

Communications, Internet and Technology

New Backup Power Mandates for California Communications Companies

By: [Zeb Zankel](#)

With the recent statewide uptick in California's destructive wildfires, de-energization events, and corresponding impact on wireless communication services, the state's utility regulator has moved forward with regulations to address the resiliency of wireless networks. On July 16, 2020, the California Public Utilities Commission (CPUC) voted to effectuate a [proposed decision](#) (Decision) that mandates network resiliency requirements in enumerated high fire-risk areas (High Fire Threat Districts) for certain wireless carriers. Facilities-based wireless carriers in California are now required to maintain 72-hours of on-site backup power in High Fire Threat Districts, and submit resiliency and emergency operations plans. In addition to the new regulatory requirements it creates for wireless carriers, the Decision is notable due to its expansive assertion of the CPUC's jurisdiction and deferral of the regulatory framework for wireline carriers.

New Requirements

There are three key obligations for facilities-based wireless carriers emerging from the CPUC's Decision:

1. *Backup Power*. Within 12 months, carriers must ensure emergency backup power for wireless facilities for a minimum of 72-hours in Tier 2 (elevated risk) and Tier 3 (extreme risk) High Fire Threat Districts.
2. *Resiliency Plan*. Within 6 months, carriers must submit to the CPUC a Communications Resiliency Plan (Resiliency Plan) via a Tier 2 Advice Letter. The Resiliency Plan must include various information, including the carrier's ability to provide minimum levels of service like 9-1-1 and basic internet browsing during a power outage, a grid outage response plan, the ability to report on system outages, and plans for achieving long-term clean generation backup power.
3. *Emergency Operation Plan*. Within 60 days, and on an annual basis, carriers must submit emergency operations plans, including emergency contact information, attestations of participation in emergency preparedness exercises, and public communications plans.

Importantly, the Decision exempts non-facilities-based wireless providers (*i.e.*, resellers), and creates an exemption to the 72-hour backup power requirement: (1) for facilities that do not need backup power, (2) where there are safety risks in implementing backup power, and/or (3) where it is objectively impossible or infeasible to deploy backup power. Carriers must include specified details about these exempt facilities in their Resiliency Plan.

Jurisdiction

This Decision is notable not only because of the significant regulations that will be extended to facilities-based wireless carriers but also because of the CPUC's expansive characterization of its own jurisdiction. The CPUC asserts that its state constitutional and statutory authority to regulate public utilities (*i.e.*, telephone corporations) necessarily includes regulating the reliability of wireless facilities. Further, the CPUC relies on its assertions regarding state police power over essential utility network

services granted to it by state law and furthered by recent legislation.

This expansive characterization is not without controversy. The wireless industry argued in comments that the CPUC's jurisdiction is expressly and impliedly preempted by federal law for regulating market entry and conflicting with federal provisions. The Decision rejects both arguments, asserting that it is within the CPUC's police power authority to protect its citizens' safety, that it has regulatory authority over the "terms and conditions" of wireless service, and that there is no federal law in direct conflict.

Wireline Implications

Importantly, the Decision does *not* extend regulations to wireline communications in this decision. Instead, the Decision focuses narrowly on facilities-based wireless carriers, emphasizing that a vast majority of emergency calls are made over wireless service, and that as of 2018 there are over three times more wireless subscribers in California than wireline, with the trend continuing towards wireless. With that said, [Senate Bill 431](#), which similarly addresses backup power issues, is working its way through the California legislature. Additionally, the Decision finds that there are Californians who depend on wireline communications in emergency situations, and states: "In a forthcoming decision, we will consider promulgating resiliency requirements for other telecommunications providers." This leaves open the possibility that the CPUC will next target wireline communications carriers in a subsequent phase of this proceeding.

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