

**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)

**REPLY COMMENTS OF  
THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

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## I. INTRODUCTION

The California Public Utilities Commission (“CPUC” or “California”) submits these reply comments to address certain comments submitted in response to the Federal Communications Commission’s (“FCC” or “Commission”) March 31, 2020 *Second Further Notice of Proposed Rulemaking* (“*Second FNPRM*”) concerning the FCC’s proposal for an intergovernmental information-sharing framework for Network Outage Reporting System (“NORS”) and Disaster Information Reporting System (“DIRS”) filings.<sup>1</sup>

All parties support an information-sharing framework for NORS and DIRS data with federal agencies, Tribal nations, states, and some also recommend sharing with local jurisdictions.<sup>2</sup> All parties agree that this type of federally-collected outage information would benefit other government entities, with most recognizing the “situational awareness” value it would bring to government entities responsible for ensuring public safety during emergencies, natural disasters, and now pandemics. The Commission should act now to grant the secure access to NORS and DIRS filings that it has been contemplating for over ten years; the record contains sufficient details to implement appropriate security measures for protecting truly confidential, critical infrastructure

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<sup>1</sup> Silence on a particular issue raised in comments should not be construed as assent or disagreement.

<sup>2</sup> See e.g., Michigan Public Service Commission Comments (4/30/20); Colorado Public Utilities Commission Comments (4/30/20); Telecommunications Regulatory Bureau of Puerto Rico Comments (4/30/20); New York Public Service Commission Comments (4/30/20); The National Association of State 911 Administrators Comments (4/30/20); AT&T Comments (4/30/20); CTIA-The Wireless Association Comments (4/30/20); Verizon Comments (4/30/20).

information. Those on the frontline in states, Tribal nations, counties, and cities cannot afford to wait for the Commission to delay adopting final rules.

To achieve meaningful coordination between federal, state, and local governments during major outages that trigger the FCC's high 900,000 user minutes threshold, all government entities responsible for public safety should be able to access the same information that the FCC and the Department of Homeland Security have at their disposal to ensure public safety. However, access to NORS and DIRS outage reports should not limit states and local jurisdictions from seeking more granular or different outage information as needed to fulfill their public safety mandates.

**II. THE FCC'S INFORMATION-SHARING FRAMEWORK FOR NORS AND DIRS FILINGS IS NOT A SUBSTITUTE FOR, NOR A BASIS TO PREEMPT, STATE AND LOCAL LAWS SEEKING MORE GRANULAR OR DIFFERENT OUTAGE INFORMATION FOR PURPOSES SPECIFIC TO STATE AND LOCAL NEEDS.**

The Commission should disregard or reject comments by T-Mobile and The Internet and Television Association ("NCTA") suggesting that the FCC preempt state and local laws requiring wireless and other providers to provide outage data.<sup>3</sup> Preemption is not an issue in the *Second FNPRM*. The Commission's goal here is to provide states and other "need to know" governmental entities with *more* information to improve their situational awareness of communications outages, rather than to take away other, important information-gathering tools that state or local laws may provide.

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<sup>3</sup> See T-Mobile Comments (4/30/20), pp. 3, 10-11; see also NCTA Comments (4/30/20), p. 11. Other industry comments make similar recommendations, which ask the Commission to make clear a preference for federal-led collection efforts. See e.g., CTIA Comments (4/30/20), p. 11.

NORS and DIRS data are not a substitute for the more granular or different data that state or local laws may require. As Verizon’s comments recognize, there are times “when direct communication with a service provider or participation in emergency operations center is a better means of obtaining outage-related information,” than through NORS or DIRS.<sup>4</sup> T-Mobile’s and NCTA’s comments, as well as those similarly pushing for a federal-only framework for collecting outage data, undermine valid state and local exercise of these jurisdictions’ police powers to obtain more information than the FCC may possess or require. State and local entities are better situated to know what information they need during emergencies, disasters, catastrophes, or other unfortunate events that may impact local communications, as explained further below.

We address T-Mobile’s comments because they go the furthest in undermining the FCC’s public safety goals in the *Second FNPRM* by recommending that “the Commission should preempt state laws requiring the submission of outage data by wireless carriers.”<sup>5</sup> T-Mobile claims “[t]hese laws often establish different thresholds for triggering outage reporting and could cause public confusion” and “these laws may not carry the presumption of confidentiality afforded outage data by the FCC.”<sup>6</sup> Without any factual support, legal grounds, citations to specific state or local laws, or any substantiation, T-Mobile leaps to the unfounded conclusion that “[b]ecause such state laws directly conflict with FCC regulations governing the sensitivity of outage reporting

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<sup>4</sup> Verizon Comments (4/30/20), pp. 1-2.

