

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

Order Instituting Rulemaking Regarding
Emergency Disaster Relief Program.

R.18-03-011
(Filed March 22, 2018)

**AT&T'S OPENING COMMENTS ON PROPOSED DECISION
ADOPTING WIRELESS PROVIDER RESILIENCY STRATEGIES**

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SUMMARY OF RECOMMENDED CHANGES

Pursuant to California Public Utilities Commission Rule of Practice and Procedure 14.3 (b), and as discussed below, AT&T respectfully requests that the Proposed Decision be modified to:

- (1) provide for filing the Resiliency Plan as an Information-only Submittal;
- (2) indicate that small cells are categorically exempt from the Proposed Decision;
- (3) revise service impact reporting to include only actual impacts, and remove any mandate to report expected restoration time; and
- (4) correct the erroneous Findings of Fact, Conclusions of Law and Ordering Paragraphs identified in Appendix A.

Pursuant to California Public Utilities Commission Rule of Practice and Procedure 14.3, AT&T¹ submits its opening comments regarding the *Proposed Decision Adopting Wireless Provider Resiliency Strategies* filed on June 11, 2020 in this proceeding (“Proposed Decision”).

I. INTRODUCTION

AT&T appreciates President Batjer’s thoughtful approach to establishing a flexible network resiliency policy that recognizes “communications networks are complex, diverse, and there may not be a ‘one size fits all’ approach to ensuring resiliency.”² Communications networks are dynamic and complex, and the highly competitive wireless industry requires flexibility to ensure resiliency in disasters while also meeting increasing consumer demand for advanced services and greater capacity. Accordingly, AT&T supports the Proposed Decision’s overarching goals: (1) collaboration between the Commission and wireless providers to meet future challenges; and (2) demonstration of each wireless provider’s ability to maintain service during disasters and outages. However, AT&T objects to some of the means the Commission uses to reach these overarching goals. AT&T is committed to ensuring its networks are resilient and support public safety during both natural disasters and power shutoffs. We will continue our collaboration with the Commission, Cal OES and other stakeholders to prepare for and respond to power shutoffs and enhance resiliency plans.

While AT&T fully supports its focus on collaboration, the Proposed Decision exceeds the Commission’s authority to regulate wireless services, as explained more fully below. Should the

¹ Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) and its affiliates AT&T Corp. (U 5002 C); Teleport Communications America, LLC (U 5454 C); and AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U 3060 C); AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C); and Santa Barbara Cellular Systems, Ltd. (U 3015 C)) are collectively referred to as “AT&T.”

² *Proposed Decision Adopting Wireless Provider Resiliency Strategies* (“Proposed Decision”), Rulemaking (R.) 18-03-011, at 88 (June 11, 2020).

Commission nonetheless decide to proceed with the Proposed Decision, AT&T respectfully requests several changes. Because the focus is on collaboration and information sharing, AT&T requests that the Communications Resiliency Plan be filed as an Information-only Submittal rather than a Tier 2 Advice Letter. Consistent with the Proposed Decision’s intent to allow wireless providers to design their own Resiliency Plan, an Information-only Submittal would reduce the distractions caused by potential Advice Letter protests and eliminate opportunities for the “micromanagement” of wireless networks, which the Proposed Decision seeks to avoid.³ In addition, AT&T requests that the exemption for impossible and infeasible backup power installations be clarified to allow the identification of classes of facilities where such installations are impossible or infeasible. Moreover, given the volatility of natural disasters and power shutoffs, AT&T requests changes to the reporting requirements regarding “likely service impacts” and “expected restoration time.” Finally, AT&T asks that unsupported and/or erroneous Findings of Fact, Conclusions of Law, and Ordering Paragraphs be corrected as indicated in Appendix A.

II. DISCUSSION

A. The Commission’s Authority to Regulate Wireless Services

As CTIA has explained more fully in its comments, federal law preempts the Proposed Decision’s resiliency, backup power, and service level requirements. First, Congress expressly preempted States from “regulat[ing] the entry” of “any commercial mobile service or any private mobile service.”⁴ The Proposed Decision impermissibly regulates the entry of both types of service to the extent it “burden[s] a wireless service provider’s ability to provide a network of

³ Proposed Decision at 87.

⁴ 47 U.S.C. § 332(c)(3)(A).

wireless service coverage” by imposing additional requirements on network deployment.⁵

The FCC agrees: 47 U.S.C. § 332(c)(3)(A) expressly preempts state regulation of wireless carriers’ “tower construction, location and coverage,” and their “quality of service.”⁶

Second, the Proposed Decision’s rules, to the extent they are prescriptive, stand as an obstacle to the FCC’s determination that voluntary industry standards are the “more appropriate path forward to improving wireless resiliency.”⁷ That decision *not* to regulate is itself a judgment that preempts conflicting state judgments.⁸ In addition, state regulation of information services, including broadband and text messaging, is preempted because it conflicts with the FCC’s policy of light touch regulation of such services.⁹ As discussed further below, the proposed Advice Letter process is one example of impermissible micromanagement of wireless providers.

Third, the Proposed Decision regulates in a field that is exclusively federal.¹⁰ The FCC has exclusive control over not only the allocation of spectrum, but also “the nature of the service to be rendered by” wireless providers and the “areas or zones to be served by” them.¹¹ The Proposed Decision is preempted to the extent it seeks to regulate in those areas.¹²

⁵ *Pinney v. Nokia, Inc.*, 402 F.3d 430, 456 (4th Cir. 2005) (following *Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 989 (7th Cir. 2000)).

⁶ *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 9088, ¶ 36 n. 84 (2018) (citing *Bastien*).

⁷ *In the Matter of Improving the Resiliency of Mobile Wireless Commc’ns Networks*, 31 FCC Rcd. 13745, ¶¶ 1, 10-11 (2016).

