

**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)

**REPLY COMMENTS OF CTIA  
ON PROPOSED DECISION DETERMINING  
DECISION 16-12-066 HAS BEEN COMPLIED WITH  
AND CLOSING INVESTIGATION 14-05-012**

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In accord with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), CTIA replies to the comments of the Public Advocates Office at the California Public Utilities Commission, The Utility Reform Network, and the Center for Accessible Technology (collectively, “Joint Commenters”) on the *Proposed Decision Determining Decision 16-12-066 has been Complied with and Closing Investigation 14-05-012* (“Proposed Decision”) filed in the above-captioned proceeding on August 26, 2019.

**I. INTRODUCTION**

The Proposed Decision determines to close Investigation 14-05-012 “because Commission staff, respondents, and the applicable parties have completed their tasks ordered by Decision 16-12-066.”<sup>1</sup> In accord with the Commission’s Rules of Practice and Procedure, comments on the Proposed Decision must be limited to “factual, legal or technical errors” in the Proposed Decision’s determination that the tasks ordered by Decision 16-12-066 have been completed.<sup>2</sup> The Joint Commenters’ comments are not so limited, and as a result, must be

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<sup>1</sup> Proposed Decision, p. 2.

<sup>2</sup> Rule 14.3(c) (“Comments shall focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law.”)

dismissed outright. Moreover, the Joint Commenters' request that the scope of R. 18-03-011 be amended by way of a decision in this docket is procedurally improper and should be given no countenance by the Commission.

## **II. THE JOINT COMMENTERS' MAKE IMPERMISSIBLE COLLATERAL ATTACKS ON THE COMMISSION'S EARLIER REACHED CONCLUSIONS**

In arguing that the "Commission must require carriers to share outage notification information directly with [California Office of Emergency Services] Cal OES and local authorities for the protection of public safety,"<sup>3</sup> the Joint Commenters do not identify any new legal or factual error. Rather, they merely restate their previously rejected arguments.

For example, the Proposed Decision, consistent with earlier-reached conclusions, indicates that confidentiality considerations make it legally infeasible to share carriers' outage reports with other California agencies.<sup>4</sup> In response, the Joint Commenters argue the Ordering Paragraph addresses whether outages themselves should be reported to Cal OES, not whether confidential outage reports generated under GO-133D should be provided to Cal OES.<sup>5</sup> This is the *same* argument they made in their November 28, 2018 comments in this proceeding.<sup>6</sup> It was incorrect then, and as noted in the Proposed Decision, is incorrect now:

Joint Parties try to draw a distinction between evidence of an outage and a formal report, and [the] reason that the former should be produced as a matter of public safety. But neither GO 133-D nor 47 CFR draw a distinction between outage

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<sup>3</sup> Joint Commenters Comments, p. 3; *see also* p. 4 ("The fact that an outage occurred should be shared with Cal OES and local authorities"); p. 5 ("the PD's Ordering Paragraphs and Conclusions of Law should be revised to require carriers to provide outage reports to these government agencies.").

<sup>4</sup> Proposed Decision, p. 57.

<sup>5</sup> *See* Joint Commenters' Comments, p.4.

<sup>6</sup> *See* Opening Comments of the Center for Accessible Technology, the County of Mendocino, and the Utility Reform Network on the October 29, 2018 Administrative Law Judge Ruling, I. 14-05-012 (November 28, 2018), p. 28.

information and a formal report. It is the evidence of the outage, regardless of the form the information is conveyed, that is confidential.<sup>7</sup>

To the extent that the Joint Commenters seek to challenge the Commission's determination regarding the confidentiality of the outage data, they are effecting an improper collateral challenge to Decision 18-07-045 in which that determination was made. If the Joint Commenters believed that such determination was "over expansive and contrary to essential public interests,"<sup>8</sup> then they should have challenged that decision through an application for rehearing or other appropriate procedural vehicle. Their attempt to alter the Commission's earlier rendered determination through comments on a proposed decision in a separate, subsequent proceeding is procedurally defective and must be rejected.

### **III. JOINT COMMENTERS' REQUESTS TO MODIFY THE SCOPE OF RULEMAKING 18-03-011 ARE ALSO PROCEDURALLY DEFECTIVE**

The Joint Commenters assert "[i]f the Commission closes this proceeding, it should, at minimum, include an ordering paragraph requiring the scope of R.18-03-011 to include implementation of a requirement that carriers must provide state emergency responders with prompt notification of telecommunications service outages,"<sup>9</sup> and propose an ordering paragraph to accomplish this request.<sup>10</sup> The Joint Commenters' request is procedurally invalid and must be rejected outright.<sup>11</sup>

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<sup>7</sup> Proposed Decision, p. 57.

<sup>8</sup> Joint Commenters' Comments, p. 4.

<sup>9</sup> *Id.*, p. 8.

<sup>10</sup> *Id.*, p. A-3.

<sup>11</sup> The same argument applies to the Joint Commenters' recommended ordering paragraph that "Within 180 days of the issuance of Examination of the Local Telecommunications Networks and Related Policies and Practices of AT&T California and Frontier California, 2010 – 2017, the Commission should address the key findings and recommendations identified in the Examination of the network condition, facilities, policies, practices, and procedures of AT&T and Frontier in a new phase of R.11-12-001." Joint Commenters' Comments, p. A-2. Such a determination can only be made through the issuance of a ruling in R. 11-12-001.

There is nothing in the Public Utilities Code or the Commission's Rules of Practice and Procedure that allows the Commission to amend the scope of a particular proceeding by way of a decision in another docket. To the contrary, the Public Utilities Code and Commission Rules are very clear on this subject. Specifically, PU Code Section 1701.1 (c) provides that:

The commission, upon initiating a quasi-legislative proceeding [such as R. 18-03-011] shall assign one or more commissioners to oversee the case ....The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution and that, consistent with due process, public policy, and statutory requirements, determines whether the proceeding requires a hearing.

Correspondingly, Commission Rule 7.3 provides that:

The assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed.

The scope of any proceeding must be determined by the Commissioner assigned to that proceeding in a ruling issued in that proceeding. The Commission is therefore precluded from modifying the scope of R. 18-03-001 by way of an order in this proceeding, as the Joint Commenters have suggested.<sup>12</sup>

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<sup>12</sup> CTIA recognizes that the Proposed Decision (p. 3) "directs any party who believes that the Commission should engage in any additional intrastate rural call completion regulation or investigation to ensure telecommunications service quality to raise those concerns in one or more of the following open Commission proceedings that have identified telecommunications service quality in emergency situations as being part of their purview: Rulemaking (R.) 18-03-0111 and R.18-12-005." To the extent that the Joint Commenters believe that the scopes of these two rulemakings do not cover the issues they seek to explore, then, pursuant to the Commission's Rules of Practice and Procedure, they can file motions seeking to expand the scopes of the two rulemakings. The cited language from the Proposed Decision contemplates that exact procedure ("raises those concerns in one or more of the following open Commission proceedings....")

#### IV. CONCLUSION

The comments of the Joint Commenters should be rejected in their entirety and the Commission should proceed to expeditiously adopt the Proposed Decision.

Respectfully submitted September 3, 2019 at San Francisco, California.

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