

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



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Order Instituting Rulemaking Regarding
Emergency Disaster Relief Program.

R.18-03-011
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**AT&T'S OPENING COMMENTS ON PROPOSED DECISION
ADOPTING WIRELINE PROVIDER RESILIENCY STRATEGIES**

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Pursuant to Rule of Practice and Procedure 14.3, AT&T¹ submits these opening comments regarding the *Proposed Decision Adopting Wireline Provider Resiliency Strategies* issued by President Batjer on January 7, 2021 in this proceeding (“PD”).

I. INTRODUCTION

AT&T supports the PD’s approach to resiliency, which appropriately acknowledges the need for adaptation and flexibility to accommodate the many ways providers must prepare for and respond to disasters, and importantly includes the concept of recovery. The proposed definition of resiliency recognizes that it is impossible to harden a network against all possible disruptions, including those that can be caused by widespread disasters and extended or broad power shutoffs. Equally important, the PD recognizes that the deployment of limited recovery resources, both personnel and equipment, should be prioritized to maximize the public benefit and to meet the urgent needs of public safety partners and vulnerable communities. Thus, it is critical that any wireline resiliency requirements accommodate this imperative and accord wireline carriers the necessary flexibility to adapt to the specific circumstances of each disaster and shutoff and deploy their resources with a focus on meeting the safety needs of their customers.

As explained below, AT&T respectfully requests that the PD be clarified to build upon this necessary flexibility to accommodate additional circumstances. For example, any resiliency requirements should not require the deployment of backup generators in local communities whose governing bodies oppose such deployment for various reasons, including concerns with possible fire ignition, noise, air emissions or aesthetics. These concerns are heightened when portable generators may be placed in the public rights-of-way or neighborhoods, which is necessary to support many wireline facilities. It also is important to allow AT&T to prioritize facilities and locations that public safety partners and others identify, including areas with less adequate wireless service. In some circumstances, the deployment of portable assets is objectively impossible due to conditions that are beyond the wireline service provider’s control. For example, roads may be closed by landslides or areas may be in the path of an uncontrolled fire, in which case deploying generators may introduce additional flammable material into the area. Generally, wireline carriers must have unambiguous

¹ Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) and its affiliates AT&T Corp. (U 5002 C); and Teleport Communications America, LLC (U 5454 C) are collectively referred to as “AT&T.”

discretion to adapt and deploy their limited personnel and equipment resources where their deployment supplies the maximum possible benefit to public safety.

Accordingly, AT&T respectfully requests that the PD be modified to recognize that wireline providers maintain the flexibility to respond to disasters and shutoffs in a manner that prioritizes critical facilities and takes local circumstances into consideration, including local input regarding the appropriate response, coordination with other public safety partners, the degree of wireless service adequacy in the area and other prevailing situations.² The flexibility to engage in such prioritization is necessary to prevent pursuit of the perfect from being the enemy of the good.

II. DISCUSSION

A. DEFINITION OF RESILIENCY

AT&T supports the PD's definition of resiliency, which it summarizes as:

Resiliency shall be defined as the ability to recover from or adjust to adversity or change through an array of strategies including, but not limited to, backup power, redundancy, network hardening, temporary facilities, communication and coordination with other utilities, emergency responders, the public and finally, preparedness planning.³

By accommodating the “ability to recover,” this definition acknowledges, as it must, that regardless of the amount of planning, investment and effort expended, it is not possible to anticipate and fortify networks to withstand every possible disaster. The inherent unpredictability of disasters requires that a variety of strategies be employed to best prepare for all possible events. Even then, as the PD acknowledges, “these measures are not foolproof – ... no matter how many strategies are employed sometimes, because of their scale, disasters will cause severe service disruption.”⁴ Importantly, the PD emphasizes that “[w]e must continue to evolve to meet these challenges...”⁵

B. THE NEED FOR A PRIORITIZED RESPONSE

AT&T supports this adaptive and evolving approach to resiliency, which is necessary to address the relentless challenges posed by disasters and power shutoffs in California. A prioritized

² AT&T proposes specific language to this effect in the attached proposed Findings of Fact and Conclusions of Law.

³ PD at 31.

⁴ PD at 33.

⁵ PD at 34.

response is necessary because it would be impossible, as a practical matter, to ensure that all facilities maintain service at all times during all disasters and shutoffs. Moreover, prioritization is appropriate because the near ubiquity of wireless coverage radically reduces the need for and utility of wireline backup power in some areas, and a large portion of any effort to back up the wireline network will be futile because most customers do not have the backup power they need at their premises to ensure their wireline service will work. Wireline resiliency must be designed with these realities in mind.

1. Ensuring No Facilities Go Out of Service Is a Practical Impossibility.

Given the myriad of factors that may occur during disasters and power shutoffs, which occur primarily in high-fire threat areas during times of extreme fire risk, it is a practical impossibility to ensure that a portable generator is up and running at each and every site before the battery exhausts. Moreover, AT&T agrees with the PD that it is “unlikely that every site on an individual network would be down at the same time.”⁶ Thus, the PD acknowledges that it would be unreasonable to expect providers to have sufficient resources on hand at all times to provide portable generation at every site on their network. That would require a massive number of fossil-fuel generators and workforce—most or all of which would be idle for the vast majority of days of every year while waiting for the extremely unlikely power outage that covered every facility in a provider’s network. This would be an enormous waste of resources that could and must instead be put towards useful purposes, such as deploying additional broadband capabilities. Such an unreasonable expectation would be particularly infeasible for providers such as AT&T that operate wireline and wireless networks across multiple electric company service territories.

