

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



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Rulemaking on the Commission's Own Motion into  
Reliability Standards for Telecommunications Emergency  
Backup Power Systems and Emergency Notification  
Systems Pursuant to Assembly Bill 2393.

R.07-04-015  
(Filed April 12, 2007)

**COMMENTS OF PACIFIC BELL TELEPHONE COMPANY  
D/B/A AT&T CALIFORNIA (U-1001-C)  
ON THE  
PROPOSED DECISION OF COMMISSIONER SIMON,  
MAILED OCTOBER 19, 2009**

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Pacific Bell Telephone Company d/b/a AT&T California (U-1001-C) (“AT&T California” or “AT&T”), pursuant to Commission Rule of Practice and Procedure 14.3, provides the following comments on the **Proposed Decision Of Commissioner Simon**, mailed October 19, 2009 (hereinafter “Proposed Decision” or “PD”).

## **I. INTRODUCTION**

AT&T California supports the Proposed Decision’s determination that California consumers are best-served by providing them with the information necessary to make informed decisions. As the Proposed Decision properly recognizes, California consumers are fully capable of determining their backup power desires and needs, and taking appropriate actions to ensure they are met. AT&T California also agrees that the information provided to Californians should include the minimum customer education elements outlined in Ordering Paragraph 5 of the Proposed Decision.

However, AT&T does not agree with the Proposed Decision’s expansive conclusions regarding the regulation of “Voice over Internet Protocol” (“VoIP”) services, especially because such conclusions are not necessary to achieve the laudatory goal of ensuring appropriate customer education. Rather than attempt to impose mandatory requirements on VoIP providers, AT&T recommends that the Commission instead issue its customer education program in the form of voluntary guidelines. AT&T California voluntarily would implement the customer education program outlined in the Proposed Decision, and believes that other providers would as well.

## **II. DISCUSSION**

Aside from the issue of VoIP jurisdiction, which is discussed in more detail below, AT&T has only minor concerns with the Proposed Decision’s customer education program.

**A. Clarifications Of Customer Education Program And Factual Findings**

Ordering Paragraphs 8 and 9 of the Proposed Decision would require service providers to inform customers “of the fact that they are provided service using coaxial cable or fiber-optic cable that needs backup power....” This could be read to require service providers to inform customers of the specific deployment technology (*i.e.*, coaxial cable or fiber cable) used to serve their premises. Providers, such as AT&T, that utilize multiple deployment technologies would be required to develop a means of tailoring educational materials to the specific deployment technology used for each customer. The burden and expense of such an effort is unnecessary and indeed counterproductive, because the important message to provide the customer is simply that backup power is needed—not the specific deployment technology used for the customer—and including the specific deployment technology could be confusing to customers. AT&T thus requests that the Proposed Decision be clarified to provide that the customer be informed of the need for backup power, but not also the specific deployment technology used.

The Proposed Decision’s minimum customer education program elements (Ordering Paragraph 5) would include the provision of information regarding any battery replacement or related services offered, “their cost to the customer and how to obtain them.” AT&T supports providing this information, but requests that service providers be permitted the option of making available details of replacement services, including cost information, through a telephone number and/or link to a website. Such information will change over time, and printed materials may thus quickly become obsolete.

The Proposed Decision inaccurately finds that the costs to service providers of implementing the proposed customer education program “are ultimately recovered from their

customers.”<sup>1</sup> This is not true of service providers such as AT&T that operate in competitive markets. In competitive markets, there is no guarantee that service providers will be able to recover costs from their customers.<sup>2</sup> As discussed further below, that is particularly so if and to the extent providers are forced to compete on an uneven playing field, with regulations applied in a disparate manner to providers that compete directly in the marketplace.

Finally, the Proposed Decision appears to err in concluding that no services provided over copper wires require backup power at the customer premises.<sup>3</sup> For example, AT&T’s U-verse Voice™ service, which is a VoIP service provided over a fiber-to-the-node (“FTTN”) deployment that terminates in copper wire, does require power at the customer’s premises.

**B. The Proposed Decision’s Jurisdictional Analysis Regarding VoIP is Incorrect and Unnecessary**

The Proposed Decision deflects questions about its authority to impose customer notification requirements on all providers – including facilities-based providers of VoIP – with the broad assertion that the Commission has regulatory authority over facilities-based VoIP.<sup>4</sup> That assertion is both incorrect and unnecessary to the outcome of this proceeding.

