



N A R U C
National Association of Regulatory Utility Commissioners

November 1, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: NOTICE OF EX PARTE COMMUNICATION filed *In the Matters 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, and 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.*

Dear Ms. Dortch:

In accordance with 47 C.F.R. § 1.1206(b), I am filing this notice of a conference call October 30, 2018 with **James Wiley, Julia Tu, and Brenda Villanueva, Attorney Advisors in the Cybersecurity and Communications Reliability Division of the FCC's Public Safety and Homeland Security Bureau.** During the call, I reiterated many of the arguments outlined in NARUC's 2016 comments¹ filed in response to the May 26, 2016 Federal Communications Commission's (FCC) release of a Further Notice of Proposed Rulemaking² (*FNPRM*) seeking additional comment on proposals to improve its Part 4 outage reporting rules.

During the call, among other things, I pointed out the following:

¹ See [Comments of the National Association of Regulatory Utility Commissioners, PS Docket No. 15-80, ET Docket No. 04-35, PS Docket No. 11-82](#) (filed August 26, 2016); [Reply Comments of the National Association of Regulatory Utility Commissioners, PS Docket No. 15-80, ET Docket No. 04-35, PS Docket No. 11-82](#) (filed September 12, 2016).

² See *In the Matter(s) of 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 Nos. 15-80 and 11-82, ET Docket No. 04-35, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, [FCC 16-63] 64 Communications Reg. (P&F) 1487, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-63A1.pdf, or at: 81 Fed. Reg. 45095 (July 12, 2016), <https://www.federalregister.gov/articles/2016/07/12/2016-16273/disruptions-to-communications>.

❖ ***Providing Access to NORS can only Increase the Reliability of the Network.***

- *The States, after all, frequently are better positioned to, and frequently respond more quickly to, communications outages.³ As past experience has shown,⁴ communications network outages pose a significant risk to health and safety of the public. State agencies, including NARUC’s member commissions as well as State Offices of Emergency Services, are responsible for maintaining public services, including telecommunications services, before, during and after emergencies.*
- *The States have staff resources around the country that the FCC cannot duplicate which frequently substitute for and can supplement any FCC activity.*
- *Unlike the FCC, in disaster and emergency situations, almost all of NARUC’s members have responsibility for oversight and restoration of not just communications infrastructure, but also multi-sector critical infrastructures – including gas, electricity, communications and often water facilities. Most state commissions are key to post-disaster restoration efforts. Having access to any additional data on the size and scope of any communications outages can only facilitate service restoration for all critical infrastructures.*

❖ ***There is no reason to micromanage state access to data.***

- *The FNPRM in ¶¶85-86 present a laundry list of industry-proposed unworkable, inefficient and possibly illegal, restrictions on State access. The characteristic all those industry suggestions share is that – in large measure – they are simply unnecessary and undermine the public interest.⁵ All require additional, wasteful and complicated expenditure of both federal and State resources to address a non-existent problem.*

³ It is no accident that in the section of the federal legislation that grants the FCC its broadest pre-emptive power, 47 U.S.C. § 253, Congress also specifically preserves State authority “to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”

⁴ See, e.g., March 18, 2015 FCC News Release *Verizon Agrees to \$3.4 Million Settlement to Resolve 911 Outage Investigation*, at: <http://www.fcc.gov/document/verizon-pay-34-million-resolve-911-outage-investigation-0>; March 18, 2015 FCC News Release *Oklahoma Carrier Fined \$100,000 for failing to direct 911 Calls to Local Emergency Responders*, at: <http://www.fcc.gov/document/oklahoma-carrier-fined-100k-sending-911-calls-autorecording-0>, December 2, 2014 Washington Utilities and Transportation Commission Press Release: *CenturyLink facing (\$2.9 Million in) Penalties for Statewide 911 Outage*, at: <http://www.utc.wa.gov/aboutUs/Lists/News/DispForm.aspx?ID=291>; January 17, 2013 Commonwealth of Virginia, State Corporation Commission, *Staff Report of Final Findings and Recommendations* (Derecho Report) at http://media10.washingtonpost.com/wapo_generic/media/document_cloud/document/pdf/PUC-2012-00042_1-17-13.pdf.

