

February 4, 2020

Mr. Michael Elder, Next Generation 911 Manager  
Governor's Office of Emergency Services  
CA 911 Emergency Communications Branch  
601 Sequoia Pacific Blvd.  
Sacramento, CA 9581

**Re: Community Isolation Outage Regulations**

Dear Mr. Elder,

The Information Technology and Innovation Foundation (ITIF) appreciates this opportunity to comment on the outage reporting regulations proposed by California's Office of Emergency Services (Cal OES or Office). Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute. Our mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress.

First, we commend the goals behind the outage regulations Cal OES has proposed. Outage reporting is certainly important, giving the government crucial information about the availability and resiliency of communications services. ITIF respects that outages during the 2019 wildfires make the need for a clear understanding of communications availability an acute issue for California. It is important that Cal OES have access to actionable, up-to-date information about service outages in order to effectively respond to emergencies.

However, ITIF is concerned that the level of granularity of required reporting may go too far. Outage reporting for small areas for relatively short periods of time potentially undermines the effectiveness of the outage data for Cal OES' uses and imposes unnecessarily high compliance costs on affected companies. Ultimately these requirements would likely be borne by consumers, potentially raising the cost of communications services, or come out of companies' research and development or investment budgets, slowing innovation or deployment of new services.

The Office asserts that the proposed regulations are “consistent with existing requirements”.<sup>1</sup> This does not appear to be the case. These reporting requirements would functionally be much more granular than federal requirements. Cal OES proposing a reporting requirement for any outage affects at least 100 end users in a single zip code for at least 30 minutes.<sup>2</sup> Cal OES’ proposed regulations would require reporting of outages of at least 30 minutes, which it asserts “is the same duration of time reportable outages under FCC and CPUC thresholds.”<sup>3</sup> While Cal OES is correct that federal regulations require reporting of outages of at least 30 minutes, in order to be reported an outage must be of at least 30 minutes and meet at least one other threshold, such as affecting a 911, an interexchange carrier, or LEC tandem facility, or, notably, affects at least 900,000 user minutes of service.<sup>4</sup>

Assuming a 911 or other major facility was not affected, the minimum threshold for reporting under Cal OES proposed regulations would be one that potentially affects 3,000 user minutes, compared to 900,000 user minutes under federal regulations. Such a low threshold—300 times more sensitive than federal requirements—could see Cal OES having to sort through numerous outage reports that do not rise to the level of serious emergencies. It is likely a higher threshold could allow Cal OES to effectively identify serious outages while imposing lower costs on communications systems operating in the state.

The proposed regulations would also require operators to examine outages tied to users in specific zip codes. Communications networks are not designed to nest neatly within zip code boundaries. The proposed regulations would require a specialized system unique to California to check how many users were affected even by relatively small outages in each individual zip code, again increasing costs. Such a requirement also conceivably could result in under-reporting, if an outage covers several zip codes, none of which individually trigger the requirement. ITIF recommends the reporting requirement more closely reflects the actual geographic coverage of systems to lower the cost of compliance.

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<sup>1</sup> TITLE 19. California Governor’s Office of Emergency Services, “SB 670 Regulations,” Notice of Proposed Rulemaking (December 2019), <https://www.caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/NoticeofProposedRulemaking.pdf> (Cal OES NPRM).

<sup>2</sup> Cal OES, “TITLE 19. PUBLIC SAFETY PROPOSED REGULATIONS,” <https://www.caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/TextofProposedRegulations.pdf>.

<sup>3</sup> Cal OES NPRM.

<sup>4</sup> 47 CFR §4.9 available at [https://www.ecfr.gov/cgi-bin/text-idx?SID=bb26dc2016985e851360f15583f1006d&tmc=true&node=se47.1.4\\_19&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=bb26dc2016985e851360f15583f1006d&tmc=true&node=se47.1.4_19&rgn=div8).

As a general matter, policymakers should aim to enable uniform digital economy rules to ensure the same protections for all U.S. residents, minimize transaction costs for businesses, enable opportunities to innovate, and increase efficiency in the policymaking process.<sup>5</sup> This is certainly true for communications networks, which strongly benefit from economies of scale, and are no longer as location-dependent from a technological standpoint.<sup>6</sup>

ITIF urges Cal OES to better align its reporting requirements with existing regulations—which appears to be its intention. By raising the threshold triggering reporting and aligning the geographic scope with actual system deployment rather than ZIP codes Cal OES could receive clear information about service availability without requiring expensive reporting unique to California.

Thank you for your consideration.

Sincerely,

Doug Brake  
Director of Broadband and Spectrum Policy  
Information Technology and Innovation Foundation

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<sup>5</sup> See Alan McQuinn and Daniel Castro, “The Case for a U.S. Digital Single Market and Why Federal Preemption is Key,” *ITIF* (Oct. 2019), <https://itif.org/publications/2019/10/07/case-us-digital-single-market-and-why-federal-preemption-key>.

<sup>6</sup> See Doug Brake, “National Networks Need National Policies,” *ITIF* (Nov. 2017), <https://itif.org/publications/2017/11/09/national-networks-need-national-policies>.