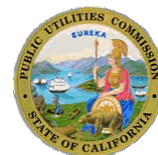


BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking Regarding
Emergency Disaster Relief Program.

Rulemaking 18-03-011

**PUBLIC ADVOCATES OFFICE REPLY COMMENTS ON
ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
RULING REQUESTING COMMENTS ON WIRELINE
PROVIDER RESILIENCY STRATEGIES**

[PUBLIC VERSION]

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I. INTRODUCTION

Pursuant to the July 22, 2020 Assigned Commissioner and Administrative Law Judge’s Ruling Requesting Comments on Wireline Provider Resiliency Strategies (Ruling), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these reply comments on wireline service provider resiliency strategies. Cal Advocates’ reply comments address the issues of the Commission’s jurisdiction and respond to specific arguments raised by the wireline service providers. They are organized in the same structure as the Ruling.

California has recently experienced unprecedented, catastrophic and extreme events from wildfires to rolling blackouts to dangerous heatwaves.¹ Communications networks, including wireline networks, must be operational, especially during such extreme events, to ensure Californians experiencing an emergency can call 9-1-1.

In Decision (D.) 20-07-011, the California Public Utilities Commission (Commission) adopted requirements for wireless communications networks located in Tier 2 and Tier 3 High Fire Threat Districts (HFTDs). Cal Advocates supports applying the same network resiliency requirements to wireline networks the Commission applied to wireless networks, with some modifications. In addition to enabling 9-1-1 calling during an emergency, wireline networks support both voice and broadband service that are necessary for California families to participate in distance learning, telework, and telehealth, during and after the current COVID-19 pandemic. In these comments, Cal Advocates recommends the Commission:

- Exert its jurisdiction over wireline service providers to require backup power to wireline networks and support the health and safety of Californians during emergencies.
- Require wireline service providers to ensure all customers receive uninterrupted service, including the ability to call 9-1-1 and 2-1-1,

¹ Chediak, Mark; Baker, David R.; Eckhouse, Brian. “First Fires, Now Heat: Millions of Californians Back in the Dark.” Bloomberg. August 15, 2020. <https://www.bloomberg.com/news/articles/2020-08-16/california-faces-second-night-of-blackouts-amid-unrelenting-heat>

receive emergency alerts and notifications, and use the Internet to access emergency information for a minimum of 72 hours immediately following a power outage within and outside of HFTDs.

- Require wireline service providers to meet a minimum 72-hour backup requirements in HFTDs within 6 months of the adoption of a decision or by May 2021, whichever is sooner.
- Require wireline service providers to submit Communications Resiliency Plans as Tier 2 Advice Letters.
- Establish a waiver protocol in which wireline service providers can seek approval from the Commission for wireline network facilities that do not need or cannot support backup power.
- Reject the Wireline Industry Proposal because it does not adequately ensure public health and safety for all wireline customers and their communities.
- Require wireline service providers to notify customers when there is an emergency or power outage in the customers' service area.
- Require wireline service providers to reimburse customers for lost service and allow customers to cancel contracts without incurring fees.

II. COMMISSION HAS JURISDICTION OVER WIRELINE SERVICES

A. The Commission has Jurisdiction Over All Providers, Including Wireline Providers.

In opening comments, Comcast, Cox, AT&T and Charter Communications question the Commission's regulatory authority and jurisdiction over wireline providers. The wireline providers are using essentially the same arguments they used previously to challenge the Commission's authority and jurisdiction over *wireless* providers. These arguments were twice addressed and twice rejected in this proceeding, in Decisions (D.) D.20-07-011 (the Decision adopting resiliency rules for wireless providers) and D.19-08-025, (the Decision adopting emergency disaster relief programs for customers of communications service providers) and they should be rejected here as well.

The Commission’s jurisdiction has already been exhaustively briefed and ruled upon in this matter. In this latest iteration of challenges, the providers raise no new facts or legal arguments to support their positions. In the aforementioned prior decisions, the Commission has made clear that, to ensure the reliability of communication networks in emergencies, its jurisdiction over public utilities and telephone corporations is broad and technology neutral, extending to traditional wireline, wireless services, internet and voice over internet protocol (VoIP) services.² Thus, the Providers repeated protestations on authority and jurisdictional grounds have no merit.

The Commission’s analysis in D.20-17-011 and D.19-08-025 should have put to rest jurisdictional challenges. However, providers continue to challenge the Commission’s authority and jurisdiction, with essentially baseless assertions.

In D.20-07-011, the Commission re-affirmed its authority and jurisdiction to ensure resiliency in communications providers networks. The arguments relating to wireless providers, were the same, or substantially the same, as the arguments being made by the wireline providers in opening comments.

For example, Cox claims in comments that “subjecting BIAS³ to public utility regulation at the state level would trigger conflict preemption on the basis that BIAS is an information service upon which common carrier regulations cannot be imposed.”⁴ Cox had made precisely the same argument before.⁵

² D.19-09-025, p. 9, D.20-07-011, p. 12.

³ The FCC defines BIAS as Broadband Internet Access Service.

⁴ Comments of Cox California Telcom, LLC DBA Cox Communications (U-5684-C) On Assigned Commissioner and Administrative Law Judge Ruling Requesting Comments on Wireline Provider Resiliency Strategies (Public Version) (August 12, 2020) (Cox Opening Comments) pp. 10-11.

⁵ Comments of Cox California Telcom, LLC, DBA Cox Communications (U-5684-C) On Assigned Commissioner's Ruling and Proposal, Cox (April 3, 2020), pp. 31-32.

Comcast claims the Commission has little or no regulatory authority over “Public utility-style regulation of voice over [VoIP]”⁶ Comcast vaguely claims that “utility-style regulation” of VoIP and broadband Internet access services would “conflict with federal law and policy.”⁷ But Comcast never actually provides legal support for this contention, citing instead portions of its previous opening comments in this matter, which are themselves, vague and unsupported. “Preemption of state laws, including laws regulating information services requires ‘a link to express delegated authority.’”⁸ No such link was provided by Comcast.

AT&T claims, “To the extent the Wireline Ruling proposes requirements on providers of VoIP, such regulation is preempted by federal law because it contravenes the longstanding federal policy of nonregulation for information services.”⁹ Evidently the Commission did not agree as it was quite clear it had the authority to and did assert its jurisdiction over VoIP in this rulemaking.

For its part Charter asserts, “Extending requirements of this sort to broadband and VoIP facilities providers conflicts with the federal policy of exempting information services, such as interconnected VoIP and broadband services, from such public utility regulation.”¹⁰ No legal support is cited.

