

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications</b>	)	<b>PS Docket No. 15-80</b>
	)	
<b>New Part 4 of the Commission’s Rules Concerning Disruptions to Communications</b>	)	<b>ET Docket No. 04-35</b>
	)	

**COMMENTS OF COMPTTEL**

COMPTTEL, through undersigned counsel, hereby submits these comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceedings.<sup>1</sup>

**Major Transport Facility Outages**

Section 4.9 of the Commission’s Rules, 47 C.F.R.§4.9, currently provides that outages of at least 30 minutes duration that potentially affect at least 900,000 user minutes of telephony service or affect at least 1,350 DS3 minutes must be reported.<sup>2</sup> The Commission notes in the NPRM that DS3 circuits were the standard units of purchase for telecommunications transport capacity at the time the 1,350 DS3 minutes threshold was adopted.<sup>3</sup> Since that time, increasing bandwidth requirements has prompted providers to shift the majority of their traffic onto larger fiber facilities. As a result, many of the outages reported under the DS3-based standard are

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<sup>1</sup> *In the Matter of Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, PS Docket No. 15-80, Notice of Proposed Rulemaking, Second Report and Order on Reconsideration, FCC 15-39 (rel. Mar. 30, 2015) (“NPRM”).

<sup>2</sup> Section 4.9(a), (e) and (f).

<sup>3</sup> NPRM at ¶19. But see Qwest Corporation and Qwest Communications Corporation Petition for Reconsideration, filed in ET Docket No. 04-35 January 3, 2005, urging the Commission to require reporting only when outages impact OCn level services rather than DS3s.

relatively minor and unlikely to have “a significant impact on communications or jeopardize public safety.”<sup>4</sup> Because such reports are of limited usefulness in terms of the Commission’s ability to monitor the security and reliability of the nation’s communications infrastructure, the Commission has asked for comment on whether it should increase the reporting threshold for transport facility outages and define the threshold in terms of OC3, rather than DS3, minutes.<sup>5</sup>

To the extent that increasing the reporting threshold will reduce the number of outage reports required for relatively minor incidents, such an adjustment should definitely be made. The Commission predicts that increasing the reporting threshold for major facilities outages to 667 OC3 minutes (the equivalent of 2000 DS3 minutes) would reduce the number of outage reports required to be filed each year by as many as 2,835.<sup>6</sup> Increasing the reporting threshold will serve the public interest by easing the reporting burden on network operators without compromising the Commission’s ability to track major outages.

### **Simplex Outage Reporting**

COMPTTEL opposes the Commission’s proposal to reduce from five days to 48 hours the reporting timeframe for simplex outages.<sup>7</sup> In simplex situations, where one circuit fails, traffic is diverted to a backup circuit or protect path. The network redundancy is designed to protect end users from an actual service outage or degradation.

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<sup>4</sup> NPRM at ¶¶19, 21.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at ¶23.

<sup>7</sup> NPRM at ¶24.

Under the Commission’s current procedures, DS3 simplex outages that are corrected within five days of their discovery are not required to be reported.<sup>8</sup> COMPTTEL submits that the reporting timeframe for simplex outages should not be reduced to 48 hours. As the Commission acknowledges, simplex events are typically scheduled for repair during regular maintenance windows and are corrected within 24 to 48 hours in the normal course of business.<sup>9</sup> Because a simplex outage does not result in a loss of service and does not meet the definition of “outage” set forth in the Commission’s rules,<sup>10</sup> such outages should not be required to be reported at all. As long as simplex outages are required to be reported, increasing providers’ costs and reporting burdens by reducing the reporting timeframe by 60 percent would outweigh any benefits the additional reports might generate.

The Commission states that recent years “have witnessed an increase in the reporting of simplex outages” under the five-day standard.<sup>11</sup> The Commission interprets the increased reporting of simplex outages lasting more than five days as meaning that providers are not following the industry best practice of repairing simplex outages “expeditiously.”<sup>12</sup> It speculates that requiring providers to report simplex outages that are not repaired within 48 hours of their

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<sup>8</sup> *In the Matter of New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Order Granting Partial Stay, FCC 04-291, at ¶9 (rel. Dec. 22, 2004). The Commission granted a partial stay of the requirement originally adopted which provided that DS3s that switch to protect be counted for outage reporting purposes until such time as the both the primary and protect path DS3s are restored to normal service. *Id.* at ¶ 1.

<sup>9</sup> NPRM at ¶28.

<sup>10</sup> Section 4.5(a) of the Commission’s rules defines “outage” as “a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of a failure or other degradation in the performance of a communications provider’s network.”

<sup>11</sup> NPRM at ¶ 28.

