

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding
Emergency Disaster Relief Program.

Rulemaking 18-03-011

**REPLY COMMENTS OF THE PUBLIC ADVOCATES OFFICE
ON THE JUNE 11, 2020 PROPOSED DECISION ADOPTING WIRELESS PROVIDER
RESILIENCY STRATEGIES**

**CHARLYN HOOK
DON HILLA**

Attorney for

Public Advocates Office
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Telephone: (415) 703-4673
E-mail: Donald.hilla@cpuc.ca.gov

RAISA LEDESMA RODRIGUEZ
Project Supervisor for

Communications and Water Policy Branch
Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: 415-703-2691
E-mail: raisa.ledesma@cpuc.ca.gov

**VICTOR SMITH
KATE E BECK
SEAN CALABRO**

Regulatory Analysts and Utilities Engineer for

Communications and Water Policy Branch
Public Advocates Office
California Public Utilities Commission
505 Van Ness Ave
San Francisco, CA 94102
Telephone: 415-703-2315
E-mail: victor.smith@cpuc.ca.gov

July 6, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding
Emergency Disaster Relief Program.

Rulemaking 18-03-011

**REPLY COMMENTS OF THE PUBLIC ADVOCATES OFFICE
ON THE JUNE 11, 2020 PROPOSED DECISION ADOPTING WIRELESS PROVIDER
RESILIENCY STRATEGIES**

I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these Reply Comments on the June 11, 2020 *Proposed Decision Adopting Wireless Provider Resiliency Strategies*, Rulemaking (R.) 18-03-011 (PD). The PD is an important first step in ensuring that wireless service customers in High Fire Threat Districts (HFTDs) have reliable access to 9-1-1 service, 2-1-1, and emergency information. The Commission should dismiss the objections of communications providers as detailed below and move forward with ensuring the health and safety of Californians.

II. DISCUSSION

A. The Commission’s Exercise of Jurisdiction Over Wireless Providers is Legally Sound.

Wireless Providers’¹ comments continue to question the Commission’s legal authority to require Resiliency Plans and Emergency Operations Plans (hereafter, collectively referred to as the “Resiliency Requirements”). For example, AT&T, Verizon, and Cellular Telecommunications Industry Association (CTIA) erroneously assert that the Commission has no jurisdiction over Wireless Providers and cannot lawfully enforce portions of the PD due to conflicts with federal law and federal pre-emption.² T-Mobile asserts that the Commission does

¹ Wireless Providers include AT&T Mobility (AT&T), T-Mobile West LLC, MetroPCS California, LLC, Sprint Spectrum, L.P. and Assurance Wireless, L.P. (Sprint), and Cellco Partnership (Verizon).

² Opening Comments of CTIA on Proposed Decision of President Batjer (“CTIA Opening Comments”), CTIA (July 1, 2020) pp. 4-14; Comments of Cellco Partnership (U3001C) on Assigned Commissioner’s Proposal Decision (“Verizon Opening Comments”), Verizon (July 1, 2020) p. 2; and, AT&T’s Opening

not have authority to mandate how Wireless Providers build their networks or regulate the level of services provided, as this is within the exclusive jurisdiction of the Federal Communications Commission (FCC).³

The PD properly asserts the Commission’s jurisdiction over Wireless Providers and affirms the Commission’s authority to ensure resilient and reliable communications networks.⁴ The PD’s jurisdictional analysis is legally sound and renders moot the Wireless Providers’ federal pre-emption arguments on all levels (express, implied and conflict pre-emption).⁵ As discussed in the PD, the Commission’s jurisdiction is also grounded the State of California’s police powers as exercised through the Commission and state authority to protect public health and safety.⁶ Cal Advocates agrees with the PD that the resiliency requirements adopted are a lawful exercise of the Commission’s authority to protect public health and safety by ensuring communications during wildfires and other public emergencies. In Commission Decision (D.) 19-08-025, the Commission confirmed that it’s authority to regulate public utilities and telephone corporations is broad, technology neutral, and extends to wireless services.⁷ Thus, the Wireless Providers repeated protestations on jurisdictional grounds have no merit and the PD’s jurisdictional analysis should not be altered.

