

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

Order Instituting Rulemaking Regarding
Emergency Relief Disaster Program

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

**REPLY COMMENTS OF CTIA
ON PROPOSED DECISION OF PRESIDENT BATJER**

GOODWIN, MACBRIDE,
SQUERI & DAY, LLP
Jeanne B. Armstrong
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: 415.392.7900
Facsimile: 415.398.4321
Email: jarmstrong@goodwinmacbride.com

Attorneys for CTIA

July 6, 2020

Pursuant to Rule 14.3 of the California Public Utility Commission’s (“Commission’s”) Rules of Practice and Procedure, CTIA submits this reply to the comments filed on the June 11, 2020 Proposed Decision of Commissioner Batjer in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

The initial comments urging the Commission to impose even more extensive and onerous regulations on wireless carriers’ network facilities and service levels, such as those proposed by TURN *et al.* and the Office of the Public Advocate (“OPA”), must be rejected for several reasons. First, such regulations would be preempted by federal law for the same reasons as the proposed regulations in the PD, as explained in CTIA’s initial comments. Second, the record in this proceeding amply shows that such regulations would present significant practical problems and lead to unintended adverse consequences. Finally, proposals to impose more extensive regulations on wireless carriers are procedurally barred because they represent mere policy disagreements with the PD rather than arguments identifying “factual, legal, or technical errors” in a proposed decision, as the Commission’s rules require.²

II. COMMENTERS’ PROPOSALS TO IMPOSE EVEN MORE EXTENSIVE REGULATIONS ON WIRELESS CARRIERS’ NETWORK FACILITIES AND SERVICE LEVELS ARE AS FULLY PREEMPTED UNDER FEDERAL LAW AS ARE THE PD’S PROPOSALS

In its comments, CTIA demonstrated that adoption of the rules proposed in the PD (including rules attempting to regulate wireless carriers’ network facilities, service levels, or both) is preempted by federal law.³ In particular, CTIA showed that the PD’s proposed regulation of carriers’ resiliency plans and mandates for backup power, clean energy generation, and service levels are expressly preempted by section 332(c)(3)(A),⁴ impermissibly conflict with

¹ Proposed Decision of Commissioner Batjer, R. 18-03-011 (June 11, 2020) (“PD”).

² See CPUC Rules of Practice and Procedure § 14.3(c) (“Rule 14.3(c”).

³ See Opening Comments of CTIA on Proposed Decision of President Batjer, R.18-03-011, at 4-14 (filed July 1, 2020) (“CTIA Comments”). No party provided any discussion of the Commission’s legal authority, aside from one unsupported assertion that the PD supports the Commission’s authority. See Opening Comments of the Utility Reform Network, et al., on the Proposed Decision of Commissioner Batjer, R.18-03-011, at 2 (filed July 1, 2020) (“TURN *et al.* Comments”).

⁴ CTIA Comments at 4-9. While not discussed at length here, some of the requirements, such as the clean energy requirements, are both preempted by federal law and clearly beyond the Commission’s authority

specific federal policies,⁵ and are barred by field preemption.⁶ CTIA further showed that the proposed regulations are not permissible under section 332(c)(3)(A)'s narrow savings clause addressing "the other terms and conditions" of wireless service, nor are they saved by the PD's assertions of state "police powers" in the face of clear federal preemption.⁷

Despite the clear jurisdictional problems, some commenters argue that the Commission should impose even more burdensome regulations on wireless carriers' network facilities or service levels, including more onerous resiliency, backup power, or service level requirements than those proposed in the PD. These include, but are not limited to, TURN *et al.*'s proposals to impose additional requirements related to backhaul and broader backup power requirements beyond Tier 2 and Tier 3 High-Fire Threat Districts,⁸ and OPA's proposals to both maintain service levels immediately following a disaster and implement backup power and clean energy requirements on an even more aggressive timeline.⁹

The proposals in the comments for more extensive regulation of wireless network facilities and service levels must be rejected for the same reasons cited in CTIA's comments—such regulations are clearly preempted by federal law.

