

**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
(December 1, 2011)

**REPLY COMMENTS OF CTIA ON ALTERNATE PROPOSED
DECISION ADOPTING GENERAL ORDER 133-D**

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Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), CTIA¹ respectfully submits its Reply Comments on the Alternate Proposed Decision Adopting General Order 133-D (“APD”) issued in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

The comments of the Office of Ratepayer Advocates (“ORA”) and Communications Workers of America (“CWA”) misrepresent the facts, the law, and the record to advocate for utility-style regulation that is inappropriate for the competitive marketplaces in which wireless and voice over Internet protocol (“VoIP”) providers operate. This is particularly true with regard to installation standards for wireless service, which is generally provided on an immediate basis in a competitive retail environment. ORA also proposes conclusions of law regarding Pub. Utils. Code §§ 710, 2896, and 2897 that CTIA previously has demonstrated to be erroneous.

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America’s competitive and world-leading mobile ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

II. CWA AND ORA MISSTAGE THE FACTS, LAW, AND RECORD IN ARGUING FOR BROADER EXTENSION OF SERVICE QUALITY STANDARDS

CWA argues that “[t]here is no reasonable basis to exclude those additional millions of [wireless and VoIP] customers from the protections provided by service quality standards,” and therefore supports the opening of a new phase of the proceeding to examine service quality standards for wireless and VoIP services.² Similarly, ORA supports the APD’s goal of updating the Commission’s General Order on service quality rules “to be more consistent with both the Commission’s statutory duty to protect the public and its ‘technology-neutral’ policy goal.”³ ORA proposes additional findings of fact that “[s]ervice quality standards should be, as much as practicable, technology neutral,”⁴ and that the “chronic failure of many carriers to meet minimum service quality measures and standards demonstrates that competition has not been sufficient to ensure quality service.”⁵

Both of these commenters misstate the facts and the record by ignoring the overwhelming evidence in this proceeding of the vigorously competitive nature of the wireless marketplace in California.⁶ The record demonstrates that this competition has resulted in declining prices, diverse service plans, significant network improvements, and enthusiastic consumer adoption.⁷ The VoIP marketplace is similarly competitive. As a result, utility-style service-quality

² CWA Comments at 4-5. Unless otherwise noted, references herein to parties’ “Comments” refer to initial comments on the APD filed on or about July 12, 2016.

³ ORA Comments at 1.

⁴ *Id.* at A-1.

⁵ *Id.* at A-2.

⁶ *Id.* at 3; *see also id.* at A-2 (proposing an additional conclusion of law that applicability of the Installation Interval and Installation Commitment service quality measures should not be limited to only General Rate Case (“GRC”) incumbent local exchange carriers (“ILECs”)), A-3 (deleting language limiting to GRC ILECs application of section 3.1 regarding Installation Interval and 3.2 regarding Installation Commitments).

⁷ *See, e.g.*, CTIA Comments at 4-7.

regulation is unnecessary and, in fact, could undermine the customer experience by limiting providers' ability to meet customer needs.⁸

III. ORA MISSTATES THE FACTS, LAW, AND RECORD TO SUPPORT APPLICATION OF INSTALLATION REQUIREMENTS TO WIRELESS CARRIERS

ORA incorrectly states that “the record supports” the “applicability of the Installation Interval and Installation Commitment service quality metrics to all carriers,” including wireless carriers.⁹ In fact, as CTIA points out in its comments, the record in this proceeding establishes that California’s wireless marketplace is functioning effectively, providing carriers significant incentives to maintain and improve all aspects of service quality for consumers.¹⁰

Application of traditional utility installation standards to wireless carriers also would be misguided because of the manner in which customers purchase and obtain wireless services from carriers. Wireless carriers generally maintain retail stores where consumers can obtain service in a matter of minutes. Many wireless carriers also sell their services online, allowing customers to order service and receive their phones via mail or courier. Installation standards designed for plain old telephone service are incurably maladapted for wireless service. Application of traditional utility-style installation regulation to wireless service would be inappropriate, and actually could impair wireless carriers’ ability to provision services more quickly and effectively to customers.

⁸ See CTIA Comments at 8 & n.26, *citing* D. 06-03-013 at 3 (a return to a “traditional regulatory approach” would “cause delays for the introduction of innovative services, beneficial rate plans, and deployment of new technology.”).

⁹ ORA Comments at 3; *see also id.* at A-2 (proposing additional conclusion of law that applicability of the Installation Interval and Installation Commitment service quality measures should not be limited to only General Rate Case incumbent local exchange carriers), A-3 (deleting language limiting application of section 3.1 regarding Installation Interval and 3.2 regarding Installation Commitments to GRC ILECs).

¹⁰ CTIA Comments at 4-8 & n.6.

IV. CTIA PREVIOUSLY HAS DEBUNKED ORA’S UNFOUNDED LEGAL THEORIES FOR COMMISSION AUTHORITY OVER SERVICE QUALITY STANDARDS FOR WIRELESS AND VOIP SERVICES

ORA proposes additional conclusions of law stating that the Commission has the authority, and perhaps even the obligation, to regulate wireless and interconnected VoIP service quality and installation standards under Pub. Util. Code §§ 2896 and 2897 and 47 U.S.C. § 706(a).¹¹ The text of ORA’s comments offers no explanation for these conclusions, and CTIA has shown these legal theories to be erroneous in previous filings in this docket. Specifically, CTIA has shown that § 2896 permits the Commission to recognize that competition, and not regulation, is the best means of ensuring service quality in the California wireless market.¹² CTIA has further demonstrated that Commission regulation of wireless service quality is preempted by § 332(c) of the Federal Communications Act, so that no state law could authorize such regulation in any event.¹³ CTIA also has explained that telephone-style service quality regulations for VoIP would violate federal law as well as Pub. Util. Code § 710, and 47 U.S.C. § 706 does not provide an exception, consistent with the opinion of the California Legislative Counsel.¹⁴

ORA also argues that §§ 2896 and 2897 provide the “express statutory direction” required by the exception to Pub. Util. Code § 710(a),¹⁵ but offers no justification for this theory, and indeed none exists. As discussed above, the FCC has specifically preempted telephone-style

¹¹ ORA Comments at A-3.

¹² *Id.* at 3.

¹³ CTIA Comments at 8-10; CTIA Reply Comments on Proposed Decision Adopting G.O. 133-D (April 18, 2016) at 2-3.

¹⁴ CTIA Comments on Proposed Revisions to G.O. 133, Section 4 (Jan. 22, 2016) at 4-6.

¹⁵ ORA Comments at A-3

regulation of VoIP, and it is not clear that VoIP is even within the scope of services covered by §§ 2896 and 2897.

The Commission should not entertain ORA's proposed erroneous conclusions of law regarding the scope of Pub. Util. Code §§ 710, 2896, and 2897.

V. CONCLUSION

ORA and CWA misstate the facts, the law, and the record and advocate for unsupportable legal positions that would drive the already flawed APD even farther towards a utility-style regulatory approach that is inappropriate for the competitive wireless and VoIP markets. The Commission should reject the APD and instead adopt President Picker's Proposed Decision.

Respectfully submitted July 18, 2016, at San Francisco, California.

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