⁸ *See United States v. Locke*, 529 U.S. 89, 110 (2000); *see also Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1008 (9th Cir. 2010) (holding that states are preempted from “reexamin[ing] . . . the FCC’s regulatory determination regarding a mobile service’s entry into the market”).

⁹ *See Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715, 718 (8th Cir. 2018).

¹⁰ *See* 47 U.S.C. §§ 301, 303.

¹¹ *Id.* § 303(b), (h).

¹² *See Johnson v. American Towers, LLC*, 781 F.3d 693, 706 (4th Cir. 2015) (applying field preemption).

B. Filing of Resiliency Plan

Ordering Paragraphs 1 and 2 require facilities-based wireless providers to file a “Communications Resiliency Plan” that “describes how the wireless providers shall maintain a minimum level of service and coverage”¹³ and “assure[s] the Commission that the wireless providers transparently and thoughtfully plan for wildfire and de-energization adversity in advance to protect the public health, safety, and welfare of California.”¹⁴ While the Communications Division is “to develop and adopt standardized templates as well as a submitted schedule for the Communications Resiliency Plan within 30 days from the adoption of the decision,”¹⁵ the Proposed Decision explains the requirements and submission of the Resiliency Plan are “not an effort by the Commission to micromanage the wireless providers’ operations.”¹⁶

Although the Proposed Decision disavows any attempt to “micromanage,” the Proposed Decision orders the filing of the Resiliency Plan “via [a] Tier 2 Advice Letter”¹⁷ without explanation or justification. Tier 2 Advice Letters are appropriate for matters that require staff review and approval;¹⁸ however, other than ensuring providers’ Resiliency Plans contain the required elements, which will be set out in templates, there is nothing for staff to review and approve. A Tier 2 Advice Letter is thus not the appropriate method for submitting the Resiliency Plans. As the Proposed Decision explains, the Resiliency Plans are to show the Commission that providers have “thoughtfully plan[ned] for wildfire and de-energization adversity in advance to

¹³ Proposed Decision, Ordering Paragraph 1, at 127.

¹⁴ Proposed Decision at 89.

¹⁵ *Id.*, Ordering Paragraph 1, at 129.

¹⁶ *Id.* at 87.

¹⁷ *Id.*, Ordering Paragraph 1, at 127.

¹⁸ General Order (“GO”) 96-B, Telecommunications Industry Rule 7.2. – Matters Appropriate to a Tier 2 Advice Letter.

protect the public health, safety, and welfare of California.”¹⁹ The submission of the Resiliency Plans squarely meets the definition of an “Information-only Submittal” set out in General Rule 3.9 of General Order 96-B:

“Information-only Submittal” means an informal report, required by statute or Commission order, that is submitted by a utility to the Commission, but that is not submitted in connection with a request for Commission approval, authorization, or other relief. “Information-only Submittal” includes both periodic and occasional reports.²⁰

Consequently, the Proposed Decision errs by requiring the Resiliency Plans to be submitted as Tier 2 Advice Letters subject to Communications Division disposition. At most, the Resiliency Plans could be submitted as Tier 1 Compliance Advice Letters as provided for in Rule 7.1(3) of the Telecommunications Rules in GO 96-B and as similarly adopted by D.19-08-025 for providers’ provision of the Commission’s consumer assistance requirements following a declared state of emergency resulting in disrupted or degraded utility service.

C. Small Cells

As their name implies, “small cells” are radio antennas that are considerably smaller in both physical size and coverage area than larger “macro” cell sites (400-700 meters coverage radius for small cells versus 4-10+ miles coverage radius for macro cell sites). AT&T Mobility operates small cells primarily in areas where space constraints make it infeasible, if not impossible, to place a macro site. They generally are not necessary to ensure “minimum service levels and coverage,”²¹ and instead usually offer additional network capacity.²²

¹⁹ Proposed Decision at 89.

²⁰ GO 96-B, General Rule 3.9 – Information-only Submittal.

²¹ Proposed Decision at 82.

²² See *Comments of Cellco Partnership (U 3001 C) and MCI Metro Access Transmission Services Corp. (U 5253 C) (“Verizon”) On Assigned Commissioner’s Ruling and Proposal [Public Version]*, Rulemaking (R.) 18-03-011, at 5, 18 (dated April 3, 2020); *AT&T’s Opening Comments on The Assigned*

As can be seen in the following pictures, small cells have a very small form factor, and they are located primarily in the public rights-of-way (ROWs):



Because of their small size, none of the small cells have backup batteries; when commercial power goes out, they shut down. The governing ROW ordinances usually do not allow the installation of a fixed generator or fuel tank adjacent to these small cells because of noise, size, environmental, safety and traffic control considerations. They are, for these same reasons as well as the fact that the commercial power cables are most often concealed inside the street pole, not susceptible to being powered by portable generators. Moreover, many local jurisdictions seek to limit the amount of equipment installed or temporarily placed on the ground near the facilities,

Commissioner's Ruling and Proposal. Rulemaking (R.) 18-03-011, at 20-21 (dated April 3, 2020). See also, *City of San José's Comments on Assigned Commissioner's Ruling and Proposal*, Rulemaking (R.) 18-03-011, at 2 (dated April 3, 2020) (“[S]mall cells are not designed for backup power, and it does not make sense to re-engineer them for backup power given their higher frequencies and limited coverage range during an emergency.”).

due to space constraints and Americans with Disability Act (“ADA”) requirements. Finally, cities and counties often require small cells to be installed in an aesthetically pleasing manner, which further limits backup power options.²³

These features, limitations and constraints cause small cells to fall within one or more of the backup power exceptions identified in the Proposed Decision: 1) facilities unnecessary to maintain coverage or minimum service levels, 2) facilities where backup would create health and safety risks or legal conflicts, and 3) facilities where backup is objectively impossible or infeasible.²⁴

Although most small cells will fall within the first and/or second exemptions, AT&T respectfully requests that the Commission revise the third exemption to categorically exclude small cells. AT&T Mobility has over a hundred small cells in Tier 2 and 3 High Fire-Threat Districts. Most of those small cells are nearly identical, with only a few variations in models and features, but all are subject to the same size limitations that render backup objectively impossible or infeasible. This would make both the preparation and review of the Resiliency Plan more efficient.

