

**Before The
Federal Communications Commission
Washington, D.C. 20554**

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

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REPLY COMMENTS OF INTRADO

Intrado Inc. and Intrado Communications Inc. (collectively, “Intrado”) respectfully submit these reply comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-referenced proceeding.¹

I. SUMMARY

The Commission has articulated its policy goals related to network outage reporting and the agency’s network outage reporting system (“NORS”), and for the NPRM’s proposals to be adopted, they should align with those stated policy goals. Intrado believes the urgent needs of acutely-affected parties to a 911 service disruption can be at odds with some NORS reporting requirements, and that conflict should be resolved in favor of public safety interests through appropriate changes to reporting requirements. With regard to wireless reporting metrics, Intrado suggests the Commission adopt a standardized metric consistent with the Commission’s modified version of Sprint’s initial proposal as described below. The Commission proposes to

¹ *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications, Notice of Proposed Rulemaking, Second Report and Order and Order on Reconsideration*, FCC 15-39 (*rel.* March 30, 2015).

provide states with read-only access to portions of the NORS database that pertain to communications outages in their respective states. Intrado supports the concept of state regulators having access to outage information, but the proposal in its current form has far too many deficiencies for Intrado to support its adoption. Intrado believes the Commission's proposal to expand the definition of Special Offices and Facilities to include entities eligible to enroll in the Telecommunications Service Priority Program would impose unnecessary burdens and costs on NORS filers without an offsetting benefit and thus is unwarranted. The Commission should abandon its cost/benefit analysis, because the Commission's estimated costs to implement the NPRM's proposals do not include several cost centers; the estimated costs significantly underestimate the burdens on reporting entities; and the Commission does not adequately compare or analyze any benefits to such costs. The Commission should not revise its reporting rules to include a new category or definition of a "partial" outage, because the current rules sufficiently address service degradations and are working well. The Commission's proposal to reduce the amount of time providers have to report "simplex" events, from the current five days to 48 hours, is unwarranted and overreaching, and the proposal should be abandoned.

II. DISCUSSION

A. Revisions To The Commission's Reporting Rules Should Further The Agency's Stated Policy Goals; Revisions Should Occur Only Where There Is An Impetus For Change; And Priority Should Be Given To Acutely-Affected Parties.

With respect to network outage reporting and NORS, the FCC has articulated its policy goals ("Policy Goals") by: (a) recognizing that access to outage data is important because it allows the Commission to adopt prospective regulations to "increase the reliability and security

of telecommunications networks in the future,”² and (b) reiterating its rationale for maintaining its event reporting rules in the NPRM -- noting that its “goal remains ensuring the reliability and resiliency of the Nation’s communications system, and in particular strengthening the Nation’s 9-1-1 system.”³ Intrado believes any revision the Commission makes to its reporting rules must be in furtherance of these stated Policy Goals so as to allow regulated entities to align therewith and avoid the cost⁴ and waste associated with shifting policy objectives. Intrado is concerned that some of the proposed changes distract from or are at odds with the Commission’s Policy Goals or are unwarranted given the lack of factual justification.⁵ There are proposed changes that *are* warranted and if instituted in a reasonable and measured way, the Commission could promote improvements to prompt outage diagnosis and service restoration; collect more accurate and valuable outage data from providers; and more effectively advance its Policy Goals. Particularly in connection with 911 system service providers, the Commission should consider, in addition to its Policy Goals, the two primary objectives of such providers during an event: (1) to promptly diagnose and repair or restore service, and (2) to alert acutely-affected parties which allows them to take timely, remedial action to mitigate “... the effects on efforts [911 callers may

² 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*, FCC 04-188 at ¶3 (rel. Aug. 19, 2004).

³ NPRM ¶ 6.

⁴ *See*, Comments of AT&T beginning at page 17 which states, “Each time the Commission scraps its 911 reporting metric, it imposes significant costs on the reporting entities, which must implement IT and ordering, provisioning, and maintenance systems changes in order to begin tracking the data in the manner required by the latest version of this rule. Carriers also must re-train their employees on the new reporting metrics, particularly since these employees may have to track the new data on a manual basis, at least until systems work that might automate the collection is complete. All of these items take time and, of course, resources.”

⁵ *See*, for example, Comments of CenturyLink at page 10 where, in connection with the proposed change to Section 4.5(e)(1), the company states, “Even if the proposed modifications to Section 4.5(e)(1) could be easily implemented (which is far from clear, as discussed below), they are a solution in search of a problem and should be rejected in favor of maintaining the current rule.”

make] to communicate with that facility.”⁶

1. The Current Requirement For Three Reports Is Unnecessary And Potentially Harmful; And Time Frames For Reports Should Be Made Technologically Neutral

For outages in a 911 context, covered 911 service providers are required to give notice to 911 Special Facilities, i.e., public safety answering points (“PSAPs” – the principle parties in the emergency communications ecosystem that are acutely-affected by a 911 service disruption) within 30 minutes of discovering the outage; and at two hour intervals thereafter, covered 911 service providers must provide those agencies with updated information.⁷ In addition, current NORS outage reporting rules create concurrent and overlapping obligations by requiring covered 911 service providers to notify the FCC of all outages that last at least 30 minutes and potentially affect at least 900,000 user minutes (herein, a “Reportable Outage”),⁸ and for every Reportable Outage, the filing party must file three separate NORS reports with the FCC. In sequence, they are: a Notification within 120 minutes of discovering the outage (“Notification”); an Initial Communications Outage Report within 72 hours (“Initial Report”); and a Final Communications Outage Report within 30 days (“Final Report”).⁹

Intrado believes the Commission should partially eliminate at least some of these concurrent and overlapping obligations by changing its NORS reporting rules so that a total of two reports are required of providers instead of three,¹⁰ i.e.: a first report to initially inform the

⁶ See, 47 C.F.R. 4.9(f)(4).

⁷ 47 C.F.R. 4.9(h).

⁸ 47 C.F.R. 4.9(f). The underlying technology used for 911 service provider systems is wireline.

⁹ 47 C.F.R. 4.11. See also, §4.9(f)(4).

¹⁰ To be clear, this suggestion is not targeted at notifying PSAPs or other affected parties, and the basis of this recommendation is not to deprive the FCC of information but to prioritize use of precious time during an outage and improve the quality of the information gathering process, outage responses and reporting. As discussed *infra*, consideration must be given to the fact that the Commission does not contribute to the diagnosis or repair / restore scenario, so immediate FCC notification must be prioritized accordingly. Also, if an outage occurred on a weekend,

Commission of an outage and a second report that provides a final, more detailed explanation of the cause, the steps taken to prevent a future occurrence, and other disclosures required by NORS. This rule modification is consistent with the recommendation made by ATIS.¹¹ It will provide better information, unburden NORS from unreliable data, and lower costs. And, those entities that actually file reports agree that perhaps the greatest benefit is removing a significant distraction from service restoration.¹²

Intrado believes the current PSAP notification requirement (i.e., to notify within 30 minutes of discovering a significant degradation) is appropriate given its attendant urgency, but the NORS requirement relative to a 911 Special Facility for filing a Notification with the Commission within 90 minutes thereafter (i.e., within 120 minutes of discovery) conflicts with the PSAP notification requirement,¹³ because the requirement creates competing interests for time and resources during a period when precious time and resources must be sharply focused. In addition to only requiring two reports, the goals underlying both requirements could still be achieved, and the conflicting, competing interests could be somewhat alleviated, if the NORS filing requirement for this first report was extended from 120 minutes of discovery to 240 minutes of discovery.¹⁴ Intrado believes the Initial Report should be eliminated entirely, and the

overnight, or on a holiday, these are outside the normal business hours of the Commission, so some reports sit idle in the NORS system or receive limited analysis and review until regular business hours resume.

