

**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

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

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I. INTRODUCTION

The California Public Utilities Commission (“CPUC” or “California”) submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking [NPRM], Second Report and Order and Order on Reconsideration* regarding specific proposals to improve the FCC’s *Part 4 rules*, which govern the FCC’s collection and use of outage data reported by certain communications providers. The FCC maintains the outage data in its Network Outage Reporting System (NORS).

In this *NPRM*, the FCC proposes “to grant states read-only access to those portions of the NORS database that pertain to communications outages in their respective states,”¹ in response to a 2009 Petition filed by the CPUC.² The CPUC had petitioned the FCC for direct and secure access to California-specific NORS data in an effort to streamline the CPUC’s collection of outage data and to eliminate redundant reporting for entities that must also concurrently provide the CPUC with California-specific NORS reports.³ Similar to the FCC, the CPUC collects and analyzes outage data as part of its “traditional

¹ *NPRM*, ¶ 51, at 19.

² See *Petition of the California Public Utilities Commission and The People of the State of California for Rulemaking on States’ Access to the Network Outage Reporting System (NORS) Database and a Ruling Granting California Access to NORS*, ET Docket No. 04-35 (Nov. 12, 2009) (“CPUC Petition”).

³ The FCC’s NORS reports and reporting requirements are significant to the CPUC. In 2009, in the context of reviewing and revising its service quality rules, the CPUC issued Decision (D.) 09-07-019. Decision 09-07-019 adopted General Order (G.O.) 133-C, which imposes the FCC’s NORS reporting requirements on certain carriers. Since the Commission issued D.09-07-019, facilities-based and registered carriers must simultaneously provide the CPUC with NORS reports when they are filed with the FCC.³ While it was the CPUC’s preference when it adopted D.09-07-019 to obtain NORS data directly from the FCC, that option was not explicitly available under the FCC’s rules.

role of protecting public health and safety through monitoring of communications network functionality.”⁴

The CPUC also treats the outage data that it receives from communications providers as confidential and thus concurs with the FCC’s proposal to require a state 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 Freedom of Information Act (FOIA)” in order to obtain direct access to NORS.⁵ California has shown that this type of certification, which California has provided to the FCC in the context of obtaining direct access to confidential numbering data, is an adequate means to ensure that confidential data obtained from the FCC is properly safeguarded.⁶ None of the other suggested conditions or restrictions listed in paragraphs 52 and 53 of the *NPRM*, which would impose additional confidentiality burdens on states and limit a state’s use of the NORS data, are necessary. As long as the NORS data can be kept confidential, states should be able to use the data consistent with state law and for purposes determined by each state.

The *NPRM* also proposes to (1) clarify certain rules concerning call failures that impact access to 9-1-1 and Public Safety Answering Points (PSAPs)⁷ and (2) adopt “a more standardized, technology neutral method for calculating the number of users

⁴ CPUC Petition, at 14.

⁵ *Ibid.*

⁶ See CPUC Petition, at 15-20; see also *generally* CPUC Reply Comments (Mar. 19, 2010), ET Docket 04-35.

⁷ See *NPRM*, ¶¶ 9-18, at 4-7. A PSAP is a call center responsible for answering emergency and 9-1-1 calls and dispatching police, fire, and ambulance services.

‘potentially affected’ by a wireless outage.”⁸ The CPUC generally supports the concepts of clarifying rules that would impact access to 9-1-1 and to PSAPs and adopting a standardized, technology neutral method for calculating the number of users affected by a wireless outage. However, any updated or new *Part 4 rules* the FCC adopts should not prohibit or preclude states from adopting their own rules related to these matters.

California is currently considering updates or amendments to its service quality rules that may include reporting thresholds that are lower than those the Commission’s *Part 4 rules* currently require.

II. THE CPUC’S PETITION FOR DIRECT ACCESS TO THE NORS DATABASE

A. A State’s Certification of Confidentiality Protections is Sufficient and Should Be the *Only* Condition for a State to Obtain Direct Access to NORS

The FCC proposes to grant states direct access to NORS, but access would be conditioned upon a state certifying 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 Freedom of Information Act (FOIA).”⁹ The CPUC supports this proposal and recommends that the certification be the *only* condition imposed upon states seeking direct access to state-specific outage reports in NORS. The CPUC recommended this approach in its Petition.¹⁰

⁸ See *NPRM*, ¶¶ 31-37, at 11-14.

⁹ *NPRM*, ¶ 51, at 19.

¹⁰ See CPUC Petition, at 18-20; see also CPUC Reply Comments (Mar. 19, 2010), ET Docket No. 04-35, at 5-9.

The *NPRM*, however, further asks how the FCC can “ensure that the data is shared with officials most in need of the information while maintaining confidentiality assurances that the information will be properly safeguarded.”¹¹ The *NPRM* lists several suggestions: security training, identify personnel handling NORS data, require states to report breaches of confidentiality to the FCC, allow a provider to audit a state’s handling of its outage data, grant access to NORS only on the condition that such access replace any separate outage reporting required under state law, or allow caveats with respect to the sharing of any data elements.¹² The CPUC opposes all of these other suggested conditions or restrictions listed in ¶ 52.

