

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation to Address
Intrastate Rural Call Completion Issues.

Investigation 14-05-012
(Filed May 15, 2014)

**COMMENTS
OF THE OFFICE OF RATEPAYER ADVOCATES
ON PHASE 2 ISSUES**

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I. INTRODUCTION

Pursuant to the March 6, 2017 Phase II Scoping Memo and Ruling of Assigned Commissioner (“Phase 2 Scoping Memo”), the Office of Ratepayer Advocates (“ORA”) provides comments responsive to Ordering Paragraphs (“OP”) 21 and 22 of Decision (“D.”) 16-12-066 regarding the reporting of service outages by Carriers of Last Resort (“COLRs”) or other respondents.

The California Public Utilities Commission’s (“Commission”) authority with regard to service outages is governed by California Public Utilities Code (“Pub. Util. Code”) § 451, which establishes the Commission’s responsibility for ensuring safe and reliable service at just and reasonable rates:

All charges demanded or received by any public utility...shall be just and reasonable. Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

Service outages compromise public safety. A service outage means that a subscriber may be unable to call or text 9-1-1 or otherwise seek access to public safety services. The Federal Communications Commission (“FCC”) recently observed the importance of the continuity of voice services, such as Voice over Internet Protocol (“VoIP”) service, during power outages:

Although we recognize that we are in the midst of sweeping change, we believe that voice communications continue to play an essential and central role in the delivery of public safety services...¹

¹ See FCC, Report and Order, In the Matter of Ensuring Continuity of 9-1-1 Communications, PS Docket No. 14-174, Released August 7, 2015, at ¶18.

Moreover, in July 2014 the Commission adopted a Safety Policy Statement and guiding principles.² The guiding principles included the following commitments by the Commission:

- Continually assess and reduce the safety risk posed by the companies we regulate.
- Hold companies (and their extended contractors) accountable for safety of their facilities and practices.

The Commission must recognize its duty to promote safety as it considers Phase 2 issues and 1) order Carriers and other obligated respondents to report outages to the California Office of Emergency Services (“CalOES”) and to the Commission, and 2) develop strong outage reporting thresholds, requirements and protocols, in response to public safety needs as described below.

II. DISCUSSION

A. The Commission Should Order Carriers to Report Outages to the California Office of Emergency Services and to the Commission

OP 21 of D.16-12-066 states that Phase 2 “shall 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 the California State Warning Center of the Cal Office of Emergency Services, and city, county, and federally recognized tribal Office of Emergency Services official contacts.” Furthermore, OP 21 tasks the Commission with evaluating “the suitability of the thresholds, procedures, and results of the reporting.”

The Commission noted in D.16-12-066 that the FCC observed outage on April 9, 2014 “was not an anomaly, but a flash point that indicates a pattern of software-driven

² Safety Policy Statement of the California Public Utilities Commission, July 10, 2014. Available at <http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Safety/VisionZero4Final621014_5_2.pdf>

outages.”³ The outage was a complication of the 9-1-1 system’s transition to an Internet Protocol (“IP”) based network. Furthermore, the Commission noted that without outage information, public safety officials were not able to take steps to reduce the impact of the outage by asking carriers to re-route calls or inform the public to use a landline to dial 9-1-1. It is in the public interest for carriers to be transparent with public safety personnel about the location of outages and how public safety personnel may mitigate any negative effects from an outage.

The Commission should require all telecommunications companies that provide 9-1-1 services to report all major outages to the CalOES’ California State Warning Center. These major outages should include “Major Service Interruptions” as defined by General Order 133-D, § 4. In addition, as discussed further below, rural outages should have a different reporting requirement than the 900,000 user minutes threshold outlined in General Order (“GO”) 133-D. OP 20 of D.16-12-066 already imposes similar requirements in ordering respondents to provide notice of outages to the Commission and to CalOES.⁴

Outage notifications should at least include the telecommunications provider’s contact name and number, a description of the estimated area affected by the outage, estimated time to resolve the outage, and estimated time of service restoration. Furthermore, to assist the Commission in monitoring outages that fall below the Major Service Interruption Threshold of General Order 133-D, a copy of the rural outage reports, discussed further below, should also be provided to the Commission’s Communications Division and to ORA.⁵

³ Decision 16-12-066, p. 48.

