

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

Order Instituting Rulemaking Regarding  
Emergency Disaster Relief Program

Rulemaking 18-03-011

**EXTENET SYSTEMS (CALIFORNIA) LLC (U 6959 C) REPLY  
COMMENTS ON PROPOSED DECISION ADOPTING  
WIRELESS PROVIDER RESILIENCY STRATEGIES**

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July 6, 2020

ExteNet Systems, Inc. (“ESI”) (U 7367 C)<sup>1</sup>, along with its affiliated entity ExteNet Systems (California), LLC (“ExteNet”) (U 6959 C), hereby provides reply comments identifying errors in the Opening Comments of other parties on the Proposed Decision Adopting Wireless Provider Resiliency Requirements issued on June 11, 2020. (“Proposed Decision”). Specifically, ExteNet identifies legal and factual errors in the Opening Comments of The Utility Reform Network (TURN), Access Humboldt, the Center for Accessible Technology (CforAT), the National Consumer Law Center (NCLC), and Communications Workers of America, District 9 (CWA) (collectively “Joint Consumer Advocates/CWA”).

Rule 14.3(c) of the Commission’s Rules of Practice and Procedure require that 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.” Further, new evidence may not be introduced after a proposed decision is issued.<sup>2</sup>

The Joint Consumer Advocates/CWA commit legal error because they fail to comply with these rules in their Opening Comments requesting that the Commission revise the Proposed Decision to apply backup power requirements to small cells and fiber services. As discussed below, the Joint Consumers fail to cite to errors of fact or law in the Proposed Decision, and indeed the request to apply the 72-hour backup power requirement to small cell and fiber is contrary to the record evidence in the proceeding. Thus, under the Commission’s rules, the Joint Consumer Opening Comments on these issues should be accorded no weight.<sup>3</sup>

The Joint Consumer Advocates/CWA urge the Commission to apply backup power requirements to small cell sites on the basis that facility providers such as ExteNet are

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<sup>1</sup> ESI has filed a motion for party status in this proceeding, which is pending as of today’s date. ExteNet is already a party to this proceeding.

<sup>2</sup> D.18-06-036; D.19-06-039, at p. 9.

<sup>3</sup> Rule 14.3(c).

purportedly responsible for the “physical hardware, with the exception of the radio cards or the radio . . . permitting and construction, connecting power and the relationship with the power company, and working to restore power to the facility.”<sup>4</sup> The sole citation to support this broad assertion is ExteNet’s Opening Comments on the Assigned Commissioner Ruling and Proposal. But ExteNet’s comments do not support the Joint Consumer Advocates/CWA’s broad claims.

ExteNet’s comments stated:

It should be noted however, that in many cases the infrastructure providers do not own the actual radio, or in some cases the control card to the radio, that is located in a small wireless facility, as that term is defined by the Federal Communications Commission (“FCC”) at 47 C.F.R. § 1.6002(1). In those cases, while the small wireless facility is owned by an infrastructure provider, such as ExteNet, the actual infrastructure that provides or otherwise carries 9-1-1, voice, text messages, or data – namely the radio control card – is owned by the wireless provider licensed to use the spectrum.

Thus, ExteNet’s comments simply noted that WSPs own the essential communication facility (*i.e.* the radio or radio card) that supports wireless communications at small cell and DAS sites, a fact that undermines the Joint Consumer Advocates/CWA’s argument. The WSP’s control over the essential facility makes it infeasible or impossible for providers such as ExteNet’s to ensure that wireless services supported by the WSP’s essential radio facilities will continue uninterrupted during commercial power outages.

ExteNet did not address any of the other activities that small cell/DAS providers purportedly provide -- permitting, construction, power supply or power restoration activities, and clearly do not provide a basis for the Joint Consumer Advocates/CWA’s claims. Even if the group’s assertions could be corroborated, they constitute new “evidence.” Similarly, the group argues, without record evidence, that the backup power requirements should be applied to fiber

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<sup>4</sup> Opening Comments of Joint Consumer Advocates/CWA, at p. 10.

services and backhaul.<sup>5</sup> The arguments in support of extending the Proposed Decision’s requirements to fiber appear to be based on a declaration from Andrew Afflerbach attached to the Joint Consumer Advocates/CWA’s Opening Comments. The Commission precluded the introduction of new evidence in comments on proposed decisions in D.18-06-036 and D.19-06-039. The Commission stated, “comments on a proposed decision or draft resolution are mainly for the purpose of identifying errors made in the proposed disposition of the case and are not a forum for introducing new evidence or advancing novel theories or arguments. (Rule 14.3(c).)” Therefore, the Joint Consumer Advocates/CWA’s request to extend the backup power requirements to small cell, DAS, fiber services and backhaul are not supported by the record and are entitled to no weight.<sup>6</sup>