As explained in the CPUC Petition, California has well-established confidentiality protections in place to prevent the public disclosure of NORS data, and the CPUC has already deemed NORS data to be confidential.¹³ The CPUC also currently receives from carriers the same NORS data which the CPUC seeks in its Petition, without any of the conditions or limitations suggested in the *NPRM*. There is no need to impose further conditions on California (or other states) simply because the source of the data would be the FCC itself.

¹¹ See *NPRM*, ¶ 52, at 19.

¹² See *ibid.*

¹³ See *Decision Adopting General Order 133-C and Addressing Other Telecommunications Service Quality Reporting Requirements*, D.09-07-019, 2009 Cal. PUC LEXIS 320 (“Service Quality Decision”).

B. The FCC Should Not Limit a State’s Use of NORS Data

The FCC seeks comment “on limitations on states’ use of NORS data.”¹⁴ The *NPRM* asks several questions related to the extent of which states may use NORS data: whether states should be required to notify the FCC and service providers if a state seeks to share data with parties outside its direct employ; whether the use of NORS data be restricted to activities relating to states’ “traditional role of protecting public health and safety.”¹⁵ The CPUC opposes all of the limitations proposed in ¶ 53 for the same reasons that the CPUC opposes the conditions in ¶ 52. States should be able to use NORS data consistent with state law and for purposes each state determines.

Outage and service disruption data is essential for state commissions to carry out their regulatory obligations. State commissions have a responsibility to ensure the stability of their infrastructure and the welfare of their residents, and service outages pose a significant risk to health and safety of the public and “greatly inconvenience the public and cause significant economic disruption.”¹⁶ For this very reason, the Department of Homeland Security (“DHS”) recommended in the underlying 2004 proceeding that the FCC consider making “outage information available to State public utility commissions, in order to assure that State authorities have the...data they need to support their homeland security and emergency response functions....”¹⁷ The FCC responded by

¹⁴ See *NPRM*, ¶ 53, at 19.

¹⁵ See *ibid.*

¹⁶ NASUCA Comments (Mar. 4, 2010), ET Docket No. 04-35, at 4-5.

¹⁷ *In the Matter of New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd. 16830, ¶ 25, at 16845 (2004) (“*New Part 4 Rules and Order*”).

granting DHS latitude to share NORS data with “other governmental authorities.”¹⁸ In contrast to the *NPRM*, the FCC’s Order that adopted the current *Part 4 rules* did not require DHS to impose further confidentiality requirements or other restrictions in order for states to obtain the NORS data from DHS.¹⁹

The *NPRM* asks what data should be shared: “Should states be granted access to the notification, initial, and final reports? Should providers’ outage coordinators information be redacted before the information is shared with states?”²⁰ The CPUC recommends that all California data in NORS be shared with the CPUC, including VoIP outage reports. In addition to notification, initial, and final reports, states should also have access to “withdrawn” reports, which are also submitted in NORS. States should have access to the data *as soon as* the carriers submit it to NORS, with no redactions or time delay (contrast this with the FCC’s Form 477 data, which is routinely produced more than a year after the service providers give it to the FCC). When it comes to network outages, time is of the essence; to perform their jobs effectively, states must have timely access to outage information.

The *NPRM* asks about the costs and benefits of sharing state-specific NORS outage data with state entities.²¹ The FCC believes that the proposed sharing of NORS data with states would not have an appreciable cost impact to either the states or the FCC.

¹⁸ *Id.* at ¶ 47 (2004). It would not be as feasible for states to request the NORS data from DHS. See CPUC Petition, at 12-13; see also CPUC Reply Comments.

¹⁹ See *New Part 4 Rules and Order*, *supra*, 19 FCC Rcd 16830, ¶ 47 (2004).

²⁰ *NPRM*, ¶ 53, at 19.

²¹ See *ibid.*

The CPUC agrees with the FCC’s assumption, for the simple reason that allowing states to access an existing data base should impose modest one-time costs to create the access protocol and de minimus additional on-going costs of maintaining the data base.²² The FCC already has a similar password-protected process when it shares numbering data with states, including California.²³

III. CALL FAILURES TO PSAPS

The FCC is concerned about the reporting of outages that significantly degrade communications to PSAP(s).²⁴ Some providers may be interpreting Section 4.9(e)(1) narrowly to require reporting only “when a PSAP is rendered unable to receive *any* 911 calls for a long enough period to meet the reporting threshold. Under this interpretation, a failure or degradation that prevents hundreds or even thousands of 911 calls from completing might fail to qualify as a reportable outage if some 911 calls continued to reach the PSAP throughout the event.”²⁵ The FCC proposes to revise Section 4.5e (1) “to clarify that any network malfunction or higher-level issue that significantly degrades or prevents 911 calls from being completed constitutes a ‘loss of communications to PSAP(s),’ regardless of whether the PSAP is rendered completely unable to receive 911 calls.”²⁶

²² See *NPRM*, ¶ 53, at 19.

²³ See CPUC Petition, at 15-17.