<sup>12</sup> *Id.* at ¶27, ¶ 28.

discovery “would create incentives for providers to repair simplex outages in a timelier manner.”<sup>13</sup>

The Commission does not state the basis for its assumption that providers are not following the industry best practice to make simplex repairs expeditiously and that reducing the reporting timeframe is necessary to incent timelier repairs. Providers already have every incentive to make simplex (or any other type of network) outage repairs expeditiously and do not need an increased reporting burden to improve their behavior. Where simplex repairs are not made within a 48-hour window, it is often because harsh weather or other hazardous conditions preclude effectuating immediate repairs. A simplex repair that is completed within 60 hours once the weather permits may still be “expeditious” under the circumstances. In any event, reducing the reporting timeframe from five days to 48 hours will not speed repair time where hazardous conditions prevent repairs from being made in 48 hours. The Commission should not reduce the simplex reporting timeframe without solid evidence that providers are deliberately not following the industry best practice of repairing simplex outages expeditiously, especially when such outages do not result in a loss of service to customers.

### **Special Offices and Facilities**

Section 4.5(b) of the Commission’s Rules defines Special Offices and Facilities as major military installations, key government facilities, nuclear power plants and certain airports.<sup>14</sup> The Commission seeks comment on its proposal to classify as Special Offices and Facilities “those facilities enrolled in or eligible for the Telecommunications Service Priority (‘TSP’) program.”<sup>15</sup>

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<sup>13</sup> NPRM at ¶ 30.

<sup>14</sup> 47 C.F.R. §4.5(b).

<sup>15</sup> NPRM at ¶39.

The TSP prioritizes the restoration and provisioning of critical circuits used by entities with National Security/Emergency Preparedness responsibilities. The TSP prioritization system consists of five different levels with the top levels reserved for national security and military communications and the remaining levels for the protection of public health, safety, maintenance of law and order, public welfare and maintenance of the national economic posture, including the maintenance of the national monetary, credit and financial systems.<sup>16</sup> TSP-enrolled facilities include military installations, federal cabinet-level department and agency headquarters, governors' offices, Federal Reserve Banks, national stock exchanges, federal, state and local law enforcement facilities, hospitals, airports, major passenger rail terminals, nuclear power plants, oil refineries and water treatment plans.<sup>17</sup>

COMPTEL submits that the TSP framework should be used to identify Special Offices and Facilities for reporting purposes and that the rule should apply only to facilities actually enrolled in the program. Separately identifying Special Offices and Facilities and TSP facilities just adds another layer of unnecessary complexity to the reporting process. The TSP system designates high priority telecommunications circuits/infrastructure for restoration and provisioning. All circuits used by TSP-enrolled facilities, regardless of priority level, should come within the definition of Special Offices and Facilities. Such a definition would eliminate the burden on the telecommunications provider to separately track "Special Offices" and "circuits."

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<sup>16</sup> 47 C.F.R. Part 64, Appendix A, Section 12.

<sup>17</sup> NPRM at ¶39.

The Commission should not extend the definition of Special Offices and Facilities to include facilities that are eligible for, but are not enrolled in, the TSP program.<sup>18</sup> Providers should not be put in the position of having to speculate whether any of the facilities they serve that are *not* enrolled in the TSP program would be eligible for such enrollment because it is the federal government that is tasked with determining eligibility.

The Commission asks whether the rules should expressly exempt providers from reporting any information about a TSP enrolled facility that is protected under a confidentiality or non-disclosure agreement with a TSP participant.<sup>19</sup> COMPTTEL is not quite sure what is being asked here because it is unclear how the Commission could carry out its obligation to support “the continuous operation and restoration of critical communications systems and services by assisting the Secretary of Homeland Security with infrastructure damage assessment and restoration”<sup>20</sup> and provide regulatory oversight of the implementation of the TSP system<sup>21</sup> if service providers and their TSP subscribers could prevent the reporting of outages to the government through confidentiality or non-disclosure agreements. While the reporting procedures and reporting responsibility for outages that affect special offices and facilities may

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<sup>18</sup> See NPRM at ¶40.

<sup>19</sup> *Id.* Outage reports that are filed with the Commission are presumed to be confidential and access to such reports may only be sought through a Freedom of Information Act (“FOIA”) request. See Section 4.2 of the Commission’s Rules.

<sup>20</sup> Executive Order 13618 (July 6, 2012), Section 5.6(b).

<sup>21</sup> 47 C.F.R. Part 64, Appendix A, Section 6(a)(1).

differ somewhat from those that affect other telecommunications facilities,<sup>22</sup> such outages must still be reported to the federal government under the current rules.

