

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation to Address
Intrastate Rural Call Completion Issues

I. 14-05-012
(Filed May 15, 2014)

**COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS
ASSOCIATION ON PHASE II SCOPING MEMO AND RULING OF ASSIGNED
COMMISSIONER**

Lesla Lehtonen
California Cable & Telecommunications
Association
1001 K Street, 2nd Floor
Sacramento, CA 95814
T: 916.446.7732
F: 916.446.1605
E: lesla@calcable.org

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The California Cable & Telecommunications Association (CCTA) herein files its Comments on the Phase II Scoping Memo and Ruling (Ruling) of the Assigned Commissioner, pursuant to the schedule provided therein (and consistent with the assigned Administrative Law Judge's email, dated March 27, 2017, confirming comments are due on April 3, 2017, since March 31, 2017 is a Commission holiday).

The Ruling invites parties to submit comments on the directives set forth in ordering paragraphs (OPs) 21 and 22 of D. 16-12-066 (Phase I Decision), namely: 1) should Carriers of Last Resort (COLRs) or other respondents report outages to California Office of Emergency Services (Cal OES), City and County OES, and California federally recognized tribal OES official contacts (OP 21), and 2) the holding of a workshop to discuss and recommend outage reporting thresholds, requirements and protocols (OP 22) (Ruling at 4). In soliciting comments on these issues, the Ruling also directs parties to provide comments to assist the Commission in "determin[ing] if issues have been suitably framed and refined so that resources are properly utilized in order to provide the most useful information to the Commission for an eventual Phase II decision." Ruling at 4.

As a preliminary matter, in February, CCTA and other industry parties filed an Application for Rehearing of the Phase I Decision¹ and a Motion for Stay.² CCTA strongly urges the California Public Utilities Commission (Commission) to review and grant the Rehearing Application (or the Stay Motion) prior to moving forward with Phase II as doing so is the only way to ensure that Phase II issues are suitably framed and refined. The Rehearing Application specifies a number of legal errors in the Phase I Decision, including issues relating to OP 20, which requires staff to issue standing data requests to all respondents to report to the Commission outages of 90,000 to 900,000 user minutes that last 30 minutes or more, and directs respondents to provide concurrent notice of such outages to Cal OES within 60 minutes of discovery.³

The Rehearing Application demonstrates, among other errors, that OP 20 is not supported by the findings and that the Commission abused its discretion in adopting OP 20. Specifically, the findings in the text of the Phase I Decision conflict with the FCC's outage reporting requirement and prior Commission decisions, the Phase I Decision fails to consider relevant factors affecting the appropriate threshold for outage reports, and the Commission ultimately

¹ Coalition Application for Rehearing Of Decision 16-12-066 on Rural Call Completion Issues, Other Call Completion Issues and Call Initiation Issues Including Lack of 911 Access and Dial Tone, February 3, 2017 ("Rehearing Application").

² Coalition Motion For Stay of Decision 16-12-066 on Rural Call Completion Issues, Other Call Completion Issues and Call Initiation Issues Including Lack of 911 Access and Dial Tone, filed February 19, 2017 ("Stay Motion"). In part the stay motion requested that the Commission stay the requirements OP 20.

³ Phase I Decision, OP 20 ("We direct Communications Division to issue standing data requests to all respondents to report to this Commission outages of 90,000 user minutes that last 30 minutes or more, and the number of user minutes affected by an Optical Carrier 3 (OC3) or transport outage. We delegate the authority to Communications Division to adjust the data request threshold between 90,000- 900,000 user minutes. We further direct respondents to provide concurrent notice of such outages to the California State Warning Center of the California Office of Emergency Services, and require such reports or notice to be made as soon as possible, but no later than 60 minutes after their discovery of such outages.").

