

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

Order Instituting Rulemaking on the ) R. 02-12-004  
Commission's Own Motion into the Service )  
Quality Standards for All Telecommunications )  
Carriers and Revisions to General Order 133-B. )

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**REPLY COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS  
ASSOCIATION ON PROPOSED DECISION OF COMMISSIONER CHONG ADOPTING  
GENERAL ORDER 133-C AND ADDRESSING OTHER TELECOMMUNICATIONS  
SERVICE QUALITY REPORTING REQUIREMENTS**

Lesla Lehtonen /s/

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May 18, 2009

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The California Cable & Telecommunications Association (CCTA) hereby replies to the Opening Joint Comments of the Division of Ratepayer Advocates (DRA) and the Utility Reform Network (TURN) on Commissioner Chong’s Proposed Decision Adopting General Order 133-C and Addressing Other Telecommunications Service Quality Reporting Requirements, submitted in the above-captioned proceeding.

In their Joint comments, DRA and TURN suggest that the Commission “should extend General Order (G.O.) 133-C standards to cable and Voice over Internet Protocol (VoIP) providers” (Joint Comments at 2), essentially repeating previously submitted comments in this proceeding that VoIP services be included in service quality standards, suggestions which the PD specifically rejects. Joint Commenter’s concerns in this regard thus have been heard and dismissed, both for sound legal and public policy reasons, and Joint Commenters offer no new argument of legal error that would compel reversal. Accordingly, arguments submitted by Joint Commenters regarding the inclusion of cable and VoIP providers in the proposed service quality standards must be dismissed.

As the PD correctly notes, the Commission has deferred a final decision on the issue of whether it has authority to regulate VoIP, or IP-enabled services (PD at 48). In its Investigation specifically designed to determine whether or not VoIP providers should be subject to various regulatory requirements, the Commission closed its proceeding after finding that the FCC has determined that it, and not the states, will prescribe what regulations apply to IP-enabled services.” (D. 06-06-010). Thus the PD’s determination here to recognize that decision and forego regulation of cable, VoIP and IP-enabled services is consistent and fully compliant with the current regulatory status of those services and federal law. It also avoids the legal pitfalls of reversing prior decisions on a piecemeal basis without notice and opportunity to be heard under PU Code Section 1708 that could occur if the Commission were to include VoIP and cable-provided services here.

Even apart from these legal impediments to regulating providers of IP-enabled services, this Commission as well as the FCC have recognized that such regulation is both unnecessary and unwise. For example, in declining to assert jurisdiction over VoIP services, the Commission noted that “[t]he potential benefit to consumers from the entry of VoIP providers may be significant,” and it thus opined that it should strive to “minimize regulation so as not to stifle the continued development of VoIP service.” [*Voice Over Internet Protocol, Order Instituting Investigation, Interim Order 04-02-007, 2004 WL 360291, at \*1 (Cal. P.U.C. Feb. 11, 2004).*] Similarly, the FCC explained that “economic regulation” — such as the service quality requirements at issue — should not (and may not) be imposed on VoIP providers. See *Vonage Holdings Corp.; Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm’n*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004), , *aff’d, Minn. Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007)). Notably, the FCC sought to avoid just this sort of “patchwork regulation” of VoIP services, under which regional and national providers finally challenging incumbent LECs’ entrenched dominance would “have to satisfy the requirements of more than 50 jurisdictions with more than 50 different sets of regulatory obligations.” *Id.* ¶¶ 32, 41.

For the reasons stated above, Joint Commenters have failed to provide sound legal or public policy support to include cable, VoIP and IP-enabled services in the proposed service quality standards, and their comments in this regard must be rejected.

DATED: May 18, 2009

Respectfully submitted,

California Cable & Telecommunications Association

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## CERTIFICATE OF SERVICE

I hereby certify that I have on this 18<sup>th</sup> day of May, 2009 served a copy through the California Public Utilities Commission's Electronic Filing System Reply Comments of the *REPLY COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION ON PROPOSED DECISION OF COMMISSIONER CHONG ADOPTING GENERAL ORDER 133-C AND ADDRESSING OTHER TELECOMMUNICATIONS SERVICE QUALITY REPORTING REQUIREMENTS R.02-12-004* together with this Certificate of Service. The document was served by sending a copy thereof to each party by e-mail and/or hand delivery.

Executed in Oakland, California.

/s/ Antoinette J. Irwin

Antoinette J. Irwin