In the *Vonage Order*,<sup>5</sup> the FCC made clear that the imposition of traditional state common carrier regulation on VoIP service would threaten the overriding federal policy in favor of rapid, widespread deployment of VoIP services and the broadband facilities over which those services ride, and it accordingly preempted the attempt of the Minnesota state commission to

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<sup>1</sup> Finding of Fact 42.

<sup>2</sup> See *Re Assessing and Revising the Regulation of Telecommunications Utilities*, Decision No. 06-08-030, *Opinion*, 2006 WL 2527822 (Cal.P.U.C. Aug. 24, 2006), *mimeo*, p. 117.

<sup>3</sup> Proposed Decision at 10.

<sup>4</sup> *Id.* at 16-21.

<sup>5</sup> *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, *Memorandum Opinion and Order*, 19 FCC Rcd 22404, FCC 04-267 (2004) (“*Vonage Order*”), *petitions for review denied*, *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007) (“*Minnesota PUC*”).

exert regulatory authority over Vonage’s VoIP service. The specific service at issue in the *Vonage Order* was an “over-the-top,” nomadic service – *i.e.*, one that rode on top of broadband service purchased from a separate provider and that was not tied to a specific user location. But the FCC made unmistakably clear, in that same order, that the result would be the same with respect to non-nomadic, facilities-based VoIP. The FCC stressed that the “integrated capabilities and features” of VoIP “are inherent features of most, if not all, IP-based services having basic characteristics found in [Vonage’s DigitalVoice service], *including those offered or planned by facilities-based providers.*”<sup>6</sup> The FCC thus explained that *all* VoIP services, including facilities-based services, sharing certain “basic characteristics” would be equally exempt from state regulation.<sup>7</sup>

Critically, the FCC then articulated those “basic characteristics” with specificity: “a requirement for a broadband connection from the user’s location; a need for IP-compatible [customer premises equipment]; and a service offering that includes a suite of integrated capabilities and features, able to be invoked sequentially or simultaneously, that allows customers to manage personal communications dynamically.”<sup>8</sup> None of those “basic characteristics” turns on whether the VoIP service at issue is nomadic. Indeed, the FCC stated that, “to the extent other entities, *such as cable companies*, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order.”<sup>9</sup> Cable companies’ VoIP offerings are of course facilities-based and, more importantly for present

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<sup>6</sup> *Id.* at 22420, ¶ 25 n.93 (emphasis added). In the course of affirming the *Vonage Order*, the Eighth Circuit dismissed as unripe New York’s challenge to the FCC’s assertion that state regulation of facilities-based VoIP would be preempted. *See Minnesota PUC*, 483 F.3d at 582-83.

<sup>7</sup> *Vonage Order*, 19 FCC Rcd at 22424, ¶ 32.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (emphasis added).

purposes, are non-nomadic. It necessarily follows that the FCC did not intend to limit its discussion to over-the-top, nomadic providers such as Vonage.

Nor is this conclusion called into question by the FCC's subsequently issued *Interim Contribution Order*.<sup>10</sup> As the Proposed Decision emphasizes,<sup>11</sup> in that order, the FCC stated that "a fundamental premise of . . . the *Vonage Order* was that it was impossible to determine whether calls by Vonage's customers stay within or cross state boundaries," and it observed that "an interconnected VoIP provider with the capability to track the jurisdictional confines of customer voice calls would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation."<sup>12</sup> The Proposed Decision takes from this statement the principle that, because facilities-based VoIP providers supposedly can determine the origin and destination of voice calls, they are presumptively subject to state regulation. But, for one thing, the Proposed Decision is incorrect in asserting that facilities-based VoIP providers necessarily can and do track the end points of voice calls.<sup>13</sup> Nothing in the record before this Commission supports that proposition, and, elsewhere, AT&T has established that, with respect to the U-verse Voice facilities-based VoIP service, AT&T does *not* track the jurisdictional end-points of voice calls.<sup>14</sup>

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<sup>10</sup> *In the Matter of Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd 7518, FCC 06-94 (2006) ("*Interim Contribution Order*"), *petitions for review granted in part and vacated in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007), and *Order clarified by, In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, Declaratory Order*, 23 FCC Rcd. 1411, 43 Communications Reg. (P&F) 1055, FCC 07-231 (rel. Jan 24, 2008).

