

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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
)	

To: The Commission

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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July 16, 2015

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CTIA – The Wireless Association® (“CTIA”) hereby submits the following comments in response to the above-captioned Notice of Proposed Rulemaking (“*Notice*”) seeking to update the Commission’s Part 4 outage reporting rules.¹

I. INTRODUCTION AND SUMMARY.

As the *Notice* explains, “[t]he current outage reporting rules have served the Commission well for over a decade,” but CTIA nonetheless agrees that aspects of the Part 4 rules can be “refined” to improve the outage reporting program.² CTIA supports the *Notice*’s “targeted proposals,”³ that would make meaningful, reasonable improvements, but opposes those that would significantly expand the reach of the rules beyond the intent and structure of the current framework. CTIA therefore urges the Commission to:

¹ *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Notice of Proposed Rulemaking, 30 FCC Rcd 3206 (2015) (“*Notice*”).

² *Id.* ¶ 1; *see also id.* ¶ 6.

³ *Id.* ¶ 1.

- Adopt a standardized and simplified method for calculating the number of users “potentially affected” by a wireless network outage, specifically by adopting the *Notice*’s proposal to multiply the number of cell sites disabled as part of an outage by the average number of users the carrier serves per cell site;
- Adopt an improved method for reporting a wireless network outage affecting a Public Safety Answering Point (“PSAP”), specifically by adopting Sprint’s proposal to divide the capacity of a mobile switching center equally among subtending PSAPs, producing a more accurate estimate of the number of end users potentially affected by an outage affecting a given PSAP;
- Reject the proposal to require wireless carriers to report call failures that result from congestion in the radio access network, which would assess wireless call quality and radio access network congestion during temporary surges and expand the scope of the outage rules well beyond their underlying purposes;
- Refrain from expanding the rules to require reporting for a “partial loss of communications” to a PSAP, as the underlying concern is undocumented and the proposed solutions are unworkable;
- Extend the wireless carrier exemption for reporting outages potentially affecting airports to special offices and facilities, and in any event refrain from expanding the definition of special offices and facilities to Telecommunications Service Priority (“TSP”)-enrolled or -eligible facilities; and
- Implement effective and meaningful safeguards designed to protect Network Outage Reporting System (“NORS”) data and mitigate the risks of unauthorized disclosures, to the extent the Commission finds it is appropriate to share that data with requesting state regulatory commissions and federal agencies.

CTIA welcomes the opportunity to work with the Commission to refine the Part 4 outage reporting rules without imposing unreasonable requirements and burdens on wireless carriers.

II. THE COMMISSION CAN MAKE REASONABLE MODIFICATIONS TO WIRELESS OUTAGE REPORTING METRICS TO ACHIEVE ITS OBJECTIVES.

A. CTIA Supports a Standardized and Simplified Method for Calculating “Potentially Affected” Users.

The *Notice* recognizes that the current wireless outage reporting rule requires wireless providers to calculate the number of users “potentially affected” by an outage, but does not

provide for a uniform method for identifying that number.⁴ It then proposes to adopt “a more standardized, technology neutral method” to calculate the number of potentially affected users in order to achieve consistency of data.⁵ CTIA supports the Commission’s objective and one of the *Notice*’s proposals, in particular.

As an initial matter, any method to identify how potentially affected users are calculated should be clear, simple, and not overly burdensome for providers to implement. Any such method also should ensure consistency in the data reported. The Commission can achieve these objectives by adopting its proposal for carriers to multiply the number of cell sites disabled as part of an outage by the average number of users the carrier serves per site.⁶

The alternative suggestion identified in the *Notice* – *i.e.*, use of a carrier’s Visitor Location Register (“VLR”) – would not be consistent with the Commission’s goal of technological neutrality and, in any event, would not be workable. A VLR is typically associated with older, second generation (“2G”) network technologies and is being phased out as carriers transition their networks away from 2G, away from 3G, and to 4G and beyond. The Commission’s cell site / user multiplier approach is a far better method for uniform, technologically-neutral calculations.