2. The Massive Resources Required for Ubiquitous Wireline Backup Would Reap Limited Benefits.

Any effort to ensure that absolutely no wireline facilities ever go down would reap only limited benefits in exchange for the massive, and indeed impractical, amount of resources required. Especially in the context of emergencies, wireline service is largely a supplement to wireless service, which is better suited to emergency communications. Moreover, the vast majority of wireline customers do not have the backup power at their premises necessary for wireline service to work, rendering any effort to back up the wireline network futile with respect to those customers. Finally,

⁶ PD at 53.

the electric companies are working to limit the frequency, scope and duration of power shutoffs, which will make any massive buildup of generators and workforce an obsolete, wasted effort and investment.

a. Existing Wireless Coverage Radically Reduces the Benefit of Blanket Portable Generator Coverage.

In addition to being impossible as a practical matter, any requirement to ensure that no wireline facilities go down would be of limited benefit. 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 3.3% of California households rely exclusively on wireline service.⁷ The Commission has already established a resiliency approach for wireless services,⁸ which are better suited for emergency communications given their inherent mobility and the ability of equipped phones to receive Wireless Emergency Alerts (“WEAs”).⁹ The National Emergency Number Association reports that more than 80 percent of 9-1-1 calls originate from mobile phones.¹⁰ Moreover, while the design of wireless service does not require power at the customer premises, customer premises power is required for most wireline services to work. As discussed below, a small percentage of California households is equipped to use wireline services during a power outage. Customers do not require two separate and independent methods of communication and access to the internet in a power outage or fire. AT&T agrees that the 3.3% of wireline-only customers must be cared for, and wireline providers should be allowed to focus their resiliency efforts on those communities that are in greater need because they have less adequate wireless coverage.

⁷ See National Center for Health Statistics, *National Health Interview Survey Early Release Program* (Dec. 2019), https://www.cdc.gov/nchs/data/nhis/earlyrelease/Wireless_state_201912-508.pdf.

⁸ See *Decision Adopting Wireless Provider Resiliency Strategies*, Decision (D.)20-07-011 (July 16, 2020).

⁹ *Declaration of Peter B. White in Support of AT&T’s Opening Comments on The Assigned Commissioner’s Ruling and Proposal* (“April 3, 2020 Declaration of White”), Rulemaking (R.)18-03-011, para. 3 (April 3, 2020).

¹⁰ See *9-1-1 Statistics*, NENA The 9-1-1 Association, <https://www.nena.org/page/911Statistics> (last visited Jan. 27, 2020).

b. The Vast Majority of Wireline Customers Do Not Have Backup Power at Their Premises.

The lack of backup power at customer premises would severely limit the public benefit of any wireline backup power requirement for the 3.3% of California households relying exclusively on wireline service.¹¹ This limited public benefit, combined with the impossible undertaking of attempting to provide ubiquitous 72-hour backup power in AT&T's wireline network, render any such requirement unreasonable.

Many wireline services require power at the customer premises in order to function. Broadband service includes the use of a modem at the customer's premises, and that modem must be powered at the customer's premises—either by commercial or backup power.¹² Most customers use WiFi to connect their computer to their internet service, and the WiFi router also relies on power at the customer's premises.¹³ Further, if the customer is using a desktop computer to access the internet, that computer also will require power at the customer's premises.¹⁴ Thus, there are numerous pieces of equipment involved in providing internet access that require power at the customer premises, and the failure of a customer to provide backup power for any of them will prevent the customer from accessing the internet during a power failure—regardless of how much backup power is installed in the wireline broadband network.

VoIP service also requires power at the customer's premises. VoIP runs over broadband service, so again there must be commercial or backup power at the customer's premises for the broadband modem and any WiFi router. In addition, VoIP customer premise equipment requires power at the customer's premises. Even though VoIP customers receive annual notice of the need for backup power, only a very small percentage (perhaps 3% or less) purchase such power for their

¹¹ *Declaration Of Jeff Luong In Support Of At&T's Comments On The Assigned Commissioner And Administrative Law Judge's Ruling on Wireline Provider Resiliency Strategies* ("August 12, 2020 Declaration of Luong"), Rulemaking (R.)18-03-011, para. 5 (Aug. 12, 2020).

¹² *Comments of Cox California Telcom, LLC d/b/a Cox Communications (U-5684-C) on Assigned Commissioner's Ruling and Proposal*, Rulemaking (R.)18-03-011, at 14-15 (April 3, 2020); Opening Comments of Charter Communications, Inc. on the Assigned Commissioner's Proposal, Rulemaking (R.)18-03-011, at 8-10 (April 3, 2020).

¹³ August 12, 2020 Declaration of Luong, para. 18.

¹⁴ Laptop computers will hold out as long as their batteries last, but few (if any) have 72-hour batteries.

VoIP service.¹⁵ Finally, an overwhelming majority of residential phone customers now use cordless phones, which also require power at the customer's premises.¹⁶

Even traditional telephone service often requires backup power at the customer's premises to operate. All traditional telephone service customers with cordless phones must have power (commercial or backup) at their premises for their cordless phones to operate. As noted above, that is an overwhelming majority. And when service is provided over fiber optic facilities, the optical network terminal at the customer's premises will also require power.¹⁷

Regardless of the type of wireline service, it is highly likely that the customer will require either commercial or backup power at their residence for the service to operate. Currently, only a small portion of California residences have backup power, and few (if any) have backup power that will last for 72 hours.¹⁸ Although there may now be increased interest in the installation of residential generators, even with that increase it is likely to take decades for any material number of households in California to have residential power backup.¹⁹ This lack of residential backup power significantly limits the public benefit of any wireline backup power requirements.

