

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving the Resiliency of Mobile Wireless Communications Networks)	PS Docket No. 13-239
)	
Reliability and Continuity of Communications Networks, Including Broadband Technologies)	PS Docket No. 11-60
)	

**JOINT COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION AND
NTCA—THE RURAL BROADBAND ASSOCIATION**

Competitive Carriers Association (“CCA”)¹ and NTCA—The Rural Broadband Association (“NTCA”,² together with CCA, “the Joint Commenters”) hereby submit these joint comments in response to the Federal Communications Commission’s (“the Commission”) Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceedings.³

¹ CCA is the leading association for competitive wireless carriers, representing more than 100 competitive wireless providers across the United States. CCA also represents almost 200 associate members who provide critical inputs for building and sustaining the wireless ecosystem.

² NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite and/or long distance services as well.

³ See Improving the Resiliency of Mobile Wireless Communications Networks, Reliability and Continuity of Communications Networks, Including Broadband Technologies, PS Docket Nos. 13-239, 11-60, *Notice of Proposed Rulemaking*, 28 FCC Rcd 14373 (2013) .

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I. INTRODUCTION AND SUMMARY

The Joint Commenters appreciate the Commission's goal of providing consumers with quantifiable data and metrics for evaluating Commercial Mobile Radio Service ("CMRS") providers' network performance both during and immediately after major disasters. The Joint Commenters' members strive to provide their subscribers with a superior customer experience before, during, and after emergencies, and many consider the resiliency of their networks as a competitive "differentiator" of their services. Indeed, all carriers recognize the critical importance of providing a safety lifeline to their customers, and strive to maintain network functionality during emergency situations.

The regulations proposed in the NPRM, however, are not the best means for fulfilling the ultimate goal of promoting public safety. At a minimum, any new rules must properly balance the value and benefits of acquiring the requested information with the burdens of providing it to the public and the confusion that might result if the wrong information is captured and presented to consumers. The Commission should recognize that the information consumers want most during times of disaster are the *places or locations* where communications services are available, as opposed to a flat percentage of operational cell sites, a statistic which does not aid consumers in their efforts to connect to the network. Whatever value percentages may provide as an evaluative tool for comparing providers in a shopping scenario, these percentages will not help consumers find a service signal during or immediately after a disaster. Moreover, the Joint Commenters agree with Commissioner Pai's concern that "holding up percentages as a measure of reliability or resiliency is bound to mislead consumers into thinking that one provider is better than another even if, in reality, the converse is true."⁴ The Commission must resist the

⁴ NPRM, Dissenting Statement of Commissioner Ajit Pai at 1.

temptation to move forward with inflexible and burdensome regulatory mandates that yield minimal public benefits.

If, however, the Commission moves forward with the paradigm proposed in the NPRM, it must balance any benefit to consumers against the burden placed on carriers, particularly on small and mid-size carriers who lack the substantial resources of the nation’s largest carriers. Further, the Commission must not simply collect data because their collection may be possible. Instead, the Commission should narrowly tailor its data collection efforts to provide the data that will be most useful to consumers. Any data collection efforts must also recognize regulatory burdens and the practical realities that carriers face during extreme weather or other catastrophic events. Rather than being forced to dedicate scarce resources to completing and submitting FCC report forms, carriers should focus their efforts on restoring service to their customers. The Commission must tread carefully in this area and heed the age-old maxim to “first, do no harm”—lest this additional regulatory mandate have the paradoxical effect of hampering efforts to restore service.

II. MARKET FORCES ALREADY ENSURE THAT MOBILE WIRELESS CARRIERS MAINTAIN RESILIENT AND RELIABLE NETWORKS

There is no reason for the Commission to “hold[] providers publicly accountable” for outages, because market forces are already accomplishing the Commission’s stated goal of “incentiviz[ing] improvements to network resiliency.”⁵ All carriers, but particularly smaller competitive carriers, have a strong market incentive to maintain a robust and resilient network that can provide their customers with continuing service during catastrophic events.

Small and mid-size carriers are subject to the same market pressures as larger carriers, including ever expanding customer demands and competition. Small carriers also are

⁵ NPRM at ¶ 2.

community-based companies. Their employees live and work in the companies' service territories, dedicated to serving and investing in these local areas. As such, small carriers directly benefit from maintaining reliable and resilient networks. Accordingly, it is unnecessary for the Commission to impose a mandate in order to encourage these carriers to continue to maintain reliable and resilient communications networks.

