

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

01-19-10
04:59 PM

)
Rulemaking on the Commission's Own)
Motion into Reliability Standards for)
Telecommunications Emergency Backup) R.07-04-015
Power Systems and Emergency Notification)
Systems Pursuant to Assembly Bill 2393.)
_____)

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK (TURN) AND
DISABILITY RIGHTS ADVOCATES
ON THE ALTERNATE PROPOSED DECISION OF
COMMISSIONER MICHAEL R. PEEVEY**

DISABILITY RIGHTS ADVOCATES

Melissa W. Kasnitz
Karla Gilbride

Disability Rights Advocates
2001 Center Street, Fourth Floor
Berkeley, CA 94704-1204
Ph.: (510) 665-8644
Fax: (510) 665-8511
TTY: 510) 665-8716
pucservice@dralegal.org

January 19, 2010

THE UTILITY REFORM NETWORK

Bill Nusbaum
Managing Attorney
bnusbaum@turn.org

Regina Costa
Telecommunications Research
Director
rcosta@turn.org

TURN
115 Sansome St., Suite 900
San Francisco, CA 94104
Ph. (415) 929-8876, ext. 312
Fax: (415) 929-1132

I. INTRODUCTION

The Utility Reform Network (TURN) and Disability Rights Advocates (“DisabRA”) submit these Reply Comments on the Alternate Proposed Decision of Commission President Michael R. Peevey (“Alternate”). TURN and DisabRA respond to the Comments of the California Cable and Telecommunications Association (“CCTA”) and Comcast, AT&T, Verizon, Cox and The Small LECs.

The opening comments of TURN, the Division of Ratepayer Advocates (DRA) and DisabRA highlighted how the discussion and findings in both the Alternate and the Proposed Decision of Commissioner Simon (“PD”) are consistent on a key central point: the information required by the proposed rules is essential to the public safety. As further demonstrated by the comments of the consumer advocates, it is clear that the Commission has the authority to require all providers of telephone service to comply with the proposed guidelines, and it should do so. The customer education requirements set forth in the Alternate and PD fall squarely within the state’s police power, which cannot be preempted by federal law unless such preemption was the “manifest intention of Congress.”¹ However, because the Commission should not leave such matters of public safety to the whims of “voluntary” commitments by telecommunications service providers, the Alternate should be rejected in favor of the PD.

II. DISCLOSURE OF INFORMATION THAT IS VITAL TO PUBLIC SAFETY SHOULD BE MANDATORY, NOT “VOLUNTARY”.

The carriers are unanimous in their appreciation for the voluntary information guidelines proposed by the Alternate. Verizon praises the PD for its “flexibility” in this regard.² CCTA/Comcast claims that the “voluntary compliance” would make arguments about Commission authority to require disclosure of this crucial information “irrelevant.”³ The Small LECs supported the PD, but also support the Alternate because it “avoids an unnecessary debate” about the applicability of the customer information guidelines to VoIP providers.⁴ AT&T notes that it “has committed, on a voluntary basis, to follow the proposed customer education program.”⁵

¹ *DisabRA*, p. 4; *Rice v. Santa Fe Elevator Corp.*, (1947) 221 U.S. 218, 230.

² Verizon, p. 1-2;

³ CCTA/Comcast, p. 3.

⁴ Small LECs, p. 1.

⁵ AT&T, P. 2.

The argument that “voluntary commitments” are an adequate substitute for a formal Commission requirement is specious at best and disingenuous at worst. As TURN explained in its opening comments, a non-binding, unenforceable commitment is no substitute for a formal requirement with explicit guidelines and provisions for Commission review and enforcement.⁶ Moreover, as DisabRA noted, the voluntary commitment approach envisioned by the Alternate has no basis in existing Commission procedure. If VoIP providers fail to live up to commitments, the Commission would have three options: 1) accept continued noncompliance, 2) ask the carriers to keep their word, or, 3) assert jurisdiction over customer disclosure related to public safety.⁷ Only the last of these options ensures that customers will receive essential information, and that option is the basis of the PD. Finally, as DRA pointed out, the telecom industry has a poor track record when it comes to keeping promises made to regulators.⁸ Information disclosure to customers that is vital to the public safety should not, and need not be left to voluntary commitments. Thus, the Alternate should be rejected.

III. CCTA/COMCAST’S ARGUMENT REGARDING PU CODE § 1708 IS SPECIOUS AND SHOULD BE REJECTED.

CCTA/Comcast argue that the Commission cannot extend any regulatory requirements to VoIP service providers without observing the requirements of PU Code Sect. 1708, and that this has not occurred.⁹ CCTA/Comcast are simply wrong. The Commission can impose issue-specific regulations with the proper notice and opportunity to be heard guaranteed in PU Code Sect. 1708. VoIP carriers have been active participants in this proceeding and had notice that the outcomes in this docket would apply to them. CCTA and other parties made similar arguments regarding jurisdiction in Phase 1 of this docket that the Commission rejected or ignored.¹⁰ CCTA/Comcast have failed to demonstrate why a different outcome is warranted here.

