



Competitive Carriers Association
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Competitive Carriers Association

805 15th Street NW, Suite 401

Washington, DC 20005

Office: (202) 449-9866 • Fax: (866) 436-1080

July 16, 2015

Via ECFS

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

Re: EX PARTE NOTICE

PS Docket No. 15-80: *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications;*

ET Docket No. 04-35: *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*

Ms. Dortch:

Competitive Carriers Association hereby submits this letter in response to the *Notice of Proposed Rulemaking* ("NPRM") adopted by the Federal Communications Commission (the "FCC" or "Commission") in the above-captioned proceedings, which seeks comment on proposals to revise the Commission's Part 4 outage rules.¹

CCA's members strive to provide uninterrupted service to their customers at all times, and especially during and after emergency situations, recognizing the critical role that wireless connectivity plays during an emergency. Accordingly, CCA supports the Commission's efforts to better "ensur[e] the reliability and resiliency of the Nation's communications system" and to "strengthen[] the Nation's 911 system."² However, CCA is concerned by the limited factual support for the proposed rule changes, as well as the additional burdens these new regulations will place on smaller wireless providers. Consistent with CCA's positions in previous filings concerning outage regulations and other network reliability and resiliency issues,³ any new rules must properly balance

¹ *In the Matter 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*, PS Docket No. 15-80; ET Docket No. 04-35, Notice of Proposed Rulemaking, Second Report and Order and Order on Reconsideration, 30 FCC Rcd 3206 (2015) ("NPRM").

² NPRM ¶ 6.

³ See, e.g., *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 13-239, PS Docket No. 11-60 (filed Feb. 26, 2015); *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 13-239, PS Docket No. 11-60 (filed Feb. 13, 2015); Joint Comments of Competitive Carriers Association and NTCA – The

the value and benefits of acquiring the requested information with the burdens of collecting it. CCA believes that the benefits associated with the proposed rules will not “outweigh the costs of crippling carrier resources available to actually repair and restore communications facilities—especially if less onerous means of obtaining this information are available.”⁴

The Commission Has Not Fully Explained the Purported Need for its Proposed Rule Changes

As an initial matter, the *NPRM* provides very little in the way of factual support on which to base its proposed rule changes, other than a general passage of time.⁵ For example, the Commission seeks comment “on the reporting of wireless call failures that result from congestion in the access network, a problem often encountered during emergencies,”⁶ and claims, in support of this proposition, that “this problem was observed in the aftermath of the derecho storm of 2012 and the Boston Marathon bombings in 2013.”⁷ Yet the Commission failed to provide specific data on alleged call failures for either of these incidents, and the Commission admits that it would benefit from “a more complete understanding of the problem” in seeking comment on the failure rate of wireless calls.⁸ Moreover, while the FCC “assume[s] that providers are already technically capable of tracking call failures at each cell site, and that they do so as a matter of practice,”⁹ some of CCA’s members do not currently collect and preserve this information in an ongoing manner.

Rather than adopting rules at this phase of the process, the Commission should consider an interim step such as a Further Notice of Proposed Rulemaking, so that it—to the extent necessary—it can craft rules based on responses to the questions it asks in the *NPRM*, such as “[h]ow often and under what circumstances [] wireless calls fail in RANs.”¹⁰ The Commission should use the *NPRM* to gather the necessary information from stakeholders, and then provide this information to all parties through an additional notice-and-comment period if the Commission determines that there is a factual basis for proposing additional outage reporting rules. This approach, if adopted, will lead to a fully informed rulemaking.

Rural Broadband Association, PS Docket No. 13-239, PS Docket No. 11-60 (filed Jan. 17, 2014) (“*CCA-NTCA Joint Comments*”); *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 11-60 (filed July 19, 2013) (“*CCA July 19, 2013 Ex Parte*”).

⁴ See, e.g., *CCA July 19, 2013 Ex Parte* at 1.

⁵ See, e.g., *NPRM* ¶ 6.

⁶ *Id.* ¶ 13.

⁷ *Id.* ¶ 13, n.22.

⁸ *Id.* ¶ 15.

⁹ *Id.* ¶ 17.

¹⁰ *Id.* ¶ 15.

The Commission Must Take a Measured Approach With Respect to Any Additional Outage Reporting Requirements

To the extent the Commission nevertheless moves forward with its rulemaking, it should bear in mind the existing incentives carriers have to provide robust, high quality service to their customers in all circumstances, especially during catastrophic events.¹¹ Competitive carriers are especially sensitive to these market forces because they are oftentimes rural or community-based companies who are the sole provider of services, and whose employees live in the area and personally depend on the network they manage and maintain for reliable service. Thus, these carriers directly benefit from maintaining reliable and resilient networks. If, however, the Commission imposes additional or revised outage reporting regulations, it should minimize the burdens associated with such reporting as much as possible. The need for increased regulations surrounding network outages must be balanced against significant burdens the proposed regulations will likely place on wireless carriers.