¹⁵ The National Cable and Telecommunications Association has commented on the percentage of customers actually purchasing a battery backup for their VoIP service, stating: "[b]ased on information gathered from some of NCTA's larger members, the percentage of new voice customers electing to purchase a backup battery is not more than three percent, and for some companies it is less than one percent." *Comments Of The National Cable & Telecommunications Association*, PS Docket No. 14-174, at 8 (Feb 5, 2015), available at: <https://ecfsapi.fcc.gov/file/60001026792.pdf>.

¹⁶ See *Consumer Electronics Association, Digital America: State of the U.S. Consumer Electronics Industry I*(2013), available at <http://www.ce.org/News/Publications/Digital-America.aspx>. The CPUC has previously recognized the limitations of wireline service during power outages, commenting in the FCC's *Backup Power* proceeding that "[t]he CPUC's advocacy division, the Office of Ratepayer Advocates, has obtained information showing that the 'take rate' for cordless phones vastly outstrips new purchases of corded phones. Cordless phones also are not self-powered and fail during a power outage." *Comments of the California Public Utilities Commission* PS Docket No. 14-174, at 4 (Feb 5, 2015), available at: <https://ecfsapi.fcc.gov/file/60001036811.pdf>.

¹⁷ August 12, 2020 Declaration of Luong, para. 18.

¹⁸ See <https://handymansworld.net/how-long-can-generator-run-continuously/>. Moreover, any effort to encourage Californians to install more backup power at their homes must be carefully designed to ensure that the backup power used does not, itself, create safety hazards (e.g., portable generators and stored fuel)

¹⁹ *AT&T's Reply Comments on the Assigned Commissioner and Administrative Law Judge's Ruling Requesting Comments on Wireline Provider Resiliency Strategies*, Rulemaking (R.)18-03-011 at 10 (Aug. 21, 2020).

c. California's Electric Companies Are Working to Limit Power Shutoffs

California electric companies are implementing measures to reduce the frequency, scope and duration of power shutoffs and the Commission is working to ensure this improvement continues. California's electric companies should not be allowed to "outsource" their obligation to provide reliable and safe power to other entities, such as communications providers. Power shutoffs have effects that reach far beyond communications networks, and can cause major disruptions to residences, businesses, medical facilities, water companies and other critical infrastructure. Reducing their frequency, scope and duration would benefit all Californians. AT&T has assisted California's power companies by offloading power from the grid when requested, and the electric companies should in turn be required to assist AT&T and other communications providers by minimizing and eventually eliminating the need for power shutoffs.

3. Examples of Needed Flexibility and Prioritization

Because it is impossible to prevent all outages, and the resources that would be required to attempt this impossible task would be massive and largely wasted, it is critical that wireline providers be allowed the continued flexibility to prioritize their response to disasters and power outages. Wireline carriers must be given the flexibility and discretion to adapt to each specific disaster and shutoff, and to deploy their limited resources (personnel and equipment) where they are wanted and where public safety is best enhanced. The PD already recognizes the need to prioritize, but AT&T respectfully requests the PD be clarified to provide greater flexibility to providers so they can better manage their limited resources. Primarily, the wireline focus should be on those critical customers that have made the necessary investment to take advantage of backup power deployed in the network, such as hospitals, police departments, fire departments, etc. But there are too many possible unique conditions to identify them all in advance. Some additional examples of how providers require flexibility are identified below, but these are only examples. It is necessary to preserve some general flexibility to consider situational awareness of local conditions.

a. Local Government Requests

AT&T should not be forced to deploy or activate generators in communities that oppose their use. Many of the wireline facilities in AT&T's network that require support by portable generators²⁰ are in the public rights-of-way in residential neighborhoods. In recent months, several communities have asked AT&T to either remove or turn off its generators due to complaints about noise and aesthetics, even when AT&T informed community leaders that their residents may lose service as a result. Community leaders indicated the complaints about noise were more concerning than potential lost service. This is perhaps additional confirmation that consumers largely look to their mobile devices for emergency purposes. AT&T should not be required to deploy portable generators in communities that do not want them. Nor should AT&T be put in the untenable position of having to choose between complying with a Commission requirement and responding to strong customer opposition and complaints.

b. Critical Facilities and Services

When a power shutoff or disaster strikes, AT&T's current practice is to prioritize critical facilities that are likely to have the necessary backup power at their premises to ensure continued service, such as fire stations, police departments and other public safety facilities. In addition, as required by the FCC, AT&T offers priority restoration services for such facilities.²¹ AT&T respectfully requests that any wireline resiliency measures continue to allow this important prioritization.

c. Wireless Coverage

One of the local circumstances AT&T considers when prioritizing its disaster response is the adequacy of wireless service in the area. As noted above, wireless service is nearly ubiquitous and has characteristics that make it superior to wireline services for emergency response applications, including inherent mobility and the fact that wireless handsets do not, by design, require commercial power at the customer premises. Thus, Californians should be encouraged to utilize wireless devices

²⁰ As AT&T noted in prior comments, it is not possible to support these sites with 72 hours of batteries. *See AT&T's Opening Comments on the Assigned Commissioner and Administrative Law Judge's Ruling Requesting Comments on Wireline Provider Resiliency Strategies*, Rulemaking (R.)18-03-011 at 10-11 (Aug. 12, 2020).

