

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Modernizing the FCC Form 477 Data Program)	WC Docket No.11-10
)	
Development of Nationwide Broadband Data to)	WC Docket No. 07-38
Evaluate Reasonable and Timely Deployment of)	
Advanced Services to All Americans, Improvement)	
of Wireless Broadband Subscribership Data, and)	
Development of Data on Interconnected Voice over)	
Internet Protocol (VoIP) Subscribership)	
)	
Service Quality, Customer Satisfaction,)	WC Docket No. 08-190
Infrastructure and Operating Data Gathering)	
)	
Review of Wireline Competition Bureau Data)	WC Docket No. 10-132
Practices)	

COMMENTS OF CALTEL

Pursuant to the Commission’s Notice of Proposed Rulemaking (NPRM),¹ which was published in the Federal Register on February 28, 2011, the California Association of Competitive Telecommunications Companies² (“CALTEL”) files the following comments on behalf of its members.³

¹ Notice of Proposed Rulemaking FCC 11-14 (February, 8, 2011).

² CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying next-generation networks to provide competitive voice, broadband, and video services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

³ See www.caltel.org for a list of CALTEL member companies.

I. Introduction and Summary

In this NPRM, the Commission seeks comment on whether and how to reform the Form 477 data program. The Commission outlines a number of objectives for improved data collection from service providers, including “supporting informed policymaking, promoting competition, and protecting consumers,”⁴ while stressing the need for modernizing and streamlining current requirements so that the Commission “has the data it needs, while minimizing the overall burdens of data collection.”⁵ The Commission also questions whether more information regarding service quality would be helpful in carrying out its statutory duties, including ensuring universal service, ensuring public safety, promoting telephone and broadband competition, and promoting broadband deployment and availability.⁶

CALTEL’s answer to this latter question is an emphatic “yes,” especially in view of the serious threat to the nation’s telecommunications infrastructure that has recently come to light. CALTEL also believes, as explained below, that the Commission can meet the data collection goals of this NPRM easily by simply requiring carriers who file retail and / or wholesale service quality data with state public utility commissions to file those same reports with this Commission.⁷

⁴ NPRM at ¶ 1.

⁵ *Id.*

⁶ NPRM at ¶¶ 23, 25, 27,31, 34, 36, 44, 47, 65, and 89-99.

⁷ CALTEL is not recommending that the Commission impose new data collection requirements on any carrier - ILEC, CLEC or otherwise. There is already plenty of data available. The idea, therefore, is that the Commission should request those carriers that are *already* filing service quality reports at the state level to file those same reports with the Commission.

A. There is a Nexus Between Service Quality Data and Small Business Broadband Competition, Deployment and Availability: Competitive Carriers Use Copper Loops to Provide Broadband Services to Small and Medium Business Customers

As CALTEL explained in its comments on the Commission’s Public Notice Seeking Comment on the Business Broadband Market,⁸ its member companies are competitive local exchange carriers (CLECs) that predominantly provide products and services either to very small, small and medium business customers, or to other carriers (wholesale services). Small and medium businesses, including very small businesses, (“SMBs”) are the lifeblood of CLECs in California. And those CLECs, in turn, regularly provide SMBs with innovative and cost-effective voice-and-broadband services that would otherwise be unattainable for many of them.

Although CLECs have invested millions of dollars building out tens of thousands of miles of fiber networks in California, they all depend on having access to ILEC “last-mile” facilities to serve the vast majority of their customers. These last mile connections run over copper loops that connect the CLECs’ networks to the customer. These copper loops are owned by the incumbent local exchange carrier (ILEC), which in California is usually AT&T or Verizon, and CLECs pay to lease the access to these last mile connections.

While these last-mile copper loops recently have become maligned as outdated or obsolete, they are actually an essential component of the cost-effective, high-quality broadband services that competitive carriers provide. Technological advances such as

⁸ See Opening Comments of the California Association of Competitive Telecommunications Companies on the Business Broadband Marketplace, WC Docket No. 10-188, dated October 15, 2010. See also Reply Comments of CALTEL dated November 4, 2010.

Ethernet over copper (EoC), for example, have allowed competitors to bond together multiple slower-speed copper circuits into a high-speed link that allows carriers to deliver integrated voice-and-broadband services over the existing copper infrastructure at speeds of up to 45Mbps.

The National Broadband Plan, in fact, recognizes the importance of maintaining competitive access to these vital last-mile connections to the customer:

Ensuring robust competition not only for American households but also for American businesses requires particular attention to the role of wholesale markets, through which providers of broadband services secure critical inputs from one another. Because of the economies of scale, scope and density that characterize telecommunications networks, well functioning wholesale markets can help foster retail competition, as it is not economically or practically feasible for competitors to build facilities in all geographic areas... While facilities such as end-user loops and other point-to-point data circuits often serve as critical inputs to retail broadband services for business, mobile and residential customers, competitors' access to those inputs currently depends on factors that have little bearing on the economics of facilities-based competitive entry. For example, some wholesale access policies vary based on technology—including whether the facility or service operates using a circuit-or-packet-based mode or is constructed from copper or fiber—regardless of the economic viability of replicating the physical facility.⁹

Because carriers rely on the availability of these copper facilities to connect with their customers, the quality of those facilities, and the quality of the ILECs' maintenance of them, is of critical importance to the continued development of competitive services. The best way for the Commission to monitor such quality is via the “off-the-shelf” data that CALTEL recommends the Commission seek from carriers required to file it at the state level.