B. The Commission Should Adopt the Sprint Petition to More Accurately Report on Outages Affecting a PSAP.

The Commission recognizes that the current PSAP outage reporting rule may prompt carriers to over-estimate the number of end users potentially affected by an outage impacting a

⁴ *Id.* ¶ 31.

⁵ *Id.* ¶ 32.

⁶ *Id.* ¶ 33.

given PSAP and seeks comment on a more targeted solution.⁷ As the Commission notes, Sprint raised this issue in a 2004 petition for reconsideration.⁸ Sprint noted that multiple PSAPs typically subtend a wireless carrier’s mobile switching center (“MSC”) and a wireless customer dialing 9-1-1 will, depending upon the caller’s location, be routed to the appropriate subtending PSAP (not each PSAP). Yet the rule could be viewed as requiring wireless carriers to assume that all 9-1-1 calls to the MSC are sent to the affected PSAP. This assumption, in turn, would mean that “the 900,000 user-minute threshold would likely be reached even though, in reality, the number of user-minutes potentially affected by the PSAP outage may not ever reach that level.”⁹

Sprint’s proposal mitigates this problem by allowing wireless carriers to divide the capacity of the MSC, as defined by the rule, by the number of subtending PSAPs, thereby producing a more accurate estimate of the number of end users potentially affected by an outage impacting a given PSAP. CTIA supports Sprint’s proposal as a simple and far more reasonable approach to reporting on outages affecting a PSAP.

While CTIA appreciates the Commission’s desire to modify the Sprint proposal to more accurately reflect the relative size of each PSAP,¹⁰ the revised proposal set forth in the *Notice* adds significant complexity and burden. Wireless carriers do not know the exact population served by every PSAP, and as the Commission is aware, PSAP boundaries can and often do change, thereby altering the number of users served. Additionally, the actual number of end

⁷ *Id.* ¶ 36.

⁸ *See* Petition of Sprint Corporation, ET Docket No. 04-35, at 3 (filed Jan. 3, 2005), <http://apps.fcc.gov/ecfs/comment/view?id=5512038643>.

⁹ *Id.*

¹⁰ *Notice* ¶ 37.

users whose 9-1-1 calls would be routed to a given PSAP inherently fluctuates based on the number of mobile users that are within a PSAP's jurisdiction at a given time. This fluctuation could result in varying allocations of users to subtending PSAPs, thereby defeating the Commission's goal of achieving greater consistency by providers in determining the number of impacted users. For these reasons, requiring wireless carriers to determine the relative capacity of each PSAP subtending an MSC is not a readily available number, and adoption of the Sprint proposal without modification will provide significant benefit in and of itself.

III. THE COMMISSION SHOULD NOT EXPAND THE OUTAGE REPORTING RULES TO MONITOR CALL CONGESTION IN THE RADIO ACCESS NETWORK.

The Commission's proposal to require wireless carriers to report call failures that result from congestion in the radio access network ("RAN") would expand the scope of the outage rules well beyond their underlying purpose and should be rejected. The proposal is less targeted to "service disruptions that could affect homeland security, public health or safety, and the economic well-being of our Nation"¹¹ and more focused on assessing wireless call quality and RAN congestion during any temporary surges. The Commission should refrain from adopting any such reporting requirement.

The Part 4 network outage rules are intended to capture emergencies, major disasters, and significant degradations that result in network failures that could potentially impact the public's health and safety, but the call congestion proposal is not in any way limited to such occurrences.¹² The call congestion proposal is a much broader and far-reaching exploration into

¹¹ See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 16830, ¶ 1 (2004) ("*2004 Outage Reporting Order*").

