

**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)

**CENTER FOR ACCESSIBLE TECHNOLOGY'S MOTION TO STRIKE
DECLARATION OF DAN PAUL AND ASSOCIATED DISCUSSION IN
T-MOBILE'S OPENING COMMENTS**

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July 6, 2020

I. INTRODUCTION

In accordance with Rule 11.1 of the Commission's Rules of Practice and Procedure (the Rules), the Center for Accessible Technology (CforAT) files this Motion to Strike the Declaration of Dan Paul (the Paul Declaration) submitted in conjunction with T-Mobile's Opening Comments on Commissioner Batjer's Proposed Decision Adopting Wireless Provider Resiliency Strategies (the PD), filed on July 1, 2020. The Declaration is an improper attempt to expand the record after the issuance of a proposed decision, and is outside of the permissible focus of comments on a proposed decision as set out in Rule 14.3 of the Rules. For this reason, the Paul Declaration should be stricken from the record and T-Mobile should be directed to re-file its comment without any reference to the declaration.

II. DISCUSSION

As described in CforAT's Reply Comments on the PD, filed concurrently with this motion, T-Mobile purports to submit a new declaration, with information that was not previously presented to the Commission, in conjunction with its opening comments on the PD.¹ This is improper. Rule 14.3(c) of the Commission's Rules of Practice and Procedure sets out the requirements for comments on a proposed decision. It states:

(c) Comments shall focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight. Comments proposing specific changes to the proposed or alternate decision shall include supporting findings of fact and conclusions of law.

The record for this Phase is closed with the conclusion of the parties' substantive filings. There is no basis for a party to attempt to supplement the record regarding this PD with new

¹ T-Mobile Comments on the PD, including attached Declaration of Dan Paul.

factual submissions in conjunction with comments on a proposed decision, and any information in such a new declaration is not part of the record of the proceeding.

The Paul Declaration is not simply tacked onto T-Mobile's comments; rather, the comments include a substantive discussion about the state of T-Mobile's network which cites to the declaration multiple times.² This discussion is apparently intended to refute the factual findings in the PD regarding past network failures.³ However a party may not introduce new evidence or raise a new factual dispute after the issuance of a proposed decision.

Because the Paul Declaration and the associated argument in T-Mobile's comments are not consistent with the requirements of Rule 14.3 regarding party comments on a proposed decision, they should be stricken.

III. CONCLUSION

CforAT respectfully requests an order granting this Motion to Strike and directing T-Mobile to refile its comments on the PD without any reference to the improper declaration.

Respectfully submitted,

Dated: July 6, 2020

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² T-Mobile Comments on the PD at pp. 4-5, including nine citations to the Paul Declaration.

³ T-Mobile Comments on the PD at p. 5.