⁹ See *Connecting America: The National Broadband Plan, Chapter 4: Broadband Competition and Innovation Policy*, at p. 47.

B. Service Quality Data in California Indicates Significant Deterioration of AT&T's Copper Infrastructure

The importance of collecting this data was highlighted by the widespread telephone service outages across California during the winter storms of December 2010. Those storms, and AT&T's interminable response to them, demonstrated for everyone to see that the outside plant copper infrastructure here has fallen into serious disrepair.

The data collected by the California Public Utilities Commission ("CPUC") supports this conclusion. For example, for the year 2010 AT&T California was only able to restore service to residential and small business customers within 24 hours of an outage being reported 50% of the time.

AT&T is supposed to meet the 24-hour repair standard 90% of the time in California.¹⁰ Yet AT&T not only never met the standard for even one month last year, but AT&T could not restore service within 24 hours more than 35% of the time even during the normally dry months of May through July¹¹

C. Off-the-Shelf Data Already Exists to Provide the Commission with a Reliable Window Into the Magnitude of this Critical Problem

In these comments, CALTEL will show how gathering off-the-shelf data about retail and wholesale service quality, using measurements and data that have already been established by the states, will help the Commission to carry out its statutory obligations, including enforcement of the anti-backsliding provisions of Section 271 of the Act, and

¹⁰ D.09-07-019, Decision Adopting General Order 133-C and Addressing Other Telecommunications Service Quality Reporting Requirements, Issued July 16, 2009.

¹¹ See Attachment A for copy of AT&T California's Out of Service Repair Standard results for the year 2010. Also posted on the CPUC website at <http://ftp.cpuc.ca.gov/Telco/ServiceQualityReports/AT&T%20CA%20Service%20Quality%202010.pdf>

the policy goals of the NPRM. In particular, it is critical for the Commission to understand how deterioration of the nation's outside plant copper infrastructure has impacted AT&T and Verizon landline customers,¹² as well as the wider implications for competitive choice available to small and medium business customers.

II. Recently-Published Service Quality Data in California Indicates Significant Deterioration of AT&T's Copper Infrastructure

Two recent examples from California serve to demonstrate how collecting service quality data could help the Commission gauge the condition of the nation's physical telecommunications network, and the impact that condition is having on public safety, competition, and the plethora of other issues identified in the NPRM. Both of these examples show how and why the deteriorating copper infrastructure directly impacts residential and small business consumers.

A. California Senate Informational Hearing on February 4, 2011

California State Senator Alex Padilla, Chair of the California Senate Energy, Utilities and Communications Committee hosted an informational hearing in Los Angeles on Friday, February 4, 2011 to discuss the widespread service outages recently experienced by Southern California residents and businesses, as well as to look at the state of the underlying outside plant copper infrastructure.

The Committee's Background Summary noted that over 100,000 AT&T and Verizon customers lost service in December 2010, many for 2-3 weeks.¹³ Company

¹² According to the federal Center for Disease Control and Prevention, in the first half of 2010 71.3% of U.S. households still had traditional landline telephone service, and approximately 13% had landline-only service. See <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf>, Table 1.

¹³ See Background Summary for February 4, 2011 California Senate Energy, Utilities and Communication Committee Informational Hearing in Los Angeles: Telephone Service Outages and

technicians who spoke with the press and testified at the hearing noted that so-called “pulp cable” (copper wires wrapped in paper) was especially vulnerable--not because of its age or make-up--but because the companies no longer maintain the constant air pressure needed to protect the cable. Technicians also complained that “routine maintenance” was a thing of the past, and AT&T’s Network Vice President described the difficulties of allocating sufficient workforce to both the demand of installing new customers and performing routine maintenance (what he termed “rehab” work).¹⁴

B. The Impact of the Service Outages on CLECs and Their Business Customers Was Equally Significant and Statewide

The CEO of CALTEL member company TelePacific Communications, the third largest telecommunications carrier in California, testified at the hearing that over 3,000 of their business customers experienced outages during the December storms, and that non high-cap customers were out of service for an average of 15 days because of outside plant troubles that were the responsibility of the ILECs. By mid-January, TelePacific reported that customers were waiting an average of 8 days for service to be restored.¹⁵ Other CALTEL member companies suffered similar impacts and delays in working with AT&T and Verizon maintenance and repair personnel.

