

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matters of

Amendments to Part 4 of the  
Commission's Rules Concerning  
Disruptions to Communications

PS Docket No. 15-80

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Petition of California Public Utilities  
Commission and the People of the State  
of California for Rulemaking on States'  
Access to the Network Outage  
Reporting System ("NORS") and a  
Ruling Granting California Access to  
NORS

RM-11588

(Terminated)

**COMMENTS OF  
THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

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## I. INTRODUCTION

The California Public Utilities Commission (“CPUC” or “California”) submits these comments concerning proposals in the Federal Communications Commission’s (“FCC” or “Commission”) March 31, 2020 *Second Further Notice of Proposed Rulemaking* (“*Second FNPRM*”) to amend the FCC’s Part 4 rules, § 4.2, to provide state and federal agencies, and Tribal nations direct access to the FCC’s Network Outage Reporting System (NORS) and Disaster Information Reporting System (DIRS) filings.<sup>1</sup> The *Second FNPRM*’s proposals are intended to assist government officials with their efforts to keep the public safe, while also preserving confidentiality, ensuring appropriate access, and facilitating reasonable information sharing. This *Second FNPRM* represents the third rulemaking to refresh the record in the past ten years to respond to the CPUC’s 2009 Petition,<sup>2</sup> in which California requested that the Commission grant states secure

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<sup>1</sup> The *Second FNPRM* proposes to amend its Part 4 rules, § 4.2 Availability of reports filed under this part, to state: “Reports filed under this part will be presumed to be confidential, except that the Chief of the Public Safety and Homeland Security Bureau may grant agencies of the states, the District of Columbia, Tribal Nations, territories and the federal governments access to portions of the information collections affecting their respective jurisdictions only after each requesting agency has certified to the Commission that it has protections in place to safeguard and limit disclosure of confidential information to third parties as described in the Commission’s Certification Form. Public access to reports filed under this part may be sought only pursuant to the procedures set forth in 47 C.F.R. § 0.461. Notice of any requests for public inspection of outage reports will be provided pursuant to 47 C.F.R. 0.461(d)(3).”

<sup>2</sup> *Petition of California Public Utilities Commission and the People of the State of California for Rulemaking on States’ Access to the Network Outage Reporting System (“NORS”) and a Ruling Granting California Access to NORS* (“CPUC Petition”), ET Docket No. 04-35, RM-11588, filed November 12, 2009. The CPUC petitioned the Commission for California-specific access to the NORS database for two reasons: to monitor and verify service outages and disruptions of communications networks that carriers report to the CPUC and to simplify the reporting process for carriers. See CPUC Petition, at 7 & 13-14.

access to the NORS database to assist those on the frontlines with responding to emergencies and disasters in their respective jurisdictions.<sup>3</sup>

During the time the CPUC's Petition has been pending at the FCC, California has developed its own outage database because of the very real need to have available, in electronic format, specific and detailed information about loss of communications service and infrastructure.<sup>4</sup> Monitoring and protecting the communications network is important to protect the public health and welfare as mandated by state law.<sup>5</sup> Having specific, detailed and near real-time outage information is essential to the performance of that vital function. The *Second FNPRM* aptly recognizes that all states, federal agencies, and Tribal nations need the type of outage information contained in NORS and DIRS filings.<sup>6</sup>

The Commission should proceed with adopting the framework set forth in the *Second FNPRM*, subject to these comments,<sup>7</sup> without the need for this further

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<sup>3</sup> Public Notice released June 17, 2015 seeking comments on a *Notice of Proposed Rulemaking* adopted on March 30, 2015; Public Notice released July 19, 2016 seeking comments on a *Further Notice of Proposed Rulemaking* adopted on May 25, 2016; Public Notice released April 1, 2020 seeking comments on a *Second Further Notice of Proposed Rulemaking* adopted on February 28, 2020.

<sup>4</sup> In 2008, the CPUC began requiring carriers to provide copies of their NORS reports to the CPUC at the same time carriers submitted them to the FCC. See *Decision Adopting General Order 133-C and Addressing Other Telecommunications Service Quality Reporting Requirements*, Decision (D).09-07-019, 2009 Cal. PUC LEXIS 320 ("Service Quality Decision").

