

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Amendments to Part 4 of the)	PS Docket No. 15-80
Commission's Rules)	
Concerning Disruptions to)	
Communications)	
)	PS Docket No. 04-35
New Part 4 of the Commission's Rules)	
Concerning Disruptions to)	
Communications)	

**REPLY COMMENTS
OF
NTCA—THE RURAL BROADBAND ASSOCIATION**

July 31, 2015

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OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association¹ (“NTCA”) hereby submits reply comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“NPRM”), Second Report and Order, and Order on Reconsideration that seeks comment on targeted improvements to the Commission’s Part 4 rules related to its Network Outage Reporting System (“NORS”).²

NTCA’s members appreciate the need to collect information on service disruptions that could impact homeland security, public health and safety, and the economic well-being of the

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service rural local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended.

² *In the Matter of: Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications; New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, PS Docket Nos. 15-80 and 04-35 (rel. Mar. 30, 2015) (“NPRM”).

nation. Further, NTCA supports the Commission’s current efforts to ensure that NORS requirements are effectively and efficiently serving their intended purpose. However, as other parties have noted, rural service providers already have existing incentives to “provide robust, high-quality service to their customers in all circumstances.”³ As community-based providers, NTCA’s members live and work in the area and personally depend upon the network for communications connectivity. Small rural service providers recognize that communications are a lifeline, especially in times of crisis, and consequently they display a strong commitment to network resiliency and reliability.

Many of the Commission’s changes would significantly increase the reporting burden for small carriers. As such, NTCA urges the Commission to proceed cautiously, and carefully consider the effects of any proposed changes on the nation’s small rural service providers. The Commission should seek to “properly balance the value and benefits of acquiring the requested information with the burdens of collecting it.”⁴ Further, the Commission should consider the unique circumstances of small rural operators and undertake much-needed (and mandatory) Regulatory Flexibility Act⁵ analyses in designing, adopting, and implementing any new rules.

Further, many of the current rules already function as intended and revisions, or additional reporting requirements, are not necessary. As an initial matter, simplex events are not outages, and the Commission’s proposal to decrease the reporting threshold from five days to 48-hours is a solution in need of a problem. Further, the Commission should reject its new,

³ CCA Ex parte, PS Docket Nos. 15-80 and 04-35, July 16, 2015, (CCA), p. 3

⁴ CCA, pp. 1-2.

⁵ 5 U.S.C. § 601, *et seq.*

proposed wireless reporting requirement based upon RAN congestion, and a new wireless metric based upon the geographical scope of an outage. Likewise, the Commission should refrain from expanding the definition of Special Offices and Facilities to all enrolled or eligible Telecommunications Service Priority (“TSP”) Facilities, as this would significantly increase the administrative burden for small, rural carriers.

In a related matter, before the Commission proceeds forward with new NORS requirements specific to public safety, it should first resolve outstanding ambiguity with respect to Rule 12.4.

Finally, the Commission should only grant access to NORS data by state and Federal agencies if key confidentiality protections and use restrictions are in place.

II. MANY OF THE COMMISSION’S PROPOSALS WOULD SIGNIFICANTLY INCREASE THE REPORTING BURDEN ON AND HAVE A DISPROPORTIONATE NEGATIVE IMPACT ON SMALL CARRIERS AND THEIR CONSUMERS

Within the NPRM, the Commission has estimated staff resources and time, and assigned a corresponding numerical dollar figure, arising out of compliance with the proposed additional reporting requirements. However, it is important to note that rural service providers operate with extremely lean staff, and a monetary figure that seems reasonable in one context may not be appropriate or practical for a small service provider.

AT&T asserts that the Commission significantly “understates the burden of *all* of its proposals because it proposes to use an inadequate amount of time (two hours) to prepare and file outage reports.”⁶ In fact, AT&T reports that its employees require more than five times that

⁶ Comments of AT&T, PS Docket Nos. 15-80 and 04-35, July 16, 2015, (AT&T), p. 3.

amount of time to file a wireline network outage report.⁷ Further, “it is reasonable to conclude that AT&T’s processes are more efficient – and thus require less time – than other carriers, who may not have the same amount of dedicated resources and level of expertise.”⁸

Indeed, a small rural carrier employs limited staff, and during a service outage, all hands are mobilized to communicate with the public and, likewise, bring the system back into operational status. Consequently, tasking even one staff member with reporting an outage may inadvertently impede restoration efforts and thereby hinder, rather than promote, consumer interests.