²¹ *See* Telecommunications Service Priority, FCC.GOV, <https://www.fcc.gov/general/telecommunications-service-priority> (last visited, Jan. 27, 2021)

for emergency response purposes. However, in some areas wireless service may not be adequate for this purpose, those areas should receive prioritized attention from wireline providers because they are more likely to require wireline services for emergency communications.

AT&T currently prioritizes such areas for wireline backup power deployment. For example, AT&T has prioritized wireline backup in the community of Bonny Doon, which was previously identified as having wireless coverage gaps. This prioritization should continue. Any requirement that all wireline facilities be given equal priority would, in effect, deprioritize areas like Bonny Doon. The “prioritization” of all facilities would, in reality, prioritize none.

d. Other Local Circumstances

In pre-positioning generators and other resources, AT&T also takes into consideration the area’s history of power outages and any local hazardous conditions, such as existing fires, landslides, etc. The flexibility to consider these conditions is necessary to preserve life and property. AT&T should not be forced to roll portable generators into, or refuel, an area that is currently experiencing a wildfire or in the imminent path of a wildfire.

There are too many possible conditions to foresee them all. Thus, it is necessary to preserve some general flexibility to rely upon situational awareness to consider local conditions. Such flexibility is like that given electric companies to address local conditions in determining whether to shut off power.

C. APPLICABILITY TO BROADBAND AND VOIP SERVICES

AT&T respectfully notes that the PD proposes some requirements the Commission does not have the legal authority to impose.²² The proposal to include “basic internet browsing” within the definition of “minimum service levels”²³ and the application of requirements to broadband and

²² Some of the proposed requirements are similar to those proposed by the Public Advocates Office last year and in the Assigned Commissioner’s Ruling and Proposal, filed on March 6, 2020 (hereinafter, “March 6 Proposal”). In response, AT&T explained why these proposed requirements exceed the Commission’s jurisdiction, and AT&T incorporates those objections by reference here. *See AT&T’s Opposition to Motion by the Public Advocates Office for an Immediate Order* (“AT&T Opposition to PAO Motion”), Rulemaking (R.) 18-03-011, at 42-62 (June 19, 2019); *see also, AT&T’s Opening Comments on the Assigned Commissioner’s Ruling and Proposal*, Rulemaking (R.) at 6-8 (April 3, 2020).

²³ PD at 57.

Voice over Internet Protocol (“VoIP”) services²⁴ would extend beyond the Commission’s state law jurisdiction²⁵ and be federally preempted. It would unlawfully impose state regulation on broadband service, a well-established interstate information service.²⁶ To the extent the PD 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.²⁷ Nonetheless, AT&T is committed to working collaboratively with the Commission to continuously improve the resiliency of its services during these unprecedented times.

D. FILING OF RESILIENCY PLAN

Draft Ordering Paragraphs 1 and 2 would require wireline providers to file a “Communications Resiliency Plan” that “describes how the wireline providers shall maintain a minimum level of service and coverage”²⁸ and “assure[s] the Commission and emergency responders at all levels of government that the wireline providers transparently and thoughtfully plan

²⁴ Although the PD is not entirely clear, these comments assume that the proposed applicability to “wireline providers” includes providers of both broadband and VoIP services. *See* PD at 24, 57, Conclusion of Law 3.

²⁵ Under California law the Commission has the authority to regulate a “public utility,” which includes a “telephone corporation.” (Pub. Util. Code Section 216(a).) “Telephone corporation” is in turn defined in relation to “telephone line[s],” which are those operated in connection with, or facilitating, “communication by telephone....” (*See* Pub. Util. Code Sections 233, 234(a).) The capabilities of broadband and VoIP services extend far beyond “communication by telephone” and thus are not within the Commission’s general public utility law jurisdiction.

²⁶ *See U.S. Telecom Ass’n v. FCC*, 825 F.3d 674, 730-31 (D.C. Cir. 2016) (approving the FCC’s conclusion that “broadband service falls within its jurisdiction as an interstate service”); *MediaOne Grp., Inc. v. County of Henrico*, 257 F.3d 356, 365 (4th Cir. 2001) (the FCC “has jurisdiction over all interstate communications services, including high-speed broadband services”). *Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, 746 F.2d 1492, 1498 (D.C. Cir. 1984) (citing 47 U.S.C. § 151). *See W. Union Tel. Co. v. Boegli*, 251 U.S. 315, 316 (1920) (holding that statutory provisions bringing telegraph companies under the Act to Regulate Commerce and placing them under the exclusive control of the Interstate Commerce Commission “so clearly establish the purpose of Congress to subject such companies to a uniform national rule as to cause it to be certain that there was no room thereafter for the exercise by the several states of power to regulate”). *See also* AT&T Opposition to PAO Motion at 57-60.

²⁷ *Charter Advance Servs. (MN), LLC v. Lange*, 903 F.3d 715, 719 (8th Cir. 2018). *Id.* at 720. The FCC has also expressly acknowledged its “active role in VoIP regulation” and its interest in “allow[ing] the FCC to offer a solution that would apply nationwide and avoid the risk that VoIP providers will be subject to a patchwork of different and potentially conflicting rules across more than 50 different state and local jurisdictions.” Br. of FCC as Amicus Curiae in Supp. Plaintiffs-Appellees at 20, 26, *Charter Advanced Servs.*, 903 F.3d 715 (No. 17-2290), 2017 WL 4876900. *See also VoIP Coalition Application for Rehearing of Decision 19-08-025, Decision Adopting an Emergency Disaster Relief Program for Communications Service Provider Customers*, Rulemaking (R.)18-03-011 (Sep. 23, 2019).

