

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

Order Instituting Rulemaking Regarding)
Emergency Disaster Relief Program) Rulemaking 18-03-011
)
)

**COMMENTS OF THE
WIRELESS INFRASTRUCTURE ASSOCIATION
ON PROPOSED DECISION OF COMMISSIONER BATJER**

Matt Mandel
Vice President, Government and Public Affairs
Matt.mandel@wia.org

Arturo Chang
Senior Counsel, State Government Affairs

Stephen Keagan,
Associate Counsel, Government Affairs

WIA – The Wireless Infrastructure Association
2111 Wilson Blvd., Suite 210
Arlington, VA 22201
(703) 739-0300

July 1, 2020

TABLE OF CONTENTS

INTRODUCTION.....	1
DISCUSSION.....	2
I. WIA COMMENDS THE CPUC FOR TAKING PROACTIVE STEPS TO ENSURE CONTINUED SERVICE DURING PUBLIC SAFETY POWER SHUTOFFS	2
A. THE PROPOSED DECISION PROPERLY EXCLUDES WIRELESS INFRASTRUCTURE PROVIDERS FROM THE RULE.....	2
B. THE PROPOSED DECISION SEEKS TO ESTABLISH A NARROWLY TAILORED AND REASONABLE BACKUP POWER REQUIREMENT	3
II. CERTAIN ASPECTS OF THE PROPOSED DECISION REQUIRE CLARIFICATION	4
A. THE 72 HOUR BACKUP REQUIREMENT SHOULD BE CLARIFIED	4
1. THE ROLE OF MOBILE GENERATORS SHOULD BE CLARIFIED.....	4
2. THE 72 HOUR BACKUP POWER REQUIREMENT SHOULD BE EXPRESSLY LIMITED TO COVERAGE SITES	5
B. THE IMPLEMENTATION TIMELINE SHOULD BE CLARIFIED	6
III. ANY BACKUP POWER REQUIREMENT SHOULD INCLUDE A WAIVER OF LOCAL AIR QUALITY DISTRICT REQUIREMENTS.....	7
CONCLUSION	8

hour performance requirement, (ii) clarify the implementation timeline, and (iii) include a waiver of Air Quality District (AQD) requirements for generators at wireless facilities.

DISCUSSION

I. WIA COMMENDS THE CPUC FOR TAKING PROACTIVE STEPS TO ENSURE CONTINUED SERVICE DURING PUBLIC SAFETY POWER SHUTOFFS

WIA generally supports the CPUC’s efforts to ensure Californians do not lose service during emergencies.² The ability to communicate during emergencies is essential and the wireless industry has invested billions of dollars in an ongoing, continuous effort to strengthen and fortify wireless networks. WIA cautions, however, that it is impossible to economically design and deploy networks that are immune to failure. As the Proposed Decision recognizes, “a requirement to maintain service for 100 percent of customers 100 percent of the time, is not always possible, even in non-emergency conditions.”³ Accordingly, any resiliency regulations should reflect this fact.

A. THE PROPOSED DECISION PROPERLY EXCLUDES WIRELESS INFRASTRUCTURE PROVIDERS FROM THE RULE

The Proposed Decision, consistent with the Scoping Memo,⁴ properly excludes infrastructure providers from the scope of the proposed rules.⁵ The Scoping Memo defined the scope of this proceeding as “establishing resiliency planning *for communications service*

² *Order Instituting Rulemaking Regarding Emergency Disaster Relief Program*, Rulemaking 18-03-011, Assigned Commissioner’s Phase II Scoping Memo and Ruling at 3, January 2020 (emphasis added), available at: <http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&docid=324941921> (“Scoping Memo”).

³ See Proposed Decision at 82.

⁴ Scoping Memo at 3.

⁵ Proposed Decision at 48-49.

providers in areas that are prone to outage events and wildfires.”⁶ Although the original Proposal appeared to go beyond the Scoping Memo by proposing requirements “applicable to *all companies* owning, operating, or otherwise responsible for infrastructure that provides or otherwise carries 9-1-1, voice, text messages, or data,”⁷ the Proposed Decision gets it right by limiting the scope of the requirements to facilities-based wireless providers.⁸ As WIA previously noted, wireless infrastructure providers – entities that build or install communication transmission equipment, wireless facilities, or wireless support structures, but do not provide wireless communications services – should be excluded from any proposed resiliency requirements.⁹

B. THE PROPOSED DECISION SEEKS TO ESTABLISH A NARROWLY TAILORED AND REASONABLE BACKUP POWER REQUIREMENT

The wireless industry generally opposes adoption of rigid requirements for fixed backup generators because such requirements would fail to account for situations where backup power cannot be deployed due to logistical or economic constraints.¹⁰ WIA shares these concerns and thus supports the Proposed Decision’s attempt to craft a “narrowly tailored and reasonable backup power requirement” to account for these realities.¹¹

⁶ Scoping Memo at 3 (emphasis added).