In response to the same assertions made by Cox, Comcast, AT&T & Charter, in the wireless phase, challenging the Commission’s authority and jurisdiction, the

⁶ Comments of Comcast Phone of California (U-5698-C) on Assigned Commissioner and Administrative Law Judge’s Ruling Requesting Comments on Wireline Provider Resiliency Strategies (Public Version) (August 12, 2020) (Comcast Opening Comments.) p. 5.

⁷ Comcast Opening Comments, p. 4.

⁸ D.20-17-011 p. 23, fn., 67, citing *Comcast Corp. v. FCC*, 600 F.3d 642 at 658 DC Cir. 2010.

⁹ AT&T’s Opening Comments on the Assigned Commissioner and Administrative Law Judge’s Ruling Requesting Comments on Wireline Provider Resiliency Strategies (August 12, 2020) (AT&T Wireless Opening Comments), pp. 3-4.

¹⁰ Comments of Charter Communications, Inc. on the Assigned Commissioner and Administrative Law Judge’s Ruling Requesting Comments on Wireline Provider Resiliency Strategies [Public Version] (August 12, 2020) (Charter Opening Comments) p. 7.

Commission ruled, among other things, that it has plenary authority and jurisdiction over telephone corporations and other communications utilities,¹¹ and that the Commission has police power authority over matters related to public health and safety, and that authority is traditionally reserved to the states.¹² In short, Decision 20-07-011 completely rejected each and every one of these jurisdictional and authority arguments. The Commission makes clear the safety requirements contemplated in the rulemaking apply to VoIP.¹³ And, the Commission makes clear, its authority and police power extends to internet browsing or BIAS.¹⁴

B. There is No Preemption

In D.20-07-011 the Commission has determined that telephone corporations, including VoIP, are public utilities under Public Utilities Code §§ 216, 233, and 234.¹⁵ As stated above the Commission has broad authority over public utilities and has broad police power authority over matters related to public health and safety. Those police powers are generally reserved to the states. Further, the “presumption against preemption where the state is exercising traditional health and safety police powers is particularly strong.”¹⁶

Under traditional preemption analysis, preemption must be express or implied. There is no express preemption. While the providers have made the assertion, they have failed to cite an express intent to prohibit states from regulating wireline providers to protect the health and safety of California citizens. To paraphrase D.20-07-011, nowhere has Congress expressly stated or clearly manifested any intention to prohibit *all* state public safety regulations that apply to wireline carriers.

¹¹ D.20-07-011 p. 13.

¹² D.20-07-011 p. 14.

¹³ Decision 20-07-011, p. 36.

¹⁴ Decision 20-07-011, p. 35.

¹⁵ Decision 20-07-011, p. 22.

¹⁶ Decision 20-07-011 p. 26 citing *Farina v. Nokia Inc, supra*, 625 F.3d at 121-22).

Second, there is no conflict preemption. As stated in D.20-0-011, “The emergency rules adopted herein do not conflict with federal law or regulations, and therefore, are not subject to conflict preemption.” Further, there is nothing in the proposed regulations, that directly or explicitly seeks to control rates.¹⁷ All of the arguments relating to conflict preemption of the proposed regulations, where those regulations focused on health and safety concerns, were rejected by the Commission in D.20-0-011.

In terms of health and safety regulation, and as stated above, these preemption questions have been litigated and flatly rejected by the Commission. The requirements contemplated are necessary to promote the safety, health, comfort and convenience of the telephone providers’ customers and the public and therefore well within the Commission authority.

III. RESPONSES TO QUESTIONS IN RULING

A. Wireline Service Provider Resiliency and Disaster Response Requirements.

The comments below respond to parties’ opening comments on the Ruling.

1. Resiliency Definition

Charter’s Opening Comments state that “any reasonable definition of resiliency must... reflect that the most important aspect of resiliency is the ability to recover from service interruptions.”¹⁸ Network recoverability is important but it is not the most important aspect of resiliency. As Center for Accessible Technology stated in its reply on the (wireless service provider) Assigned Commissioner’s Ruling and Proposal, “any gap in service represents a situation where people are at increased risk during an emergency and are unable to seek help or receive information on how to respond.”¹⁹ Cal

¹⁷ Decision 20-07-011, p.137.

¹⁸ Charter Opening Comments, p. 5; Cox Opening Comments p. 4.

¹⁹ Center for Accessible Technology and National Consumer Law Center’s Reply Comments on Assigned Commissioner’s Ruling and Proposal (CforAT Reply Comments), April 17, 2020, p. 5.

Advocates recognizes that there might be catastrophic events when communications networks will not function; however uninterrupted service must remain the Commission's and communications service providers' goal.

Contrary to wireline service providers suggestions, the stated goal of the resiliency definition should not be modified to emphasize recoverability. The current definition establishes a goal of continuous service, which correctly aims to minimize the amount of time where customers are at increased risk.

2. Backup Power Requirement

Backup Power Duration

It is critical for wireline service providers to maintain service for at least 72 hours following power outages. Californians are reliant on wireline networks for teleworking, distance learning, communicating with their health providers, making emergency calls, and many other essential activities. Because wireline service provider networks are extensive, the Commission should consider implementing a phased approach to require backup power for wireline networks across the state. These measures are urgently needed to ensure Californians' public health and safety.

In opening comments to the Ruling, wireline service providers stated that 72 hour backup power requirements are unrealistic in that they will require backup of tens of thousands of facilities across the state.²⁰ As Charter explained, providing backup power to headends and hubs is not a significant issue; the major difficulty is in providing backup power to cable networks' nodes.²¹ The wireline providers go on at length about the number of nodes in the state.²² However, compared to macro cell sites, nodes are not significantly more numerous, especially when considering only nodes in HFTDs. As Cal Advocates showed in Opening Comments on the Assigned Commissioner's Ruling and

²⁰ Charter Opening Comments p. 8, Comcast Opening Comments, p. 11.

²¹ Charter Opening Comments, p. 15.

²² Charter Opening Comments pp. 6-9, Comcast Opening Comments pp. 8-11, Cox Opening Comments pp. 8-14.

Proposal, there are 4,626 macro cell sites in HFTDs.²³ By contrast, there are 6,818 power supplies serving nodes in HFTDs. This is less than 50% more relative to the number of macro cell sites.

Providing backup power to cable nodes in Tier 2 and Tier 3 HFTDs would be significantly less onerous than described by the wireline service providers. Table 1 shows the number of power supplies for nodes in and outside of Tier 2 and Tier 3 HFTDs. Data from AT&T, Charter, Comcast and Cox show that a significantly smaller number of video ready access devices (VRADs) and cable nodes, an estimated 12 percent, are in Tier 2 and Tier 3 HFTDs. Cal Advocates notes that AT&T’s network uses a different technology than the cable providers’ and therefore its VRADs are not powered by power supplies but rather by batteries. Network differences notwithstanding, Cal Advocates has included AT&T’s data along with Charter, Comcast and Cox.