Infrastructure Needs (the “CA Senate Background Summary”), at p. 1, which can be downloaded at http://www.senate.ca.gov/ftp/SEN/COMMITTEE/STANDING/ENERGY/_home/020411/Background_020411.pdf. An audio recording of the hearing is also available.

¹⁴ See http://www.nbclosangeles.com/news/local/Inside_Recent_Phone_Outages_Los_Angeles-113453139.html, http://www.pe.com/business/local/stories/PE_News_Local_D_telephone04.26f7d84.html, <http://losangeles.cbslocal.com/2011/02/04/panel-probes-widespread-landline-phone-outages/> http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=7940573

¹⁵ See filed testimony of Dick Jalkut, Chief Executive Officer, TelePacific Communications at http://www.senate.ca.gov/ftp/SEN/COMMITTEE/STANDING/ENERGY/_home/02-04-11Jalkut.pdf.

Pursuant to Section 251 Interconnection Agreements between CLECs and AT&T,¹⁶ the ILECs are required to pay performance penalties for poor performance, but may avoid penalties if a “Force Majeure” condition is invoked. In this case, AT&T declared a Force Majeure throughout *the entire states* of California and Nevada effective December 16 through January 15.¹⁷ Even though the severe weather was primarily isolated to Southern California, AT&T informed CLECs that the need to redeploy technicians from Northern California and Nevada lengthened restoral of more routine outages in, and justified extending the Force Majeure to, Nevada, central and northern California.

In the meantime, CLECs have had to provide credits and other remediation efforts to restore customer confidence in the future reliability of their networks.

III. The Commission Should Gather Service Quality Data to Fulfill A Number of Purposes Outlined in the NPRM

The NPRM seeks comment on “whether service quality and customer satisfaction data are necessary to fulfill several purposes...(including) reducing waste, fraud, and abuse and increasing accountability in our universal service programs by ensuring that recipients of government support provide services to their customers that are reliable and of comparable quality to those not provided with government support; ensuring public

¹⁶ Because Verizon California was a part of the former General Telephone and Electronics (GTE) Corporation, it is not a Bell Operating Company (BOC) and is not subject to the requirements of Section 271 of the Telecommunications Act of 1996 (the Act). Therefore, the CPUC’s adopted performance remedy plan only applies to AT&T California, although Verizon is subject to a set of CLEC performance measurements as well as service guarantees and remedies for special access and other wholesale products. For that reason, Verizon also invoked a Force Majeure notification for California for the period of December 22, 2010 through January 29, 2011.

¹⁷ See Attachment B for the Force Majeure notification issued to CLECs by AT&T California.

safety by ensuring that networks remain a reliable means of contacting public safety organizations; monitoring telephone and broadband competition by ensuring that service providers with overlapping footprints provide comparable levels of service; promoting broadband deployment and availability; protecting consumers by ensuring that end users have information about network performance; and tracking the effects of the conversion from PSTN to IP services by providing insight into the performance levels of both networks.”¹⁸ CALTEL will explain how its proposal for the Commission to gather off-the-shelf retail and wholesale service quality data supports each of these objectives.

A. Supporting Universal Service Goals

The NPRM states that “Section 254 of the Act, which governs administration of universal service programs, requires the Commission to base its universal service policies on certain principles, including that ‘[q]uality services’ be ‘available at just, reasonable, and affordable rates.’”¹⁹ It further states that “the Commission itself has noted the importance of having reliable data to measure the performance of USF and to protect against waste, fraud and abuse.”²⁰

Access to service quality data would help the Commission measure whether companies like AT&T California, which receives substantial subsidies from both federal and state USF funds to provide basic telephone service to residential customers in high-cost areas, are actually providing the required “quality services.”

¹⁸ NPRM at ¶89.

¹⁹ *Id.*, at ¶24.

²⁰ *Id.* at ¶25.

These federal and state USF subsidies that AT&T receives, in addition to exponentially increased AT&T retail rates,²¹ the wholesale Unbundled Network Element (UNE) rates and the special access rates that CLECs pay to lease end-user loops, all provide ongoing revenue that in most cases was intended to, and certainly should be sufficient to, cover the costs of performing routine maintenance and repair of AT&T's outside plant copper infrastructure. AT&T's dreadful service quality results and related deterioration of outside plant infrastructure indicate that the company may be redirecting this revenue to new technologies and products such as wireless and video. The Commission, as well as the CPUC, have clear mandates to determine if this is the case. Obtaining AT&T's service quality data would be the right first step.

B. Ensuring Public Safety

As the CA Senate Background Summary noted, “prolonged and widespread service outages create a serious threat to public safety because when customers lose landline telephone service they lose the most reliable way to call 911 in an emergency.”²² Two examples that made the news in California prove the point.

Verizon California landline customer Kay Hemet, whose voice and broadband service was out for 12 days during the December storms, described her concerns this way:

²¹ The CPUC deregulated all retail rates except residential basic service in 2006, and the basic service rate freeze was lifted earlier this year on January 1, 2011. *See* California Senate Office of Oversight and Outcomes Report, “Gaps Emerge in Telephone Consumer Protections: A Report Prepared for the Rules Committee of the California State Senate,” dated July, 16, 2010, for an analysis of the impacts on residential customers. For business customers, AT&T's rate for a “Single and Multiline Business Access Line” in California increased from \$11.70 in 2006 to \$24.50 effective December 1, 2010.