<sup>5</sup> T-Mobile Comments (4/30/20), p. 10.

<sup>6</sup> *Ibid.*

data, they should be preempted.”<sup>7</sup> As an initial matter, the Commission should disregard this argument as beyond the scope of the *Second FNPRM*.

More importantly, T-Mobile’s comments reveal something more alarming– a dangerous agenda – in its argument that the FCC’s NORS and DIRS information-sharing framework should be conditioned on preventing state and local governments from carrying out their statutory public safety mandates to collect outage data at the state or local level. For example, T-Mobile claims that “given that states can obtain access to NORS/DIRS data, there is no reason to establish an independent data collection requirement.”<sup>8</sup> This position is wrong, both legally and as a policy matter.

Independent state and local data collection are examples of lawful police power activities needed to bridge the information gap resulting from reliance on NORS or DIRS filings alone. NORS and DIRS filings are not triggered until a major outage affecting 900,000 user minutes occurs. That is an extremely high threshold that often leaves outages in small communities and rural areas unseen and unknown, unless reported by the media or affected customers. Indeed, the California legislature passed Senate Bill 670 in 2019 to require outage reporting directly to the Governor’s Office of Emergency Services (“Cal OES”) because “...significant outages affecting rural communities may not be reported, leaving those residents at risk of not being able to call 9-1-1 or receive

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<sup>7</sup> T-Mobile Comments (4/30/20), p. 10-11.

<sup>8</sup> *Id.*, p. 11.

emergency notifications.”<sup>2</sup> Cal OES currently is engaged in a rulemaking process to define community isolation and to ensure it receives such information in a uniform and timely manner.

CTIA’s comments also acknowledge that “NORS and DIRS reports were developed for the specific purpose of aiding officials at the DHS in their efforts to assess the state of communications network outages and coordinate overall emergency response efforts. The scope of information required for these efforts may be broader than the type of information appropriate to improve the situational awareness of public safety stakeholders at the state and local levels.”<sup>10</sup>

Accordingly, while NORS and DIRS filings undoubtedly provide useful information to states and local governments for responding to major outages at the 900,000 user minutes threshold, the Commission should not interfere with intrastate matters. State and local laws or regulations requiring service providers to produce more granular or different outage data to public safety or state regulatory agencies are essential public safety activities lawfully exercised pursuant to state and local authority.

### **III. COMMENTS JUSTIFY GRANTING DIRECT ACCESS TO LOCAL JURISDICTIONS RESPONSIBLE FOR ENSURING PUBLIC SAFETY.**

Both government and industry parties recognize the importance of NORS and

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<sup>2</sup> See California Governor’s Office of Emergency Services Statement of Initial Reasons, <https://www.caloes.ca.gov/cal-oes-divisions/public-safety-communications/ca-9-1-1-emergency-communications-branch/outage-reporting> (last visited 5/27/20).

<sup>10</sup> CTIA Comments (4/30/20), p. 9.

DIRS data for emergency management and public safety purposes.<sup>11</sup> For example, the National Association of State 911 (“NASNA”) provides that access to NORS and DIRS data “may provide crucial information to help coordinate state and local emergency management efforts and therefore save lives.”<sup>12</sup> Further, the Montrose Emergency Telephone Service Authority (“METSA”) notes that public safety agencies can use NORS and DIRS data to conduct “trend analysis for understanding, improving, and reporting on the fitness of 9-1-1 telephone service to the public.”<sup>13</sup> Industry parties also agree that NORS and DIRS data is helpful for emergency management. Verizon commented that granting access to NORS and DIRS “...could provide a valuable resource as states further enhance their emergency management capabilities in the wake of major disaster events.”<sup>14</sup>

Many parties agree that the need for NORS and DIRS data is critical for local public safety agencies who are often the first to respond to emergencies.<sup>15</sup> If these local public safety agencies, who would also meet the FCC’s “need to know” criteria, can also comply with the confidentiality requirements set forth by the FCC to obtain NORS and

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<sup>11</sup> New York Public Service Commission Comments (4/30/20), p. 2; AT&T Comments (4/30/20), p. 2; Verizon Comments (4/30/20), p. 3; International Assoc. of Chiefs of Police Comments (4/30/20), p. 4.

<sup>12</sup> NASNA Comments (4/30/20), p. 9.

<sup>13</sup> METSA Comments (4/30/20), p. 1.

<sup>14</sup> Verizon Comments (4/30/20), p. 4.