In the recent *Derecho Public Notice* following the 2012 derecho,⁶ industry comments were nearly universally united in their stance that market forces are already working to address carriers' responses to network outages. For example, CTIA – The Wireless Association (“CTIA”) noted that wireless operators “understand that resiliency and reliability are extremely important to their customers and society. . . . [T]here is no incentive that the Commission could give that would be greater than the carriers' existing incentive to protect their significant network investments and provide robust service to their customers.”⁷ Similarly, the Telecommunications Industry Association (“TIA”) correctly observed that “[n]etwork operators . . . are already furiously working to make sure networks are as resilient and reliable as possible, and have incentive to do so in order to remain competitive in the marketplace.”⁸

Yet nothing speaks more loudly than the deeds of the carriers themselves. As noted in numerous comments responding to the *Derecho Public Notice*, many of the Joint Commenters' members were able to promptly restore service to cell sites due to preemptive, voluntary measures taken “to prepare for emergency situations and ensure the continuity of service during

⁶ Public Safety and Homeland Security Bureau Seeks Comment on 9-1-1 Resiliency and Reliability in the Wake of June 29, 2012, Derecho Storm in Central, Mid-Atlantic, and Northeastern United States, PS Docket No. 11-60, *Public Notice*, (rel. July 18, 2012) (“*Derecho Public Notice*”).

⁷ CTIA *Derecho Public Notice* Comments at 7; see also T-Mobile *Derecho Public Notice* Comments at 8.

⁸ TIA *Derecho Public Notice* Comments at 6.

disasters.”⁹ During Hurricane Isaac, a more recent extreme weather event impacting the Gulf Coast, CCA member C Spire Wireless reported that due to its preemptive efforts to secure its network before the storm, coverage was not significantly impaired.¹⁰

It is thus clear that carriers are already expending significant resources to prepare for outage events, and are directing their resources during these events to mitigating outage issues and restoring service. The Commission’s proposed reporting mandates, particularly for resource-constrained small, rural, and regional carriers, will have the perverse effect of diverting resources away from preemptive disaster management and from service restoration during catastrophic events.

III. THE COMMISSION SHOULD ONLY SEEK TO COLLECT INFORMATION THAT IS USEFUL TO CONSUMERS, WITHOUT IMPOSING SIGNIFICANT REGULATORY BURDENS ON CARRIERS OR DETERRING CARRIER EFFORTS TO RESTORE SERVICE

The Commission should adopt only data collection requirements that (1) will provide consumers with useful information; (2) do not impose significant burdens on carriers; and (3) do not hamper efforts to resolve network issues as quickly as possible during times of emergency. What the NPRM proposes, however—the public reporting of a flat percentage of working network facilities¹¹—is not particularly helpful for consumers either during or immediately following catastrophic events. For example, following Superstorm Sandy, press reported clusters of people gathered in areas that were known to have cellular reception.¹² Practically speaking,

⁹ See, e.g., T-Mobile *Derecho Public Notice* Comments at 9.

¹⁰ John Hendel, *Isaac Storms Gulf Coast States, Telecom Impact Unclear*, COMMUNICATIONS DAILY, Aug. 30, 2012, at 1.

¹¹ NPRM at ¶ 24.

¹² See, e.g., Brian X. Chen, *F.C.C. Seeks Ways to Keep Phones Alive in a Storm*, N.Y. Times Bits Blog, Feb. 5, 2013, http://bits.blogs.nytimes.com/2013/02/05/f-c-c-revisits-communications-failures-after-hurricane-sandy/?_r=0.

providing a number or a percentage of operational cell sites has little to no real-world value to a subscriber unless she (or the person she is trying to reach) knows if she is within the provider's operational service area. Unfortunately, it is virtually impossible to collect or present real-time operational coverage maps to customers in any meaningful manner, particularly during an emergency. Propagation characteristics, environmental characteristics, and an innumerable amount of other factors make this information difficult to collect and display under the best of circumstances. Adverse weather conditions, debris and other unknowns create additional complications.

The costs associated with diverting precious resources away from the restoration of service are difficult to justify when weighed against the purported benefits. Rather than forcing engineers and other critical staff to submit reports to the Commission containing information that will not be particularly helpful to consumers during an emergency, responders should focus their efforts on limiting service disruptions and restoring service to the greatest extent possible.