²⁸ PD, Ordering Paragraph 1, at 99.

for wildfire and de-energization adversity in advance to protect the public health, safety, and welfare of California.”²⁹ While the Communications Division “shall develop reporting templates as well as a submitted schedule for the Communications Resiliency Plan within 60 days from the adoption of the decision,”³⁰ the PD explains the requirements and submission of the Resiliency Plan are “not an effort by the Commission to micromanage the wireline providers’ operations.”³¹

Although the PD disavows any attempt to “micromanage,” the PD orders the filing of the Resiliency Plan “via [a] Tier 2 Advice Letter”³² without explanation or justification. Tier 2 Advice Letters are appropriate for matters that require staff review and approval;³³ however, other than ensuring providers’ Resiliency Plans contain the required elements, which will be set out in templates, there is nothing for staff to review and approve. A Tier 2 Advice Letter is thus not the appropriate method for submitting the Resiliency Plans. As the PD explains, the Resiliency Plans are to show the Commission that providers have “thoughtfully plan[ned] for wildfire and de-energization adversity in advance to protect the public health, safety, and welfare of California.”³⁴ The submission of the Resiliency Plans squarely meets the definition of an “Information-only Submittal” set out in General Rule 3.9 of General Order 96-B:

“Information-only Submittal” means an informal report, required by statute or Commission order, that is submitted by a utility to the Commission, but that is not submitted in connection with a request for Commission approval, authorization, or other relief. “Information-only Submittal” includes both periodic and occasional reports.³⁵

Consequently, the PD errs by proposing to require the Resiliency Plans to be submitted as Tier 2 Advice Letters subject to Communications Division disposition. At most, the Resiliency Plans could be submitted as Tier 1 Compliance Advice Letters as provided for in Rule 7.1(3) of the Telecommunications Rules in GO 96-B and as similarly adopted by D.19-08-025 for providers’ provision of the Commission’s consumer assistance requirements following a declared state of emergency resulting in disrupted or degraded utility service.

²⁹ PD at 69.

³⁰ *Id.*, Ordering Paragraph 2, at 100.

³¹ *Id.* at 68.

³² *Id.*, Ordering Paragraph 1, at 99.

³³ GO 96-B, Telecommunications Industry Rule 7.2. – Matters Appropriate to a Tier 2 Advice Letter.

³⁴ PD at 69.

³⁵ GO 96-B, General Rule 3.9 – Information-only Submittal.

E. EMERGENCY OPERATIONS PLAN

The Proposed Decision “direct[s] the wireline providers to submit the following information to the Commission’s Communications Division Director, CalOES, and local emergency response managers within their service territory within 60 days of the effective day of this decision, in an information only filing, that contains the wireline provider’s: (1) emergency operations plan; (2) emergency contact information; (3) emergency preparedness exercise attestation; and (4) public communications plans.”³⁶ AT&T supports providing the foregoing information to the Commission (in an Information-only Submittal as specified in the Proposed Decision), Cal OES, and local emergency response managers.

AT&T is concerned about a new requirement that the Commission did not mandate for the wireless providers in D.20-07-011 – to “require customers update their contact information used to receive emergency and outage notices in advance of fire season each year.”³⁷ AT&T has no enforcement mechanism to “require” customers to undertake such efforts. AT&T suggests that the wireline carriers be required to “remind” customers to update their contact information, in the annual notification required by this Proposed Decision.

AT&T is also concerned about one aspect of the Proposed Decision’s requirement for public communications plans, which includes a directive that “as soon as reasonably possible, at the onset of a disaster or PSPS event, each wireline provider shall post on its website, and update at least daily, a map of outages and service impacts, a description of any outage impacts in the specified areas, and the expected restoration time.”³⁸ The requirement to provide an “expected restoration time” presents substantial difficulties. Reporting “expected restoration time” is extremely difficult given the fluidity of PSPS and disaster events. For PSPS events, footprints change frequently leading up to a power shutdown. With each change, AT&T must completely reassess the deployment of its assets (*e.g.*, personnel and generators that have been pre-staged and that are planned for deployment). Each reassessment impacts refueling schedules, deployment times based on current traffic conditions, possible road closures, and battery discharge rates based on real-time power consumption, among other factors. For both PSPS and disaster events, there are simply too many variables, most of which are based largely on real-time environmental factors, to provide anticipated

³⁶ PD at 86.

³⁷ *Id.* at 88

³⁸ *Id.* at 88.

outage impacts with any level of confidence. Further, the lack of certainty in those reports raises questions about the value they would have to the recipient agencies. An additional difficulty in requiring reporting during disasters is that providers frequently will not know when commercial power will go out due to damage from the disaster.³⁹ In addition, AT&T's wireline network in California includes thousands of network elements that might be affected by a PSPS or disaster event, and often AT&T is not in control of when service restoral will occur. Depending on the event, AT&T's access to its equipment may be restricted by first responders because of safety issues (such as the proximity of a wildfire); by the lack of access due to the event itself (for example, in the case of a severe earthquake or flood); or if the equipment damage is so extensive that an assessment of the restoral time requires complex analysis and/or vendor support. In the case of a PSPS event, restoral of commercial power may be required, over which AT&T has no control.

