Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Public Safety and Homeland Security Bureau Seeks Comment on Whether the Commission's Rules Concerning Disruptions to Communications Should Apply to Broadband Internet Service Providers and Interconnected Voice Over Internet Protocol Service Providers	)	ET Docket No. 04-35 WC Docket No. 05-271 GN Docket Nos. 09-47, 09-51, 09-137

COMMENTS OF METROPCS COMMUNICATIONS, INC.

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 2

II. THE BROADBAND INTERNET ACCESS SERVICE MARKETPLACE IS COMPETITIVE, AND THERE IS NO NEED TO IMPOSE BURDENSOME REPORTING REQUIREMENTS 4

III. THE SECTIONS OF THE COMMUNICATIONS ACT CITED IN THE NOTICE DO NOT PROVIDE THE COMMISSION WITH THE NECESSARY AUTHORITY TO REQUIRE BROADBAND INTERNET ACCESS OUTAGE REPORTING 8

IV. THE COMMISSION SHOULD RECONSIDER ITS CURRENT PART 4 RULES FOR REPORTING DISRUPTIONS IN SERVICE FOR LEGACY NETWORKS 17

V. CONCLUSION 18

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COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its comments on the *Public Notice* (the "*Notice*") in the above captioned proceeding opposing the imposition of additional regulatory requirements on broadband Internet providers, particularly wireless broadband Internet providers, pertaining to outage reporting.[2] In opposition, the following is respectfully shown:[3]

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] *Effects on Broadband Communications Networks of Damage to or Failure of Network Equipment or Severe Overload*, NOTICE OF INQUIRY, in PS Docket No. 10-92 (April 21, 2010) ("*Notice*").

[3] The *Notice* specifically directs that "[c]ommenters addressing the Legal Issues section of this Public Notice may (1) incorporate their respective Notice of Inquiry pleadings in their filings in response to this Public Notice…Commenters choosing Option 1 must explicitly reference their Notice of Inquiry pleadings in their Public Notice responses." *Id.* at 4. MetroPCS hereby explicitly references and asks the Commission to consider in this proceeding its comments, filed

I. INTRODUCTION AND SUMMARY

In the *Notice*, the Commission seeks comment on the potential application of outage reporting rules, currently applied to voice and paging services only, to broadband Internet access services and/or interconnected voice over Internet protocol ("VoIP") services. The Commission believes that this information might "help prevent future outages and ensure a better response to actual outages."[4] The Commission asks whether such reporting requirements are necessary, how they should be established, and whether the Commission has the authority to implement them at all. The Commission notes that it is seeking such comment in advance of a potential Commission proceeding on this subject.[5]

MetroPCS believes that extending the current network outage reporting requirements applicable to voice and paging services to broadband Internet access providers would be completely unnecessary and unwise. The broadband Internet access market is highly competitive, composed of a variety of modes of connection and a variety of styles of offerings, and new technologies with new providers are entering the industry every year. If providers do not maintain their networks and allow their customers to fall victim to unnecessarily lengthy service outages, they will not be able to retain customers in the face of intense appeals by competitors. Thus, providers have more than adequate incentives to ensure that any disruptions in service are quickly and effectively handled and that customers are returned to a fast and clear quality of service. Such providers should be focusing their efforts on identifying and repairing such outages, rather than scrambling to provide the Commission with reports detailing such

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July 15, 2010, in *Framework for Broadband Internet Service*, GN Docket No. 10-127, FCC 10-114, NOTICE OF INQUIRY (June 17, 2010) ("MetroPCS 'Third Way' Comments").

[4] *Notice* at 2.

[5] *Id.*

outages in extremely tight timelines. Further, unlike voice and paging networks which comprise the public switched telephone network, broadband access services are part of the Internet. An essential difference between these networks is that the public switched telephone network is not designed like the Internet to withstand outages. The Internet allows for traffic to be redirected if a facility goes down, whereas the public switched telephone network is point-to-point and does not have such redundancy. If the Commission decides any action is necessary, it should focus on the initiatives proposed in the National Broadband Plan to increase competition among broadband Internet access service providers, such as releasing more spectrum for wireless commercial use, thus promoting new entrants into the market and increased competition among existing providers.