IV. THE COMMISSION'S PROPOSED DATA COLLECTION METHODOLOGY IS CAUSE FOR SERIOUS CONCERN

If, however, the Commission adopts the proposed regulations, it should take measured steps to reduce burdens on smaller carriers. First, the Commission should allow a reasonable amount of time *following* a disaster for submission of the requested data. As the Joint Commenters set forth above, the requested data is of little use to consumers during an emergency and could in fact impair carriers' efforts to restore service. Second, the Commission should consider a *de minimus* threshold for triggering the reporting obligation, based on either a high percentage of towers functioning in the county area, or a low total percentage of towers in the area. Third, the Commission's proposed rules should promote, rather than punish, the deployment of cells on light trucks ("COLTs") or cells on wheels ("COWs") to supplement

coverage during emergency events, as well as the use of small cells. Finally, the Commission should consider equitable issues related to roaming scenarios when deciding who is required to submit reports and in what manner.

A. The Commission Should Set a Minimum Reporting Threshold to Ensure that Carriers with Largely Operational Networks Are Not Required to File Unnecessary and Burdensome Reports

As an initial matter, the Commission must consider the important question of when a reporting obligation is triggered. A reporting obligation should only be triggered if (a) the carrier operates antennas on more than 10% of the total number of cells sites within the affected county subject to reporting, and (b) more than 10% of the reporting company's cell sites are out of service within the affected county that is subject to the reporting. Setting the reporting thresholds at lower levels will not significantly improve the data that may become available to consumers. As the NPRM suggests, where a service provider has a limited number of sites in a bleed-over county, forcing the carrier to report a percentage of operational sites may not be probative of overall performance.¹³ Likewise, if 90% of cell sites are fully functional within a county, the services provided to customers are likely to be minimally impacted, and providers' efforts and resources would be better spent resolving the small number of cell site outages rather than filing FCC reports regarding service in a county that is effectively fully operational. In addition, many macro sites provide overlapping coverage, so an outage that impacts 10% of macro cell sites may have a significantly smaller than 10% impact on customer coverage. As a result, such instances should be excluded from the Commission's proposed public network outage reporting.

¹³ NPRM at ¶ 34.

B. The Reporting Timeline Should be Amended to 30 Days Following the Conclusion of a Disaster to Allow Carriers Enough Time to Accurately Assess Outages and Causes

The NPRM proposes that, once activation of the Disaster Information Reporting System (“DIRS”) has occurred, impacted carriers would be required to submit reports once per day during and immediately following a declared disaster.¹⁴ This, in conjunction with DIRS reporting and other outage reporting obligations through the Commission’s Network Outage Reporting System (“NORS”), is simply too much, and provides little additional value to the Commission or to consumers. During an ongoing weather event, cell sites may be out of service for various reasons—such as rolling power outages, changing weather patterns or issues with backhaul—and arbitrarily reporting cell site operational percentages by county on a daily basis is likely to provide a wholly inaccurate picture of a carrier’s network. Perhaps even more significantly, the Commission must understand that catastrophic events do not occur in a laboratory. Hastily prepared daily reports are likely to contain uncertain or incomplete information on cell site operation, and thus provide the worst kind of information—incorrect information. Carriers are working at full throttle to restore service during catastrophic events, and information regarding cell site operation may be spotty or uncertain as the carrier attempts to assess the true scope of the network outage. As noted above, mandatory outage reporting would strain the resources of small and mid-size carriers, and, in order to provide customers with usable information, the Commission should allow carriers appropriate time to accurately assess outages and their causes post disaster and restoration of services.

Rather than requiring many daily reports, the Commission should instead seek from carriers a single report, 30 days *after* the end of the emergency event, which can fully and

¹⁴ NPRM at ¶ 45.

accurately report on cell site uptime and downtime. If the Commission is interested in more granular information, carriers that participate in DIRS reporting can include the DIRS reports, which will provide the Commission with additional information on the life-cycle of the network's response to the event. It is unreasonable to think that consumers will be visiting an FCC outage reporting website daily during disaster events and using this information to make immediate subscription decisions based on various carriers' day-to-day progress. Instead, to the extent the Commission believes network outage statistics are a useful tool for consumers, individuals are far more likely to look at such statistics once the event has subsided in order to make an informed decision about a service provider's performance. Consumers are unlikely to switch carriers during or immediately after a disaster event based on reporting statistics. As a result, a report filed 30 days after the event has ended should provide consumers with any relevant information that they might desire, while also ensuring that carriers are able to provide accurate data and reducing regulatory burdens during the pendency of the event.