Accordingly, AT&T requests that the mandate in Section 5.9.2 of the PD (under Public Communications Plans, at 88) be modified as follows:

- “Next, as soon as reasonably possible, at the onset of a disaster or PSPS event, each wireline provider shall post on its website, and update at least daily, a map of outages and service impacts, and a description of any outage impacts in the specified areas, ~~and the expected restoration time.~~”

III. CONCLUSION

AT&T supports the definition of resiliency in the PD and its flexible approach. The PD appropriately acknowledges the need for adaptation in its recognition of the many ways in which providers must prepare for and respond to disasters. To reinforce this approach, AT&T requests that the PD be modified to more clearly indicate that wireline providers maintain the flexibility to respond to disasters and shutoffs in a manner that prioritizes response efforts based on local conditions, including local government requests, the presence of critical facilities, the adequacy of wireless coverage and other circumstances. AT&T proposes specific language to this effect in the proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs attached as Appendix A.

[Signature page to follow]

³⁹ See *AT&T's Opening Comments on The Assigned Commissioner's Ruling and Proposal*, Rulemaking (R.) 18-03-011, Declaration of Brett Magura, para. 3, (April 3, 2020).

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APPENDIX A

RECOMMENDED CHANGES TO FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

Findings of Fact

1. The Commission initiated Phase I of this proceeding to adopt an emergency disaster relief program for electrical, natural gas, water and sewer, and communications service providers.
2. As part of Phase I, the Commission adopted D.19-08-025, requiring communications providers to implement an array of customer protections when the governor of California or the president of the United States declares a state of emergency.
3. In October and November 2019, widespread reports of communications outages across all communications sectors were reported.
4. D.19-08-025 found that during declared states of emergency, such as in the 2017, 2018, 2019 wildfires and 2019 PSPS, California's facilities-based wireline providers' networks failed, endangering the lives of customers and first responders.
5. Without access to 9-1-1 and the ability to reach first responders, Californians cannot access needed services, be safe, or even function in an emergency.
6. Many individual PSPS events have impacted tens of thousands of customers, with the largest PSPS events taking place on October 9-11 and 26-31, 2019.
7. Resiliency, for purposes of this decision, is the ability to recover from or adjust to adversity or change through an array of strategies including, but not

limited to: backup power, redundancy, network hardening, temporary facilities, communication and coordination with other utilities, emergency responders, the public and finally, preparedness planning.

8. Wireline providers that diligently and adeptly utilize resiliency, and its related strategies, demonstrate that they can maintain and restore service for a portion of their customers during a disaster.

9. Mitigating wireline network disruption through resiliency measures minimizes the likelihood that large numbers of wireline customers will be adversely impacted.

10. A power outage is the period during which a generating unit, transmission line, or other facility is out of service.

11. There is a public need to adopt a narrowly tailored and reasonable backup power requirement for wireline providers during disasters or commercial power outages.

12. Because of climate change, wildfires ~~and PSPS events~~ and other disasters will be part of the future with an expected increase in both frequency and severity.

~~12.13.~~ California electric companies are implementing measures to reduce the frequency, scope and duration of power shutoffs and the Commission is working to ensure this improvement continues.

~~13.14.~~ Customers and first responders have a reasonable expectation that they will be able to call 9-1-1 and 2-1-1, receive emergency alerts and notifications, and access critical information during an emergency, especially when the power is out.

15. There are certain disasters where it will be impossible to maintain wireline service, including during extended commercial power outages.

16. When disasters and commercial grid outage events occur, maintenance of service and restoration should be prioritized in a manner that gives precedence to public safety.

14.17. Some communities may raise objections about the deployment of generators or other backup power within their jurisdictions.

15.18. Without a clear backup power requirement for wireline providers operating in the State of California, the public will be harmed during disasters and commercial grid outage events.

16.19. 72 hours of required backup power ensures wireline customers have access to communication services, receive emergency alerts and notifications, and access the internet for critical information during an emergency, disaster, or when the power is out.

17.20. During the Covid-19 pandemic, the reliance on internet connection has intensified.

18.21. Californians are relying on wireline networks that support voice and internet service to attend school through distance learning, conduct work-from-home, take telehealth appointments, and for public safety during emergencies.

19.22. Decision 20-07-011 found that 80 percent of all calls to 9-1-1 during the 2017 and 2018 wildfires came from wireless devices; therefore, the remaining 20 percent came from wireline networks. However, some portion of that 20 percent likely could have placed their 9-1-1 call using a wireless device.

20.23. On October 28, 2019, over 400,000 wireline subscribers in California lost service.

21.24. Federal Communications Commission Disaster Information Reporting System found that cable and wireline companies reported 454,722 subscribers out of service due to the power shutoffs; this may include the loss of telephone, television, and/or internet service.

~~22.25.~~_____The Commission assessed the backup power currently deployed at wireline facilities in Tier 2 and Tier 3 High Fire Threat Districts and found that approximately 97 percent of wireline facilities have some amount of backup power, while three percent of facilities have no backup power.

~~23.26.~~_____Comcast and Frontier were not prepared during the 2019 public safety power shut off events.

~~24.27.~~_____Comcast lost power at several facilities resulting in service outages that affected a disproportionate number of facilities.

~~25.28.~~_____A significant number of Frontier's remote terminals do not have generators for backup power and are thus, unable to maintain service for 72 hours or any other amount of time in the event of a power outage.

~~26.29.~~_____Deployable generators, including mobile generators, that have capacity to provide 72 hours of backup power present less siting, permitting, and cost difficulties than requiring 72 hours of on-site backup power.