Table 1: Wireline Companies’ Number of Power Supplies²⁴ Inside and Outside of Tier 2 and Tier 3 HFTDs²⁵

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	AT&T	Charter	Comcast	Cox	Total	Percentage of Total
Power Supplies in Tier 2 and Tier 3 HFTDs	██████	██████	██████	██████	10,967	12%
Power Supplies not in HFTDs	██████████	██████████	██████████	██████████	82,519	88%
Total					93,486	

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Californians face health and safety risks due to limited or non-existent backup power on wireline networks. Between October 24 and November 5, 2019, the

²³ Public Advocates Office Comments on Assigned Commissioner’s Ruling and Proposal For Communications Service Provider Resiliency and Disaster Response Requirements, April 3 2020, p. 5.

²⁴ One power supply generally supports one piece of infrastructure, however in some cases, a power supply can support multiple pieces of infrastructure.

²⁵ Wireline Service Provider Responses to Cal Advocates DR 4.

Commission’s Consumer Affairs Branch (CAB) received 61 complaints related to communications outages during the October 2019 Power Safety Public Shutoffs (PSPS) events. One wireline customer in Cupertino stated that “many people have complained about lack of cell service during PSPS. In our area, many people cannot get cell service. However, our land lines run through an ancient AT&T switch that has a 2-hour battery backup. After a blackout, the phone goes dead after two hours, leaving many people without any form of 911 communication. [...]A bigger battery would solve this dangerous situation. Many of these people live on a long dead-end road in a high fire danger area.” Another wireline customer in Los Gatos stated that “my community of 150 homes in the Santa Cruz Mountains is not given the option of broadband services. We are wholly reliant on electricity and [we have experienced outages] for 3 days. Frontier removed the generator for their services when they took over from Verizon. [We] cannot get critical public safety information including evacuation orders for wildfires. [I have] my own net-zero battery charger meant to keep my modem operational.” The current pandemic has made clear that landline service, broadband and cable are critical and essential services. Many Californians are entirely dependent on wireline communications for work, health, and education.²⁶ Cal Advocates Opening Comments further illustrate why a 72-hour backup power requirement is needed to protect Californians.²⁷

²⁶ UC Riverside’s School of Public Policy’s Report “COVID-19, Digital Divide and Distance Learning Working Paper” https://spp.ucr.edu/sites/g/files/rwecm1611/files/2020-07/COVID-19%2C%20Technology%2C%20and%20Distance%20Learning%20-%20Strategies%20and%20Policies%20to%20Avert%20an%20Education%20Crisis_0.pdf?_ga=2.265306249.740685799.1597178037-1402645141.1597178037, Brookings Institute’s study on Telework during COVID-19 <https://www.brookings.edu/blog/up-front/2020/04/06/telecommuting-will-likely-continue-long-after-the-pandemic/>, Public Policy Institute of California article “Online medical care during COVID-19” <https://www.ppica.org/blog/online-medical-care-during-covid-19/>

²⁷ Comments of the Public Advocates Office on Assigned Commissioner and Administrative Law Judge’s Ruling Requesting Comments on Wireline Provider Resiliency Strategies (Cal Advocates Opening Comments), August 12, 2020, pp. 3-19.

The 72-hour wireline backup power requirements should extend throughout the state to ensure essential communications service to all Californians.²⁸ This could require wireline service providers to install backup power at over fifty thousand power supplies for over fifty thousand nodes (see Table 1). The Commission should consider a phased approach by which wireline service providers are first required to provide backup power in Tier 2 and Tier 3 HFTDs within six months of the adoption of the decision or by May 2021, whichever is sooner. Resiliency requirements should be extended to areas outside of HFTDs within a year of adoption of a decision.

Wireline service providers object to the 72-hour backup power requirements claiming such a requirement will delay implementation of backup power requirements during a time when the adoption of these resiliency requirements is an urgent matter of public health and safety. Functioning communication networks are necessary for keeping Californians safe during emergencies such as wildfires. As Cal Advocates' Opening Comments pointed out, several vulnerable populations, including the elderly, rely heavily on wireline services.²⁹ The Commission should not delay in requiring wireline service providers to adopt a 72-hour backup standard.

Service Level Coverage

Cox's opening comments state that "the Commission should not apply minimum service level coverage as a requirement on a system-wide basis to wireline providers."³⁰ Comcast shared a similar objection.³¹ Cal Advocates disagrees. The Commission should apply the same service level coverage requirements for wireline service providers as currently required for wireless providers in D.20-07-011. These requirements include the ability to maintain a sufficient level of service to preserve access to 9-1-1 and 2-1-1,

²⁸ Cal Advocates Opening Comments, p. 12.

²⁹ Cal Advocates Opening Comments, p. 24.

³⁰ Cox Opening Comments, pp. 9-10.

³¹ Comcast Opening Comments, p. 15.

maintain the ability to receive emergency notifications, and maintain access to Internet browsing for emergency notices immediately following the event of a disaster or power outage. It is imperative that wireline networks continue to provide services to customers during power outages to ensure public health and safety. Many Californians use wireline services to access emergency information. In addition, at-risk populations in California, including the elderly, low-income individuals, and individuals with disabilities, may be more likely to rely on wireline services than wireless in an emergency.³²

Maintaining the ability to receive emergency notifications is a matter of life and death. According to the Federal Communications Commission (FCC), most Emergency Alert System (EAS) alerts are in response to severe weather events, including wildfire events.³³ With increased frequency of wildfires in California, wireline networks cannot be compromised. The importance of wireline services is clearly stated in several CAB complaints made by customers during the October 2019 PSPS events. One customer in Orinda stated that “during the recent PG&E power shut offs in the Bay Area, Comcast service was also lost. Myself and many neighbors were without internet, cable and phone service for starting Saturday evening and not being restored until Tuesday afternoon. This is completely unacceptable, as I and many others rely on this service for work and safety. In our area, cell phone reception is not very good, so we rely on WiFi calling even for our cell phones to work. With Comcast down, we have no access to communication with the outside world. [There is] no way to get emergency updates, no way to make 9-1-1 calls, and no way to receive an evacuation alert (of which there were several in the area). I have a newborn baby, and it is terrifying not knowing what is

³² CforAT Reply Comments, p. 9.