C. The Fractional Counting of COLTs and COWs Makes Little Sense and Must Be Amended to Ensure These Network Assets Are Fully Counted as Operational Sites Within a Carrier's Network

The NPRM proposes that providers be allowed “to count as sites within their network any temporary sites, *e.g.*, Cells on Wheels (“COWs”) and Cells on Light Trucks (“COLTs”), that they have deployed to provide supplementary coverage and capacity during an emergency,”¹⁵ a proposal that the Joint Commenters wholeheartedly support. COLTs and COWs represent carriers' first line of defense during network outages, and can restore critical wireless services to impacted areas on a rapid basis. Accordingly, they are an important part of most carriers' voluntary disaster mitigation planning and should be recognized in any report regarding network

¹⁵ NPRM at ¶ 38.

performance during emergencies. However, the Joint Commenters disagree with the proposal that COLTs and COWs “be counted on a fractional basis, *e.g.*, as one-half of a site, given any attributes of COWs and COLTs such as coverage limitations[.]”¹⁶ Regardless of any limitations that may be attributable to COLTs or COWs, they represent critical carrier efforts to restore service to impacted areas, and should be fully counted as operational cell sites. A failure to fully count these facilities could lead to the perverse ramification of deterring the policy goal of promoting deployment of these facilities in times of emergency to ensure continuity of service.

The FCC should not be in the business of discouraging deployment of temporary sites by giving providers “half credit” for their use. At an absolute minimum, each COLT and COW should count as a full cell site in both the numerator and denominator of a carrier’s reporting percentage. Indeed, given that these assets are voluntarily deployed to the hardest hit and most affected areas, the Commission should consider adding COLTs and COWs *only* to the numerator, thereby giving incentive and credit to carriers who voluntarily deploy these important facilities to supplement coverage during emergencies. Given the importance of these temporary cell sites to carriers’ disaster mitigation strategies, the Commission must rethink its fractional counting position in regard to COLTs and COWs in favor of a more rational approach that encourages the rapid deployment of emergency facilities.

D. Small Cells Should Be Excluded From Commission Reporting Requirements

The NPRM appropriately considers the problems associated with reporting flat “up/down” percentages for all cell sites, as carriers now regularly employ heterogeneous network architectures.¹⁷ Today’s mobile wireless network often incorporates small cells, pico cells, and

¹⁶ *Id.*

¹⁷ NPRM at ¶ 39.

WiFi offload points, in addition to larger macro cells for wide-area coverage. Most of these small cells are implemented for capacity purposes, and are subsumed within the coverage footprint of a carrier's macro cells. As a result, the outage of an individual pico cell may have little to no impact on service to a customer during an emergency, and yet under the FCC's proposal would be reported as out of service in the same manner as if a single macro cell covering an entire small town were to go down. Requiring the reporting of small cells as full cell sites in the proposed outage reporting percentages may have the effect of discouraging the use of small cells within wireless provider's networks, to the detriment of the overall consumer experience and the efficient use of spectrum. Indeed, the NPRM explicitly recognizes the unfortunate truth that disclosure requirements may cause carriers to "favor large-tower architectures over small-cell and other heterogeneous architectures where there may be more towers, each more likely to fail but more resilient in the aggregate[.]"¹⁸ Thus, the Commission should limit its reporting methodology to macro and other similar large cell sites, which will provide a much more accurate picture of areas where service was lost.

E. Carriers Must Not Be Permitted to Include Roaming Sites as "Operational" Sites on Their Own Networks

The NPRM seeks comment on whether carriers should be permitted to "count" cell sites on which their customers can roam for the purposes of reporting network outage percentages.¹⁹ This is inherently unfair for two reasons. First, it obfuscates the true resiliency and reliability of the reporting carrier's network. If every cell site in a county goes down on a given provider's network, but that carrier has a roaming agreement with another carrier whose network remained operational across that same geographic area, the first provider is still able to report significant

¹⁸ NPRM at ¶ 27.

¹⁹ NRPM at ¶¶ 36-37.

operations in the area, despite its entire network being down. If the Commission’s intent for this exercise is to provide consumers with information on the resiliency and reliability of individual carrier networks, then a report of this nature would be misleading at best, and flatly disingenuous at worst. Second, allowing carriers to report roaming sites as “up” may also disadvantage smaller carriers. In particular, the difficulties of smaller carriers in obtaining reasonable roaming agreements with the two largest carriers are well-documented,²⁰ and the Commission’s proposal to count roaming sites for outage reporting could exacerbate this disadvantage.²¹

V. THE COMMISSION SHOULD CONSIDER WHETHER THE PROPOSED OUTAGE REPORTING OBLIGATIONS WILL LEAD TO REDUCED INDUSTRY COOPERATION

Finally, the Commission recognizes in the NPRM the potential for “reduction of cooperation among providers during emergencies” due to the fact that providers now have an incentive for their competitors to have longer and more extensive network outages.²² Any Commission requirement that could lead to a disincentive for providers to cooperate to restore service during emergencies must be carefully considered. The Commission has an obligation to protect the safety of life and property through the regulation of communications systems, which may not be furthered if incumbents use the outage reporting requirements to assert a competitive advantage over smaller providers.