²² CA Senate Background Summary, p. 1.

“We have nothing wireless in this house,” she said. Her husband, Marshall, 76, is hard of hearing and isn’t a fan of cell phones. Their land line is their lifeline in case of a medical emergency, she said. “Each day that I was trying unsuccessfully to recontact them, my anxiety over that possibility grew,” she said.²³

California Senator Alex Padilla stressed that his primary concern in convening the hearings was one of public safety:

“Rule number one,” said Pacoima State Senator Alex Padilla. “No matter who you are, no matter what your income level is, you should be able to dial 911 in the case of an emergency. It is a requirement for all phone companies in California to make sure that they maintain their networks, even when there are outages, that service is restored as quickly as possible.”²⁴

As noted above, the data available in California shows that AT&T California was able to restore lost service to residential and small business customers within 24 hours only 50% of the time in 2010. That fact alone suggests there is a potentially significant public safety risk growing out of the deterioration of the copper plant. By monitoring service quality reports, this Commission, and state commissions everywhere, can begin to ascertain the critical public safety risks associated with this issue.

C. Promoting Broadband Competition, Deployment and Availability

As CALTEL has described above, service quality data that provides insight into the viability of the ILECs’ outside plant copper infrastructure also provides value insight into the existence and viability of competitive choice for business customers. Because competitors rely on last-mile access from the ILECs, there is a lot of competitive

²³ See “Storm-Related Phone Outages Sign Network Needs Fix, Groups Say,” The Press-Enterprise at http://www.pe.com/business/local/stories/PE_News_Local_D_telephone04.26f7d84.html .

²⁴ See “Lawmakers Want Explanation to SoCal Outages,” KABC-TV at http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=7940573 .

mischievous that could take place under the guise of infrastructure deficiencies. Service quality reports delivered to the Commission would allow the Commission to analyze the data to determine if and how deteriorating infrastructure is affecting broadband competition, deployment and availability.

The Commission has described competitors' reliance on "last-mile" copper loops in the National Broadband Plan, the Small Business Broadband Public Notice and other recent decisions:

Competitive carriers are currently using **copper** to provide SMBs with a competitive alternative for broadband services. Incumbent carriers are required to share (or "unbundle") certain **copper loop facilities**, which connect a customer to the incumbent carrier's central office. By leasing these **copper loops** and connecting them to their own DSL or Ethernet over **copper equipment** that is collocated in the central office, competitive carriers are able to provide their own set of integrated broadband, voice and even video services to consumers and small businesses.²⁵

In addition, although the bandwidth capacities primarily available to business customers have historically been based on the architecture of the legacy circuit-switched telephone network (*e.g.*, 1.5 Mbps DS1 circuits corresponding to 24 voice channels, 45 Mbps DS3 circuits corresponding to 672 voice channels, and so forth), providers increasingly are able to offer customers greater flexibility in how much bandwidth they purchase as part of a business broadband service (*e.g.*, 10 Mbps, 100 Mbps, and 1 Gbps, or variable bandwidth offerings). We also know that optical fiber facilities are increasingly being used for higher-capacity offerings, **but that legacy copper facilities (with or without higher-layer communication protocols)**, co-axial cable facilities, and wireless spectrum remain highly desirable transmission media that are used in a wide variety of circumstances.²⁶

First, there is evidence that consumers can benefit from innovative offerings provided by competitors relying on UNEs. Several providers have explained that by attaching their own equipment to **legacy copper loops** leased as UNEs, they

²⁵ See *Connecting America: The National Broadband Plan, Chapter 4: Broadband Competition and Innovation Policy*, at p. 48. (Emphasis added)

²⁶ See Wireline Competition Bureau Seeks Comment on Business Broadband Marketplace, WC Docket No. 10-188, released September 15, 2010, at page 2. (Emphasis added)

have been able to differentiate their service offerings and provide additional choices to residential or business customers in markets entered by relying on UNEs... Second, evidence in the record also suggests that competitors rely on UNEs to target particular niche markets or customer segments. For example, multiple carriers provide **advanced services over copper loops** to enterprise customers, including hospitals, fire departments, and schools, as well as government clients.²⁷

Given this context, gathering service quality data will give the Commission a critical input for its plans to address the lack of a “cohesive, comprehensive analytic framework for promoting competition in business broadband markets.”²⁸

D. Tracking the Effects of the Conversion from PSTN to IP Services

Although the service quality data that CALTEL recommends the Commission gather will not provide direct insight into the impacts of the transition from circuit-switched to IP-formatted traffic routing and interconnection, it will help ensure that the CLECs that have invested in adopting IP technology will have adequate last-mile facilities available over which to transmit the ever-increasing broadband traffic of residential and business customers.

