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

REPLY COMMENTS OF AT&T

AT&T Services, Inc., on behalf of its operating affiliates (collectively, AT&T), respectfully urges the Commission to reject its proposed rules in the *Further Notice*, with the notable exception of significantly streamlining the reporting process for all services.[1] In its comments, AT&T offered a set of guiding principles that the Commission should follow for any new or modified network outage reporting requirements, recognizing that all data collection and

[1] *See 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*, PS Docket No. 15-80; ET Docket No. 04-35; PS Docket No. 11-82, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 31 FCC Rcd 5817 (2016) ("*2016 Network Outage Reporting Order*" or "*Further Notice*").

reporting requirements impose costs. Network outage reporting rules should (1) be narrowly tailored to a legitimate regulatory need; (2) be focused on customer-affecting outages; and (3) provide bright lines for providers to follow.[2] Now that the record is in, we can see that with the exception of streamlining the reporting process, the Commission's new proposed rules fail these tests. For these reasons, other than process streamlining, the Commission should reject the rules it proposes in this *Further Notice*.

DISCUSSION

New Reporting Requirements. The comments in this proceeding reflect widespread consensus across industry—those who actually know the cost and complexity of operating vast networks—that the Commission should reject the new reporting proposals in the *Further Notice*. As many commenters explain, the costs of the proposed reporting dwarf any claimed benefit (and the modest relief granted in the *2016 Network Outage Reporting Order*).[3] Indeed, such regulations would interfere with market incentives to restore service as quickly as possible.[4] And as commenters note, the Commission's legal authority to adopt the sweeping rules proposed here is questionable.[5] At the same time, other commenters, including state commissions and

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[2] *See* AT&T Comments at 2-3. A fourth principle that the Commission should always apply in adopting new rules is to allow ample time for implementation to provide for required internal process changes including systems upgrades, deployment of monitoring in the network, and appropriate training of personnel.

[3] *See, e.g.*, AT&T Comments at 1; American Cable Association (ACA) Comments at 3, 9; ITTA—The Voice of Mid-Size Communications Companies (ITTA) Comments at 3-4; T-Mobile Comments at 12-15; CTIA Comments at 8-9; Comcast Comments at 17; Comtech Comments at 3; United States Telecom Association (USTelecom) Comments at 6.

[4] *See* AT&T Comments at 6; *see also* Boulder Regional Emergency Telephone Service Authority (BRETSA) Comments at 11 ("Competition should also be more effective than Commission enforcement in promoting improvements in service reliability."); ACA Comments at 8; Verizon Comments at 2-3; CenturyLink Comments at 5; T-Mobile Comments at 9-11; The Alliance for Telecommunications Industry Solutions (ATIS) Comments at 4.

[5] *See, e.g.*, AT&T Comments at 8 n.20; CenturyLink Comments at 5-8; ACA Comments at 32-39; NTCA–The Rural Broadband Association (NTCA) Comments at 3; *see also* Comments of AT&T Inc., PS Docket No. 11-82 at 1-9 (Aug. 8, 2011).

purported public interest advocates, are quick to clamor for more regulation without due consideration of costs—costs ultimately borne by consumers.[6]

In the *Further Notice*, on the heels of new network outage reporting requirements just adopted in May, the Commission proposes a slew of new rules including outage reporting for broadband Internet access services (BIAS) and dedicated services; Quality of Service (QoS) metrics that purport to measure service degradation for BIAS, dedicated services, and interconnected VoIP; reporting obligations beyond the boundaries of the network that the provider owns, operates, leases or otherwise provides; reporting of call failures in the radio and local access networks; increased reporting for interconnected VoIP; geography-based wireless outage reporting; and expanded reporting of outages affecting critical aviation information facilities. Together (or individually), these amount to massive, unwarranted new burdens on providers that cannot be justified under any credible cost-benefit analysis. As the record shows, the Commission overstates the purported benefits of its proposed reporting requirements (including its own role in the network outage process) while far understating the costs and complexities.[7]

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[6] *See generally* California Public Utilities Commission (California Commission) Comments; Washington State Utilities and Transportation Commission (Washington Commission) Comments; National Association of State 911 Administrators (NASNA) Comments; Letter to Marlene H. Dortch, Secretary, FCC, from Harold Feld, Public Knowledge, PS Docket Nos. 15-80, 11-82; ET Docket No. 04-35 (filed Aug. 26, 2016) (Public Knowledge *Ex Parte*).

[7] *See* BRETSA Comments at 1-2 ("Outage reporting requirements, both in terms of the information to be reported and the time within which reports should be made, should follow the hierarchy of need and ability to institute remedial measures of 9-1-1 stakeholders. The PSAPs must be ranked at the top of this hierarchy, and the FCC at the bottom; but the Commission's regulations have turned this hierarchy on its head."); AT&T Comments at 8; USTelecom Comments at 5.