As noted above, the *NPRM* proposes to require the reporting of systemic wireless call failures that result from RAN overloading, and proposes using the percent of calls failed as a potential metric.¹² If adopted, this approach would require carriers to incur additional administrative costs and to expend additional resources, which may hamper efforts to restore service to customers. This will be particularly burdensome for small and rural providers that often have limited resources, and will likely have to divert some of these resources away from repairing an outage to ensure compliance with additional reporting rules. Furthermore, as CCA has noted in the past, providing a percentage of working cell sites during an outage will not promote efforts to bring the network back to a fully functioning state, which is what consumers need during or immediately after a disaster.¹³

CCA likewise has concerns about the various proposals to calculate the total number of users “potentially affected” by an outage.¹⁴ The *NPRM* proposes two potential “standardized, technology neutral method[s]” that may be used in most scenarios, and a separate method to be used for outages affecting PSAPs.¹⁵ Mandating two separate metrics for calculating “potentially affected” wireless users—one for PSAP outages and another for all other outages—will unnecessarily

¹¹ See, e.g., *CCA-NTCA Joint Comments* at 4-6; *CCA July 19, 2013 Ex Parte* at 1.

¹² *NPRM* ¶¶ 15-17.

¹³ See *CCA-NTCA Joint Comments* at 6-7. Providing the percentage of functioning cell sites may result in additional consumer confusion and misguidance. As Commissioner Pai has stated, “there’s no particular correlation between the percentage of inoperable cell sites and the coverage and capacity maintained by a provider during a disaster . . . [s]o holding up percentages as a measure of reliability or resiliency is bound to mislead consumers into thinking that one provider is better than another even if, in reality, the converse is true.” *In the Matter of Improving the Resiliency of Mobile Wireless Communications Networks; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket No. 13-239; PS Docket No. 11-60, 28 FCC Rcd 14373 (2013), Dissenting Statement of Commissioner Pai 1.

¹⁴ See, e.g., *NPRM* ¶¶ 33-36.

¹⁵ See *id.*

complicate the outage reporting process and impose administrative burdens on carriers, especially small carriers with limited staff support. In addition, more resources will need to be dedicated to determining and calculating two separate metrics for what may be one single outage.

The Commission's proposal to classify facilities enrolled in or eligible for the Telecommunications Service Priority ("TSP") Program as "special offices and facilities"¹⁶ also would result in an increase of the number of outage reports required to be submitted by reporting providers, with little or no corresponding public interest benefit. While reporting outage events for top level facilities may have some marginal value, the list of TSP-eligible facilities includes a wide variety of locations, ranging from military installations and federal agencies to hospitals and local law enforcement facilities.¹⁷ There are potentially thousands of qualifying facilities in some of CCA's smaller members' service territories, making the proposed expansion overbroad and unnecessary.

One way the Commission can alleviate this increased burden, and others proposed in the *NPRM*, is to exempt wireless carriers from these additional requirements. Wireless carriers are currently exempt from the special offices and facilities reporting obligation when an outage affects airports. In the past, Sprint, Cingular Wireless, and CTIA submitted separate petitions arguing that, for technical reasons, the exemption for wireless carriers should extend to the reporting obligations for all special offices and facilities.¹⁸ Sprint argues that the Commission's rationale for exempting wireless carriers from the outage reporting for airports "applies with equal force to all special office and facilities" since wireless providers generally do not have their own equipment installed at the special office or facility.¹⁹ If the carrier does not have a dedicated access line, it is not feasible for the carrier to determine whether one of its devices is being used within the special office or facility.²⁰ This makes it impossible for the carrier to know whether an office or facility has been impacted by an outage.²¹ CCA agrees with the petitioners and supports a wireless provider exemption.

Finally, CCA has concerns with making information reported in NORS widely available to other federal agencies, state public utility commissions and others.²² At a minimum, state or federal agencies seeking access to this information should be required to specify how they intend to use the

¹⁶ *Id.* ¶ 39.

¹⁷ Indeed, the *NPRM* provides several examples of TSP-eligible facilities, including: "military installations; federal cabinet-level department and agency headquarters; state 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 plants." *Id.*

¹⁸ Sprint Corporation, Petition for Reconsideration, ET Docket 04-35, at 3-4 (Jan. 3, 2005) ("Sprint Petition"); Cingular Wireless LLC, Petition for Reconsideration, ET Docket 04-35, at 4 (Jan. 3, 2005); CTIA – The Wireless Association, Petition for Partial Reconsideration and Motion for Partial Stay, ET Docket 04-35, at 2-3 (Dec. 23, 2004) ("CTIA Petition").

¹⁹ Sprint Petition at 4; *see also* CTIA Petition at 2-3.

²⁰ Sprint Petition at 4.

²¹ *Id.*

²² *NPRM* ¶¶ 48-55.

information, who they intend to share it with, and what safeguards they have established to ensure that the information is only shared on a need-to-know basis.²³ For example, the Commission should consider only sharing this information with state PUCs once the PUC has certified that the information will be subject to confidentiality protections at least as strong as those set forth in the Freedom of Information Act.²⁴ In addition, CCA has concerns with state PUCs potentially inappropriately leveraging outage information, such as making statewide funding or cost recovery decisions for wireless providers based on this data.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

Regards,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
General Counsel, CCA

²³ *See id.* ¶ 54.

²⁴ *Id.* ¶ 51.