³³ Federal Communications Commission, The Emergency Alert System (EAS) <https://www.fcc.gov/emergency-alert-system#:~:text=FEMA%20is%20responsible%20for%20any,and%20exercises%20of%20the%20EAS.&text=The%20majority%20of%20EAS%20alerts,tribal%20authorities%20also%20send%20alerts,> Accessed August 11, 2020.

going on around you, and not even being able to call for help in an emergency. In these emergency situations it is paramount that we have access to these services.”

Receiving emergency alerts through wireline networks is critical for customers that only utilize landline devices and communities that do not have reliable wireless service and thus cannot receive Wireless Emergency Alerts (WEAs). Local government authorities send alerts regarding public safety emergencies, such as severe weather, missing children, or the need to evacuate, using WEAs. Customers cannot receive these notices without functioning WEA services.³⁴ Wireline service provider arguments that relatively few people rely on wireline networks are misleading. AT&T states “the vast majority of Californians need not and do not rely on wireline services for emergency communications. About 94% of California households have a wireless phone, while a mere 3.3% of California households rely exclusively on wireline service.”³⁵ AT&T fails to state that 3.3 percent of California’s households equates to 1.3 million Californians that rely solely on wireline networks for emergency notifications.³⁶ These Californians will only receive emergency notifications if wireline service providers keep their network operational during a power outage.

Wireline service providers also rely on their services to inform customers about outages and restoration. In response to a Cal Advocates data request, Charter, Cox, and Comcast state <<BEGIN CONFIDENTIAL>> [REDACTED] <<END CONFIDENTIAL>>³⁷ Cox stated that they “[format] and send the [emergency] message via the Cox cable system” from the FCC’s EAS Encoder and “alerts are

³⁴ Cal Advocates Opening Comments, p. 16.

³⁵ AT&T’s Opening Comments on the Assigned Commissioner and Administrative Law Judge’s Ruling Requesting Comments on Wireline Provider Resiliency Strategies, (AT&T Opening Comments), August 12, 2018, p. 8.

³⁶ California has 39.5 million people, 3.3% of 39.5 million is 1.3 million.

³⁷ Wireline Service Provider Responses to Cal Advocates DR 4, issued to wireline providers July 27, 2020.

received automatically on Cox set-top boxes and third-party receivers.”³⁸ Charter stated

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CONFIDENTIAL>>³⁹ Comcast “passes through [EAS] messages to cable service subscribers... [and] may distribute ‘reverse-911’ telephone calls to voice customers.”⁴⁰ These responses highlight the critical importance wireline networks play in distributing emergency notices to their customers, especially in communities that cannot get emergency notices from wireless services.

In addition, wireline networks also support broadband service, which is an essential service for accessing work, school, healthcare and other services during and outside of emergencies.⁴¹ Due to the broadband speeds required to support these activities, wireline broadband service should not be substituted with data service provided through wireless networks.

3. Communications Resiliency Plans

The Commission should not rely on voluntary resiliency measures, including information-only filings, as Cox suggested.⁴² The Commission should instead require wireline service providers to submit Communications Resiliency Plans through Tier 2 Advice Letters, as required for wireless service providers in D. 20-07-011.⁴³ The record

³⁸ Cox response to Cal Advocates Data Request 4, issues to wireline providers July 27, 2020.

³⁹ Charter response to Cal Advocates Data Request 4, issued to wireline providers July 27, 2020.

⁴⁰ Comcast response to Cal Advocates Data Request 4, issued to wireline providers July 27, 2020.

⁴¹ The CPUC establishes broadband as an essential service in R.18-07-006, D.20-07-032, Section 5.3.2, pp. 27-33.

⁴² Cox Opening Comments p. 12.

⁴³ Cal Advocates Opening Comments, p. 20, D. 20-07-011 p. 102.

shows that the Commission cannot rely on voluntary measures to protect the public. The public comments in this proceeding and cited in these comments in Section III.C., and the CAB comments included in Section III.A.2. show that voluntary measures have not been sufficient to maintain the state's wireline network. Similarly, the Disaster Information Report System (DIRS) reports cited by Cal Advocates in reply comments to the Ruling showed that 454,722 cable and wireline subscribers lost service on October 28, 2019, showing that these issues are not only anecdotal but systemic.⁴⁴ Instead, the Commission should adopt mechanisms, including Tier 2 Advice Letter filings, to ensure that providers are meeting the requirements to the best of their abilities. The Commission should review and, when necessary, require modifications to Communications Resiliency Plans submitted by wireline service providers to ensure the information contained in the plans is compliant with Commission requirements.

4. Waivers

The Commission should develop a protocol that allows wireline service providers to apply for waivers for wireline network facilities that do not need or are unable to support backup power. In recent years, providers have not clearly communicated with the Commission and other state and local agencies about the status of backup power in their network. Wireline service providers should be required to submit detailed descriptions of facts supporting the basis of the provider's claim of preclusion from compliance. These waivers should be supported by an affidavit or declaration under penalty of perjury and signed and dated by a duly authorized officer of the provider. Cal Advocates' position on waivers are discussed more fully in opening comments.⁴⁵

Furthermore, we agree with Joint Consumer Advocates and Communications Workers of America's (CWA) proposal that prohibits wireline service providers from

⁴⁴ Reply Comments of the Public Advocates Office on Assigned Commissioner's Ruling and Proposal for Communications Service Provider Resiliency and Disaster Response Requirements, April 17, 2020.

⁴⁵ Cal Advocates Opening Comments, pp. 20-21.

applying for waivers for headends and central offices because these facilities are critical within wireline networks and are often large enough in size to easily house the equipment necessary for backup power.⁴⁶

B. Wireline Industry Proposal

Customers Receiving Backup Service

Utility Consumers' Action Network's (UCAN) opening comments correctly state that "it is unreasonable to only provide this benefit to two classes of customers- critical facilities and wireless carrier customers [...] There may be vital communications infrastructure which maintain service to entire neighborhoods or communities that could be subject to a power shutoff even when people served by those facilities are not."⁴⁷ The Commission should reject the Wireline Industry Proposal because it limits backup power to only a subset of customers.⁴⁸ The Wireline Industry Proposal implies that customers who are not designated as critical do not need access to emergency services during disasters and PSPS events because they will have access to wireless services. A lack of continuous service for customers outside of critical facilities will have negative impacts for entire communities.

As Cal Advocates, Rural County Representatives of California (RCRC) and The Association of Water Agencies and California Water Association opening comments point out, the Wireline Industry Proposal fails to include a number of critical customers, including schools, libraries, community centers, radio stations, local government and tribal offices, and critical infrastructure, many of which are highly dependent on wireline

⁴⁶ The Utility Reform Network, Access Humboldt, Center for Accessible Technology, National Consumer Law Center, and Communications Workers of America, District 9 Opening Comments, p. 5 and A.10.

