

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

In the Matter of

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

PS Docket No. 15-80

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

ET Docket No. 04-35

The Proposed Extension of Part 4 of the  
Commission's Rules Regarding Outage  
Reporting to Interconnected Voice Over Internet  
Protocol Service Providers and Broadband  
Internet Service Providers

PS Docket No. 11-82

**REPLY COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

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**I. INTRODUCTION AND SUMMARY**

The record in this proceeding demonstrates that the Commission's proposed broadband and voice over Internet protocol (VoIP) outage reporting rules would impose unreasonable (and, in some cases, impossible) burdens on service providers and yield copious amounts of meaningless data that ultimately would not serve the Commission's goal of "ensur[ing] reliability of broadband networks used to deploy critical communications services."<sup>1</sup> If the Commission goes

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<sup>1</sup> *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 Service Providers and Broadband Internet Service Providers, Report and Order, Further Notice of Proposed*

forward with imposing new outage reporting requirements on broadband providers and/or with revisiting the outage reporting rules for VoIP providers, it should significantly limit the scope of these new obligations. In order to reduce the burden on providers to a manageable level and to ensure that the costs of new reporting obligations do not wildly exceed any anticipated public benefit, commenters largely agree that the Commission should narrowly tailor its broadband reporting requirements to: (1) apply only to hard down outages; (2) apply only to broadband Internet access service (BIAS), not business data service (BDS), providers; (3) apply only to networks within the ownership or control of a provider; and (4) limit the number of reports and establish reasonable deadlines for submission.

The record also supports retaining the current outage reporting rules for VoIP providers. The Commission should, as it did in 2012, reject its proposals for performance degradation reporting and for a three-tier VoIP outage reporting process.

The record also reflects the importance of protecting the confidentiality of outage reporting data for both competitive and national security reasons. If the Commission determines that it is appropriate to share outage reporting data with a limited number of state agencies, commenters agree that such agencies must protect the confidentiality of outage data and that additional safeguards would also be appropriate.

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Rulemaking, and Order on Reconsideration, 31 FCC Rcd 5817, 5856 ¶ 93 (2016) (*Order & FNPRM*).

**II. IF THE COMMISSION IMPOSES BIAS REPORTING REQUIREMENTS, THEY SHOULD BE NARROWLY TAILORED TO SERVE PUBLIC SAFETY GOALS AND NOT UNDULY BURDEN BIAS PROVIDERS**

The record in this proceeding is clear: the Commission’s proposed broadband outage reporting rules bear little relationship to its public safety goals and must be narrowed substantially in order for the public benefits of such reporting to exceed the costs of the burden imposed on service providers. The record also demonstrates that many of the assumptions underlying the Commission’s *Order & FNPRM* are not borne out by the realities of operating a broadband network. If the Commission goes forward with its proposal to require broadband providers to submit outage reports, it should focus on hard down outages that occur on networks within the ownership or control of the reporting provider. It also should not require BDS providers to report outages, and should adopt two-tier reporting procedures with reasonable deadlines for submission.

**A. The Record Supports Focusing on Hard-Down Outages Because Performance Degradation Reporting Would Impose Great Costs and Yield Little or No Benefits**

Providers of broadband services that commented in this proceeding unanimously and unequivocally state that any outage reporting rules imposed on broadband providers must relate only to hard down outages.<sup>2</sup> Some state government entities express the view that performance

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<sup>2</sup> Comments of the Alliance for Telecommunications Industry Solutions at 13 (ATIS Comments); Comments of the American Cable Association at 6, 11, 16-17 (ACA Comments); Comments of AT&T at 6, 17-18 (AT&T Comments); Comments of CenturyLink at 15 (CenturyLink Comments); Comments of Comcast Corporation at 11-13 (Comcast Comments); Comments of the National Cable & Telecommunications Association at 4 (NCTA Comments); *see also* Comments of NTCA – The Rural Broadband Association at 4-5 (NTCA Comments); Comments of Verizon at 5 (Verizon Comments); Comments of

degradation reporting would be useful for their purposes. However, these state agencies have failed to overcome the overwhelming evidence from broadband providers that performance degradation is not a good proxy for evaluating outages that actually affect a consumer's ability to communicate with emergency service personnel, and that it cannot be easily or cost-effectively measured or reported.<sup>3</sup>