¹¹ Comments of the Alliance For Telecommunications Industry Solutions, p. 4.

¹² See, Comments of Sprint at pp. 5-6, and Comments of Verizon at p. 8.

¹³ By way of example only, while a provider is spending that 90 minutes diagnosing and determining whether a Notification must be filed -- and if so what content to report, the provider must concurrently be preparing to give acutely-affected PSAPs their first update within 40 minutes of filing the Notification (2 hours after discovery).

¹⁴ Intrado respectfully disagrees with ATIS's recommendation on this specific item, i.e., that 911 special facilities related notifications should remain at 120 minutes instead of being harmonized with other outage reports at 240 minutes.

Final Report should remain due after 30 days -- as the rule currently requires. By eliminating the Initial Report, and giving more time to providers to file the Notification, acutely-affected PSAPs would, rightly, garner more attention in these early minutes (as would efforts on diagnosis, repair or restoration), and the data provided to PSAPs would be more reliable and therefore more useful to them. These changes should apply to all NORS reporting regardless of the technology or type of carrier involved.

Currently, a Notification frequently contains minimal information about the outage, since the most useful details are often not available within 120 minutes; rather, they become available when more facts are unearthed after restoral of service and when a more complete analysis is done which can take hours, days and sometimes weeks. Under this proposal, the Commission would retain the ability to gather valuable (and usually more accurate) information related to the event via the Final Report for post outage analysis. And between the time a Notification is filed and when the Final Report is filed, Commission staff is not deprived of its ability to contact a provider to request interim or supplemental information, and in fact it has done so with Intrado -- not just to supplement information already in NORS but to enhance staff's own understanding of technology and relevant issues. Intrado has always been willing to accommodate these requests, and based on its knowledge and relationships with other providers, Intrado believes other providers are, similarly, willing to assist the Commission with the facts relevant to an outage.

Compared to IP-based systems that utilize soft-switches, software and IP circuits, legacy analog and digital switches and point-to-point circuits are far easier to diagnose and isolate when determining the cause of an outage. The inherent nature of IP-based systems makes it more difficult to isolate service-involved elements and thus adds time to the diagnosis period. In Intrado's view, the 120 minute time frame for diagnosing and reporting a 911 outage appears

arbitrary.¹⁵ That time frame was put in place years ago for legacy 911 systems which typically involve a single provider system and well understood technologies and problem resolution. It is unrealistic and unreasonable to continue imposing the same 120 minute expectation when IP-based systems -- that utilize multiple providers and varied and evolving technologies -- are involved. Even 240 minutes, which must include time for preparation and filing of the Notification, can often push the limits of how fast an IP-based system can be fully diagnosed in a multi-provider next generation 911 system, but Intrado believes the 240 minute time frame is a reasonable compromise in light of the Commission's important Policy Goals.

In Intrado's view, requiring an interim report perpetuates an unnecessary, unproductive and potentially-harmful level of bureaucracy given that it can interfere with service providers' life-saving efforts when time is of the essence. Moreover, the Commission has articulated no need or reason for it to have three separate reports, and this is particularly true with regard to the need for an Initial Report which follows the Notification by only 3 days. Having two reports instead of three would give the FCC more than enough initial notification to understand the general nature of an outage and to otherwise meet its stated Policy Goals (of ensuring the reliability and resiliency of the nation's emergency communications system), and the change would have no bearing on the Commission's ability to consider policy issues and adopt future regulations to implement its Policy Goals. Policy and rule making, which are the means by which these Policy Goals are accomplished, does not occur in timeframes of 120 minutes, 72 hours or 30 days. The assimilation of real-time outage activity is asynchronous with longer-term policy or rule making. A first report within 240 minutes of discovering the outage and another within 30 days is sufficient and appropriate, and to suggest otherwise would be to unreasonably

¹⁵ Intrado can find nothing in the record that indicates the Commission analyzed or made findings about the appropriate length of time it should take to diagnose an outage, gather data, and prepare and file a Notification while in the midst of a service disruption.

elevate the importance of the Commission’s real-time role during, or within 72 hours of, a 911 outage.

There are increasingly high expectations placed on 911 service providers including the expectation to promptly diagnose and repair or restore service which must be done concurrently with the strictly-applied obligation to timely notify PSAPs; and these expectations are accompanied by an equally-high degree of liability.¹⁶ The FCC is not an acutely-affected party to a 911 outage event, nor is it meaningfully involved in notifying acutely-affected parties to a 911 related outage. It has no role in diagnosing or restoring 911 service and has no resources relevant to aiding with outage circumstances. In Intrado’s view, the FCC should be the first to recognize that its own interests in having *immediate* access to 911 outage information is subordinated by acute and immediate public safety interests which heavily depend on 911 service providers devoting all of their expertise, resources and time to finding and fixing the

¹⁶ Intrado recognizes its special responsibility to 911 callers and PSAPs and accepts the challenge of maintaining the highest degree of 911 system reliability achievable. In Intrado’s view, the increasingly high expectations are not well-grounded in science or law and are the result of recent Public Safety & Homeland Security Bureau and Enforcement Bureau activity which now, effectively, applies a strict liability standard to 911 service provisioning particularly with regard to PSAP notifications. *See*, for example, In The Matter Of T-Mobile USA, Inc., File No. EB-SED15-00018025, Order and Consent Decree, Adopted July 16, 2015, Released July 17, 2015 wherein Travis LeBlanc, Chief, Enforcement Bureau, states, “All Americans rely upon 911 in an emergency. One of the bedrock principles of the Communications Act and the Commission’s rules is that reliable 911 must be available to all Americans at all times” (emphasis added). *See* also, Remarks of David Simpson, Rear Admiral (Ret.), Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, NARUC Panel Discussion re E911 Governance, New York, NY, July 13, 2015, wherein Mr. Simpson states, “The topic of our panel is 911 governance, which raises many complicated questions about preserving effective oversight at the local, state, and federal levels as technologies and business models for 911 service evolve. I will start, however, with a simple message that guides the FCC’s efforts: Americans must have confidence that every call to 911 will go through, and for that to happen, every link in the chain of 911 call completion must be dependable, and responsible parties need to be held accountable for their parts in ensuring reliable and resilient service” (emphasis added). T-Mobile’s violation, like others that recently preceded it, related only to a failure to timely notify affected PSAPs of a service disruption, yet the Enforcement Bureau’s statement strongly implies that the violation and associated fine were for the underlying outage even though there was no violation or fine related to the outage. And rightly so: FCC rules do not proscribe outages, and again, rightly so: if rules proscribed outages, they would either have to be applied strictly (i.e., there was an outage or there wasn’t an outage) or else be devised to accommodate subjective criteria on a continuum of service disruptions – both of which would be an unworkable and arbitrary means of regulating. And, the agency’s civil enforcement methodology appears to have dramatically shifted to one that more closely resembles criminal prosecution and makes no distinction between inadvertent, careless and intentional behavior, i.e., strict liability.

problem and to providing PSAPs with vital information. The Commission should acknowledge the fact that this is a compelling reason for it to modify reporting rules accordingly.