The Commission asks whether it should delete Section 4.13 of the Commission's Rules because the reporting requirements for Special Offices and Facilities are duplicative of those set forth in other sections of the Commission's Rules and because the reporting obligations with respect to the National Communications System ("NCS") became obsolete when NCS was dissolved in 2012.<sup>23</sup> The Commission should eliminate Section 4.13 in light of the demise of the NCS. The rule requires Special Offices and Facilities to report outages to NCS. Because NCS no longer exists, it makes no sense to keep the rule on the books. Deleting the provision should have no impact on the Commission's ability to gather information about critical outages. Although NCS had the discretion under the rule to share outage reports it received from Special Offices and Facilities with the Commission, it apparently never did so.<sup>24</sup> As a result, elimination of the rule will not afford the Commission any less access to information about critical outages than it has today. If the Commission nonetheless determines to keep the rule in place, it should at least delete the references to NCS and replace them with the Office of Emergency Communications, the National Coordinating Center for Communications or other appropriate arm of the Department of Homeland Security ("DHS").

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<sup>22</sup> Compare Section 4.13 of the Commission's Rules (covering reports by the National Communications System and by Special Offices and Facilities) and Section 4.9 of the Rules (covering reports by service providers).

<sup>23</sup> NPRM at ¶ 41.

<sup>24</sup> Section 4.13 of the Commission's Rules requires outages at special offices and facilities to be reported to NCS which then has the discretion to forward the reports to the Commission. According to the Commission, NCS never shared any such reports with it. NPRM at ¶ 41.

## Part 4 Information Sharing

Reports filed in the Network Outage Reporting System (“NORS”) pursuant to Part 4 of the Commission’s Rules are presumed confidential and are not routinely made available for public inspection.<sup>25</sup> The Commission states that it routinely shares NORS reports with the Office of Emergency Communications at DHS and that the information in those reports may be provided to other governmental authorities, including state governmental authorities. At this time, however, the Commission does not itself provide access to or share information from NORS reports with state authorities.<sup>26</sup>

The Commission has asked for comment on whether it should grant states read-only access to those portions of the NORS database that contain information about communications outages in their states.<sup>27</sup> There is no question that the public interest would be served if state governments were made and kept aware of communications outages within their borders so that they can take whatever action may be necessary to protect their citizens and promote the security, public safety and welfare of their residents. At the same time, it is critically important that the confidentiality of federal NORS reports be preserved and protected. The Commission has proposed that in order to receive direct access to NORS data, a state be required to certify that it will keep the data confidential and that it has in place confidentiality protections at least equivalent to those set forth in the federal FOIA. COMPTTEL submits that a pledge to keep the data confidential should be the minimum requirement for state access to the NORS database.

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<sup>25</sup> See Section 4.2 of the Commission’s Rules.

<sup>26</sup> NPRM at ¶ 48.

<sup>27</sup> *Id.* at ¶52.

While the existence of state equivalents of the federal FOIA protections would also be helpful in preserving the confidentiality of NORS reports, COMPTTEL submits that the appropriateness of release of confidential information under state public records acts or FOIA equivalents may be subject to different interpretations than it is under the FOIA and stronger protections are needed.

Rather than assume that state equivalents of FOIA will be sufficient to protect NORS data from public disclosure, the Commission should adopt a rule with language similar to the statutory language that Congress enacted to govern a federal agency's sharing of homeland security information with a state government.<sup>28</sup> COMPTTEL would suggest that the Commission adopt a rule providing that:

Information obtained by a State government from the Federal Communications Commission's NORS database shall remain under the control of the FCC and a State law or regulation authorizing or requiring the State government to disclose information shall not apply to such information.

As the Commission is well aware, the NORS database contains extremely confidential and sensitive information – both from a competitive perspective and from a national security perspective. The Commission acknowledged when it adopted the current rules that “[t]he disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity.”<sup>29</sup> In light of the critical importance of the nation's communications infrastructure to homeland security, law enforcement, public health, safety and welfare and a functioning economy, the Commission cannot afford to put the confidentiality of outage reporting information in jeopardy to the extent it decides to allow state government

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<sup>28</sup> See 6 USC. §482(e).

<sup>29</sup> *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-188, at ¶3 (rel. Aug. 19, 2004).

agencies access to such information. By maintaining control over the information it shares with states and by preempting any state laws that might require disclosure of such information, the Commission can best ensure that the information remains as secure as possible and that risks of intentional or even inadvertent confidentiality breaches are minimized.

The Commission should limit a state's use of NORS data to "activities relating to its 'traditional role of protecting the health and safety'" of its residents. Only those state employees that have a need to review NORS data to protect the health and safety of the state's residents should be given access. In order to reduce the reporting burdens and obligations on service providers, the Commission should condition a state's access to NORS data on the state's waiver or elimination of any independent outage reporting requirement imposed by state law.

### **Conclusion**

COMPTEL respectfully requests that the Commission make any revisions to its outage reporting rules consistent with the foregoing recommendations

July 16, 2015

Respectfully submitted,

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