Next, the Commission inquires into its legal authority to implement outage reporting rules for broadband Internet access, specifically asking "whether the proposed collection and reporting information process would fall within specific grants of authority in Title II and/or Title III" and "whether the Commission could, if necessary, exercise ancillary authority to create the revised process."[6] MetroPCS believes that the Commission has no authority to require outage reporting of broadband Internet access providers under any cited section of Title II or Title III, and any information collection requirements are limited by the burden placed on licensees and by the Commission's ability to take action related to its findings. This is particularly true with regard to the asserted Title II sources of authority, as the Commission may not regulate Internet access service under Title II because it is an information service, outside the scope of that portion of the Act. And, based on the decision in *Comcast Corp. v. FCC*,[7] the FCC cannot connect its Title I authority to other statutory mandates on which to base its ancillary

[6] *Id.* at 4.

[7] *Comcast Corp. v. FCC*, No. 08-1291, 2010 WL 1286658 (D.C. Cir. April 6, 2010).

jurisdiction. Accordingly, the Commission does not have the necessary authority to require outage reporting by broadband Internet access service providers.

Finally, MetroPCS believes that if the Commission does institute a rulemaking on its outage reporting rules, the Commission should reconsider its current outage reporting requirements for voice services. The current reporting regime has proven to be inefficient, ineffective, and overly costly. The current circumstances in the communications industry do not match assumptions made by the Commission when it adopted those rules. Accordingly, the Commission should revisit its current rules and devise a system that would result in more complete, accurate information within a reasonable timeframe.

II. THE BROADBAND INTERNET ACCESS SERVICE MARKETPLACE IS COMPETITIVE, AND THERE IS NO NEED TO IMPOSE BURDENSOME REPORTING REQUIREMENTS

There is no need for the Commission to impose burdensome reporting regulations upon providers of broadband Internet access. American consumers have a myriad of options for their connection to the Internet via broadband services. In some cases, consumers have (or may soon have) a choice between six different types of channels through which to access the Internet at broadband speeds: (i) connections through traditional telecommunications companies, such as digital subscriber lines ("DSL") and fiber-to-the-home ("FTTH") (at least one per market); (ii) cable broadband (at least one per market); (iii) satellite broadband (one or more per market); (iv) wireless broadband, potentially provided by a number of wireless carriers in their market (four or more per market); (v) broadband over power lines ("BPL") (one per market); and (vi) Wireless ISPs ("WISPs"), which provide important broadband services to many underserved rural communities. Accordingly, some consumers may have the opportunity to choose between nine or more competitors per market. And, in each category of service, providers have plans to expand and improve their offerings in an attempt to gain a competitive advantage against other

providers. This is why carriers, especially wireless carriers, have invested tens of billions of dollars to ensure the integrity of their networks.[8] Natural market forces already are ensuring that disruptions to service are as insubstantial and minimal as possible.

Additionally, with this wide range of technological avenues for providers to use, the adoption of comprehensive, efficient regulations that will work fairly and effectively in this diverse market would be virtually impossible to design. In such a varied environment, problems, including outages, are best left to individualized decision-making tailored to the unique characteristics of each offering and offeror, not to "one-size-fits-all" government regulations.

The market for broadband Internet access is highly competitive, and service providers must do all they can to ensure that their customers receive the highest quality of service and experience limited degradations of service. This is especially true of wireless broadband Internet access providers. The Commission's *Fourteenth Mobile Wireless Competition Report* noted that 72.8 percent of the nation's population have the option of subscribing to service from five or more wireless carriers, 90.8 percent have the option of choosing four or more carriers, and 95.8 percent may choose from three or more carriers.[9] Accordingly, carriers must aggressively compete with one another based on the quality of their services. Consumers often choose their carrier based on its reputation for reliable service. If a carrier fails to provide this consistently reliable service, its prospective and existing customers will turn to other providers, and the provider will fall in the face of competitors ready and willing to do so. Competition gives

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[8] AT&T is reported to have invested over $30 billion in the last several years. *See* Fred Vogelstein, *Bad Connection: Inside the iPhone Network Meltdown*, WIRED, *available at* http://www.wired.com/magazine/2010/07/ff_att_fail/all/1 (July 19, 2010). MetroPCS itself has invested hundreds of millions of dollars as well.