drew conclusions regarding outages and reporting thresholds without any substantial reason.⁴ CCTA respectfully submits that before the Commission proceed with Phase II and take any action with respect to reporting thresholds, notification requirements and any related requirements and protocols, the Commission must first decide if the outage reporting requirement included in the Phase I Decision was lawfully adopted. Thus, consideration of the Rehearing Application (as well as the Stay Motion) is critical and is the right next step to ensure that issues for future consideration are suitably framed and refined prior to pushing forward with Phase II.⁵ Consistent with this approach, CCTA respectfully requests that the Commission direct Communications Division staff to hold in abeyance the data requests issued by Commission staff on March 28, 2017, seeking data about *past* outages, which are inconsistent with OP 20.⁶

In the alternative, if the Commission elects to proceed with Phase II prior to ruling on the Rehearing Application or Stay Motion, CCTA respectfully requests (without waiving any rights) that the Commission defer issuing any prospective standing outage data requests until the Phase II is complete. The information that will be gathered in Phase II is directly relevant to the scope and requirements of any prospective standing outage data request (and to the related issue of which government agencies should receive notice of an emergency outage). To that end, and

⁴ Application for Rehearing at 13-21.

⁵ CCTA also notes that Senator McGuire has introduced SB 566 to establish rural reporting requirements that could also impact the Commission's determinations. Senator McGuire is working with industry groups as well as rural representatives and emergency officials to ascertain the appropriate rural outages reporting thresholds that will provide emergency assistance in rural communities. Because having multiple thresholds reporting requirements would be impractical and would potentially cause confusion, the Commission should consider postponing the reporting requirements ordered in the Phase I decision until Senator McGuire's legislation is passed and effective.

⁶ See Data Request 1.0-CD-D1612066-Respondent from California Public Utilities Commission (issued March 28, 2017). At this point, it is unclear if data even exists to provide retroactive responses given that the FCC NORS reporting rules (and the CPUC's GO 133-D) currently only require reporting at the 900,000 user minute level.

consistent with the procedure set forth in the Ruling, CCTA supports the use of a workshop forum to receive the input contemplated in OPs 21 and 22.

I. The Commission Should Hold Workshops to Discuss and Recommend Outage Reporting Thresholds, Requirements and Protocols and Related Notification.

OP 22 of the Phase I Decision requires the Commission to “convene a *Working Group*” by June 30, 2017, to “discuss and recommend outage reporting thresholds, requirements and protocols that reflect California’s public safety needs and this Commission’s responsibilities, including discussion of call completion reporting and improving communications between carriers and first responders during emergency situations.” (Emphasis added.) The Ruling invites parties to submit comments on the directives set forth in OP 21 and OP 22, including a “*workshop* to discuss and recommend outage reporting thresholds, requirements and protocols.”⁷

CCTA strongly supports the holding of workshops in Phase II - and interprets the Ruling to mean that they will be conducted by the Working Group referenced in OP 22. Past experience confirms, and the Ruling itself acknowledges, the potential value of workshops in a proceeding such as this one.⁸ Workshops have been used successfully by the Commission in similar proceedings to consider rules which raise complex technical and operational issues and impact multiple stakeholders.⁹ Through the workshop process, various outage reporting alternatives and notice options could be considered and fully vetted by the parties, with the potential for reaching consensus on all, or at least some, of the issues. Through the submission of a workshop report, and comments and reply comments thereon, the Commission would be provided

⁷ (emphasis added) Ruling at 4 to 5.

⁸ Ruling at 4-5.

⁹ See e.g. D.05-01-030, in which the Commission noted the desirability of workshops in proceedings to modify the rules in General Order 95

additional information by which to assess any outage reporting and notice options. Attached hereto as Exhibit A is a proposed revised schedule that incorporates workshops.

A. *Workshops Should Explore Whether The Commission Should Require Notification Of Outages To OES Official Contacts*

OP 22 directs Phase II of the proceeding to explore whether Cal OES and to other OES official contacts should receive notification of outages. OP 21 also directs Phase II to consider improving communications with first responders. CCTA believes that the workshop setting is a good one in which to examine these issues. For example, during Phase I, the County of Mendocino expressed concerns about its first responders receiving timely notification of area-wide emergency outages, such as one resulting from hit and run accident near Mendocino County's west coast (e.g. Phase I Decision at 110), which would allow them to fulfill their public safety obligations and meet the needs of the various communities in the county.¹⁰ CCTA agrees that public safety personnel having sufficient information which will allow them to make decisions to protect and enhance public safety and to fulfill their responsibilities for incident command under SEMS is a high priority. Accordingly, CCTA agrees that the Commission should make improving communications with first responders – by ensuring they have notices of outages in emergency situations in rural areas should be a top priority at the workshops (OP 22).