⁷ *Order Instituting Rulemaking Regarding Emergency Disaster Relief Program*, Rulemaking 18-03-011, Assigned Commissioner’s Ruling and Proposal, at 3 (Mar. 6, 2020) (emphasis added) (“Proposal”).

⁸ Proposed Decision at 48-49.

⁹ These entities may be authorized to provide telecommunications in California, but do not provide wireless services. *See* Comments of the Wireless Infrastructure Association, Rulemaking 18-03-011, 2-4 (filed Apr. 2, 2020); Proposed Decision at 48 (“We also agree with ExteNet and WIA that even this definition benefits from more clarity to recognize the distinct roles the wireless infrastructure providers have apart from the infrastructure providers, backhaul providers, contractors, and other agents.”).

¹⁰ *See* Proposed Decision at 60.

¹¹ *Id.* at 61.

Consistent with a narrowly tailored and reasonable approach, the Proposed Decision includes a waiver process for “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.”¹² WIA supports this process but, as discussed below, various aspects of the Proposed Decision should be clarified to ensure that (i) the CPUC is not inundated with waiver requests and (ii) the rules ultimately adopted are consistent with the goal of adopting a narrowly tailored and reasonable requirement. For example, any requirement that 72 hours of backup power must be deployed at all small cells would trigger an onslaught of waiver requests. The requested clarifications will eliminate the need for numerous waiver requests.

II. CERTAIN ASPECTS OF THE PROPOSED DECISION REQUIRE CLARIFICATION

A. THE 72 HOUR BACKUP REQUIREMENT SHOULD BE CLARIFIED

The Proposed Decision’s 72 hour backup power requirement is ambiguous and should be clarified. First, the ability of mobile generators to satisfy the requirement should be clarified. Second, the types of wireless sites subject to the requirement should be clarified.

1. THE ROLE OF MOBILE GENERATORS SHOULD BE CLARIFIED

The original proposal excluded mobile generators from the backup power requirement and limited the requirement to on-site backup power.¹³ The wireless industry generally objected to any requirement that fixed generators be deployed at all sites¹⁴ and the Proposed Decision acknowledges that (i) “the timing, siting, permitting, and cost constraints the wireless providers assert are real barriers to ensure customers have the backup power necessary to withstand a

¹² *Id.* at 94.

¹³ Proposal at 3.

¹⁴ *See* Proposed Decision at 77.

disaster or de-energization event,” (ii) the cost to replace potentially thousands of fixed generators with fuel tanks inadequate to meet a 72 hour backup power requirement is prohibitive, and (iii) “siting larger fuel tanks presents an additional barrier.”¹⁵ Indeed, the Proposed Decision’s Findings of Fact state that “[d]eployable 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.”¹⁶

Despite these statements, WIA is concerned that there may be some unintended ambiguity over the ability of mobile generators to satisfy the 72 hour backup power requirement. Through allowing the use of mobile generators the CPUC can recognize their own determination that it is not feasible to mandate on-site backup, but should encourage consistent service through all tools available.¹⁷ Accordingly, WIA urges the CPUC to eliminate such ambiguity by expressly endorsing the use of mobile generators to satisfy the 72 hour backup power requirement.

2. THE 72 HOUR BACKUP POWER REQUIREMENT SHOULD BE EXPRESSLY LIMITED TO COVERAGE SITES

The applicability of the 72 hour backup power requirement beyond macro cells should be clarified. The Proposed Decision states that wireless carriers must ensure sufficient backup power to provide a minimum level of service, such as 9-1-1 access, ability to receive emergency notifications, and Internet browsing.¹⁸ It also states that “[t]he CPUC has both the jurisdiction and the authority to require wireless telecommunications carriers to install emergency backup

¹⁵ *Id.* at 71-72.

¹⁶ *Id.* at 116.

¹⁷ *Id.* at 78-79.

¹⁸ *Id.* at 81-83.