²³ See City of Campbell Small Cell Design Guidelines for Small Cell Wireless Facilities in the Public Right-of-Way (available at <https://ci.campbell.ca.us/DocumentCenter/View/16106/Small-Cell-Design-Guide-Final-Post-Res>); City of Encinitas Small Wireless Facilities City Council Policy, Section 11 (design standards) (available at https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2148&meta_id=111967); City of Palo Alto Objective Standards for Wireless Communication Facilities in the Public Rights of Way on Streetlight Poles and Wood Utility Poles (available at <https://www.cityofpaloalto.org/civicax/filebank/documents/74311>); City of San Mateo Design and Engineering Standards and Application Requirements for Wireless Communications Facilities on City Owned Poles (available at <https://www.cityofsanmateo.org/DocumentCenter/View/64833/Final-Design-and-Engineering-Standards?bidId=>).

²⁴ Proposed Decision at 95.

D. Emergency Operations Plan

The Proposed Decision “direct[s] the wireless providers to submit the following information to the Commission’s Communications Division Director, CalOES, and local emergency response managers within their service territory within 60 days of the effective day of this decision, in an information only filing, that contains the wireless provider’s: (1) emergency operations plan; (2) emergency contact information; (3) emergency preparedness exercise attestation; and (4) public communications plans.”²⁵

AT&T supports providing the foregoing information to the Commission (in an Information-only Submittal as specified in the Proposed Decision), Cal OES, and local emergency response managers. Yet, aspects of this information may be confidential and/or competitively sensitive. Accordingly, AT&T urges that, if a carriers’ filing includes such confidential information, that the obligation to provide the information to local emergency response managers be contingent upon such managers entering into a Non-Disclosure Agreement with carriers prior to dissemination.

AT&T is also concerned about some aspects of the Proposed Decision’s requirement for public communications plans, which includes a directive that “as soon as reasonably possible, at the onset of a disaster or PSPS event, each wireless provider shall post, and update at least daily, on its website a map of outages and service impacts, a description of any outage impacts in the specified areas, and the expected restoration time.”²⁶ The Proposed Decision also requires that “upon receiving notice from an electric utility that a PSPS event will occur, wireless providers must alert the subscribers in the impacted community of any likely service impacts.”²⁷

²⁵ *Id.* at 104.

²⁶ *Id.* at 106.

²⁷ *Id.* at 106-107.

These requirements present substantial difficulties that warrant modifications to the Proposed Decision. Reporting “likely service impacts” and “expected restoration time” is extremely difficult given the fluidity of PSPS and disaster events. For PSPS events, footprints change frequently leading up to a power shutdown. When those changes occur, AT&T must completely reassess the deployment of its assets (*e.g.*, personnel and generators that have been pre-staged and that are planned for deployment). This reassessment impacts refueling schedules, deployment times based on current traffic conditions, and battery discharge rates based on real-time power consumption, among other factors. For both PSPS and disaster events, there are simply too many variables, most of which are based largely on real-time environmental factors, to provide anticipated outage impacts with any level of confidence. Further, the lack of certainty in those reports raises questions about the value they would have to the recipient agencies. An additional difficulty in requiring reporting during disasters is that providers frequently will not know when commercial power will go out due to damage from the disaster.²⁸

In addition, AT&T’s wireless network in California includes thousands of network elements that might be affected by a PSPS or disaster event, and often AT&T is not in control of when service restoral will occur. Depending on the event, AT&T’s access to its equipment may be restricted by first responders because of safety issues (such as the proximity of a wildfire); by the lack of access due to the event itself (for example, in the case of a severe earthquake or flood); or if the equipment damage is so extensive that an assessment of the restoral time requires complex analysis and/or vendor support. In the case of a PSPS event, restoral of commercial power may be required, over which AT&T has no control.

²⁸ See *AT&T’s Opening Comments on The Assigned Commissioner’s Ruling and Proposal*, Rulemaking (R.) 18-03-011, Declaration of Brett Magura, para. 3, (dated April 3, 2020).

Accordingly, AT&T requests that the mandate in Section 6.8.2 of the PD (under Public Communications Plans, at pp. 106-7) be modified as follows:

- “Next, as soon as reasonably possible, at the onset of a disaster or PSPS event, each wireless provider shall post, and update at least daily, on its website a map of outages and service impacts, and a description of any outage impacts in the specified areas; ~~and the expected restoration time.~~”
- “In addition, upon receiving notice from an electric utility that a PSPS event will occur, wireless providers must alert the subscribers in the impacted community of ~~any likely~~ service impacts.”

E. Erroneous Findings of Fact and Conclusions of Law

Several of the Proposed Decision’s findings of fact lack any record basis and/or misinterpret the factual record. At times, the Proposed Decision relies on unverified statements, unsourced documentation, and flawed analyses. In addition, many conclusions of law are based on erroneous interpretations of the applicable law, particularly the extent of the Commission’s jurisdiction over wireless resiliency, backup power, and service level requirements. These errors are identified and corrected in Appendix A to these comments, which provides a redlined version of the Proposed Decision’s Findings of Fact, Conclusions of Law, and Ordering Paragraphs.

III. CONCLUSION

AT&T appreciates President Batjer’s efforts to craft a workable, collaborative resiliency approach. However, Commission regulation of wireless resiliency, backup power, and service level requirements is preempted by federal law. Nonetheless, if the Commission intends to adopt the Proposed Decision, AT&T respectfully requests that it be modified to (1) provide for filing the Resiliency Plan as an Information-only Submittal, (2) indicate that small cells are categorically exempt from the Proposed Decision, (3) revise service impact reporting to include only actual impacts, and remove any mandate to report expected restoration time, and (4) correct

the erroneous Findings of Fact, Conclusions of Law and Ordering Paragraphs identified in Appendix A.

