BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding Whether to Allow Access to 211 Services in Counties and Localities without 211 Centers.	Rulemaking 10-06-002 (Filed June 3, 2010)

COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON 211 WORKSHOP REPORT

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I. INTRODUCTION

Pursuant to Rule 6.2 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Division of Ratepayer Advocates (DRA) hereby submits these comments on the *Emergency Access to 211 Services in Counties and Localities Without Existing 211 Centers Workshop Report* (Workshop Report) issued on November 23, 2010. The Workshop Report summarizes the information provided by the participating and interested parties during the September 14, 2010 public workshop conducted by the Commission's Communications Division (CD). DRA generally supports the Commission's initiative to extend 211 services to the existing counties currently without the service. Nonetheless, DRA recommends that the Commission

- Expand 211 service – at least that available only in disasters – to wireless providers, since customers are as likely to be away from their wireline phones in times of disaster or emergency as they are near wireline service. While the Workshop Report discusses wireless jurisdiction, it is up to the Commission, and not staff, to address this legal issue. DRA analyzes the issue below, and demonstrates that the Commission has the appropriate jurisdiction to regulate terms and conditions of wireless service.

- Require customer education explaining that in certain counties, 211 service will only be available during disasters or emergencies.
- Define "disasters" and "emergencies" in a clear and obvious way.
- Require 211 providers to give updates on implementation of 211 in San Mateo County (where the Pacific Gas and Electric Company [PG&E] San Bruno pipeline exploded) and other counties in which 211 service is being implemented.

II. BACKGROUND

211 is the abbreviated dialing pattern the Federal Communications Commission (FCC) has designated for use by members of the public to gain access to non-emergency community Information and Referral (I&R) providers. Upon dialing 211, a caller is routed to an I&R provider to obtain information about social services such as housing assistance, programs to assist with utility bills, food assistance, and other non-emergency services not addressed either by 911 or 311 services.[1]

On August 30, 2001, the Commission initiated a proceeding to establish policies, procedures and guidelines for designating 211 I&R providers in each of California's fifty-eight counties. On February 13, 2003, the Commission adopted Decision (D.) 03-02-029, which established guidelines and procedures to certify I&R providers to offer 211 service. The decision required all local exchange carriers to provide 211 call origination services at reasonable rates in those territories served by 211 I&R providers.[2]

On February 4, 2010, 211 California submitted a petition to the Commission to be designated the lead 211 entity and to enable emergency access to 211 services in counties and localities without existing 211 centers (Petition). 211 California asked to be able to deliver 211 services in unserved counties only in disaster situations, a key difference from the usual 211 service, which offers service 24 hours a day, 7 days a week and 365 days per year (24/7/365). While the Workshop Report (at 6) notes that "disaster" 211 service really only differs from regular 211 in that it will not be offered 365 days per year, the "24/7' moniker is also appropriate, because that term has come to mean that something is always up and running. In the Petition, 211 would not always be up and

[1] D.03-02-029, *mimeo.* at 3.

[2] *Id.* at 2.

running; it would only be activated in times of disaster or emergency, and it would end when the disaster abates. Thus, DRA uses the term 24/7/365 to refer to regular 211 service.

On June, 3, 2010, the Commission granted the Petition and opened an Order Instituting Rulemaking (OIR). The OIR authorized a workshop to be held on September 14, 2010. The workshop focused on five primary issues:

- Is there a benefit to the counties where 211 is currently not available to have 211 services available during disaster/emergency periods even though 211 will not be available 24/7/365?
- Will changing the 24/7 rule allow for the introduction of interim 211 services where 211 is not available during disaster/emergency periods?
- What are general routing and technical requirements and considerations to establish such service?
- How does 211 apply to wireless providers?
- May 211 California be designed the lead agency providing 211 services in order to extend 211 services to unserved counties during disaster/emergency periods?

Following the workshop, CD issued its Workshop Report, and the Administrative Law Judge (ALJ) issued a ruling allowing parties to comment thereon. These are DRA's comments.

III. DISCUSSION

A. The Commission Should Include Wireless Carriers in the 211 Program to Provide Emergency Service in Unserved Areas

In their comments on 211 California's original Petition (P.) 10-02-002, the wireless providers asserted that they had no obligation to deliver 211 service because D.03-02-029 excluded wireless services from the 211 program.[3] Verizon Wireless reiterated this flawed argument in comments filed in this proceeding on August 3, 2010,

[3] August 3, 2010 Response by Verizon, at 3.

and the Workshop Report picks up the thread. However, as DRA pointed out at the workshop, jurisdiction is a legal determination for the Commission. As we show below, the Commission has jurisdiction to regulate terms and conditions of wireless service, including whether wireless providers have an obligation to offer 211.