As Comcast notes, the Commission's proposed performance degradation reporting obligations "would lead to outage reporting for network events that do not adversely impact consumers, much less prevent them from using critical communications during an emergency."<sup>4</sup> This is because, as CTIA observes, "the proposed metrics of throughput, packet loss and latency relate to quality of performance, not loss of service. Variations in these metrics do not mean that customers are unable to reliably send or receive data."<sup>5</sup> In fact, as AT&T explains, "IP networks can be engineered to ensure that throughput variations, packet loss, and latency rarely affect customers while maintaining high levels of flexibility, efficiency, and [Quality of Service]."<sup>6</sup>

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Vonage Holdings Corporation at 6 (Vonage Comments); Comments of the Wireless Internet Service Providers Association at 18-19 (WISPA Comments). Unless otherwise noted, comments cited in this filing were filed in PS Docket Nos. 15-80 and 11-82, and ET Docket No. 04-35 on August 26, 2016.

<sup>3</sup> ATIS Comments at 12-14; ACA Comments at 11-13; AT&T Comments at 18-21; Comcast Comments at 14-18; Comments of CTIA at 10-11 (CTIA Comments); Comments of ITTA – The Voice of Mid-Size Communications Companies at 9-14 (ITTA Comments); NCTA Comments at 5-7, 11-14; NTCA Comments at 5; Verizon Comments at 5-7; WISPA Comments at 19-22; *see also* Vonage Comments at 4-6.

<sup>4</sup> Comcast Comments at 14; *see also* ATIS Comments at 14.

<sup>5</sup> CTIA Comments at 10; *see also* AT&T Comments at 18.

<sup>6</sup> AT&T Comments at 18.

If the Commission were to insist on performance degradation reporting, it is not at all clear what thresholds of packet loss, latency, or throughput degradation should trigger a reporting obligation. As the American Cable Association describes, “the Commission’s proposal would be difficult, if not impossible, to implement because there is no set industry metric for determining when performance degradation passes from merely degraded service to effective loss of service.”<sup>7</sup> The one provider to suggest a possible threshold for reportable broadband packet loss degradation<sup>8</sup> nevertheless urges the Commission “to focus on hard down events because the conditions that may trigger a loss of ‘generally useful availability and connectivity’ could vary based on the end user application.”<sup>9</sup>

State agencies express that they would welcome the opportunity to review detailed performance degradation information from broadband providers.<sup>10</sup> However, they provide no

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<sup>7</sup> ACA Comments at 11; *see also* ATIS Comments at 14 (“[T]here are no established industry standards that would indicate to BIAS providers that certain markers of network performance could or should be read to indicate an outage, let alone a reportable outage under the Commission’s Part 4 regulations.”); NCTA Comments at 13-14 (noting that “[a]lthough broadband providers do to some extent utilize these network performance indicators, no industry standard metric exists for judging when performance degradation crosses the line into an outage”).

<sup>8</sup> CenturyLink Comments at 16 (suggesting a reportable broadband degradation of “at least 30% packet loss lasting continuously on the provider’s network for 30 minutes or more”).

<sup>9</sup> *Id.* at 15.

<sup>10</sup> Comments of the California Public Utilities Commission at 11 (CA PUC Comments) (“[T]he CPUC supports the collection of performance degradation data, such as packet loss and latency, because this type of information has been useful in the CPUC’s data collection efforts to determine the availability of broadband in California.”); Initial Comments of the New York State Public Service Commission at 5 (NY PSC Comments) (“The addition of service quality metrics represents a common sense update to Part 4 outage reporting rules

facts or analysis that suggest that broadband providers can feasibly collect and report such information in a cost-effective way. A mere wish to review the data—especially for purposes (such as measuring broadband adoption) that are unrelated to public safety<sup>11</sup>—cannot overcome the overwhelming response from broadband providers that submitting performance degradation data would be technically infeasible and cost-prohibitive, without providing the Commission with meaningful information about true outages.

When it comes to measuring hard down outages, commenters agree that the Commission’s proposed throughput metric is overly complex and would quickly become outdated.<sup>12</sup> Instead, “any ‘hard down’ broadband reporting threshold should be based only on customer impact and outage duration to achieve greater efficiency, accuracy and sustainability than could be realized under the FNPRM’s proposed throughput-based metric.”<sup>13</sup> Most commenters agree that any reporting threshold for hard down outages should be the same as (or greater than) the 30-minute, 900,000 user minute thresholds applicable to legacy voice outages.<sup>14</sup>

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that reflects technological advancements and facilitates broader access to critical outage information to ensure safe and reliable communications, and resilient networks.”).