Importantly, the focus in Phase II should remain on issues related to major service outages that impact a large number of customers in a given rural area, as compared to issues related to service-related issues that a given *individual consumer* experiences. That is, due in

¹⁰ See also, Phase I Decision at 111 (stating “The Mendocino County Sheriff reported that he was unaware of the widespread communications outage for six hours, and learned about it when a fire chief was finally able to reach him on a landline. The Mendocino County Emergency Services Office was unaware of the extent of the outage and unable to communicate with western Mendocino. During the telephone outage, Mendocino County relied heavily on the local Ham Radio Community for emergency dispatch.” Footnotes omitted).

part, due to the Commission already adopting rules in GO 133-D, Rule 3 which address out-of-service issues that individual customers may experience.¹¹ Under those rules, carriers already report on various service quality metrics, and any carrier that routinely misses the reporting thresholds must either pay a penalty for the missed metric or make investments in its networks to improve its performance.¹² Since it just adopted the updated out of service metric/penalty rule in GO 133-D last year, the Commission can focus its efforts here to addressing issues related to major outages in rural areas.

Accordingly, CCTA recommends that improving communications with public safety officials in rural areas when major service outages affecting a given occur should be a priority and one of the first issues the Commission addresses in Phase II.

B. The suitability of reporting thresholds for emergency outages and the procedures for giving notice of such should be discussed at the workshop.

OPs 21 and 22 require the Commission to explore a number of issues relating to outage reporting in Phase II including reporting thresholds, requirements, procedures, protocols, the results of reporting and emergency agency notification requirements. CCTA strongly believes that workshops are an appropriate procedural vehicle to tackle these kinds of technical issues that will afford all interested stakeholders an opportunity to share their experiences, best practices, needs and challenges in a way that will enhance the record and move the process forward constructively. CCTA further believes, at a minimum, the workshop be tasked with considering the following specific aspects of outage reporting.

First, what is the appropriate threshold/duration for any outage reporting requirements?

While the Phase I Decision required the Communications Division to issue standing data

¹¹ For example, under GO 133-D, Part III, carriers must report customer trouble reports and out-of-service repair intervals, among others. (See GO 133-D, Rules 3.3 and 3.4).

¹² GO 133-D, Rule 9 Fines.

requests to all respondents to report outages of 90,000 user minutes lasting 30 minutes or more (OP 20), staff was giving the flexibility to adjust that threshold within a defined range.¹³ Yet, there was no factual evidence presented in Phase I that reporting at the 90,000 minute level is needed or would serve the public interest. While the Phase I Decision included text suggesting that 300,000 user minutes is a prudent level that would “provide the commission with information to ensure the carriers provide safe and reliable service and comply with California law, and the Commission’s rules, orders and Decisions,”¹⁴ that discussion was in the context of COLRs operating in rural areas.¹⁵ Relatedly, what parameters should be used for reporting an OC3 or Transport outage (outage duration, user minutes, thresholds etc.)? The workshop should explore what outage reporting threshold would best serve the public interest.

Second, what is the appropriate geographical scope for any additional outage reporting requirements? The purported information gap identified in the Phase I Decision was the reporting of significant outages *in rural communities*.¹⁶ The workshop should consider how to define those areas.

Third, what is the right timeframe for reporting outages? The Phase I Decision required that notification of outages be provided to Cal OES in 60 minutes (but the Phase I Decision does not specify what time period outage *reports* would need to be submitted to the Commission).

Although receiving prompt notification of outages can be beneficial, it is important to understand

¹³ Phase I Decision, OP 20.

¹⁴ Phase I Decision at 170, Finding of Fact 27. See also Phase I Decision at 152 “300,000 user minutes is approved level to start Kohler reporting of outages.”