III. MANY OF THE CURRENT STANDARDS ARE FUNCTIONING AS INTENDED AND NO ADDITIONAL REPORTING REQUIREMENTS ARE NEEDED

A. The Commission Should Maintain the Status Quo for Simplex ‘Outages’

In regard to specific rule changes and additions, the Commission has inquired about changing the standard for reporting simplex outages from five days to 48 hours.⁹ As an initial matter, it should be noted that simplex events are not outages; rather, as the NPRM explains, when one circuit fails, traffic is diverted to a backup circuit or route.¹⁰ In fact, this “network redundancy is designed to protect end users from an actual service outage or degradation.”¹¹ NTCA agrees with CenturyLink that the Commission’s simple proposal is “unnecessary,

⁷ AT&T, p.6.

⁸ *Id.*

⁹ NPRM, ¶24.

¹⁰ *Id.*

¹¹ Comments of COMPTTEL, PS Docket Nos. 15-80 and 04-35, July 16, 2015, (COMPTTEL), p. 2.

unjustified, and unwarranted.”¹² Since simplex events are not service outages, they do not have a direct effect on end-users and should not be subject to the Commission’s NORS requirements.¹³

Further, the Commission has not established “a basis for its assumption that providers are not following the industry best practice to make simplex repairs expeditiously and that reducing the reporting timeframe is necessary to incent timelier repairs. Providers already have every incentive to make simplex (or any other type of network) outage repairs expeditiously and do not need an increased reporting burden to improve their behavior.”¹⁴

It should be noted that many factors may contribute to restoration intervals, including “obtaining access to customer sites in order to access equipment, permits if any work must be completed in a public right-of-way, and replacement equipment, particularly if the vendor no longer manufactures that equipment.”¹⁵ In addition, “harsh weather or other hazardous conditions [may] preclude effectuating immediate repairs.”¹⁶ As such, “[c]ontrary to the Commission’s belief, reducing the amount of time carriers have to resolve simplex events before they have to report these events as ‘outages’ is unlikely to cause carriers to invest additional – perhaps significant – resources to resolve these facilities sooner. And as noted above, carriers may be unable to do so due to circumstances out of their control....”¹⁷

¹² Comments of CenturyLink, PS Docket Nos. 15-80 and 04-35, July 16, 2015, (CenturyLink), p. 7.

¹³ *Id.*

¹⁴ COMPTEL, p. 2.

¹⁵ AT&T, p. 4.

¹⁶ COMPTEL, p. 4.

¹⁷ AT&T, p. 14.

Further, if the Commission adopts this proposal to reduce the reporting threshold by 60%, it will result in a substantial increase in the number of reports.¹⁸ In fact, the record supports that the Commission has significantly underestimated the administrative burden of this proposed rule.¹⁹ Increasing providers' reporting burden and associated costs would not outweigh the limited benefits. Therefore, NTCA asserts that the Commission should maintain the five-day metric for simplex outage reporting.

B. The Commission Should Reject the Proposal to Install a New Wireless Reporting Requirement Based upon RAN Congestion

The Commission also has inquired about setting a new standard for call failures in the Wireless Access Network, i.e. congestion or RAN overloading.²⁰ However, the "NPRM provides very little in the way of factual support on which to base its proposed rule changes, other than the general passage of time."²¹ The NPRM cites only two instances of wireless RAN congestion and both are highly unusual occurrences: the aftermath of the derecho storm in 2012, and the Boston Marathon bombings in 2013.²² Further, the Commission has failed to provide specific data for the incidents in question. In fact, the Commission acknowledges that it would "benefit from a more complete understanding of the problem" and subsequently seeks qualitative and quantitative information from industry in regard to the failure rate of wireless calls.²³

¹⁸ Comments of Verizon, PS Docket Nos. 15-80 and 04-35, July 16, 2015, (Verizon), p. 10.

¹⁹ AT&T, p. 15; CenturyLink, p. 8; Verizon p. 10.

