

**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)	
)	

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION
TO FURTHER NOTICE OF PROPOSED RULEMAKING AND
WITH RESPECT TO REGULATORY FLEXIBILITY ANALYSIS**

NTCA–The Rural Broadband Association¹ (“NTCA”) hereby submits reply 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 feedback on changes to the Commission’s Part 4 rules related to its Network Outage Reporting

¹ NTCA represents more than 800 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.

System (“NORS”).² NTCA recognizes the Commission’s “foundational public safety mission”³ and understands its need to collect information that could affect homeland security, public health or safety.⁴ However, the proposals in the FNPRM go far beyond their stated purpose. They are unnecessary and excessively burdensome, especially for the country’s small, rural providers, and would do little to further the reliability or resiliency of the nation’s communications networks.

II. THE COMMISSION’S PROPOSALS ARE OVERBROAD

NTCA appreciates the desire and need to update rules to keep pace with technology, but nothing more than a simple and straightforward update to the existing reporting rules to capture timely data on broadband outages is appropriate or necessary.

The FNPRM strays, however, from a simple and straightforward update to existing rules to reflect a broadband world, instead proposing sweeping reforms that would remake the existing frameworks and extend far beyond the task at hand. As other commenters have noted, the Commission fails to demonstrate what tangible benefits will flow from the proposed rules, or show whether any purported benefits exceed the burdens and costs providers would incur to comply.⁵ The Commission states that the reporting obligations would “likely provide” the agency with situational awareness for broadband networks and more consistent and reliable data.

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.* ¶ 93

⁴ *Id.*, ¶3.

⁵ *See, e.g.* Comments of CTIA at, 2. USTelecom, 4-5, “The NPRM, however, lacks any substantive discussion or analysis of the professed public safety benefits that would result from implementation of the Commission’s BIAS outage reporting regime.”

But as US Telecom recognizes, the Commission never discloses how the data or “situational awareness” will improve reliability or resiliency of broadband networks.⁶ Indeed, the FNPRM fails to proffer any actual or anticipated benefit of the information collection to the public or the Commission.

The Commission also fails to tie the proposed rule changes to its underlying public safety mission, instead relying on unrelated statutory and regulatory goals to justify the value of the information. For example, USTelecom points out the Commission’s faulty reliance on and overstatement of the connection between mandated outage reports and the development of voluntary best practices adopted through the efforts of the Communications Security, Reliability and Interoperability Council (CSRIC).⁷ The Commission claims that “review and analysis of outage reports” have enabled the Commission to “facilitate and promote systemic improvements to reliability.”⁸ However, a review of the Working Group 4A report on Best Practices for Reliable 9-1-1 and E9-1-1 (CSRIC WG 4A Report) reveals no link between improved resiliency and greater access to outage reporting data. Rather, the CSRIC WG 4A Report’s methodology was based on “existing 9-1-1 standards and best practices from any sources that may have applicability to the identified areas.”⁹

The Commission’s reliance on Sections 706 of the Telecommunications Act of 1996 and 254 of the Communications Act of 1934 are similarly misplaced, as noted in NTCA’s initial

⁶ Comments of USTelecom pp 3-4.

⁷ *Id.*, p. 4.

⁸ FNPRM, ¶ 94.

⁹ CSRIC Working Group 4A, Final Report, *Best Practices for Reliable 9-1-1 and E9-1-1*, March 2010 (available at: <https://transition.fcc.gov/pshs/docs/advisory/csric/WG-4A-Final-Report.pdf>) (*CSRIC II WG 4A Report*), p. 6.

comments.¹⁰ Although the Commission asserted that Section 706 provides a reasonable legal platform for its proposed network outage requirements related to broadband, Section 706 merely instructs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”¹¹ While network outage reporting may have several statutory tethers, it is a stretch indeed to link the deployment objectives of Section 706 to the timely reporting by operators of occasional material network outages on networks already deployed. In fact, if anything, overly burdensome outage reporting requirements run the risk of diverting resources from broadband deployment, thereby *undermining* the objectives of Section 706 *and* putting at risk the ability of operators to respond quickly and effectively to outages as they arise.

The Commission also invokes Universal Service Fund (“USF”) 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.¹² However, the Commission’s Part 4 rules were never contemplated as a reporting mechanism to monitor or encourage broadband deployment; the Commission has *many* other tools already created for that purpose and at its disposal within the construct of its USF rules.¹³ Rather, as highlighted above, Part 4 has a narrow mission: to protect the public’s safety by monitoring substantive network outages.

The unrelated proceedings and goals cited as justification for the outage reporting proposals are red herrings, unrelated to the task at hand. Outage reporting requirements should

¹⁰ NTCA Comments, pp. 3-4

¹¹ *Id.*, ¶¶ 206-208.