[9] *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, FOURTEENTH REPORT, at Table 6, in WT Docket No. 09-66 (May 20, 2010) ("*Fourteenth Mobile Wireless Competition Report*").

broadband Internet access providers incentive to avoid unnecessary and unnecessarily lengthy outages. Competition provides motivation to construct reliable networks. Competition works.

What's more, the source of performance impairments experienced by end users cannot be as easily pinpointed as with legacy networks. Data networks operate differently than voice networks. The cause of some degradations of service may not be clearly identifiable, especially within a limited timeframe, and those causes may self-heal through changes in area traffic and standard network management tools. Furthermore, whereas voice services either work or they do not, a "degradation of service" for broadband Internet access could mean any number of changes to quality of service. Several interwoven elements compose broadband Internet access networks, including end user equipment and software, and end users themselves, for that matter. To ask providers to report at any particular threshold of reported degradations of service would be to ask them to aggregate all complaints of users at any given time, regardless of what the actual causes of disruption are eventually determined to be, perhaps even by technical support specialists at customer help centers. Such a system would be completely unworkable. Accordingly, the only workable solution would be to evaluate only total outages.

Further, outage reporting for broadband access is unnecessary. The Internet is fundamentally different than the public switched telephone network. The Internet was designed to reroute traffic in the event portions of the network became inoperable, and it was designed to be redundant. On the other hand, the public switched telephone network is largely a point-to-point network which can be susceptible to outages of specific facilities and congestion. As a result, an outage of a facility for broadband Internet access may in fact have no effect on the ability of the network, or its users, to continue to send and receive traffic. Further, to the extent broadband Internet access relies on existing public switched telephone network facilities (such as

OC-3, OC-12, and other telecommunications facilities), such underlying telecommunications service providers already have an obligation to report an outage of such facilities. Having broadband Internet access providers try to figure out whether an outage affects its network would be both unnecessary and pointless.

Instead, if the Commission wants to do anything to limit outages for wireless broadband, it should follow through on the National Broadband Plan's recommendation to allocate and license additional spectrum for wireless broadband, which will increase competition and further incent existing and new wireless broadband carriers to have reliable systems and to limit the length and frequency of any network outages.[10] It would be unwise for the Commission to impose undue, inflexible regulatory burdens on the broadband industry, especially the wireless broadband industry, which is still in its nascency and is very competitive. This is especially true given that market forces already create the incentive for wireless providers to ensure the reliability of their networks, making Commission involvement redundant.

If the Commission wants to gather information on outages, it should seek to do so within the confines of a voluntary consensus-based reporting regime. A voluntary program would provide the flexibility to work within an industry of widely diverse offerings and incorporate the knowledge and experience of industry leaders and engineers at the forefront of broadband deployment. For example, MetroPCS is a member of the Alliance for Telecommunications Industry Solutions ("ATIS"), a global standards development and technical planning organization, and actively participates in its formulation of best practices to improve network reliability and to ensure that those practices are followed. Organizations such as ATIS are best

[10] *See* THE NATIONAL BROADBAND PLAN, Federal Communications Commission, 85 (March 2010) ("Ultimately, the cost of not securing enough spectrum may be higher prices, poorer service, lost productivity, loss of competitive advantage and untapped innovation.").

suited to respond quickly and effectively to the needs of an industry facing ever-changing technology and diverse approaches and to consult with the Commission to build a flexible, reasonable approach to broadband outages. There should not be any "one-size-fits-all" approach to any such reporting. Each service provider, be it cable, wireline, or wireless, each provides service to customers differently. The Commission should not apply an overall regime that does not take into account the differences between those providers.

