



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

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Order Instituting Rulemaking to Evaluate  
Telecommunications Corporations Service Quality  
Performance and Consider Modification to Service  
Quality Rules.

Rulemaking 11-12-001  
(December 1, 2011)

**COMMENTS OF CTIA ON ALTERNATE PROPOSED DECISION  
ADOPTING GENERAL ORDER 133-D**

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Dated: July 12, 2016

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ADOPTING GENERAL ORDER 133-D**

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), CTIA<sup>1</sup> respectfully submits its Comments on the Alternate Proposed Decision Adopting General Order 133-D issued in the above-captioned proceeding on June 22, 2016 (“APD”). For the reasons discussed below, CTIA supports the Commission’s adoption of Commissioner Picker’s Proposed Decision filed March 2, 2016,<sup>2</sup> rather than the APD.

**I. INTRODUCTION AND SUMMARY**

CTIA supports adoption of Commissioner Picker’s Proposed Decision in this proceeding, which wisely declines to impose unnecessary utility-style regulation on the competitive wireless marketplace. The APD, by contrast, includes two components that would introduce utility regulation that could damage the competitive marketplace – the opening of another phase of this

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<sup>1</sup> CTIA – The Wireless Association® (“CTIA”) ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America’s competitive and world-leading mobile ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> Proposed Decision Adopting General Order 133-D, R. 11-12-001 (March 22, 2016).

Rulemaking to consider service quality standards for wireless carriers, and specific outage reporting requirements for rural areas.

First, the Commission should not adopt the APD's proposal to open another phase of this Rulemaking to examine service quality standards for wireless carriers. As the Commission has recognized, service quality standards may be relevant in the case of traditional public utilities operating in a monopoly or duopoly market, but are unwarranted and counterproductive for the competitive wireless marketplace.<sup>3</sup>

The record in this proceeding supports these conclusions, demonstrating that in the absence of prescriptive regulation, strong competition in California's wireless marketplace has acted as a powerful incentive for providers to improve service quality, lower prices, and expand service offerings. As such, the Commission should refrain from further exploration of such standards as proposed by the APD.

Another reason for the Commission not to waste its limited resources exploring wireless service quality requirements is that such regulation is preempted by Section 332 of the federal Communications Act. The courts have confirmed that regulation of the sufficiency of wireless carriers' networks – the sort of regulation that the APD would explore in the next phase of this proceeding – constitutes prohibited rate and entry regulation.

In proposing to open a new phase of this proceeding to explore what service quality standards should be applied to wireless carriers, the APD also fails to comply with Section 1705 of the Public Utilities Code, which requires the Commission to issue decisions that contain “separately stated, findings of fact and conclusions of law” on “all issues material to the order or

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<sup>3</sup> D. 06-03-013, p. 6.

decision.”<sup>4</sup> The APD contains no findings of fact or conclusions of law, or any analysis whatsoever, as to whether service quality regulation of wireless carriers is allowable under the limits of the Commission’s jurisdiction, or whether such regulation is appropriate given the strong competition that exists in California’s wireless marketplace. Both of these issues are material to the APD’s determination to open a new phase of this proceeding to address wireless service quality.

Second, the APD must be rejected for its proposed imposition of rural outage reporting requirements. Adopting rural reporting requirements would be ill-timed at best and unlawful at worst. The FCC is actively considering rural network outage reporting standards designed to achieve precisely the same goals as the standards that the APD would adopt.<sup>5</sup> The precise requirements of the FCC’s rules, however – including the definition of rural areas and the precise thresholds for reporting – are not yet finalized. Requiring wireless carriers serving rural areas to comply with differing reporting obligations in rural areas would, at minimum, impose unnecessary burdens and costs on wireless carriers seeking to serve rural areas in California. These inconsistencies with federal requirements also give rise to preemption concerns.

Given these significant errors in the APD, as discussed in more detail below, the APD should be rejected, and the Commission should proceed expeditiously to adopt the Proposed Decision.

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<sup>4</sup> See Public Utilities Code §1705; see also *id.* at § 311(d) (“Consistent with the procedures contained in Sections 1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner or the administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions.”).

<sup>5</sup> *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications, et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 16-63 (rel. May 26, 2016) (“Outage Reporting NOPR”).