⁴ D.16-12-066, Ordering Paragraph (“OP”) 21 directs Communications Division to issue standing data requests to respondents to provide notice of outages of 90,000 user minutes that last 30 minutes or more to the Commission to and to CalOES.

⁵ D.16-12-066, OP 23. Directs Communications Division to monitor “other outages that fall below the Major Service Interruption threshold of General Order 133-D.”

B. Proposed Outage Reporting Thresholds, Requirements and Protocols

OP 22 of D.16-12-066 orders that a Working Group convene in Phase 2 of the current proceeding “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.”⁶

The Commission’s General Order 133-D, § 4 already requires communications providers to submit reports of “Major Service Interruptions” to the Commission that are reportable under the FCC’s Network Operating Reporting System (“NORS”). However, in D.16-12-066, the Commission recognized a data gap for voice service outages occurring in sparsely populated rural areas. These outages may not meet the 900,000 user minute reporting threshold for NORS and General Order 133-D, §4 Major Service Interruption reports.⁷ The Commission therefore decided:

We determine that to meet the Commission’s duties under state law duties to ensure safe, reliable service, and that calls are completed, 9-1-1 access is available, and that reliable service is reasonably comparable in California’s diverse regions, it is critical to fill the current information void about call failures and outages between the levels of individual calls for service and the Commission’s current limited access to FCC NORS data for large-scale outages affecting at least 900,000 user minutes and lasting 30 minutes.⁸

The Commission found that standing data requests from Communications Division to all respondents to report outages of 90,000 user minutes that last at least 30 minutes was consistent with its duty to assure safe and reliable service and to protect public safety.⁹

The Commission order of standing data requests addresses the data gap on a provisional basis. As such, the Commission should permanently institute this reporting

⁶ D.16-12-066, OP 22.

⁷ See Id., pp. 138-39, 148-49, 170; See also Id., OP 26.

⁸ Id., p. 150.

⁹ See Id., Findings of Fact (“FOF”) 29; See also Id., pp. 182-83, OP 20.

requirement based on a 90,000 user minute threshold. However, the reporting should not be limited to the respondents identified in this investigation, but should include Voice over Internet Protocol (“VoIP”) and wireless service providers. All voice service providers that provide 9-1-1 services should provide rural outage reporting. In order to tailor the needed additional reporting to the identified data gap, the reporting should be limited to rural areas.

1. The Commission Should Order Rural Outage Reporting from All Voice Service Providers Who Provide 9-1-1 services

In D.16-12-066, the Commission ordered provisional rural outage reporting, citing its responsibility to 1) ensure safe, reliable service, 2) ensure that calls are completed, and 3) ensure access to 9-1-1 services.¹⁰ These Commission responsibilities extend to VoIP and wireless service providers, as discussed below.

The Commission’s responsibility for ensuring safe and reliable service, pursuant to Pub. Util. Code § 451, applies to every “public utility.” “Public utility” includes every telephone corporation where the service is performed for, or the commodity is delivered to the public.¹¹ Thus, the statute charges the Commission with oversight of safety not just for traditional wireline carriers, but VoIP and wireless carriers.

Furthermore, the Commission must enforce the duty of telephone corporations to carry and complete calls. Pub. Util. Code § 558 states:

Every telephone corporation and telegraph corporation operating in this State shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other such corporation with whose line a physical connection has been made.

¹⁰ See *Id.*, p. 150.

¹¹ See Pub. Util. Code § 216(a), (b).

The duty to complete calls applies to all carriers involved in the origination, routing and completion of calls.¹² Thus, the Commission must ensure that VoIP and wireless service providers fulfill their call and text completion duties pursuant to Pub. Util. Code § 558. Rural outage reporting is an important tool for the Commission to address this task.

Finally, the Commission has a responsibility to enforce a telephone corporation's duty (excluding providers of mobile service) to ensure access to 9-1-1, as governed by Pub. Util. Code § 2883(b). Although wireless service providers are excluded from the requirements of Pub. Util. Code § 2883(b), many wireless service providers still provide access to 9-1-1 service. Wireless customers rely on access to 9-1-1 service. Widespread wireless service outages jeopardize customers' ability to call 9-1-1 or otherwise seek access to public safety services. Moreover, access to 9-1-1 via text messaging will soon be in place for many carriers. Wireless service outages will also jeopardize text to 9-1-1 access. The exclusion of wireless service providers from the 9-1-1 access requirements of Pub. Util. Code § 2883(b) does not mean that wireless service providers should be excluded from rural outage reporting, especially as wireless service providers are included within the Commission's authority over ensuring safe and reliable service and in ensuring call and text completion.

