



January 22, 2021

Via Email

President Marybel Batjer
Commissioner Martha Guzman Aceves
Commissioner Clifford Rechtschaffen
Commissioner Genevieve Shiroma
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94105

Re: Resolution M-4849: Authorization and Order Directing Utilities to Extend Emergency Customer Protections to Support California Customers Through June 30, 2021, and to File Transition Plans for the Expiration of the Emergency Consumer Protections

Dear Commissioners:

CTIA¹ respectfully submits this letter regarding Draft Resolution M-4849, which the Commission issued last week “on its own motion in response to Governor Gavin Newsom’s declaration of a state of emergency and issuance of executive orders due to

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.



the novel coronavirus (COVID-19) pandemic.”² The Draft Resolution, which is scheduled to be voted on at the Commission’s February 11, 2021 meeting, extends various service requirements imposed in Resolution M-4842³ through June 30, 2021, subject to an open-ended “option to extend further.”⁴ The Draft Resolution acknowledges that the Wireless Requirements are borrowed from Commission decisions in Rulemaking 18-03-011,⁵ a proceeding precipitated by the perennial problem of wildfires in California and their potential to cause the “loss or disruption” of communications and other services.⁶

² Draft Resolution M-4849 (issued Jan. 15, 2021) (“Draft Resolution”) at 1.

³ As relevant to wireless carriers, the Draft Resolution would extend the requirements to: “(1) Deploy mobile equipment, including Cells on Wheels and Cells on Light Trucks, to supplement service in areas that need additional capacity to ensure access to 9-1-1/E9-1-1 service; (2) Provide device charging stations in areas where impacted wireless customers seek refuge; ... (3) Provide WiFi access in areas where impacted wireless customers seek refuge”; and “(4) Provide mobile phones for customers seeking shelter from a disaster to use temporarily at a county or city designated shelter” (collectively, the “Wireless Requirements”). *Id.* at 8. Requirements (1) to (3) apply to all “facilities-based wireless providers,” while Requirement 4 (in addition to other requirements) applies to “resellers and non-facilities-based wireless providers.” *Id.*

⁴ *Id.* at 1.

⁵ See Draft Resolution at 3 (“[T]he Commission initiated a disaster relief Rulemaking, (R.) R.18-03-011, and adopted a series of requirements for utility companies ... and communications providers, culminating in customer protection measures adopted in two Decisions, (D.) D.19-07-015 and D.19-08-025”); *id.* at 8 (citing D. 19-08-025 as the basis for the Wireless Requirements).

⁶ See R.18-03-011, Ordering Paragraph 2 (addressing requirements to respond to wildfires and similar natural disasters that “result[] in the *loss or disruption of the delivery or receipt of utility service*”) (emphasis added); see also Draft Resolution at 3 (“The customer protection measures adopted in R.18-03-011 apply where a gubernatorial or presidential declared emergency relates to the *disruption or degradation of service*”) (emphasis added).



As CTIA has previously explained and need not reiterate in detail here,⁷ the wireless industry remains committed to responding quickly and constructively to all disasters affecting California consumers, and has done so in response to the COVID-19 pandemic. For example, wireless carriers in California have taken numerous steps to aid their customers and others during the pandemic, including voluntarily: suspending disconnections for nonpayment and late fees for customers affected by the pandemic; providing additional usage allowances (including additional voice minutes, text messaging, and megabytes of data); providing SIM cards, mobile device chargers, and other equipment to state and local government agencies and hospitals; and providing reduced-price data plans in partnership with schools to facilitate learning from home, especially for students that otherwise lack home Internet access. CTIA members remain committed to taking robust voluntary actions to help consumers during this extraordinary public health emergency.

Especially in light of these voluntary actions, CTIA respectfully urges the Commission to refrain from further extending the Wireless Requirements. The Draft Resolution (like Resolution M-4842) is the policy equivalent of the proverbial square peg in a round hole problem. The Draft Resolution proposes to erroneously apply mandates borrowed from a wholly different context (the loss or disruption of communications services due to natural disasters such as wildfires) to a public health crisis that does not entail such consequences.⁸ This fundamental misalignment will work to the detriment of Californians without providing any relief. The wildfires that torment California cause geographic harm where Californians live or work, while the

⁷ See, e.g., Application of CTIA and AT&T Mobility for Rehearing of Resolution M-4842 (filed May 18, 2020) (“CTIA/AT&T AFR of Resolution M-4842”) at 1-2; Letter from Benjamin J. Aron, Director, State Regulatory and External Affairs for CTIA, to the Commissioners of the California Public Utilities Commission regarding Resolution M-4842 (filed April 8, 2020) at 2.

⁸ Draft Resolution at 3 (The Wireless Requirements adopted in R.18-03-011 “apply where a gubernatorial or presidential declared emergency *relates to the disruption or degradation of service*,” yet “[t]he COVID-19 pandemic represents a *different type* of emergency.”) (emphasis added).



pandemic that is plaguing California causes harm based on one's employment and economic standing – factors largely decoupled from locale. As such, the Wireless Requirements do nothing to address the actual harms Californians are experiencing. In fact, as CTIA previously cautioned the Commission, “some of the requirements would be affirmatively counterproductive in the context of an infectious disease pandemic, such as providing Wi-Fi or charging stations – services that may encourage people to congregate in violation of social distancing mandates.”⁹ Further, the Commission never examines whether wireless providers' employees can safely (or lawfully) implement the Wireless Requirements during a pandemic.

The Executive Director's March 17, 2020 directive to communications providers (the precursor to Resolution M-4842) acknowledged that “COVID-19 has not resulted in the same disruptions or degradations to utility service in California as the recent wildfires” and “expect[ed] that utility services will remain reliable and assist in California's COVID-19 response.”¹⁰ Like Resolution M-4842 before it, the Draft Resolution fails to adequately explain why the Wireless Requirements, adopted in a wholly different context, should apply here. Implementing the Wireless Requirements during a pandemic is exceptionally poor policy as it will offer no benefit to Californians, may put wireless providers' employees at risk, and may encourage Californians to violate social distancing guidelines.

Moreover, the Wireless Requirements are preempted by federal law, including 47 U.S.C. § 332(c)(3)(A), and otherwise exceed the Commission's authority for reasons CTIA has previously explained.¹¹ Extending these Requirements through June 30,

⁹ CTIA/AT&T AFR of Resolution M-4842 at 2-3.

¹⁰ Letter from Alice Stebbins, Executive Director, California Public Utilities Commission, to communications service providers (March 17, 2020) (cited in Draft Resolution at note 1) at 2.

¹¹ See, e.g., CTIA/AT&T AFR of Resolution M-4842 at 3-18; see *also* Application of CTIA and AT&T Mobility for Rehearing of Decision 19-08-025 (September 23, 2019) at 5-22. Although the Commission denied the CTIA/AT&T Application for Rehearing of D. 19-08-025, see Decision 20-09-012, the CTIA/AT&T Application for Rehearing of Resolution M-4842 remains pending. In



2021—and potentially even longer—only exacerbates the jurisdictional concerns CTIA previously identified.

For these reasons, CTIA respectfully urges the Commission to decline to further extend the Wireless Requirements.

Respectfully submitted:

/s/ Benjamin J. Aron

Benjamin J. Aron
Assistant Vice President
State Regulatory Affairs

cc: April Mulqueen, Communications Division
Service List, R. 18-03-011

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addition, CTIA respectfully maintains that the denial of rehearing in D. 20-09-012 was erroneous and, in particular, incorrectly applied federal law.