⁶ TURN, p. 2-3.

⁷ DisabRA p. 5.

⁸ DRA, p. 6.

⁹ CCTA/Comcast, p. 2-3.

¹⁰ D.08-09-014, p. 22; see Opening Comments of the Proposed Decision of Commissioner Simon filed by CCTA, AT&T and Verizon in this docket on May 29, 2008.

IV. CONTRARY TO CCTA/COMCAST’S CLAIMS, THE LEGISLATIVE HISTORY OF AB 2393 SUPPORTS EXTENDING DISCLOSURE REQUIREMENTS TO ALL VOIP SERVICE PROVIDERS.

CCTA/Comcast claim that there is no indication in the legislative history or the language of PU Code 776 that it was the intent of the legislature to broaden the class of entities subject to Commission jurisdiction or change the definition of telephone corporation for purposes of PU Code Section 776.¹¹ CCTA/Comcast are mistaken. The analysis prepared for the Assembly Committee on Appropriations demonstrates that it was the intention of the Legislature to apply the statute broadly, to all carriers providing telephone service, regardless of the technology or transmission protocols used to provide the service. The Comments from that analysis state:

3) Battery Backups . The benefit of fiber optic cable, over copper wire, is that it can carry far more information, providing consumers with a host of benefits, from increased internet speeds to clearer phone calls. Unlike copper wire, however, fiber optic cable does not carry its own electrical charge, but instead requires an independent power source. Thus while a traditional telephone will continue to function during a blackout, a phone connected [to] fiber optic cable will not, so if an earthquake knocked out power, it would disable fiber optic phone systems as well.

In an attempt to offer continuity in phone service during a power outage, backup battery systems have been installed in homes when fiber optic cable is deployed. However, there are currently no standards to regulate these backup batteries. *A homeowner often does not know why the backup battery was installed, how long the phones can operate under backup power, or the maintenance requirements for such systems.* AB2393 requires the PUC to determine appropriate performance criteria for backup systems on the home.¹²

The Legislature was concerned with *all phone service requiring backup batteries to function during a power outage*. This intent is clear in the combined language of the statutes. The use of the broader term “voice telephony” in PU Code Sect. 776, the explicit definition of “telecommunications service” in PU Code Sect. 2892.1 to include “voice communication provided by a commercially available facilities-based provider of voice communication services using voice over Internet Protocol or any successor protocol,”¹³ combined with the explanation provided to the legislative committee that voted on the bill, together show that the Legislature was concerned with *all* phone service that required battery back-up, including VoIP.

¹¹ CCTA/Comcast, p. 5-6.

¹² AB 2393, May 10, 2006, Assembly Committee on Appropriations, Comments (*emphasis added*).

¹³ DRA, p. 3-5.

In support of their argument, CCTA/Comcast focus on the definition of “telephone corporation” in PU Code Sect. 234, claiming they do not manage telephone lines and therefore cannot be a telephone corporation.¹⁴ They fail to address PU Code Section 233, which states:

233. "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with *or to facilitate communication by telephone*, whether such communication is had with or without the use of transmission wires. (emphasis added)

The statute applies to *all* telephone service. PU Code Sect. 233 makes it abundantly clear that the term “telephone line” is much broader than CCTA/Comcast portray in that it refers to any “communication by telephone”. Cable companies and other telecom companies offering VoIP service offer *telephone* service. Comcast, Time Warner and Cox all hold Certificates of Public Convenience and Necessity. Comcast, Time Warner and Cox all market their VoIP service as “digital phone service.”¹⁵ The customers using this service use their telephone like any other telephone customer utilizing the public switched telephone network.

IV. THE CCTA/COMCAST PROPOSED REVISIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS SHOULD BE REJECTED.

With a some carefully chosen key strokes, CCTA/Comcast would have the Commission:

- Delete all reference to the cost-benefit analysis conducted by the Commission and contained in the record of this proceeding;
- Re-write the Alternate to delete the finding that the value of customer education on this vital public safety issue outweighs the cost of carriers providing the information;
- Eradicate all elements of a customer education program that both the Alternate and the PD believe are necessary to protect the public safety;
- Modify the Alternate to eliminate key discussion of relevant statutory provisions so that the Conclusions of Law would be inaccurate and would inappropriately have the Commission cede its authority over both public safety and telecommunications regulation; and

¹⁴ CCTA/Comcast p. 6.

¹⁵ See, for example, http://www.timewarnercable.com/corporate/site_faqs/DigitalPho/ProductInf/Is-Digital-Phone-a-VoIP-servic ; <http://customer.comcast.com/Pages/FAQListViewer.aspx?topic=Voice&folder=40b34f8c-a783-47fc-aad5-dabb1b1c8c8b> ; <http://www.google.com/url?q=http://www.cox.com/About/NewsRoom/presskit/CDTOPK.pdf&ei=ZvRUS8yDAPsQtgO8zYnYBw&sa=X&oi=nshc&resnum=1&ct=result&cd=2&ved=0CA4QzgQoAQ&usg=AFQjCNFnLsoNmFT4nkoUJRIpUC0tNyzVPw>

- Restrict the education requirements to apply to “certificated carriers only,” thereby setting the stage for arguments that Comcast and Time Warner should not be required to give their customers *any* of this crucial information.