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.”¹⁹ It then spends a dozen pages analyzing the impact of the proposed 72 hour backup power requirement on macro cells.²⁰ Further, it recognizes that “some sites that are used for capacity will not be maintained during an outage.”²¹

Despite these numerous references that appear to limit the scope of the backup power requirement to macro sites that are used to serve wide coverage areas, the Proposed Decision elsewhere implies that small cells are not excluded completely from the backup power requirement.²² WIA urges the CPUC to clarify that the 72 hour backup power requirement only applies to cell sites necessary to provide coverage to a geographic area – coverage sites. Sites that carriers deploy to increase capacity, such as many small cells, should be expressly excluded from the proposed backup power requirement. Absent such a clarification, the CPUC will be inundated with waiver requests for small cell deployments where long term backup power cannot be reasonably or safely deployed.

B. THE IMPLEMENTATION TIMELINE SHOULD BE CLARIFIED

WIA applauds the twelve month implementation period associated with the proposed backup power requirement.²³ The Proposed Decision, however, contains scant discussion of how

¹⁹ *Id.* at 12 (emphasis added).

²⁰ *Id.* at 74-76.

²¹ *Id.* at 83.

²² *Id.* at 97 (“Wireless providers suggest that it is necessary to broadly exempt small wireless facilities from any consideration to maintain backup power, suggesting that these facilities are not essential and that they only provide additional capacity to meet growing needs for data. However, this is not always the case. As ExteNet explains, small wireless facilities may also be used to improve coverage and fill in “dead spots” in certain geographic areas. As such, providing such a broad exemption may leave many individuals without access to critical communications services during an emergency.”).

²³ *See id.* at 2, 79, 107-08, 124.

the implementation period would work. WIA assumes that the twelve month implementation period means that wireless carriers are not required to comply with the backup power requirement until one year after the effective date of the order adopting the requirement. To avoid regulatory uncertainty, however, WIA urges the CPUC to clarify the implementation process.

III. ANY BACKUP POWER REQUIREMENT SHOULD INCLUDE A WAIVER OF LOCAL AIR QUALITY DISTRICT REQUIREMENTS

The Proposed Decision acknowledges that diesel generators remain the primary source of backup power for the wireless industry and therefore expressly permits the use of diesel generators – rather than renewable energy sources – to satisfy the backup power requirements.²⁴ An additional step must be taken, however, to ensure that the wireless industry can continue to utilize diesel generators. Specifically, the CPUC should waive AQD Requirements for emergency backup generators at telecommunications sites. As WIA noted in its comments:

California regulates the amount of run time generators are allowed to operate through its thirty-five Air Districts, many of which have differing requirements. This patchwork of requirements makes it difficult to maintain power at scale across large networks which may cross multiple districts. For example, while both Ventura County APCD and South Coast AQMD limit generators to 200 hours of operation a year, Ventura does not count operations during a failure of electrical power line service towards the 200 hour cap while South Coast does. These inconsistent rules in California present additional challenges to maintain continuity of operations during electrical outages and puts the wireless industry in a tough position to make the choice of whether to operate the generator in violation of these run times or shut the auxiliary power off to avoid fines and other penalties.²⁵

²⁴ *Id.* at 2, 99-101.

²⁵ WIA Comments at 13.

Strictly adhering to AQD Requirements will require many generators to be taken offline before the end of the year and will make the 72 hour backup power requirement impossible to satisfy.²⁶

CONCLUSION

WIA supports efforts to ensure resilient wireless networks. The Proposed Decision is the CPUC's most recent effort on this subject. As discussed above, WIA generally supports the Proposed Decision subject to certain necessary clarifications. Specifically, the Proposed Decision should be modified to (i) clarify the 72 hour performance requirement, (ii) clarify the implementation timeline, and (iii) include a waiver of AQD requirements for generators at wireless facilities.

Respectfully submitted,

/s/ Matt Mandel

Matt Mandel
Vice President, Government and Public Affairs
Matt.mandel@wia.org

Arturo Chang
Senior Counsel, State Government Affairs

Stephen Keagan,
Associate Counsel, Government Affairs

WIA – The Wireless Infrastructure Association
2111 Wilson Blvd., Suite 210
Arlington, VA 22201
(703) 739-0300

July 1, 2020

²⁶ Alternatively, the CPUC should at the very least recommend that AQDs modernize their rules to provide the flexibility necessary for the wireless industry to continue relying on diesel backup generators as the industry transitions to alternative, renewable energy sources.