<sup>11</sup> See Proposed Decision at 19-20.

<sup>12</sup> *Interim Contribution Order*, 21 FCC Rcd at 7546, ¶ 56.

<sup>13</sup> See Proposed Decision at 20.

<sup>14</sup> See, e.g., Reply Br. of AT&T Wisconsin, Docket No. 6720-DR-101, at 10 (Wisc. Pub. Serv. Comm'n filed Mar. 18, 2009); Transcript of Proceedings 33:9-10, 33:17-34:3, Docket No. 6720-DR-101 (Wisc. Pub. Serv. Comm'n Jan. 28, 2009).

The Proposed Decision is also mistaken insofar as it concludes that the ability to track the end points of *voice* calls is itself sufficient to establish state jurisdiction over a facilities-based VoIP service. The *Vonage Order*'s discussion of the difficulties in tracking the jurisdictional end points of VoIP communications did not turn simply on the difficulty of locating the subscriber when making a *voice* call. Rather, that discussion emphasized the “inherent capability” of “IP-based services” to “enable subscribers to utilize multiple service features that access different websites or IP addresses during the same communication session and to perform different types of communications simultaneously,” and the inherent difficulty in tracking the end points of *those* communications.<sup>15</sup> Like Vonage itself, many facilities-based providers of VoIP take advantage of the “inherent capability[ies]” of IP-based transmission to offer the end user “a suite of integrated capabilities and features, able to be invoked sequentially or simultaneously, that allows customers to manage personal communications dynamically.”<sup>16</sup> To the extent a facilities-based VoIP service shares that “basic characteristic” with Vonage’s DigitalVoice service (along with the other “basic characteristics” the FCC identified), it remains subject to the preemption principles interpreted and applied in the *Vonage Order*, and nothing in the *Interim Contribution Order* changes that.

There is an additional reason, moreover, that states do not possess the authority to impose traditional common carrier regulation on VoIP providers (including facilities-based, non-nomadic providers). VoIP networks use the “Internet Protocol,” or IP, to transmit information. The public switched telephone network (“PSTN”), by contrast, uses the Time Division Multiplexing protocol, or “TDM.” Because of these different protocols, VoIP providers that wish to permit their own subscribers to communicate with customers served by the PSTN must

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<sup>15</sup> *Vonage Order*, 19 FCC Rcd at 22419, ¶ 25.

<sup>16</sup> *Id.*

perform a “net protocol conversion” (*i.e.*, from IP to TDM and vice versa). As multiple federal district courts have recognized<sup>17</sup> – and as the FCC itself recently asserted in a notice of proposed rulemaking<sup>18</sup> – that “net protocol conversion” renders the service an “information service” under the 1996 Act. And it has long been established that “information services” are exempt from state common carrier regulation.<sup>19</sup> For that reason as well, the Proposed Decision is wrong to conclude that the Commission has broad regulatory jurisdiction over facilities-based VoIP.

In all events, however, the Commission need not address these difficult jurisdictional issues here. Instead, the Commission should simply adopt the Proposed Decision’s provisions – with the modifications described above – as voluntary guidelines. As AT&T California has made clear throughout this proceeding, it considers public safety to be of paramount importance, and indeed it already goes to great lengths both to ensure customers have adequate backup power and to make sure they understand any limitations in their service in the event of a power outage. In light of the importance of this issue and the work of this Commission in formulating appropriate guidelines, AT&T commits to follow guidelines adopted by the Commission on this issue, assuming the slight modifications described above are made to the Proposed Decision.

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<sup>17</sup> See *Vonage Holdings Corp. v. Minnesota Public Utilities Commission*, 290 F.Supp.2d 993, 999 (D. Minn. 2003) (concluding that VoIP is an “information service” and is therefore exempt from traditional state common-carrier regulation: “For calls originating with [a VoIP provider’s] customers, calls in the VoIP format must be transformed into the format of the PSTN before a POTS user can receive the call. For calls originating from a POTS user, the process of acting on the format and protocol is reversed.”); *Southwestern Bell Telephone, L.P. v. Missouri Public Service Commission*, 461 F.Supp.2d 1055, 1073 (E.D. Mo. 2006) (affirming state commission ruling that VoIP traffic delivered to the PSTN is an “enhanced” and therefore an “information” service under the FCC’s rules), *aff’d*, 530 F.3d 676 (8th Cir. 2008), *cert. denied*, 129 S.Ct. 971 (2009).