B. The Commission should adopt the Resiliency Plans’ and Emergency Operations Plans’ reporting requirements established in the PD.

Wireless Providers suggest that the reporting requirements contained in the Communications Resiliency Plans and Emergency Operations Plans are overly prescriptive and burdensome.⁸ AT&T argues that it would face “substantial difficulties” in reporting service

Comments On Proposed Decision Adopting Wireless Provider Resiliency Strategies (“AT&T Opening Comments”), AT&T (July 1, 2020), pp. 2-3.

³ T-Mobile West LLC, MetroPCS California, LLC, Sprint Spectrum, L.P. and Assurance Wireless, L.P. Joint Comments on Commissioner Batjer’s Proposed Decision Adopting Wireless Provider Resiliency Strategies (“T-Mobile Opening Comments”), T-Mobile (July 1, 2020) p. 5.

⁴ Proposed Decision, pp. 121-22, Conclusion of Law 29, 31-39.

⁵ Proposed Decision, pp. 15-25.

⁶ Proposed Decision, pp. 15-19.

⁷ D.19-08-025, p. 9.

⁸ AT&T Opening Comments, pp. 8-9; Verizon Opening Comments, p. 8.

impacts and expected restoration time during PSPS and disaster events.² T-Mobile describes the Communications Resiliency Plan requirements as “onerous, overbroad and unsupported by the record.”¹⁰

The Communications Resiliency Plans and Emergency Operations Plans are critical elements of the PD that provide up-to-date information on network resiliency measures and plans to maintain coverage during emergencies. These plans will show whether the Wireless Providers have sufficiently prepared for disasters and outages and whether the Wireless Providers are closely coordinating with the relevant emergency agencies. Given how critical these plans are, it is crucial that Wireless Providers be required to submit them.

C. The Commission should require Wireless Providers to submit Resiliency Plans using Tier 2 Advice Letters and not Rely on Voluntary Measures.

The Commission should retain the Tier 2 Advice Letter requirement as written in the PD. The Commission should not rely on voluntary measures but instead move forward with clearly defined rules. Public safety is at stake when Californians are not able to dial 9-1-1 during an emergency and we cannot rely on voluntary measures to protect the public. AT&T and Verizon state that they are willing to submit the Communications Resiliency Plans on a voluntary basis, but suggest that they should be submitted as informational filings, not Tier 2 Advice Letters.¹¹ Verizon argues that requiring Tier 2 Advice Letters suggest that the Commission “may approve or reject the sufficiency of the [plans].”¹² AT&T argues that the Commission does not have the ability to review or approve these plans.¹³ In addition, CTIA objects to the PD’s “impermissible effort to regulate the substance” of Communications Resiliency Plans.¹⁴

The Wireless Providers’ arguments for voluntary measures is based on their incorrect claims of lack of jurisdiction. The Commission has the authority to require Communications Resiliency Plans to be submitted as Tier 2 Advice Letters under General Order (GO) 96-B. Rule

² AT&T Opening Comments, pp. 8-9.

¹⁰ T-Mobile Opening Comments, p. 12.

¹¹ AT&T Opening Comments, pp. 8-9; Verizon Opening Comments, p. 8.

¹² Verizon Opening Comments, p. 8.

¹³ AT&T Opening Comments, pp. 4-5.

¹⁴ CTIA Opening Comments, p. 14.

7.1.3 of GO 96-B states that Tier 2 Advice Letters can be used when the Commission requests to review a utility's documentation of the utility's compliance with applicable requirements. The Commission must retain the ability to review and approve or require modifications to Communications Resiliency Plans, and ensure the information contained in the plans is compliant with Commission requirements.

