



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

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Order Instituting Rulemaking Regarding
Emergency Disaster Relief Program.

Rulemaking 18-03-011
(Filed March 22, 2018)

COMMENTS OF CTIA ON ORDER INSTITUTING RULEMAKING

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Pursuant to the Order Instituting Rulemaking Regarding Emergency Disaster Relief Program to Support California Residents issued on April 2, 2018 (“OIR”), CTIA submits the following comments.

I. INTRODUCTION

CTIA supports the Commission’s efforts to help ensure that consumers have access to vital utility services in the wake of natural disasters. In 2017, wireless carriers undertook substantial efforts to support and address the needs of the California wildfire victims and worked on a collaborative basis with Commission staff to provide information regarding such efforts.

As detailed below, wireless carriers have established a cooperative framework to enhance collaboration between carriers, local government, and public safety officials before, during, and after natural disasters. Such a framework allows for the type, degree, and duration of the assistance provided and information shared by the carriers to be dictated most effectively by the particular circumstances of each disaster. CTIA suggests that a collaborative model is an appropriate, efficient, and effective means of ensuring consumer assistance in the event of a natural disaster. Accordingly, the Commission should avoid imposing inflexible regulations to address what are often fluid situations. Such regulations could divert efforts focused on restoring networks or otherwise limit the ability of carriers to respond to the unique needs of consumers

and public agencies in the face of a natural disaster. Moreover, the Commission should keep in mind that, because wireless carriers are not rate-regulated entities, the type of post-disaster measures it can require of these carriers is limited.¹

II. THE WIRELESS INDUSTRY PROACTIVELY ASSISTS CUSTOMERS WHO ARE VICTIMS OF NATURAL DISASTERS

The Emergency Relief resolutions recently adopted by the Commission² did not impose any obligations on wireless carriers, but before, during, and after the tragic wildfires in California, wireless carriers undertook voluntary, significant measures that supported and benefited consumers who were impacted by these natural disasters. While these actions were voluntary, they were wide-ranging in nature and were commended by the Commission.³ As referenced above, wireless carriers worked on a collaborative basis with Commission staff to provide information regarding their consumer assistance measures.

Moreover, the nation's five largest wireless carriers, who serve the vast majority of U.S. wireless consumers, created and committed to the Wireless Network Resiliency Cooperative Framework ("Cooperative Framework") to "enhance coordination and communication to advance wireless service continuity and information sharing during and after emergencies and disasters."⁴ Importantly, the structure of the Cooperative Framework provides carriers with the flexibility necessary to tailor network resiliency and continuity of service efforts to the individualized needs of affected communities and the unique challenges presented by each

¹ CTIA notes that wireless carriers are not named as respondents in this docket, although most or all of the Commission's proposals are addressed to "utilities," a term that includes wireless carriers under California law. CTIA has sought clarification of the intended applicability of this docket to wireless carriers. *See* Prehearing Conference Statement of CTIA (filed April 30, 2018).

² *See* Resolutions M-4833 and M-4835.

³ Resolution M-4833, p. 34 ("We commend these companies on their efforts . . .").

⁴ Cooperative Framework at 1, <https://www.ctia.org/the-wireless-industry/industry-commitments/wireless-network-resiliency-cooperative-framework>.

natural disaster. The Federal Communications Commission (“FCC”) has endorsed the Cooperative Framework as “a reasonable approach to achieving the [FCC’s] stated goals . . . including promoting availability of wireless mobile services in the event of natural disasters and other emergencies and increasing provider transparency around wireless resiliency.”⁵

As part of the Cooperative Framework, representatives from the wireless industry worked with local government and public safety officials (collectively, “local authority”) from a diverse set of localities across the country to develop best practices for voluntary coordination efforts between wireless providers and local governments. These representatives recognized that individual disaster coordination efforts vary depending upon a number of factors, including “the scope of the emergency or disaster, the nature of service providers’ networks, the individualized circumstances involving the local authority to perform the coordination activities, and the resources available to the parties.”⁶ The need for flexibility in addressing each natural disaster was reflected in CTIA’s “Best Practices for Enhancing Emergency and Disaster Preparedness and Restoration,” released in December 2017 (“Best Practices”). The Best Practices provide a set of tools to help coordinate joint efforts by wireless carriers and local governments to maintain service continuity, promote resiliency efforts, and expedite restoration activities during and after a disaster.⁷

The efficacy of the Cooperative Framework was evident when wireless carriers undertook significant efforts to support and address the needs of the California wildfire victims.

⁵ In the Matter of Improving the Resiliency of Mobile Wireless Communications Networks, Order, FCC 16-173 (December 20, 2016), ¶ 1.