Eliminating one of the three reports would also promote improved network reliability data in the near and long-term by significantly reducing the number of submissions that are withdrawn or unnecessarily filed in haste within the hectic 120 minutes immediately following the discovery of an event. The current Notification requires carriers, in the midst of an event, to make hasty calculations regarding the duration and breadth of a disruption as well as the user minutes impacted in order to determine whether a Notification must be filed with the Commission. In the next generation 911 world of multiple providers, soft switches and MPLS networks, it can easily take much longer than the available 120 minutes for a provider to determine whether the event even triggers a Reportable Outage, and in Intrado's experience, this typically leads to filing more reports than perhaps is necessary to avoid non-compliance with the Commission's reporting rules. In a related section of the NPRM, the Commission recognizes these important interests by noting that, "the reporting of minor outages ... inundates the Bureau with information that may not be sufficiently useful to justify the attendant reporting burden."¹⁷ The Commission can further improve the usefulness of the data it collects by eliminating one of the three reporting requirements and providing more time to file the Notification.

Lastly, the Commission should consider any proposed changes to its existing regulations with an eye toward next generation IP networks, since networks evolved and the agency's reporting rules became outdated over the past decade.¹⁸ Any revisions adopted by the

¹⁷ NPRM at ¶ 19.

¹⁸ See, for example, Comments Of Comcast Corporation, p.1; see also, Comments of the National Association of State 911 Administrators which states at page 1, "The Commission asks how a provider would determine the need to report an outage that results only in a partial "loss of communications" to a PSAP. The discussion then repeatedly refers to 'trunks' serving a PSAP. Trunks exist in a legacy environment, but not in a Next Generation 911 (NG911)

Commission should accommodate data collection capabilities and difficulties and reporting obligations for providers operating IP and hybrid networks as well as legacy, circuit switched networks. Again, legacy switches and point-to-point circuits are far easier to isolate for problems than IP-based systems that utilize soft-switches, software and IP circuits. The agency should begin removing regulations aimed at only legacy technologies that would require operators of IP networks to expend substantial resources to “fit a square peg into a round hole” as well as to continually reinvent their recordkeeping systems and reporting procedures with no commensurate benefit.

B. Wireless Outage Reporting Metrics Should Be Standardized, Technologically Neutral and Based On System and PSAP Capacity.

The Commission proposes two potential approaches that would provide a standardized, technologically-neutral method for calculating the number of users “potentially affected” by a wireless network outage.¹⁹ Intrado suggests the Commission adopt a standardized metric consistent with the Commission’s modified version of Sprint’s initial proposal²⁰ as described below.

A reportable wireless network outage occurs with respect to a 911 special facility (i.e., a PSAP) when there is a loss of communication that potentially affects 900,000 user minutes, its cause is not at the PSAP, a complete reroute is not possible, and the disruption lasts 30 minutes

environment. The nation’s 911 systems, at present, are a mix of legacy and IP technologies. Thus a calculation of magnitude on the basis of “trunks” is limited at best. The issue is a loss of connectivity, regardless of how that connectivity is provisioned.” APCO’s support for the Commission’s proposal suggests that a significant degradation exists when 50% of a PSAPs inbound trunks are disabled - - a suggestion that, likewise, is an outdated method for measuring IP-based outages. *See*, Comments of APCO, p. 3.

¹⁹ NPRM at ¶ 32.

²⁰ *See*, Comments of Sprint, p.8-9, where it states, “In its Petition for Reconsideration filed in 2005, Sprint proposed that wireless carriers be permitted to divide the capacity of the MSC as defined in the rules by the number of subtending PSAPs.”

or more.²¹ By way of example, Sprint suggests that, if an outage affects only one of the subtending PSAPs, only those customers whose calls would have been routed to such PSAP would be “potentially affected.” Under Sprint’s proposal, the reportable number of potentially affected users would, therefore, be calculated by evenly dividing the capacity of the involved Mobile Switching Center (MSC) by the number of PSAPs served by that MSC. The Commission proposed to slightly modify Sprint’s proposal by allocating capacity to each PSAP in reasonable proportion to its size based on the number of users served.²² Intrado agrees with this approach and suggests the Commission adopt it by including an appropriate reference thereto in Section 4.7 (definitions of metrics used to determine the general outage-reporting threshold criteria).

C. Sharing NORS Information With States

The Commission proposes to provide states with read-only access to portions of the NORS database that pertain to communications outages in their respective states.²³ Intrado supports the concept of state regulators having access to outage information, perhaps including NORS reports, so long as they have a legitimate need therefore, but because there are significant issues associated with the proposal in its current form, Intrado strongly opposes it and urges the Commission not to adopt it.

In 2009, the California Public Utilities Commission (“CPUC”) petitioned the FCC requesting access to NORS data to monitor and verify service outages and disruptions of

²¹ 47 C.F.R. 4.9(e)(5) which references Section 4.5(e).

²² NPRM at ¶ 37.

²³ *Id.* at ¶ 52.

communications networks affecting Californians.²⁴ The CPUC previously adopted state outage reporting requirements that paralleled the FCC’s NORS reporting requirements, yet the state argued that “access to NORS would enable California to rapidly obtain complete and accurate information on service disruptions”²⁵ without providing any explanation as to exactly why its own state rules were inadequate and must be supplemented with NORS information. Several parties filed comments in response to the CPUC Petition, now being re-hashed, arguing that providing California (and other states) with access to NORS data would compromise the confidentiality of that data. T-Mobile, for example, argued that state utility commissions may be unable to protect NORS data as a result of public record and state freedom of information laws.²⁶ CTIA urged the Commission to identify state-specific risks before sharing NORS data with individual states.²⁷ And, AT&T urged the FCC to “carefully weigh the national security implications of the CPUC’s proposals.”²⁸ AT&T also noted that, “efficiency and speed are all well and good but at the end of the day it is the duty of the FCC to guarantee the security of the ‘nation’s critical information infrastructure’ and the special facilities that are served by it.”²⁹ In its reply comments, the CPUC urged the Commission to essentially ignore legitimate security concerns raised by these (and other) parties, asserting that California has adequate laws and rules

²⁴ Petition of the California Public Utilities Commission (CPUC) 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 04-35 (Nov. 12, 2009) (“CPUC Petition”).

²⁵ CPUC Petition, p. 2.

²⁶ T-Mobile Reply Comments, p. 3 (Mar. 19, 2010).

²⁷ CTIA Comments, pp. 3-4 (Mar. 4, 2010).

²⁸ AT&T Comments at p. 3 and p. 9 (Mar. 4, 2010).