The Commission and the FCC have not ruled out wireless carriers' obligations to provide 211 services. Instead, D.03-02-029 permits the Commission to reexamine the issue at a later date. We set forth the reasons for such reexamination below, and urge the Commission to require wireless carriers to assist in delivering 211 service, at least in times of disaster or emergency in the counties covered by 211 California's Petition.

1. Federal Delegation of Authority to the States

State commissions retain authority to regulate terms and conditions of wireless service, including authority to require wireless providers to offer 211 service.[4] It is especially appropriate to offer 211 service during "disasters" or "emergencies," as the Commission defines such events, since people may be unable to enter their homes during such times, and therefore may not have access to wireline phone service. Wireless 211 service may be their best chance of reaching essential services without overloading the 911 system.

In addition, the FCC authorized use of the 211 dialing pattern for I&R services in the context of exercising its authority, pursuant to the 1996 Federal Telecommunications Act, over the North American Numbering Plan.[5] In a series of orders, the FCC has delegated to state commissions generally, and to the CPUC specifically, certain authority to monitor numbering resources, and to implement new area codes.

The FCC classified 211 as the national abbreviated dialing code to access non-emergency community I&R providers in its *Third Report and Order and Order on Reconsideration of 2000* (FCC Order). The FCC Order concluded that 211 services presented a useful adjunct to 311 and 911 services by alleviating unnecessary call volumes to these dedicated public assistance numbers. The FCC further decided that

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[4] 47 U.S.C. § 332.

[5] *See* 47 U.S.C. § 251(e).

providing a national safety network for persons to get ready access to assistance met the public interest showing required for 'N11" status.

The FCC made clear that under 47 U.S.C. § 251(e)(1) – which provides that "[n]othing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction" – state Commissions may have a role in 211 service delivery:

> We do not at this time decide what role, if any, state commissions may play once we make national assignment. That role will necessarily be determined on a case by case basis as we make national assignment. *We clarify, however, that states will be allowed to continue to make local assignments that do not conflict with our national assignment*. *Third Report and Order and Order on Reconsideration,* at 23 (emphasis added).

Although the FCC possesses comprehensive authority over wireless telecommunications entry and rates, states retain jurisdiction to regulate wireless terms and conditions:

> [N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. 47 U.S.C. § 332(c)(3); emphasis added.

DRA is not requesting that the Commission assert regulatory jurisdiction over the entry of or the rates charged by any wireless provider. Instead, DRA recommends that the Commission exert its delegated authority to impose terms and conditions of service upon wireless providers for the purpose of enhancing public safety.

2. State Authority

The Commission's *Decision Granting Petition for Rulemaking and Order Instituting Rulemaking* (R.10-02-002, OIR) explicitly included wireless carriers when it assessed whether and how to expand the 211 program. In the OIR, the Commission stated:

> If residents are evacuated during an emergency, they leave their landline phones behind and only have access to wireless telecommunications until some temporary shelter is found. It would be insensitive and *could be dangerous* for evacuees who are facing trauma of a disaster to be left without any way to contact the authorities as to which roads and shelters are open, what the latest news is on the emergency, and when they can return to their homes. We will therefore *include the wireless carriers in our assessment of expanding the 211 program to provide emergency service in unserved area*. R.10-06-002, *mimeo.* at 12 (emphasis added).

While the OIR notes the Commission's lack of jurisdiction regarding the setting of *rates* for wireless carriers, the focus of this proceeding is to extend 211 service to communities without such service for the limited purpose of employment during emergency situations. For the specific reason of promoting public safety, the Commission, in this instance, would be exercising its "terms and conditions" authority to require wireless carriers to provider disaster 211 service.

Among Verizon Wireless' principal arguments against mandating wireless 211 service is that D.03-02-029 excluded wireless from the 211 program. Specifically, Verizon states, "reasonable rates cannot by imposed the Commission on wireless carriers pursuant to § 332 of the Federal Communications Act, and implementation would be complicated since a wireless caller that dials 211 could be calling from anywhere in the state or could be roaming another carriers' network."[6]

Verizon's interpretation of D.03-02-029 is misleading. Decision 03-02-029 did not specifically exempt wireless carriers from 211 services; rather, the Commission concluded that it would "not require wireless carriers to provide 2-1-1 origination service *at this time* because of the FCC's current consideration of a petition by wireless carriers to use 2-1-1 for wireless information."[7] The Commission clearly preserved its right to address the issue at a later time. This proceeding is the procedural vehicle to do just that.