III. THE SECTIONS OF THE COMMUNICATIONS ACT CITED IN THE NOTICE DO NOT PROVIDE THE COMMISSION WITH THE NECESSARY AUTHORITY TO REQUIRE BROADBAND INTERNET ACCESS OUTAGE REPORTING

The jurisdictional inquiry in the *Notice* cites the Commission's ancillary authority under Section 1 of the Act. However, as is now abundantly clear, Section 1 is merely a "general jurisdictional grant" and delegates to the Commission no substantive authority.[11] Moreover, as previously noted by MetroPCS, retail broadband Internet access services are "information services," and the Commission should not reverse a near-decade of decisions to classify such services as "telecommunications services." The Commission has appropriately classified retail broadband Internet access service as an information service, and thus outside the scope of Title II authority. In MetroPCS' "Third Way" comments,[12] MetroPCS demonstrates that the Commission rightly decided in previous orders that the provision of broadband Internet access constitutes the "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information," placing it within the definition of an "information

[11] *E.g.*, *American Library Ass'n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005).

[12] MetroPCS Comments, *Framework for Broadband Internet Service*, in GN Docket No. 10-127, 31-37 (filed July 17, 2010) ("METROPCS THIRD WAY COMMENTS"). MetroPCS would like to draw the Commission's attention to its full comments in that matter for a more comprehensive analysis of the Commission's lack of authority over Title II authority over broadband Internet access service.

service."[13] Thus, the Commission has no authority to adopt outage reporting regulations upon broadband Internet service providers.

In order to establish Title II authority over a service, the Commission must show that the service is a telecommunications service and that the service may be regulated as a common carrier service. First, although the transmission component of broadband Internet access is telecommunications, it cannot be regulated as a telecommunications service because it is inseverably intertwined with the retail information service component of the offering. As MetroPCS discusses in depth in its "Third Way" comments, Commission and judicial precedent establish that, when classifying a communications service, the determinative aspect is not how the components could be broken down, but rather how those components are viewed by consumers – "what the consumer perceives to be the integrated finished product"[14] – and, as the Supreme Court has held, broadband Internet access is a "single, integrated offering"[15] that is not "separable from the data-processing capabilities of the service."[16] The Commission's decisions in the *Wireless Broadband Order*, the *Cable Modem Declaratory Ruling*, the *Wireline Reclassification Order* and the *BPL Order* also each found the telecommunications transmission component of integrated wireless broadband Internet access service offered to end users using the provider's own transmission facilities was not a telecommunications service, but rather constitutes an information service, because the transmission component was "part and parcel of the Internet access service's information service capabilities."[17] Accordingly, when the

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[13] 47 U.S.C. § 153(20).

[14] *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 990 (U.S. 2005).

[15] *Id.* at 967.

[16] *Id.* at 997; *see also Stevens Report* ¶¶ 57-60.

[17] *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901, in WT Docket No. 07-53, ¶ 26 (March 23, 2007) ("*Wireless*

transmission component of broadband Internet access service is offered along with an information service, it is not a telecommunications service and is therefore not subject to Title II regulation.

In the *Comcast* decision, the U.S. Court of Appeals for the District of Columbia reaffirmed the two-part test of *American Library Ass'n v. FCC* under which, in order to utilize its ancillary authority under Title I, the Commission must show that "(1) the Commission's general jurisdictional grant under Title I covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities."[18] Here, such regulations would find no grounding in specific statutory authority granted by Congress to the Commission, and the Commission is unable to point to any such statutory authority.

As noted by MetroPCS in its "Third Way" comments, broadband Internet access services are not telecommunications services subject to Title II regulation.[19] Thus, MetroPCS does not believe that any of the cited Title II services by the Commission are applicable here. However, even if the Commission were to reclassify broadband Internet service, the cited sections of Title II would not grant the Commission the required authority to compel such outage reporting requirements.

Broadband Order"); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798, ¶ 33 (2002) ("*Cable Modem Declaratory Ruling*"); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, in CC Docket Nos. 02-33, 01-337, 95-20, and 98-10, WC Docket No. 04-242, WC Docket No. 05-271, ¶ 14 (Sept. 23, 2005) ("*Wireline Reclassification Order*"); *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, 21 FCC Rcd 13281, in WC Docket No. 06-10, ¶ 9 (Nov. 7, 2006) ("*BPL Order*").