## **II. THE COMMISSION SHOULD NOT OPEN A NEW PHASE OF THIS PROCEEDING TO EXAMINE WIRELESS SERVICE QUALITY REGULATIONS**

### **A. Vigorous Competition in California’s Wireless Marketplace Makes Service Quality Regulation Unnecessary**

The record in this proceeding establishes that California’s wireless marketplace is functioning effectively, providing carriers significant incentives to maintain and improve service quality for consumers.<sup>6</sup> As a result, prescriptive, utility-style regulation is unnecessary and counterproductive.

Over ten years ago, the Commission recognized that its traditional regulatory approach was designed for carriers operating in monopoly or duopoly positions and “is ill-suited for th[e] modern telecommunications marketplace.”<sup>7</sup> The Commission recognized that a competitive market drives down prices and improves service quality, customer satisfaction, and increases information flows.<sup>8</sup>

By any measure, the California wireless services marketplace is vigorously competitive. There are currently seven facilities-based wireless providers in California and many more resellers and mobile virtual network operators (“MVNOs”). Almost 97 percent of the California population has access to four or more wireless providers, and over half the population has access

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<sup>6</sup> See, e.g., Opening Comments of AT&T California and Certain of its Affiliates, R. 11-12-001 (January 31, 2012), pp. 6–8, 25–26, and supporting Declaration of D. Aron (“Aron January 2012 Declaration”) ¶¶ 106–112; Opening Comments of CTIA – The Wireless Association®, R. 11-12-001 (January 31, 2012) (“CTIA January 2012 Comments”), pp. 4–6; Opening Comments of Verizon California Inc., R. 11-12-001 (January 21, 2011), pp. 25–26 and supporting Declaration of Jeffrey A. Eisenach, PHD, ¶104; Reply Comments of AT&T California and Certain of its Affiliates, R. 11-12-001 (March 1, 2012), pp. 39–41 and Reply Declaration of D. Aron ¶¶ 51–68; Comments of AT&T Communications, Inc. on Staff Report, R. 11-12-001 (October 24, 2014), Declaration of Dr. Debra J. Aron Supporting Comments on Staff Report (“Aron October 2014 Declaration”).

<sup>7</sup> D. 06-03-013, p. 6.

<sup>8</sup> *Id.*, pp. 33–34.

to six or more.<sup>9</sup> This competition continues to drive a broad array of providers to offer mobile wireless services in California under a variety of business models, competing aggressively on a range of factors including price, network quality, and customer service.

The benefits of competition are readily apparent in the steady decline in prices for comparable packages of wireless services. From December 2009 to September 2015, the Consumer Price Index for wireless telephone services *decreased* 13 percent.<sup>10</sup>

Competition also is driving carriers to invest billions of dollars to improve their networks. As of the end of 2015, the wireless industry's cumulative capital expenditures on infrastructure totaled more than \$462 billion, with wireless providers having invested approximately \$32 billion in 2015.<sup>11</sup> During the pendency of this proceeding, this investment has enabled the industry to advance through two generations of network upgrades: 3G (enabling broadband internet access and many associated services and applications), and 4G (which is better suited to the data demands of video, multi-person gaming, and other high-bandwidth services).<sup>12</sup> Mobile broadband services at download speeds above 10 Mbps are available to 99.4 percent of

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<sup>9</sup> See National Broadband Map, California Summary, available at <http://www.broadbandmap.gov/summarize/state/california> (last visited July 6, 2016). Comparable data regarding levels of subscriptions and number of service providers was provided in CTIA's January 2012 Comments. The FCC continues to collect data and report on deployment. December 2014 and 2015 data are available for download, and the FCC offers deployment data specific to California and other states. See <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477> (last visited July 11, 2016).

<sup>10</sup> Bureau of Labor Statistics, "Price Trends for Wireless and Landline Phone Services, December 2009-September 2015," available at <http://www.bls.gov/opub/ted/2015/price-trends-for-wireless-and-landline-phone-services-december-2009-september-2015.htm> (last accessed July 5, 2016). See CTIA January 2012 Comments, p. 5 (showing comparable pricing information).

<sup>11</sup> Data from CTIA's *Wireless Industry Survey 2015*. <http://www.ctia.org/your-wireless-life/how-wireless-works/annual-wireless-industry-survey> (last accessed June 30, 2016); see CTIA January 2012 Comments, pp. 5–6 for then-current information on network investment. These figures do not include investment by wireless providers to secure spectrum at auction, which represents many more billions of dollars of investment.