¹² 47 C.F.R. § 4.5(a).

how wireless networks operate during times of peak consumer usage. The Commission readily acknowledges in the *Notice* that its focus on call congestion “may not constitute a reportable ‘failure or degradation,’” but it seeks to adopt an additional reporting framework based on call blocking.¹³ Additionally, the Commission inquires about other indicators to help it “better understand the network dynamics that prevent a wireless network from effectively handling calls once a certain saturation point is reached[.]”¹⁴ Yet wireless networks are designed with a certain amount of total capacity to carry reasonably predictable traffic loads, based on typical calling patterns. There is not nearly enough spectrum allocated to commercial wireless providers to handle every temporary surge in traffic and, even if there was, it would be inefficient to over-engineer the networks. This expedition into the inner workings of RANs, call congestion, and spikes in traffic would significantly expand the Part 4 outage reporting beyond its mission. The proposal would result in Commission involvement in the assessment of call quality and RAN congestion during any temporary surges in call volume on the network. Requiring carriers to report call congestion resulting from a spike in the number of users on a network, unrelated to any event or resulting in significant degradation, goes far beyond the purpose of the Part 4 outage rules. Indeed, the proposal would capture instances when wireless networks perform as designed – even exceeding ordinary call processing levels. It would be an inappropriate distortion to require providers to report such events as network failures.

Moreover, the proposal fails to grapple with the Commission’s earlier decision rejecting the idea of outage reporting on the state of RANs in the *2004 Outage Reporting Order*. There, the Commission determined that it is far better to measure wireless communications outages and

¹³ *Id.* ¶¶ 14, 16.

¹⁴ *Id.* ¶ 16.

require reporting at the MSC switch, not the radiofrequency (“RF”) portion of the wireless network. As the Commission stated:

The MSC switch, like a wireline switch, operates in a stable, controlled environment and easily accommodates the measurement of call connections potentially lost during an outage. When a call is established through the MSC switch, there is a single switch connection used for the duration of the call as long as that user is located within the MSC serving area.¹⁵

This avoids, as the Commission concluded, “the computational difficulties that result from the fluidity of the RF portions of each wireless network....”¹⁶ These complexities may be influenced by the number of small, capacity and macro sites subtending a switch, the amount and types of distinct spectrum bands deployed, the number and types of mobile devices in use at a particular time and their bandwidth demands (*e.g.*, laptop vs. tablet vs. smartphone, etc.), and the capacity of base station controllers to manage handoffs.¹⁷ The current rules thus encompass call failure, but measured from the MSC switch, not the RAN. The *Notice* fails to explain why the Commission’s 2004 analysis is no longer valid, and the Commission does not point to any new facts to justify a reversal of course to adopt a call congestion reporting requirement.¹⁸

¹⁵ *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 16830, 16865 ¶ 111 (2004) (“*2004 Outage Reporting Order*”).

¹⁶ *Id.*

¹⁷ *See, e.g., 2004 Outage Reporting Order, Comments of Sprint Corporation* (May 25, 2004).

¹⁸ The fact that the *Notice* asks whether reporting requirements may “vary depending on the technology used to provide service,” *id.* ¶ 16, raises the question of whether call congestion reporting would even be technologically neutral. Wireless carriers are on the cusp of transitioning to new 4G LTE technologies, including VoLTE, and the Commission should refrain from imposing a new call congestion reporting requirement that will not work for existing and new technologies alike.

Further, it is unclear what the proposal would accomplish. In a highly competitive wireless marketplace, each carrier is compelled to improve network capacity and reliability and avoid call failures as a result of RAN congestion. Carriers are investing billions of dollars annually in network infrastructure and systems to expand capacity and reliability, and they have demonstrated a strong commitment to adhere to industry best practices concerning network reliability and resiliency.¹⁹ The wireless industry has made, and will continue to make, substantial efforts to develop and implement effective network resiliency, disaster preparation, and recovery initiatives to sustain wireless communications during and after disasters. The Commission and the wireless industry thus share the objective of ensuring the resiliency and reliability of wireless networks. A new rule imposing reporting obligations based on call congestion in RANs will not advance this goal.