²⁹ *Id.*

in place to safeguard confidential information received from the Commission.³⁰ The Commission stated that it plans to hold the CPUC's request in abeyance.³¹

The issue has received considerable attention at the state level and was embodied in a National Association of Regulatory Utility Commissioners ("NARUC") Resolution expressing NARUC's support for CPUC's petition.³² However, even the NARUC Resolution acknowledged that, "Protecting the security, integrity and confidentiality of NORS data is paramount" and conditioned the release of such information "subject to appropriate safeguards."³³

Without diminishing or conceding any of the reasons why states should not have access, if the Commission does grant the CPUC's petition, or if the Commission otherwise acts on its own proposal, such action should protect confidentiality and other proprietary interests, should be conditional and include remedial and punitive measures for violations, and should include changes to the NORS database. Intrado believes that specific states that are granted access should make guarantees of confidentiality and take other prophylactic action as outlined below.

1. NORS Information Filed Under Part 4 Is Presumed Confidential And Access To Such Information Must Honor That Presumption

NORS reports are presumed confidential,³⁴ and for good reason: a significant amount of the information service provides submit to the FCC under Part 4 contains highly sensitive

³⁰ CPUC Reply Comments, p. 2 (Mar. 19, 2010).

³¹ NPRM at ¶ 51. In a footnote, the Commission noted it would hold California's request in abeyance pending completion of the present rulemaking proceeding.

³² *NARUC Resolution on State Access to NORS Database* (Adopted by the NARUC Board of Directors February 18, 2015), available at <http://www.naruc.org/Resolutions/NARUC%20Resolution%20on%20State%20Access%20to%20NORS%20Database.pdf> (July 9, 2015).

³³ *Id.*

³⁴ 47 C.F.R. 4.2.

network and other business information. The FCC recognizes this and believes NORs information should be shielded from public inspection.³⁵ It seeks to maintain this confidentiality by requiring states to certify that NORs data will be kept confidential and that the state has in place confidentiality protections at least equivalent to those set forth in the federal Freedom of Information Act.³⁶ Given the wide variation of state open records laws and other vulnerabilities, described in more detail below, such a certification procedure is woefully inadequate to ensure that NORs data is protected.

2. Many State Public Records Laws Will Not Adequately Protect NORs Data

State legislatures, courts, and state agencies interpret state public records laws. In many states, these laws are liberally construed in favor of disclosure, while exemptions to the laws aimed at shielding records from public disclosure are narrowly construed.³⁷ The goal of these laws, combined with those that construe them, is to maximize the information that is disclosed to the public. Such a doctrine runs completely counter to the legitimate interests set forth in Section 4.2 and via the Commission's own stated interest in maintaining confidentiality.³⁸

Most states have several exemptions that shield records from public disclosure, but many

³⁵ *Id.*

³⁶ *Id.* A state agency may have concerns with protecting confidential information released to a federal agency in the absence of an express statute, and in the absence of an express information sharing statute, it is not, or it should not be, unreasonable for a federal agency to have the same or similar concerns with respect to releasing confidential information to a state agency.

³⁷ *See*, Wash. Rev. Code §42.56.030 (“This chapter shall be liberally construed and its exemptions narrowly construed to . . . assure that the public interest will be fully protected.”); *See also*, *Hardaway Co. v. Rives*, 262 Ga. 631 (Ga. 1992) (exemptions to disclosing public records must be narrowly construed); *See, also*, Fl. Atty. Gen. Advisory Legal Opinion AGO 2010-37 (Sept. 2, 2010)(“The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose.”).

³⁸ *Id.*

of these exemptions focus on preserving the integrity of law enforcement investigations,³⁹ protecting sensitive consumer information,⁴⁰ or shielding the personnel records of state employees.⁴¹ Since NORS data was not designed to be directly available to states, in some cases, there may be no specific law in a state that would protect this data or such a federal interest. Instead, in these cases, NORS data would only be protected to the unlikely extent it is covered by catchall provisions in state statutes that generically exempt trade secret or sensitive homeland security information from public disclosure. In such cases, service providers would be unreasonably exposed to the time constraints, costs and unpredictable outcomes of procedures, if any, designed to give them an opportunity to object to disclosure.

For example, Maryland is one of many states with a broad public records law that favors disclosing information to the public.⁴² The state has a few narrowly-written exemptions that may not adequately shield NORS data from public disclosure. The Maryland Public Information Act has an exemption for information related to emergency management.⁴³ But this exemption would not apply to NORS data as it is generally written to protect disclosure of emergency response plans and blue prints for buildings, stadiums, and mass transit facilities.⁴⁴ Maryland also permits a state agency to deny requests for public disclosure if such disclosure would reveal

³⁹ Mich. Comp. Laws §15.243(1)(b).

⁴⁰ Col. Rev. Stat. §24-72-204(3)(a)(I); *see also*, Wash. Rev. Code §42.56.330.

⁴¹ Wis. Stat. §19.36(10).

⁴² Md. Code Ann., Public Information Act §4-103 (b) (“...this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.”).

⁴³ Md. Ann Code., Pub. Info. Act., §4-352.

⁴⁴ *Id.*

a trade secret or confidential commercial information,⁴⁵ but again, this is far from the guarantees of Part 4, Section 4.2.

Other states, like Georgia, have similar laws.⁴⁶ However, Georgia requires the party submitting a record that is confidential to also include an affidavit affirmatively declaring that specific information in the records constitutes trade secrets (something a reporting entity need not, and cannot, do via NORS).⁴⁷ In addition, state employees in Georgia lack a strong incentive to protect trade secret information. Under Georgia law, if trade secret information is publicly disclosed by a state agency acting “in good faith reliance on the requirements of” the public records law, the agency “shall not be liable in any action on account of such decision.”⁴⁸ The Georgia Supreme Court has noted that state agencies are not insurers against disclosure of trade secrets.⁴⁹

While Intrado appreciates the willingness of states to take precautionary steps to ensure the propriety and secrecy of NORS reports,⁵⁰ these are just a few examples of the statutory nuances in a specific state law that may or may not provide adequate protection to ensure the confidentiality of NORS data. The Commission would need to ensure that the law in *every* state adequately protects NORS data before permitting states to access this information – an

⁴⁵ Md. Ann Code., Pub. Info. Act., §4-335.

⁴⁶ Ga. Code Ann. §50-18-72(a)(34).

⁴⁷ Ga. Code Ann. §50-18-72 (33).

⁴⁸ Ga. Code Ann. §50-18-73(c).

⁴⁹ *Georgia DNR v. Theragencis Corp.*, 545 S.E.2d 904 (Ga. 2001).

⁵⁰ *See*, for example, discussion starting on page 3 of the comments filed by the New York Department of Public Service (NYPS) regarding the extent to which the agency attempts to maintain confidentiality.

unrealistic if not impossible assignment.⁵¹

3. Even Where Protections Exist, It Would Be Difficult for Reporting Entities To Protect NORS Data Once It Is Disclosed to States

As mentioned above, in some instances, an entity that submits trade secret information to a state agency may be able to challenge requests that this information be publicly disclosed. However, in the NORS context, it would be unduly burdensome for a reporting entity to monitor state public records requests in every state.⁵² This is especially so given that many states have requirements that agencies respond to public records requests in a matter of days.⁵³ It would be a full time job (and would represent a significant expense)⁵⁴ for a reporting entity to monitor public records requests in each state to ensure that NORS data is not intentionally or unintentionally disclosed in response to each outage.