III. COMMENTERS' PROPOSALS TO IMPOSE MORE BURDENSOME REGULATIONS THAN THE PD RECOMMENDS WOULD LEAD TO MORE PRACTICAL PROBLEMS AND UNINTENDED ADVERSE CONSEQUENCES

CTIA and its members have pointed out throughout this proceeding that various proposals would create substantial (and, in many cases, insurmountable) practical problems, as well as significant unintended consequences. These include, among others, negative environmental impacts (including noise pollution and adverse impact on air quality),

under California law. *See, e.g.*, Opening Comments of California State Association of Counties on the Proposed Decision Adopting Wireless Carrier Resiliency Strategies, R.18-03-011, at 5 (filed July 1, 2020) ("the Commission should make clear that diesel backup generation should only be used after clean energy resources have been exhausted and in near-term situations only.") ("CSAC Comments").

⁵ CTIA Comments at 9-13.

⁶ *Id.* at 14.

⁷ *Id.* at 7-9.

⁸ *Id.* at 4-7.

⁹ Opening Comments of the Public Advocates Office on the June 11, 2020 Proposed Decision Adopting Wireless Provider Resiliency Strategies, R.18-03-011, at 3-7 (filed July 1, 2020) ("OPA Comments").

technological and space constraints on the placement of battery systems and other backup power sources, objections and delays from permitting authorities, safety concerns (including fire risk), and other substantial burdens that are not offset by benefits evidenced in the record (especially given the extensive voluntary actions carriers already are taking).¹⁰

Various proposals in the comments, however, would exacerbate such practical problems and unintended adverse consequences. These include, without limitation, TURN *et al.*'s proposals to require more frequent submission of resiliency plans, expanded applicability of backup power requirements beyond Tier 2 and Tier 3 High-Fire Threat Districts, and sharing of highly confidential infrastructure information, including GIS information and maps of the locations of wireless facilities, that would create public safety, security, and anti-terrorism concerns;¹¹ OPA's proposals to maintain service levels immediately following a disaster and impose more stringent timelines on wireless carriers' use of clean-energy backup power;¹² and CSAC's proposal to mandate a local government role in determining which facilities are critical within carriers' networks.¹³

These proposals for even more onerous rules are particularly unwarranted given the Commission's recognition that "communications networks are complex, diverse, and there may

¹⁰ See, e.g., CTIA Comments at 1 n.3; Opening Comments of CTIA on the Assigned Commissioner's Ruling and Proposal, R.18-03-011, at 10-13 (filed April 3, 2020); Reply Comments of CTIA on the Assigned Commissioner's Ruling and Proposal, R.18-03-011, at 4-11 (filed April 17, 2020) ("CTIA April Reply Comments"); see also AT&T's Opening Comments on the Assigned Commissioner's Ruling and Proposal, R.18-03-011, at 8-47 and Exhibits 2-9 (filed April 3, 2020); AT&T's Reply Comments on the Assigned Commissioner's Ruling and Proposal, R.18-03-011, at 12-29 and Exhibits 2-4 (filed April 17, 2020); T-Mobile West LLC's Comments in Response to the Assigned Commissioner's Ruling and Proposal for Communication Service Provider Resiliency and Disaster Relief Requirements, R.18-03-011, at 12-14 (filed April 3, 2020) ("T-Mobile April Comments"); T-Mobile West LLC Reply Comments to Various Opening Comments Filed in Response to the Assigned Commissioner's Ruling Requesting Information on Development of the Record in This Proceeding on the Issues of Resiliency and Responsiveness Requirements, R.18-03-011, at 7-10 (filed April 17, 2020); Comments of Cellco Partnership and MCImetro Access Transmission Services Corp ("Verizon") on Assigned Commissioner's Ruling and Proposal, R.18-03-011, at 7-24 and Attachment (Declaration of Fred Zhu) (filed April 3, 2020); Reply Comments of Cellco Partnership and MCImetro Access Transmission Services Corp. ("Verizon") on Assigned Commissioner's Ruling and Proposal, R.18-03-011, at 6-28 (filed April 17, 2020).