²⁰ NPRM, ¶14.

²¹ CCA, p. 2.

²² NPRM, ¶14.

²³ *Id.*, ¶15.

NTCA members operate in rural and remote areas that are often affected by weather disturbances, and they understand first-hand the need to ensure continuity of communications. They already have implemented network reliability and resiliency best practices to the extent applicable, and financially reasonable, to their businesses. However, a small rural carrier has an extremely limited customer base from which to recoup network investment, and it is not financially judicious to engineer the network for the worst-case scenario catastrophic event. As Sprint asserts, “[m]ass calling events are irregular, unpredictable, and typically short-lived.”²⁴ Given these tenets, one would expect network congestion when an extremely large number of people are concentrated in an enclosed area and, in addition to a planned event, a terrorist incident also takes place, thereby triggering unforeseen demand for wireless network connectivity. Further, “because RAN congestion is sporadic and is often attributed to a one-time occurrence that is unlikely to be repeated, the information reported is not likely to be useful. In sum, there is little correlation between capacity constraints during mass calling events and the overall reliability and resiliency of the network.”²⁵ CCA also notes that some small carriers do not collect and/or preserve data related to call failures, and, as such, small carriers may be unable, at this time, to comply with a new requirement to report wireless call failures.²⁶

The Commission should therefore reject the proposal to install a new wireless metric based upon RAN congestion. However, if it decides to proceed forward, at a minimum, the Commission should first seek to collect additional information from carriers in regard to how

²⁴ Comments of Sprint, PS Docket Nos. 15-80 and 04-35, July 16, 2015, (Sprint), p. 4.

²⁵ Sprint, p. 4.

²⁶ CCA, p. 2.

often and under what circumstances wireless calls fail – and then, only if necessary, propose appropriate and tailored revised wireless outage reporting rules.

C. A New Wireless Metric for Reporting on the Geographic Scope of an Outage is Not Needed

The Commission also has proposed new rules in regard to metrics for how wireless service outages will be calculated. In regard to a less densely populated area, the Commission has suggested a “separate and additional wireless outage reporting requirement based on the geographical scope of an outage, irrespective of the number of users potentially affected,” with an accompanying reporting threshold equivalent to 5 percent or more of the provider’s advertised footprint.²⁷ As an initial matter, NTCA agrees with Verizon:

“...[t]he NPRM does not establish a need for a new metric to address outages in lesser populated areas in any event. NORS already requires that wireless providers report the counties affected by outages and thus should indicate network reliability in less populated areas...Reportable outages cover a wide variety of geographic areas and population densities. Before proceeding forward with an additional reporting threshold, the Commission thus should first disclose and discuss with affected stakeholders what its existing NOPRS data reveal about network reliability in less populated areas.”²⁸

Nevertheless, if the Commission decides to proceed forward with a new requirement irrespective of additional industry feedback, it should understand that small wireless carriers have very limited service territories and associated facilities. As such, under the proposed rule, if a temporary outage affects just one wireless tower, this may immediately trigger the carrier to report the outage in the NORS system, thereby significantly increasing the company’s administrative burden. The burden imposed by this new requirement would clearly outweigh any minimal derived value.

²⁷ NPRM, ¶34.

²⁸ Verizon, p. 9.

D. The Commission Should Refrain from Expanding the Definition of Special Offices and Facilities to All Enrolled or Eligible TSP Facilities

Section 4.5(b) of the Commission’s rules defines “Special Offices and Facilities” to include “major military installations, key government facilities, nuclear power plants and [relatively major airports.]” The Commission seeks comments on its proposal to classify as Special Offices and Facilities “those facilities enrolled in or eligible for Telecommunications Service Priority (TSP) program...” The record clearly supports that this would dramatically expand the universe of facilities covered under the reporting program, and also place the onus on the carrier to track and determine which location is eligible at all times, thereby significantly increasing the burden placed upon carriers.²⁹ It is also unclear what public interest benefit this would serve. Rural service providers already work to bring TSP locations back into service as quickly as possible, as anchor institutions which serve the community and are enrolled in the program have clear priority in restoration efforts. However, to the extent that the Commission determines that it must act, it should restrict reporting requirements to the TSP entities that are already enrolled in the program and at the highest priority levels.