[18] *Id.* at 7 (citing *American Library Ass'n*, 406 F.3d at 691).

[19] MetroPCS "Third Way" Comments at 20-37.

The *Notice* inquires as to the potential use of Section 201(b),[20] which requires that practices of common carriers be "just and reasonable."[21] However, there are tradeoffs between the costs and other burdens associated with having to meet regulatory mandates pertaining to reporting outages of broadband Internet access. It costs money to add additional monitoring to network services and to file detailed administrative reports, both in the long term and short term. In light of these complex tradeoffs, it would be legally unsustainable for the Commission to conclude that it is *per se* unreasonable for a carrier to fail to file broadband outage reports mandated by the Commission. This conclusion is further supported by the fact that, because broadband Internet access is provided through networks utilizing different equipment, technologies, and facilities, just and reasonable standards for outage reporting would necessarily vary and would make any such balance to be fact specific to each broadband Internet access provider and each broadband Internet access network – meaning that a rational, sustainable mandate cannot be dictated by general rulemaking. Furthermore, as the Commission acknowledges in the *Notice*, the question of what constitutes a network disruption adds to the unworkable complexity of creating any decipherable standard by which network operates may evaluate whether they must file Commission-mandated paperwork while trying to restore the network to full capacity.[22] This is further complicated by the diversity of channels through which broadband Internet access is provided, including wireline, cable, and wireless. To determine at what point their particular network, based upon the particular network configuration of that branch of the service provider, must file outage reports in response to "serious degradation" of quality of service will do nothing but draw their attention away from fixing the

[20] *Notice* at n.9.

[21] 47 U.S.C. § 201(b).

[22] *See Notice* at 3.

problem and increase the size of the provider's legal expenses. Finally, given the nature of broadband Internet access and the Internet, such outage reporting is unnecessary and will serve no useful purpose. Surely this cannot be a "just and reasonable" result.

The *Notice* also cites Section 214(d),[23] which allows the Commission to require a common carrier "to provide itself with adequate facilities for the expeditious and efficient performance of its service."[24] As an initial matter, the Commission previously has forborne from regulating CMRS pursuant to Section 214, thus closing the door on using this section to regulate at least wireless broadband Internet access service providers.[25] It is not clear how the Commission could defensibly use a section which it has forborne from applying as a basis for imposing new regulations. In addition, Section 214 applies to orders imposed upon individual entities, allowing the Commission, "after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, [to] authorize or require by order any carrier, party to such proceeding."[26] This section explicitly requires that any such determination be carrier specific, which the Commission cannot do in a generic rulemaking proceeding. Moreover, Section 214(d) notes that "no such authorization or order shall be made unless the Commission finds…that the expense involved therein will not impair the ability of the carrier to perform its duty to the public."[27] Accordingly, the Commission must avoid regulations that

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[23] *Notice* at n.9.

[24] 47 U.S.C. § 214(d).

[25] *See Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, SECOND REPORT AND ORDER, 9 FCC Rcd 1411, at 1481 (March 7, 1994).

[26] *Id.*

[27] *Id.*

impose undue burdens on licensees, burdens that would potentially divert carriers' resources, such as personnel and capital, from the efficient and effective operation of their networks.

The *Notice* also points to the Commission's authority under Section 215(a) to "examine into transactions entered into by any common carrier which relate to the furnishing of equipment, supplies [or] services,"[28] but its authority goes no further than a mere examination. The section grants the Commission the authority only to "examine" and to "report to the Congress."[29] It does not grant the Commission any power to directly regulate "equipment, supplies [or] services" provided by carriers or to require extensive reporting and constant monitoring by those carriers. Furthermore, Section 215(a) states that the Commission should examine transactions that "may result in undue or unreasonable increase in charges or in the maintenance of undue or unreasonable charges for such service."[30] The Commission, however, needs to explain how the power to "examine transactions" translates into an ability to set extensive reporting requirements on the continuing operation of networks. Surely Congress did not intend to authorize the Commission to demand information from regulated entities the production of which would create overly burdensome costs for the licensees, especially if the Commission is not otherwise authorized to regulate the area. The end result would be the "undue or unreasonable increase in charges" to customers this provision aims to monitor. Further, it is not clear how the operation of a carrier's network would be considered a "transaction." Transaction generally means an act to purchase or sell equipment, not the actual provision of the service.