Customers with VoIP service and wireless service rely on these services to seek information and assistance, especially during public safety emergencies. The Commission has responsibilities over safety, call completion, and access to 9-1-1 service. Pursuant to these responsibilities, the Commission must seek to overcome the data gap identified by D.16-12-066 regarding outages in rural areas. Rural outage reporting from VoIP and wireless service providers must be part of the Commission's effort to overcome this data gap.

¹² See D.16-12-066, pp. 23-24, citing D.97-11-024, pp. 460-61.

2. Rural Outage Reporting Should Be Based on the 90,000 User Minute Threshold

The Commission provisionally identified reporting based on a 90,000 user minute threshold as the means to address the data gap of outages in rural areas.¹³ The Commission should continue such reporting on a permanent basis. Many service providers will have current experience in reporting based on such a threshold, as they will have already responded to the standing data requests ordered by D.16-12-006. Some VoIP and wireless service providers are not covered by the data requests. However, these providers will have experience providing NORS reports, based on the 900,000 user minute threshold.¹⁴ These providers will simply need to adjust the threshold to 90,000 user minutes.

In the Commission's recent rulemaking to evaluate telecommunications service quality rules, ORA identified a 90,000 user minute threshold as more appropriate for sparsely populated rural areas.¹⁵ The 90,000 user minute reporting threshold is specifically responsive to the rural data gap. In order to tailor the reporting to the data gap, such reporting should be limited to rural areas.

3. The Additional Outage Reporting May Be Limited to Rural Areas

Limiting the additional outage reporting to rural areas will prevent excessive reports resulting from outages in more densely populated urban areas. There are several possible ways to identify rural areas. "Rural areas" may be determined by the Commission, utilizing United States Census Bureau measurements and data, as areas not within urbanized areas or urban clusters. Alternatively, "rural areas" may be defined as

¹³ See D.16-12-066, p. 170, FOF 29, pp. 182-83, OP 20. The Commission also required reporting of an Optical Carrier 3 or transport outage. This reporting should also continue on permanent basis.

¹⁴ The Commission's rural outage reporting should require all the same data points as those required for NORS. Service providers already have mechanisms for and experience with providing such data in NORS reports.

¹⁵ See Comments of ORA on Communications Division's February 2015 Proposal for Modification to General Order 133-C, filed March 30, 2015 in R.11-12-001, Appendix B.

counties in California for which the United States Census Bureau has measured a population density of 600 or less per square mile.¹⁶

4. Use of Media Resources, Such as Radio Stations, Should Be Discussed in the Phase 2 Working Group

D.16-12-066 stated that Phase 2 of this proceeding will consider whether reporting to the media should be required as part of service outage reporting.¹⁷ During the proceeding, the role of radio stations, social media and other media resources in immediately spreading information about service outages was highlighted.¹⁸ On the other hand, there may be drawbacks to immediate public reporting of service outages, such as the possibility of attracting bad actors seeking attention. The Phase 2 Working Group should consider all of these concerns and develop policies and procedures governing the immediate media reporting of service outages.

III. CONCLUSION

This proceeding uncovered significant public safety issues arising from call completion issues and outages occurring in rural areas. The Commission addressed many of these issues in D.16-12-066, and ordered Phase 2 to determine, among other things, how outage reporting procedures could better address California's public safety needs.¹⁹ ORA makes several proposals regarding outage reporting in these comments. We look forward to further discussion of these matters in the Working Group to be convened among the parties to this proceeding.

¹⁶ This is the definition of "rural counties" utilized by Senate Bill 566 (McGuire), which also involves the reporting of service outages in rural areas. ORA's proposals for Commission rural outage reporting requirements are harmonious with that bill.

¹⁷ See D.16-12-066, p. 21.

¹⁸ See D.16-12-066, p. 114-121.

¹⁹ See D.16-12-066, p. 183, OP 21 and OP 22.

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