None of this attempt to simply re-write the Alternate to be even more to their specifications is supported by the record, the legislative history or reasonable legal analysis. CCTA/Comcast’s proposed revisions should be rejected.

VI. CONCLUSION

For the reasons set forth above, TURN and DisabRA urge the Commission to adopt the positions set forth herein.

Dated: January 19, 2010

Respectfully submitted,

/S/

Regina Costa
Telecommunications Research Director
TURN

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On January 19, 2010 I served the attached:

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK (TURN) AND
DISABILITY RIGHTS ADVOCATES
ON THE ALTERNATE PROPOSED DECISION OF
COMMISSIONER MICHAEL R. PEEVEY**

on all eligible parties on the attached lists **R.07-04-015** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this January 19, 2010, at San Francisco, California.

 /S/
Larry Wong

Service List for R.07-04-015

ahanda@telcordia.com
anitataffrice@earthlink.net
arasura@tcastcom.com
ashm@telepacific.com
ayo@cpuc.ca.gov
bfs@cpuc.ca.gov
bglaze@oaklandnet.com
bgranados@oaklandnet.com
Bill.Wallace@VerizonWireless.com
bnusbaum@turn.org
bor@cpuc.ca.gov
carrie.cox@chartercom.com
cg2@cpuc.ca.gov
charlie.born@frontiercorp.com
cinta.putra@3nonline.com
cmailloux@turn.org
crs@cpuc.ca.gov
daphne.rhoe@dgs.ca.gov
DavidJMiller@att.com
deyoung@caltel.org
douglas.garrett@cox.com
edward.randolph@asm.ca.gov
elaine.duncan@verizon.com
ens@loens.com
ep@hormannamerica.com
eric.uller@smgov.net
esther.northrup@cox.com
g.gierczak@surewest.com
HOA.D.LE@saic.com
jacque.lopez@verizon.com
james.keene@3nonline.com
jarmstrong@goodinmacbride.com
jesus.g.roman@verizon.com
Jfc@calcable.org
jjw@cpuc.ca.gov
jlites@schottlites.com
joe.chicoine@frontiercorp.com
John_Gutierrez@cable.comcast.com
joshdavidson@dwt.com
jpo@cpuc.ca.gov
jskow@tbteam.com
jweiss@scottsvalley.org
jwilson@scottsvalley.org
katiensel@dw.com
kchalm@dwt.com
kevin.saville@frontiercorp.com
kmudge@covad.com
Kristin.L.Jacobson@sprint.com
kweed@dralegal.org
larry.rowe@dgs.ca.gov
LBarr@west-comm.org

lgx@cpuc.ca.gov
lindab@stcg.net
ll@calcable.org
lmb@wblaw.net
lorraine.kocen@verizon.com
marc.ladin@3nonline.com
marg@tobiaslo.com
maryliz.dejong@att.com
mg1@cpuc.ca.gov
michael.bagley1@verizonwireless.com
michelle.salisbury@crowncastle.com
mike@borsetti.com
mike@edelsteingilbert.com
mp1321@att.com
mrubalcava@schottlites.com
mschreiber@cwclaw.com
nathan.glazier@alltel.com
ndw@cpuc.ca.gov
nlj@research.telcordia.com
nrabe@ntigroup.com
pcasciato@sbcglobal.net
pcl@cpuc.ca.gov
PHILILLINI@aol.com
pjpg3@pge.com
prw@cpuc.ca.gov
psp@cpuc.ca.gov
pucservice@dralegal.org
raw@cpuc.ca.gov
rcosta@turn.org
rdelsman@nextgnetworks.net
renato.peruzzi@dts.ca.gov
rex.knowles@xo.com
RGiles@semprautilities.com
richard.goldberg@dgs.ca.gov
richard.osborne@oes.ca.gov
robertg@greenlining.org
rrichards@ntigroup.com
rsm@cpuc.ca.gov
rudy.reyes@verizon.com
shynek@sbcglobal.net
sim@cpuc.ca.gov
sleeper@manatt.com
smakris@telcordia.com
smallecs@cwclaw.com
snr@cpuc.ca.gov
stephaniec@greenlining.org
stephen.h.kukta@sprint.com
steve@shascom911.com
sue.plantz@oes.ca.gov
Susan.Lipper@T-Mobile.com
suzannetoller@dwt.com
tch@cpuc.ca.gov

thomas.mahr@verizonwireless.com
thomas.selhorst@att.com
tmacbride@goodinmacbride.com
tray@extenetsystems.com
vfb@cpuc.ca.gov
vhedgpeth@ci.irvine.ca.us
wcrosthwaite@roseville.ca.us
ysmythe@caltel.com