Moreover, this reporting would in no way be narrowly tailored to a legitimate regulatory need.[8] The stated purpose of the Part 4 network outage rules is "reporting of disruptions to communications and to the reliability and security of communications infrastructures."[9] Indeed, many of the proposed reports would not even address outages but instead would require reporting such as QoS metrics or call failures in the radio and local access network—measures not designed or intended to measure customer-affecting outages.[10] And any questions about whether the Commission's proposed rules are really about some other political or regulatory agenda far beyond the appropriate use of outage data[11] are betrayed by commenters who readily admit that they want this data used for purposes such as assessing broadband deployment or even public disclosure to consumers for quality of service reasons.[12]

AT&T does agree strongly with commenters that 911 should be the priority for network outage reporting—specifically, customer-affecting outages with the primary focus on 911 emergency services.[13] Many commenters appear to support additional reporting burdens proposed here under the mistaken impression that the proposed rules will support 911 operations

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[8] *See* NTCA Comments at 2-3 ("Instead, consistent with its approach in other recent regulatory contexts, the Commission appears to be using the need to update rules for broadband as a pretext for regulatory overreach – proposing wide-sweeping reforms that extend far beyond the straightforward task at hand.").

[9] 47 C.F.R. § 4.1(a).

[10] *See, e.g.*, BRETSA Comments at 13 ("[P]roviders should *not* be required to report instances in which network facilities are at capacity, but no calls have been blocked. It is inconsistent with market regulation for the Commission to second-guess provider network configurations and capacity. Will the Commission next dictate providers' investment in their facilities and services? Will it also assure the investments it dictates do not impact profitability? Does the Commission propose to engage again in tariff-based rate-of-return regulation?"); AT&T Comments at 19, 28; Comcast Comments at 12.

[11] *See* AT&T Comments at 20.

[12] *See* California Commission Comments at 11; Public Knowledge *Ex Parte* at 1; BRETSA Comments at 10 (arguing that public disclosure of outage data is needed to encourage competition).

[13] *See* Virginia State Corporation Commission (Virginia Commission) Comments at 8 ("Continued special emphasis should be placed on the 911 infrastructure as it exists today and as it transitions to NG911 in Virginia and across the nation."); *see also* ACA Comments at 6; CenturyLink Comments at 8; ITTA Comments at 3; NTCA Comments at 3.

or improve outage notifications to PSAPs or other agencies involved on the ground in disaster or other emergency situations (unlike the Commission).[14] But the proposals here are not really about 911 notifications to PSAPs and most of the proposed reporting would have nothing to do with 911 calling or PSAPs at all.[15] Rather, the Commission is proposing unprecedented reporting of service quality and other information for a swath of services to end users. The granular level of this reporting and the low thresholds will swamp providers and the Commission with data that would tell PSAPs little or nothing about the outages that are critical to them in outage events.[16] Thus, their support for more burdensome regulation is based on a misguided premise and indeed such regulations could be detrimental to their goals by diverting resources, and spreading them too thin, during outages that affect 911 services.

For these reasons, the Commission should reject its new reporting proposals. But to the extent the Commission adopts rules anyway, it must modify the proposed coverage, metrics and thresholds to make reporting workable for providers and the Commission itself, in accordance with the comments of AT&T and others in this proceeding.[17]

Expanded Access to Highly Sensitive Outage Data. AT&T continues to have well-founded concerns about granting wider access to confidential commercial data and highly sensitive national security information contained in providers' network outage reports.[18]

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[14] *See, e.g.*, BRETSA Comments at 11; California Commission Comments at 2; NASNA Comments at 3-4; New York State Public Service Commission (New York Commission) Comments at 8.

[15] *See, e.g.*, ACA Comments at 13; Comcast Comments at 6.

[16] *See* Comtech Comments at 3 ("[T]he Commission continues to overlay tedious and confusing analog micro-regulations on an evolving digital system.").

[17] *See* AT&T Comments at 8-12, 16-20; *see also, e.g.*, ACA Comments at 6; ITTA Comments at 6-14.

[18] *See* AT&T Comments at 21 (*citing* Comments of AT&T, PS Docket No. 15-80; ET Docket No. 04-35 at 25-26 (July 16, 2015); Comments of AT&T Inc., PS Docket No. 11-82 at 22 (Aug. 8, 2011); Comments of AT&T Inc., ET Docket No. 04-35; RM-11588 at 3-5 (Mar. 4, 2010); Reply Comments of AT&T Inc., ET Docket No. 04-35; RM-

Although some commenters attempt to minimize these concerns,[19] the record reflects an imperative for stringent safeguards if the Commission goes forward with the ill-advised plan to give states broader access to network outage reporting data.[20] The risks are high.[21] But in no event should the Commission adopt the absurd suggestion to allow public access to this data.[22] Not only does this risk exposure of commercial and highly sensitive information about the Nation's critical infrastructure, but it strays far from the intended purpose of "reporting of disruptions to communications and to the reliability and security of communications infrastructures."[23] Network outage reporting is not intended for—and is ill-suited to—the various improper uses proposed by commenters such as assessing broadband deployment and providing QoS information to consumers.[24] The utter disregard for the sensitivity of this information in pursuit of other regulatory agendas is troubling at best.