⁴⁷ Opening Comments of the Utility Consumers' Action Network, August 12, 2020, p. 6.

⁴⁸ Cal Advocates Opening Comments, p. 15.

networks. Ten out of thirty-five public comments made on the proceeding docket emphasize the important role that schools play during emergencies and power outages.⁴⁹

In addition, Cal Advocates Opening Comments show that a number of vulnerable populations rely heavily on wireline services.⁵⁰ Cal Advocates recently received customer testimony from an individual with a disability who lost commercial power, and subsequently lost communications. The customer stated “[d]uring last October’s PG&E PSPS we had major communications... problems. These would have been devastating to anyone, but since I have been a paraplegic for over 50 years and use a CPAP, our problems were further compounded. During Last October’s PSPS we lost the ability to communicate via Comcast with 911, 211 or PG&E in Bonny Doon... [C]ommencing with the PG&E shutdown Comcast telephone, internet, and television service went down. This created a danger due to lack of communication infrastructure. For example, Comcast could not be used by PG&E to contact us to let us know when the electrical power was restored, nor for reverse 911,⁵¹ CalFire, and County Sheriff contacts (to or from). Furthermore, we were unable to obtain information of any kind either via TV or Internet.”⁵² The customer also could not use his mobile phone: “Cell phone service via Verizon likewise was unavailable... This included communication by phone, text, or email.” The only communications service that worked for this individual was a repurposed fax line from AT&T, but the customer states that “AT&T is giving low

⁴⁹ Public Comments on R.18-03-011 docket.

⁵⁰ Cal Advocates Opening Comments, pp. 23-25.

⁵¹ In Santa Cruz County, reverse 9-1-1 is also known as the “CodeRED notification system [which] sends important messages to residents and businesses within Santa Cruz & San Benito Counties in the event of emergency situations or critical community alerts.” Santa Cruz Regional 9-1-1. <http://www.scr911.org/>

⁵² Email received by Cal Advocates “FW: Latest Experience with Loss of Communication and Information Was Unacceptable - Follow up from Prior Summary re Need for Landline Back Up during Emergencies.” August 17, 2020.

priority to maintaining its lines... AT&T is refusing to restore service if it has been discontinued (even temporarily).”⁵³

This customer experience illustrates several points. First, some Californians have been preparing for emergencies by having backup power, such as a personal generator, in the event of an emergency, but these efforts are dependent on functioning wireline networks. Second, county emergency officials rely on wireline communication infrastructure to issue emergency notifications. Backup power for wireline networks is critical. For some Californians wireline networks are the only communications services available.

Further, based on Cal Advocates’ findings, wireline providers such as Charter, Comcast, and Cox do not track vulnerable populations they serve, so they will be unable to maintain service to these customers during power outages.⁵⁴

Limiting Backup Power Requirements to Provider Owned Facilities

As stated in Cal Advocates’ Opening Comments, lack of direct ownership should not preclude backup power requirements for wireline service providers’ facilities.⁵⁵

Charter and Cox declined to share site ownership data when requested by Cal Advocates. However, Cal Advocates found that Comcast leases either the land or structure for <<BEGIN CONFIDENTIAL>> [REDACTED]

[REDACTED] <<END CONFIDENTIAL>> It is unacceptable for this proportion of a communications network to be exempt from backup power requirements.

⁵³ Ibid.

⁵⁴ Wireline Service Provider Responses to Cal Advocates DR 4, issued to wireline providers July 27, 2020

⁵⁵ Cal Advocates Opening Comments, p.27.

Table 2: Comcast Facility Ownership of Hubs and Head ends⁵⁶

<<BEGIN CONFIDENTIAL>>

Facility	Own Both Land and Structure		Lease Land or Structure		Total
	Count	%	Count	%	
Hub					
Head end					

<<END CONFIDENTIAL>>

12-month Timeline to Implement Requirements

As mentioned in the Cal Advocates Office Opening Comments, the Commission should require wireline service providers to meet the 72-hour backup power requirement within six months of Decision adoption or by May 2021 (whichever comes sooner), in order to ensure that providers are prepared to support customers during 2021’s fire season.⁵⁷ There has already been a number of wildfires this year that have required tens of thousands of Californians to evacuate.⁵⁸ Communications networks are critical to share emergency information, and even more so during the COVID-19 pandemic, during which officials are concerned that households who are in evacuation areas may be less willing to leave their homes.⁵⁹

⁵⁶ Comcast response to Cal Advocates’ Data Request, November 2019.

⁵⁷ Public Advocates Office Opening Comments, p. 28.

⁵⁸ The Apple Fire that is currently burning in Riverside and San Bernardino Counties caused 7,800 people to evacuate thus far at its height (<https://www.nbclosangeles.com/news/local/apple-fire-90-contained-33424-acres-burned-full-containment-set-for-monday/2413461>). Evacuation orders were also in place in Fresno County during the Mineral Fire and Lassen County during the Hog Fire that both occurred in late July, 2020 (<https://www.mercurynews.com/2020/07/18/smoke-from-the-mineral-fire-expected-to-reach-the-bay-area/> and <https://sanfrancisco.cbslocal.com/2020/07/21/hog-fire-tornado-firenado-firewhirl-susanville/>), and as of August 20 the CZU August Lightning Complex Fire had forced over 22,000 people to evacuate, and the LNU Lightning Complex Fire had forced more than 15,000 people to evacuate (<https://www.mercurynews.com/2020/08/19/with-367-wildfires-raging-cal-fire-to-all-citizens-of-california-be-ready-to-go>).

⁵⁹ Chacko, Diya. “Coronavirus Today: ‘A very expensive plan B’ for wildfire evacuations.” Los Angeles Times. August 5 2020. <https://www.latimes.com/science/newsletter/2020-08-05/apple-fire-evacuations-covid-coronavirus-today>

C. Communities Without Sufficient Wireless Coverage

Charter and Comcast have argued that the Commission should not impose backup power requirements on providers in communities without sufficient wireless coverage, except for carriers of last resort (COLRs).⁶⁰ To the contrary, the Commission should ensure that the wireline networks in these areas have robust backup power. In Opening Comments, Cal Advocates used the Commission’s CalSPEED maps to estimate that over 200,000 Californians live in areas with limited wireless coverage served by only one or no wireless service provider.⁶¹

The proposal by Charter and Comcast belies the reality in areas with unreliable wireless service. A number of public comments made in this proceeding reflect the experiences of Californians living in places without sufficient wireless coverage, like Bonny Doon. One member of the public commented that their community relies “on land lines for life-saving public safety announcements, evacuation orders, other emergency information, and to make outgoing calls for help.”⁶² Other comments state that AT&T, Bonny Doon’s nominal COLR,⁶³ “refuses to provide [wireline] telephone service to a new account, even in a residence or apartment that previously had service from an occupant who had just moved out.”⁶⁴ Comcast also provides service to this area, but public comments indicate that Comcast’s backup power lasts from a few minutes to at most a few hours during outages, leaving the community entirely without communications during power outages.⁶⁵

⁶⁰ Charter Opening Comments, p. 27, Comcast Opening Comments, p. 40.