<sup>5</sup> For example, Cal. Pub. Util. Code § 451 mandates that the CPUC ensure that providers provide safe and reliable service.

<sup>6</sup> See *Second FNPRM*, at ¶ 23; see also Michigan Public Service Commission letter (November 16, 2018); Massachusetts Department of Telecommunications and Cable Ex Parte (September 13, 2016); Michigan Public Service Commission Comments (September 12, 2016); Virginia State Corporation Commission Comments (August 26, 2016); Washington Utilities and Transportation Commission Comments (August 26, 2016); New York State Public Service Commission Comments (August 26, 2016); Michigan Public Service Commission Comments (July 16, 2015); New York State Public Service Commission Comments (July 16, 2015).

<sup>7</sup> Silence on any particular issue should not be construed as assent.

rulemaking. As Commissioner Rosenworcel states, the Commission has “a decade of experience with disasters and . . . a decade-long record with comments about just how to relay outage information to our state colleagues,” including the necessary safeguards to maintain the confidentiality of the NORS and DIRS information.<sup>8</sup>

## **II. THE FCC ALREADY HAS A SUFFICIENT TEN-YEAR RECORD TO GRANT STATES SECURED, DIRECT ACCESS TO OUTAGE INFORMATION WITHOUT A FURTHER RULEMAKING**

This *Second FNPRM* seeks comment on a framework for NORS/DIRS access that includes the following proposals: (1) direct, read-only access to qualified agencies of the 50 states, the District of Columbia, Tribal nations, territories, and the federal government; (2) agencies with access would be allowed to share NORS and DIRS information with other public safety officials that have a “need to know” NORS and DIRS information to prepare for and respond to disasters; (3) participating agencies would be allowed to disclose NORS or DIRS filings information that is aggregated and anonymized across at least four service providers; (4) participating agencies’ access to NORS and DIRS filings would be conditioned upon their agreement to treat the filings as confidential and to not disclose them absent a finding by the Commission that allows them to do so; and (5) participating agencies would be required to follow an application process that would

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<sup>8</sup> See *Second FNPRM*, Released March 2, 2020, Statement of Commissioner Jessica Rosenworcel, at 53 (“we’re going to start yet another rulemaking on what is obvious – we have a problem with communications failing in disasters and we should change our rules so state public safety officials have the information from our outage reporting systems they need to do their job”); see also *id.*, Statement of Commissioner Geoffrey Starks, at 54 (“Giving state and local officials access to the Network Outage Reporting System (NORS) and the Disaster Information Reporting System (DIRS) is a step in the right direction, but I believe we have a sufficient record to move forward with rules. . . . Securing and maintaining the confidentiality of those systems remains important, but I believe we can provide adequate protections while still expanding access to this lifesaving and recovery-enhancing information.”).

include certification to certain requirements related to maintaining confidentiality of the data and the security of the databases.<sup>2</sup>

The answers to these proposals can already be found in the extensive record that started with the CPUC's 2009 Petition.<sup>10</sup> Nonetheless, the CPUC provides these comments to assist the Commission in further refining its NORS/DIRS information-sharing framework, but urges the Commission to amend its Part 4 rules swiftly so that all levels of government can work with service providers to adequately prepare for the next disaster.

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<sup>2</sup> See FCC Fact Sheet, Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, February 7, 2020, found at <https://docs.fcc.gov/public/attachments/DOC-362365A1.pdf> (last visited 4/29/20).

<sup>10</sup> See *Second FNPRM*, at ¶¶ 10-13. The procedural history of this matter is as follows: In 2010 the FCC sought comment on the 2009 CPUC Petition. *Id.*, at ¶ 10. In 2015, the FCC issued a *Notice of Proposed Rulemaking, Second Report and Order, and Order on Reconsideration*, in which the Commission "proposed to grant state governments 'read only access to those portions of the NORS database that pertain to communications outages in their respective states.'" "The Commission proposed to condition access on a state's certification that it 'will keep the data confidential and that it has in place confidentiality protections at least equivalent to those set forth in the federal Freedom of Information Act (FOIA).'" *Id.*, at ¶ 11. In 2016, the FCC issued another order and further notice, in which the Commission found that "the record reflected broad agreement that state and federal agencies would benefit from direct access to NORS data and that 'such a process would serve the public interest if implemented with appropriate and sufficient safeguards.'" The Commission directed its Public Safety and Homeland Security Bureau "to further study and develop proposals regarding how NORS filings could be shared with state commissions and federal agencies in real time, keeping in mind the information sharing privileges already granted to [Department of Home Security] DHS." *Id.*, at ¶ 12. In 2018 the Bureau conducted ex parte meetings "to solicit additional viewpoints from industry, state public service commissions, trade associations, and other public safety stakeholders on the issue of granting state and federal government agencies direct access to NORS and DIRS filings." *Id.*, at ¶ 13. This *Second FNPRM* notes that the record developed in response to the CPUC's 2009 Petition, in RM-11588 "remains available to help inform and resolve issues that are raised in the instant proceeding." *Id.*, at ¶ 17.

