

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

Order Instituting Rulemaking Regarding Broadband
Infrastructure Deployment and to Support Service
Providers in the State of California

Rulemaking 20-09-001
(Filed September 10, 2020)

**COMMENTS OF CTIA ON
ASSIGNED COMMISSIONER'S AMENDED SCOPING
MEMO AND RULING**

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Pursuant to the Amended Scoping Memo and Ruling issued by Assigned Commissioner Guzman Aceves on April 20, 2021 (“Amended Scoping Memo”),¹ CTIA respectfully submits these Comments.

I. INTRODUCTION AND SUMMARY.

CTIA and its members appreciate the opportunity to continue to work with the California Public Utilities Commission (“Commission”) on the critical issues of broadband deployment and disaster restoration.

Last year Governor Newsom issued an Executive Order (“EO”) directing the Commission and other state agencies to take a variety of actions aimed at promoting broadband deployment and bridging the digital divide.² CTIA and its member companies actively support these crucial goals. It is less clear, however, whether the Amended Scoping Memo most effectively addresses those issues, focusing instead on disaster restoration—an issue already being addressed in other Commission proceedings and inapposite to the EO’s focus on broadband deployment and bridging the digital divide. For this reason, CTIA urges the Commission to refine the scope of this proceeding.

Moreover, California’s wireless providers already engage in a variety of activities to bolster resiliency and, where needed, restoration capabilities. For instance, wireless providers are enhancing existing initiatives and implementing new procedures to further advance information sharing and coordination with electric investor-owned utilities (“IOUs”) during and after a disaster. Providers are continually working to promote service continuity and restoration capabilities—from incorporating resiliency into network design, to investing in densified

¹ *Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment to Support Service Providers in the State of California*, R. 20-09-001, Order Instituting Rulemaking (issued Apr. 20, 2021).

² See Cal. Executive Order N-73-20 (Aug. 14, 2020).

networks with overlapping cell sites, to strengthening the resilience of networks. Any action the Commission takes with respect to resiliency should seek to encourage, rather than create impediments to, these ongoing successes improving resiliency, preparedness, and restoration capabilities.

The Amended Scoping Memo also offers a proposal for administering the Digital Divide Account that will promote broadband deployment. CTIA broadly agrees with this proposal, and the Commission should ensure it is implemented in a competitively neutral manner, recognizing the significant role wireless providers play in closing the digital divide and the homework gap.

II. THE WIRELESS INDUSTRY WORKS TIRELESSLY TO IMPROVE RESILIENCY IN THE FACE OF INCREASINGLY INTENSE AND FREQUENT DISASTERS AND EMERGENCIES.

Disaster and emergency events too often cause destruction to our physical surroundings—downing trees and damaging homes and businesses. And as the effects of climate change are felt more broadly, these events are increasing in both severity and frequency. The challenges left in their wake are compounded when infrastructure is impacted, resulting in electricity outages, loss of heat, interruptions to drinking water, and downed communications networks. Recognizing that consumers are especially dependent on wireless services during such times, the wireless industry is working tirelessly to ensure that mobile wireless services remain available and, where necessary, are restored quickly.

Indeed, the wireless industry has taken significant action to minimize the impact of these events on consumers—from enhancing coordination with electric power companies, to densifying networks with overlapping cell sites, to expanding service continuity and restoration capabilities. These investments in time, material, and people are necessary because each disaster is different, and providers need flexibility to adapt their response to the evolving challenges of each event. Taken together, these efforts help ensure that each wireless provider has the right

tools at its disposal to maintain service in a variety of disaster conditions and to swiftly restore services when networks are impacted.

A. Wireless Providers Recognize the Importance of Situational Awareness and Coordination to Successful Resiliency and Restoration.

The wireless industry recognizes that effective coordination and information sharing to promote situational awareness are key elements of resiliency. The nationwide wireless providers and many others have voluntarily filed disaster related outage information in the Federal Communications Commission’s Disaster Information Reporting System (“DIRS”) for over a decade. More recently, CTIA and its members supported the sharing of both DIRS information and Network Outage Reporting System (“NORS”) data with appropriate state partners.³ Wireless providers also comply with a variety of California reporting requirements, including the California Office of Emergency Services’ (“CalOES’s”) outage reporting rules⁴ and the Commission’s requirement that wireless providers submit NORS reports in the form of Major Service Interruption (“MSI”) Reports.⁵ Wireless providers also regularly fulfill data requests from the Commission’s staff for information during disasters and emergencies.