IV. SMALL RURAL OPERATORS ARE IN NEED OF CLARIFICATION IN REGARD TO RULE 12.4 BEFORE THEY CAN DETERMINE TO WHAT DEGREE A RELATED, REPORTABLE OUTAGE HAS OCCURRED

In a related matter, before the Commission proceeds forward with new NORS requirements, it should first resolve outstanding ambiguity with respect to Rule 12.4. As NTCA has noted in other venues,³⁰ it is still not clear where the 911 reliability requirements apply in

²⁹ AT&T, p. 21; CCA p. 4; COMPTEL, p. 6; Sprint, p. 9; CTIA, pp. 11-12.

³⁰ See Comments of NTCA–The Rural Broadband Association, In the Matter of Improving 9-1-1 Reliability; and Reliability and Continuity of Communications Network, Including Broadband Technology, PS Docket No. 13-75 and 11-60, May 13, 2015.

rural areas, and which participant in a rural 911 ecosystem is liable for installing, maintaining, and monitoring new facilities or equipment. Given their diverse network architectures, the variety of ways in which they interconnect with PSAPs, and their extremely limited resources, rural service providers operate within unique parameters. Rural service providers need specific examples of where additional reliability and resiliency requirements are required within their networks. As a logical consequence, rural providers are in need of this clarification now, before they can determine whether and to what degree a related, reportable outage has occurred.

V. THE COMMISSION SHOULD ONLY GRANT ACCESS TO NORS DATA BY STATE AND FEDERAL AGENCIES IF KEY CONFIDENTIALITY PROTECTIONS AND USE RESTRICTIONS ARE IN PLACE

The Commission has proposed granting state read-only access to those portions of the NORS database that pertain to communications outages in their respective states.³¹ NTCA supports granting this read-only access contingent upon key confidentiality protections and use restrictions. As Sprint has identified:

“First and foremost, there are national security concerns associated with protecting the sensitive data reported via the NORS database. The detailed outage information submitted by carriers could be used by terrorists or other seeking to intentionally disrupt communications. Expanding the scope of entities that have access to this data would increase the risk of disclosure and make it more difficult to identify the source of the breach. There are also competitive concerns that would be impacted by any unauthorized access to reported outage data.”³²

If the Commission decides to proceed forward with its proposal, it “must implement effective and meaningful safeguards designed to protect such data and mitigate the risks of

³¹ NPRM, ¶51.

³² Sprint, p. 11.

unauthorized disclosures.”³³ As the operator community asserts, at a minimum, the Commission must guarantee that information will be protected from state-level FOIA requests, thereby preempting any state laws that might require disclosure of such information.³⁴ The Commission should also require personnel with access to the database to undertake security training. Further, access to NORS should be read-only; the system should have the capability to track which agency and authorized individual accessed information; and, in the unfortunate event of a data breach, the Commission and carriers should be notified.³⁵ In addition, a state agency should only be allowed to use the information gained via the NORS system for its public safety functions, limited to the agency’s geographic boundaries defined by its jurisdiction.

The Commission also proposes entertaining requests from other Federal agencies for access to NORS data on a case-by-case basis.³⁶ However, apart from the Department of Homeland Security (“DHS”), it is unclear what public interest benefit or value would be derived from granting other Federal agencies access to outage information. And in regard to the DHS National Coordinating Center (“NCC”), NTCA already participates in information sharing directly with the NCC on behalf of its members. Before it proceeds down this road, the Commission should clearly identify the need for Federal agency access to the NORS database and again, at a minimum, install key confidentiality protections.

³³ CTIA, p. 14.

³⁴ NPRM, ¶51; AT&T, p. 25; COMPTTEL, p. 10; Sprint, p.12.

³⁵ AT&T, p. 27; CTIA, p. 14; Sprint, p. 12.

³⁶ NPRM, ¶54.

VI. CONCLUSION

For the aforementioned reasons, the Commission should proceed carefully, and comprehensively evaluate the effect of any new or revised reporting requirements on small, rural service providers. The Commission should ensure that the value derived from any new NORS requirements will in fact outweigh the burdens placed upon small carriers with limited resources.

Respectfully submitted,



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July 31, 2015