Reporting Process. Finally, the record reflects widespread consensus among providers that the Commission should streamline the reporting process for all services—to align them with

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11588 at 2-3 (Mar. 19, 2010)); *see also* Comcast Comments at 30-31; Comtech Comments at 5-6; USTelecom Comments at 15-17.

[19] *See, e.g.*, National Association of Regulatory Utility Commissioners (NARUC) Comments at 5; Washington Commission Comments at 2; California Commission Comments at 14-15, 16; Virginia Commission Comments at 3-7; New York Commission Comments at 3.

[20] *See* AT&T Comments at 21-25; *see also* CenturyLink Comments at 18-19; ITTA Comments at 18-20; CTIA Comments at 18-21; Comcast Comments at 27-30; ATIS Comments at 19-21.

[21] *See* Comments of the Department of Homeland Security, ET Docket No. 04-35 at 14-15 (June 2, 2004) ("Depending on the disruption in question, the errant disclosure to an adversary of this information concerning even a single event may present a grave risk to the infrastructure. The potential availability of all reports, across all of the platforms proposed in the Commission's Notice, could provide a potential adversary with a virtual road map targeting network stress points and vulnerabilities and a field guide to defeating 'best practices' and protective measures. . . . Safeguarding this information – especially the location, root cause, provider and other sensitive information – should be a paramount consideration in the final rules adopted by the Commission.").

[22] *See, e.g.*, Public Knowledge *Ex Parte* at 1; BRETSA Comments at 10; California Commission Comments at 11.

[23] 47 C.F.R. § 4.1(a).

[24] *See, e.g.*, California Commission Comments at 11; Public Knowledge *Ex Parte* at 1; BRETSA Comments at 10 (arguing that public disclosure of outage data is needed to encourage competition).

the existing deadlines for outage reporting for interconnected VoIP services (or better yet, reduce the reporting to Final Reports only).[25] This approach would provide ample, timely information for the limited role the Commission plays while reducing unnecessary burdens to allow providers to focus their attention on what should be the highest priority—restoring service to customers.[26]

The Commission should reject calls to maintain the reporting timelines, or even to reduce the time allowed.[27] Shorter deadlines would pressure providers to divert resources from restoration priorities even more than the current regime. Already, the current rules pull scarce expert personnel resources between competing priorities of restoring service for our customers and complying with arbitrary and unneeded reporting deadlines. As BRETSA notes:

> Particularly given (i) the Commission's recent assessment and negotiation of steep forfeitures as a result of 9-1-1 outages to 'send a message,' and (ii) the perception that the Commission is particularly aggressive and draconian in its levying of forfeitures; Commission intervention is more likely to get senior management and legal counsel involved to mitigate potential regulatory liability, and to take up time of personnel who could be working to restore service to assure that accurate information is provided the Commission regarding the outage, when the public interest demands that the focus be on restoration of service.[28]

Moreover, short deadlines often produce initial assessments that ultimately prove inaccurate due to time limitations. A streamlined process will facilitate restoration and improve reporting quality while still serving the needs of the Commission's limited role in industry trend

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[25] *See, e.g.*, AT&T Comments at 13-16; CenturyLink Comments at 20-21; ITTA Comments at 14-16; T-Mobile Comments at 15-16; Comcast Comments at 23-27; Comtech Comments at 3-4; USTelecom Comments at 8-10; ATIS Comments at 17-19.

[26] *See* AT&T Comments at 15; ACA Comments at 4.

[27] *See, e.g.*, Washington Commission Comments at 2; New York Commission Comments at 8, 9-10.

[28] BRETSA Comments at 10.

analysis and facilitating industry best practices,[29] none of which is time sensitive enough to justify the burdens of the current reporting deadlines.[30]

CONCLUSION

AT&T respectfully requests that the Commission take action in accordance with AT&T's recommendations discussed in its Comments and as outlined above.

Respectfully Submitted,

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[29] *See* AT&T Comments at 16; ACA Comments at 8.

[30] For any new information collection, the Commission must certify to the Office of Management and Budget (OMB) that a proposed information collection "has practical utility," which OMB defines as:

> the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion . . . In the case of recordkeeping requirements . . . 'practical utility' means that actual uses can be demonstrated. 5 C.F.R. § 1320.3(l).