When disasters and emergencies strike, wireless providers coordinate closely with CalOES. Coordination with IOUs and government and public safety stakeholders is a key component of the wireless industry’s engagement with CalOES, where stakeholders execute emergency response and restoration activities they have perfected during blue skies planning and

³ See *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Second Further Notice of Proposed Rulemaking, 35 FCC Rcd 2239 (2020)[Error! Hyperlink reference not valid.](#).

⁴ See Cal. Gov.’s Office of Emergency Services, Tit. 19, Ch. 1.5.

⁵ See Cal. Pub. Util. G.O. 133-D, § 4, Major Service Interruption.

simulation exercises conducted prior to the event. These activities and initiatives reflect the wireless industry's experience that coordinated efforts best advance resiliency.

B. Wireless Providers Build Resiliency Into Network Design; Invest in Network Density, Redundancy and Strengthening; and Take Other Steps to Keep Consumers Connected During Disasters.

In addition to those initiatives aimed at enhancing information sharing and coordination, wireless providers have taken a number of additional steps aimed at enhancing service continuity and restoration capabilities. As just one example, AT&T alone has invested more than \$650 million and over 15,000 working hours in resiliency efforts to keep consumers connected when disaster strikes.⁶ Investments like these are making mobile wireless networks stronger than ever before and enabling service providers to nimbly respond to and recover from extreme events.

Resiliency by Design. Wireless network operators tailor the design of networks to each unique region of the country and the emergency events prevalent in those regions. For instance, networks in California have been designed to decrease their vulnerability to wildfires and earthquakes. As extreme weather events have become more frequent, wireless providers have employed increasingly sophisticated risk-analysis tools to inform key aspects of network design. Through these activities, wireless providers are designing networks in a manner that helps to keep critical assets out of harm's way.

Strengthening the Resilience of Wireless Networks. Providing backup power and strengthening backhaul networks, where appropriate, to better withstand the effects of extreme weather also remains a core component of the wireless industry's emergency and disaster preparedness initiatives. For example, applying lessons learned from past natural disasters,

⁶ Eli Blumenthal, *Staying Connected When the World Falls Apart: How Carriers Keep Phones Working*, CNET (Nov. 23, 2020), available at <https://www.cnet.com/features/staying-connected-when-the-world-falls-apart-how-carriers-keep-phones-working/> (last accessed May 5, 2021).

wireless providers have equipped critical cell sites in wildfire-prone areas with permanent generators, deployed backup battery power at other sites, and densified their networks. And to identify potential problem areas before disaster strikes, wireless providers continually monitor and analyze trends to determine areas where existing assets require strengthening.⁷

Response preparedness. When IOUs provide timely and accurate advance warning of possible public safety power shutoff (“PSPS”) events and share adequately specific information, or when natural disasters can be predicted in advance, wireless providers deploy response teams to reduce or eliminate service interruptions. These dedicated teams work tirelessly to pre-position a wide range of assets that can be quickly deployed to maintain service when commercial power is lost or networks are damaged or destroyed. A recent report by the Federal Communications Commission’s (“FCC’s”) Broadband Deployment Advisory Committee’s Disaster Response and Recovery Working Group described the around-the-clock preparatory work in which these teams engage.⁸

⁷ See, e.g., CDP, *T-Mobile USA Inc. – Climate Change 2020*, available at <https://www.t-mobile.com/content/dam/t-mobile/assets/pdf/T-Mobile-USA-2020-CDP-Submission.FINAL.pdf> (last accessed May 5, 2021) (T-Mobile’s 2020 environmental impact disclosure.)