Date: July 1, 2020

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APPENDIX A

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RECOMMENDED CHANGES TO FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

Findings of Fact

1. The Commission initiated Phase I of R.18-03-011 to adopt an emergency disaster relief program for electrical, natural gas, water and sewer, and communications service providers.

2. As part of Phase I of R.18-03-011, the Commission adopted D.19-08-025 requiring communications providers to implement an array of customer protections when the governor of California or the president of the United States declares a state of emergency.

3. D.19-08-025 found that during declared states of emergencies, such as in the 2017, 2018, and 2019 wildfires and 2019 PSPS, California's facilities-based wireless providers' networks failed, endangering the lives of customers and first responders.

4. The CalOES states that 80 percent of all calls to 9-1-1 during the 2017 and 2018 wildfires came from wireless devices and that this high percentage represents first responder and the public's dependence on data and wireless service.

~~5. In 2018, wireless service was throttled, adversely affecting the Santa Clara County Fire Department's control and command unit deployed to support relief efforts during the Mendocino Complex Fire.~~

6. Californians rely on their wireless devices among other modes of communication to receive emergency notifications, contact family and friends, and reach first responders during emergencies.

7. In October and November 2019, widespread reports of communications outages across all communications sectors were reported.

8. According to the FCC Disaster Information Reporting System reports, which the Commission takes official notice of pursuant to Rule 13.9 of the Rules of Practice & Procedure, 57 percent of cell sites in Marin County alone were out of service between October 26-27, 2019.

9. Without access to 911 and the ability to reach first responders, Californians often cannot access needed services, ~~be safe, or even function in an emergency.~~

~~10. The Commission's Communications Division experienced an increase in Major Service Interruption reports from the wireless providers in 2017, 2018, and 2019.~~

11. Communications Division received a 16 percent increase in Major Service Interruption reports from 2017 to 2018, and a 123 percent increase from 2018 to 2019 coincident with a change in the FCC reporting threshold calculations in 2018.

12. The wildfires and the power outages from the PSPS events contributed to a significant delay in the restoration of communications service as compared to non-fire threat circumstances and wireless communications failed at critical times during wildfire and PSPS events and, as a result, ~~many~~ some wireless customers were unable to make calls during times of emergency or disaster.

13. As of December 31, 2018, there were 45,335,804 wireless subscribers in California compared to 13,418,711 wireline subscribers.

14. The number of wireline subscribers ~~customers~~ has steadily decreased as consumers begin to rely solely on wireless service.

15. In 2019, approximately 27.4 million 9-1-1 calls were placed via wireless service as compared to approximately 3.6 million placed via wireline service.

16. The first major PSPS event took place on October 9-11, 2019, with the second and third event taking place between October 26- 31 that year.

17. Communications Division staff measured the impact of the 2017-2019 wildfires and PSPS events by analyzing the wireless service providers' major service interruption and disaster information reporting system reports and calculated the number of potentially affected wireless users, macro cell sites, and blocked calls.

~~18. Communications Division findings are illustrated in this table below, depicting the estimated impact from 2017-2019 wildfires and PSPS events on wireless service in California:~~

Year	Events	Number of Potentially Impacted Wireless Customers	Approximate Number of Impacted Cell Sites	Approximate Number of Blocked Calls
2017	Napa and Sonoma County	96,097	248	814,041
2017	Mendocino and Humboldt County	104,441	46	8,271,992
2017	Southern California	97,811	457	434,086
2018	Camp Fire-Butte	48,414	51	2,165,308
2018	Hill and Woolsey Fires-Southern CA	512,231	492	4,228,585
2019	Kincade Fire and Statewide PSPS	1,122,645	224	n/a

19. The most severe impacts of these fires were in high fire-threat areas, where there were repeated reports of cell site failures, particularly in the 2018 Camp Fire in Butte County, town of Paradise.

~~20. In 2019, substantial numbers of wireless sites in Butte County were inoperative due to PSPS events.~~

21. “Facilities-based wireless providers” serve, directly and indirectly, approximately 45,335,804 wireless subscribers in California.

22. Resiliency is defined for purposes of this Decision as the ability to recover from or adjust to adversity or change through an array of strategies including, but not limited to: backup power, redundancy, network hardening, temporary facilities, communication and coordination with other utilities, emergency responders, the public and finally, preparedness planning.

23. Wireless providers that diligently and adeptly utilize resiliency, and its related strategies, demonstrate that they can maintain and restore service during a disaster.

24. Mitigating wireless network disruption through resiliency measures minimizes the likelihood that large numbers of wireless customers will be adversely impacted.

25. In 2019, Verizon utilized an array of resiliency strategies successfully and kept much of its network operational and running on backup power.

26. T-Mobile, AT&T, and Verizon demonstrates that using multiple resiliency strategies, including and backup power, results in network resiliency preservation.

~~27. Wireless providers that have not made these investments suffer more severe impacts and struggle to maintain service.~~

28. A power outage is the period during which a generating unit, transmission line, or other facility is out of service.

29. There is a public ~~need~~ benefit for carriers to continue to make reasonable and robust efforts to maintain the resiliency of their networks to adopt a narrowly tailored and reasonable backup power requirement for wireless providers during disasters and PSPS events.

30. Customers and first responders ~~have a reasonable~~ generally expectation that they will hear a dial tone, receive emergency alerts and notifications, and

can access critical information during an emergency, especially when the power is out.

31. Because of climate change, wildfires and PSPS events will be part of the future with an expected increase in both frequency and severity.