<sup>15</sup> See e.g., Colorado Public Utilities Commission (4/30/20), p. 3; Pennsylvania Public Utilities Commission (4/30/20), pp. 4-5, 7; International Assoc. of Chiefs of Police Comments (4/30/20), p. 5; The Utility Reform Network (4/30/20), p. 3; NTCA–The Rural Broadband Association (4/30/20), p. 2; BRETSA (4/30/20), p. 2; The Massachusetts Department of Telecommunications and Cable (4/30/20), p. 6.

DIRS filings, then they should have direct access. As the Boulder Regional Emergency Telephone Service Authority (“BRETSA”) stated, “[t]he Commission must stop interfering with state and local public safety authority access to telecommunications network reliability and outage information. The Commission...must make such regulatory changes as are necessary to meet the needs of state and local stakeholders who actually respond to emergencies, natural disasters, and homeland security incidents.”<sup>16</sup>

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

Some parties disagree with the *Second FNPRM*'s proposal to share historical outage information with states and participating agencies.<sup>17</sup> However, agencies and state commissions find this information essential, especially in identifying outage trends, developing statistical baselines, and determining infrastructure status which will enhance the effectiveness and recovery efforts after disaster events.<sup>18</sup>

The Commission should reject Alliance for Telecommunications Industry Solutions' proposal to provide “read-only” access to data that cannot be copied.<sup>19</sup> Historical data that cannot be downloaded will inhibit proactive action and prevent analysis and identification of outage trends. Furthermore, ACA Connects (“ACA”) asserts that the Commission should not share historical outage data because benefits from

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<sup>16</sup> BRETSA Comments (4/30/20), p. 10.

<sup>17</sup> See e.g., ACA Connects Comments (4/30/20), p. 4; see also e.g., T-Mobile Comments (4/30/20), p. 8.

<sup>18</sup> See Colorado Public Utilities Comments (4/30/20), p. 6; see also METSA Comments (4/30/20), p. 3; see also Communications Workers of America Comments (4/30/20), p. 2; see also Pennsylvania Public Utility Commission Comments (4/30/20), p. 9.

<sup>19</sup> Alliance for Telecommunications Industry Solutions Comments (4/30/20), pp. 7-8.



such access are “purely hypothetical” and would risk misuse or disclosure of confidential data.<sup>20</sup> ACA appears to suggest that participating agencies and state commissions will somehow misuse the data, when in fact, the data may be used to identify weaknesses which would assist in recovery efforts.

The CPUC agrees with BRETSA, “that states may find comparison of the impacts of a multi-state outage on 9-1-1 service and PSAP operations in their state with other states useful.”<sup>21</sup> Further restrictions on historical data and multistate information will prevent meaningful analysis during and after times of disaster. Additionally, the CPUC agrees with NASNA that the cost for minor changes to the NORS form to include multistate reporting is highly questionable.<sup>22</sup>

#### **V. THE FCC ALREADY HAS SUCCESSFUL PROCESSES IN PLACE TO PROTECT CONFIDENTIAL INFORMATION.**

The CPUC concurs with the Michigan Public Service Commission (“MPSC”) that the FCC should continue to use its already established procedures to protect the confidentiality and security of NORS and DIRS reports, and that state agencies have proven their ability to protect similar information through previous access to sensitive information.<sup>23</sup> As part of their goal to protect public safety, state agencies will continue to take their responsibilities seriously by protecting NORS and DIRS information and ensure that it is not disclosed to any unauthorized entity or individual. Furthermore,

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<sup>20</sup> ACA Comments (4/30/20), p. 4.

<sup>21</sup> BRETSA Comments (4/30/20), pp. 22-23.

<sup>22</sup> *Id.*, pp. 18-19.

<sup>23</sup> MPSC Comments (4/30/20), p. 4.

states have a strong record in maintaining confidentiality with the service providers' federal Form 477 data. As such, there is little reason for the FCC to impose additional restrictions on public agencies' ability to access NORs and DIRs data.

## **VI. CONCLUSION**

Comments on the *Second FNPRM* make clear that access to NORs and DIRs reports would be an extremely useful information-gathering tool for other government entities, including local jurisdictions responsible for ensuring public safety. The Commission should reject any industry comments that suggest the FCC condition access to NORs and DIRs on eliminating state and local information-gathering efforts, which would directly contravene the Commission's public policy goal in adopting an information-sharing framework – to improve public safety through situational awareness.

The Commission's proposed information-sharing framework should not be held hostage to an industry agenda that serves to keep state and local governments in the dark about outages by preempting state or local laws that aim to fill in any information gaps left by the FCC's high NORs 900,000 user minutes outage reporting threshold and DIRs's voluntary reporting scheme. The Commission should also make historical NORs and DIRs outage data available to qualified government entities to further enhance their situational awareness with better recovery and prevention efforts. The Commission has what it needs to adopt final rules now.

Respectfully submitted,

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