

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

Order Instituting Investigation to Address
Intrastate Rural Call Completion Issues.

Investigation 14-05-012
(Filed May 15, 2014)

**CTIA COMMENTS ON
PHASE II SCOPING MEMO AND RULING OF
ASSIGNED COMMISSIONER**

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Pursuant to the Phase II Scoping Memo and Ruling of Assigned Commissioner issued in the above-captioned proceeding on March 6, 2017 (“Scoping Memo”), CTIA¹ submits the following comments.

I. INTRODUCTION

Phase II of this proceeding is scoped to address issues that were left open for further consideration by Decision 16-12-066, including whether the Commission should “require carriers of last resort or other respondents or other carriers under the Commission’s jurisdiction to report outages to the California State Warning Center of Cal. Office of Emergency Services, and city, county, and federally recognized tribal Office of Emergency Services official contacts.”² Phase II will also consider the suitability of the outage reporting thresholds, as well as reporting procedures. CTIA provides these comments because the Phase II Scoping Memo

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² Decision 16-12-066, Ordering Paragraph 21.

was served on a number of CTIA’s member carriers. As explained below, an examination of outage reporting requirements for wireless carriers is unnecessary.

The Commission’s adoption of rural outage reporting requirements for wireless carriers would be ill-timed and potentially conflict with federal law. The Federal Communications Commission (“FCC”) is actively considering rural network outage reporting.³ The precise requirements of the FCC’s rules, however – including the definition of rural areas and the precise thresholds for reporting – are not yet finalized. Requiring wireless carriers serving rural areas to comply with differing state and federal reporting obligations in rural areas would, at minimum, impose unnecessary burdens, and, more critically, would detract from carriers’ primary duty to restore service during an outage. Moreover, any inconsistencies between state and federal requirements may also give rise to preemption concerns.

II. THE COMMISSION SHOULD NOT ADDRESS RURAL OUTAGE REPORTING REQUIREMENTS FOR WIRELESS CARRIERS

The FCC is currently considering proposed rules for rural outage reporting. Specifically, the FCC is considering requiring a wireless provider serving a rural area to file outage reports whenever one-third or more of its macro cell sites serving that area are disabled such that communications services cannot be handled through those sites, or are substantially impaired due to outage(s) or other disruptions affecting those sites.⁴ As part of its proposal, the FCC is also considering what constitutes a “rural area.”⁵ The FCC’s deliberations on these matters seem to be motivated, at least in part, by the same concerns expressed by the Commission – i.e., that it is possible that outages in some geographic areas may occur without meeting the reporting

³ *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications, et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 16-63 (rel. May 26, 2016) (“Outage Reporting NOPR”).

⁴ *See generally* Outage Reporting NOPR.

⁵ Outage Reporting NOPR, ¶ 186.

threshold under the current reporting requirements.⁶

Wireless carriers will continue working with regulators to ensure that the appropriate authorities are notified of material outages regardless of where a community is located, but any action by the Commission to establish reporting requirements differing from the FCC's risks obligating carriers to submit varying outage reporting data to separate regulators, using different triggers, formats, and submission protocols. Such differing obligations would not only place an unreasonable operational and technical burden on those charged with tracking and reporting outages, they also could have the unintended consequence of impacting public safety by diverting critical resources and attention away from restoring service as quickly as possible.⁷

The Commission recognized the merits of mirroring the FCC's reporting requirements when it adopted the California major service interruption reporting requirements in 2009.⁸ In that decision, the Commission correctly observed that "for robust service outage reporting and a policy favoring streamlined reporting requirements . . . we can achieve both objectives by conforming our reporting requirements to the FCC's."⁹ The same is true in the context of rural outage reporting, where the Commission can achieve both objectives by awaiting finalization of the FCC Outage Reporting NOPR and then conforming the Commission's reporting requirements to those resulting from the FCC proceeding.¹⁰

⁶ Outage Reporting NOPR, ¶¶ 184, 186.

⁷ See Decision 06-06-013, p. 34 (recognizing that well-intentioned regulations can inadvertently harm consumers).

⁸ Decision 09-07-019.

⁹ *Id.*, p. 64.

¹⁰ In Decision 16-12-066, at p. 148, the Commission acknowledged the ongoing FCC proceeding regarding outage reporting standards for wireless carriers, but stated that "[s]uch a standard may not be responsive to California's needs and does not supplant the authority of this Commission to adopt appropriate rules to enforce California law" The Commission should, however, await the outcome of the FCC proceeding in order to determine whether the standard set by the FCC is "responsive to

Finally, CTIA notes that any inconsistency between outage reporting requirements adopted by the Commission and the FCC's requirements raises preemption concerns. Situations where regulators must balance competing policy objectives in crafting a regulatory scheme "lend themselves to a finding of conflict preemption" because a state scheme that differs from the federal scheme "permits re-balancing of those considerations."¹¹ The public safety issues raised by outage reporting intensify this concern, given the specific federal statutory directive that state commission action with respect to IP-enabled service providers' 9-1-1 service may not be "inconsistent with Federal law or [FCC] requirements."¹²

III. CONCLUSION

For the reasons set forth above, including the operational need to devote resources to restoring service following an outage, the Scoping Memo should be refined to exclude wireless carriers while the Commission awaits further action by the FCC.

Respectfully submitted April 3, 2017, at San Francisco, California.

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California's needs," while also ensuring that the Commission does not enact regulations inconsistent with the FCC requirements.

¹¹ *Farina v. Nokia*, 625 F.3d 97, 123 (3rd Cir. 2010).

¹² 47 U.S.C. § 615a-1(d).