<sup>12</sup> Aron January 2012 Declaration, ¶ 39.

California's population,<sup>13</sup> and the industry already is working on the next generation of network upgrades (5G).<sup>14</sup>

Competition has driven wireless providers to develop a wide variety of service plans to satisfy diverse consumer needs. These include contract plans with devices subsidized, unsubsidized, or leased, and non-contract (pre-paid) plans, as well as friends and family plans, unlimited calling and texting plans, and a wide range of data service options. The wireless industry is actively and consistently accommodating consumers' needs across all income and usage levels. The industry response to ever-changing consumer demands is exemplified by CTIA's *Consumer Code for Wireless Service*, which has been an integral part of delivering superior customer service to wireless consumers since 2003. New principles have been added to the *Consumer Code for Wireless Service* as consumer demands have evolved.<sup>15</sup>

The low prices and other value created by the competitive market are driving consumers to purchase wireless services enthusiastically. Since CTIA provided information regarding the number of wireless subscriptions in California at an earlier stage of this proceeding three and a half years ago,<sup>16</sup> that number has continued to grow. The FCC's most recent data show that

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<sup>13</sup> See National Broadband Map, California Summary, available at <http://www.broadbandmap.gov/summarize/state/california> (last visited July 6, 2016).

<sup>14</sup> See, e.g., Sawanobori, Thomas, "The Next Generation of Wireless: 5G Leadership in the U.S." (February 9, 2016), available at [http://www.ctia.org/docs/default-source/default-document-library/5g\\_white-paper-web.pdf](http://www.ctia.org/docs/default-source/default-document-library/5g_white-paper-web.pdf) (last visited July 6, 2016).

<sup>15</sup> See CTIA Consumer Code for Wireless Service, available at <http://www.ctia.org/policy-initiatives/voluntary-guidelines/consumer-code-for-wireless-service> (last visited July 6, 2016).

<sup>16</sup> CTIA January 2012 Comments, p. 4.

there are almost as many wireless subscriptions in the state (38,746,000)<sup>17</sup> as there are residents (38,802,500).<sup>18</sup>

These reductions in prices, increases in adoption, network improvements, and broadening service offerings all have occurred *not* because of any regulatory intervention, but rather, because of vigorous competition among the multiple service providers in the California wireless marketplace.

Moreover, as presented in CTIA's January 2012 Comments, consumers have access to abundant sources of information regarding wireless services, enabling them to evaluate their options and determine which providers, plans, and devices best meet their specific wireless needs.<sup>19</sup> These sources of information have continued to expand during the four years this proceeding has been open. In addition to provider and manufacturer websites, independent resources are available to educate wireless consumers and allow them to compare wireless options. For example, the websites Phone Scoop,<sup>20</sup> Consumer Reports,<sup>21</sup> and Root Metrics<sup>22</sup> all offer reviews and guidance on wireless service to consumers. MyRatePlan<sup>23</sup> and Mountain Wireless<sup>24</sup> offer comparison functions across carriers, as well as reviews of a variety of functions

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<sup>17</sup> See Industry Analysis and Technology Division, FCC, Voice Telephone Services: Status as of December 31, 2014, at tbl. 1, available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-338629A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-338629A1.pdf) (last accessed July 8, 2016).

<sup>18</sup> See U.S. Census Bureau Annual Estimates of the Resident Population: 2013 Population Estimates, available at <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (select "Annual Population Estimate (2015 PEP, PEPANNRES)"; select "2013") (last accessed June 30, 2016).

<sup>19</sup> CTIA January 2012 Comments, pp. 6–7.

<sup>20</sup> Available at <http://www.phonescoop.com> (last accessed June 30, 2016).

<sup>21</sup> Available at <http://www.consumerreports.org/cro/electronics-computers/phones-mobile-devices/cell-phones-services/cell-phone-stores-ratings/ratings-overview.htm> (last accessed June 30, 2016).

<sup>22</sup> Available at <http://www.rootmetrics.com> (last accessed June 30, 2016).

<sup>23</sup> Available at <http://www.myrateplan.com/> (last accessed June 30, 2016).

