

**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)	
)	
New Part 4 of the)	PS Docket No. 04-35
Commission’s Rules)	
Concerning Disruptions to)	
Communications)	
)	
The Proposed Extension of Part 4 of)	PS Docket No. 11-82
the Commission’s Rules Regarding)	
Outage Reporting to Interconnected)	
Voice Over Internet Protocol Service)	
Providers and Broadband Internet)	
Service Providers)	
)	

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association¹ (“NTCA”) hereby submits comments in response to the Federal Communications Commission’s (the “Commission’s”) Report and Order, Further Notice of Proposed Rulemaking (“FNPRM”), and Order on Reconsideration that seeks

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service rural local exchange carriers (“RLECs”) 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.

feedback on targeted improvements to the Commission’s Part 4 rules related to its Network Outage Reporting System (“NORS”).²

Communications are a lifeline, especially in times of crisis. As such, NTCA’s members appreciate the need to collect information on significant customer-affecting service disruptions. The Commission has recognized that it has a “foundational public safety mission”³ and in this proceeding it aims to update the existing NORS requirements to “keep pace with technological change and the impact of evolving customer preferences.”⁴ As the FCC has noted, “Part 4’s purpose is to collect information on ‘service disruptions that could affect homeland security, public health or safety.’”⁵ NTCA concurs too with the notion that this is just as important today with respect to broadband services as it was in the past with respect to more traditional telecommunications services. Accordingly, a simple and straightforward update to the existing reporting rules to capture timely data on broadband outages is appropriate and necessary.

However, in the FNPRM the Commission strays from such a simple and straightforward update to existing rules to reflect a broadband world. Instead, consistent with its approach in other recent regulatory contexts, the Commission appears to be using the need to update rules for

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; the Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol and Broadband Internet Service*, PS Docket Nos. 15-80, 04-35, and 11-82 (rel. May 26, 2016) (“FNPRM”).

³ *Id.*, par. 93.

⁴ *Id.*, par. 3.

⁵ *Id.*, par. 50, referencing *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, Notice of Proposed Rulemaking, Second Report and Order, and Order on Reconsideration*, 30 FCC Rcd 3206 (2015) (“2015 Notice”).

broadband as a pretext for regulatory overreach – proposing wide-sweeping reforms that extend far beyond the straightforward task at hand. NTCA urges the Commission to instead apply its legal authority in a direct and targeted manner that ensures the fundamental public policy goals of public safety and reliability are achieved without introducing substantial new burdens or confusion by rewriting the rules as a whole. Put another way, any network outage information the Commission seeks to collect should be clearly and unequivocally tied to its underlying public safety mission.

For instance, the FCC has proposed that Section 706 of the Telecommunications Act provides a reasonable legal platform for its proposed network outage requirements related to broadband. Section 706 instructs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”⁶ The Commission also invokes Universal Service Fund mandates under Section 254, noting that Part 4 reporting can promote or provide assurance to the Commission that carriers are meeting their network deployment obligations.⁷ However, the Commission’s Part 4 rules were never contemplated as a reporting mechanism to monitor or encourage broadband deployment. Rather, as highlighted above, Part 4 has a narrow mission: to protect the public’s safety by monitoring network outages. Outage reporting requirements should be clearly translated from the Commission’s legal authority, and fundamentally wed to – and structured with reference to – this public safety mission.

⁶ *Id.*, pars. 206-208.

⁷ *Id.*, pars. 209-211.

As it endeavors to update its NORS requirements to reflect new services, the Commission should proceed in a thoughtful and disciplined manner, carefully analyzing and updating the Part 4 rules, and surgically transferring and translating the reporting requirements from TDM to IP technology. The Commission should ask what the current rule aims to accomplish; if it is appropriately and clearly tied to the agency’s public safety mission; and if so, how the rule can then be updated to keep pace with technology and maintain an equivalent level of visibility into operators’ networks and occasional, significant outages.

It logically follows that the Commission should not use this proceeding to install *new* rules that extend beyond the current requirements and resultant benefits currently captured in Part 4. Further, the Commission should seek to accurately identify and account for the subsequent reporting burden on service providers, ensuring that by updating its rules the Commission is not installing new, more burdensome, and strenuous requirements that serve little or no value to the agency, consumers, or other stakeholders.