IV. THE COMMISSION SHOULD REFRAIN FROM IMPOSING NEW “PARTIAL OUTAGE” PSAP REPORTING REQUIREMENTS.

The Commission proposes to expand the rules to require reporting for a “partial loss of communications” to a PSAP,²⁰ but the concern is speculative and the proposed solutions are unworkable. The *Notice* provides no evidence of problems resulting from instances that are not already captured under existing rules and carrier practices. More broadly, the reporting metrics the Commission proposes are not feasible.

There is no readily discernible method for a carrier to identify the number of potentially affected users for a “partial loss of communications” to a PSAP. The *Notice* suggests that

¹⁹ See, e.g., Comments of CTIA, PS Docket Nos. 13-239, 11-60, at 3-8 (filed Jan. 17, 2014); Comments of CTIA, PS Docket No. 11-60, at 3-6 (filed Aug. 17, 2012); Reply Comments of CTIA, PS Doc. No. 11-60, at 3-5 (filed Sept. 4, 2012); Comments of CTIA, PS Docket Nos. 11-60, 10-92, EB Docket 06-119 (filed July 7, 2011).

²⁰ *Notice* ¶ 9.

providers could report the number of actual 9-1-1 calls that fail to complete,²¹ but ignores the fact that providers lack this visibility into the PSAP. As the FCC has previously recognized, “communications providers will not necessarily know whether the PSAP(s) receive 9-1-1/E911 communications.”²² The Commission thus has concluded, “[w]e will not hold providers accountable for determining whether their transmissions were in fact received by the PSAP(s).”²³ The *Notice* also suggests that a carrier could determine the need to report based on the percentage of PSAP communications capacity that has been lost by, for example, reporting when 80 percent of the trunks serving a PSAP are disabled.²⁴ But it is the 9-1-1 system service provider that has access to this information, not the originating service provider. And, even if the wireless carrier had access to that information, the architecture of the 9-1-1 system is undergoing a seismic shift as 9-1-1 systems upgrade to NG9-1-1. The notion of “trunk groups” serving a single PSAP today may be very different in the not-so-distant future. Thus, a rule based on PSAP capacity and trunk group outages would not be forward-looking and would be inconsistent with the Commission’s broader NG9-1-1 efforts. The Commission should therefore refrain from taking such action.

²¹ *Id.* ¶ 12.

²² *2004 Outage Reporting Order* ¶ 64.

²³ *Id.*

²⁴ *Notice* ¶ 12.

V. THE COMMISSION SHOULD EXTEND THE WIRELESS CARRIER EXEMPTION FOR AIRPORTS TO SPECIAL OFFICES AND FACILITIES AND IN ANY EVENT SHOULD REFRAIN FROM EXPANDING SPECIAL OFFICES AND FACILITIES TO TSP-ENROLLED OR -ELIGIBLE FACILITIES.

A. The Rule Exempting Wireless Carriers from Reporting Outages Potentially Affecting Airports Should Apply with Equal Force to All Special Offices and Facilities.

The Commission should act on CTIA’s 2004 Petition for Partial Reconsideration and extend the wireless carrier reporting exemption to include not just outages potentially affecting airports but all special offices and facilities.²⁵ The rationale for excluding wireless carriers from reporting airport outages applies with equal force to all special offices and facilities, a term defined in Section 4.5(b) to include “major military installations, key government facilities, nuclear power plants, and [relatively major airports].”²⁶

In the *2004 Outage Reporting Order*, the Commission found that wireless carriers should be excluded from the outage reporting requirements for communications that affect airports because the “critical communications infrastructure serving airports is landline based.”²⁷ In making this determination, the Commission noted that wireless carriers do not have dedicated access lines assigned to airport towers and airport security offices.²⁸ Wireless networks provide undifferentiated service to all end users. That was true in 2004 and remains true today. Even with the growth of wireless in everyday life, “wireless providers do not generally assign

²⁵ See CTIA Petition for Partial Reconsideration and Motion for Partial Stay, ET Docket No. 04-35 (filed Dec. 23, 2004) (“CTIA Petition”).