<sup>24</sup> Available at <http://www.mountainwireless.com/> (last accessed June 30, 2016).

and aspects of wireless services. JD Power regularly publishes data on service quality and customer satisfaction across a number of elements including customer service, call quality, and handsets.<sup>25</sup>

In light of the copious evidence of vigorous competition leading to lower prices, better networks, broader service offerings, enthusiastic adoption, and readily available information, there is simply no need for wireless service quality regulations. Opening a new phase of this proceeding to explore such standards would be an ineffective use of the Commission's limited resources and, as the Commission has previously recognized, a return to a "traditional regulatory approach" would "cause delay for the introduction of innovative services, beneficial rate plans, and deployment of new technology."<sup>26</sup> Adoption of the Proposed Decision would better benefit California consumers.

#### **B. Federal Law Preempts State Wireless Service Quality Regulation**

The Commission should not expend its limited resources to open a new phase of this proceeding to explore the imposition of wireless service quality standards because federal law preempts state regulation of wireless service quality. The FCC has noted that there must be "federal primacy over the areas of technical standards and competitive market structure for cellular service," because it is "imperative that no additional requirements be imposed by the states which could conflict with [the FCC's] standards and frustrate the federal scheme for the provision of nationwide cellular service."<sup>27</sup>

Section 332(c)(3)(A) of the federal Communications Act states that "no State or local government shall have any authority to regulate the entry of or the rates charged by any

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<sup>25</sup> Available at <http://www.jdpower.com/ratings/industry/telecom> (last accessed June 30, 2016).

<sup>26</sup> See D. 06-03-013, p. 3.

<sup>27</sup> *Inquiry Into the Use of the Bands 825–845 MHz and 870–890 MHz for Cellular Communications Systems*, 89 F.C.C.2d 58 (1982).

commercial mobile service, . . . except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.”

Reviewing courts have held that Section 332 preempts state regulations that effectively require a wireless carrier to build a network capable of providing a particular level of coverage or capacity to handle wireless traffic. In the seminal case on the issue, the Seventh Circuit held that Section 332 barred a state from entertaining a customer complaint alleging that a wireless carrier lacked sufficient infrastructure to serve the number of customers that it had signed up because a ruling on this issue “would directly alter the federal regulation of tower construction, location and coverage, quality of service and hence rates for service.”<sup>28</sup> The court concluded that “[t]hese claims tread directly on the very areas reserved to the FCC: the modes and conditions under which [the wireless carrier] may begin offering service in [a particular] market.”<sup>29</sup> Courts have continued to hold that Section 332 bars state action that “targets the sufficiency of [a wireless carrier’s] network infrastructure.”<sup>30</sup>

The APD proposes a further proceeding to explore precisely the type of regulations that courts have held are preempted, including “standards regarding network technical quality,”

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<sup>28</sup> *Bastien v. AT&T Wireless Services, Inc.*, 205 F. 3d 983, 989 (7th Cir. 2000).

<sup>29</sup> *Id.*

<sup>30</sup> *In re Apple iPhone 3G Prods. Liab. Litig.*, 728 F. Supp. 1065, 1072 (N.D. Cal. 2010). While the prohibition against state regulation under Section 332 has been broadly and consistently construed, courts have clarified that states may continue to regulate “other terms and conditions” of wireless service, such as misrepresentation, fraud, and tort claims. *See, e.g., Wireless Consumers Alliance*, 15 FCC Rcd 17021, 17035 (2000) (Section 332 does not preclude all state tort or contract claims, but whether any specific damage award is preempted will depend on the specific details of the calculation); *Telesaurus VPC v. Power*, 623 F.3d 998, 1009-10 (9<sup>th</sup> Cir. 2010) (tort claims requiring consideration of a wireless carrier’s rate to compute damages are not preempted, but those collaterally attacking FCC licensing decisions are preempted); *Southwestern Bell Mobile Systems*, 14 FCC Rcd 19898, 19908 (1999) (“[S]tates do not have authority to prohibit CMRS providers from charging for incoming calls or charging in whole minute increments.... We do not agree, however, that state contract or consumer fraud laws relating to the disclosure of rates and rate practices have generally been preempted with respect to CMRS.”).

