

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: August 15, 2018

To: The Commission
(Meeting of August 23, 2018)

From: Hazel Miranda, Director
Office of Governmental Affairs (OGA) – Sacramento

Subject: **Commission Position on Communications Legislation - AB 2693
(Wood): Public Utilities Commission: telecommunications service:
natural disasters: reports. (as amended 7/3/18)**

RECOMMENDED POSITION: SUPPORT

SUMMARY OF BILL:

This bill would, upon declaration of emergency or natural disaster by the Governor, require the following:

- 1) Require the California Public Utilities Commission (Commission or CPUC) to collect data from communications service providers regarding their efforts to restore service outages during an emergency or natural disaster;
- 2) Require the Commission to prepare a report that summarizes the information collected;
- 3) Require the report to be organized by emergency or natural disaster, submitted to the corresponding legislative policy committee, and posted in a conspicuous area of the Commission's website; and
- 4) Require the President of the Commission, on an annual basis, to present a summary of the information collected in the report to the corresponding policy committee of the legislature.

Communications service providers for purposes of this bill are defined as telephone providers, satellite providers, wireless carriers, and facilities-based VOIP carriers, according to PU Code § 2892.1.

STATUS: Assembly Appropriations Committee Suspense File (as of 8/6/18)

REASON:

This bill will help ensure Californians continue to have access to essential communication services, by requiring the publication of important information on how communications service providers are restoring service outages following natural disasters and provide information to the people affected by a disaster about communications service providers' plans to rebuild and repair their infrastructure following a natural disaster.

Communication service outages during natural disasters such as wildfires are a substantial problem for affected Californians. The frequency, intensity, and size of wildfires is likely to increase in California, as drought and beetles kill millions of trees and fuel these fires. Towns and subdivisions have been built in—and closer to—forested areas, putting their inhabitants and structures at greater risk. Local governments, the CPUC, and residents need to understand the detailed status and timing of restoral and what may potentially change in the communications infrastructure. This increased oversight of communication service provider service restoral will provide data on the overall impact of natural disasters on the State's communications grid and its resiliency.

CRITICAL ANALYSIS:

Stated Problem

California's wildfires lead to communications service outages. Without telephone service, Californians are unable to reach 911 and emergency services. Local governments and residents have had trouble after previous disasters determining the extent and timing of communications service providers' infrastructure restoral in the aftermath of wildfires. Government agencies and residents also do not know whether the rebuilt infrastructure will be more resilient.

Examples

In 2017, the Governor declared 21 disasters that impacted communications. These declarations affected almost all of California counties, sometimes a county was affected by multiple disasters. Moreover, we expect an increased number of natural disasters due to weather extremes in the coming years.

The 2017 wildfire season caused widespread communication outages in California. The North Bay area of California experienced three of California's most destructive fires (Atlas, Nuns, Tubbs), which collectively destroyed over 7,000 structures and caused 30 deaths. Each of these structures likely had communication facilities in addition to wireless communications. Before, during, and after the fires, residents, government agencies and emergency responders were trying to communicate with each other using any means available. As a result of these fires, communication providers may make a variety of temporary or long term restoral efforts.

Although CPUC staff voluntarily made a summary report of the fires and restoral efforts of the North Bay fires in November of 2017 once the fires were contained, the report needed more depth and specificity, and did not cover all the disasters experienced

throughout the year. AB 2693 (Wood) proposes a comprehensive, detailed report and analysis produced on an on-going basis.

Policy Objective Alignment

The Communications Division is responsible for licensing, registration and the processing tariffs of local exchange carriers, competitive local carriers, and non-dominant interexchange carriers. It is also responsible for registration of wireless service providers and franchising of video service providers. The Division tracks compliance with commission decisions and monitors consumer protection and service issues and Commission reliability standards for safe and adequate service. The Communications Division is responsible for oversight and implementation of the six public purpose Universal Service Programs.

The Division also reviews General Orders and policies to reflect the emerging competitive environment and changing regulatory structure for the telecommunications industry. The Communications Division is responsible for the implementation and oversight of local competition and competitive issues. The Division reviews, analyzes, and advises on carrier-to-carrier arrangements and interconnection agreements, as well as, competitive access issues. The Division responds to utility applications for mergers, divestitures and acquisitions. The Division also implements Area Code Policy, equal access reform and analysis on number resource allocation issues. The Division develops, advises and implements policy on 911, back-up power and other consumer protection issues. AB 2693 would further these objectives.