In this regard, it is important to understand that transitioning from circuit switched to IP-formatted traffic does not necessarily mean transitioning away from the copper loop and existing outside plant. To the contrary, last mile access via copper is a critical element of IP-based services provided by most CLECs.

²⁷ See Memorandum Opinion and Order, Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 09-135, at ¶ 102-103. (Emphasis added)

²⁸ See *Connecting America: The National Broadband Plan*, Chapter 4: Broadband Competition and Innovation Policy, at p. 47.

As CALTEL described above and in its comments on the Commission's Small Business Broadband Public Notice, CLECs were the early adopters of IP technology and many have already made the transition to all-IP networks.²⁹

However, the protocol that a service provider uses to route and exchange traffic with other service providers generally bears no relationship to the type of underlying outside plant facilities used to connect service provider switches to end user premises. Nor does it necessarily have a bearing on what kind of services can be supported. IP traffic can be, and routinely is, routed over copper as well as fiber facilities. Broadband services can be provided in either IP or TDM format.

The importance of the Commission using precise language to describe this transition cannot be overstated. When the NPRM describes the transition as one "from legacy circuit-switched networks to all IP, broadband networks" and talks about the potential for consumers to "lose access to statutorily required 'adequate facilities at reasonable charges,'" ³⁰ it could be concluded, incorrectly, that the transition from TDM to IP renders the existing outside plant obsolete, a conclusion that AT&T has already shown it is all too happy to exploit.³¹

²⁹ See Opening Comments of the California Association of Competitive Telecommunications Companies on the Business Broadband Marketplace, WC Docket No. 10-188, dated October 15, 2010, at pp. 14-22.

³⁰ NPRM at ¶23.

³¹ See Comments of AT&T Inc. on the Transition From the Legacy Circuit-Switched Network to Broadband, National Broadband Plan Public Notice #25, GN Docket Nos. 09-47, 09-51, 09-137, dated December 21, 2009.

IV. Off-the-Shelf Retail and Wholesale Service Quality Data is already available and should be Gathered by the Commission to Support the NPRM's Stated Purposes

A key virtue of CALTEL's proposal is that it would merely require carriers to file with the Commission data that the carrier has already prepared and filed with a state commission. In other words, carriers would not have to do any additional data collection in order to provide the Commission with robust information it could use to meet the purposes of the NPRM. Similarly, if a carrier is not subject to state service quality reporting requirements, there would be nothing to report.

As the examples below indicate, states already have in place retail and wholesale performance / service quality data reporting that would provide exactly the information that the Commission needs.

A. Retail Service Quality Standards

1. The CPUC's General Order 133-C Recently Revised Retail Service Quality Measures for California

In July, 2009, the CPUC adopted a decision that updated the retail service quality measures and standards applicable to telecommunications carriers.³² The streamlined set of measures exempted all but small rate-of-return ILECs from reporting data on installation orders, but it requires larger ILECs, CLECs, and non-VoIP cable companies to report on two key maintenance and repair measures (Customer Trouble Report Rate and Out of Service Repair Interval) as well as a customer service response time measure

³² D.09-07-019, Decision Adopting General Order 133-C and Addressing Other Telecommunications Service Quality Reporting Requirements, Issued July 16, 2009.

(Answer Time). Small carriers (those with fewer than 5000 customers), resellers, wireless carriers³³ and VoIP carriers were, for the most part, exempted from the rules.

The CPUC documented the updated service quality rules in a new General Order (G.O. 133-C), and required telecommunications carriers to begin reporting data against the new standards on a quarterly basis beginning with the first quarter of 2010.³⁴ The decision also required the CPUC's Communication Division to post service quality standards and data on the CPUC's website.

2. Other States Have Similar Service Quality Data

Earlier this month, the Connecticut DPUC finalized a \$745,000 fine against AT&T for missing out-of-service restoral benchmarks between 2001 and 2009.³⁵ Likewise, in November 2009, Verizon negotiated down an initial \$4.6M fine to reach a final \$2M settlement with the Florida PSC for missing out-of-service standards in 2007 and 2008.³⁶

CALTEL makes several observations about these facts. First, while admittedly limited to retail telecommunications (i.e. voice) services, there is relevant service quality data already available for California that provides a reliable window into the health (or deterioration) of the outside plant copper infrastructure, and from which the Commission can meet the objectives of the NPRM. Second, it appears that other states have adopted

³³ Wireless carriers were required to "provide coverage maps on their websites and at retail locations and to make these maps available during a sales transaction consistent with voluntary compliance agreements many wireless carriers have entered into with Attorneys General in other states." D.09-07-019 at page 6.

³⁴ See Rules Governing Telecommunications Services, General Order 133-C at <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/110984.PDF> .

³⁵ See <http://www.nhregister.com/articles/2011/03/04/business/doc4d70140e5cf81979535750.txt> .