⁶¹ Cal Advocates Opening Comments, p. 30.

⁶² Public Comment of Michael Geluardi, R1803011 Public Comments, August 10, 2020.

⁶³ CPUC, Carrier of Last Resort Territories in California – 2017. Map available [here](#).

⁶⁴ Public Comment of James Brown, R1803011 Public Comments, August 9, 2020.

⁶⁵ Public Comment of James Brown, Robert Coe, and Christine Tucker, R1803011 Public Comments, August 9 & August 11, 2020.

Charter and Comcast’s attempts to offload responsibility for maintaining backup power onto COLRs is misguided. AT&T, the COLR for much of California, has filed a Section 214 application with the FCC for its voice grade access channels, which allows it to not provide these services to new customers in its service area.⁶⁶ Wireline service providers, especially COLRs, must be held responsible to ensure the communities they serve have reliable service during emergencies.

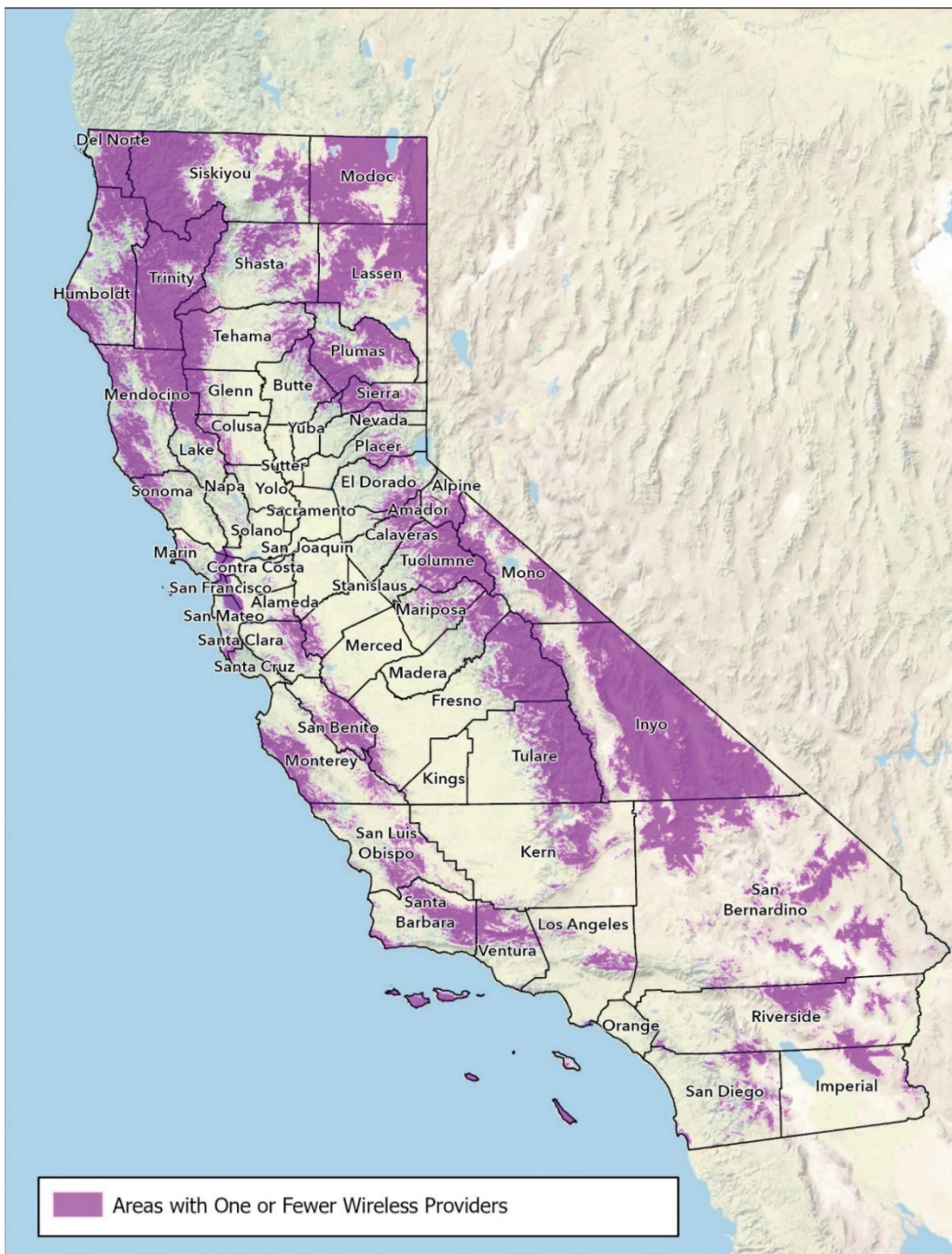
Cal Advocates analyzed CalSPEED data to find areas with one or no wireless service providers. A map of these areas is shown in Figure 1. Cal Advocates also analyzed CalSPEED data using a speed threshold to find areas that are served with slow speeds, defined as less than 1 megabit per second (Mbps), which is depicted in Figure 2.⁶⁷ Cal Advocates notes that the California Advanced Services Fund’s (CASF) defines speeds under 6 Mbps downstream as “unserved.”⁶⁸ The download speed threshold used by Figure 2 is conservative in that it shows areas that are served by wireless speeds at 1 Mbps, significantly slower than the download speeds that would be considered “unserved” by CASF.

⁶⁶ Comments Invited on Section 214 Application(s) to Discontinue Domestic Non-Dominant Carrier Telecommunications Services, Federal Communications Commission, January 13 2020. <https://docs.fcc.gov/public/attachments/DA-20-56A1.pdf>

⁶⁷ CalSPEED’s reporting defines slow speeds as 0.7 Mbps or less, but CalSPEED’s map data does not use 0.7 Mbps as a speed tier break; the closest speed tier break is at 1 Mbps.