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[28] 47 U.S.C. § 215(a).

[29] *Id.*

[30] *Id.*

The *Notice* inquires also as to Section 218.[31] This section allows the Commission to "inquire into the management of the business of all carriers subject to this Act" and mandates that the Commission "keep itself informed as to the manner and method in which the same is conducted" as well as technical developments in the industry.[32] Section 218 only allows for the collection of information "necessary to enable the Commission to perform the duties and carry out the objects for which it was created."[33] Thus, if the Commission does not have the authority to use the collected information towards any other statutorily permissible manner, it may not exercise this inquiry provision of the Act.

Finally, the Commission inquires into the application of Title III authority. As an initial matter, Title II at most would only apply to wireless providers or those carriers using wireless facilities. The Commission needs to find authority elsewhere or else it will not be able to impose any outage requirements on the wireline and cable broadband Internet providers. Thus, Title III does not provide any additional authority except for wireless and should not be used since it would not allow the Commission to regulate wireline provider. Among those provisions, it points to sections 301, 307(a), and 309(a).[34] Section 301, however, addresses only the Commission's power to regulate "transmission of energy or communications or signals" along with its authority to generally grant licenses.[35] Sections 307(a) and 309(a) similarly only address the grant of licenses to transmit over public airwaves, not the use of already-granted licenses.[36]

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[31] *Notice* at n.9.

[32] 47 U.S.C. § 218.

[33] *Id.*

[34] *Notice* at n.10.

[35] 47 U.S.C. § 301.

[36] *See* 47 U.S.C. §§ 307(a), 309(a).

If the Commission were to make this leap across the gap of authority, it would find no barrier to granting itself the ability to regulate all aspects of communications networks.

Section 302(a) gives the Commission the authority to "make reasonable regulation [] governing the interference potential of devices" which may "cause harmful interference to radio communications."[37] The ability to regulate under this section, however, is limited to preventing interference with other systems and licensees, not to whether such networks remain operational. These rules may be "applicable to the manufacture, import, sale, offer for sale, or shipment of such devices and home electronic equipment and systems."[38] The network infrastructure targeted by this *Notice* is not closely connected to the devices governed by Section 302(a). To claim that the Commission could regulate non-interfering aspects of the network would be to assert that any component of the entire telecommunications industry may be regulated by the application of Section 302(a).

The *Notice* cites Section 303(b)'s grant of authority to the Commission to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class."[39] However, this *Notice* does not prescribe the "services" provided by licensees, but rather seeks information about the physical infrastructure supporting those services. That infrastructure is not "rendered by each class of licensed station."[40] That infrastructure renders the services. Thus, Section 303(b) is inapplicable here.

In addition, the *Notice* points to Section 303(r)'s authorization to "prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the

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[37] 47 U.S.C. § 302(a).

[38] *Id.*

[39] 47 U.S.C. 303(b).

[40] *Id.*

provisions of this Act."[41] However, Section 303(r) alone does not grant the Commission authority to act without other, specific delegations of authority from Congress. The Court of Appeals for the District of Columbia has held that "[t]he FCC must act pursuant to delegated authority before any 'public interest' inquiry is made under § 303(r)."[42] As with Title I, the Commission must first find another clear expression of congressional intent to authorize its actions before it may even turn to Section 303(r).

Section 309(j)(3) likewise falls short of providing the Commission with authority in this matter. As the *Notice* points out, that provision gives the Commission the responsibility to "include safeguards to protect the public interest" and to "seek to promote the purposes specified in section 1 of this Act."[43] However, it provides as a vehicle to achieve these goals only authority to "establish a competitive bidding methodology."[44] It may "design" auctions to distribute licenses,[45] but it may not use this section to regulate the networks or such spectrum afterwards.