32. Energy and water utilities, customers, and first responders across all levels of government have expressed public safety concern with their ability to use failure of wireless providers to adequately provide service continuity, including 9 1 1, during disasters and during de-energization events.

33. In April 2018, the Commission's Communication Division issued a report analyzing major communication outages during the 2017 winter storms.

~~34. The April 2018 Communications Division report found that that a total of 964,003 subscribers, or 2.5% of Californians, did not have the capability to dial 9 1 1 for some period of time during the 2017 winter storms.~~

35. Communications Division's April 2018 report emphasized that many cell site outages could have been prevented with better availability of backup power for wireless providers and improved reliability of cable facilities for wireline providers.

~~36. Of the four providers serving the Town of Paradise, two had no macro-cell sites with backup capacity beyond batteries and the other two providers had at least one macro-cell site, with additional on site backup capacity in the form of generators.~~

~~37. Of the 15 macro-cell sites near the Town of Paradise, in the Tier 3 High-Fire Threat District, only three (20 percent) of the macro-cell sites have onsite backup generators.~~

38. Cell site oOutages were widespread for most wireless providers during the 2019 PSPS events, with outages occurring in nearly half of the counties in the State.

39. Most macro cell sites out of service in a single day during the 2019 PSPS events occurred on October 27, 2019, with 567 macro cell sites out of service.

40. In 2019, over half of California's counties experienced ~~were impacted by network cell site~~ outages, with Marin County experiencing 57 percent of its 280 cell phone tower sites out of service and Sonoma, Lake, Santa Cruz, Humboldt, and Calaveras counties all experiencing ~~facing impacts when~~ over 20 percent of cellphone towers were without power.

41. In the October 2018 wildfires, CalOES saw a total of 341 cell sites go offline, ~~prohibiting 9-1-1 calls.~~

42. ~~In the October 2018 wildfires, approximately 72,000 people had difficulty reaching 9-1-1, some due to the inability of the wireless system to provide service.~~

43. Some of California's water utilities rely on communications networks to monitor facilities, maintain contact with field personnel, communicate with personnel and customers, and receive emergency notifications and critical information.

44. California's wireless providers, like all California businesses, rely on ~~electrical corporations rely on wireless networks~~ utilities to provide ~~ensure~~ reliability and resiliency ~~commercial power.~~

45. California's wireless providers and their consumers will ~~electrical corporations may~~ benefit from an electrical grid ~~wireless communications network~~ that is more resilient.

46. Ensuring a more resilient electric grid ~~that wireless provider network operators continue to maintain have resilient networks~~ ~~reliable backup power~~ will help water utilities maintain safe and reliable service during an emergency.

47. State emergency services personnel ~~state find~~ that California's wireless network is not built to survive disasters, and many cell sites do not have resiliency, whether through backup power or ability to survive disruption.

48. In 2019, RCRC reported that Sonoma County made the difficult decision to evacuate early in response to the Kincade Fire because they feared what evacuation would be like without reliable access to wireless service to disseminate warnings and alerts.

49. Because of the widespread outages, RCRC reported that many fire departments in Sonoma County were forced to operate by radio alone, and had limited ability to receive data or maps.

50. There are certain disasters where it will be impossible to maintain wireless service, including during extended power outages~~Without a clear backup power requirement for wireless providers operating in the State of California, the public will be harmed during disasters and commercial grid outage events.~~

51. ~~Seventy two hours of required backup power ensures wireless customers have access to communication services, receive emergency alerts and notifications, and access the internet for critical information during an emergency, disaster, or when the power is out.~~

52. Electrical corporations de-energized 2,290 circuits during the 2019 PSPS events, and the average outage duration was just under 46 hours while over 16 percent of outages lasted longer than 72-hours.

53. Cal Advocates analysis indicates that ~~o~~Only 8 percent of power outages at macro cell sites during the 2019 PSPS events lasted longer than 72 hours.

54. ~~A 72 hours backup requirement would have, more likely than not, provided uninterrupted power to 92 percent of the macro cell sites in California that lost commercial power during the 2019 PSPS events.~~

~~55. Requiring seventy two hours of required backup power aligns with FCC standards.~~

56. Deployable generators that have capacity to provide 72-hours of backup power present less siting, permitting, and cost difficulties than requiring 72-hours of on-site backup power.

~~57. Minimum service levels and coverage includes the following: (1) 9 1 1 service; (2) 2 1 1; (3) the ability to receive emergency alerts and notification; and (4) basic internet browsing during a disaster or commercial power outage.~~

58. A ~~required~~ Communications Resiliency Plan should ~~will ensure the wireless providers transparently~~ describe to the Commission, their wireless provider's ability to maintain, to the extent feasible, the following:

- (a) sufficient level of service and coverage to maintain access to 9-1-1 and 2-1-1;
- (b) the ability to receive emergency notifications; and (c) access to internet browsing for emergency notices in the event of a disaster or power outage.

59. The Communications Resiliency Plan will promote ~~ensure~~ collaboration between the Commission and the wireless providers to meet future challenges.

60. The Communications Resiliency Plan will demonstrate how ~~that~~ the wireless providers ~~can maintain~~ or restore service during disasters and outages.

61. The Communications Resiliency Plan will help prepare both the Commission and the wireless providers to face emerging challenges and implement key learnings as conditions change and we observe response efficacy and effectiveness.

62. Using fossil fuel generators for backup power reliability and resiliency in both the 2020 and 2021 wildfire and PSPS seasons will ~~may~~ be necessary to ensure minimum continuity of service.

~~63. Fossil fuel generation as a backup power resource cannot be a long term resiliency strategy.~~

~~64. Large fossil fuel generators—even when localized in select areas—present potential health risks for individuals who live or work near a temporary generation site.~~

65. Service providers' reasonable efforts to maintain Minimum continuity of service will promote ~~must be available for the~~ public safety given the dangers associated with widespread, commercial grid outages, including the potential loss of, or damage to, life, health, property, and essential services.