~~27.30.~~_____Minimum service levels and coverage during a disaster or commercial power outage include the following: (1) 9-1-1 service; (2) 2-1-1; and (3) the ability to receive emergency alerts and notifications; ~~and (4) basic internet browsing.~~

~~28.31.~~_____A required Communications Resiliency Plan will ensure the wireline providers transparently describe to the Commission, their ability to maintain: (a) sufficient level of service and coverage to (a) maintain access to 9-1-1 and 2-1-1; and (b) receive emergency notifications; ~~and (c) access internet browsing for emergency notices~~ in the event of a disaster or power outage.

~~29.32.~~_____The Communications Resiliency Plan will ensure collaboration between the Commission and the wireline providers to meet future challenges and will demonstrate that the wireline providers can maintain and restore service during disasters and outages.

~~30.33.~~_____ The Communications Resiliency Plan will help prepare both the Commission and the wireline providers to face emerging challenges and implement key learnings as conditions change and we observe response efficacy and effectiveness.

~~31.34.~~_____ Using fossil fuel generators for backup power reliability and resiliency in the near term is necessary to ensure minimum continuity of service.

~~32.35.~~_____ Fossil fuel generation as a backup power resource cannot be a long-term resiliency strategy.

~~33.36.~~_____ Minimum continuity of service must be available for the public given the dangers associated with widespread, commercial grid outages, including the potential loss of, or damage to, life, health, property, and essential services.

~~34.37.~~_____ An emergency operations plan demonstrates to the Commission how a wireline provider prepares and plans, organizationally, for a disaster or PSPS event.

Conclusions of Law

1. The Commission has jurisdiction over facilities-based wireline telephone service providers, and authority to ensure the reliability of ~~communications~~ telephone networks in emergencies.

2. The State has a duty to ensure the safety of all Californians.

3. ~~The Commission has both the jurisdiction and the authority to require wireline telecommunications carriers, including interconnected voice over internet protocol (VoIP) carriers, to have emergency backup power for a minimum of 72 hours in Tier 2 and Tier 3 High Fire Threat Districts immediately following a commercial grid outage to support all essential communications equipment and minimum service levels for the public.~~

4. The Commission has plenary authority over public utilities, including during emergencies, pursuant to the California Constitution and the Public Utilities Code.

5. The Commission's "broad regulatory power over public utilities" derives from Article XII of the State Constitution, which establishes the Commission, and gives it wide-ranging regulatory authority, including but not limited to "the power to ... establish rules, hold various types of hearings, award reparation, and establish its own procedures."

6. The Commission's authority over public utilities includes oversight over both public utility services and facilities.

7. The Commission has an ongoing responsibility to ensure the reasonableness and sufficiency of utility facilities and may order additions, extensions, repairs, or improvements to, or changes in utility facilities that the Commission finds ought reasonably to be made.

8. Police power authority over matters related to public health and safety is traditionally reserved to the states.

9. The Tenth Amendment to the U.S. Constitution provides that powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

10. The California Constitution and California statutory law designate the Commission as the principal body through which the State exercises its police power in the case of public~~essential~~-utility ~~network~~-services.

11. Public Utilities Code Section 451 gives the Commission broad authority to regulate public utility services and infrastructure as necessary to ensure they are operated in a way that provides for the health and safety of Californians.

12. Police powers have been vested to the Commission by various provisions of the Public Utilities Code, including Sections 451, 584, 701, 761, 768, and 1001.

13. The Commission's iterations of ~~wired network~~public utility authority include General Order (GO) 52 (construction and operation of power and communication lines for the prevention or mitigation of inductive interference), GO 95 (overhead electric [and communications] line construction); GO 128 (construction of underground electric supply and communication systems), and GO 159-A (construction of cellular radiotelephone facilities in California).

14. The regulatory measures promulgated in this Decision are consumer safeguards intended to protect the health and safety of utility customers, particularly those encountering wildfires and related public emergencies triggered by historic climate change.

~~15. The Commission's authority to adopt backup power rules set forth in this decision does not infringe on the authority the Legislature gave to the Governor and the California Office of Emergency Services under the California Emergency Services Act.~~

~~16.~~15. It is reasonable to define resiliency, for purposes of this decision, as the ability to recover from or to adjust to adversity or change through an array of strategies, consistent with Section 5.2.2, including, but not limited to: (a) backup power; (b) redundancy; (c) network hardening; (d) temporary facilities; (e) communication and coordination with other utilities, emergency responders, and the public; and (f) preparedness planning.

~~17.~~16. It is reasonable to define an outage, consistent with Section 5.3.2 of this decision.

~~18.~~17. It is reasonable for the wireline providers to maintain service through various technological means to ensure customers in Tier 2 and Tier 3 High Fire Threat Districts have access to 72-hour backup power during the upcoming wildfire season and de-energization events with prioritization of

critical facilities such as hospitals, fire departments, police departments, water companies and sewage disposal companies.

18. It is reasonable to allow wireline carriers to deploy resources in a manner that maximizes public safety by taking into account local conditions, including local government requests, the presence of critical facilities, the adequacy of wireless coverage and other circumstances.

19. It is reasonable for the Commission to review whether this narrow requirement provides sufficient protection to all Californians impacted by wildfires, disasters and PSPS events later in this proceeding.

20. It is reasonable for the wireline providers to have eight months from the effective date of this decision to implement the 72-hour backup power requirement.

21. It is reasonable to define minimum service levels and coverage as including: (1) 9-1-1 service; (2) 2-1-1; and (3) the ability to receive emergency alerts and notifications; ~~and (4) basic internet browsing during a disaster or commercial power outage.~~

22. It is reasonable to require each wireline provider to submit a Communications Resiliency Plan via a Tier 2 Advice Letter within 4 months from the effective date of this decision.