Another issue that undermines the confidentiality of NORS data would be the sheer number of state personnel that would have access to NORS data. It would be impossible for the FCC to restrict access to NORS data to a small group of critical state personnel in each state. As to the California Petition, the state's rules are (as a classic example of Intrado's concern) unclear as to the reports' availability for public inspection; and even if there were some confidence

⁵¹ Comptel suggests an intriguing alternative that deserves additional legal research: do not let any NORS information become "state" information. *See*, Comments of Comptel at p. 9 where it states, "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. Comptel 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."

⁵² The NPRM suggests defining the term "State" to include the District of Columbia, U.S. territories and possessions, and Tribal nations. *NPRM* at *fn* 101.

⁵³ *See, e.g.* Wash. Rev. Code §42.56.520 (five business days); *see also*, Mass. Gen. Laws ch. 66, §10(b) (ten days).

⁵⁴ It is important to note that such expenses are not contemplated or included in the Commission's cost estimate.

regarding confidentiality, that protection has a loophole via an appeal to the recording authority and a disturbingly low burden of persuasion.⁵⁵

The FCC proposes granting states access to NORS data to “advance compelling state interests in protecting public health and safety in an efficient manner.”⁵⁶ However, in order for states to realize such purported benefits, it is likely that many individuals in each state will be assigned different tasks, including viewing, logging, recording, and analyzing different portions of each NORS report. These individuals may work for multiple agencies and hold varying levels of seniority. The odds are that some (if not many) may not be covered under state open records laws.⁵⁷

The many questions underlying how to address these problems are highlighted by the New York Department of Public Service which points out its own concerns about the lack of control over the accessed information. It states, “... it is not clear based on the proposed rulemaking if other [New York] state agencies or other principal entities, such as the state’s executive branch or emergency agencies would constitute those in the ‘direct employ’ of the NYPSC and thus be eligible to receive this shared information.”⁵⁸

⁵⁵ Section 4.a of the CPUC’s *General Order 133-C* invokes the confidentiality provisions of California *Pub. Util. Code § 583 and General Order 66-C*, which may shield information from public release. However, a requirement also exists that “Carriers must maintain and make available for public inspection at their main office in California copies of all reports submitted to the PUC. Copies must be held available for two years.” [GO 133-C, §1.4] It is unclear if either or both provisions may be impacted by other state or federal laws and with particular reference to General Order 66-C, it includes a process of releasing documents upon a hearing and the low evidentiary threshold of “good cause shown.” Under no rational legal theory could this reasonably be classified as sufficient protection.

⁵⁶ NPRM at ¶ 51.

⁵⁷ For example, in Arkansas, a *Public Record* includes all records maintained in public offices or by public employees within the scope of their employment. Ark. Code Ann. §25-19-103(5)(A). A NORS report would be considered a *Public Record*. However, a *Custodian* of a *Public Record* is limited to the person that has administrative control over that record, excluding personnel that may touch the record for storage, safekeeping, or data processing. Ark. Code Ann. §25-19-103(1)(A). It is unclear from the Commission’s proposal if each of these additional state employees that may touch the NORS data in some capacity would undergo security screening by the Commission.

⁵⁸ Comments of NYPSC, p. 3.

NORS is an FCC database and must remain in the full control of the FCC. In order to ensure NORS data remains confidential, the Commission would itself have to ensure the sanctity of NORS data by compelling participating states to undertake the daunting, if not impossible, task of identifying, registering, and screening every state employee that could view, log, record, or analyze a portion of a NORS report to ensure that each individual is legally responsible and held to account for maintaining the confidentiality of the data.

4. Dual Reporting Is Unnecessary, Unduly Expensive And Inappropriate

Intrado supports the concept of giving regulators the tools they need to protect the public's safety, but not one state or federal agency has ever articulated why *both* state and federal outage reporting rules are necessary or appropriate in order to do so.⁵⁹ For the reasons outlined below, and until a compelling case is made for dual outage reporting regimes, Intrado cannot support the casual assumption operating in the public sector and this docket about the need for states to have access to NORS, particularly while many states have their own outage reporting rules and/or are empowered to impose such rules through legislation or regulation.⁶⁰

⁵⁹ For example, in addition to wanting access to NORS, the NYPSC currently gathers and shares its own critical network status information with the Governor's Office, State Office of Emergency Management, State Police and other state emergency responders when events or emergencies require network status awareness or monitoring of communications outages. Comments of NYPSC, pp. 3-4. The NYPSC attempts to explain why it needs both state reports as well as NORS reports, and although nobly intentioned, the agency falls short of making a convincing case by essentially claiming *the more information the better* which lacks any real explanation of exactly why more information is better or necessary or what deficiencies exist in state law or rules that only NORS data can remedy. And, there is no consideration given to the value proposition impacting the multiple stakeholders involved including the public. Similarly, the Massachusetts Department of Telecommunications and Cable suggests that, "... State entities collect different information than is contained in the NORS database, and should not be foreclosed from making their own determinations as to whether data is duplicative. Further, because State entities utilize data differently, it is unlikely that NORS data will adequately capture all the State's needs." Comments of the Massachusetts Department of Telecommunications and Cable, p. 5. Like New York, this simplistic explanation also falls far short of a meaningful analysis about why states can't resolve their own reporting deficiencies or why only NORS data can resolve their problem. However, Intrado commends Massachusetts and New York and others for taking the time to offer their vision for how states might help solve the dual reporting problem and/or reduce reporting redundancy.

⁶⁰ Intrado is not taking a position here one way or the other on the subject of whether the federal or state government is the appropriate jurisdiction for 911 outage reporting. The point is simply that it is unreasonable for providers to

One commenter has argued, “Adding supplemental requirements for access to NORS data or placing restrictive limitations on its use will discourage States from eliminating their own redundant reporting requirements. States could simply maintain duplicative direct reporting to safeguard their access to and analysis of outage information.”⁶¹ This statement evidences Intrado’s concern and accurately reflects the inertia currently preventing a reasonable and appropriate governance solution. It would be very beneficial to the entire industry if the statement was accompanied by a willingness – instituted by *all* states -- to commit to eliminating redundancies between state and federal reporting rules. Yet, even that would not be enough. Governance problems will exist until states, and the Commission, eliminate the larger broader governance redundancy.⁶²

Not every state needs access to NORS. Some states (e.g., CO, OH, SC, VA WA, PA, and VT)⁶³ in addition to California already have outage reporting requirements. Other states are fully capable of establishing their own outage reporting rules and thus don’t need access to NORS. There has been a growing trend of telecom deregulation in the states with several jurisdictions either deregulating or lightly regulating competitive telecommunications services.⁶⁴

be forced to meet federal and multiple state obligations, almost none of which are the same, and that there appears to be a willingness by policy makers to avoid this kind of difficult governance choice but rather to force providers to deal with the problem.

⁶¹ Comments of the Massachusetts Department of Telecommunications and Cable, p. 4.

⁶² See, In the Matters of 911 Governance and Accountability, PS Docket No. 14-193 and Improving 911 Reliability, PS Docket No. 13-75, Comments of Intrado for a discussion of the larger governance and accountability problem involving dual 911 regulation.

⁶³ These are states in which Intrado operates and limits its comments thereto. This may not be an exhaustive list.