66. Wireless Emergency Operation Plans should include ~~providers must attest to the Commission that their organizations have~~ an emergency operation plan ~~in place~~ for disaster and PSPS preparedness.

67. Wireless Emergency Operation Plans must be submitted to the Commission by each wireless provider, as well as, emergency contact information, emergency preparedness exercise attestations, and public communications plans.

68. On March 19, 2020 Governor Gavin Newsom signed Executive Order N-33-20 in response to COVID 19.

69. Executive Order N-33-20 requires all individuals living in the State of California to stay home or stay at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors, in order to address the public health emergency presented by COVID-19.

70. The stay-at-home order is indefinite, and as of the date of the issuance of this decision it remains in effect.

Conclusions of Law

1. The Commission has jurisdiction over facilities-based wireless providers subject to limitations under federal and state law, ~~and authority to ensure the reliability of communications networks in emergencies.~~

2. California is in an unprecedented climate emergency that has produced increasingly deadly and destructive wildfires, and PSPS events.

3. The State has a duty to ensure, as much as possible, the safety of all Californians.

4. The Commission has responded to this ongoing threat to essential utility infrastructure and services by acting across the breadth of its jurisdiction, addressing energy, water, and communications networks and their customers.

5. The Commission ~~has both the jurisdiction and the authority to~~ encourages ~~require~~ wireless telecommunications carriers to (i) install emergency backup power at macro cell sites in Tier 2 and 3 high fire threat districts, so that those cell sites continue to receive and transmit signal when commercial power sources are cut off, or (ii) otherwise enhance the resiliency of their networks in the face of commercial power shut offs.

6. The Decision sets forth a flexible structure for the wireless providers to determine how best to maintain service during emergencies and PSPS events
~~Uninterrupted transport of communications is an essential precondition to the ability of public safety officials to communicate and coordinate with each other and with the public.~~

7. The Commission has jurisdiction over certain actions taken by wireless telephone corporations and other communications utilities.

8. Public Utilities Code § 216 gives the Commission ~~broad~~ jurisdiction over public utilities, including telephone corporations as defined by Public Utilities Code § 234.

9. The Commission's "broad regulatory power over public utilities" derives from Article XII of the State Constitution, which establishes the Commission, and gives it ~~wide-ranging~~ regulatory authority, including but not limited to "the power to ... establish rules, hold various types of hearings, award reparation, and establish its own procedures."

10. Public Utilities Code § 216 definition of a “public utility” includes every “telephone corporation” where service is performed, or a commodity is delivered to the public or any portion thereof.

11. Public Utilities Code § 234 definition of a “telephone corporation” includes “every corporation or person owning, controlling, operating, or managing any telephone line for compensation in this state.”

12. Public Utilities Code § 233 definition of a “telephone line” includes “all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, or controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.”

13. California’s Constitution, Art. XII, § 3, specifically extends the Commission’s jurisdiction to companies engaged in “the transmission of telephone and telegraph messages.”

14. The Commission’s authority over public utilities is based in part on ~~includes oversight over both public utility services and facilities pursuant to~~ California Constitution, Art. XII §§ 1-6 and Public Utilities Code § 701.

15. Public Utilities Code § 451 requires the Commission to ensure that utilities, including telephone corporations, “furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and *facilities* ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.” [emphasis added]

~~16. Public Utilities Code § 761 requires the Commission to ensure the reasonableness and sufficiency of utility facilities³¹⁶ and may order “additions, extensions, repairs, or improvements to, or changes in” utility facilities that the Commission finds “ought reasonably to be made.” [emphasis added]~~

~~17. Public Utilities Code § 1001 gives the Commission the sole power to grant operating authority to California utilities, i.e., issue a certificate of public convenience and necessity (CPCN) to traditional utilities seeking to operate in California.~~

~~18. Public Utilities Code §§ 1001 and 1013 gives the Commission the lone power to grant a “registration” license to companies the Commission has determined lack “monopoly power or market power in a relevant market or markets or to wireless telephone corporations.”~~

~~19. In the case of both non dominant carrier and wireless registrations, the telephone corporations are required to comply with all applicable sections of the Public Utilities Code other than the entrance regulation inherent in Public Utilities Code § 1001.~~

~~20. A CPCN or equivalent authority confers upon a public utility telephone corporation numerous benefits in addition to the obligations under the Public Utilities Code, CPUC decisions, and regulations.~~

~~21. Public Utilities Code § 7901 states that public utility telephone corporations have the right to interconnect with other service providers³¹⁷ and the ability to access the public rights of ways to build or install facilities to provide their services.~~

³¹⁶ Pub. Util. Code § 761.

³¹⁷ State certification/registration entitles the telephone corporation to interconnect with other telephone corporations under 47 USC §§ 251 and 252 and analogous state law.

~~22. Public Utilities Code §§ 233, 224.4 extends the Commission’s jurisdiction to the facilities wireless carriers rely upon to provision service.~~

23. Police power authority over matters related to public health and safety is traditionally reserved to the states, but is subject to limitations imposed by federal statutes and orders of the FCC.

24. Subject to limitations under federal law, including the jurisdiction of the FCC, sStates may traditionally rely on ~~have had great latitude under~~ their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.

25. The California Constitution and California statutory law designate the CPUC as the principal body through which the State exercises its police power in the case of essential utility network services.

26. Public Utilities Code § 451 provides ~~gives the Commission broad authority to regulate public utility services and infrastructure as necessary to ensure they are operated in a way that provides for the health and safety of Californians:~~ “Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

27. Protections for Californians as consumers of telecommunication services are set forth in Public Utilities Code §§ 2890-2896.

28. The regulatory measures promulgated in this Decision are consumer safeguards intended to protect the health and safety of utility customers, particularly those encountering wildfires and related public emergencies triggered by historic climate change.