<sup>11</sup> CA PUC Comments at 11.

<sup>12</sup> *See, e.g.*, ATIS Comments at 10-12; ACA Comments at 17-19; AT&T Comments at 17; CenturyLink Comments at 13-15; Comcast Comments at 20; Verizon Comments at 6; WISPA Comments at 16-18.

<sup>13</sup> CenturyLink Comments at 14-15.

<sup>14</sup> ATIS Comments at 11-12 (“[T]he reporting threshold should be based on the 900,000 user minute approach currently used as the threshold for other reportable events.”); ACA Comments at 19 (“[T]he Commission should continue to use the familiar outage reporting threshold of 30 minutes/900,000 user minutes affected for hard down outage reporting.”); AT&T Comments at 17 (“AT&T recommends reporting for BIAS hard-down outages that are: (1) of at least 30 minutes duration; (2) of a non-redundant Internet Protocol switching

## **B. The Record Supports Exempting BDS Providers From Outage Reporting Requirements**

Commenters largely agree that BDS providers should not be subject to outage reporting obligations.<sup>15</sup> These providers are “already subject to contractual service quality obligations,”<sup>16</sup> that “require providers to quickly remedy service degradations when they occur.”<sup>17</sup> These contractual guarantees and the competitive marketplace for BDS guarantee sufficient incentives for network operators to provide very high-reliability services with minimal outages.<sup>18</sup> Given this environment, it is not at all clear how BDS outage reporting “will assist the Commission in its efforts to ‘facilitate and promote systemic improvements to reliability.’”<sup>19</sup> In the absence of

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element that the provider owns, operates, leases, or otherwise utilizes; and (3) that potentially isolates subscribers’ Internet connectivity for at least 900,000 user minutes.”); CenturyLink Comments at 13-14; Comcast Comments at 2, 20; NCTA Comments at 10-11; Verizon Comments at 6; WISPA Comments at 18 (“When applied to a broadband network, the only reasonable standard is the number of subscribers affected by a ‘hard down’ outage over a specified time period.”).

<sup>15</sup> ATIS Comments at 6; ACA Comments at 22-23; AT&T Comments at 8-9, 11; Comcast Comments at 21-23; ITTA Comments at 4-6; NCTA Comments at 18-19; Comments of the United States Telecom Association at 14-15 (US Telecom Comments).

<sup>16</sup> US Telecom Comments at 14.

<sup>17</sup> Comcast Comments at 22.

<sup>18</sup> ACA Comments at 25; Comcast Comments at 21-23; NCTA Comments at 19; US Telecom Comments at 14-15.

<sup>19</sup> ACA Comments at 22 (citing *Order & FNPRM*, 31 FCC Rcd at 5862 ¶ 104); *see also* ITTA Comments at 5; US Telecom Comments at 14-15. The New York State Public Service Commission “recommends that Part 4 reporting requirements should apply to dedicated service/access providers offering ‘big pipe’ IP and data services to enterprise customers and other network providers,” but fails to discuss in any detail how such reporting would facilitate “quick efficient communications between and among affected companies, emergency service providers and state and federal regulators” or whether the benefits of such reporting would exceed the costs to providers. *See* NY PSC Comments at 9.

clear evidence that a new reporting requirement would result in public benefits that exceed the costs to providers, the Commission should not adopt it.

As many commenters discuss, the limited benefits to be expected from BDS reporting likely would not exceed the substantial costs imposed on providers to gather and report this data. The American Cable Association explains “not all dedicated services are provided under Tariff or with service level agreements (‘SLAs’) containing the types of sophisticated quality of service guarantees that would require collection and retention of the type of performance data also needed for outage reporting purposes.”<sup>20</sup> Therefore the costs to such providers to install monitoring equipment and report (especially performance degradation data) would be substantially more than the Commission anticipated.<sup>21</sup> Even for BDS providers with more sophisticated agreements that do require some quality of service monitoring and periodic information sharing with customers, the type of information collected, equipment required to collect it, and timing for reports varies by provider and by contractual arrangement with each customer.<sup>22</sup> Therefore even for larger BDS providers with more sophisticated SLAs, the Commission should not assume that providers regularly collect or could easily report the information that it seeks. In sum, the record reflects that the Commission’s proposed outage reporting rules for BDS providers would be very costly to implement. They would also yield

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<sup>20</sup> ACA Comments at 23.