Through Public Utilities Code (PU Code) § 451, the CPUC has the responsibility to ensure safe and reliable service. This bill would provide the Commission—and the public—with the information it needs to carry out its oversight of communication service providers' service restoration and infrastructure rebuilding following an emergency or natural disaster. This oversight is critical in ensuring outages are restored expeditiously and that rebuilding efforts improve the safety and reliability of service for Californians.

By providing data on outage restoration and infrastructure rebuilding efforts, the Commission is fulfilling the responsibilities outlined in PU Code § 709. Specifically, the Commission would be allowing consumers to make informed choices (section (h)) and ensuring the availability of high-quality telecommunications services to all Californians (section (a)).

Through PU Code § 558, telephone corporations have a responsibility to transmit calls without delay. The Commission will be able to make a determination as to whether this statutory responsibility is being met by communication service providers through the analysis of data provided pursuant to this bill.

CPUC General Order 133-D requires telecommunications providers to report outage information to the CPUC's Communications Division when a disruption or outage meets the FCC's reporting threshold and the disruption or outage involves communications in

California, regardless of whether the affected communications independently meet the FCC's reporting threshold. Although the reporting requirements in this bill are different from existing reporting requirements, the carriers should not experience a significant burden to produce this information because they are already compiling it for their own restoral.

Using Public Utilities Code §364, if any of the information gathered pursuant to this bill is deemed to pose a security threat to the public, the Commission has the authority to withhold such information from disclosure to the public.

Legal Overview

This bill would require the CPUC to collect outage and restoral data from several different types of service providers – telephone corporations, as defined in PU Code § 234, 2) satellite providers, 3) mobile telephone service providers, and VoIP providers. The CPUC has different degrees of regulatory authority over these different types of providers, and the level of authority will dictate the ease with which the CPUC can obtain the data the bill anticipates the CPUC would gather.

The CPUC has full regulatory authority over “telephone corporations” as defined in PU Code § 234. Accordingly, the CPUC may impose reporting obligations on telephone corporation consistent with this bill.

The CPUC has no regulatory authority over satellite providers. Those providers are regulated by the Federal Communications Commission pursuant to provisions of the Communications Act. Nor could the Legislature confer such authority. See 47 USC 701-769. However, we recognize that this section incorporates by reference the definition of “telecommunications service” in PU Code section 2892.1, which includes “voice communications provided by a provider of satellite telephone services.” Notwithstanding the language in 2892.1, the FCC has authority over satellite services.

Under federal law, the Communications Act preempts state authority over wireless rates and entry, but preserves state jurisdiction over terms and conditions of service that wireless providers offer. This bill would require the CPUC to collect data about service outages and service restoration. The data in question does not involve entry into the telecommunications market, nor does it pertain to rates that wireless carriers charge. Accordingly, the CPUC is not barred by federal law from collecting this information. At the same time, it is possible that wireless carriers may object to this data collection and may seek to challenge the resulting statute or the CPUC's implementation of the statute.

The CPUC is prohibited by PU Code § 710 from exercising regulatory jurisdiction over VoIP service. While § 710 (f) states that the CPUC retains authority to “monitor” VoIP services, which should allow the CPUC to collect data from the providers. However, many VoIP providers have repeatedly challenged the CPUC's efforts to collect data regarding VoIP service, asserting that because the CPUC is barred by § 710 from

regulating VoIP service, it has no authority to gather such data. We recognize that this bill proposes to incorporate by reference the definition of “telecommunications service” as set forth in PU Code § 2892.1, which includes “voice communication provided by a commercially available facilities-based provider of voice communication utilizing Voice over Internet Protocol or any successor protocol.”

CUMULATIVE RATEPAYER IMPACT

AB 2693 (Wood) would have no negative impact on ratepayers. Telephone bills will not increase because the carriers are required to respond to data requests. This new requirement would fall within the normal activity of the carriers’ regulatory departments.

Over the long term, this bill could produce a positive ratepayer impact. By publishing these reports online, the Commission improves carrier transparency and accountability. The reports may induce better performance by carriers as a means to maintain their public image.

CUMULATIVE FISCAL IMPACT

The total fiscal impact to implement this bill would be about \$400,000 for new positions at the California Public Utilities Commission.

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http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2693