⁶ See Best Practices for Enhancing Emergency and Disaster Preparedness and Restoration, <https://api.ctia.org/docs/default-source/default-document-library/best-practices-for-enhancing-emergency-and-disaster-preparedness-and-restoration.pdf>.

⁷ See *id.* Stakeholders identified best practices in three categories: (1) planning before disasters and emergencies occur; (2) facilitating coordination during and after emergencies and disasters; and (3) creating education awareness campaigns.

Among other efforts, wireless carriers: (a) devoted all resources necessary to restore wireless service to the impacted areas as quickly as possible; (b) deployed mobile equipment including Cells on Wheels and Cells on Light Trucks to supplement service in areas that needed additional capacity; (c) deployed trucks outfitted to provide devices charging stations, WiFi access, loaner mobile phones as needed, and supplies like bottled water, food, and respiratory masks; (d) waived overage charges for data, talk, and text for defined periods of time; and (e) extended payment dates for service for defined periods of time.⁸

In addition, when assessing steps taken by the wireless industry to assist those impacted by natural disasters, the Commission should recognize that wireless carriers are continually making significant investments in their networks, which total billions of dollars to date.⁹ These investments have resulted in greater capacity and increased densification, thereby increasing network resiliency and mitigating network outages during natural disasters.

CTIA and its member companies are proud that wireless networks provide critical services for consumers and first responders when they need it most – during and after disasters. The wireless industry will continue its work to strengthen networks and raise awareness about the Cooperative Framework and tools such as the Best Practices. In preparation for, during, and in the aftermath of disasters and emergencies, wireless providers are committed partners with affected communities and the people that wireless networks connect.

⁸ See How carriers are helping those affected by California wildfires, *Android Authority*, Matt Adams, <https://www.androidauthority.com/california-wildfires-carriers-807137/> (October 12, 2017).

⁹ See Wireless Snapshot 2017, <https://api.ctia.org/docs/default-source/default-document-library/ctia-wireless-snapshot.pdf> (“[National wireless capital expenditures totaled \$26.4 billion in 2016, and over \$200 billion in the past seven years alone.”)

III. THE COMMISSION SHOULD NOT CREATE A “ONE-SIZE-FITS-ALL” RESPONSE TO EMERGENCY DISASTER RELIEF

A. The Commission Should Not Create an Emergency Relief Program Applicable to All Utilities in all Natural Disasters Because Relief Measures Should be Dictated by the Particular Circumstances of Each Disaster

The OIR is premised on a belief that the “creation of a permanent disaster relief program will ensure predictability and consistency across utilities, and will allow utility companies to establish the systems and procedures necessary to provide swift and substantive assistance to Californians affected by disaster,”¹⁰ as well as the belief that consumers’ receipt of necessary assistance is dependent on the Commission ordering such assistance.¹¹ In furtherance of these beliefs, the OIR asks a series of questions framed around the Commission’s creation of a rigid construct for the provision of post-disaster relief for utility customers of all types (*e.g.*, specific post-disaster measures, triggering events for implementation, duration, and customer eligibility). Such a “one-size-fits-all” construct cannot reflect the significant variations between each event (and indeed, each industry and technology), which should dictate the nature and duration of the relief provided. Moreover, as illustrated above with respect to the wireless industry, the assumption that wireless carriers will not provide customers necessary assistance absent regulatory intervention is demonstrably unfounded.

All of the proposed post-disaster measures for energy utilities that were adopted by the Commission in the wake of the 2017 California fires are not appropriate in the wake of all natural disasters for each utility subject to the Commission’s jurisdiction.¹² Such a paradigm

¹⁰ OIR, p. 5.

¹¹ OIR, p. 5 (“The Commission seeks to establish consumer protections that can be implemented expeditiously by utilities following a triggering event rather than needing to prepare and adopt a resolution after each event.”).

¹² The OIR, on p. 6, seeks comment on whether “some or all of the post-disaster consumer protections that the Commission adopted in Resolutions M-4833 and M-4835 (including, *e.g.*, the

does not account for the variations in each type of utility industry and the technologies they employ, and also fails to account for variations in customers' needs and expectations with respect to each utility service. Similarly, determining in advance the appropriate duration for a post-disaster measure¹³ is inefficient and potentially arbitrary. The duration of a measure should be dictated by the specifics of each natural disaster, the needs of affected customers, whether measures are reasonably implementable by utilities, and the type of utility service at issue. As noted above, wireless carriers undertook significant efforts to address the needs of their customers located in the areas impacted by last year's wildfires. These responses were tailored to the specific needs of their customers for a time-period that corresponded to the need being addressed, helping to ensure the most efficient use of resources for recovery.

