states, but opines that Pub. Util. Code section 710 (SB 1161) takes away the Commission’s jurisdiction over VoIP and IP-enabled services. The federal delegation, however, is predicated on a state’s jurisdiction over “telecommunications services,” which this Commission undoubtedly has.³⁴

Indeed, in seeking to expand advanced telecommunications availability to all Californians, the Legislature has authorized this Commission to invest hundreds of millions of dollars of ratepayer funds in the construction of new broadband infrastructure over which VoIP service travels.³⁵ The Commission can request access to the very reporting by which it could gauge how well that new infrastructure is working.

VII. CONCLUSION

For the foregoing reasons, the Commission should adopt the ALJ Ruling’s proposed revision to G.O. 133-D, Section 4.

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³⁴ See e.g., §§ 216, 233, 234.

³⁵ § 281 (California Advanced Services Fund).