<sup>21</sup> *Order & FNPRM*, 31 FCC Rcd at 5878 ¶ 150, 5879 ¶ 152 (“Today, providers collect network performance information as a necessary part of fulfilling their SLA duties for particular customers, and more generally, providers have significant incentives to track these metrics as part of their network, service, and business risk assurance models. In other words, providers’ existing approaches for network data collection for premium customers likely already captures losses of ‘generally-useful availability and connectivity’ . . .”).

<sup>22</sup> See ATIS Comments at 6-7; ACA Comments at 24-25.

little or no public benefit when SLAs and competitive pressures already demand that BDS providers maintain very high levels of network reliability. The Commission therefore should not impose reporting obligations on BDS providers.

**C. The Record Supports Limiting Reporting Obligations to Outages on Facilities that a Provider Owns or Controls**

The record reflects strong opposition to the Commission’s proposal to require BIAS providers to serve “as a central reporting point for all broadband network outages.”<sup>23</sup> It simply is not possible for a broadband provider to collect and report outages or degradation occurring on another provider’s network or at the application layer. As CenturyLink explains,

[i]t is not feasible to require a BIAS provider to be able to pinpoint, after it has handed off the communication to another broadband provider without any trouble, if/when/where in an end-to-end transmission to the Internet a communication may have been lost on another provider’s network. Providers cannot be reasonably expected to report outages they cannot see and cannot detect.<sup>24</sup>

Although BIAS providers may in some cases be aware of outages in their transport providers’ networks, they are unlikely to know or be able to identify the root cause of the outage or provide any more detailed information.<sup>25</sup> Whether BIAS providers could obtain such information is

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<sup>23</sup> See ATIS Comments at 4-5; ACA Comments at 19-20; AT&T Comments at 3, 12 (calling the proposal “discriminatory and unworkable”); CenturyLink Comments at 10-11 (calling the proposal “significant and troubling”); CTIA Comments at 9 (calling the proposal “unfair and infeasible”); NCTA Comments at 16-17; NTCA Comments at 5; ITTA Comments at 16-18; US Telecom Comments at 13 (calling the proposal “problematic”); Verizon Comments at 6; WISPA Comments at 22-23; *see also Order & FNPRM*, 31 FCC Rcd at 5865 ¶ 112.

<sup>24</sup> CenturyLink Comments at 11.

<sup>25</sup> ACA Comments at 20; CenturyLink Comments at 11; NTCA Comments at 5; *see also* ITTA Comments at 17; WISPA Comments at 22-23.

unclear; in most cases, they would be seeking information from competitors<sup>26</sup> and would have no authority (and in the case of small providers, little leverage) to require other service providers to share detailed outage information.<sup>27</sup> With almost universally negative feedback on this proposal, the Commission should not require BIAS providers to report outages occurring on networks outside their ownership or control.

**D. The Record Supports the Adoption of a Two-Tier Outage Reporting Process with Reasonable Time Periods for Submission**

If the Commission adopts outage reporting requirements for BIAS providers, commenters agree that the process for such reporting should mirror the two-step process currently used by VoIP providers.<sup>28</sup> The submission of an initial notification within 24 hours, followed by a final report within 30 days, would provide the Commission with timely notice of outages and sufficient information about such outages after the fact to inform forward-looking efforts to improve network reliability. Broadband providers note that requiring the submission of reports within shorter time periods could result in the provision of inaccurate information, would likely result in the filing and withdrawal of many unnecessary reports, and would undermine service

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<sup>26</sup> AT&T Comments at 12; US Telecom Comments at 13.

<sup>27</sup> ACA Comments at 20; AT&T Comments at 12; NTCA Comments at 5; US Telecom Comments at 13.