¹⁵ See e.g. Phase I Decision at 5-6, 19-20, 150.

¹⁶ Phase I Decision at 128 (“long distances between many rural communities...merit outage reporting responsive to the needs of this state.”); see also Phase I Decision at 146 (“County of Mendocino calculated that the “threshold of 90,000 user minutes is appropriate for rural counties...””) (emphasis added).

(and this could be explored further in the workshops) that in 60 minutes carriers often do not know the precise cause of the outage (or in some cases whether it is even truly an outage that impacts customers or meets the threshold). Thus, a 60 minute notification requirement would likely lead to notification of many “false positives” (i.e. events that were thought perhaps to be an outage that met the reporting threshold but, which after investigation, were determined not to be). Moreover, during the short time following the identification of a potential customer-impacting outage, carriers are (appropriately) focusing their efforts on trying to assess customer impact, determining the root cause and implementing any necessary repairs and/or work-arounds. Requiring outage notifications to be provided in that critical time window will divert resources away from important and critical restoration efforts. The workshops should develop information that would be helpful to the Commission in weighing the competing considerations.

Fourth, what jurisdictional entities should report outage and notify state agencies? The Proposed Decision in Phase originally only imposed the reporting obligation on COLRs¹⁷ and a section of the Phase I Decision still reflects the Commission’s determination that reporting by COLRs serves the public interest.¹⁸ Yet, OP 20 requires respondents to report.]] And OP 21 directs the Commission to explore whether “the commission should require carriers of last resort or other respondents or other carriers under the commission’s jurisdiction to report outages to” Cal OES. This scope of entities subject to the Commission’s jurisdiction that should be required to submit outage reports should be considered in workshops.

¹⁷ Proposed Decision at 152: (“We impose this outage report duty on COLRs only at this time in light of their responsibility to provide service to any customer who requests it within their service territory.”).

¹⁸ FoF 27, Phase I Decision at 170 (“Data from Carriers of Last Resort to the Commission about outages of 300,000 user minutes or more, lasting at least 30 minutes will provide the Commission with information to ensure that carriers provide safe and reliable service and comply with California law, and the Commission’s rules, orders and Decisions.”).

*Fifth, what volume of outage reports would be triggered at various reporting thresholds and geographical coverage areas?*¹⁹ The volume of reports that will be generated at a given thresholds/geographic coverage areas/reporting entities will be important for the Commission to consider. If the outage reporting threshold is set so low that a huge number of reports are generated (including false-positive reports), that could actually be more of a hindrance than a help in identifying significant outages that impact end-user customers.

Sixth, what is the method to file and track outage reports, update reports and withdraw outage reports (web interface?) and what data points should be included in the report? Although CCTA members today track the NORS data fields (at the current FCC thresholds), they do not track several of the additional data fields included in the staff's recent data request (e.g. if outage is at location in a declared State of Emergency).

Finally, participants should also assess the economic impact of various reporting thresholds as is required by California Public Utilities Code section 321.1(b).²⁰

II. The Commission Must Address The Critical Need To Protect Confidentiality Of Outage Reports.

OP 20 orders respondents to provide outage reports to the Commission, with concurrent notice to OES.²¹ To the extent this requirement is upheld on rehearing, the Commission will need to address issues related to confidentiality. Additionally, OP 21 requires the Commission to

¹⁹ This question is directly tied to the requirement OP 21 that the commission consider the “results of the reporting “

²⁰ PU Code section 321.1(b)(2) (“(b) The commission shall take all necessary and appropriate actions to assess the economic effects of its decisions and to assess and mitigate the impacts of its decisions on customer, public, and employee safety.”). All section references hereafter are to the Code unless stated otherwise.

²¹ Phase I Decision, OP 20.

explore whether outages should be reported more broadly to other emergency agencies. While CCTA does not believe it is necessary for actual outage reports to be transmitted to Cal OES, or any other non-Commission entity, the Commission must still address in Phase II, at a minimum, how it, OES, and any other emergency agencies that receive outage notifications/reports that include a carrier's confidential information.