In short, a "one-size-fits-all" program for disaster relief, as the Commission is considering, would remove the flexibility necessary for efficient responses and shift carriers' priorities for disaster response away from addressing consumer needs and towards achieving regulatory compliance. Such a construct will be harmful both for wireless carriers and the consumers they serve.

B. Imposing on Wireless Carriers the Post-Disaster Measures Set Forth in Resolution M-4833 and M-4835 Would Exceed Commission Jurisdiction

The OIR asks whether "some or all of the post-disaster consumer protections that the Commission adopted in Resolutions M-4833 and M-4835 (including, e.g., the establishment of Memorandum Accounts) [should] be adopted for use by all utilities subject to Commission

establishment of Memorandum Accounts) be adopted for use by all utilities subject to Commission jurisdiction?"

¹³ The OIR, on p. 8, seeks comment on whether "any post-disaster consumer protections adopted in this proceeding have defined beginning and end dates?"

jurisdiction?”¹⁴ Due to the Commission’s limited jurisdiction over wireless carriers, the imposition on wireless carriers of a majority of the post-disaster protections adopted in Resolutions M-4833 and M-4835 may exceed the Commission’s jurisdiction by straying into prohibited rate regulation.

Section 332(c)(3)(A) of the federal Communications Act provides that “no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.” A number of the post-disaster measures adopted by the Commission in Resolutions M-4833 and M-4835 go beyond “other terms and conditions” and may constitute rate regulation, as they would regulate what or how carriers charge for service. For example, the measures in these Resolutions include: (1) waiving charges for services; (2) waiving deposit requirements for affected customers seeking to reestablish service; (3) suspending disconnection for non-payment and associated fees; (4) waiving late fee requirements; and (5) providing payment options.¹⁵ Such measures, if mandated for wireless carriers, raise serious preemption concerns, and seem unnecessary considering the industry’s voluntary actions during previous disasters.

C. The Commission Should Not Predetermine the Informational Needs of Government Agencies, Because That Could Hamper Relief Efforts

The OIR requested comment on whether and how to require utility companies to provide information to local, state, and/or federal agencies, asking, for example, questions regarding the type and granularity of information that utility companies should be required to share in the event of a natural disaster and the triggering event for sharing such information. Again, the

¹⁴ OIR at 6.

¹⁵ See OIR at 3.

Commission should avoid creating a new layer of regulation that could impede, rather than promote, relief efforts.

It is the practice of wireless carriers, as advanced by the Cooperative Framework discussed above, to work with government agencies and first responders to help support relief efforts, including the provision of information needed for situational awareness and response operations. This practice, though informal, has proven to be effective at providing in a timely manner information tailored to meet agencies' specific needs. Mandates requiring carriers to generate and provide a predetermined set of information to local, state, and federal agencies, when such information sharing is already taking place on a collaborative basis as needed, is an inefficient use of resources. Such mandates tend to divert efforts focused on restoring wireless networks and limit the ability to respond to the needs of consumers and particular agencies in the face of a natural disaster.

Moreover, in considering the types of information that the Commission seeks to have carriers share, and the manner in which it is to be shared, the Commission should consider what has been long understood with respect to certain carrier information: Wireless carriers' outage and outage recovery information is competitively sensitive, and critical infrastructure information that is "not customarily in the public domain and is related to the security of critical infrastructure or protected systems."¹⁶

¹⁶ Department of Homeland Security, Protected Critical Infrastructure Information Program Procedures Manual (April 2009), at Appendix 2, Definitions, *available at* <https://www.dhs.gov/sites/default/files/publications/pcii-program-procedures-manual-508.pdf>; *see also* D.09-07-019 (In requiring Network Outage Reporting System ("NORS") information, the Commission recognized that "MSI [major service interruptions] data has critical utility infrastructure implications" and "[c]onsistent with the FCC's treatment of NORS data, we will afford the information confidential treatment.").

V. CONCLUSION

CTIA's member carriers voluntarily undertake significant measures to support and benefit consumers impacted by natural disasters. These measures are tailored in type and duration to the specific impacts of individual disasters. Imposing a rigid set of regulations to address what are often fluid situations could impede, rather than promote, relief efforts. CTIA suggests that a collaborative model is a more efficient and effective means of ensuring that consumers receive needed assistance than adopting regulations that could, among other things, impair the flexibility that is necessary to ensure the best response to a given disaster.

Respectfully submitted May 2, 2018, at San Francisco, California.

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