

**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)

**REPLY COMMENTS OF THE CENTER FOR ACCESSIBLE TECHNOLOGY
ON PROPOSED DECISION ADOPTING WIRELES PROVIDER
RESILIENCY STRATEGIES**

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I. INTRODUCTION

In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure, the Center for Accessible Technology (CforAT) files these timely reply comments responding to comments by various carriers on the Proposed Decision Adopting Wireless Provider Resiliency Strategies. In addition, CforAT has reviewed the reply comments being filed by TURN and by the National Consumer Law Center; CforAT fully supports the comments of these consumer organizations.

II. DISCUSSION

A. The PD appropriately requires carriers to submit their Communications Resiliency Plans via Tier 2 Advice Letter

AT&T and Verizon oppose the PD's requirement to submit Communications Resiliency Plans via a Tier 2 Advice Letter and argue that their Plans should be submitted simply as Information-Only Filings.¹ The carriers argue that this would allow for better collaboration and information sharing between carriers and the Commission; in reality, the carriers appear most concerned about the advice letter review process and what they describe as the "distractions caused by potential Advice Letter protests," "numerous potentially unfounded protests," and the risk of "opportunities for the 'micromanagement' of wireless networks."²

Far from being unnecessary or bothersome, the transparency and review process of a Tier 2 Advice Letter are critical to ensure that the carriers are in compliance with the PD's informational requirements in the Resiliency Plan and have demonstrated their ability to meet the

¹ AT&T at p. 4-5; Verizon at p. 7-8; General Order 96-B, General Rule 6. *See also*, CTIA at p. 14 also urging the Commission to only require Information-Only filing for Resiliency Plan to avoid efforts to regulate the substance of the plans.

² AT&T at p. 2; Verizon at p. 8

minimum service and back-up power requirements.³ The Tier 2 review process allows the Commission to provide carriers with substantial flexibility and discretion to meet the requirements without prescriptive rules.⁴ While the rules provide discretion to the carriers, the Commission staff still must review the Plan, plus the exemption process that is also part of the Resiliency Plan.⁵ Therefore, it is not appropriate to categorize these submissions as Information-Only.⁶

B. T-Mobile improperly seeks to expand the record in conjunction with its comments on the Proposed Decision

T-Mobile/Sprint 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.⁷ 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.

³ See Proposed Decision at p. 90, OP 1-2 (requiring that each carrier’s Advice Letter, “describes how the wireless provider shall maintain a minimum level of service and coverage ... in the event of a power outage.”)

⁴ Tier 2 Advice Letter requirements serve similar purposes in the LifeLine program by allowing the Commission Staff to review the carriers’ LifeLine offerings and ensure they meet the minimum service standards to qualify for subsidy (D.14-01-038, OP 24). Tier 2 ALs are also required for the carriers’ emergency relief plans in response to the recent pandemic emergency (M-4842, OP 2). In each case, the providers must submit their advice letter to demonstrate how they have met, or exceeded, a certain set of minimum requirements within the flexibility and discretion given to the providers by the Commission.

⁵ Proposed Decision at p. 92, 94-98 (noting that the submissions are intended to “guide a data-driven conversation between the State, the wireless providers, and local governments”).

⁶ CforAT and the other Joint Consumers also urge the Commission to revise the Proposed Decision to require quarterly updates and an annual re-filing of the Resiliency Plan, also by Advice Letter. Joint Consumer Opening Comments at p. 11.

⁷ T-Mobile/Sprint Comments, including attached Declaration of Dan Paul.

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 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.

In keeping with the requirements of Rule 14.3, the Commission should accord no weight to the declaration attached to the T-Mobile/Sprint or to any portion of the comments that purport to rely on this declaration. In conjunction with these reply comments, CforAT is separately filing a motion to strike the declaration and the portions of the comments that rely on the declaration.

C. AT&T's proposed revisions to the Findings of Fact and Conclusions of Law substantially exceed the substance of their comments

In Opening Comments, AT&T addressed a constrained set of issues; with four substantive items identified in the Table of Contents: (1) the Commission's regulatory authority; (2) the requirement for Resiliency Plans, (3) Small Cells; and (4) the requirement for Emergency Operations Plans.⁸ The Table of Contents also notes a section on "erroneous Findings of Fact and Conclusions of Law."

This final section consists of a single paragraph, reproduced in full below:

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.⁹

⁸ AT&T Comments, Table of Contents at p. i.

⁹ AT&T Comments at p. 10.

Presumably based on these few general sentences, AT&T then submits proposed revisions to the PD's Findings of Fact and Conclusions of Law that would fundamentally eliminate or undermine virtually every element of the PD.

Again, the scope of a party's input on a proposed decision is set out in Rule 14.3, which directs parties who are proposing "specific changes" to a proposed decision to include supporting findings and conclusions. AT&T makes a limited and general statement about its position on the PD, but it only specifically addresses the four identified issues. Nevertheless, its dramatic edits to the Findings of Fact and Conclusions of Law would go far beyond these issues and would fundamentally remake the meaning of the proposed decision notwithstanding the lack of any specific references to the record or applicable law. This is not appropriate, and the Commission should give no weight to any proposed modifications to the findings and conclusions that do not correspond to specific changes proposed by AT&T.

III. CONCLUSION

CforAT continues to support adoption of the PD with the modifications suggested in our opening comments, filed in conjunction with the National Consumer Law Center.

Respectfully submitted,

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