⁶⁴ According to NRRI, “Deregulation of retail wireline telecommunications continued to be a focus for state regulators and legislators during the 2014 legislative sessions. By the end of 2013, 30 states had reduced or eliminated retail telecommunications regulation. Two additional states, Colorado and Iowa, were added to the map in 2014, bringing that total to 32. Bills pending in another four states (Massachusetts, Pennsylvania, New York, and Oklahoma) could increase that number to 36, covering nearly 75% of the country.” Sherry Lichtenberg, Ph.D., *Telecommunications Legislation 2014: Completing the Process*. www.nrri.org

States have demonstrated that they have the capacity, expertise, and political will to determine the appropriate regulatory reporting environment in their respective jurisdictions. Regardless of whether a state decides to establish its own outage reporting rules, and regardless of one's point of view on whether federal or state government should have jurisdiction over 911 service, dual regulation, including regulation of outage reporting, is inappropriate. Being compelled to honor two sets of regulations causes confusion and defeats the purpose of efficiently reporting outages; is overly-burdensome; and is redundant. And, the costs for redundancy will likely be passed along to public safety agencies and ultimately to consumers who will derive no benefit from double reporting.⁶⁵

The Commission asks relevant questions regarding its proposal to grant states limited access to the NORS database, including: (i) whether personnel charged with obtaining the information should be required to have security training; (ii) if their identities should be provided to the FCC; (iii) whether a provider should be able to audit a state's handling of its event data; and (iv) what information the FCC should share with state officials.⁶⁶

At the time, the Commission recognized that the Department of Homeland Security ("DHS") also required access to this data to fulfill its obligations with respect to homeland security. Accordingly, the Commission provided DHS with real-time, encrypted access to NORS data.⁶⁷ The Commission determined that "DHS can then undertake to provide information from those reports to such other governmental authorities as it may deem to be

⁶⁵ It is worth noting that the Office of Management and Budget specifically requires that federal agencies, including the FCC, not gather duplicative data. *See*, 5 C.F.R. § 1320.5(d)(1)(ii). It seems incongruous that the Commission would reverse this logic and participate in duplicated fact gathering for other government agencies or where data is already available.

⁶⁶ NPRM at ¶¶ 52-53.

⁶⁷ NPRM at ¶ 54.

appropriate.”⁶⁸ Intrado is concerned that essentially the same vulnerabilities that apply to state-level dissemination of NORS data exist at the federal level, beginning with DHS and including the uncontrolled and unknown list of personnel that may have access to NORS data without identification of individuals that have access and without personal responsibility or accountability.

As outlined below, Intrado recommends the FCC place restrictions on states that are given access to NORS information, and at least some of these recommendations are consistent with the views expressed by the Michigan Public Service Commission which states,

Many state governments possess the authority to require communication providers to report their outage information at a state level in addition to federal reporting requirements. While this provides some states the ability to monitor any outage issues that may affect the public safety of their citizens, Michigan no longer requires providers to supply outage information to the MPSC and is, therefore, not afforded the opportunity to keep abreast of public safety concerns that may negatively affect its citizens. The FCC also notes that the information reported at both state and federal levels is often redundant (NPRM, p. 18). A single database where providers can submit outage information and authorized stakeholders can access such information is an efficient model for all parties involved. For this and the reasons mentioned below, the MPSC supports granting state government’s access to NORS outage reporting data. (Emphasis added.)⁶⁹

If the Commission grants access to qualifying states, Intrado believes the FCC should require that each such state agree to: (a) use the information only for public safety purposes; (b) not distribute data among non-authorized agencies, private contractors or any third-parties; (c) take the maximum care to prevent release of the information; (d) have in place appropriate civil and/or criminal penalties for breach of these conditions; and (e) not promulgate their own outage

⁶⁸ *Id.*

⁶⁹ Comments of the Michigan Public Service Commission, pp 2-3.

reporting rules or, if rules currently exist, commit to phase out those rules within three years.⁷⁰

In addition, the FCC should ensure that NORS filers have an opportunity to comment on any proposed FCC program for sharing NORS data with states prior to implementing the program; and ensure a process is in place for NORS filers to seek federal redress for any breaches or abuse to include a requirement that the FCC notify actual or potentially affected NORS filers of any suspected or actual NORS database breaches.⁷¹

5. NORS Data Must Be Secure and Redesigned For State Use

Cyber-security activities and threats have increased exponentially since the Commission adopted its NORS rules in 2004.⁷² Yet, the Commission has proposed to expand California's request and to grant access -- to all states -- sensitive information that is stored in a cyber environment pertaining to communications events in their respective states including information that, in the hands of the wrong parties, could easily be used for illegal or malicious purposes.⁷³ Intrado urges the Commission to consider significant and increasing security and confidentiality concerns raised by this proposal.

Cyber-security for NORS is paramount. For states to have read-only access, they would, at a minimum (in addition to the security measures the Commission has noted), need to have

⁷⁰ Massachusetts Department of Telecommunications and Cable suggests that access to NORS "... will give States the opportunity to eliminate redundant reporting requirements, potentially reducing costs and administrative burdens on service providers," and further states, "Once State entities are able to access the NORS database, States should take action to amend or eliminate redundant outage reporting requirements." Comments of Massachusetts Department of Telecommunications and Cable, pp. 3-4. Intrado believes there should be a willingness by all states to commit to this.

⁷¹ Other filers offer additional suggestions for safeguarding NORS data with which Intrado concurs, e.g., Comments of AT&T, pp. 25-30.

⁷² Michael S. Schmidt, *Russian Hackers Read Obama's Unclassified Emails, Officials Say*, N.Y. Times, Apr. 25, 2015; Ben Fritz, *Sony Hack Exposed Personal Data of Hollywood Stars*, Wall St. J., Dec. 5, 2014; Rachel Abrams, *Target Puts Data Breach Costs at \$148 Million, and Forecasts Profit Drop*, N.Y. Times, Aug. 5, 2014.

⁷³ *NPRM* at ¶ 51.

unique logins and passwords for very specific state personnel with the users' identities verified. Logins and passwords would need to be managed and periodically re-verified for personnel changes, retirements, etc. User logs should be maintained, audits should be conducted regularly, and inactive accounts should be terminated. Notably, the Commission's estimated costs for instituting its NPRM proposals does not include these costs which would not be insubstantial and which should not be borne by service providers.

The NORS database is currently designed primarily for ease of reporting, and while it is constantly being refined and improved, it was not designed for non-FCC use and is not currently organized so that state specific data could be easily available and confidential information protected. For example, the drop-down menu in the NORS form only contains one field for the state location of an event, and if the event impacts multiple states, the forced list choice is "multi-state." Reporting entities are left to try to further refine the location in the "free form" text field; however, as this field is unrestricted, it would not be useful in sorting data by state (as would be necessary for the proposal to appropriately function).

NORS reports often include very specific information and descriptions (e.g., equipment location, network design, etc.) that would be considered proprietary, business sensitive, or at the least, confidential. This data would not be useful, legitimately, to a state agency for event reporting and represents some of the most problematic and damaging if released to states or beyond into the public domain. The free form text fields should not be available even for read-only access for state interrogation.

These are just a few of the many issues with sharing NORS information. If the NORS database were open to states or others, there should be a thorough joint industry/Commission review of the NORS structure and function, and appropriate modifications should be considered

and made so that only essential relevant information, specific just to the state in question, is accessible.