<sup>18</sup> See *In the Matter s of High-Cost Universal Service Support, etc.*, WC Docket No. 05-337 *et al.*, *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd. 6475, FCC 08-262, Appdx. A, ¶ 209 (rel. Nov. 5, 2008) (citing *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-489, 11 FCC Rcd. 21905, 21957-58, ¶ 106 (1996) (subsequent history omitted)).

<sup>19</sup> See, e.g., *Vonage Holdings*, 290 F.Supp.2d at 999; *Comcast IP Phone of Missouri, LLC v. Missouri Pub. Serv. Comm’n*, No. 06-4233-CV-C-NKL, 2007 WL 172359, at \*5 (W.D. Mo. Jan. 18, 2007) (in light of the FCC’s preemption of state regulation of “information services,” the Missouri state commission “would have no jurisdiction over any VoIP service” that is classified as an “information service[.]”).

This approach, moreover, would resolve the lack of competitive neutrality that is the one major substantive flaw in the Proposed Decision. Under the Proposed Decision as written, all facilities-based providers – including VoIP providers – would have to comply with various customer notification requirements related to back-up power. Nomadic VoIP providers, however, would not. But nomadic VoIP providers compete directly for subscribers with traditional wireline and facilities-based VoIP providers. Imposing regulations on one set of providers but not another would create an uneven playing field and distort competition, enabling a certain class of competitors to win customers – not because they are more efficient or provide better service – but simply because their regulatory costs are lower *or even because their customers were not informed of the need for backup power*. In this case, moreover, that result would be doubly perverse. As the record here makes clear, facilities-based providers – including facilities-based VoIP providers – *already* provide sufficient backup power *and* comply with the bulk of the customer notification provisions the Proposed Decision proposes to codify. Nomadic VoIP providers, by contrast, *generally do not provide backup power* and may not adequately disclose the need for backup power. Thus, if anything, *the need for customer education is greater for nomadic than for fixed VoIP providers*. In this context, it makes no sense for the Commission to adopt regulations that would apply to those that already provide backup power and customer notification, while leaving those that do not outside the scope of the Commission’s ruling. Issuing guidelines would resolve that issue by establishing a broadly applicable standard of care.

Nor, finally, would a Commission decision to articulate voluntary guidelines in this area, rather than asserting jurisdiction generally, in any way compromise the interests of consumers. Although the FCC has made clear that the application of traditional common-carrier regulation to

VoIP service is inconsistent with federal policy, it has at the same time imposed a series of regulatory requirements intended to protect consumers and to further social goals reflected in federal communications law. Thus, the FCC has made clear that all VoIP providers (nomadic and facilities-based alike) that permit communication with the PSTN must,<sup>20</sup> for example, adhere to federal E911 requirements and contribute to E911 funding (including at the state level),<sup>21</sup> contribute to the federal universal service fund,<sup>22</sup> comply with federal privacy rules relating to customer proprietary network information (“CPNI”),<sup>23</sup> facilitate access by the disabled,<sup>24</sup> adhere to the requirements of federal law in providing assistance to law enforcement,<sup>25</sup> port telephone numbers on request,<sup>26</sup> and provide notice before discontinuing service.<sup>27</sup> The FCC, in short, has taken an active consumer protection role with respect to VoIP, even as it has labored to keep VoIP free from traditional state economic regulation. The Commission need not assert jurisdiction here in order to ensure that same result, particularly where, as explained, it can

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<sup>20</sup> See 47 C.F.R. § 9.3 (defining “interconnected VoIP service”).

<sup>21</sup> *In the Matters of IP-Enabled Services [and] E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 & 05-196, *First Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 10245, FCC 05-116 (2005), *petitions for review denied*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

<sup>22</sup> *Interim Contribution Order*.

<sup>23</sup> *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115 & WC Docket No. 04-36, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd. 6927, FCC 07-22 (rel. Apr. 2, 2007).

<sup>24</sup> *In the Matters of IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WC Docket Nos. 04-36, *et al.*, *Report and Order*, 22 FCC Rcd 11275, FCC 07-110 (2007).