For instance, in regard to the specifics of the FCC’s proposals, the Commission has suggested an outage reporting requirement associated with “hard-down” Broadband Internet Access Service (“BIAS”) outages,⁸ and a separate reporting requirement related to BIAS degradation.⁹ However, with its underlying public safety mission and the above-noted guiding principles in mind, the Commission should draw a bright line between network outage reporting requirements, consistent with its current Part 4 rules, and reporting on issues of network degradation. Service degradations are outside the scope of the current Part 4 rules and would

⁸ *Id.*, par. 129.

⁹ *Id.*, par. 133.

extend far beyond the specific goal of updating the NORS requirements for an IP world; rather it would create new, more burdensome, and confusing requirements on small operators.

Small, rural providers are not currently collecting data in regard to network degradation, nor is there a plug-and-play, cost-effective solution that small providers could employ to capture the requested information. Further, the Commission’s proposal is confusing; it is difficult to understand how the threshold or metric would be calculated. Indeed, if a small, rural provider has to employ the services of a consultant to interpret and explain the NORS rules, then the requirements are not clear, transparent, and straightforward. Clarity is one most important characteristic as it relates to the NORS requirements, as it provides the Commission, service providers, consumers, public safety providers, and the community at large with well-defined, grounded, and concise “rules of the road” to ensure the public’s safety.

In addition, the Commission has suggested that BIAS providers could serve as a central reporting point for issues of network outages and/or service degradation.¹⁰ However, small, rural BIAS providers often rely upon middle-mile, transit, and/or the backbone of several unrelated, third-party service providers – all of whom have extensive, even national, networks and none of whom a smaller provider is likely to be able to control or even bargain with from a position of negotiating strength such that visibility into network disruptions will be shared freely. As such, to the extent service degradation does occur and it takes place outside of the last-mile network, the BIAS provider does not have insight into occurrences beyond its borders. The NORS

¹⁰ *Id.*, par. 112.

proposals cannot be overly burdensome on small, rural providers as compared to other network operators in the broadband food-chain.

Further, there is no evidence that a broadband degradation reporting requirement is needed in the marketplace to continue to ensure that service providers protect the public's safety. The goal of the NORS requirements is not to collect information for the sake of compiling data, but rather for the Commission to understand when public safety is impacted. Not every incident of BIAS degradation will rise to the significant level needed to trigger a public safety event, and while the network performance information might be useful in other contexts, the Commission should not be using its Part 4 rules and related NORS as a vehicle to obtain it.

The Commission has also proposed a new hard-down service outage reporting requirement and a degradation requirement for interconnected Voice over Internet Protocol ("VoIP") service providers.¹¹ However, the Commission's VoIP service degradation reporting proposal stands as another example of regulatory overreach; the proposal is not appropriately tied to the Commission's public safety goals. Likewise, as with broadband, there is no indication of widespread, systematic VoIP service degradation that would necessitate the installment of the Part 4 reporting requirement. As such, in regard to interconnected VoIP, the Commission must draw a bright line between a network outage proposal on the one hand, and a more complex service degradation outage requirement on the other. Having said that, in updating its rules, the Commission also should avoid actions that precipitate regulatory disparity. Rather, to serve its mission, outage-reporting requirements should apply equally to all service providers, regardless of the underlying technology employed. As such, if the Commission deems

¹¹ *Id.*, par.160.

it absolutely necessary to protect the public's safety, VoIP providers should be subject to the same outage reporting rules as BAIS providers.

On a related note, from a broader perspective, to the extent that the Commission evaluates the current NORS framework and deems it fundamentally necessary to install new reporting requirements, it should strive to meet its need for information while limiting the burden imposed on carriers, especially small, rural telecommunications providers with limited financial resources. As NTCA highlighted in response to the Commission's 2015 Notice,¹² 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, rural service provider. Further, for a rural provider with few employees, during a service outage all hands are mobilized to communicate with the public and, likewise, bring the system back into operational status; tasking even one staff member with reporting an outage may inadvertently impede restoration efforts.

NTCA urges the Commission to consider the unique circumstances of small rural operators and to undertake much-needed (and mandatory) Regulatory Flexibility Act¹³ analyses in designing, adopting, and implementing any new rules. Given the proposals teed up in this proceeding, the Commission may be planning to impose significant burdens with an associated substantial and real cost. A cost-benefit analysis is only legitimate and useful if the rules proposed are in line with their stated public safety-purpose.

¹² See 2015 Notice, Reply Comments of NTCA–The Rural Broadband Association, filed July 31, 2015, at 3.

¹³ 5 U.S.C. § 601, *et seq.*

In summary, the Commission should re-visit its NORS proposals, interpreting its legal authority in a narrow manner and drawing a clear, straight line between protecting the public's safety and network outage reporting requirements.

Respectfully submitted,



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