~~29. The Federal Communications Act does not preempt the Commission from exercising public safety regulation of wireless facilities.~~

30. The 1993 amendments to the Federal Communications Act limit the Commission’s ~~ushered in an era of shared~~ jurisdiction over wireless services.

31. In 1993, Congress passed the Omnibus Budget Reconciliation Act of 1993 (Budget Act), which amended Section 332(c)(3)(A) of the Communication Act § 332) as follows: no State or local government shall

have any authority to regulate the entries of or the rates charged by any commercial mobile service or any private mobile service, except this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile service.

32. After Congress enacted the revised § 332, the CPUC issued multiple decisions implementing the change in federal law, and harmonizing those changes with existing Commission oversight of wireless telephony.

~~33. Accordingly, the Commission continues to exercise broad authority over wireless service.~~

~~34. In providing a role for states, Congress explicitly declined to occupy the field.~~

~~35. Congress did not expressly or otherwise, preempt state health and safety rules.~~

~~36. A 72 hour backup power requirement is not tantamount to rate regulation.~~

~~37. The scope of § 332's preemptive language is limited to regulations that directly and explicitly control rates, prevent market entry, or require a determination of the reasonableness of rates.~~

~~38. The Commission retains the unequivocal authority to regulate "other terms and conditions of service."~~

~~39. The emergency measures rules adopted herein do not conflict with federal law or regulations, and therefore, are not subject to conflict-preemption. A backup power regime does not run afoul of § 332(c)(3)(A) because the FCC has no current backup power rules.~~

~~40. The underlying facts of the Seventh Circuit Court of Appeals, *Bastien v. AT&T Wireless Servs., Inc.* are fundamentally different, and therefore not applicable here.~~

~~41. None of the requirements in this Decision conflict with the FCC's 2018 Order for 5G and advanced wireless network deployment.~~

42. The Commission has long established ~~regulated the safety related aspects of utility networks, extending to~~ provisions relating to backup power, support structures, and the requirements in General Orders 95 and 128, relating to overhead lines and underground facilities

43. Governor Gavin Newsom signed Executive Order N-33-20 requiring Californians to comply with the orders of the California State Public Health Officer and the Director of the California Department of Public Health that all individuals living in the State of California stay home or at their place of residence (Stay-At-Home Order). The Stay-At-Home order is indefinite, and as of the date of the issuance of this Decision, it remains in effect.

44. It is reasonable to require California's electrical corporations ~~the wireless providers~~ to collaborate with wireless providers ~~California's electrical corporations~~ in advance of a de-energization event or wildfire and give notice to their customers ~~if service coverage cannot be maintained.~~

45. It is reasonable to define resiliency for purposes of this Decision as the ability to recover from or to adjust to adversity or change through an array of strategies, consistent with Section 6.2.2, including, but not limited to: (a) backup power; (b) redundancy; (c) network hardening; (d) temporary facilities; (e) communication and coordination with other utilities emergency responders, the public; and (f) preparedness planning.

46. It is reasonable to define an outage, consistent with Section 6.3.2 of this decision.

47. It is reasonable for the wireless providers to use their best efforts to maintain service through various technological means ~~to ensure customers in Tier 2 and Tier 3 High Fire Threat Districts have access to 72 hours backup~~

~~power~~ during the upcoming wildfire season and de-energization events, to the extent feasible.

~~48. It is reasonable to require the wireless providers to ensure customers and first responders in Tier 2 and Tier 3 High Fire Threat Districts have access to minimum service levels and coverage through 72 hours of backup power.~~

~~49. It is reasonable for the wireless providers to have a twelve (12) months implementation period from the effective date of this decision to implement the 72 hour backup power requirement.~~

50. It is reasonable to require wireless providers to report on their efforts to maintain ~~define minimum service levels and coverage as including:~~ (1) 9-1-1 service; (2) 2-1-1; (3) the ability to receive emergency alerts and notification; and (4) basic internet browsing during a disaster or commercial power outage.

51. It is reasonable to require each wireless provider to submit an informational filing regarding its Communications Resiliency Plan ~~via a Tier 2 Advice Letter~~ within 6 months from the effective date of this decision.

52. It is reasonable to require the Communications Resiliency Plan to include, but not be limited to, the following information:

- ~~• Facilities based wireless providers shall submit a Communications Resiliency Plan pursuant to section 6.5.2 of this decision, within six (6) months of the effective date of this decision, to the Communications~~

~~Division via Tier 2 Advice Letter that~~

- a description of how the wireless provider's efforts to shall maintain a minimum level of service and coverage to preserve access to 9-1-1 and 2-1-1, maintain the ability to receive emergency notifications, and provide access to internet browsing for emergency notices for their customers in the event of a disaster or

power failure. ~~Each resiliency plan shall include, but is not limited to, the following information:~~

- ~~• Discussion of their ability to maintain a sufficient level of service and coverage to maintain access to 9 1 1 and 2 1 1, maintain the ability to receive emergency notifications, and access Internet browsing for emergency notices in the event of a disaster or power outage, including identifying how they maintain the resiliency of their networks, as defined in Section 6.2 of this decision~~
- Detailed PSPS and grid outage response plans;
- ~~Detailed Clean Generation and Diesel Generation Near and Long Term Approaches, consistent with Section 6.7.2 of this Decision;~~
- Facilities with and without battery backup, fixed generation, and mobile generator hookups, and their location, ~~and the estimated length of time the facilities will operate during a grid outage with and without refueling at each site;~~
- The number of mobile generators and refueling trucks and specify which are stationed in California;
- ~~• Identify the ability to replace damaged facilities, including logical and physical network route diversity and temporary facilities (e.g., mobile cell sites and temporary microwave backhaul);~~
- Identify titles of management and number of personnel dedicated to refueling and vendors including company and contract agreement;
- ~~• Identify the ability to support reporting on system outages as required by CPUC rules, Cal OES regulations and California Government Code;~~
- ~~• Detail how backup generators comply with CARB standards;~~
- ~~• Provide refueling schedules;~~
- ~~• Provide roaming agreements;~~

- Provide cooperative agreements which are used to pool resources with other providers;
- Identify facilities that do not need backup power, are unable to support backup power due to a safety risk, or that are objectively impossible or infeasible to deploy backup power pursuant to Section 6.6.2.; and
- Identify investment plans to improve network resiliency pursuant to Section 6.6.2. (e.g., deployment of redundant backhaul and deployment of fixed generators).