<sup>25</sup> *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, *First Report and Order and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 14989, FCC 05-153 (2005), *petitions for review denied*, *American Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006).

<sup>26</sup> *In the Matter of Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket Nos. 07-243, *et al.*, *Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking*, 23 FCC Rcd. 1647, 43 Communications Reg. (P&F) 1, FCC 07-188 (rel. Nov. 8, 2007).

<sup>27</sup> *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, *Report and Order*, 24 FCC Rcd. 6039, 47 Communications Reg. (P&F) 1080, FCC 09-40 (rel. May 13, 2009).

achieve its goals on a competitively neutral basis through the announcement of voluntary guidelines.

### III. CONCLUSION

AT&T California agrees that well-informed customers are best able to ensure they have sufficient backup power to meet their individual desires and needs. While AT&T already provides extensive information to our customers, we are committed to continually improving customer communications. Thus, AT&T California supports the Proposed Decision's customer education program, with the clarifications noted in these comments.

DATED: November 9, 2009

Respectfully submitted,

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## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

### **Findings of Fact**

#### **Background**

1. AB 2393, signed into law on September 29, 2006, added Sections 776, 2872.5 and 2892.1 to the Public Utilities Code.
2. Sections 776 and 2892.1 address backup power systems while Section 2872.5 addresses emergency notification systems.
3. Section 776 requires the Commission to consider the need for performance reliability standards for backup power systems installed on the premises of residential and small commercial customers by a facilities-based provider of telephony services. The Commission is to develop and implement such standards if the benefits of the standards exceed the costs.
4. On September 4, 2008, the Commission issued D.08-09-014 addressing AB 2393 and finding that a customer education program regarding backup power was needed.

#### **Backup Power Systems and Their Capabilities**

5. A cordless telephone will not function during a power outage.
6. Telephone service provided through coaxial cable or fiber-optic cable to the building utilizes electricity from the building and will not work without some form of backup power.
7. To ensure that service continues during a power outage, telephone service providers who utilize coaxial cable or fiber-optic cable to the building provide some form of backup power using a battery that allows the phone to continue working only for a limited period of time.
8. All of the service providers provide backup power using a backup battery that can provide approximately eight hours of standby time or approximately four hours of talk time.
9. The actual amount of time the backup battery can keep the telephone in service depends on how much the telephone is used and other factors.

## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

10. Most power outages last less than two hours.
11. Over time, backup batteries deteriorate resulting in reduced ability to provide backup power, and their performance can be adversely affected by heat and cold.
12. In order to maintain sufficient backup power, the backup battery must be replaced as necessary.
13. Providers of voice service over fiber-optic cable (including Verizon, AT&T, and SureWest) provide the initial backup battery, but specify that it is the customer's responsibility to monitor and replace the battery when necessary.
14. Providers of voice service over coaxial cable monitor backup power equipment remotely and take responsibility for backup battery replacement.
15. Backup batteries can be replaced by the customer.
16. Customers can obtain additional backup power by obtaining additional backup batteries, but can not take advantage of this opportunity unless the customer is aware of it.
17. There is a need for appropriate customer education regarding backup power.
18. Customer 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.

### **Necessary Elements of a Customer Education Program**

19. The backup battery is located in the BBU.

### **Outreach**

20. Customer education materials do no good if the customer is unaware of them.
21. Over time, customers may forget or mislay the information provided, or otherwise need reminding.

### **Existing Customer Education Plans**

## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

22. Most of the service providers adequately inform customers of the need for backup power and that during a power outage, the backup battery will provide service for only a limited amount of time.

23. Only some of the service providers provide limited information on how to use the telephone during an outage to maximize their ability to make necessary calls.

24. No service provider adequately provides all of the necessary information.

### **Existing Customer Outreach**

25. The service providers provide some customer education information when the customer initiates service.

26. No service provider conducts outreach efforts after the customer initiates service.

27. Most service providers do not provide customer education materials in a language other than English.

### **Small Commercial/Business Customers**

28. Section 776 refers to the need for performance reliability standards for backup power systems installed on the premises of residential and small commercial customers, but does not define the term "small commercial customer."

29. There is no readily available definition of small commercial or business customer in terms of access lines.

30. Workshop participants generally addressed residential customers, not small commercial or business customers, and did not recommend an appropriate definition.

31. As a group, it is reasonable to assume that business or commercial customers would be more knowledgeable about communications needs and capabilities than some residential customers.