⁸ See Broadband Deployment Advisory Committee Disaster Response and Recovery Working Group of the Federal Communications Commission, *Report and Recommendations* (Mar. 27, 2020) at 5, available at <https://www.fcc.gov/sites/default/files/bdac-disaster-response-recovery-approved-rec-03272020.pdf> (“BDAC DRRWG Report & Recommendations”) (last accessed May 5, 2021). Specifically, the BDAC DRRWG Report & Recommendations found:

[I]n advance of a disaster event, industry stakeholders prepare towers and other facilities for potentially catastrophic events by taking steps including but not limited to:

- Securing all attachments to towers and poles;
- Topping off generator fuel tanks and fuel stores;
- Validating battery reserves;
- Preparing for refueling shuttles of each respective fuel type;
- Validating and coordinating 24/7 site access or scheduling;
- Preparing sandbagging material and operations for expected water level rise;
- Clearing combustible materials from sites in fire-prone areas;
- Confirming pumps are functioning in advance of flooding;
- Securing sites under construction;

As extreme weather events have become more common, the teams engaged in this work are now a regular part of each provider's response efforts. Verizon's response team, for example, assisted in more than 2,000 engagements last year, supporting pandemic, wildfire, hurricane, and other emergency response efforts.⁹

Repairing Damaged Facilities. When it is safe to do so, wireless providers deploy highly-trained network restoration teams to cell sites and other network facilities. These teams inspect for damage, make repairs to impacted infrastructure, and coordinate efforts with frontline workers of other stakeholders such as power companies, government partners, backhaul providers, and debris removal crews. If damage is found, teams quickly transport pre-positioned network equipment to repair facilities and restore services to consumers.

After-Action Assessments. When a storm has passed and communities have recovered, wireless providers take stock of lessons learned and develop practices and initiatives to prepare for the challenges posed by future disasters and PSPS events. When appropriate, wireless providers enhance existing practices to incorporate lessons learned. These after-action steps ensure that wireless resiliency is always improving and evolving to meet the trials posed by future events.

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- Moving mission-critical equipment to high ground, avoiding flooding risks, ensuring reliable power, and fuel storage for response;
 - Installing ground stations for fixed wireless backhaul; and
 - Integrating third-party deployables with wireless provider and fiber backhaul networks.

Id.

⁹ See Thorpe, Najuma. *When Crises Come, the Verizon Response Team is Always Ready*. Verizon (Dec. 16, 2020), available at <https://www.verizon.com/about/news/when-crises-come-verizon-response-team-always-ready> (last accessed May 5, 2021).

III. CTIA’S RESPONSE TO THE SPECIFIC RESTORATION AND COORDINATION PROPOSALS IN THE AMENDED SCOPING MEMO.

As detailed above, wireless providers work around-the-clock using a wide variety of tools to advance service continuity and, where necessary, quickly restore service during a PSPS or disaster event. Providers utilize so many different tools because each event presents its own unique conditions, and these conditions often evolve throughout the event. To respond effectively, wireless providers require the flexibility to tailor their relief efforts to the prevailing conditions in real-time, and not divert resources to satisfy static regulatory mandates that, while well-meaning, may not be well-suited or even applicable to the current conditions at a given time.

As the Commission considers additional regulations aimed at advancing communications resiliency, the necessity for and benefits of a flexible approach to resiliency should remain top of mind.

A. Advice Letters Detailing Service Restoration Plans Will Provide Little or no Useful Information and Could Hinder or Delay Restoration.

Wireless providers currently keep their partners in the California government informed about the status of service restoration through a variety of required state filings (*e.g.*, MSI Reports, CalOES reporting requirements, and responses to Commission staff’s data requests). These filings are supplemented by voluntary filings, such as DIRS reports that will soon be available to relevant state agencies,¹⁰ and voluntary coordination mechanisms, such as direct engagement with CalOES, which CTIA members performed even in the midst of the COVID-19

¹⁰ See *In the Matter of Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Second Report and Order, PS Docket No. 15-80 (Mar. 17, 2021).

pandemic. And of course, wireless providers disclose all new cell site builds in filings with the Commission, keeping the Commission apprised of all broadband deployment progress.

With this background, it is unclear how an additional filing requirement—in the form of an Advice Letter filed 15 days after an event—would yield further useful information about wireless providers’ service restoration plans. Moreover, a filing made 15 days following an event is likely to yield little useful information about the status of wireless restoration, because given the speed at which wireless carriers generally are able to restore their networks, any sections of wireless networks that are still not restored at that juncture would likely be suffering from infrastructure loss such as unavailable rooftops, unavailable towers, or similar circumstances beyond the providers’ control. Compounding these policy concerns are the considerable legal limits on the Commission’s authority to regulate in the area of network design and deployment, a topic that CTIA has addressed at length previously.¹¹