53. It is reasonable to allow the wireless providers to identify, in their Communications Resiliency Plans, facilities that do not need backup power, are unable to support backup power due to a safety risk, or are unable to support backup power because the conditions make it objectively impossible or infeasible to deploy backup power.

54. It is reasonable to treat all information provided as part of the Communications Resiliency Plans as confidential under General Order 66-D and the California Public Records Act unless otherwise designated as public ~~by allow the wireless providers to use fossil fuel generation as a primary backup power resource, in the near term, but require the wireless providers to transition to a future of renewable backup generation.~~

55. It is reasonable to require the wireless providers to submit annual emergency operations plans that discuss emergency response procedures and ensure substantive engagement with the Commission and CalOES during emergencies.

56. The actions directed in this decision require the wireless providers to comply with the Governor's Executive Order N-33-20, the orders of the California State Public Health Officer and the Director of the California Department of Public Health that all individuals living in the State of California stay home or at their place of residence, except as needed to

maintain continuity of operation of the federal critical infrastructure sectors, in order to address the public health emergency presented by the COVID-19 disease.

57. It is reasonable to require the wireless providers, when implementing the requirements of this decision, to comply with the direction from public health officials regarding shelter-in-place, social distancing, or other measures that may need to be taken in response to the COVID-19 pandemic, consistent with Executive Order N-33-20.

O R D E R

IT IS ORDERED that:

1. Facilities-based wireless providers shall file a Communications Resiliency Plan pursuant to Section 6.5.2 of this decision, within six (6) months of the effective date of this decision, to the Communications Division via an informational filing, Tier 2 Advice Letter that a description of how the wireless provider's efforts to ~~shall maintain a minimum level of service and coverage to preserve~~ access to 9-1-1 and 2-1-1, maintain the ability to receive emergency notifications, and access to internet browsing for emergency notices for their customers in the event of a power outage. The Communications Resiliency Plan shall include, but is not limited to, the following information identified in Conclusion of Law 53.:

- ~~• Discussion of their ability to maintain a sufficient level of service and coverage to maintain access to 9 1 1 and 2 1 1, maintain the ability to receive emergency notifications, and access to Internet browsing for emergency notices in the event of a disaster or power outage, including identifying how they maintain the resiliency of their networks, as defined in Section 6.2 of this decision~~
- ~~• Detailed PSPS and grid outage response plans;~~

- ~~Detailed Clean Generation and Diesel Generation Near and Long Term Approaches, consistent with Section 6.7.2 of this Decision;~~
- ~~Facilities with and without battery backup, fixed generation, and mobile generator hookups, their location, and the estimated length of time the facilities will operate during a grid outage with and without refueling at each site;~~
- ~~The number of mobile generators and refueling trucks and specify which are stationed in California;~~
- ~~Identify the ability to replace damaged facilities, including logical and physical network route diversity and temporary facilities (e.g., mobile cell sites and temporary microwave backhaul);~~
- ~~Identify titles of management and number of personnel dedicated to refueling and vendors including company and contract agreement;~~
- ~~Identify the ability to support reporting on system outages as required by CPUC rules, Cal OES regulations and California Government Code;~~
- ~~Detail how backup generators comply with CARB standards;~~
- ~~Provide refueling schedules;~~
- ~~Provide roaming agreements;~~
- ~~Provide cooperative agreements which are used to pool resources with other providers;~~
- ~~Identify facilities that do not need backup power, are unable to support backup power due to a safety risk, or that are objectively impossible or infeasible to deploy backup power pursuant to Section 6.6.2.; and~~
- ~~Identify investment plans to improve network resiliency pursuant to Section 6.6.2. (e.g., deployment of redundant backhaul and deployment of fixed generators).~~

We direct the Communications Division to work cooperatively with the wireless providers to develop and adopt standardized reporting templates as

well as a submittal schedule for the Communications Resiliency Plans within 630 days from the adoption of this decision.

~~2. Facilities based wireless providers shall, in their Communications Resiliency Plan pursuant to Section 6.5.2 of this decision, demonstrate their ability to meet the 72 hour backup power requirement, in Tier 2 and Tier 3 High Fire Threat Districts, consistent with Sections 6.4.2, 6.4.4, and 6.4.6 of this decision, as well as describe their ability to maintain a minimum level of service and their long term investment plan to comply with the 72 hour backup power requirement of this decision.~~

3. Facilities-based wireless providers shall file emergency operations plans pursuant to Section 6.8.2 of this decision, on an annual basis, with the first due within 60 days of the effective date of this decision to the Director of the Communications Division, the California Governor's Office of Emergency Services, and local emergency response agencies, as an information only filing that contains the wireless provider's: (1) emergency operations plan; (2) emergency contact information; (3) emergency preparedness exercise attestation; and (4) public communications plans.

4. Upon the effective date of this decision, the wireless providers, when implementing the requirements of this decision, shall comply with the orders of the Governor's Executive Order N-33-20, the California State Public Health Officer, and the Director of the California Department of Public Health shelter-in-place directives, social distancing directives, and/or other measures that may need to be taken in response to the COVID-19 pandemic.

5. Rulemaking 18-03-011 remains open.

This order is effective today.

Dated _____, at San Francisco, California