³⁶ See <http://www.fiercetelecom.com/story/verizon-reaches-settlement-florida-psc/2009-11-12>.

and gathered data around a similar Out Of Service standard (90% of customer repair tickets restored within 24 hours). CALTEL therefore suggests that the Commission could quickly and easily request carriers to simultaneously provide it with all state-specific retail service quality data that they are already required to report.

B. CLEC Performance Measurements and Remedy Plans

In addition to the statutory obligations referenced in the NPRM, the Commission also has an obligation to monitor RBOCs who have entered the long distance market and ensure they do not backslide on their performance as wholesale providers to competitive carriers. The Commission can help itself in that mission by requesting that the RBOCs provide it with the wholesale performance measurement data that they already provide to the states.

1. The Commission's Approval of Pacific Bell's Section 271 Application Relied on the Performance Measurements and Performance Incentives Plan (PIP) Approved by the CPUC

The Telecommunications Act of 1996, and the Commission's implementation requirements state that ILECs must provide CLECs with non-discriminatory access to Operational Support Systems (OSS) and other services, elements and functions "in quantities that competitors may reasonably demand and at an acceptable level of quality."³⁷ The Commission has further clarified that for those functions "the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to

³⁷ See Memorandum Opinion and Order, Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization to Provide In-Region, InterLATA Services in California, FCC 02-330, WC Docket No. 02-306 (December 19, 2002) at Appendix C: Statutory Requirements at page C4, ¶5.

competing carriers in ‘substantially the same time and manner’ as it provides to itself.”³⁸

For those functions without a retail analog, a BOC must offer access sufficient to allow an efficient competitor “a meaningful opportunity to compete.”³⁹

On August 5, 1999, the CPUC issued a decision which established 44 performance measurements and standards for Pacific Bell (now AT&T California). These measures and standards track performance in nine areas: pre-ordering, ordering, provisioning, maintenance and repair, network performance, billing, database updates, collocation and interfaces.⁴⁰ On May 24, 2001, performance measurements and standards for GTE California (now Verizon California) were added to the plan.⁴¹ A Performance Incentive Plan was adopted for Pacific Bell in March, 2002,⁴² which later that year was cited as a critical component of the Commission’s approval of Pacific Bell’s Section 271 Application (the *California Section 271 Decision*):

We find that the performance incentives plan (PIP) currently in place for California provides assurance that the local markets will remain open after Pacific Bell receives section 271 authorization... We conclude that the Pacific Bell PIP plan provides sufficient incentives to foster post-entry checklist compliance...(and) should play a key role in swiftly detected (sic) and sanctioning any post entry backsliding.⁴³

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See D.99-08-020, Opinion Adopting the Operations Support Systems Performance Measurements, Standards, and Auditing, Reporting, Implementation and Review Procedures, August 5, 1999.

⁴¹ See D.01-05-087, Opinion Adopting Revisions to the Comprehensive Framework for Operations Support Systems Performance Measurements and Standards Adopted in D.99-08-020, Issued May 24, 2002.

⁴² See D.02-03-023, Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company, Issued March 7, 2002.

⁴³ See Memorandum Opinion and Order, Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization to Provide

The Commission also required Pacific Bell to provide it with “all California carrier-to-carrier performance metrics results and PIP reports, beginning with the first full month after the effective date of this Order, and for each month thereafter for one year, unless extended by the Commission.”⁴⁴

2. Both the CPUC and the Commission Have Ongoing Obligations to Monitor AT&T’s Wholesale Performance and Identify Post-Entry Backsliding

The *California Section 271 Decision* promised that the Commission would work with the CPUC to “closely monitor Pacific Bell’s post-approval compliance” with Section 271 requirements.⁴⁵ The Commission’s current webpage provides a more in-depth description of Act’s requirements and the Commission’s obligations:

Section 271(d) of the Communications Act of 1934, as amended (“the Act”), grants the Commission enforcement authority to ensure that a Bell Operating Company (“BOC”) continues to comply with the market opening requirements of section 271 after the Commission has approved its application to provide long distance service in its home region. The Commission can take enforcement action if, at any time after approval of the application, it determines that a BOC “has ceased to meet any of the conditions required for such approval.” After “notice and an opportunity for hearing,” which may be only a paper proceeding, the Commission may: (i) issue an order to the BOC to correct the deficiency; (ii) impose a forfeiture penalty on the BOC pursuant to title V; or (iii) suspend or revoke the BOC’s section 271 authority.⁴⁶

In-Region, InterLATA Services in California, FCC 02-330, WC Docket No. 02-306 (December 19,2002) at ¶ 160-163.

⁴⁴ *Id.*, at ¶180.

⁴⁵ *Id.*, at ¶179.

⁴⁶ See “Section 271 Enforcement” at <http://www.fcc.gov/eb/LoTelComp/271.html> .

