

**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 UTILITY REFORM NETWORK, CENTER FOR  
ACCESSIBLE TECHNOLOGY AND THE GREENLINING INSTITUTE ON PHASE  
II SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Address  
Intrastate Rural Call Completion Issues.

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

**COMMENTS OF THE UTILITY REFORM NETWORK, CENTER FOR  
ACCESSIBLE TECHNOLOGY AND THE GREENLINING INSTITUTE ON  
THE PHASE II SCOPING MEMO AND RULING OF ASSIGNED  
COMMISSIONER**

**I. INTRODUCTION**

Pursuant to the March 6, 2017 Phase II Scoping Memo and Ruling of Assigned Commissioner ("Phase II Scoping Memo"), The Utility Reform Network ("TURN"), Center for Accessible Technology ("CforAT") and The Greenlining Institute ("Greenlining") (collectively, "Joint Consumers") file these comments in response to the Phase II Scoping Memo.

Phase II of this proceeding follows the issuance of D. 16-12-066, the Phase I Decision. The Phase I Decision is based on substantial evidence (including information provided directly from public officials and telephone service customers) regarding a panoply of rural call completion problems, many of which make it difficult for public safety officials to obtain timely information on outages and for the general public to reliably use 9-1-1 to contact emergency services. In response to the information contained within the record, the Phase I Decision ordered or recommended several actions to be taken by staff and/or carriers to improve the quality of outage data available to the Commission and the reporting of outage information to the Commission and to

both state and local emergency officials. The Phase II Scoping Memo notes that the carriers requested and received extensions of time to comply with many of these requirements, set forth in Ordering Paragraphs (OPs) 1, 2, 5, 6, 7, 11 and 16 of the Phase I Decision.<sup>1</sup>

The Phase II Scoping Memo appropriately requests comment on two directives, in OPs 21 and 22,<sup>2</sup> noting that these issues were specifically designated for Phase II. The Scoping Memo also states that Phase II will:

- Evaluate "the completeness of the telephone carriers' responses to OPs 1, 2, 5, 6, 7, 11 and 16;"
- Determine if any new requirements should be imposed on the carriers, "consistent with the Commission's regulatory authority and the scope of this proceeding;" and
- "[M]onitor the development of guidelines to ensure that transfers or mergers do not compromise safe and reliable service."<sup>3</sup>

In addition to the directives in OP 21 and 22, it is clear from the Phase II Scoping Memo that the issues associated with the OPs specifically identified as being subject to evaluation are included within the Scope of Phase II. It is reasonable to defer comment on these issues at this time, because deadlines for the information or action required of the carriers have been extended.

The directive for Commission staff to develop and recommend guidelines for ensuring that transfers or mergers do not compromise safe and reliable service is set forth in OP 26. Joint Consumers agree that it is appropriate to monitor the development of such guidelines and that this issue is properly addressed within Phase II. However, for

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<sup>1</sup> Scoping Memo, p. 3.

<sup>2</sup> Id., p. 4-5

<sup>3</sup> Id. at p. 4.

the reasons explained further in Section III., below, we also believe that the Scoping Memo should be revised to fully incorporate the development of merger guidelines within the scope of Phase II and consistent with the public interest analysis of mergers required by Public Utilities Code § 854. This revision would allow the Commission to request input from parties on the development of the guidelines and ensure that parties will have the opportunity to comment on the recommended guidelines.

In addition to the issues identified above, the Phase I Decision contains additional directives that are not mentioned in the Phase II Scoping Memo, but which Joint Consumers believe should be included in the scope of Phase II. Specifically, we ask that the scope of Phase II be clarified or expanded to include the directives set forth in OPs 15 and 20 of the Phase I Decision.<sup>4</sup> Including these issues within the scope is important both to preserve the ability of the Commission to solicit comment from parties on the issues as part of this proceeding and to give the Commission the opportunity to take appropriate action. For example, the Scoping Memo states that Phase II will determine if any new requirements should be imposed "...consistent with the Commission's regulatory authority and the scope of the proceeding." If the issues in those OPs are not specifically included in the scope, it leaves the door open for parties to argue that they are not appropriately addressed in Phase II. At the same time, the Commission is free to decide later that an issue included within the scope of Phase II does not require further comment or action. The important point is to preserve the procedural opportunity for the Commission to act, following an opportunity for parties to comment, on the

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<sup>4</sup> OP 15 directs carriers to meet and confer with tribes and County OES offices to determine if action is needed to make residential addresses visible to the 9-1-1 database. OP 20 directs the Communications Division to issue Standing Data Requests to respondents to report outages of 90,000 user minutes or more, as well as Optical Carrier 3 or transport outages.

implementation of the Phase I Decision. Accordingly, Joint Consumers ask that the Phase II Scoping Memo be revised to make clear that the scope of Phase II includes oversight of the implementation of all of the directives in the Phase I Decision, including OPs 15, 20 and 26.