Even if the Joint Consumer Advocates/CWA’s newly introduced declaration were permissible, it is contradicted by the findings in the Proposed Decision and the weight of evidence in the record. The Proposed Decision requires WSPs to ensure a minimum level of wireless service,<sup>7</sup> and distinguishes small cell and DAS, which only provide inputs to WSPs’ networks.<sup>8</sup> The Proposed Decision acknowledges that small cell/DAS wireless infrastructure providers do not control the quality or level of service on WSPs’ networks.<sup>9</sup> The Proposed Decision notes that “macro cell sites” are the locations that must be able to continue receiving and transmitting signals during a commercial power outage.<sup>10</sup> Thus the Proposed Decision correctly places the requirement for network resiliency on the entities that control the overall

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<sup>5</sup> Joint Consumer Advocates/CWA Opening Comments, at pp. 6, 12.

<sup>6</sup> Rule 14.3(c).

<sup>7</sup> Proposed Decision, at p. 81-83.

<sup>8</sup> Proposed Decision, at p. 48-49.

<sup>9</sup> Proposed Decision, at p. 47.

<sup>10</sup> Proposed Decision, at p.12.

networks – the wireless service providers (“WSPs”) -- rather than wireless infrastructure providers that provide facility inputs to WSPs’ networks.

Two of those WSPs, AT&T and Verizon, note in their Opening Comments that the record in this proceeding confirms network resiliency requirements are correctly placed on the wireless service providers,<sup>11</sup> not facility providers such as small cells and Distributed Antenna Systems (“DAS”).<sup>12</sup> The stated intent of the Proposed Decision is to ensure “minimum service coverage is maintained during disasters or commercial grid outages.”<sup>13</sup> But as AT&T and Verizon note in their Opening Comments, small cell inputs to their wireless networks provide additional capacity, not coverage,<sup>14</sup> and are not intended to ensure minimum levels of service.<sup>15</sup> San Jose, one of the cities that would have to approve WSPs’ installations of backup power equipment concurred. In comments on the Assigned Commissioner’s Ruling and Proposal that opened this examination of backup power, San Jose stated, “small 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.”<sup>16</sup>

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<sup>11</sup> ExteNet notes that AT&T and Verizon assert that the Commission lacks jurisdiction to require WSPs to provide backup power for their networks. Nonetheless, if backup power is required, both WSPs confirm that such requirements are correctly placed on the WSPs themselves, not small cells.

<sup>12</sup> AT&T’s Opening Comments on Proposed Decision Adopting Wireless Provider Resiliency Requirements, at p. 5 [“AT&T Opening Comments”] (*citing 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], Commissioner’s Ruling and Proposal. Rulemaking (R.) 18-03-011, at 20-21 (dated April 3, 2020), and City of San José’s Comments on Assigned Commissioner’s Ruling and Proposal, Rulemaking (R.) 18-03-011, at 2 (dated April 3, 2020); Comments of Cellco Partnership (U 3001 C) (“Verizon”) on Assigned Commissioner’s Proposed Decision, at p. 4 [“Verizon Comments”]*).

<sup>13</sup> Proposed Decision, at p. 2.

<sup>14</sup> Verizon Opening Comments, at p. 4.

<sup>15</sup> AT&T Opening Comments, at p. 5.

<sup>16</sup> City of San Jose’s Comments on Assigned Commissioner’s Ruling and Proposal, Rulemaking (R.) 18-03-011, at p.2.

Both AT&T and Verizon ask the Commission to exempt small cells from the backup power requirements due to the regulatory and technical infeasibility of placing generators in the public rights of way where small cells and DAS are located.<sup>17</sup> Verizon and AT&T note that local ordinances usually do not allow the installation of a generator or fuel tank adjacent to small cells because of noise, size, environmental, safety and traffic control considerations. One reason that local jurisdictions restrict or bar installation of equipment on the ground near small cell facilities is the navigable space constraints of the Americans with Disabilities Act (“ADA”).<sup>18</sup> Further, AT&T notes that powering small cells from generators is technically infeasible because the commercial power cables for small cells are most often concealed inside the street pole, and therefore not able to be powered by an outside source.<sup>19</sup> Based on the record evidence in this proceeding the Proposed Decision correctly concluded that requiring 72 hours of backup power at small cell sites is technically infeasible.<sup>20</sup>

Because the Joint Consumer Advocates/CWA’s request to extend backup power requirements to small cell/DAS and fiber services/backhaul constitute legal and factual error, ExteNet respectfully requests that the Commission deny those requests in their entirety.

Signed and dated July 6, 2020 at Walnut Creek, CA.

Respectfully submitted,

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<sup>17</sup> Verizon Opening Comments, at pp. 1, 4; AT&T Opening Comments, at p. 7.

<sup>18</sup> AT&T Opening Comments, at p. 6-7.

<sup>19</sup> *Id.*, at p.6.

<sup>20</sup> Proposed Decision, at p. 48.