3. The Commission Should Require BOC ILECs to Provide Aggregated Wholesale Performance Data to Determine if Backsliding Has Occurred

ILEC wholesale performance measurements and remedy plans in most states, as in California,⁴⁷ have likely been updated since Section 271 approvals were granted. The California performance measurement plan indicates that “each CLEC will have access to its own data, aggregate CLEC data, ILEC data and ILEC Affiliate data...(and) the CPUC will have access to reports for all entities.”⁴⁸ CALTEL is not aware if the CPUC is receiving or reviewing the data it is supposedly receiving, and AT&T has refused CALTEL’s request for access to aggregate CLEC data.

AT&T California’s significantly poor maintenance and repair performance on behalf of its retail customers, as discussed above, virtually guarantees that wholesale performance has deteriorated as well. The Commission needs to review both retail and wholesale service quality/performance data in order to gain a comprehensive picture about the state of the nation’s outside plant copper infrastructure, and should at the very least request that BOC ILECs provide monthly aggregated CLEC performance measurement results by state for maintenance and repair measures.

⁴⁷ See D.07-09-009, Opinion Consolidating Proceedings, Adopting the Agreed-To Joint Partial Settlement Agreement Changes of AT&T California and Verizon California Inc., and Grant Joint Application to Modify Decision 99-08-020, Issued September 13, 2007 and D.08-12-032, Decision Granting Joint Motion for Adoption of Amendments to Performance Incentive Plan, Issued December 19, 2008.

⁴⁸ See D.07-09-009, Opinion Consolidating Proceedings, Adopting the Agreed-To Joint Partial Settlement Agreement Changes of AT&T California and Verizon California Inc., and Grant Joint Application to Modify Decision 99-08-020, Issued September 13, 2007, Appendix I, Attachment A, California OSS OII Performance Measurements, Joint Partial Settlement Agreement, Reporting Process at page 175.

CALTEL further recommends that the Commission request that the BOC ILECs provide copies of all Force Majeure Event Notifications that are invoked in order to avoid payment of CLEC performance remedies when the duration of the Force Majeure period exceeds 5 days for an entire state (or multiple states) or exceeds 10 days for one or more regions within a state. This information, in addition to state-specific aggregated CLEC performance data, is critical to ensure that the Commission can meet its many statutory obligations, including enforcement of the anti-backsliding provisions of Section 271 of the Act.

C. The Commission Should Not Reinstate or Attempt to Modernize ARMIS Service Quality Reports

Finally, the Commission notes that some service quality data was collected from price cap carriers in the form of ARMIS Reports 43-05 and 43-06 “in order to monitor whether the implementation of price caps would lead to carriers lowering service quality.”⁴⁹ Some parties who commented on the Commission’s Service Quality NPRM, including the CPUC, suggested that some or all parts of these ARMIS reports should be reinstated, while others viewed these reports as “irrelevant and outdated.”⁵⁰

CALTEL does not support reinstatement of ARMIS 43-05 and 43-06, and believes that the retail and wholesale service quality data that CALTEL has proposed will be more useful to the Commission in carrying out its statutory duties and assessing the health (or deterioration) of the nation’s outside plant copper infrastructure as described above.

⁴⁹ NPRM at ¶94.

⁵⁰ NPRM at ¶94-95.

CONCLUSION

For the reasons described above, CALTEL urges the Commission to gather off-the-shelf data about retail and wholesale service quality, using measurements and data that have already been established by the states, in order to meet its statutory obligations and better understand how deterioration of the nation’s outside plant copper infrastructure has impacted ILEC landline customers, as well as the wider implications for competitive choice available to small and medium business customers.

Respectfully submitted,

/s/ Sarah DeYoung

/s/ Clay Deanhardt

Sarah DeYoung
Executive Director
CALTEL

Clay Deanhardt
Law Office of Clay Deanhardt
Attorney for CALTEL

ATTACHMENT A

AT&T California's Out of Service Repair Standard results for the year 2010

**California Public Utilities Commission
Service Quality Standards Reporting
General Order No. 133-C**

Company Name: AT&T California.