### **III. FEDERAL, STATE, TRIBAL, AND LOCAL JURISDICTIONS RESPONSIBLE FOR ENSURING PUBLIC SAFETY SHOULD HAVE DIRECT ACCESS TO NORS AND DIRS DATA**

The *Second FNPRM* proposes to provide access to NORS and DIRS filings to qualified agencies of the 50 states, the District of Columbia, Tribal nations, territories, and the federal government.<sup>11</sup> The CPUC supports granting access to these entities.

The CPUC applauds the Commission for recognizing that Tribal nations also have a real need for outage information because Tribes and Tribal entities have the same “need to know” basis that other government officials have regarding outages affecting the communications on their land.<sup>12</sup> The CPUC realizes that the FCC may have some trouble identifying whether outages affect Tribal lands based on the current format of NORS reports, but there are ways to address this. The CPUC recommends that the NORS forms be modified to include an indicator of whether the outage had an impact on Tribal land. A second indicator should be included to identify the specific location impacted. The CPUC favors allowing any state or federally recognized Tribe access to this data, using the protocols recommended herein for other participating agencies.

In addition, the CPUC recommends that the FCC provide access to certain local agencies with public safety mandates. While the CPUC appreciates the FCC’s concern that “local eligibility would be likely to result in tens of thousands of applications for access,” certain local agencies do indeed have the same level of “need to know” as state

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<sup>11</sup> See *Second FNPRM*, at ¶ 23.

<sup>12</sup> The *Second FNPRM* states that “a ‘need to know’ basis exists where the recipient would need to reasonably require access to the information in order to prepare for, or respond to, an event that threatens public safety, pursuant to the recipient’s official duties.”

agencies. For instance, during September 2018, the CPUC received a complaint from the City of Santa Maria, stating that wireless mobile users, including the local Fire Chief, were unable to make 9-1-1 calls. This type of failure affects public safety. Granting access to NORS and DIRS will allow these local emergency services agencies to react in real-time to protect the public by providing residents and businesses important safety information about a declared emergency, natural disaster, or other catastrophic event. Examples of such catastrophes include the October 2019 Wildfires in Los Angeles, Ventura, Sonoma, Napa, Riverside, and Tehama Counties.

Further, while some local law enforcement agencies may be able to obtain the NORS/DIRS filings from the CPUC pursuant to state law or CPUC order,<sup>13</sup> this downstream sharing of information would not be ideal for these local public safety agencies, as time is of the essence during emergencies. The CPUC has its own processes and procedures for sharing confidential information with other state and local agencies consistent with California's Public Records Act, and providing the NORS/DIRS filings downstream to all "need to know" local agencies in real-time could be administratively challenging and burdensome for the CPUC. Therefore, these local *public safety* agencies should have direct access to NORS/DIRS filings for the same reasons that the FCC is proposing to provide them to other state and federal agencies, territories, and Tribal nations.<sup>14</sup>

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<sup>13</sup> See e.g., CPUC Resolution L-294, *Established Procedures for Release of Public Records Not Open to Public Inspection and Authorizes Commission Staff to Release Such Records to Certain Law Enforcement Organizations*, October 22, 1997, attached hereto as Attachment A.

<sup>14</sup> See *Second FNPRM*, at ¶ 23.