¹² *Id.*, ¶¶ 209-211.

¹³ *See, e.g.*, FCC Form 481 and Instructions, OMB Approval No. 3060-0986 (May 27, 2016)

be clearly translated from the Commission’s legal authority, and fundamentally wed to – and structured with reference to – its public safety mission. The Commission should therefore refine and re-publish proposals that tie more specifically to capturing data on critical, material outages of broadband in a timely manner consistent with its public safety mission.

III. THERE IS NO NEED FOR A DIFFERENT STANDARD FOR REPORTING CELL SITE OUTAGES IN RURAL AREAS.

When the Commission first proposed a rural cell-site outage reporting requirement, the existing wireless outage reporting requirement calculated an outage based partly on the number of users served by each cell site. The Commission was concerned that this rule could result in less reporting in rural areas, because rural cell sites typically serve fewer users. There was concern that the 900,000 “user minute” threshold may not be triggered for an outage in a rural area, even though an outage of the same duration and affecting the same number of sites in an urban area would be reportable because those sites had more users.¹⁴ . However, the FNPRM acknowledges that the issue “may become less critical as wireless providers begin to comply with the standardized method adopted [in the FNPRM’s accompanying Report and Order].” As CTIA observes, “the issue is not just “less critical” -- it no longer exists.”¹⁵

Under the recently revised Part 4 rules, once the trigger is reached, outages affecting a minimum number of sites and lasting for a minimum duration will be reported, regardless of the number of users that send or receive traffic through the affected site, or whether the site is located in an urban or rural area. In other words, rural areas are subject to the same reporting

¹⁴ FNPRM, ¶ 188

¹⁵ Comments of CTIA, p. 17.

requirements for the same level of outages as urban areas, and this will sufficiently address the Commission's need for insight into material outages across the country, regardless of locale or the number of users that are affected.¹⁶ At the very least, the Commission should do as Verizon requests and evaluate the impact of this rule change on the reporting of outages affecting rural areas before considering another distinct reporting threshold.¹⁷

IV. REPLY COMMENTS IN RESPONSE TO THE INITIAL REGULATORY FLEXIBILITY ANALYSIS

NTCA urges the Commission to consider the unique circumstances of small rural operators and to undertake much-needed (and mandatory) Regulatory Flexibility Act¹⁸ 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.

As Commissioner Pai observed, “there is virtually no consideration given to the thousands of small and mid-sized providers who are critical to competition in these markets . . . Many of them have told the FCC that this top-heavy approach to outage reporting will siphon

¹⁶ A different, lower reporting threshold for small wireless providers would place a burden on small providers far in excess of what the nation's largest providers face, impact few users and run afoul of the Commission's duty to minimize the significant economic impact of its rules on small entities. 5 U.S.C. § 604(a)(5).

¹⁷ Comments of Verizon, p. 7.

¹⁸ 5 U.S.C. § 601, *et seq.*

resources away from broadband deployment, slow genuine outage repair, and provide no benefit to consumers.”¹⁹

To the extent the Commission does adopt new outage reporting requirements, it should lessen the burdens on small providers to avoid wasteful and unnecessary over reporting of outages. Timelines should be extended and thresholds raised.

NTCA agrees in particular with other commenters that there should be a bright line between network outage reporting requirements, consistent with its current Part 4 rules, and broadening reporting duties to sweep in instances of network degradation. As NTCA highlighted in its initial Comments, service degradations are outside the scope of the current Part 4 rules and remaking those rules to capture such data would extend far beyond the more specific goal of “updating” the NORS requirements for an IP world.

An expansion of the current rules in the proposed manner would create new, more burdensome, and confusing requirements on small operators that are not currently collecting data in regard to network degradation. There is no 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. Despite the substantial associated cost, there is no evidence that a broadband degradation reporting requirement is needed in the marketplace to continue to ensure that service

¹⁹ FNPRM, Statement of Commissioner Ajit Pai, Concurring in Part and Dissenting in Part. *See, also*, Statement of Commissioner Michael O’ Reilly, Concurring in Part and Dissenting in Part (criticizing the FNPRM cost-benefit analysis).

providers protect the public's safety. The Commission must balance the cost of the perceived benefit in collecting the data against the costs associated with capital expenditures and additional personnel and consultant fees for small carrier compliance.

In addition, the Commission has suggested that retail broadband Internet access service ("BIAS") providers could serve as a central reporting point for issues of network outages and/or service degradation.²⁰ 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. The outage reporting proposals are overly burdensome on small, rural providers as compared to other network operators in the broadband ecosystem.

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. It is difficult, if not impossible, to see how any incident of BIAS degradation will rise to the level of 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.

²⁰ FNPRM, ¶ 112.

V. CONCLUSION

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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