“installation,” and “repair.”<sup>31</sup> Regulations in these areas would “directly alter the federal regulation of tower construction, location and coverage, quality of service”<sup>32</sup> and “target[] the sufficiency” of wireless carriers’ “network infrastructure.”<sup>33</sup> The Commission should not waste its scarce resources considering regulations it lacks the jurisdiction to adopt. The Proposed Decision wisely eschews such ill-advised detours, and the Commission should adopt it.

**C. The APD Lacks of Findings of Fact and Conclusions of Law to Support Exploring Wireless Service Quality Regulation, in Violation of Section 1705 of the Public Utilities Code**

The Commission also should not adopt the APD’s proposal to explore wireless service quality regulations because the APD fails to set out the findings of fact and conclusions of law that Section 1705 requires. The California Public Utilities Code requires all Commission decisions to contain findings of fact and conclusions of law regarding all material issues.<sup>34</sup> As the California Supreme Court has noted, the Commission must consider all relevant facts when reaching its ultimate findings.<sup>35</sup>

As discussed above, the evidence adduced in this proceeding demonstrates that competition has led to high-quality wireless service in California.<sup>36</sup> The APD does not make *any* findings of fact identifying concerns with or failings of wireless service quality. In the absence of any actual facts in the record, the APD simply declares – as a finding of fact – that “[t]he

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<sup>31</sup> APD, p. 37.

<sup>32</sup> *Bastien*, 205 F.3d at 989.

<sup>33</sup> *Apple iPhone*, 728 F. Supp. at 1072.

<sup>34</sup> Pub. Util. Code, § 1705 (requiring Commission decision to “contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision”); *see also Southern Pacific Co. v. Pub. Util. Comm’n*, 68 Cal. 2d 243 (1968).

<sup>35</sup> *U.S. Steel Corp. v. Pub. Util. Comm’n*, 29 Cal. 3d 603, 608 (1981) (determining that the Commission must “consider all facts that might bear on exercise of [its] discretion”); *see also Greyhound Lines, Inc. v. Pub. Util. Comm’n*, 65 Cal. 2d 811 (Cal. 1967).

<sup>36</sup> *See supra* Section II.A.

service quality standards in GO 133-D are necessary to ensure safe and reliable telephone service for California residents and businesses.”<sup>37</sup> The APD continues “there are public safety issues associated” with the transition to wireless and VoIP.<sup>38</sup> The APD, however, fails to identify any such public safety issues as findings of fact, contrary to the requirements of Section 1705.<sup>39</sup> From these unsupported declarations, the APD then wrongly concludes that the Commission must open another phase of the proceeding.<sup>40</sup>

Further, the APD notes that federal preemption of the Commission’s authority to adopt service quality requirements for wireless services and the absence of policy reasons for the adoption of service quality standards for wireless services – material issues – have been raised in this proceeding, but fails to address them.<sup>41</sup> This deficiency is especially glaring as the Commission has never addressed the limits on its jurisdiction over wireless service quality or whether competition in the marketplace is adequate, instead deferring these issues for later consideration.<sup>42</sup> The extent of the Commission’s jurisdiction is a material issue, and the absence of any conclusion on law addressing the issue fails to meet the requirements of Section 1705.

Moreover, relying on language in the scoping memo as the sole basis for imposing wireless service quality, as the APD appears to do, does not meet the requirements of Section 1705. The scoping memo cannot serve as “findings of fact” for the purposes of Section 1705.

Additionally, the decision affirming certain provisions of the scoping memo and ruling

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<sup>37</sup> APD, p. 39 (Finding of Fact 5).

<sup>38</sup> *Id.* p. 40 (Finding of Fact 12).

<sup>39</sup> *See Greyhound Lines*, 65 Cal. 2d at 813 (“Every issue that must be resolved to reach that ultimate finding is material to the order or decision, and findings are required of the basic facts upon which the ultimate finding is based.”) (internal quotations omitted).

<sup>40</sup> APD, p. 40 (Finding of Fact 13); *id.* p. 41 (Conclusion of Law 10).

<sup>41</sup> *See id.* p. 37.

<sup>42</sup> *See* Decision 09-07-019, Conclusion of Law 2.

conditioned the Commission's ability to adopt a next phase.<sup>43</sup> The APD provides no analysis as to whether the service quality standards for wireless carriers are "appropriate," thereby failing to meet the statutory requirements under Section 1705 for there to be conclusions of law on all material issues.