D. The PD's Requirements Apply to All Essential Communications Equipment

Extenet and AT&T's comments request that the Commission exclude small cells and distributed antenna systems (DASs) from the PD's requirements.¹⁵ The PD calls for 72 hours of backup power to support all "essential communications equipment and minimum service levels for the public."¹⁶ Small cells and Distributed Antenna Systems (DAS) are essential communications equipment necessary to provide wireless service in a geographic area. Therefore, the Commission should reject Extenet and AT&T's comments.

E. The PD Properly Relies on Network Outage Reporting System and Disaster Information Reporting System Report Data.

The PD properly uses Network Outage Reporting System (NORS) and Disaster Information Reporting System (DIRS) data to support the adoption of the 72-hour backup power requirement. T-Mobile expresses general concern that the PD misunderstands and improperly relies upon NORS and DIRS data to over-state the number of customers affected by outages.¹⁷

T-Mobile's arguments are misplaced. The FCC considers NORS data acceptable for analysis of the magnitude of outages. "The FCC analyzes [NORS] data to assess the magnitude of major outages... [and] also informs the agency's outage investigations and recommendations for improving network reliability."¹⁸ Moreover, T-Mobile's footnotes state that it "is unaware of any reliable way to determine how many customers are impacted by an actual service outage."¹⁹

¹⁵ Extenet Systems (California) LLC (U 6959 C) Comments on Proposed Decision Adopting Wireless Provider Resiliency Strategies, Extenet (July 1, 2020), p. 1; AT&T Opening Comments p. 5.

¹⁶ Proposed Decision, p. 31.

¹⁷ T-Mobile Opening Comments, p. 8.

¹⁸ Network Outage Reporting System, Federal Communications Commission (February 19, 2020), <https://www.fcc.gov/network-outage-reporting-system-nors>, Accessed July 2, 2020.

¹⁹ T-Mobile Opening Comments, p. 9.

The PD is clear that its interpretation of customer impact data reported by NORS and DIRS is construed as an average.²⁰ As the PD explains, “an ‘average’ means that it is just as likely that many more people, rather than fewer people, may have been relying on each... macro cell site.”²¹ Therefore, the PD correctly interprets the NORS and DIRS data.

Since T-Mobile acknowledges that there is no other reliable way to determine customers affected by outages, and since the FCC uses NORS data for network reliability analysis, it is reasonable for the Commission to use NORS and DIRS data as a basis for “recommendations for improving network reliability.”

F. Green Energy Options are a Viable Alternative for Backup Power.

It is critical to ensure there are 72-hours of backup power at communications facilities as soon as practicable. Clean energy is available as a backup power option now and may be more readily available in the future. In opening comments, Verizon states that “renewable energy is not close to being scalable for cell site deployment any time soon.”²² The notion that renewable energy, including fuel cell backup is not currently available or viable is not supported by the record.

Non-polluting fuel cell systems are already commercially available. The California Hydrogen Business Council (CHBC) stated in reply comments to the Assigned Commissioner’s Ruling that fuel cell systems “including those that run on hydrogen, are commercially available and are being used broadly by telecommunication and cable companies for long duration backup power.”²³ Therefore, Verizon’s comments should be rejected.

III. CONCLUSION

For the reasons stated above, the Commission should reject the arguments of CTIA, AT&T, Verizon, and T-Mobile, and adopt the PD with the modifications proposed by Cal Advocates in its Opening Comments. Alternatively, if the Commission does not adopt Cal Advocates suggested modifications, the PD should be adopted as written.

²⁰ Proposed Decision, p. 63

²¹ Proposed Decision, p. 63.

²² Verizon Opening Comments, pp. 10-11.

²³ Reply Comments of the California Hydrogen Business Council on the Assigned Commissioner’s Ruling and Proposal, California Hydrogen Business Council (April 17, 2020), p. 3.

Respectfully submitted,

/s/ DONALD P. HILLA

Donald P. Hilla
Attorney for the

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-4673
E-mail: Donald.hilla@cpuc.ca.gov

July 6, 2020