## **II. ISSUES IDENTIFIED IN D. 16-12-066 ORDERING PARAGRAPHS 21 AND 22**

The Phase II Scoping Memo invites comment on two actions required by the Phase I Decision: (1) the question of whether Carriers of Last Resort (COLRs) or other respondents should report outages to the state Office of Emergency Services (OES) as well as the local OES for cities, counties and federally-recognized tribes; and (2) a workshop to discuss and recommend outage reporting thresholds, requirements and protocols. Joint Consumers offer comment on these directives.

### **A. Reporting Outages to State, Local, and Tribal OES**

OP 21 of the Phase I Decision states:

Determine whether the Commission should require COLRs or other respondents to report outages to Cal Office of Emergency Services (OES), City, and County OES, and California federally recognized tribal OES official contacts.

Joint Consumers believe that this issue is appropriately included in Phase II. It was clearly identified as an issue in need of further activity and follow up in the Phase I Decision, and it was a response to a major concern of the many local public safety officials who testified at public participation hearings.

Joint Consumers anticipate that other parties may argue that the issue does not need to be addressed by the Commission due to the fact that a bill - SB 566, sponsored by Senator Mike McGuire - has been introduced to require certain outages to be reported to

Cal OES, which would in turn be responsible for providing the information to local OES officials.<sup>5</sup> This argument would have no merit. First, the fact that a bill has been introduced before the state legislature is no guarantee that it will become law. Further, even if the legislature were to act, such action would not necessarily preclude further CPUC action; indeed, many statutes impacting matters within the Commission's jurisdiction affirmatively require CPUC action. At this point no one knows what amendments may be made or whether the bill will be adopted. Joint Consumers support the efforts of Senator McGuire to improve network outage reporting. But the existence of a bill is not a reason for the Commission to ignore the directive set forth in OP 21. If some form of SB 566 becomes law, the Commission can tailor its consideration of the issue in Phase II accordingly.

### **B. Working Group to Discuss and Recommend Outage Reporting Thresholds**

OP 22 of the Phase I Decision states:

By June 30, 2017, the Commission shall convene a Working Group including Communications Division, Safety and Enforcement Division, the parties, and, by invitation, Cal OES, City Officials, County officers, and federally recognized tribal OES officials to discuss and recommend outage reporting thresholds, requirements, and protocols that reflect California's public safety needs and this Commission's responsibilities.

Joint Consumers believe that this issue is appropriately included in Phase II. The discussion of this issue in D. 16-12-066 stated that Phase II of the proceeding would include consideration of whether public reporting and reporting to the media should be required, as is the case for electrical corporations.<sup>6</sup> This issue should be within the scope

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<sup>5</sup> SB 566. At the November 30, 2016 all-party meeting, AT&T argued that the directive in OP 21 was not necessary because they were working with Senator McGuire's office on a bill.

<sup>6</sup> D. 16-12-066, p. 21, 141 and 153. See D. 16-01-008 for the requirements for electrical outage reporting. D. 16-01-008, Docket R. 14-12-014, Order Instituting Rulemaking Regarding Policies,

of Phase II consideration of OP 22. The directive regarding the outage reporting is closely associated with OP 20 of the Phase I Decision, directing staff to issue standing data requests to all respondents to report outages of 90,000 user minutes or more and the number of user minutes affected by an OC3 or transport outage. Pursuant to OP 20, staff has the authority to adjust the data request threshold. It would be most helpful and efficient if the Working Group could be informed by the work carried out by staff and any data received in response to the standing data request. The Commission can consider how the data can be formatted to sufficiently address any legitimate carrier concerns about confidentiality, and what, if any, nondisclosure agreements may be necessary.

### **III. GUIDELINES TO ENSURE MERGERS OR TRANSFERS DO NOT COMPROMISE SAFE AND RELIABLE SERVICE**

OP 26 of the Phase I Decision states:

We direct the Commission's Communications Division and Legal Division to develop and recommend guidelines to ensure that transfers or mergers do not compromise safe and reliable service.

This requirement has its origins in the problems that occurred following the recent transfer of assets from Verizon to Frontier, as authorized by the Commission in Decision 15-12-005, which was discussed at length in the Phase I Decision. In light of the concerns set forth in the record, the Phase II Scoping Memo states that “Phase II will also . . . (c) monitor the development of guidelines to ensure that transfers or mergers do not compromise safe and reliable service.”<sup>7</sup>

Customers caught up the Verizon-Frontier transfer problems experienced extensive outages, difficulties obtaining assistance, and other harm. This lead the

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Procedures and Rules for Reliability Reporting Pursuant to California Public Utilities Code Section 2774.1.

<sup>7</sup> Scoping Memo, p. 4 (March 6, 2017).

