



December 6, 2023

Ex Parte Notice

Ms. Marlene H. Dortch
Secretary,
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

RE: *Data Breach Reporting Requirements, WC Docket No. 22-21*

Dear Ms. Dortch:

On Wednesday, December 6, 2023, the undersigned and Tamber Ray on behalf of NTCA–The Rural Broadband Association (“NTCA”) spoke with Greg Watson from the office of Commissioner Brendan Carr regarding matters in the above-referenced proceeding. The discussion focused upon two aspects of the draft Data Breach Reporting Requirements Order (“Draft Order”)¹ released by the Federal Communications Commission (the “Commission”) in advance of consideration at the December open meeting.

First, with respect to the proposed definition of harm,² NTCA noted that expanding the definition to include many types of harm beyond financial or physical harm can be subjective as applied to individual customers and thus quite possibly indiscernible to the carrier in any given circumstance. NTCA therefore urged the Commission, in the context of inadvertent breaches, to require reports to federal agencies and/or notifications to consumers only where such breaches are reasonably likely to result in financial or physical harm and otherwise rise to the level of requiring such reporting or notification as defined in the Commission’s rules.

Second, NTCA expressed concern with including Personally Identifiable Information (“PII”) in the scope of the breach notification rules. Putting aside the significant question of the Commission’s authority with respect to administration of PII in the context of a statutory framework that defines and governs Customer Proprietary Network Information specifically, when combined with the more expansive definition of “harm” as discussed above and the requirement that carriers report all breaches to the FCC, FBI and Secret Service unless the carrier can “conclusively” determine that

¹ *Data Breach Reporting Requirements*, Report and Order, WC Docket No. 22-21, FCC-CIRC2212-06 (Nov. 21, 2023).

² *Id.* at ¶ 51.

fewer than 500 customers were affected,³ these provisions could trigger numerous reports and notifications that place an inordinate burden on reporting entities and risk fatiguing customers. Such an outcome would undermine the value of the Commission’s decision in the Draft Order to permit carriers to file an annual summary of breaches for “smaller, less risky” breaches,⁴ as well as the Commission’s recognition that over-notification to customers would result in “notice fatigue.”⁵ Such a result is also contrary to the Commission’s conclusion that “[a] harm-based trigger for notification to customers also allows carriers, particularly small and rural providers, to focus their resources on data security and mitigating any harms caused by breaches rather than generating notifications where harm was unlikely.”⁶ This is of particular interest and concern to NTCA members, who on average have approximately 30 employees and would face significant challenges in even just determining when there is a need to comply with these rules, in addition to then preparing and issuing the required reports and notifications.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Michael Romano
Michael Romano
Executive Vice President

cc: Greg Watson

³ *Id.* at ¶ 29.

⁴ *Id.* at ¶ 51.

⁵ *Id.* at ¶ 49.

⁶ *Id.*