

**Commissioner Simon's Comments from the Dais**  
**Item 52: Decision Adopting Guidelines for Customer Education Programs**  
**Regarding Backup Power Systems Pursuant to Assembly Bill 2393**

*Introduction & Background*

Colleagues:

Today I request your support for Item 52, which represents the culmination of an epic three-year long proceeding (I think you're all probably familiar with this one). This Proposed Decision would implement clear guidelines for customer education programs for facilities-based providers of telephony services who provide residential service using technologies that require backup power on the customer's premises. Unlike copper wires, fiber optic, coaxial cable, and other facilities do not provide power to the customer's telephone. Thus, customer education about the availability and reliability of backup power is more vital now than ever.

*Assembly Bill 2393*

Pursuant to Assembly Bill 2393 (Levine), signed into law on September 29, 2006, these customer education guidelines address backup power needs and limitations, as well as service provider responsibilities in the event of power outages. AB 2393 added Sections 776, 2872.5, and 2892.1 to the Public Utilities Code, which address backup power and emergency notification systems. Section 776 requires the Commission to consider specific minimum standards for performance reliability if the benefits exceed the costs. We explored performance standards in Phase 1 of this proceeding, including minimum operating life of backup batteries, optional services for the disabled, and other best practices. After workshops featuring technical and industry experts, our Communications Division issued a Workshop Report on Emergency Backup Power and "Customer

Education, Accessibility, and Implications”. We determined to consider in Phase 2 the customer education requirements that are delineated in this Proposed Decision.

AB 2393 is critically important legislation, and was inspired in large part by the fallout resulting from Hurricane Katrina, and the need for enhanced communications reliability in the event of natural disasters and other emergencies. At a time when we are experiencing extended and more severe fire seasons, flooding, and the ever-looming threat of earthquakes in California, it is essential that the communications industry is mandated to proactively educate the public about the limitations of battery backup power.

The tragedy that has befallen the people of Haiti is a solemn reminder of our critical need for solid and reliable communications infrastructure, and for our citizens to be adequately informed of its performance limitations during emergencies.

### *On the Commission’s Public Safety Authority*

The central point of controversy throughout this proceeding was jurisdiction and the scope of the Commission’s authority to enforce the proposed customer education requirements. A lengthy and spirited debate (to say the least) among interested parties that called into question whether these education requirements should be voluntary or mandatory. Some parties were adamant that optional compliance would suffice to meet the objectives of AB 2393. However, I have long held that we cannot rely solely on voluntary commitments and competitive markets to ensure the health, safety, and security of California.

The Proposed Decision merely upholds the basic ability of this Commission to enforce core safety guidelines. This is a role that is clearly within the authority

of the Commission and rooted in the foundation of the historic police powers of the state – and this should never be diluted to appease certain parties. Let me be clear that I will not support policymaking that risks the erosion of public safety, one of the pillars of this Commission’s fundamental regulatory responsibility. Furthermore, some parties erroneously argued that the Commission’s decision to hold off on assessing its regulatory role over Voice over Internet Protocol (VoIP) in D.06-06-010 signifies an abdication of authority over the provisions embodied in these proposed customer education requirements. This is just not the case. The Proposed Decision appropriately reaffirms Commission sovereignty over matters involving the welfare of the public.

### ***The Proposed Decision is Balanced and Competitively Neutral***

The Proposed Decision expressly concludes that it does not involve the regulation of VoIP providers as telephone corporations under Public Utilities Code Section 234, and therefore is not in contravention of any federal order or the Uniform Regulatory Framework (URF). Rather, the end result of this lengthy proceeding is an essential customer education program that satisfies the directives of AB 2393 through a light-handed regulatory approach with maximum flexibility for implementation. The requirements in the Proposed Decision are competitively neutral in that they would be uniformly applicable to all providers of telephony services regardless of technology.

Ultimately, the Proposed Decision is a win-win situation for consumers and service providers as the Commission reinforces its commitment to providing safe and reliable service over state-of-the-art emerging communications technologies in California. This is simply responsible public policy that offers critical protections while still encouraging economic growth and innovation in communications.

### ***Closing***

In closing, I would like to thank Administrative Law Judge Jeff O'Donnell, Simin Litkouhi and other Communications Division staff, and Judith Allen and Helen Mickiewicz of the Legal Division for their superb work and assistance over the course of this lengthy proceeding. In addition, I also want to thank Commissioner Grueneich's advisor, Kelly Hymes, Commissioner Bohn's advisor, Amy Yip-Kikugawa, my former advisor, Phyllis White, and my current advisor, Paul Phillips, for their collective efforts. Thank you to Telcordia, TURN, Disability Rights Advocates, the First Responders (Cal Fire, Office of Emergency Services), Art Botterell (expert/consultant in emergency communications) and Senator Christine Kehoe for their contributions to this proceeding.

Finally, as this lengthy proceeding hearkens back to my first days at the Commission, let me also thank Marzia Zafar, ALJ Tim Sullivan, Jennie Chandra, and Mary Jo Borak. [It's entirely possible that everyone in the Commission has worked on this proceeding at some point.] Three years later, it is with great pride and tremendous relief that this journey comes to an end. I request your support to move this item forward for adoption.

Thank you.