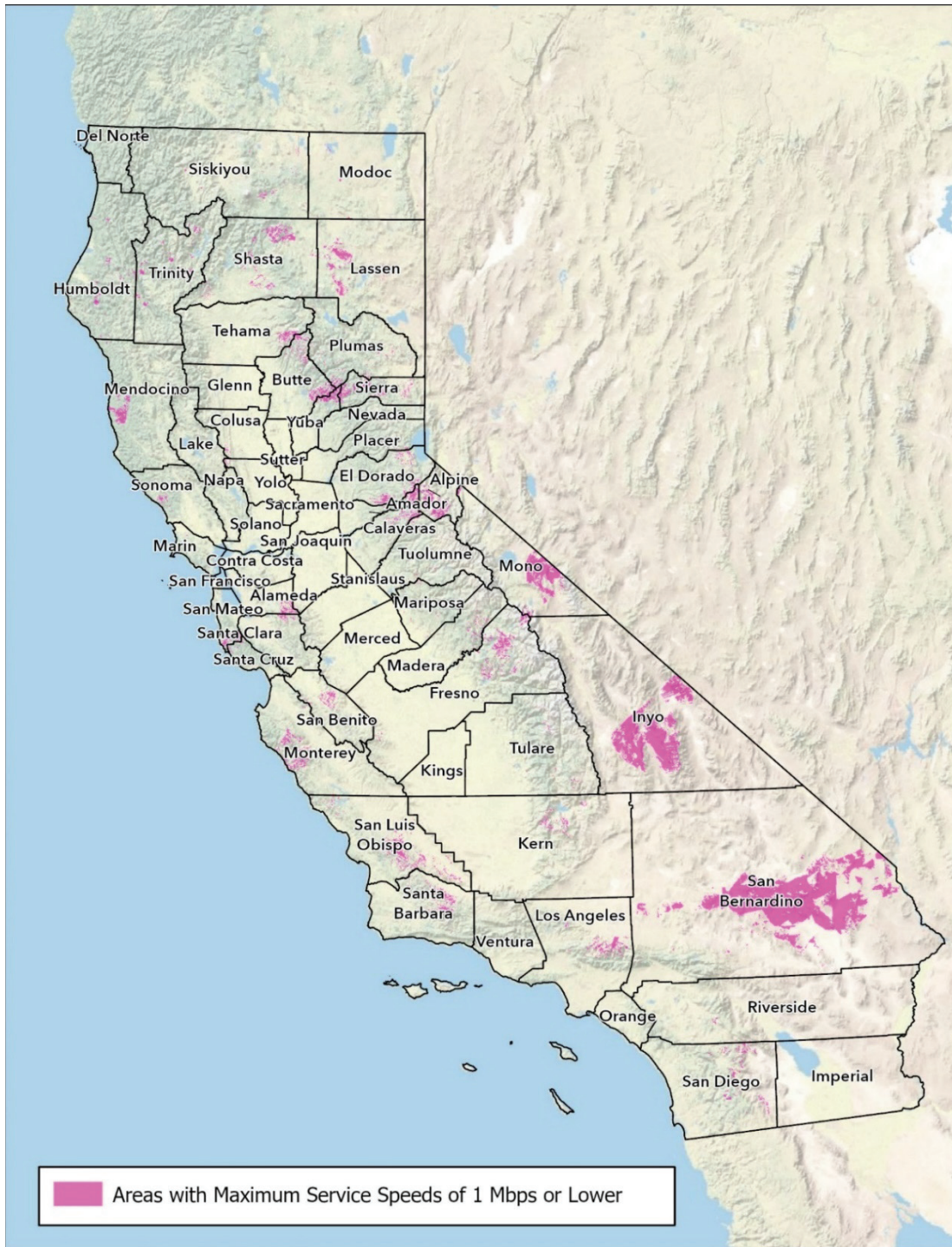
⁶⁸ California Public Utility Code Section 281.

Figure 1: Areas with One or Fewer Wireless Providers⁶⁹



⁶⁹ Map created by CalAdvocates using CalSPEED Spring 2017 data provided to Cal Advocates by the Communications Division.

Figure 2: Areas with Maximum Service Speeds of 1 Mbps or Lower⁷⁰



⁷⁰ Map created by Cal Advocates using CalSPEED Spring 2017 data provided to Cal Advocates by the Communications Division.

These maps show that places like Bonny Doon, Arnold, Grass Valley, Big Sur and Caspar, among others, have limited access to wireless communications.

In CAB complaints made during October 2019 PSPS events, customers from several different communities, including many of which are outlined in figures 1 and 2, stated that they do not have reliable wireless service and solely rely on wireline during emergencies. For instance, one customer from Grass Valley stated that “whenever the public utility power goes off, the Comcast "landline" telephone service fails. I live in an area without cellular mobile coverage, so the telephone is my lifeline for wildfire alerts and health issues. As a regulated service it seems that Comcast needs to install backup power, especially since our utility turns the power off regularly in Northern California. I have called Comcast around 8 PM on October 26. They said there is no backup power and so the service will be down until the utility power comes back.”

Another wireline customer who lives in Nevada City stated “On Sept. 25, at approximately 7:30 pm both POTS and DSL connectivity went down. We attempted to contact AT&T with no response. At this time - with 6 hours to another PSPS that could last over 72 hours and a high wind event resulting in extreme fire danger - we have learned that the outage appears to affect several hundred AT&T customers. Due to topography, there is no cell service available. In case of a wildfire or medical emergency residents won't be able to contact 911 or receive emergency notifications.”

Another wireline customer living in Montara stated “we rely upon Comcast for all forms of telecommunications (TV, internet, cellphone via femtocell and VOIP). Comcast does not have a redundant fiber connection to the San Mateo Coast and its sole link (follows the Highway 92 corridor) is subject to regular breaks. When the fiber is cut, all service goes down. This also impacts other forms of telecommunication for many[who] lease capacity on Comcasts fiber to backhaul payload. The next problem is that NONE of the major Cellular carriers on the coast provide adequate coverage to places such as Montara. If you travel more than 500 yards inland from Highway 1, you'll find that much of Montara is a cell phone dead zone. The last problem is that with

power outages that last more than a few hours all Comcast service goes down. When Comcast goes down during a power outage or fiber break, we residents have no way to contact 911, 211 let alone be contacted by the San Mateo County Emergency Service notification system.”

The August 2020 wildfires illustrate the importance of ensuring that wireline service providers maintain reliable networks. Lisa Michel of Bonny Doon, California wrote to Cal Advocates that “as I write this, Bonny Doon and Boulder Creek are being evacuated. The call came via cell phone. I did not get it until 8 hours after I should have evacuated - I heard from a friend. How many people are in Bonny Doon right now and not evacuating because they do not know?”⁷¹

Californians in areas with limited wireless service are reliant on cable providers, such as Comcast, or Incumbent Local Exchange Carriers (ILECs) for communications. However, Ms. Michel writes that in Bonny Doon “AT&T [refuses] to reinstate landlines after a customer moved or temporarily closed an account.”⁷² In areas with limited wireless connectivity, wireline networks can be the only functioning communication network. Cal Advocates finds Ms. Michel’s experience illustrative of the necessity of reliable wireline communications networks.