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[6] OIR at 10.

[7] D.03-02-029, *mimeo.* at 43.

The Commission, in its duty to provide for the safety of the public, retains comprehensive jurisdiction over questions of public health and safety arising from utility operations. For example, in D.09-08-029, the Commission asserted its authority over wireless providers for public safety purposes. In D.09-08-029, the Commission found, "[o]ur jurisdiction over questions of public health and safety arising from utility operations is not constrained by federal law."[8] Given the FCC's delegation of 211 implementation responsibility to the states, the Commission may order wireless carriers to operate 211 services for the purpose of enhancing public safety.

Finally, under Public Utilities Code § 451, the Commission is statutorily obligated to assure that "every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including facilities . . . as are necessary to promote the *safety*, *health*, *comfort*, and convenience of its patrons, employees, and the public." (Emphasis added.) As noted above, the FCC designated 211 as a specific "N11" code primarily because of its perceived contributions to the public safety network. In accordance with California law, the Commission has jurisdiction to order wireless providers to furnish 211 service for public health and safety purposes.

3. Recommendations

DRA recommends that the Commission implement 211 standards for wireless carriers for the purpose of enhancing public safety. To be clear, the standards set for wireless carriers would be confined to the scope of this proceeding, which is "to address whether, and if so how, to enable emergency access to 211 services in counties and localities without existing 211 centers."[9]

Therefore, DRA recommends that wireless carriers be required to provide 211 services to customers during "disasters" and "emergencies" – as the Commission ultimately defines the terms.[10] The Commission should not exclude wireless providers

[8] D.09-08-029, *mimeo.* at 9.

[9] R.10-06-002, *mimeo.* at 2.

[10] DRA discusses definitions later in these comments.

from obligatory provisioning of 211 services on the assumption that individuals will have access to a landline service during emergencies.

DRA recommends that the Commission order the following:

- Wireless carriers should be required to provision 211 services to the unserved counties specified in R.10-06-002 in the event of a "disaster" or "emergency," as the Commission defines those terms. However, the carriers should provision 211 in a way that allows its expansion to 24/7/365 service.

- Such carriers should be given a reasonable interval to activate 211 service once: (1) a "disaster" or "emergency" occurs, and (2) such 211 service is feasible. This interval should not exceed 24 hours after the "disaster" or "emergency" takes place.

- Wireless providers should not be liable for if 211 calls cannot be completed due to the location of cell cite facilities in relation to political boundaries. The 211 centers have protocols to reroute those calls when they come in.

- Wireless carriers should continue to follow existing methods of cost recovery and shall not seek additional ratepayer funding for implementation of the foregoing 211 service requirement.

DRA requests that the Commission consider such rules, allowing comment on them if need be. It is not appropriate, however, for the Commission simply to close this proceeding without such consideration, as the Workshop Report suggests.

B. The Commission Should Adopt Guidelines for Customer Education Programs Regarding 211 Services.

Both the FCC and the Commission have identified 211 as important to the national safety network for persons in need of information and referral services. Here, 211 California proposes to alter the typical 211 arrangement by making it available only in case of disaster or emergency. Customers who may expect 24/7/365 availability, therefore, should be educated about the more limited use of 211 service in the counties covered by 211 California's request.

Information can be located on various websites, such as 211 California's; however, public awareness would be best serviced by a ubiquitous dissemination of educational material by the telecommunications providers. This undertaking is not unfamiliar to the Commission; in D.10-01-026 the Commission adopted guidelines for

customer education programs regarding backup power systems. There, the Commission ordered telecommunications providers to implement educational guidelines because, "[c]ustomer education can only be achieved if the customer is aware of the need for it and the educational materials are available in a format the customer can utilize."[11]

DRA believes that 211 service warrants similar treatment due to its impact during times of disaster or emergency. Therefore, DRA recommends that the Commission examine customer education materials and plans both of providers with existing programs and of those that plan the new disaster- or emergency-only programs. The Commission should examine the materials to determine the accuracy and helpfulness of the content, and the effectiveness of the providers' dissemination of such material. In either case, DRA recommends that the ALJ or Commission require that providers submit such materials, and their plans for dissemination of materials, to CD for review and approval.