Nevertheless, should the Commission proceed with yet another reporting requirement, it should require an information-only filing pursuant to G.O. 96-B rather than an Advice Letter.¹² Given the limitations of the Commission’s legal authority to dictate the construction or restoration of wireless networks, a requirement mandating a Tier 1 or Tier 2 Advice Letter, both of which are subject to Commission approval, would be misplaced. Furthermore, approval processes associated with such Advice Letters would only serve to delay restoration efforts following a disaster event. However the Commission proceeds, it should refrain from imposing any obligations that would require providers to divert resources from restoration activities, and

¹¹ See Comments of CTIA on the Order Instituting Rulemaking, Rulemaking 20-09-001, at 7-9 (filed Oct. 12, 2020). (“CTIA Initial OIR Comments”) (explaining the Commission’s significant legal limitations to direct wireless carriers to take actions affecting their networks).

¹² Cal. Pub. Util. G.O. 96-B, § 6.

should recognize that wireless restoration is constantly evolving and improving due to wireless carriers' efforts and investment.

B. There is no Need to Impose Meet and Confer Obligations Because Rigid Obligations are Counterproductive and Necessary Coordination Already Occurs.

Wireless providers currently coordinate with IOUs about the restoration of wireless services through a variety of channels, including informal on-the-ground communications and more formal coordination through CalOES. As a result, wireless providers and IOUs already meet and confer regarding wireless service restoration activities during and following the vast majority of, if not all, disasters and PSPS events. For that reason, the proposed meet-and-confer requirement is unnecessary.

Moreover, while well-intentioned, this new additional requirement could add a layer of burden and delay that further complicates restoration activities. For instance, a disaster may not disrupt electric service to wireless facilities, but nonetheless may impact wireless networks in other ways (*e.g.*, damage to the cell site or backhaul circuits). Requiring coordination with IOUs in circumstances where IOUs are not involved would only divert valuable resources that could otherwise be deployed to advance other aspects of wireless resiliency. Just as there is no one-size-fits-all approach to resiliency, there is no one-size-fits-all approach to coordination for resiliency. California consumers would thus be better served by the flexible and nimble approach to coordination already in place.

C. The Commission Should Not Seek to Require the Communication of and Opportunity for Public Comments on Rebuild Plans.

The proposal requiring the communication of and opportunity for public comment on rebuild plans would fail to advance wireless resiliency, and ordering the manner in which networks are constructed exceeds the scope of the Commission's authority.

First, as a matter of sound policy, the proposed requirement would not advance the rapid restoration of wireless services. As addressed above, wireless restoration involves a wide variety of activities, and wireless providers are best situated to determine the right tool to address each challenge. For this reason, regulators have traditionally pursued a carefully calibrated approach to wireless resiliency that promotes network investment, flexibility, and innovation on multiple fronts. Inserting local stakeholders—who generally lack technical expertise about wireless networks—into this decision-making process runs counter to policies that have advanced wireless resiliency for years. In any event, the Commission lacks authority to adopt a proposal that would provide local and tribal governments, Regional Broadband Consortia, and “other interested stakeholders” with influence or control over the rebuilding of wireless facilities. If there is a time for these entities to express their opinions about wireless deployment, perhaps such input would be more appropriate during zoning processes when statutorily defined community interests may be considered. On the other hand, the FCC has exclusive jurisdiction under Title III of the Communications Act over wireless carriers’ use of spectrum and the placement and density of their facilities.¹³ For this reason, the Seventh Circuit held in *Bastien* that Section 332(c)(3)(A) of the Act preempted state regulation of wireless carriers’ transmitter locations, density, and use of frequencies¹⁴—and the Ninth Circuit has cited *Bastien* with approval, further holding that Section 332(c)(3)(A) preempts a state from “substituting its judgment for the [FCC’s] with respect to the reasonableness of a particular rate . . . [and] with regard to a market-entry decision.”¹⁵ The Commission lacks authority to dictate these terms, so

¹³ See generally 47 U.S.C. §§ 301, 332.

¹⁴ See *Bastien v. AT&T Wireless Servs.*, 205 F.3d 983 (7th Cir. 2000).

¹⁵ *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1008 (9th Cir. 2010); see also *Wireless Consumers Alliance, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 17021 (2000); *Petition of the People of the State of California and the Public Utilities Commission of the State of California to Regulatory Authority*

it similarly lacks the ability to delegate any authority regarding these decisions to third parties. Accordingly, the Commission should reject this proposal.