<sup>28</sup> ATIS Comments at 18; ACA Comments at 27; AT&T Comments at 13; CenturyLink Comments at 21; Comcast Comments at 23; ITTA Comments at 14; Comments of T-Mobile at 15 (T-Mobile Comments); US Telecom Comments at 10.

restoration efforts.<sup>29</sup> Moreover, the record demonstrates that broadband providers require additional time beyond the 120 minutes in which legacy providers submit initial reports because broadband networks are more complex and identifying root cause information more difficult.<sup>30</sup>

Parties that urge the Commission to adopt its proposed three-report structure for broadband providers or suggest that the Commission should adopt even more stringent deadlines for reporting, fail to demonstrate that their proposed approaches would be technically or economically feasible for broadband providers to implement. For example, the New York State Public Service Commission (NY PSC) suggests that broadband providers submit initial outage notifications within 60 minutes.<sup>31</sup> The agency claims that “[f]aster reporting will ensure that all relevant stakeholders . . . can work with the BIAS provider to resolve situations as appropriate,” but the NY PSC fails to describe what assistance such stakeholders could provide in real-time to help BIAS providers resolve network outages.<sup>32</sup> The NY PSC also does not provide any explanation for its assertion that broadband providers should be required to submit reports in less time than the Commission provides for legacy providers.

The record reflects that identifying and accurately reporting broadband outages takes more time than the two hours proposed by the Commission. The record also demonstrates that

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<sup>29</sup> ATIS Comments at 18; ACA Comments at 28-30; AT&T Comments at 15-16; Comcast Comments at 24-26; T-Mobile Comments at 15-16; US Telecom Comments at 8-9; *see also* CenturyLink Comments at 21.

<sup>30</sup> AT&T Comments at 13-14; Comcast Comments at 24; CenturyLink Comments at 20-21.

<sup>31</sup> NY PSC Comments at 8, 9-10; *see also* Letter from Steven V. King, Executive Director and Secretary, State of Washington Utilities and Transportation Commission, to Marlene H. Dortch, Secretary, FCC, at 2 (filed Aug. 26, 2016) (“The three-report structure advanced by the FCC provides a timely set of reports . . . .”) (WA UTC Letter).

<sup>32</sup> NY PSC Comments at 10.

the Commission’s “initial report” (step two of the three-tier system applicable to legacy providers) costs real money while providing the Commission with little additional benefit. In the absence of a solid analysis indicating that the benefits of imposing a three-tier broadband reporting system with the same deadlines applicable to legacy service providers would exceed the substantial cost of compliance for broadband providers, the Commission should not adopt its proposal.

### **III. THE RECORD SUPPORTS RETAINING THE CURRENT REPORTING REQUIREMENTS FOR VOIP PROVIDERS**

Providers of VoIP services and other commenters in this proceeding agree that the current reporting paradigm is working as intended to provide the Commission with timely information about VoIP outages. Commenters also agree that the Commission has failed to justify a departure from its existing VoIP rules in favor of more burdensome obligations it explicitly rejected only four years ago.<sup>33</sup>

Specifically, most commenters urge the Commission not to require VoIP providers to report performance degradation. They note that “packet loss and latency are QoS standards that are not appropriately used as outage metrics”<sup>34</sup> for VoIP, and that “there have been no technological or market changes” that would justify the imposition of the same burdensome

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<sup>33</sup> ATIS Comments at 15; ACA Comments at 27, 30; AT&T Comments at 25-27; CenturyLink Comments at 20-22; Comcast Comments at 18-20, 23; NCTA Comments at 20-22; NTCA Comments at 6-7; *see generally* Comments of the Voice on the Net Coalition (VON Comments); Vonage Comments at 4-9.

<sup>34</sup> AT&T Comments at 25.

performance degradation reporting requirements that the Commission previously rejected.<sup>35</sup>

Providers explain that the performance degradation metrics proposed by the Commission would result in “reporting outages even where there is no customer impact” and would “not provide any insight into when an IVoIP customer actually loses the ability to access emergency services.”<sup>36</sup> Moreover, the Commission’s proposals “do not reflect the technological realities of providing interconnected VoIP service and would not yield useful information in minimizing outages and improving service quality.”<sup>37</sup> As it did in 2012,<sup>38</sup> the Commission should therefore reject its proposal to require VoIP providers to submit outage reports on performance degradation.

The majority of commenters also urge the Commission to retain the current two-step reporting process for VoIP. The current two-step process “permit[s] the Commission adequate opportunity to get involved at an early stage, should it so choose, while permitting providers to concentrate their efforts and limited resources on network restoration and customer care, . . . strik[ing] the appropriate cost-benefit balance to achieve the Commission’s goals.”<sup>39</sup> VoIP providers would find it “challenging, if not impossible,” to submit an initial report within 120

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<sup>35</sup> VON Comments at 5.

<sup>36</sup> *Id.* at 6

<sup>37</sup> Vonage Comments at 2.