Lastly, there is no justification, legal or otherwise, for historic data to be accessible to states; thus, reports would need to be available, if at all, on a going-forward basis from a future date certain. This would help reporting entities to populate new or reformatted fields correctly and would help maximize confidentiality.

D. The Commission Should Not Expand the Definition of Special Offices and Facilities to Include Entities Eligible To Enroll in the Telecommunications Service Priority Program.

The current outage reporting rules require providers to report outages that potentially affect a specific list of entities eligible as “special offices and facilities.”⁷⁴ The Commission proposes to expand this list by adding “those facilities enrolled in or eligible for the Telecommunications Service Priority (TSP) program.”⁷⁵ In Intrado’s view, the Commission should not adopt this proposal. Entities eligible to enroll in the TSP program include military installations,⁷⁶ federal cabinet-level departments, state governors’ offices, stock exchanges, federal, state and local law enforcement facilities, hospitals, oil refineries and water treatment plants.⁷⁷ The TSP program has five levels of priority but generally prioritizes the restoration and

⁷⁴ 47 C.F.R. 4.9(a)(3), (c)(2)(iii), (e)(4) and (f)(3). As defined in §4.5(b), these entities include major military installations, key government facilities, nuclear power plants, and those airports that are listed as current primary, commercial service, and reliever airports in the FAA’s National Plan of Integrated Airports Systems.

⁷⁵ NPRM at ¶ 31.

⁷⁶ Given the language of this proposal, this presumably includes all military installations, whereas 4.5(b) currently only includes “major” military installations. Notwithstanding the other entities the FCC proposes to include, the inclusion of all military installations is, alone, a substantial expansion of the rule.

⁷⁷ *Id.* at ¶ 39.

provisioning of circuits used by enrolled entities in the event of a national security incident.⁷⁸

Intrado believes the rule change is unwarranted and would impose unnecessary burdens and costs. First, the Commission has failed to articulate any reason why this proposal advances the Policy Goals; rather, the proposal is apparently being advanced because the Commission believes it might be helpful to the expanded group of entities who, at least according to the record in this matter, have never expressed a need or desire to be added to the list of special offices and facilities. And, the burdens and costs associated with reliably tracking the new entities have not been justified.⁷⁹

Second, it is important to distinguish between (a) notifying entities of outages and (b) giving such entities priority for network restoration – a top priority status which TSP sites and circuits already receive and a benefit relative to what Intrado believes matters most to TSPs: prioritization in restoration as compared to giving the entity a right to be notified of an outage. Expanding providers' NORS reporting obligations, as proposed, does nothing to improve the standing or capabilities of TSP-eligible entities in Intrado's view.

Third, from a 911 system perspective, where diverse connectivity has been deployed and/or alternative/backup PSAPs are available, the value of TSP-repair service is diminished. For example, Intrado purchases services that typically utilize high capacity circuits (to provide traffic volume redundancy), so the rationale behind TSP-repair service has less value in the 911 environment since the transmission facility provider is already highly incented to restore the entire shared facility.

⁷⁸ Intrado already complies with this program and subscribes to TSP-Repair services where economically available for its circuits used to deliver 911 voice calls and/or ANI/ALI data.

⁷⁹ See, Comments Of Comcast Corporation, p. 8 where the company states, "...providers simply have no way of reliably tracking the entities that may be eligible for the TSP program. And contrary to the Commission's expressed belief that adopting its proposal would not "have an appreciable cost impact," requiring providers to develop complicated new tracking systems to try to identify such entities would impose significant costs."

E. The Commission’s Cost / Benefit Analysis Underestimates the Burden on Reporting Entities And Fails to Satisfy the Commission's Own Requirements For Such Estimates.

The Commission estimates that the overall burden on the industry for updating the reporting obligations would result in the filing of 339 additional reports with a modest cost – an additional \$54,240 annually *for the entire communications industry*.⁸⁰ The analysis behind this calculation is insufficient as a “cost-benefit analysis” as required by the Commission itself⁸¹ and is classically flawed as only a “cost” analysis.⁸² And, the calculation itself significantly underestimates the costs associated with the proposed modifications to its rules.

The agency’s estimate is based on theoretical employee cost estimates directly related to just *filing* minimal reports. This estimate assumes the “data” used to populate the report is immediately available at no cost. This is never the case. The additional costs of reporting, recording and tracking the additional data for new or changed reports will likely require additional staffing (including benefits and other general and administrative overhead), technical resources and internal process and procedures in order to be, and remain, compliant with FCC reporting and other rules, e.g., to determine whether reports must be filed, to integrate information related to additional circuit monitoring, to certify and maintain such records, etc.⁸³

The modern, multi-provider IP communications environment, as opposed to the legacy

⁸⁰ NPRM at ¶ 8. The commission cites this as a net figure that is the result of \$526,560 in estimated costs minus \$472,320 in estimated offsetting savings. It is unclear from the NPRM the source of these figures or any of their underlying assumptions.

⁸¹ Letter reiterating the Commission’s commitment to cost – benefit analysis in all its rulemaking proceedings. https://apps.fcc.gov/edocs_public/attachmatch/DOC-327470A1.pdf (May 19, 2014).

⁸² “Using Cost Benefit Analysis to Review Regulation” <https://www.gmu.edu/centers/publicchoice/faculty%20pages/Tyler/Cowen%20on%20cost%20benefit.pdf>

⁸³ *See*, AT&T Comments, pp. 5-9, wherein AT&T explains in detail the process it uses to addresses outages and prepare reports and explains how the Commission under-estimates the burden and costs by a factor of six. Intrado concurs with AT&T’s analysis.

circuit-switched monopoly environment, is dominated by equipment that actively reports volumes of data regarding system status; so much so, that it is the collection and interpretation of this data (into actionable information) that are the significant cost drivers for the additional reporting being proposed, and they dwarf the simple labor calculation cited by the Commission.⁸⁴ The bulk of the costs imposed on the industry by the Commission's proposed rules will result from reworking systems and processes to collect and record data that is required to measure compliance with any new reporting obligations.

The additional costs imposed by the agency's proposed rules are not limited to direct financial expenses; there are also opportunity costs. For each additional report a provider is required to file, it is focused on administrative reporting obligations instead of reinstating service or advancing other business interests.

To the extent the Commission would be required to revise its event reporting rule to address service degradations (discussed *infra*), it seeks comment on the costs and benefits of expanding its reporting requirements to further clarify the reporting obligations for partial outages or degradations in service.⁸⁵ The agency assumes that adopting such measures will not have a substantial cost impact.⁸⁶ The Commission poses a host of questions seeking guidance on how a provider would determine the need to report an event that results only in a partial "loss of

⁸⁴ Intrado recognizes that the Commission would prefer quantified cost data for analysis. However, until the specific rule changes are known, a true cost analysis is impractical. And, absent the Commission's analysis of the proposed benefits as compared to the costs, this makes a quantified/qualified analysis impossible. Intrado is also concerned that an adequate explanation of true data gathering and analysis of costs - - even in the form of estimates - - would reveal proprietary or confidential information that, for competitive and national security reasons, should not be in the public domain. Albeit smaller in scope, Intrado has in place similar processes and capabilities to that of AT&T that include individuals who are responsible for only FCC reporting and include underlying root cause efforts that are necessary for mission critical operations and for officials to certify under oath to the veracity of the contents of reports. Intrado's costs are proportionately similar albeit perhaps larger given the comparative lack of economies of scale .