²⁴ See *NPRM*, ¶ 12, at 5.

²⁵ See *id.*, ¶ 9, at 4.

²⁶ *Ibid.*

The CPUC supports the FCC’s clarification that a significant degradation of communication to a PSAP constitutes an outage. The measurement the FCC sets should be easy to understand and implement, scalable to the size of the PSAP, and be reported consistently by carriers. In Rulemaking (R.)11-12-001, the CPUC is currently considering adopting reporting rules for outages where access to 911 falls below the NORS reporting threshold.²⁷ Small, rural communities suffer outages more acutely than urban areas, and alternative means of communications are frequently a long drive away. This makes access to 911 and emergency calling critical for both residential and business users.

IV. WIRELESS OUTAGE REPORTING METRICS

The *NPRM* asks for comments on two possible methods for calculating the number of users “potentially affected” by a wireless network outage.²⁸ The current method²⁹ “has led to inconsistencies in reporting that may compromise the Commission’s ability to reliably detect wireless network outage trends. The lack of a clear and

²⁷ Documents for Rulemaking (R.) 11-12-001 can be found at <http://docs.cpuc.ca.gov/EFileSearchForm.aspx>.

²⁸ See *NPRM*, ¶ 32, at 12. The two potential approaches, each of which the FCC believes holds the potential to produce more reliable and consistent data than is currently being reported are: (1) “multiplying the number of cell sites disabled as part of the outage by the average number of users it serves per site, assuming for purposes of the calculation that each user is served by a single site and site assignments are distributed by evenly throughout the provider’s network, or (2) “a wireless provider could determine by reference to its Visitor Location Register the actual number of users that were being served at each affected cell site when the outage commenced.” *Id.*, ¶ 33, at 12.

²⁹ Currently, wireless service providers in particular are directed to calculate the number of users “potentially affected” by “multiplying the simultaneous call capacity of the affected equipment by a concentration ratio of 8.” See *id.*, ¶ 31, at 12.

consistent process for measuring and reporting wireless outages also undermines the technology neutrality that lies at the heart of the Part 4 rules.”³⁰

While the CPUC has no comment on which approach proposed in the *NPRM* would be better, the CPUC supports the FCC’s goal of adopting a consistent and standardized process for determining the number of users potentially affected by a wireless outage so that data can be accurately obtained and compared.

The FCC also seeks comment “on whether to adopt a separate and additional wireless outage reporting requirement based on the geographical scope of an outage, irrespective of the number of users potentially affected.”³¹ While this issue has been deferred to the next phase of the CPUC’s current service quality proceeding,³² wireless access to 911 has been increasing in relevancy each year. Information about service outages which affect 911 is thus also relevant. Regarding the reporting requirement, the CPUC has found, from reviewing its wireline outage reports, that both overall trend information and specific location information is important.

The CPUC aggregates its wireline service quality data in regular reports, and also has wire-center specific trouble ticket data which allows for pinpointing central office areas with particularly high outage rates, either in duration or number of outages.³³ For

³⁰ *Ibid.*

³¹ *NPRM*, ¶ 34, at 13.

³² See Rulemaking (R.) 11-12-001, found at <http://docs.cpuc.ca.gov/EFileSearchForm.aspx>.

³³ The CPUC wireline service quality reports can be found at <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/Telecommunications+Service+Quality+Reports.htm>.

wireless carriers, the CPUC has mapped the availability of broadband,³⁴ including quality of wireless coverage.³⁵ Averages and overall percentages are useful at the macro level. But, more granular information is required to insure that universal access is achieved. Geographic relevancy is as important for wireless service quality as it is for wireline.

The *NPRM* proposes that “capacity be allocated to each PSAP in reasonable proportion to its size in terms of number of users served,” rather than Sprint’s proposal of having “providers divide capacity among subtending PSAPs in order to calculate numbers of users potentially affected.”³⁶ The CPUC supports the FCC’s proposal because it considers the impact from the perspective of the served entity, the PSAP. The size of California’s PSAPs are on a spectrum from large to small, and in urban and rural areas, so this method would show the particular impact to each PSAP more accurately.

V. CONCLUSION

Granting California’s Petition for state public utilities commissions to obtain direct access to the NORS database will ensure the rapid and effective coordination of efforts to maintain or restore communications services at the local, state, and federal levels. Certification from states that they have state laws, regulations, or other confidentiality protections at least equivalent to FOIA provides an adequate and practical means to safeguard NORS data from public disclosure. Outage rules for call failures to PSAPs should be clear and should include significant degradations, while being easy to

³⁴ The California Broadband Availability Maps can be found at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/Broadband+Availability+Maps.htm>.

³⁵ The California Mobile Field Testing Report showing R-factor (a version of mean opinion score) as a predictor of VoIP quality can be found at http://www.cpuc.ca.gov/PUC/Telco/bb_drivetest.htm.

³⁶ *NPRM*, ¶ 37, at 14.

implement, scalable, and consistently reported. Similar to wireline outage data, it is important for the FCC to receive accurate and consistent wireless outage information, which should include a relevant geographical component.

Respectfully submitted,

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