⁵ For example, why should the FCC be concerned if data is being used “for any other purpose” as long as confidentiality is not breached? No supposed nefarious/inappropriate State “other purpose” is identified by any commenter. After all, outage data has a fairly discrete set of possible uses – all lawful– and all related to the ongoing reliability of the network. It is no accident that no commenter has suggested even a hypothetical potentially “abusive” State use of such data.

- *States routinely handle crucial information about all critical infrastructure sectors – gas, electricity, water and communications. Many States already have direct access to data on not just telecommunications outages, but on other information of equivalent or perhaps greater sensitivity about telecommunications and those other critical infrastructures.*
- *There is no reason to require any specific training – that is simply another federal mandate to expend scarce taxpayer dollars on duplicative and unnecessary requirements. As noted elsewhere in this ex parte, commenters have not managed to cite to even one instance of State exposure of competitive or confidential information about outages.*
- *The fact is, there simply no evidence in the record before the Commission to support additional restrictions or State use/access. There are only unsupported statements by parties that have a financial interest in constraining oversight and investigations of outages.*
- *NARUC members routinely deal with sensitive information dealing with energy, water, gas and telecommunications services, often participate in outage/disaster tabletop exercises in a range of sectors with other federal and State agencies- including the Department of Homeland Security, and are often a focus point for restoration of all critical infrastructures after disasters and outages of any sort. I did not find in my review of the comments a single cited instance of State “malfeasance” that disclosed crucial industry information in any sector. But to some commenters in this proceeding, telecommunications outages apparently require additional limitations, well beyond competitive or critical infrastructure protections accorded data from other sectors. Several suggest the use of the data (even subject to confidentiality protections) be restricted so that assuming the State agency has a related statutory charge – that is by definition in the public interest – they can litigate at taxpayer expense the internal (and confidential) use of that data. Some suggest the FCC handicap State specific efforts by requiring States to waive their own reporting requirements to access the FCC database.*
- *There is no logical reason (or evidence to support the need) to impose any additional burdensome requirements on State access. All the FCC has to do to avoid concerns raised by the tiny minority of States that have arguably deficient “FOIA” type protections in-place, is to condition access to the data on a State providing some level of confidential treatment. That is the solution. The FCC need do no more. Other industry-proposed restrictions, on either access or use of the data, are simply not necessary. Most, by their own terms, are suggested not to protect competition or assure security of the network, but simply to prevent States from using information to otherwise fulfill their statutory duty to – like the FCC - act in the public interest. Outage data has, after all, a limited “use.” Restrictions can only hamper State outage investigations and State restoration efforts.*
- ❖ ***States should have access to all the information from the FCC whatever the region and whatever the title of the FCC outage reporting program – DIRS AND NORS.***
- *The Report and Order accompanying the FNRPM, at ¶ 4, correctly concludes that “direct access to NORS by our state and federal partners is in the public interest.” If access to NORS data is important, similar access to DIRS information when the FCC lifts*

NORS requirements in favor of DIRS is also in the public interest. The logic and rational of the FNPRM concerning State access to NORS data, applies with greater force when the FCC suspends NORS in hurricanes and other broader disasters in favor of the DIRS system.

- *States can only benefit from the full range of outage information providers are already required to report to the FCC for the States and region they operate in. Access to data about outages – in any jurisdiction – can only have one purpose. That is the same purpose underlying the FCC’s NORS/DIRS systems. Access will help States respond to exist outages, anticipate problems involving specific companies and equipment, and permit additional analysis of trends to head off future outage events.*
- *In response to a question, I also pointed out the obvious. It can only facilitate actual emergency responses (particularly in large scale events) for emergency response officials in around outage areas to know as soon as possible the scope of any outage in communications services.*

I am providing a copy of this ex parte to Ms. Villanueva, Ms. Tu, and Mr. Wiley. I have attempted to fairly cover the arguments I presented. If Ms. Villanueva, Ms. Tu, or Mr. Wiley inform me that this notice fails to cover an advocacy point raised during this meeting, I will immediately revise and refile this notice to cover the cited deficit. If you have any questions, please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org.

Sincerely,

James Bradford Ramsay
NARUC General Counsel