### **Conclusion**

## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

32. Without adequate customer education and outreach, customers could end up without the ability to make necessary phone calls during a power outage. In the case of an emergency, and assuming the service provider's network still functions, this could lead to personal injury or property damage.

### **Jurisdiction**

~~33. AB 2393 was introduced for the purpose of dealing with the increasingly prevalent use of fiber optic cable in telephone services.~~

~~34. No appellate court has reviewed the backup power statutes that are at issue in this proceeding.~~

~~35. Generally, the capability of tracking intrastate and interstate calls depends on whether the VoIP service is "fixed" as opposed to "nomadic."~~

### **Cost-Benefit Analysis**

36. Section 776 requires the Commission to develop and implement standards if the benefits of the standards exceed the costs, but does not indicate how this is to be done.

37. The guidelines adopted herein are similar to the directions one would expect to be included in any equipment purchase.

38. With an adequate customer education program, customers may decide for themselves whether they want additional backup power, and will be able to ensure that their backup power system is maintained in good working order to the extent it is their responsibility to do so.

39. Since most service providers already have a customer education program, the guidelines should merely amount to an enhancement of their existing customer education programs.

40. The Commission has no reason to believe that enhancement of the service providers' existing customer education programs to meet the guidelines imposed herein can not be done at minimal cost, especially on a per customer basis.

## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

41. Making the customer fully aware of the limitations of telecommunications service provided over coaxial cable and fiber-optic cable to the building that requires backup power, and the customer's responsibilities and options regarding backup power, is of significant value in promoting the customer's safety.

42. The value to customers of enhancing the service providers' existing customer education programs to meet the guidelines imposed herein exceeds the costs to the service providers, which are ultimately recovered from their customers.

43. The guidelines provide the customer with sufficient information to make sure the benefits resulting from the customer's decisions regarding backup power exceed the costs of those decisions from the customer's perspective.

### **Conclusions of Law**

#### **Backup Power Systems and Their Capabilities**

1. In order for customers to maintain their ability to make phone calls during a power outage, they should be informed of the need to do so, and told how to do so.

2. The backup power provided by the service providers is sufficient under most circumstances if the battery is maintained in good condition.

3. If the customer is responsible for backup battery replacement, the customer should be informed of the need for replacement and how to accomplish it.

4. The customer should be informed of the possibility of obtaining additional backup batteries and, if the customer chooses to do so, how to replace them.

5. There is a need for customer education and outreach programs.

#### **Necessary Elements of a Customer Education Program**

6. Customers should be told ~~they are served by coaxial cable or fiber-optic cable to the building that~~ their service requires backup power on the customer's premises and informed of the limitations of service during a power outage.

## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

7. Customers should be educated as to how to maximize their ability to make or receive necessary phone calls by proper use of their phones during an outage.

8. Since backup batteries will eventually require replacement, customers should be told of the need for backup battery replacement to maintain backup power capability.

9. If the service provider has some role in replacement, the customer should know what it is and how to obtain that service.

10. To the extent the customer is responsible for replacement, the customer should be informed of the responsibility and how to carry it out, including how to determine when replacement is needed, and how to perform the replacement.

11. If the service provider offers the customer the option of where to place the BBU on the customer's premises, the customer should be made aware of this option so that the BBU can be made accessible to the customer if the customer is responsible for monitoring or replacing the battery.

12. If customers are responsible for backup battery replacement, they should be told how to obtain a replacement, including how to obtain backup batteries from the service provider.

13. If sources of backup batteries other than the service provider are available, the customer should be informed of the battery specifications sufficient to identify an appropriate replacement battery.

14. If customers need or want additional backup power, they too should be told how to obtain additional backup batteries.

15. If backup power can be supplied from a source other than the backup battery, information should be made available on the other types of backup power, to the extent the service provider has the information, and how to connect them to the telephone equipment.

16. If customers are responsible for backup battery replacement, the customer initiates service at a building that previously had service (as in the case

## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

of a renter), and the service provider does not install a new backup battery, the customer should be notified of this fact because the existing battery is more likely to need replacement than a new one.

17. Customers should be told that the backup battery will not power a cordless phone and other equipment connected to the telephone line that require electricity from the building, such as telecommunications devices used to assist disabled customers.