²⁰ See, e.g., Competitive Carriers Association, *Written Ex Parte Presentation*, WT Docket No. 13-193 (filed Jan. 3, 2014).

²¹ Additionally, mobile virtual network operators (“MVNOs”) and other non-facilities based providers should have the statistical average of the operational facilities of their underlying facilities-based network operators attributed to them, for purposes of public disclosure. While the Joint Commenters recognize the difficulty such providers may have in obtaining access to the underlying data, competitive fairness requires that these providers be held accountable to the public in the same way facilities-based providers are, assuming the reporting requirements are adopted by the Commission.

²² NPRM at ¶ 27.

Indeed, smaller carriers are likely to be disproportionately impacted by the use of outage reporting as a competitive tool, as large carriers with landline affiliates will see significant benefits. These large carriers have a significantly increased availability of redundant transport circuits from their landline affiliates, and smaller carriers may be entirely dependent on these larger carriers for backhaul to their cell sites. If outage reporting becomes a publicly-reported competitive weapon, there is a significant danger that the landline affiliates of the largest wireless carriers may prioritize resolution of service issues associated with their affiliates over those of smaller carriers. Incentives to delay critical repairs to lines connecting smaller carrier cell sites could possibly arise, in an effort to discredit the competition—and leaving customers of small and mid-size carriers to suffer during emergencies. The Commission should refrain from imposing any regulatory obligations that could have these dangerous results.

One possible resolution to this problem is to permit carriers to exempt cell site outages if the outage is caused by a problem in another carrier's network. For example, if an ILEC's fiber line fails, and creates a service outage at a CMRS carrier's cell site, that competing carrier should not be required to report that cell site as out of service, since it was only out of service due to circumstances entirely beyond that carrier's control. Safeguards such as this might also incentivize the landline affiliates of the largest carriers to repair circuits more rapidly, which is consistent with the Commission's policy aims of restoring service to consumers as quickly as possible.

VI. COMMENTS IN RESPONSE TO THE INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980 (“RFA”),²³ the Commission has prepared and requested comment on its Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact its proposed rules would have on a substantial number of small entities.²⁴ The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁵

The Joint Commenters disagree with the Commission’s assessment that the proposed rules would not have a significant economic impact on small mobile wireless providers.²⁶ While the Commission is correct in pointing out that it would require reporting only during serious emergencies and only once a day, resources are least available during those “serious emergencies.” During times of extreme crisis, *all* of small companies’ already scarce resources – both financial and personnel – are utilized for the purpose of getting a system back to full operations. There is nothing to spare.

²³ See 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601-12., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, tit. II, 110 Stat. 857.

²⁴ NPRM, App’x B.

²⁵ 5 U.S.C. § 603(c).

²⁶ NPRM, App’x B at ¶ 12.

The Commission estimates the financial burden of the once daily reporting to be \$1,560. That figure, even if it correctly estimates the “cost” of reporting,²⁷ does not account for the time an engineer or other network operator will lose preparing and submitting a report, when that person should otherwise be involved in the important business of helping the company become operational. The smallest companies, unlike large wireless providers, do not have someone “back at the office” who could tackle this additional responsibility during an emergency.

Accordingly, if the Commission moves forward and adopts its proposals, it must consider significant alternative approaches for small wireless providers. While the Joint Commenters have challenged the wisdom of adopting any of the reporting obligations set out in the NPRM, the Commission should, at a minimum, and consistent with the RFA, reduce the reporting obligation of smaller carriers to the single report, filed 30 days *after* the end of the emergency event and only upon the outage thresholds set forth on page 8, *supra*, being triggered and in accordance with the other recommendations set forth above.

VII. CONCLUSION

The Joint Commenters and their members strongly support efforts to improve the resiliency and reliability of the nation’s wireless communications networks, and, as noted above, small and mid-size carriers have taken many voluntary actions to ensure continuity of service to customers and first responders during times of emergency. However, a number of the specific proposals in the NPRM will do more harm than good, while also failing to contemplate that the market is already working to promote the Commission’s goals. Rather than placing additional requirements on wireless operators and implementing policies that favor the largest carriers over

²⁷ The Joint Commenters do not concede that the amount provided by the Commission is an accurate estimate of compliance costs, and reserves the right to submit additional data into the record in the future on this estimate.

smaller ones, the Commission should opt for a light regulatory touch and empower providers with maximum flexibility—and minimum regulatory burden—during and immediately after catastrophic events in order to encourage the prompt restoration of service to consumers.

Respectfully submitted,

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