#### IV. PARTICIPATING AGENCIES SHOULD HAVE ACCESS TO HISTORICAL AND MULTISTATE OUTAGE INFORMATION

The *Second FNPRM* proposes providing participating agencies with direct access to historical NORS and DIRS information which will enable identifying trends in outages and infrastructure status that would further enhance real-time recovery and restoration efforts.<sup>15</sup> The CPUC supports this proposal and recommends the FCC provide an option to download historical information in an accessible format such as Microsoft Excel.

In addition to the benefits of historical data that the *Second FNPRM* lists,<sup>16</sup> historical data will also assist officials with identifying any chronic issues in a provider's network, as well as the identification of which service areas need significant financial and infrastructure investments to improve network reliability and service quality, especially during emergencies. For example, the CPUC has examined AT&T California's and Frontier California's (formerly Verizon California) historical service quality reports to understand why these companies have consistently failed to meet the CPUC's service quality standards and to better understand the reliability of their networks in California.<sup>17</sup> The results of this examination will inform the CPUC of the need to update California's standards for service quality and to determine whether other action is necessary to ensure safe and reliable service in California.<sup>18</sup>

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<sup>15</sup> See *Second FNPRM*, at ¶¶ 35-36.

<sup>16</sup> See *Second FNPRM*, at ¶ 35.

<sup>17</sup> See CPUC Service Quality Rulemaking (R.11-12-001), documents available at <https://apps.cpuc.ca.gov/apex/f?p=401:57:0::NO> (last visited 4/29/20).

<sup>18</sup> See *Decision Affirming Commission Direction to Conduct the Network Evaluation Study Originally Ordered in Decision 13-02-023*, CPUC Decision (D.)15-08-041, available at



The CPUC also recommends that a state have access to other states' outage information if that state is affected by a multistate outage, to ensure that all affected states have a complete picture of the outage and its causes.<sup>19</sup> Coordination among federal, state, and local governments is essential during disasters and times of emergencies, as we are seeing firsthand with the current COVID-19 pandemic.

**V. THE FCC SHOULD FOLLOW THE SAME PROCESS FOR PROTECTING NORS/DIRS DATA AS IT DOES WHEN IT SHARES COMPETITIVELY SENSITIVE NORTH AMERICAN NUMBERING PLAN INFORMATION WITH STATES**

The *Second FNPRM* proposes a host of new requirements for access to NORS/DIRS filings in order to protect confidentiality.<sup>20</sup> The CPUC continues to believe that direct access to the FCC's NORS/DIRS database should only be conditioned on a state's certification that it has adequate confidentiality protections in place to protect NORS and DIRS data, similar to the process that the FCC adopted for sharing of competitively sensitive North American Numbering Plan data with states.<sup>21</sup> California has adequate confidentiality protections in place to protect sensitive data.<sup>22</sup>

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<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M154/K320/154320362.PDF> (last visited 4/29/20).

<sup>19</sup> See e.g., <https://medium.com/dataseries/the-counter-overflowth-behind-centurylinks-911-service-outage-of-2014-58eb30ca6252>; see also: <https://docs.fcc.gov/public/attachments/DOC-330012A1.pdf>; see also <https://arstechnica.com/information-technology/2019/08/centurylinks-37-hour-outage-blocked-911-service-for-17-million-people/> (last visited 4/29/20).

<sup>20</sup> See e.g., *Second FNPRM*, at ¶¶ 34-63.

<sup>21</sup> This process is similar to what the Commission had contemplated in its *2015 Part 4 NPRM*. See n. 10, *supra*.

<sup>22</sup> See CPUC Petition (Nov. 12, 2009), at 18-20 citing California Public Records Act and Cal. Pub. Util. Code § 583; see also CPUC General Order 66-D, available at <https://www.cpuc.ca.gov/generalorders/> (last visited 4/29/20).