Due to the absence of findings of fact and conclusions of law regarding the Commission's jurisdiction to regulate wireless carriers and the need for such regulation, adoption of the APD would violate Section 1705 of the Public Utilities Code.

### **III. THE APD ERRS IN ITS DETERMINATION TO IMPOSE RURAL OUTAGE REPORTING REQUIREMENTS ON WIRELESS CARRIERS AT THIS TIME**

The Commission would err by imposing rural outage reporting requirements on wireless carriers as proposed in the APD. The APD's proposed requirements will likely differ from those ultimately adopted by the FCC in a proceeding currently underway. Such hasty action would set the stage for the Commission to revisit newly promulgated rules and risks requiring carriers to submit different outage reporting data to separate regulators, imposing a burden without any offsetting consumer benefit.

The FCC is currently considering proposed rules for the same type of rural-specific outage reporting included in the APD, motivated by the same reasons expressed in the APD.<sup>44</sup> Specifically, the FCC is currently seeking comment on a proposed reporting requirement that would obligate a wireless provider serving a rural area to file outage reports whenever one-third

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<sup>43</sup> See D. 13-02-023, p. 11 ("Commission may also make findings on issues related to other types of services and/or services provided via different technological platforms, *to the extent that the record of this proceeding indicates such findings are appropriate.*") (emphasis added).

<sup>44</sup> Compare Outage Reporting NOPR, ¶¶ 184, 186 (proposing rules for reporting rural outages because "[i]t may be possible" that some geographic areas are losing service without triggering the threshold under the current reporting requirements), and APD, p. 18 (explaining that "the point of the staff proposal" is "to capture localized outages that do not meet the NORS reporting threshold").

or more of its macro cell sites<sup>45</sup> serving that area are disabled such that communications services cannot be handled through those sites, or are substantially impaired due to the outage(s) or other disruptions affecting those sites.<sup>46</sup> As part of its proposal, the FCC is seeking comment on what constitutes a “rural area.”<sup>47</sup>

Consistent with Commission precedent, the Commission should allow the FCC to conclude its pending proceeding before acting on the APD’s proposed outage reporting requirements. The Commission recognized the merits of mirroring the FCC’s reporting requirements when it adopted the California major service interruption reporting requirements in 2009.<sup>48</sup> In that decision, the Commission correctly observed that “for robust service outage reporting and a policy favoring streamlined reporting requirements . . . we can achieve both objectives by conforming our reporting requirements to the FCC’s.”<sup>49</sup> To avoid wasting its own resources as well as those of carriers, the Commission should await finalization of the FCC Outage Reporting NOPR and then conform the Commission’s reporting requirements to the FCC’s.

The APD’s rural reporting rules’ inconsistency with federal law also raises preemption concerns. Situations where regulators must balance competing policy objectives in crafting a regulatory scheme “lend themselves to a finding of conflict preemption” because a state scheme

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<sup>45</sup> Macro cells are high-powered wireless base stations owned by a wireless carrier that are intended to provide coverage to a large area for mobile network users (e.g., a county or parish).

<sup>46</sup> *See generally* Outage Reporting NOPR. The FCC announced that it will receive formal comments up to 45 days after publication of the item in the *Federal Register*, which has not yet occurred, and reply comments up to 60 days after publication in the *Federal Register*.

<sup>47</sup> *Id.* ¶ 186.

<sup>48</sup> D. 09-07-019.

<sup>49</sup> *Id.* p. 64.

that differs from the federal scheme “permits re-balancing of those considerations.”<sup>50</sup> The “public safety issues”<sup>51</sup> raised by outage reporting intensify this concern, given the specific federal statutory directive that state commission action with respect to IP-enabled service providers’ 9-1-1 service may not be “inconsistent with Federal law or [FCC] requirements.”<sup>52</sup> These concerns further militate in favor of adopting the Proposed Decision and rejecting the APD.

#### IV. CONCLUSION

Given the significant flaws in the APD, discussed above, the Commission should reject it, and instead adopt the Proposed Decision.

Respectfully submitted July 12, 2016, at San Francisco, California.

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<sup>50</sup> *Farina v. Nokia*, 625 F.3d 97, 123 (3<sup>rd</sup> Cir. 2010).

<sup>51</sup> APD, p. 38.

<sup>52</sup> 47 U.S.C. § 615a-1(d).