¹¹ TURN *et al.* Comments at 4-6, 11.

¹² OPA Comments at 6-7.

¹³ CSAC Comments at 3.

not be a ‘one size fits all’ approach to ensuring resiliency”¹⁴ and eschewing “an ‘all customers, all the time’ service requirement.”¹⁵ As California’s Fire Chiefs recognize: “There are multiple ways to meet this goal [of resiliency] and allowing multiple ways to meet this goal is critical for public safety. While some parties may support certain energy technologies or have a preference for on-site versus mobile backup power, ultimately what is needed is service continuity and rapid restoral.”¹⁶

Moreover, commenters’ requests to make the proposed rules even more onerous ignore the fact that electric utilities should be held responsible for maintaining a reliable electric grid – rather than shifting onto wireless carriers the obligation to create a substitute for the electric grid.¹⁷ Indeed, the California Fire Chiefs Association aptly notes, “power shutoffs can be a necessary evil to prevent fires, but they should not be allowed to become an ongoing policy of choice.... The Commission is responsible for ensuring that safe and reliable commercial power is restored.”¹⁸

CTIA reiterates its request for the Commission to recognize that the infeasibility, significant burdens, and unintended consequences of the proposed regulations – all of which are well documented in the record and were not sufficiently considered in the PD – counsels strongly against their adoption.

IV. PROPOSALS TO CHANGE THE POLICY DECISIONS IN THE PD ARE PROCEDURALLY DEFECTIVE AND MUST BE GIVEN NO WEIGHT

Finally, TURN *et al.*, OPA, and other commenters raise arguments that are procedurally defective. Per Rule 14.3(c), comments on a proposed decision “*shall* focus on factual, legal, or

¹⁴ PD at 88 (*citing* T-Mobile April Comments at 2); *see also* PD at 94-95 (agreeing that “any backup power requirement should also exclude wireless facilities where it is not possible to deploy backup power” and “should include an exemption for impossibility or infeasibility,” and further acknowledging that “[d]espite best efforts, there may be factors that come into play over which the wireless provider has very little control.”) and PD at 82 (“We agree with parties that the “100 percent language” creates an inappropriate expectation....”)

¹⁵ CTIA Comments at 1.

¹⁶ Comments of the California Fire Chief’s Association on the Proposed Decision of Commissioner Batjer, R.18-03-011, at 2 (filed July 1, 2020) (emphasis in original).

¹⁷ *See, e.g.*, CTIA April Reply Comments at 8-11.

¹⁸ California Fire Chiefs Association Comments at 2-3.

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.”¹⁹

Most of the comments in this proceeding from parties supporting expanded rules run afoul of this requirement. This includes, without limitation, all of the proposals discussed in Sections II and III above, as well as, for example, the suggestion that wireless carriers should be responsible for providing backup power to facilities that are owned by others,²⁰ and the proposal to expand the definition of “provider” covered by the rules to include resellers.²¹

These comments do not raise or cite to any factual, legal, or technical errors in the PD. Rather, they simply urge the Commission to make different policy decisions than the ones in the PD. Accordingly, per Rule 14.3(c) they “will be accorded no weight.”

V. CONCLUSION

The Commission should modify the PD as described in CTIA’s initial comments and reject misguided proposals that are preempted by federal law, impracticable, and in many instances impossible, to implement, or are raised in contravention of the Commission’s rules and must be ignored.

Respectfully submitted this 6th day of July, 2020, at San Francisco, California.

By: /s/Jeanne B. Armstrong
Jeanne B. Armstrong

GOODWIN, MACBRIDE,
SQUERI & DAY, LLP
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: 415.392.7900
Facsimile: 415.398.4321
Email: jarmstrong@goodwinmacbride.com

Attorneys for CTIA

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¹⁹ Rule 14.3(c) (emphasis added).

²⁰ WIA Comments at 2-3.

²¹ TURN *et al.* Comments at 9-10.