<sup>38</sup> *Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, Report and Order, 27 FCC Rcd 2650, 2683 ¶ 80 (2012) (*2012 Part 4 Order*) (“[T]he triggering criteria for a reportable ‘outage’ for interconnected VoIP outage reporting purposes that we adopt today excludes the concept of a ‘loss of generally-useful availability and connectivity’ proposed in the *NPRM* based on performance degradations.”).

<sup>39</sup> ACA Comments at 29-30.

minutes rather than 24 hours, given that outages of IVoIP services are difficult to detect.<sup>40</sup> As the Commission itself recognized when adopting the current rules in 2012, providing sufficient time for submission of an initial outage notification “is particularly important since data networks operate differently than voice networks, and the cause of some degradations of service may not be as clearly identifiable, which can lead to inaccurate reporting, or over-reporting, under strict time constraints.”<sup>41</sup>

If anything, the Commission should, as some commenters suggest, harmonize the reporting required for legacy services with the current rules for VoIP providers, requiring all service providers to submit only an initial notification followed by a final report.<sup>42</sup> CenturyLink notes that “[t]he three-phase reporting process creates a significant amount of duplicative work without any considerable gain in knowledge,”<sup>43</sup> while T-Mobile states that “[m]oving to a two-step process [for all providers] would reduce regulatory burdens without undermining Commission objectives.”<sup>44</sup> The Commission should therefore “make providers’ reporting obligations consistent across services [and] streamline the process”<sup>45</sup> by moving to a two-step outage reporting process for all service providers.

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<sup>40</sup> VON Comments at 9.

<sup>41</sup> *2012 Part 4 Order* at 2688 ¶ 95 (internal quotations omitted).

<sup>42</sup> ATIS Comments at 18; AT&T Comments at 27; CenturyLink Comments at 20-21; Comcast Comments at 25-27; ITTA Comments at 14; T-Mobile Comments at 15-16.

<sup>43</sup> CenturyLink Comments at 20.

<sup>44</sup> T-Mobile Comments at 15.

<sup>45</sup> *Order & FNPRM*, 31 FCC Rcd at 5883 ¶ 165.

#### **IV. THE COMMISSION SHOULD CONTINUE TO PROTECT THE CONFIDENTIALITY OF OUTAGE REPORTING DATA AND IMPOSE STRINGENT SAFEGUARDS IF IT SHARES DATA WITH STATES**

Nearly all parties to comment in this proceeding, from broadband providers to state agencies, agree that outage reporting data presents both competitive and national security concerns and that the Commission should continue to presume that outage data submitted through the Network Outage Reporting System (NORS) is confidential.<sup>46</sup> The Commission should therefore presume that broadband outage data is also confidential and should ensure that, to the extent it shares such data with state agencies, the agencies implement appropriately stringent safeguards.

Only two commenters, Public Knowledge and the Boulder Regional Emergency Telephone Service Authority (BRETSA), argue that outage information is “market information to which consumers should have access.”<sup>47</sup> Specifically, Public Knowledge argues that the Commission should make publicly available “the fact of an outage, [and] its duration and scope.”<sup>48</sup> Neither Public Knowledge nor BRETSA, however, discusses the national security

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<sup>46</sup> ATIS Comments at 19-20; AT&T Comments at 21-22; CA PUC Comments at 14; CenturyLink Comments at 18; Comcast Comments at 27; CTIA Comments at 3, 19-20; ITTA Comments at 18-19; NY PSC Comments at 3; WA UTC Letter at 2; WISPA Comments at 23; US Telecom Comments at 15-16; Comments of the Division of Communications Virginia State Corporation Commission, at 7 (VSCC Comments).

<sup>47</sup> Comments of the Boulder Regional Emergency Telephone Service Authority at 10-11; Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 15-80, 11-82, ET Docket No. 04-35, at 1 (filed Aug. 26, 2016) (PK Letter).

<sup>48</sup> PK Letter at 1.

implications of making outage data publicly available. Both the Commission<sup>49</sup> and the Department of Homeland Security<sup>50</sup> have previously recognized that “disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity” targeting our nation’s communications networks. Public Knowledge claims that the “fact” of an outage and the population and services impacted are all known to the persons affected and therefore should not be protected. However, Public Knowledge fails to discuss the impact of making publicly available, for the first time, a centralized source of network outage information from which trends can be assessed and systematic weaknesses identified. The Commission should decline to make outage information publicly available on the basis of two commenters’ unsupported contentions.

