

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

Order Instituting Rulemaking Regarding  
Emergency Disaster Relief Program.

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Rulemaking 18-03-011  
(Filed March 22, 2018)

**REPLY COMMENTS OF ACCESS HUMBOLDT**

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## **I. INTRODUCTION**

Access Humboldt respectfully submits these reply comments on the June 11, 2020 Proposed Decision (PD) of Commissioner Batjer in the above captioned proceeding. Access Humboldt has reviewed the reply comments filed by Center for Accessible Technologies, the National Consumer Law Center, and The Utility Reform Network/Communications Workers of America, District 9, and supports those reply comments.

## **II. VERIZON MISREPRESENTS THE FACTS WITH RESPECT TO ITS THROTTLING OF SANTA CLARA FIRE DISTRICT DATA DURING THE OCTOBER, 2017 WILDFIRES**

Verizon argues that the PD contains legal and factual errors about "a purported throttling incident" and that the discussion should be deleted from the record. Verizon misrepresents the facts. Verizon claims that it was not throttling data and cites the Government Petitioners' brief in the appeal of the Federal Communications Commission's (FCC) revised Net Neutrality Order, stating that SCFD and government parties "conceded that the incident did not implicate net neutrality and was not throttling."<sup>1</sup>

Yet, the Government Petitioners' brief, and the supporting declaration by the SCFD Chief Anthony Bowden, cited by Verizon characterizes Verizon's 2017 actions exactly as "throttling."<sup>2</sup> The government brief emphasizes the importance of an open Internet for public safety communications, stating that while Verizon's action may not have violated the FCC's 2015 Open Internet Order, broadband internet access service (BIAS) providers have "shown every indication that they will prioritize their economic interests, even in situations that implicate public safety," with Verizon's "throttling" of SCFD data as the primary example.

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<sup>1</sup> Verizon at p. 3.

<sup>2</sup> Brief for Govt. Petitioners at 23-24 & n. 13, *Mozilla Corp. v. FCC*, No. 18-1051 (D.C. Cir. Aug. 20, 2018). See also, Addendum to Brief for Government Petitioners, Declaration of Anthony Bowden (August 17, 2018) at paras. 5, 9.

Even the definition used by Verizon, “which is the restriction or targeting of certain content, applications, services, or non-harmful devices on mass market broadband internet access services,” clearly establishes the Santa Clara incident, as described by its fire chief, as one of throttling, despite Verizon’s after-the-fact explanations.<sup>3</sup> Chief Bowden declares that “Verizon representatives confirmed the throttling, but, rather than restoring us to an essential data transfer speed, they indicated that County fire would have to switch to a new data plan at more than twice the cost, and they would only remove throttling after we contacted the Department that handles billing and switched to the new data plan.”<sup>4</sup> The D.C. Circuit Court of Appeals decision describes the incident as throttling.<sup>5</sup> As the PD states, the Legislature passed AB 1699, affirming the state’s police power with respect to wireless communications, “in response to Verizon Wireless’ data throttling of the Santa Clara Fire Department’s mutual aid equipment while combatting the Mendocino Complex Fire, the largest wildfire in California history.”<sup>6</sup> The Senate Committee on Energy, Utilities and Communications characterized Verizon’s action as “[t]hrottling of firefighters during Mendocino Complex Fire Response.”<sup>7</sup> Contrary to Verizon’s argument, the PD correctly describes Verizon’s actions and this language should not be deleted as it contributes to the factual record

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<sup>3</sup> The Commission should reject Verizon’s suggestion that the requirement that providers ensure customers have access to “internet browsing for emergency notifications” could be considered “throttling.” Verizon at p. 5. Far from discriminatory traffic prioritization, this rule merely sets minimum standards that should allow a carrier to properly manage its network during emergencies, including ensuring emergency response agencies have the necessary bandwidth and data allowances to perform their life-saving efforts.

<sup>4</sup> Addendum to Brief for Govt. Petitioners, Declaration of Anthony Bowden, at ADD3 - ADD4, *Mozilla Corp. v. FCC*, No. 18-1051 (D.C. Cir. Aug. 20, 2018). PD at p. 4, fn 5.

<sup>5</sup> “The throttling incident involving the Santa Clara firefighters occurred in June 2018, six months after the 2018 order was issued.” The court refused to consider post-Order evidence, but they called what happened throttling. *Mozilla v. FCC*, 940 F.3d 1, 61 (D.C. Cir. 2019)

<sup>6</sup> PD at p. 17.

<sup>7</sup> Senate Committee on Energy, Utilities and Communications, AB 1699 Analysis, 6/24/2019, at p. 3.

supporting the Commission's exercise of its police powers to support the resilience of communications network relied upon by key public agencies.

### **III. VERIZON'S ARGUMENT THAT REQUIRING BASIC INTERNET BROWSING IS INFEASIBLE IS INCORRECT AND SHOULD BE REJECTED**

Verizon objects to the PD's inclusion of basic internet browsing as an element of the proposed minimum levels of service.<sup>8</sup> Verizon argues that the term is too vague and that it is infeasible to maintain during emergencies due to network congestion as people make phone calls or facilities are damaged.<sup>9</sup> Instead, Verizon proposes that the PD should be clarified to require providers to "strive to maintain web browsing, to the extent feasible."<sup>10</sup>

The Commission should retain basic Internet web browsing as part of the minimum level of service. The PD finds that, "the loss of internet service during a de-energization can have devastating results and cascading effects,"<sup>11</sup> making Verizon's proposal to weaken the requirement potentially life-threatening. The PD's use of the term "basic Internet web browsing for emergency notifications" is clear and reasonable. Wireless carriers have an obligation to provide service that is at least adequate to allow customers to access emergency notices from the web sites of sources like county emergency services, 2-1-1, Nixle, CalFire and the electric IOU websites. The Commission also recognizes that there will be certain disasters where it will be impossible to fully maintain service and that in the midst of an emergency, networks can be degraded, so the PD requires "basic Internet web browsing for emergency notifications" to make it clear that full functionality such as bandwidth that would

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<sup>8</sup> Verizon at p. 5.

<sup>9</sup> Verizon at p. 6.

<sup>10</sup> Verizon at p. 7.

<sup>11</sup> PD at p. 81; See also, Rural Counties Opening, March 26, 2020 at p. 3-4 ("loss of internet service during a de-energization can have equally devastating results")

allow motion picture streaming and two-way videoconferencing, is not expected.<sup>12</sup> The fact that wireless carriers will be obligated to bolster backup power and improve network resiliency will result in more reliable service and reduced network congestion during emergencies, especially compared to the situation in October, 2019, which should allow providers to ensure basic data throughput and Internet access. The PD provides the carriers with significant flexibility to meet this minimum standard and does not require specific network speeds, traffic routing protocols, or the use of particular equipment.<sup>13</sup> As CforAT and NCLC pointed out, the performance of carriers during prior emergencies has been poor and voluntary commitments that service would be reliable proved untrue. It is critical for the Commission to affirm that the carriers have an obligation to keep customers connected through voice, text and Internet, at all times.<sup>14</sup>

July 6, 2020

Respectfully submitted,

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<sup>12</sup> PD at 82-83 (Rejecting proposal to require access to low definition emergency videos).

<sup>13</sup> PD at 88.

<sup>14</sup> CforAT, NCLC at pp. 3-5.