Commission to set out its stated purpose of developing merger guidelines, “to ensure that transfers or mergers do not compromise reliability.”<sup>8</sup> The Phase I Decision contemplated that parties in Phase II would participate in developing new merger guidelines, and not simply monitor the development process.<sup>9</sup>

The Phase I Decision recognized that the implementation of the Frontier-Verizon asset transfer resulted in outage and reliability problems, including situations where customers were without a dial tone for as much as three weeks; it also concluded that this harm to consumers was preventable.<sup>10</sup> The problems stemmed from a “confluence of issues, Verizon California’s labeling practices, intellectual property not included in the transaction that Frontier realized after close was critical to network functioning, integration of that software, training, and customer service, all contributed to outages. These are factors the Commission should consider as it updates guidelines for merger and transfer conditions . . . .”<sup>11</sup>

Moreover, the extensive outages and harm to consumers were exacerbated when consumers contacted Frontier’s call center and “were met with additional frustrations and delays: long wait times, disconnected calls with representatives, no help received, had to speak to multiple representatives, and waited for appointment but the technician did not show.”<sup>12</sup> The Phase I Decision highlighted the need to fully address customer service issues in future merger or transfer proceedings.<sup>13</sup>

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<sup>8</sup> D.16-12-066, p. 97 (January 12, 2017).

<sup>9</sup> Id., p. 96.

<sup>10</sup> Id., p. 85; Finding of Fact 18.

<sup>11</sup> Id., p. 90.

<sup>12</sup> Id., p. 91-92.

<sup>13</sup> Id., p. 96.

The Commission also found that “Commission guidance and oversight during the transition from carrier to carrier following a transfer or a merger approved by the Commission is appropriate to ensure that customers continue to receive safe and reliable service including 9-1-1 and dial tone access.”<sup>14</sup> For that reason, the Commission ordered the development of guidelines to apply the lessons learned from the Frontier-Verizon asset transfer to provide a front-end solution for preventing similar outages and harm to consumers for future mergers or transfers.

The Phase II Scoping Memo does not mention OP 26 of the Phase I Decision. Although OP 26 is limited in its direction to the Communication and Legal Divisions, the discussion set out within the Phase I Decision elaborates on the role of parties in the development of the merger guidelines, including participation in Working Groups and the Commission’s consideration of merger guidelines in a resolution or as part of Phase II.<sup>15</sup> The Commission should not limit itself to *monitoring* the development of guidelines in Phase II. Rather, Phase II should allow the parties to actively participate in reviewing proposed guidelines that are initially drafted by staff, including opportunities for stakeholder input and comment. Stakeholder guidance will assist the Commission to effectively structure such a process. Accordingly, Joint Consumers recommend that the Commission clarify that the *development* of merger guidelines is within the scope of Phase II.

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<sup>14</sup> Id., Finding of Fact 20.

<sup>15</sup> Id., p. 96.

**IV. ADDITIONAL ISSUES THAT SHOULD ALSO BE WITHIN THE SCOPE OF PHASE II**

**A. OP 15 - Whether Action is Needed to Make Residential Addresses Visible to the 9-1-1 Database**

OP 15 of the Phase I Decision states:

By June 30, 2017, carriers shall meet and confer with California's federally-recognized tribes and County Office of Emergency Services offices to determine if action is needed to make residential addresses visible to the 9-1-1 database, including assigning a unique address by mutual agreement in areas where all households currently have the same address.

This requirement should be included within the scope of Phase II. Carriers should inform the Commission about the progress they make in holding these meetings and any proposals for Commission action. The reports could be submitted in a letter to Communication Division staff and should include information that would allow Commission staff to communicate with the emergency service officials involved to discuss possible Commission action. If further Commission action is needed, the Commission will have greater flexibility to respond promptly if it now makes clear that OP 15 is included in the scope of Phase II.

**B. OP 20 - Directing the Communications Division to Issue Standing Data Requests for Reporting of Outages of 90,000 User Minutes that Last 30 minutes or More**

OP 20 of the Phase I Decision states:

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.

As discussed above, OP 20 is closely related to OP 22. OP 22 directs the convening of a Working Group "to discuss and recommend outage reporting thresholds, requirements and protocols that reflect California's public safety needs and this Commission's responsibilities." The data that the Phase I Decision requires carriers to report to staff should be very useful in developing the recommended reporting thresholds, requirements and protocols. In addition, if the staff or Working Group recommends that the threshold or reporting requirements should change, parties should have the opportunity to comment. By clearly including the implementation of this Ordering Paragraph in the scope of Phase II, the Commission will have greater flexibility to ensure that necessary information is shared among all stakeholders (with appropriate protections for confidential information as may be necessary) and that all stakeholders have appropriate input.

## **V. CONCLUSION**

For the reasons set forth above, Joint Consumers urge that the Scoping Memo be amended consistent with our recommendations, including clarification that Phase II is intended to oversee the implementation of the various requirements of the Phase I Decision, including Ordering Paragraphs 15, 20 and 26, as well as OPs 1, 2, 5, 6, 7, 11, 16, 21 and 22.

Respectfully submitted,

Dated: April 3, 2017

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