Before the
Federal Communications Commission
Washington, DC 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

To: The Commission

REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

The Wireless Internet Service Providers Association ("WISPA"), pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby replies to certain Comments filed in response to the *Further Notice of Proposed Rulemaking* ("*FNPRM*") in the above-captioned proceedings.[1] Although WISPA maintains its belief that the Commission's rules should not require reporting for degradation of broadband service and that the metrics defining an outage event are unworkable, these Reply Comments are limited to further developing an approach that would take into account the burdens the rules would impose on small broadband providers.

[1] *See Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 16-63, PS Docket No. 15-80, ET Docket No. 04-35 and PS Docket No. 11-82 (rel. May 26, 2016) ("*FNPRM*").

Discussion

In its Comments, WISPA urged the Commission to exempt small broadband providers from any broadband reporting obligations the Commission may impose.[2] WISPA explained that the Commission had not justified a need for mandatory reporting by small providers and that the proposed rules would impose substantial practical and monetary burdens on small providers that the Commission failed to consider.[3] WISPA further stated that small providers do not typically collect outage information, may not even know where the source of an outage occurred and, in many cases, do not already file outage reports because they do not offer voice services. Other commenters acknowledged the "real-world impacts on smaller providers."[4]

In an *ex parte* letter filed on the Comment deadline, Public Knowledge ("PK") acknowledged many of these facts, stating that

> WISPs, for example, have typically offered only BIAS service and have never been subject to Part 4. They would therefore need to build the necessary reporting infrastructure and train personnel from the ground up. Unlike the typical case described above, *it is easy to see how imposing these new requirements could have a significant impact on the operating costs these carriers*

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[2] *See* Comments of WISPA, PS Docket No. 15-80, ET Docket No. 04-35 and PS Docket No. 11-82 (filed Aug. 26, 2016) at 4-16.

[3] WISPA also pointed out in separate Comments that the Commission failed to follow the requirements of the Regulatory Flexibility Act and the Paperwork Reduction Act. *See* Comments of WISPA Regarding the Initial Regulatory Flexibility Analysis, PS Docket No. 15-80, ET Docket No. 04-35 and PS Docket No. 11-82 (filed Aug. 26, 2016). *See also FNPRM*, Statement of Commissioner Ajit Pai, at 2 ("there is virtually no consideration given to the thousands of small and mid-sized providers who are critical to competition in these markets"); Comments of NTCA – The Rural Broadband Association, PS Docket No. 15-80, ET Docket No. 04-35 and PS Docket No. 11-82 (filed Aug. 26, 2016) ("NTCA Comments") at 7 (urging Commission "to undertake much-needed (and mandatory) Regulatory Flexibility Act analyses in designing, adopting, and implementing any new rules") (citation omitted); Comments of United States Telecom Association, PS Docket No. 15-80, ET Docket No. 04-35 and PS Docket No. 11-82 (filed Aug. 26, 2016) ("USTelecom Comments") at 9-10 (stating that the proposed rules "contradict the spirit" of Executive Order No. 13,563, which encourages policy standards that "impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations").

[4] Comments of ITTA – The Voice of Mid-Sized Communications Companies, PS Docket No. 15-80, ET Docket No. 04-35 and PS Docket No. 11-82 (filed Aug. 26, 2016) ("ITTA Comments") at 3. *See also* Comments of the American Cable Association, PS Docket No. 15-80, ET Docket No. 04-35 and PS Docket No. 11-82 (filed Aug. 26, 2016) ("ACA Comments") at 6 (noting that rules for smaller providers should be based on information they collect "in the ordinary course of business").

> *must bear, resulting in either a significant price increase to customers or even with providers choosing to exit the market entirely*.
>
> Additionally, these broadband only providers that have never been subject to Part 4 are likely to serve communities unserved by larger carriers, or compete with large carriers primarily on the basis of price. *Imposing a sudden cost increase would therefore have significant consequences on the provision of broadband services to rural areas, to promote availability of affordable broadband, and to promote competition in the provision of broadband services*.[5]

To address these realities, PK recommends "a reasonable exemption in the short term for small providers not already subject to the Part 4 reporting requirements."[6] PK encourages cooperation from trade associations, including specifically WISPA, in fashioning a solution.[7]

WISPA appreciates PK's understanding of the hardships that new outage reporting obligations would place on small broadband providers and its efforts to facilitate discussion about solutions that do not fit the Commission's "one size fits all" approach. Although WISPA continues to urge the Commission to exempt small broadband providers from any broadband reporting obligations the Commission may impose, to the extent the Commission nonetheless adopts reporting rules for small providers, it should employ an approach that builds on PK's recommendations and those of other commenters. Such an approach would, at a minimum, include the following elements:

- Small providers should be exempt from any new broadband reporting obligations for at least two years, which would help small providers avoid the "sudden cost" increase and budget for the additional expense of learning the new obligations and the Commission's reporting system.

- As suggested by ACA and ITTA, require reporting from small providers at two times – once within 24 hours of identifying the outage or as soon thereafter as is practicable

[5] Letter from Harold Feld, Senior VP, Public Knowledge, to Marlene H. Dortch, FCC Secretary, PS Docket Nos. 15-80, 11-82; ET Docket No. 04-35 (filed Aug. 26, 2016) ("PK Letter") at 5 (emphases added).
[6] *Id.*
[7] *See id.* at 6.

under the circumstances, and again within 30 days following the outage.[8] This will improve the accuracy of the report and allow small providers to focus on the more urgent task of restoring service.

- Reporting by small providers would be limited to "hard down" outage events[9] affecting at least 1,000 subscriber accounts and lasting at least 15 hours[10] that occur only on the provider's own network,[11] enabling the provider to avoid the unnecessary and substantial monetary costs and time commitment inherent in monitoring and calculating service degradation and reporting on outages on upstream provider networks.[12]

- Reporting metrics should be clarified and simplified so that the information reported is limited to the number of subscriber accounts affected by the outage event.[13]

In the event the Commission imposes outage reporting requirements on small broadband providers, incorporating in the reporting regime the elements set forth above would substantially reduce their regulatory burdens. This combination of tailored regulatory obligations should serve as a point of departure for further discussions among stakeholders and the Commission. WISPA looks forward to engagement on these important issues.

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[8] *See* ACA Comments at 27-30; ITTA Comments at 15. As discussed in the WISPA Comments, there may be circumstances when the provider is working to fix the outage or cannot establish an Internet connection to NORS to report the outage. *See* WISPA Comments at 8-9. *See also* NTCA Comments at 7 ("for a rural provider with few employees, during a service outage all hands are mobilized to communicate with the public and, likewise, bring the system back into operational status; tasking even one staff member with reporting an outage may inadvertently impede restoration efforts").
[9] *See* WISPA Comments at 16; ACA Comments at 11-17; ITTA Comments at 9-14; NTCA Comments at 6.
[10] The 900,000 user-minute threshold proposed by the Commission requires 15 hours of "hard down" outage for 1,000 subscriber accounts. *See FNPRM* at ¶ 130.
[11] *See* NTCA Comments at 5-6; ACA Comments at 19-20; USTelecom Comments at 10-14.
[12] *See, e.g.*, ACA Comments at 6.
[13] *See id.* at 18-19.

Conclusion

The record demonstrates support for rules that account for the disproportionate burdens that the Commission's proposed rules would impose on small broadband providers. If the Commission adopts rules applicable to small providers, the Commission should adopt an exemption of at least two years, and also limit and simplify the rules to better balance the regulatory obligations with the Commission's public safety objectives.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

September 12, 2016 By: */s/ Alex Phillips*, President
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