## VI. THE FCC SHOULD CONSIDER REVISITING ITS PRESUMPTION OF CONFIDENTIALITY FOR ALL INFORMATION CONTAINED IN NORS/DIRS FILINGS

The *Second FNPRM* proposes to extend the Commission’s current policy of treating NORS and DIRS filings as presumptively confidential, which means that “the filings and the information contained therein would be withheld from public disclosure, shared on a limited basis to eligible entities, and provided to others in summarized and aggregated form and only in narrow circumstances.”<sup>23</sup> This proposal would require that “participating state and federal agencies treat NORS and DIRS filings as confidential unless the Commission finds otherwise.”<sup>24</sup> At the same time, the *Second FNPRM* notes that “some service providers have recently announced plans to publicly release outage information not previously disclosed,” citing Verizon’s statement to the CPUC that “increased public disclosure of company-specific outage information will further improve information flow and transparency during disasters and other emergencies without compromising competitively sensitive data.”<sup>25</sup> The *Second FNPRM* seeks comment on how this argument should affect the Commission’s views on the presumption of confidentiality afforded to NORS and DIRS data.<sup>26</sup>

The CPUC appreciates that NORS and DIRS filings could contain data that is “sensitive, for national security and commercial reasons.”<sup>27</sup> The Commission should,

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<sup>23</sup> *Second FNPRM*, at ¶ 28.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Id.*, at ¶ 30.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Id.*, at ¶ 29.

however, take note of Verizon's statement and other service providers' agreement to publicly release outage-related information, which they initially claimed was confidential due to security and competitive concerns. California considers this shift in the industry's perception of the data's confidentiality to be grounds for the Commission to conduct an updated analysis on whether all information in the NORS and DIRS filings should continue to be presumed confidential.

Further background on Verizon's statement above provides a useful introduction on this topic. On November 20, 2019, the CPUC held a meeting with service providers in response to communications failures related to California's 2019 wildfires and California's Public Safety Power Shut Off events. The CPUC directed service providers to produce information as to why their respective networks failed to maintain essential communications services during these events.<sup>28</sup> The CPUC also required service providers to explain their plans for ensuring safer and more reliable service in the future.<sup>29</sup>

CPUC President Marybel Batjer asked the service providers in attendance at the November 20, 2019 meeting if they would follow Verizon's lead by supporting an increased level of transparency and the public release of their company-specific data on major communications outages. All eight providers affirmed that they would support the

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<sup>28</sup> The CPUC required AT&T California, Charter Communications, Comcast, Cox Communications, Frontier Communications, Sprint, T-Mobile, and Verizon Wireless to participate in the November 20, 2019 meeting.

<sup>29</sup> CPUC Pre-Hearing Conference – November 20, 2019. See webcast of meeting: [http://www.adminmonitor.com/ca/cpuc/prehearing\\_conference/201911203/](http://www.adminmonitor.com/ca/cpuc/prehearing_conference/201911203/) (last visited 4/30/20).

increased public disclosure of such outage information. AT&T stated it specifically developed a separate public website that is updated with outage information for any particular emergency.<sup>30</sup> Accordingly, some of the Commission's rationale for presuming that all of the information in the NORS and DIRS filings are confidential may no longer exist. Accordingly, the CPUC recommends that the FCC revisit its confidentiality analysis.

The *Second FNPRM* also proposes to allow participating agencies to disclose NORS or DIRS filing information that is aggregated and anonymized across at least four service providers.<sup>31</sup> The CPUC supports furthering the FCC's, CPUC's, and service providers' shared goal of increasing transparency about outages. However, this proposal fails to consider aggregation in the many instances where an area is only served by two major wireline service providers.

## VII. CONCLUSION

Based on the FCC's existing ten-year record addressing whether and how to share outage information with other government officials, the Commission should amend its Part 4, § 4.2 rule now to provide secure, direct access to NORS and DIRS filings to federal, state, Tribal nations, and local agencies with public safety mandates. The CPUC supports the general concept of the NORS and DIRS information-sharing framework set forth in the *Second FNPRM*, but the FCC should also allow access to local agencies with

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<sup>30</sup> See [https://about.att.com/pages/disaster\\_relief/california\\_winter\\_storms.html](https://about.att.com/pages/disaster_relief/california_winter_storms.html) (last visited 4/30/20).

<sup>31</sup> *Second FNPRM*, at ¶¶ 44-46.

public safety mandates because they also have a “need to know” basis for outage information. Regarding the FCC’s goal to protect confidential information, as the CPUC has previously recommended, the FCC should utilize the same process for sharing competitively sensitive North American Numbering Plan data with states. The CPUC also notes that the FCC should reconsider its presumption of confidentiality for all the information contained in the NORS/DIRS filings because some of the information may no longer warrant confidential treatment.

Respectfully submitted,

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