²⁶ 47 C.F.R. § 4.5(b).

²⁷ *2004 Outage Reporting Order* ¶ 66.

²⁸ *Id.* ¶ 63.

dedicated access lines to specific end users, and therefore do not have dedicated access lines for the critical portions of any of the special offices and facilities.”²⁹

Airports and special offices and facilities continue to rely on wireline networks for their primary voice and data communications. The *Notice* asks if airport communications remain “landline based” and if other facilities the Commission might classify as special offices and facilities are served by similar infrastructure.³⁰ To answer this question, the Commission need look no further than a 2013 filing by the Department of Defense, on behalf of all Federal Executive Agencies, in the Technology Transitions proceeding: “DoD/FEA [Federal Executive Agency] customers continue to rely heavily on wireline TDM-based networks and services and will do so for the foreseeable future.”³¹ The FCC recognized this fact in its January 2014 *Technology Transitions Order* approving IP transition trials³² and should do so here as well. Accordingly, the Commission should maintain the current wireless carrier exemption from outage reporting for airports and extend it to all special offices and facilities.

B. The Commission Should Reject the Proposal to Expand the Definition of Special Offices and Facilities to All Enrolled or Eligible TSP Facilities.

The proposal to expand the definition of “special offices and facilities” to include all facilities enrolled in or eligible for the TSP program would drastically expand the universe of facilities covered by the rule and would quickly overwhelm communications providers’ outage

²⁹ CTIA Petition at 2.

³⁰ *Notice* ¶ 47.

³¹ See Comments of United States Department of Defense and All Other Executive Agencies (“DoD/FEA”), GN Docket No. 13-5, at 1 (filed July 8, 2013).

³² See *Technology Transitions et al.*, Order, 29 FCC Rcd 1433, 1447-48 ¶ 42 (2014) (“The Department of Defense and other Federal executive branch agencies, such as the Federal Aviation Administration, maintain communications systems that today rely heavily on legacy [landline-based] TDM-based networks and services.”).

reporting programs.³³ Under the FCC proposal, every county in the United States could have a special facility or office. To minimize enforcement exposure, a carrier could have to report an outage lasting 30 minutes or more for nearly any cell site.

A list of facilities either enrolled in or eligible for the TSP program would dramatically expand the special offices and facilities reporting program and, if the rule were adopted, the burden imposed on communications providers – and the Commission – would be extraordinary. The types of facilities enrolled in TSP include 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.³⁴ Moreover, there are five broad categories of TSP eligibility: federal, state, local, or Tribal governments; critical infrastructure sectors in industry; non-profit organizations that perform critical national security and emergency preparedness (“NS/EP”) functions; and foreign governments.³⁵ The *Notice* summarily states that an expanded definition of special offices and facilities would not have an appreciable cost impact on Part 4 reporting.³⁶ CTIA strongly disagrees. As noted above, special offices and facilities could include buildings in every county, be they local law enforcement, hospitals, or critical infrastructure sites. Carriers would be required to map all such facilities against network infrastructure and coverage, and to avoid enforcement, could find itself reporting nearly every outage of 30 minutes or more.

³³ *Notice* ¶ 39.

³⁴ *Id.* ¶ 40.

³⁵ *See* DHS, TSP Eligibility, <http://www.dhs.gov/tsp-eligibility> (last visited July 10, 2015).

³⁶ *Notice* ¶ 40.

CTIA reiterates that the Commission should extend the current wireless exemption to all special offices and facilities, but it should reject the TSP-enrolled or -eligible proposal and instead maintain the current definition of special offices and facilities.