In opening comments, Comcast wrote that:

“[E]ven if it were feasible to maintain wireline service throughout Comcast’s network, the impact on public safety would be negligible. Comcast currently has fewer than <<BEGIN CONFIDENTIAL>> [REDACTED] <<END CONFIDENTIAL>> residential voice customers in Bonny Doon. According to census data, Bonny Doon has 1,086 households and a total population just over 3,000. Thus, Comcast’s voice customers account for <<BEGIN CONFIDENTIAL>> [REDACTED] <<END CONFIDENTIAL>> of the households in Bonny Doon. An

⁷¹ Email received by Cal Advocates “landlines and emergencies in santa cruz [sic] mountains (R.18-03-011).” August 19, 2020.

⁷² Ibid.

extended backup power mandate for Comcast’s network, even if it were feasible and even if every voice customer of Comcast had adequate home backup power, would have hypothetical benefit for <<BEGIN CONFIDENTIAL>> [REDACTED] <<END CONFIDENTIAL>> of the community’s residents while imposing significant costs and burdens on California consumers.”⁷³

Comcast has a dismissive interpretation of “negligible impact on public safety”⁷⁴ Comcast’s cavalier dismissal of having a reliable and operational communications networks for less than <<BEGIN CONFIDENTIAL>> [REDACTED] <<END CONFIDENTIAL>> of an entire community is alarming. Timely emergency notifications can be the difference between safe evacuation and death during a wildfire. Comcast cites “costs and burdens” as a reason for not maintaining wireline service.⁷⁵ To quote Ms. Michel: “[t]hat is unconscionable. This is the kind of money saving nonsense that caused us to lose Paradise, CA and Santa Rosa, CA.”⁷⁶ Cal Advocates agrees. The lack of backup power requirements for wireline networks, especially in communities with insufficient wireless service put the public at heightened risk during emergencies.

D. FCC Battery Backup Requirements

Cox recommends in its Opening Comments that the Commission use the FCC’s Backup Power Order to inform the development of wireline service providers’ network backup power requirements.⁷⁷ Cal Advocates submits that this is not reasonable, and should be rejected. The FCC Backup Power Order required wireline service providers to offer their customers batteries to provide backup power for customer premises equipment. However, many wireline customers are unaware of the opportunity to

⁷³ Comcast Opening Comment, pp. 39-40.

⁷⁴ Ibid, p. 39.

⁷⁵ Ibid, p. 40.

⁷⁶ Email received by Cal Advocates “landlines and emergencies in santa cruz [sic] mountains (R.18-03-011).” August 19, 2020.

⁷⁷ Cox Opening Comments, p. 18.

purchase battery backup from their wireline service providers, so these devices may be underutilized.

For example, data from a recent Charter customer satisfaction survey shows that

<<BEGIN CONFIDENTIAL>> [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] <<END CONFIDENTIAL>>⁷⁸ which confirms that some Californians

are obtaining backup power from sources other than their wireline providers. However relatively few Californians, fewer than 47,000, have bought backup batteries from AT&T, Comcast, Cox and Charter (see Table 3).

Table 3: Customer Batteries Sold by Wireline Service Provider⁷⁹

<<BEGIN CONFIDENTIAL>>

Batteries Sold	AT&T	Charter	Comcast	Cox	Total
8 Hour	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	30,669
24 Hour	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	15,995
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	46,664

<<END CONFIDENTIAL>>

The number of customer premise equipment batteries sold should not be used as an indication of the number of Californians that can operate their devices on backup power following a power outage. As outlined in Cal Advocates’ Opening Comments,

⁷⁸ Spectrum. California Customer Satisfaction Survey. Quarter 1, 2020.

⁷⁹ Wireline Service Provider Responses to Cal Advocates DR 4, AT&T’s Opening Comments on the Assigned Commissioner and Administrative Law Judge’s Ruling Requesting Comments on Wireline Provider Resiliency Strategies, August 12, 2020, p. 33. Per AT&T’s comments: “these numbers likely far overstate the number of batteries sold to AT&T’s California customers.”

there are many other ways Californians are preparing their homes and communities with backup power to ensure their telecommunication devices work during power outages, including backup power sources and microgrids.⁸⁰

IV. ADDITIONAL CONSIDERATIONS

A. Wireline Service Providers Should Notify Customers When There is an Emergency, Power Outage, or Service Outage

As noted in many public comments made in the R.18-03-011 docket, customers must be notified when there is an emergency or power outage that may impact their telecommunication service. A CAB complaint made by customer in Santa Cruz clearly states the importance of these notifications. “My neighborhood is experiencing a Comcast outage. We have power but no Internet TV or Comcast phone service since something like eight or nine this morning, Sunday October 27. [Comcast] provide[d] zero information about the nature of the outage and what it will take to repair it, and certainly no ETA [of service restoration]... They have a text messaging service and could push this information out to me but don’t.” The Commission should require wireline service providers to immediately start notifying customers when emergencies or outages will impact their service within and outside of HFTDs before backup power requirements are adopted and implemented.

B. Wireline Service Providers Should Reimburse Customers for Lost Service and Allow Customers to Cancel Contracts

Customers should be reimbursed for services they have not received due to wireline service providers’ inadequate resiliency measures during power shutoffs and emergency events. Wireline service providers should also be required to allow customers to cancel contracts without penalty if they have experienced inadequate or impaired service during emergency events. Several customers have stated that they have

⁸⁰ Cal Advocates Opening Comments, pp. 17-18.

not been reimbursed for service they did not receive, and they have been charged fees to cancel service with companies that have not provided adequate service during PSPS events and emergencies. For instance, one customer in Half Moon Bay stated that “Comcast said it is not [their] problem [and] I do not get credit for time they cannot provide service. [I]f I want to change to a provider that does provide service when PG&E is down [Comcast] want[s] an early termination penalty.”

V. CONCLUSION

It is a matter of public health and safety for the public to call 9-1-1 and 2-1-1, receive emergency notifications, and access emergency information on the Internet. It is crucial to ensure wireline communications networks operate during power outages. The Commission should apply the D. 20-07-011 resiliency requirements to wireline service providers with limited modifications, and plan to expand the scope of the resiliency requirements outside of Tier 2 and Tier 3 HFTDs.

Respectfully submitted,

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