⁸⁵ NPRM at ¶ 12.

⁸⁶ *Id.*

communications” to a PSAP.⁸⁷ Since the agency has not determined how a provider could determine what would trigger a reporting requirement under this proposed rule, it is impossible for the Commission to assume or conclude that complying with this revised rule would have no substantial cost impact. Thus, the Commission’s assumptions in this regard are unfounded and unreasonable. To the contrary, it is reasonable to assume additional resources would be required to make such determinations.

It is worth noting that, if the Commission adopted Intrado’s suggestion outlined above for eliminating one of the three reports required by Section 4.11, doing so would reduce costs.

F. The Commission Should Not Revise Its Reporting Rules to Include a New Definition for “Partial” Outages or Service Degradations.

The Commission seeks comment on whether it should revise its rules to clarify the circumstances under which a degradation of communications to a PSAP constitutes a reportable event.⁸⁸ The NPRM notes that one of the primary drivers of this proposed change is the Commission’s awareness that some providers interpret the current rule to only require reporting when a PSAP is rendered unable to receive *any* 9-1-1 calls for a long enough period to meet the reporting threshold.⁸⁹ Therefore, the agency proposes revising Section 4.5(e)(1) of its rules to clarify that “any network malfunction or higher-level issue that significantly degrades or prevents 9-1-1 calls from being completed constitutes a ‘loss of communications to PSAP(s),’ ” regardless of whether the PSAP is rendered completely unable to receive 9-1-1 calls.⁹⁰ While Intrado shares the agency’s concern that a significant degradation to service is problematic for

⁸⁷ *Id.*

⁸⁸ NPRM at ¶ 10.

⁸⁹ *Id.*

⁹⁰ *Id.* at ¶ 12.

public safety, as it potentially prevents a large number of 911 calls from reaching a PSAP,⁹¹

Intrado agrees with Verizon which suggests,

“The solution is to ensure that service providers apply the existing rule correctly, not impose new reporting burdens. The Commission need only reiterate its current policy that a significant degradation of 911 service ... is reportable based on when the provider reasonably becomes aware pursuant to normal business practices that a reportable outage has occurred. New reportable outage thresholds are not needed for that purpose.”⁹²

Intrado believes that the current rules sufficiently address the issue; that *changing* the rule is unnecessary; and that no additional reporting obligations should be imposed on providers. However, Intrado has no objection to the Commission *clarifying* the rule consistent with the above principles.

As the Commission notes in the NPRM, outage reporting rules already capture service-impacting events and require reporting for a variety of specific degradations in service; particularly, the FCC itself has defined an outage as, “a significant *degradation* in the ability of an end user to establish and maintain a channel of communication as a result of failure *or degradation* in the performance of a communications provider’s network” (emphasis added).⁹³ Webster defines “degradation” as, “diminution or reduction of strength, efficiency, value, altitude, or magnitude,”⁹⁴ and when read in the context of communications, degradation accurately describes a “partial” outage from the perspective of both the end user and the performance of the network. Thus, partial outages are already covered in rules.

Further, an E911 call consists of two components: the voice and the associated data (i.e.,

⁹¹ *Id.* at ¶ 4.

⁹² Comments of Verizon, p. 2.

⁹³ 47 C.F.R. §4.5(a).

⁹⁴ Webster’s New Universal Unabridged Dictionary.

ANI, the call back number, and ALI, the caller's location or address). The current reporting rules require a report to be filed when certain thresholds are met that impede only the voice component,⁹⁵ the ANI/ALI,⁹⁶ or both. In Intrado's experience, the overwhelming number of E911 events reported via NORS that qualify as partial outages are reported because the event involved only one of these components of the emergency call not being delivered to the PSAP -- and not a total loss of 911 calling.

Any suggestion that every network condition can be identified in advanced and explicitly correlated with Commission rules is based on a misplaced and unrealistic expectation. Instead, Intrado suggests that the Commission simply make clear: (a) it would be an incorrect assumption or interpretation of FCC rules for an entity to treat only total outages as reportable; and (b) partial service degradations can qualify as reportable events. If, as noted in the NPRM, the Commission is aware of reporting entities that have misinterpreted the rule, it should communicate the clarification to them directly.

To impose the Commission's proposed revision of Section 4.5(e)(1) on all reporting entities would be confusing and redundant; would unnecessarily and unreasonably subject providers to enforcement actions; and would be overly burdensome for reporting entities that are making good faith efforts to determine reportable events using the criteria already contained in Part 4 of the Commission's rules. Lastly but not unimportantly, the costs associated with this proposal could be substantial. Intrado therefore urges the Commission not to adopt this proposed revision.

⁹⁵ See, e.g., 47 C.F.R. §4.5(e)(1) requiring a report for a loss of voice service to a PSAP.

⁹⁶ See, 47 C.F.R. 4.5(e)(4) requiring a report for a loss of ANI/ALI data.

G. The Commission Should Not Change Simplex Reporting Rules

The Commission proposes to reduce the amount of time providers have to report “simplex events” as outages from the current five days to 48 hours.⁹⁷ There is little, if any, support for this proposal.⁹⁸ Intrado concurs with AT&T which states, “As the Commission knows, a simplex event is not an outage at all. Unlike a real outage, with a simplex event, customers do not experience any disruption in or degradation of service.”⁹⁹ Moreover, there is no factual evidence or impetus supporting a change to this rule. As explained in detail by CenturyLink, the proposal fails the simplest logical tests of an event that warrants reporting as a potential service disruption.¹⁰⁰ Put simply, simplex events are not service disruptions and do not warrant the attention the Commission is giving them. Intrado also concurs with Verizon which warns against the risks of over-reporting due to providers erring on the side of caution, thus causing NORS data to be less useful for both situational awareness and the development of best practices.¹⁰¹ The rule is working well, and the proposed change would have no beneficial impact. Intrado urges the Commission to not change this reporting rule. Instead, the Commission should follow Verizon’s suggestion to “...encourage collaborative stakeholder efforts to develop standards for reporting partial outages under the existing rules, based on

⁹⁷ NPRM at ¶ 24.

⁹⁸ On the other hand, there is considerable opposition. *See*, Comments of AT&T at p.12; Comments of Sprint at p.6; Comments of CenturyLink at p.6; Comments of Verizon at p.3; Comments of ATIS at p.7; Comments of CompTel at p.2; and the Comments of XO at p. 5.

⁹⁹ AT&T Comments, p. 14.

¹⁰⁰ CenturyLink concludes that changing the simplex rule is “... unnecessary, unjustified and unwarranted.” CenturyLink at p. 7.

¹⁰¹ *See*, Comments of Verizon at pp. 4-5. Verizon correctly points out that reporting circuit failures in “simplex”-type events is misguided given that networks are typically designed to seamlessly re-route traffic to redundant facilities and ensure that consumers and PSAPs suffer no loss of service.

service providers' existing monitoring capabilities.”¹⁰²

III. CONCLUSION

Intrado appreciates this opportunity to comment on the NPRM and looks forward to working with the Commission and others on changes to Part 4 rules that can truly have beneficial impacts on service reliability and recovery from service disruptions.

July 31, 2015

Respectfully Submitted,

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¹⁰² *Id.*, p. 4.