Certain outage data is considered extremely sensitive given its relation to critical infrastructure and its potential for competitive advantage. Under federal law, outage reports are presumed to be confidential and afforded significant protection.²² The reports implicate national security, and the FCC has thus re-affirmed its view that NORS data should be presumed confidential and shielded from public inspection, and that if they grant states access to the NORS data that states will be required to have in place confidentiality protections at least equivalent to those set forth in the federal Freedom of Information Act (FOIA).²³

Just as the Commission considers NORS reports submitted under GO 133-D, Rule 4 to be confidential and subject to Section 583 and GO 66-C, it should also find that any outage reporting adopted in this proceeding will also be protected under Section 583 and GO 66-C. Further, to the extent the Commission requires any carrier to report to an emergency agency (i.e. any entity other than the Commission) outage related information that the carrier deems confidential, the Commission must first ensure that any such agency is required to maintain the confidentiality of such information.

²² 47 CFR § 4.2 (“Reports filed under this part will be presumed to be confidential. Public access to reports filed under this part may be sought only pursuant to the procedures set forth in 47 CFR § 0.461”).

²³ *In re Amendments to Part 4 of the Commission's Rules*, 30 FCC Rcd 3206, ¶ 51 (2015).

III. Conclusion.

Before proceeding with Phase II, CCTA urges the Commission to review and grant the Rehearing Application (or the Stay Motion). To the extent that the Commission decides to move forward, then CCTA respectfully urges the Commission to consider the Phase II issues using workshops to assess the appropriate outage reporting requirements that will provide helpful assistance to emergency officials, options for how and when notice of certain outages may be provided and which governmental agencies should receive such notices. The Commission should also address how it will maintain the confidential nature of outage reports, as well as any notices that the Commission requires carriers to provide to other agencies. Until the Commission obtains that information, CCTA respectfully request that the Commission hold in abeyance any outage reporting and notification requirements, including the March 28, 2017 retroactive data requests beyond what is already required in GO 133-D.

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Respectfully submitted,

/s/ Lesla Lehtonen

Lesla Lehtonen
California Cable & Telecommunications
Association
1001 K Street, 2nd Floor
Sacramento, CA 95814
T: 916.446.7732
F: 916.446.1605
E: lesla@calcable.org

EXHIBIT A

Proposed Schedule in Ruling		Proposed Schedule including workshops	
Date	Event		
March 21, 2017	Notices of Intent to Claim Intervenor Compensation shall be filed and served	March 21, 2017	Notices of Intent to Claim Intervenor Compensation shall be filed and served
March 31, 2017	Opening comments shall be filed and served	March 31, 2017	Opening comments shall be filed and served
April 12, 2017	Reply comments shall be filed and served	April 12, 2017	Reply comments shall be filed and served
June 1, 2017	Deadline for Cox, Comcast, MCImetro, AT&T, Charter Fiberlink, Time Warner, and Citizens Telecommunications to comply with OPs 1, 2, 5, 6, 7, 11, and 16 per the extension of time granted by the Executive Director	June 1, 2017	Deadline for Cox, Comcast, MCImetro, AT&T, Charter Fiberlink, Time Warner, and Citizens Telecommunications to comply with OPs 1, 2, 5, 6, 7, 11, and 16 per the extension of time granted by the Executive Director
June 30, 2017	Deadline for Commission to convene a Working Group to discuss and recommend outage reporting thresholds, requirements, and protocols that reflect California's public safety needs and Commission responsibilities	June 30, 2017	Deadline for Commission to convene a Working Group to discuss and recommend outage reporting thresholds, requirements, and protocols that reflect California's public safety needs and Commission responsibilities
		June – September 2017	Workshops
		September 30, 2017	Workshop Report Filed
July 14, 2017	Deadline to file and serve opening comments following Working Group meeting	October 14, 2017	Deadline to file and serve opening comments on Workshop Report
July 31, 2017	Deadline to file and serve reply comments following Working Group meeting	October 31, 2017	Deadline to file and serve reply comments on Workshop Report
4th Quarter 2017	Issue proposed decision	4th Quarter 2017/ 1 st Quarter 2018	Issue proposed decision