Wireless carriers fight ban on throttling firefighters during emergencies

Enlarge / A West Covina firefighter pulls a hose away from a horse barn that burns as the Mendocino Complex Fire moves through the area on July 31, 2018, in Lakeport, Calif.

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The US mobile industry's top lobbying group is opposing a proposed California state law that would prohibit throttling of fire departments and other public safety agencies during emergencies.

As reported yesterday by StateScoop, wireless industry lobby group CTIA last week wrote to lawmakers to oppose the bill as currently written. CTIA said the bill's prohibition on throttling is too vague and that it should apply only when the US president or California governor declares emergencies and not when local governments declare emergencies.

The group's letter also suggested that the industry would sue the state if the bill is passed in its current form, saying the bill would result in "serious unintended consequences, including needless litigation."

"[T]he bill's vague mandates, problematic emergency trigger requirement, and failure to include notification requirements could work to impede activities by first responders during

disasters," CTIA wrote. The group said that it "must oppose AB 1699 unless it is amended to address the foregoing concerns." CTIA represents Verizon, AT&T, T-Mobile, Sprint, and other carriers.

Despite CTIA's opposition, the bill proposed by State Assemblymember Marc Levine (D-Marin County) sailed through an Assembly committee yesterday. The Committee on Communications and Conveyance voted 12-0 to advance the bill, Levine's chief of staff, Terry Schanz, told Ars today.

A committee analysis of the bill says that CTIA was the only organization to register opposition.

"CTIA did oppose the bill but committed to work with Assemblymember Levine to address their concerns," Schanz said. "We are confident that we will be able to reach an agreement between first responders and wireless data providers to ensure that first responders have every tool available to them necessary to keep the public safe during an emergency."

The bill's next stop is an April 30 hearing with the Assembly Privacy and Consumer Protection Committee. The bill received support from the California Central Valley Flood Control Association, the California Fire Chiefs Association, California Professional Firefighters, the County of Santa Clara, the Electronic Frontier Foundation, the Fire Districts Association of California, and the state Public Advocates Office.

Verizon throttled firefighters during wildfire

Levine proposed the bill in response to Verizon throttling an "unlimited" data plan used by Santa Clara County firefighters last year during the state's largest-ever wildfire.

Verizon's throttling was standard on the Santa Clara

firefighters' unlimited plan, which slowed down Internet speeds after usage of 25GB in a month. But Verizon apologized because it failed to follow its own policy of "remov[ing] data speed restrictions when contacted in emergency situations." Instead of immediately lifting the throttling during the wildfire response, Verizon upsold the fire department to a more expensive plan.

Levine's bill would prohibit mobile carriers from "impairing or degrading the lawful Internet traffic of its public safety customer accounts, subject to reasonable network management, during a state of emergency." This restriction would apply during states of emergency declared by the US president, California governor, or by local officials in California cities or counties.

Levine posted a video on Twitter after yesterday's committee hearing, saying he was excited to get bipartisan support.

> *Grateful for the @CalChiefs_CFCA's support of my #ab1699 to prevent data throttling of first responders during an emergency. When seconds count, our first responders need every tool available to keep our communities safe. pic.twitter.com/pYUuVcauXi*
>
> *— Assemblymember Marc Levine (@AsmMarcLevine) April 25, 2019*

"I feel really good about it today," Levine said. "The Democratic chair [Miguel Santiago] of the committee supports it. The Republican vice chair [Jay Obernolte] of the committee announced his support as well, and hopefully we'll send this bill on its way and get the signature of the governor at the end of the year."

Speaking about the throttling of Santa Clara firefighters during the wildfire response, Levine said, "We're going to make sure that never happens again."

Levine was joined by the president of the California Fire Chiefs Association, Jeff Meston.

“California is a place where we have multiple disasters on a regular basis,” Meston said. “We rely on our cell phones; we rely on Internet data to an extreme degree. When we go to an emergency incident, we need information about the incident action plan, photographs of what happens, mapping, who’s available, [and] where they’re located, and all these things now are done by cell phones.”

The California Professional Firefighters group told legislators that firefighters “cannot afford the added danger—to the safety of the public as well as their own safety—of unnecessary interferences in the technology they rely on to do their jobs and keep civilians and themselves safe.”

CTIA: “Impair or degrade” standard too vague

CTIA’s letter last week asked for four changes. First, CTIA said the bill’s “‘not impair or degrade’ standard is ambiguous and may result in serious unintended consequences, including needless litigation.”

“Data prioritization for first responders is already provided by major mobile wireless providers, and wireless carriers need the flexibility to manage their network traffic for optimum performance, especially during disasters,” CTIA wrote.

Second, CTIA said the no-throttling restriction should apply *only* during emergencies declared by the US president or California governor and not when the emergency is declared by a municipality. CTIA argued:

> *Using a declared ‘state of emergency’—particularly at the local level—as the trigger for the obligations not to impair*

> *or degrade is problematic from an operational perspective. How would carriers learn of the emergency declaration in small county X or little town Y in a timely manner? How would carriers adjust their practices or service features to accommodate the emergency only in a small, specific geographic area? How could carriers account for and treat public safety customers and non-local public safety customers responding to that emergency from other jurisdictions?*

Third, Verizon said the bill should require fire departments or other public safety agencies to notify carriers about any declared state of emergency.

In the Santa Clara case, the fire department did notify Verizon but wasn't able to get the throttling lifted until it upgraded to a more expensive plan. CTIA's letter didn't offer a solution for circumstances like that, but it said that "Allowing public safety to self-identify and request relief from their carrier is simpler and more effective than forcing a carrier to proactively try to determine which accounts belong to public safety customers and whether any service adjustments are necessary due to an emergency situation."

Finally, CTIA objected to the bill's provisions being implemented in the state's Public Utilities Code. The group said that "[t]he Office of Emergency Services (OES) is the appropriate entity to deal with issues related to emergencies." The Public Utilities Code gives enforcement power to the California Public Utilities Commission, which can issue fines for "consumer fraud, marketing abuse, and other utility misconduct."

CTIA is "trying to water down the definition and have it tucked away into an agency that can't really enforce it," Electronic Frontier Foundation Legislative Counsel Ernesto Falcon told Ars. Falcon testified at yesterday's hearing.

Despite the strong objections in the letter, Falcon said that

CTIA didn’t protest much during yesterday’s committee hearing “other than to say it isn’t a net neutrality issue.” But the bill needs approval from the full Assembly and Senate, and CTIA can continue the fight on behalf of wireless carriers as it moves through the legislative process.

The committee analysis of the bill makes clear that lawmakers do not believe Verizon’s throttling was a net neutrality violation. “In the case of the Mendocino Complex Fire, the throttling, as far as we know, was not discriminatory based on the content that was being delivered through the network,” the bill analysis said. “The incident arguably was a clear failure in customer service on the part of Verizon, but it did not demonstrate a net neutrality violation.”

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