U#: U-1001-C

Report Year: 2010

Reporting Unit Type: Total Company Exchange Wire Center

Reporting Unit Name: Total Company - Statewide

Measurement (Compile monthly, file quarterly)		Date filed (05/15/2010)			Date filed (08/16/2010)			Date filed (11/15/2010)			Date filed (02/15/2011)			
		1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
Installation Interval Min. standard = 5 bus. days	Total # of business days	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a		
	Total # of service orders	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a		
	Avg. # of business days	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a		
Installation Commitment Min. standard = 95% commitment met	Total # of installation commitments	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a		
	Total # of installation commitment met	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a		
	Total # of installation commitment missed	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a		
	% of commitment met	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a		
Customer Trouble Report														
Min. Standard	6% (6 per 100 working lines for units w/ ≥ 3,000 lines)	Total # of working lines	7,785,712	7,706,081	7,639,315	7,565,099	7,469,978	7,394,464	7,314,928	7,226,050	7,167,790	7,086,479	7,031,215	6,960,484
		Total # of trouble reports	184,999	166,896	136,556	110,006	99,247	98,408	99,560	103,312	94,913	123,182	118,341	159,539
		% of trouble reports	2.38	2.17	1.79	1.45	1.33	1.33	1.36	1.43	1.32	1.74	1.68	2.29
	8% (8 per 100 working lines for units w/ 1,001 - 2,999 lines)	Total # of working lines	196,749	195,295	194,127	193,072	191,643	190,299	188,800	187,344	186,151	185,749	184,798	183,433
		Total # of trouble reports	7,736	6,315	5,261	4,110	3,390	3,616	3,614	3,405	2,903	4,552	4,943	6,449
		% of trouble reports	3.93	3.23	2.71	2.13	1.77	1.90	1.91	1.82	1.54	2.45	2.67	3.52
	10% (10 per 100 working lines for units w/ ≤ 1,000 lines)	Total # of working lines	52,688	52,229	51,849	51,539	51,158	50,812	50,510	50,176	49,773	49,704	49,474	49,253
		Total # of trouble reports	2,553	2,072	1,695	1,438	1,095	1,144	1,394	1,132	1,045	1,453	1,716	1,886
		% of trouble reports	4.85	3.97	3.27	2.79	2.14	2.25	2.76	2.26	2.10	2.92	3.47	3.83
Out of Service Report Min. standard = 90% within 24 hrs	Total # of outage report tickets	* 97,582	* 81,124	71,933	61,260	55,337	56,389	57,777	59,719	55,178	65,056	64,160	* 75,854	
	Total # of repair tickets restored in ≤ 24hrs	* 49,508	* 32,639	38,385	23,819	18,910	18,426	18,483	32,261	41,695	43,397	44,556	* 39,203	
	% of repair tickets restored ≤ 24 Hours	* 50.73%	* 40.23%	53.36%	38.88%	34.17%	32.68%	31.99%	54.02%	75.56%	66.71%	69.55%	* 51.7%	
	Sum of the duration of all outages (hh:mm)	* 3,372,686	* 3,488,909	1,997,000	2,385,479	2,652,661	2,873,253	3,169,907	1,940,707	976,928	1,483,206	1,471,325	* 3,000,174	
	Avg. outage duration (hh:mm)	* 34.6	* 43	27.8	38.9	47.9	51	54.9	32.5	17.7	22.8	22.9	* 39.6	

Measurement (Compile quarterly, file annually on February 15)		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Answer Time (Trouble Reports "TR", Billing & Non-Billing)	Total # of calls for TR, Billing & Non-Billing	** 1,564,679	1,056,372	963,136	** 1,271,820
Min. standard = 80% of calls ≤ 60 seconds to reach live agent (w/ a menu option to reach live agent)	Total # of call seconds to reach live agent	** 59,596,609	33,722,539	32,120,005	** 194,583,558
	% ≤ 60 seconds	** 72.8%	85.4%	85.7%	** 67.5%

Primary Utility Contact Information

Name: Adela Chan

Phone: (415) 778-1470

Email: ac2517@att.com

Date Adopted: 7/28/09

Date Revised: 12/08/09 (Corrects typographical errors)

Date Revised: 05/04/10 (Added new lines and changed terms to reflect requirements of G.O.133-C)

AT&T Notes

* During January, February and December, severe storms affected the Out of Service results. The results for these months should be excluded due to catastrophic events.

** Answer Time results were also affected by the storms, when at times in January, February and December, our call centers received over three times the normal call volumes. First quarter 2010 Answer Time results without January and February are 90.3% answered in less than 60 seconds, and fourth quarter 2010 results without December are 83.6%.

ATTACHMENT B

Force Majeure notification



Accessible

Date: **January 20, 2011**

Number: **CLECCN11-007**

Effective Date: **December 16, 2010**

Category: **Other**

Subject: **(BUSINESS PROCESSES) Termination of Force Majeure Event in California and Nevada**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **California and Nevada**

Issuing ILECS: **AT&T California and AT&T Nevada (collectively referred to for purposes of this Accessible Letter as "AT&T West Region")**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

This letter is to notify you that the Force Majeure event in California and Nevada resulting from record levels of rain and heavy snow has ended. In Accessible Letter **CLECCN10-057** dated December 21, 2010, AT&T West Region provided notice of this Force Majeure event with an inception date of December 16, 2010, and an expected end date of January 5, 2011. In Accessible Letter **CLECCN11-001** dated January 6, 2011, AT&T West Region extended the Force Majeure event in both states from January 5, 2010 to January 15, 2011 due to the after effects of the storm and continuing inclement weather. Accessible Letter **CLECCN11-005** dated January 12, 2011 again extended the end date to January 21, 2011 in the California regions of Los Angeles North, Los Angeles South, and Orange Riverside, and to January 15, 2011 in the remaining areas of the two states. This is to inform you that normal installation and repair activities resumed in the Los Angeles North, Los Angeles South, and Orange Riverside areas on January 18, 2011, and the remaining areas of the two states on January 15, 2011.