To the extent that some state agencies or other parties suggest that they should be able to access confidential NORS data without uniform federal safeguards in place to protect such data, NCTA respectfully disagrees. Although several state agencies acknowledge the importance of protecting NORS data from public disclosure,<sup>51</sup> practical experience demonstrates that state-level confidentiality rules and procedures can fall short of more stringent federal standards and result

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<sup>49</sup> *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16,830, 16,834 ¶ 3 (2004).

<sup>50</sup> Comments of the Dep’t of Homeland Sec., ET Docket No. 04-35, at 14 (June 2, 2004).

<sup>51</sup> *See* WA UTC Comments at 2; VSICC Comments at 7; CA PUC Comments at 15-16; Comments of the National Association of Regulatory Utility Commissioners at 5 (NARUC Comments); NY PSC Comments at 3.

in sensitive data being used in ways the Commission never intended.<sup>52</sup> In light of those concerns, the record certainly supports conditioning state access to NORS, at a minimum, on a state's demonstration that it would protect NORS data to the same extent that the Commission does.<sup>53</sup>

NCTA agrees with the many providers who maintain that, to the extent that the Commission grants certain states access to NORS, it should do more than simply ensure that the state has “some level of confidential treatment” in place, as the National Association of Regulatory Utility Commissioners suggests.<sup>54</sup> Specifically, before granting a state access to NORS, the Commission should require the state to submit a request for Commission approval explaining why it is eligible to receive the data, what it plans to do with the data, and how it will

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<sup>52</sup> For example, the CA PUC recently ordered more than a dozen communications providers to submit confidential FCC Form 477 broadband and voice subscription data to third-party participants in a broad investigation into competition and rates for telephony services, subject to a state-level protective order and its own confidentiality policies. *See Order Instituting Investigation to Assess the State of Competition Among Telecommunications Providers in California, et al.*, I.15-11-007, at 21-22, B-2 to B-4 (Nov. 5, 2015). FCC rules permit a state commission to access Form 477 data only if it “has protections in place that would preclude disclosure of any confidential information.” 47 C.F.R. § 1.7001(d)(4)(i). Notwithstanding these and other federally mandated protections, the CA PUC has attempted to order broader dissemination of confidential Form 477 data by interpreting its own rules to permit access by all participants in an industry-wide proceeding – including direct competitors and various advocacy groups. A federal court issued a preliminary injunction halting all such disclosures. *See New Cingular Wireless PCS, LLC, et al. v. Picker, et al.*, Order Granting Motion for A Preliminary Injunction, Case No. 16-cv-02461-VC, Dkt. Nos. 8, 18 (N.D. Cal. May 20, 2016).

<sup>53</sup> *See* ATIS Comments at 20-21; CenturyLink Comments at 18; ITTA Comments at 19; US Telecom Comments at 16; *see also* AT&T Comments at 22-23; CTIA Comments at 20-21.

<sup>54</sup> NARUC Comments at 5.

protect the confidentiality of any data it receives.<sup>55</sup> The Commission should also limit the number of state officials with access<sup>56</sup> and prohibit them from sharing NORS data with other government agencies or the public.<sup>57</sup>

## V. CONCLUSION

The record in this proceeding suggests that the Commission should rethink its proposed broadband and VoIP outage reporting rules. Broadband providers agree that, if the Commission adopts broadband reporting requirements at all, it should narrowly tailor the rules to (1) focus only on hard-down outages and reject performance degradation reporting; (2) exclude BDS providers; (3) focus only on outages that occur on networks a provider owns or controls; and (4) minimize reporting burdens by requiring only an initial notification (submitted within 24 hours) and a final report (submitted within 30 days). The Commission should also retain the current reporting requirements for VoIP providers. And, if it determines that limited sharing of NORS data with states is appropriate, the Commission should require each state that wishes to access NORS to explain its need for the data and to implement appropriately stringent safeguards to protect it.

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<sup>55</sup> NCTA Comments at 24.

<sup>56</sup> *Id.* at 25; ATIS Comments at 20; AT&T Comments at 23; CTIA Comments at 20; US Telecom Comments at 16-17.

<sup>57</sup> NCTA Comments at 25; ATIS Comments at 20-21; CTIA Comments at 21; ITTA Comments at 19-20.

Respectfully submitted,

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