18. The following elements should be included in a customer education program.

- Customers should be informed that ~~they are served through coaxial cable or fiber optic cable that~~ their service utilizes a backup battery located on the customer's premises to provide service during a power outage.
- Customers should be informed of the limitations of the backup battery's ability to provide service during a power outage and how to maximize the customer's ability to make necessary calls during a power outage. This includes the fact that the backup battery can not power a cordless phone or other equipment connected to the telephone line that require electricity from the building, such as telecommunications devices used to assist customers with disabilities.
- Customers should be informed of the service provider's and customer's responsibilities regarding battery monitoring and replacement. This should include information on the limitations of the service provider's liability as it relates to backup power.
- Information should be provided about the customer's options regarding where to place the backup battery unit on the customer's premises.
- If the service provider is responsible for battery monitoring and replacement, information should be provided on how customers can contact the service provider for information about the battery or if the customer believes the battery is not working properly.

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- If the service provider is responsible for battery replacement but does not monitor battery condition, information should be provided on how age and temperature impact battery performance, how customers can monitor battery condition and how to contact the service provider if the battery needs replacement. This should include information on indicators (lights, audible tones, etc.) on the BBU that indicate battery condition.
- If the service provider is responsible for battery monitoring and/or replacement, information should be provided on how customers can contact the service provider for information about obtaining additional backup power capability such as additional batteries.
- If the customer is responsible for battery monitoring and replacement, information should be provided on how age and temperature impact battery performance, how to determine whether replacement is needed, how to obtain replacement backup batteries and how to install them. This includes information on indicators (lights, audible tones, etc.) on the BBU that indicate battery condition. This also includes whether the service provider can supply replacements and how to get them. If backup batteries are available from other sources, sufficient battery specifications should be provided to identify an appropriate replacement battery. In addition, customers should be told of possible sources or types of sources for the batteries, such as local hardware stores, etc.
- If the customer initiates service at a building that previously had service (as in the case of a renter), and the service provider is not responsible for battery monitoring and replacement, the service provider should notify the customer if it does not install a new backup battery.
- If the service provider is not responsible for battery replacement, but offers battery replacement or other related services, information should be ~~provided~~ made available on what services are available, their cost to the customer and how to obtain them.
- If backup power can be supplied from a source other than the backup battery, the customer should be told of this fact and how to request additional information from the service provider. Upon request, information should be made available on the other types of

## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

backup power, to the extent the service provider has the information, and how to connect the backup power source to the telephone equipment.

### **Outreach**

19. There should be some form of outreach sufficient to make the customer aware of the available information.

20. When customers are initially connected to the service provider's network, they should be provided with the information specified in the guidelines in a format they can utilize.

21. If the customer was marketed in a language other than English, the information specified in the guidelines should be made available to the customer in that language in a format the customer can utilize.

22. Customers should, at least annually, be reminded of the fact that they are provided service ~~using coaxial cable or fiber-optic cable~~ that needs backup power on the customer's premises and be made aware of the information specified in the guidelines and how to get it.

### **Existing Customer Education Plans**

23. Improvement in the service providers' customer education materials is needed.

### **Existing Customer Outreach**

24. Improvement in the service provider's outreach is needed.

### **Small Commercial/Business Customers**

25. The requirement to implement the guidelines should apply to residential customers only.

### **Conclusion**

26. Since the service providers' customer education information and outreach do not fully satisfy the guidelines shown in Sections 5 and 6 of this decision, they

## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

should be required to enhance their existing customer education programs to comply with the guidelines.

### **Jurisdiction**

~~27. This decision applies to both cable providers of telecommunications services and VoIP providers.~~

~~28. Section 2892.1 defines "telecommunications service" as voice communication provided by a "telephone corporation," a provider of "satellite telephone services," a provider of "mobile telephony service," and a "facilities based provider of voice communication services utilizing voice over Internet Protocol or any other successor protocol."~~

~~29. Section 2892.1 includes entities that the Commission does not currently regulate as "telephone corporations" under Section 234, or "public utilities" under Section 216.~~

~~30. Section 776 applies to "facilities based providers of telephony services," but does not define "telephony services."~~

~~31. The Commission may interpret a statute to ascertain the intent of the Legislature; first according to its plain language, and then by considering the Legislative history of the statute and the wider historical circumstances of its enactment.~~

~~32. The plain language of Section 776 is not limited to "telephone corporations."~~