VI. APPROPRIATE SAFEGUARDS SHOULD BE INCORPORATED INTO ANY DISTRIBUTION OF NORS DATA TO STATE REGULATORY COMMISSIONS AND FEDERAL AGENCIES.

The Commission determined in the *2004 Outage Reporting Order* that the potential consumer benefits of public disclosure of network outage information are “substantially outweighed by the potential harm to the public and national defense that might result from disclosure.”³⁷ As a result, reports filed in NORS are presumed confidential and thus withheld from routine public inspection.³⁸ The *Notice* proposes to grant states read-only access to those portions of the NORS database that pertain to communications outages in their respective states.³⁹ While the Commission already shares NORS data with the Department of Homeland Security, the *Notice* also proposes “to entertain requests from other federal agencies” on a case-by-case basis.⁴⁰ CTIA urges the Commission to carefully consider the risks of unauthorized disclosure of NORS data accessed by state commissions or federal agencies to other parties.⁴¹ The Commission’s decision making process on this issue should be guided by the same

³⁷ *2004 Outage Reporting Order* ¶ 45.

³⁸ 47 C.F.R. § 4.2.

³⁹ *Notice* ¶ 51.

⁴⁰ *Id.* ¶ 54.

⁴¹ CTIA incorporates by reference its comments submitted in response to a petition filed by the California Public Utilities Commission requesting that the Commission amend its rules to permit state agencies to directly access the NORS database. *See* CTIA Comments, WT Docket 04-35, RM-11588 (filed Mar. 4, 2010).

principles that led to the decision to make NORS data confidential in the *2004 Outage Reporting Order*.

Should the FCC determine that it is appropriate to share outage data with requesting state regulatory commissions and federal agencies, it must implement effective, meaningful safeguards designed to protect such data and mitigate the risks of unauthorized disclosures. NORS information should be shared with only those parties that have a direct and urgent need to know and who agree that they will only use NORS data consistent with the NS/EP purposes for which it was provided by carriers. Such individuals should be required to provide an attestation that they have the necessary qualifications, as determined in advance by the Commission, to access such information due to their specific NS/EP role. Any individual who does not need access to information for a specific national security or public safety purpose should not be provided access. Under no circumstances should a state or federal agency be permitted to make public or share the data with parties outside its direct employ.

Protections should include, at a minimum: disclosing to carriers which parties access their confidential reports; requiring notification to the FCC and corresponding service providers in the event of a data breach; providing audit tools to identify data breaches and their sources; and terminating access to parties that are unable to protect sensitive reports from disclosure. As the FCC requires before granting access to Numbering Resource Utilization/Forecast (“NRUF”) Report data, it also should require each entity requesting access to outage data to evaluate and report on the specific state laws and regulations that will be used to protect NORS data. Further, the Commission should analyze any Sunshine or public access laws that may put confidential reports collected through NORS at risk of disclosure.

The Commission should also create and maintain an audit log for its NORS database, recording which data was accessed, when, and by which parties. This audit log should be archived for several years to aid investigations after data breaches. Agencies should be required to verify that only valid and active accounts exist and the FCC should audit all of the accounts it has granted to state public utility commissions and federal agencies every six months. Any accounts that have not been used in six months should be shut down to reduce the security risk of maintaining large numbers of unused accounts. CTIA believes that if the data is to be shared, the Commission must make the results of the account audits available to the carriers that provide reports to NORS. Periodic reports should be provided that record how many active accounts are maintained by each state and federal agency and the number of reports accessed by each. Accordingly, if the Commission determines that sharing outage data is necessary, the Commission must establish concrete, enforceable safeguards to ensure that state public utility commissions and federal agencies accessing NORS protect the confidentiality of the data and use it appropriately.

VII. CONCLUSION.

CTIA welcomes the opportunity to work with the Commission to refine the Part 4 outage reporting rules where appropriate and consistent with these comments so that the Commission

can improve the program without imposing unreasonable requirements and burdens on wireless carriers.

Respectfully submitted,

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