23. It is reasonable to require the Communications Resiliency Plan to include the requirements of Section 5.6.2 of this decision.

24. It is reasonable to allow the wireline providers to identify, in their Communications Resiliency Plans, facilities that do not need backup power, are unable to support backup power due to a safety risk, or are unable to support backup power because the conditions make it impossible or infeasible to deploy backup power, and to identify the basis for that determination, as well as require

a discussion of actions being taken by the wireline provider to mitigate service loss resulting from the lack of backup power at those locations.

25. It is reasonable to require each wireline provider to submit an updated Communications Resiliency Plan annually via a Tier 2 Advice Letter that shall include, but not be limited to, all of the information included in the initial Communications Resiliency Plan.

26. It is reasonable to allow the wireline providers to use fossil fuel generation as a primary backup power resource in the near-term, but ~~require~~ encourage the wireline providers to transition to a future of renewable backup generation.

27. It is reasonable to require the wireline providers to submit annual emergency operations plans, pursuant to the requirements of Section 5.9.2 of this Decision, that discuss emergency response procedures and ensure substantive engagement with the Commission and CalOES during emergencies.

28. It is reasonable to require the wireline providers to submit updated annual emergency operations plans within 14 days of the updates taking effect.

O R D E R

IT IS ORDERED that:

1. Facilities-based wireline providers shall each file a Communications Resiliency Plan pursuant to Section 5.6.2 of this decision, within four months of the effective date of this decision, to the Communications Division via Tier 2 Advice Letter that describes how the wireline provider shall maintain a minimum level of service and coverage to preserve access to 9-1-1 and 2-1-1, and maintain the ability to receive emergency notifications, ~~and maintain access to internet browsing~~ for emergency notices for their customers in the event of a power outage. Communications Resiliency Plans shall be updated and submitted to the Communications Division via Tier 2 Advice Letters annually. The

Communications Resiliency Plan shall include, but is not limited to, the following information:

- Discussion of the ability to maintain a sufficient level of service to maintain access to 9-1-1 and 2-1-1, 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, including identifying how they maintain the resiliency of their networks and prioritize response efforts based on local conditions, including local government requests, the presence of critical facilities, the adequacy of wireless coverage and other circumstances, as defined in Section 5.2 of this decision
- Detailed PSPS and electric grid outage response plans;
- Facilities with and without battery backup, fixed generation, and portable generator hookups, their location, and the estimated length of time the facilities will operate during a grid outage with and without refueling at each site;
- The number of mobile generators and refueling trucks, specifying and which are stationed in California;
- Identify the ability to replace damaged facilities, including logical and physical network route diversity and temporary facilities (*e.g.*, temporary microwave backhaul);
- Identify titles of management and number of personnel dedicated to refueling and vendors including company and contract agreement;
- Identify the ability to support reporting on system outages as required by Commission rules, Cal OES regulations, and California Government Code;
- Detail how backup generators comply with California Air Resource Boards standards;
- Provide refueling schedules;
- Provide cooperative agreements which are used to pool resources with other providers;
- Identify facilities that do not need backup power, are unable to support backup power due to a safety risk, or that is objectively impossible or infeasible to deploy backup power pursuant to Section 5.7.2., and identify the basis for that determination as well as discuss actions being

taken by the wireline provider to mitigate service loss resulting from the lack of backup power at those locations; and

- Identify investment plans to improve network resiliency pursuant to Section 5.7.2. (e.g., deployment of redundant backhaul, deployment of fixed generators, etc.) and how these investments are prioritized for facilities most at risk (e.g., facilities impacted by past PSPS events, past outages, overall customer impact, etc.).

2. The Commission's Communications Division shall develop reporting templates as well as a submittal schedule for the Communications Resiliency Plans within 60 days from the adoption of this decision.

3. Facilities-based wireline providers shall, in their Communications Resiliency Plan pursuant to Section 5.6.2 of this decision, demonstrate their ability to: (a) meet the 72-hour backup power requirement, in Tier 2 and Tier 3 High Fire Threat Districts, consistent with Section 5.4.2, which adopts the 72-hour backup power requirement in Tier 2 and Tier 3 High Fire Threat Districts for the wireline providers operating in California; (b) meet the requirements of Section 5.4.4, which establishes that the 72 hours of backup power can be met with flexible procurement and deployment, and is a reasonable duration of time to fulfill the backup power requirement; and (c) meet the requirements of Section 5.4.6, which requires the wireline providers to ensure customers and first responders have access to minimum service levels and coverage including 9-1-1 service, 2-1-1, ability to receive alerts and notifications, and basic internet browsing during a disaster or commercial power outage, as well as describe their ability to maintain a minimum level of service and their long-term investment plan to comply with the 72-hour backup power requirement of this decision.

4. Facilities-based wireline providers shall file information only emergency operations plans pursuant to Section 5.9.2 of this decision, on an annual basis, with the first due within 60 days of the effective date of this decision to the

Director of the Communications Division, this email address-
serviceresiency@cpuc.ca.gov, the California Governor's Office of Emergency
Services, and local emergency response agencies, as an information only filing
that contains the wireline provider's: (1) emergency operations plan;
(1) emergency contact information; (3) emergency preparedness exercise
attestation; and (4) public communications plans.

5. Rulemaking 18-03-011 remains open.

This order is effective today.

Dated _____, at San Francisco, California