

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

The Proposed Extension of Part 4 of the)
Commission’s Rules Regarding Outage Reporting to) PS Docket No. 11-82
Interconnected Voice Over Internet Protocol Service)
Providers and Broadband Internet Service Providers)

COMMENTS

The WCS Coalition, by its attorneys and pursuant to Section 1.415 of the Commission’s Rules, hereby submits these brief comments in response to the *Notice of Proposed Rulemaking* (the “*Notice*”) released by the Commission on May 13, 2011 proposing to extend the Commission’s Part 4 outage reporting requirements to, among others, broadband internet service providers.¹ Members of the WCS Coalition may be addressing concerns over the Commission’s authority to extend outage reporting requirements to information service providers and other concerns regarding the *Notice* through separate filings made either directly or through other organizations. These comments are limited to addressing a single question asked by the Commission: “[s]hould the rules be amended so as to exclude AWS and 700 MHz providers from reporting requirements because the services that they provide have not reached sufficiently high levels such that outage reporting would be desirable?”²

The WCS Coalition agrees with the underlying premise of the Commission’s inquiry – until such time as a broadband network has reached a critical mass, the costs associated

¹ See The Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Provider, *Notice of Proposed Rulemaking*, 26 FCC Rcd 7166 (2011) [the “*Notice*”].

² *Id.* at 7189.

with outage reporting outweigh any benefit. As the *Notice* acknowledges, requiring interconnected Voice over Internet Protocol service providers and broadband service providers to report outages will impose burdens upon them.³ The *Notice* implicitly recognizes that this is particularly true when service providers deploy new networks on spectrum that previously had not been extensively used for the delivery of broadband services.

That burden is not limited to just emerging Advanced Wireless Service (“AWS”) and 700 MHz providers. Indeed, in the years since AWS and 700 MHz were first allocated for mobile broadband use, the Commission has freed other spectrum for use in the provision of mobile broadband services.⁴ A prime example is the 2.3 GHz band Wireless Communications Service (“WCS”). Responding to industry complaints that the regulatory environment surrounding WCS precluded viable broadband deployments, the Commission last year adopted a *Report and Order* in WT Docket No. 07-293 and a *Second Report and Order* in IB Docket No. 97-91 that extensively modified the rules applicable to WCS and the neighboring satellite Digital Audio Radio Service band in a way that promotes the use of WCS for the provision of broadband services.⁵ In so doing, the Commission took a small but significant step towards satisfying Recommendation 5.8 of the National Broadband Plan that

³ *See id.* at 7171.

⁴ The Commission’s initial AWS auction concluded on September 18, 2006. *See Auction of Advanced Wireless Services Licenses Closes, Public Notice*, 21 FCC Rcd 10521 (2006). The first non-guardband 700 MHz auction, Auction 44, closed on September 18, 2002. *See Lower 700 MHz Band Auction Closes, Public Notice*, 17 FCC Rcd 17272 (2002).

⁵ *See Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, Report and Order and Second Report and Order*, 25 FCC Rcd 11710 (2010).

“the FCC should make 500 megahertz newly available for broadband use within the next 10 years”⁶

There is no rational basis for exempting AWS and 700 MHz band providers from any new Part 4 requirements on an interim basis, and not affording similar relief to those using WCS and other bands that have even more recently been made available for broadband. To avoid distorting the market by exempting some, but not all similarly situated service providers from regulatory burdens, the Commission should extend whatever Part 4 relief is afforded AWS and 700 MHz band providers to WCS providers.⁷ Specifically, the WCS Coalition proposes that AWS, 700 MHz, WCS and other similarly situation licensees be exempted from new Part 4 outage reporting requirements until such time as they are required to meet their initial performance or substantial service obligations under their service-specific rules.⁸

⁶ Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan*, Recommendation 5.8.1, at 84-86 (rel. Mar. 2010).

⁷ See generally *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965); *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir. 1987).

⁸ Somewhat similarly, the Commission has proposed to exempt all wireless radio service licensees from restrictions on discontinuance of service until such time as they have met their initial performance or substantial service obligations under their service-specific rules. See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, *Notice of Proposed Rulemaking and Order*, 25 FCC Rcd 6996, 7018-19 (2010).

For the foregoing reasons, the WCS Coalition urges the Commission to provide 2.3 GHz band WCS licensees

Respectfully submitted,

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