Finally, to conclude its Title III inquiry, the *Notice* cites Section 316(a), which authorizes the modification of licenses if "in the judgment of the Commission such action will promote the public interest, convenience, and necessity."[46] However, this provision does not apply to rulemaking proceedings aimed at categories of licenses. Rather, this section "is concerned with

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[41] 47 U.S.C. § 303(r).

[42] *Motion Picture Ass'n v. FCC*, 309 F.3d 796, 806 (D.C. Cir. 2002).

[43] 47 U.S.C. § 309(j)(3).

[44] *Id.*

[45] *Id.*

[46] 47 U.S.C. § 316(a).

the conduct and other facts peculiar to an individual licensee."[47] Accordingly, Section 316 sets out protective provisions that may be exercised by an individual "holder of the license or permit," such as being afforded "reasonable opportunity, of at least thirty days, to protest such proposed order of modification."[48] These provisions are not at all in line with generic rulemaking procedures, and, thus, the Commission cannot construe that Congress intended this to be used as authority to modify general classes of licenses through a rulemaking.

IV. THE COMMISSION SHOULD RECONSIDER ITS CURRENT PART 4 RULES FOR REPORTING DISRUPTIONS IN SERVICE FOR LEGACY NETWORKS

In addition to urging the Commission to exercise restraint in the matter of broadband Internet access outage reporting, MetroPCS also encourages the Commission to reconsider and revise its current Part 4 rules for the reporting of outages for legacy networks. These rules have proven over time to be too rigid and unworkable. It is now clear that the Commission did not foresee the totality of circumstances surrounding outage reportings. It did not accurately foresee the vast number of reports that would be generated by the thresholds set, thresholds established without input from industry participants. It did not accurately foresee the burdens of meeting the short timeframes for assessing outage circumstances for correct initial filings. And it did not accurately foresee the total costs, costs ultimately falling on the shoulders of consumers, associated with filing these reports. Finally, as indicated by the sheer number of enforcement actions against licensees, the rules are clearly unworkable and ambiguous. Instead of clear and workable rules, the Commission has been forced to use the enforcement process to try to establish clarity around its very vague rules.

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[47] *WBEN, Inc. v. United States*, 396 F.2d 601, 618-19 (2d Cir. 1968) (internal quotation marks omitted).

[48] 47 U.S.C. § 316(a).

For example, MetroPCS believes that the Commission should revise the timeframes for initial filings. The short deadlines and the penalties associated with insufficient and late filings actually create incentives to file inaccurate or untruthful information rather than to wait until the provider can file an accurate, useful set of information concerning service outages. Recent notices of apparent liability for forfeiture released by the Commission in response to outage reporting shortcomings have actually penalized providers more for waiting to provide complete, accurate, and valuable information to the Commission regarding disruptions in service than to file quick, incomplete, and inaccurate information, merely for the sake of meeting an unnecessarily short and, due to the nature of the information received, ultimately counterproductive initial filing deadline.[49] Of course, the filing parties are forced to play this game because the short timeframe is often not long enough to collect sufficient information for a proper initial filing. Further, this has led to over-reporting and withdrawal of reports, a circumstance that does not benefit anyone. The Commission should take this opportunity to reformulate new outage reporting requirements that would both be useful for the Commission's objectives, as well as not interfere with provider's efforts to maintain their networks.

V. CONCLUSION

The foregoing premises having been duly considered, MetroPCS respectfully requests that the Commission exercise regulatory restraint in this matter and avoid unnecessary rules that would hinder the natural growth of the broadband Internet access market. Competitive market forces are working, and MetroPCS urges the Commission to allow them to continue working.

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[49] *See Verizon*, NOTICE OF APPARENT LIABILITY FOR FOFEITURE, File No. EB-09-SE-218 NAL/Acct No. 201032100034, FRN 0010790335 (July 9, 2010) (finding that Verizon's filing "did not completely and accurately describe the outage in several important respects, and thus that it did not comply with the requirements of Section 4.11 of the Rules.").

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