IV. CTIA’S RESPONSE TO THE PROPOSAL FOR THE DIGITAL DIVIDE ACCOUNT

The Revised Scoping Memo seeks comment on a proposal to use the roughly \$1 million in the Digital Divide Account to provide competitive grants to rural low-income small school districts proposing holistic solutions to address digital divide concerns.¹⁶ CTIA broadly agrees with the proposed approach¹⁷ and urges the Commission to administer the program in a competitively neutral way, recognizing the significant role that wireless providers have played in closing the digital divide and addressing educational needs during the COVID-19 pandemic.

As detailed in a recent report by Chiefs for Change, a bipartisan network of state and local education leaders, mobile hotspots powered by the wireless industry have helped schools quickly adapt to the new remote classroom environment.¹⁸ The Chiefs for Change Report observed that mobile wireless hotspots powered by commercial wireless networks are “the fastest way to get students connected to the internet.”¹⁹ As schools around the country remain closed or use a hybrid model of in-person and virtual learning to mitigate the risk of coronavirus, mobile wireless providers are helping to give students the tools they need to participate in

over Intrastate Cellular Service Rates, Report and Order, 10 FCC Rcd 7486, 7508–509 ¶ 45 (1995); *see also* CTIA Initial OIR Comments at 7-9.

¹⁶ *See* Revised Scoping Memo at 4-5 (§ 2.1, item 2 & § 2.2).

¹⁷ CTIA does note that the statute requires the Commission to provide grants “in a way that disburses the funds widely, including urban and rural areas.” Cal. Pub. Util. Code § 280.5(c)(2). As proposed, however, the program would only serve rural schools.

¹⁸ *See generally* Chiefs for Change, *K-12 Connections: How Schools and Wireless Providers Are Partnering to Get Students Online During COVID-19* (Dec. 2020), available at <https://chiefsforchange.org/wp-content/uploads/2020/12/K-12-Connections-How-Schools-and-Wireless-Providers-Are-Partnering-to-Get-Students-Online-During-COVID-19.pdf> (last accessed May 5, 2021) (“Chiefs for Change Report”).

¹⁹ *See id.* at 3.

distance learning and remain engaged with their classmates and teachers. Since the start of the COVID-19 pandemic, the wireless industry has helped connect 2.4 million students by providing hotspots, other devices, and broadband service.²⁰ As Acting FCC Chairwoman Rosenworcel has observed, “for students who don’t have internet access at home, having the school loan out a wireless hotspot is the difference between keeping up in class and falling behind.”²¹ Similarly, FCC Commissioner Starks has lauded “the great work that the wireless industry has done throughout the pandemic, particularly for students from vulnerable communities, when connectivity has become more critical than ever.”²²

Given the important role that mobile wireless services and devices have played in connecting millions of students throughout the COVID-19 pandemic, the Commission’s rules should ensure that schools and libraries have access to effective and efficient mobile wireless technologies to help close the homework gap. To this end, the Digital Divide Account should be administered on a competitively neutral basis, enabling applicant school districts to use mobile wireless broadband and devices where they are the most effective solutions to meet their connectivity needs.

V. CONCLUSION

For all the above reasons, CTIA respectfully urges the Commission to refine the scope of this proceeding to more closely align with the directive contained in the Governor’s EO. CTIA

²⁰ See *id.* at 2 (“Without wireless hotspots and emergency assistance, many more students would be locked out of learning.”) *id.* at 4 (“Over the past nine months, education chiefs and wireless industry leaders have made a real difference, connecting more than 2.4 million students during COVID-19.”).

²¹ Tanya Basu, *Why the “Homework Gap” Is Key to America’s Digital Divide*, MIT Tech. Rev. (Oct. 13, 2020), available at <https://www.technologyreview.com/2020/10/13/1010243/jessica-rosenworcel-homework-gap-key-to-americas-digital-divide/> (last accessed May 5, 2021).

²² Geoffrey Starks, Commissioner, FCC, Remarks at the CTIA 5G Summit at 1 (Oct. 28, 2020), available at <https://docs.fcc.gov/public/attachments/DOC-367818A1.pdf> (last accessed May 5, 2021).

also urges the Commission to administer the proposed Digital Divide Account in a competitively neutral manner, recognizing the significant role wireless providers play in closing the digital divide and the homework gap.

Respectfully submitted May 5, 2021 at San Francisco, California.

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