C. The Commission Should Clarify What is Meant by "Disaster" and "Emergency"

It is not entirely clear when 211 California's new services will be available. Clarity about what qualifies as a "disaster' is necessary to customer understanding of a program, and should be incorporated into the customer education piece DRA discusses above. The Commission should clarify what qualifies as a disaster in the non-24/7/365 counties. The following questions may be appropriate to answering this question:

- Does a "disaster" or 'emergency" exist only upon local, state, or federal government declaration? DRA recommends "disasters" and "emergencies" be more expansively defined. It may take days for a disaster area designation to occur, and the real need for 211 may occur the day of an incident. DRA offers the following possible definitions to assist the Commission in this task:
    - An unexpected natural or man-made catastrophe of substantial extent causing significant physical damage or destruction, injury, and/or loss of life

[11] D.10-01-026, Finding of Fact 18, at 26.

- A serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses

- An incident or calamity caused by accident, natural causes, or deliberate intent and resulting in: serious damage or destruction to records and facilities; a sudden threat to personal safety; or major disruption of operations.

- How long after a disaster or emergency strikes will 211 service be up and running? DRA recommends no more than 24 hours, since the greatest need and uncertainty may occur at the beginning of such an event.

- How will the affected community be made aware that 211 is available?

- What services will be offered?

- How will members of the community know the difference between disaster-related needs that merit a call to 911, and needs that are better met by 211?

DRA recommends that the Commission answer these questions before approving 211 California's application. DRA stands ready to assist the Commission in answering these questions as soon as possible, but believes they do need answers. Having 211 California produce a plan that answers these questions would be the appropriate first step.

D. The Commission Should Obtain Updates as to the Status of 211 Implementation in San Mateo County and the 10 Other Counties in Which 211 is Being Implemented

At the workshop, we learned that 211 service in San Mateo County – the county where the PG&E San Bruno gas pipeline explosion took place – is not yet available. San Mateo County is apparently the only urban county in California without 211 service. Thus, we understand there was a great deal of confusion after the explosion about where to call for disaster-related services. In addition, it appears that 211 service is in the process of implementation in 10 additional counties. DRA believes the ALJ should require a status update on implementation of 211 service in these counties as well. At a minimum, the update should:

1. Be served on the service list for this proceeding and on CD;
2. Explain what is left to be done to implement 24/7/365 211 service in San Mateo County, and give a timeline for such action;

3. Explain reasons for delay in implementing the foregoing service in San Mateo County;

4. Provide information in items 1 and 2 on this list for the remaining 10 counties as well.

E. DRA Supports 211 California's Request to be Named Lead Agency with Certain Conditions

DRA generally supports 211 California's petition to be named the lead agency. It appears reasonable to designate a single entity, subject to Commission jurisdiction, to oversee the coordination of and direct the growth and strength of the 211 network.[12] Moreover, it makes sense to delegate the administrative duties to an entity that will act as a single point of contact for the various 211 service regions. However, DRA recommends that the Commission impose certain requirements upon 211 California if it is named lead entity.

DRA agrees that, if designated lead agency, 211 California should not be liable for guaranteed availability of service. Instead, 211 California should be held to a duty of reasonable care. As noted in the Workshop Report, "demand is hard to predict and may outstrip resources"[13] especially if the Commission allows existing 211 centers to extend coverage to additional counties. Nevertheless, under the Commission's jurisdiction, as lead agency 211 California would be subject to inquiries and investigations performed by the Consumer Protection and Safety Division (CPSD) in cases where the Commission suspects failure to meet this standard of care.

IV. CONCLUSION

For the reasons stated above, DRA recommends that the Commission:

- Expand 211 service – at least that available only in disasters or emergencies – to wireless providers;

- Require customer education explaining that in certain counties, 211 service will be available only during disasters or emergencies;

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[12] Workshop Report at 10.

[13] *Id*. at 8.

- Define disasters and emergencies in a clear and obvious way; and
- Require 211 providers to give updates on implementation of 211 in San Mateo County (where the Pacific Gas and Electric Company (PG&E) San Bruno pipeline exploded) and other counties in which 211 service is being implemented.

Respectfully submitted,

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December 22, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON 211 WORKSHOP REPORT** in **R.10-06-002** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on **December 22, 2010** at San Francisco, California.

/s/ IMELDA EUSEBIO
Imelda Eusebio

N O T I C E

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