~~33. As originally introduced, Section 776 was applicable to a "telephone corporation." Prior to enactment, Section 776 was amended to apply to a "facilities based provider of telephony services."~~

~~34. "Telephony services" may include entities that are not "telephone corporations" under Section 234, or "public utilities" under Section 216.~~

~~35. Since fiber optic cable and coaxial cable require an independent power source in order to work during a power outage, to interpret AB 2393 to exclude~~

## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

~~telephone services provided by cable companies or VoIP services would seriously undermine the purpose of the bill.~~

~~36. Article III, Section 3.5, of the California Constitution provides that an administrative agency, including the Commission, has no power: "To declare a statute unenforceable, or refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations."~~

~~37. The Commission does not have the authority to refrain from implementing or enforcing a state statute unless an appellate court has ruled that the statute is preempted.~~

~~38. Since the requirements of AB 2393 are aimed at ensuring the public health and safety of California residents in an emergency situation and, therefore, involve the exercise of the state's historic police power, any preemption analysis must start with the assumption that the historic police powers of the States are not to be superseded by a federal statute unless that is the "clear and manifest purpose of Congress."~~

~~39. In the Vonage Order, the FCC determined that states were preempted from regulating VoIP as a traditional telephone service because VoIP service could not be separated into interstate and intrastate communications.~~

~~40. Subsequent to the issuance of the Vonage Order, the FCC clarified that preemption under the Vonage Order does not apply where an interconnected VoIP provider is capable of tracking intrastate and interstate calls. In such cases, the provider "would no longer qualify for the preemptive effects of the Vonage Order and would be subject to state regulation."~~

~~41. When the service provided is "fixed" VoIP, it can be separated into interstate and intrastate communications, and is subject to state regulation.~~

## **Appendix A: AT&T's California's (U 1001 C) Recommended Revisions to Proposed Decision's Findings of Fact and Conclusions of Law**

~~42. The Eighth Circuit Court of Appeals, in reviewing the Vonage Order, found that the Vonage Order did not specifically address "fixed" VoIP service providers. The court noted that "the FCC has since indicated VoIP providers who can track the geographical end point of their calls do not qualify for preemptive effects of the Vonage order."~~

~~43. Neither the FCC nor the federal courts have found that states are preempted from regulation of all VoIP services.~~

~~44. The Commission is not preempted from regulating "fixed" VoIP providers.~~

~~45. In D.06-06-010, the Commission stated that, since the FCC was exercising its authority over VoIP, it was "premature for us to assess what our regulatory role over VoIP will be." While the Commission stated there was no immediate need to address VoIP consumer protection issues, the Commission left open the possibility of reassessing this determination.~~

~~46. This case does not involve the issue of regulating VoIP providers as "telephone corporations" under Section 234, nor as "public utilities" under Section 216.~~

~~47. The Commission has the authority to impose educational requirements related to emergency power on fixed VoIP providers.~~

### **Cost-Benefit Analysis**

~~48. The Commission may determine how to evaluate whether the benefits of standards it may impose exceed the costs.~~

~~49. The benefits of the customer education guidelines imposed herein exceed the costs.~~

### **Implementation**

~~50. Service providers should be allowed 180 days to upgrade their existing programs to meet the guidelines adopted herein.~~

~~51. Service providers should be allowed to request additional time to upgrade their existing programs from the Commission's Executive Director as provided for~~

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in Rule 16.6 of the Commission's Rules of Practice and Procedure. Any such request should include a detailed explanation of why the extension is needed.

52. In order to verify implementation, service providers should file an information only ~~compliance~~ advice letter detailing their customer education programs, including information and outreach, including copies of the educational materials.

53. To the extent they have not already done so, service providers should ~~be required to~~ make the customer education information available to their existing customers who are served via coaxial cable or fiber-optic cable to the building that requires backup power on the customer's premises.

54. Service providers who do not currently provide service to customers using coaxial cable or fiber-optic cable to the building that requires backup power on the customer's premises should need not ~~be required to~~ comply with these guidelines at this time.

55. Prior to offering such service, service providers who do not currently provide service to customers using coaxial cable or fiber-optic cable to the building that require backup power on the customer's premises should ~~comply with~~ follow the guidelines.



# CALIFORNIA PUBLIC UTILITIES COMMISSION

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