



POLICY & ACTION FROM CONSUMER REPORTS

January 18, 2014

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Improving the Resiliency of Mobile
Wireless Communications Networks
Reliability and Continuity of
Communications Networks, Including
Broadband Technologies
PS Docket No. 13-239
PS Docket No. 11-60

COMMENTS OF CONSUMERS UNION

Consumers Union, the public policy and advocacy division of Consumer Reports,
appreciates the opportunity to comment on the above-referenced Notice of Proposed
Rulemaking. We support the proposed rule, and recommend ways it could be further improved.

Background and Summary

Hurricane Sandy resulted in widespread mobile wireless communications network
outages throughout many parts of the Northeast – involving one in four cell towers across ten

1 Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a
fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the
areas of telecommunications, health care, food and product safety, and financial services, among others. Consumer
Reports is the world’s largest independent product-testing organization. Using its more than 50 labs, auto test
center, and survey research center, the nonprofit organization rates thousands of products and services annually.
Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

States. In some areas, significant outages persisted for several days, with confidential carrier submissions to the Commission reportedly indicating that performance varied significantly among networks.

With ever more Americans giving up landline service and relying solely on their mobile phones – by the Commission’s estimate, already more than one-third of all American households – wireless service has become a critical communications lifeline for many millions of families, for contacting emergency services and other assistance, as well as for staying in touch with friends and loved ones. Reliable wireless networks are, in the Commission’s words, “a major public safety priority.”²

The proposed rule would take an important constructive step in promoting much-needed improvement in the reliability and resiliency of wireless communications networks. And it would do so at nominal cost, by giving consumers access to useful information already compiled, and harnessing competitive market forces to spur the improvements.

Public disclosure of the proposed metric – the percentage of each network’s sites that are operational, on each day the Commission’s Disaster Information Reporting System (DIRS) is activated, in each affected county – would empower consumers with important information to consider in choosing their wireless provider. And that would incentivize wireless providers to strengthen the network infrastructure they own or control, or to seek strengthening of the infrastructure they use, in order to make their wireless service more attractive to consumers armed with this information.

We share the Commission’s objective of “ensur[ing] that any disclosure rules adopted in this area are tailored to the needs of consumers, do not impose undue burdens on service providers, and provide incentives that are most likely to lead to improvements in network

² Paragraph 18.

reliability during emergencies.”³ We believe the proposed rule is fully in line with that objective.

We note that the proposed rule addresses only a narrow aspect of wireless network performance: the extent and duration of network outages in hurricanes and other events during which DIRS is activated. It thus does not cover even all network outages, let alone all useful measures of network performance. We would support better access for consumers of network performance information on a broader scale.

Nonetheless, this proposed rule would take a valuable step, by shining a light on network reliability and resiliency in situations in which they are of particularly critical importance. And it has the advantage of making use of information that is readily available to wireless providers – indeed, information that is already provided to the Commission by carriers – thus imposing no appreciable cost or burden on either wireless providers or on the Commission. Furthermore, we would expect that performance improvements in DIRS-activation situations would also be reflected in broader performance improvements. And experience under the proposed rule would provide a useful basis for considering a broader focus.

Similarly, we note that the proposed rule is limited to increasing transparency for consumers, and stops short of pursuing network improvements through performance standards. In our May 13, 2013 letter to the Commission, we suggested that the Commission could use the proposed disclosures to help set a schedule for phasing in performance standards. We continue to believe that more direction from the Commission would be beneficial. We fully support the proposed rule’s approach of using public disclosure as a means of informing consumer choice and incentivizing wireless service providers. But the increasingly critical importance of reliable wireless networks for public safety – not only in the disaster situations covered by the proposed

³ Paragraph 9.

rule, but also more broadly – warrants the Commission taking all appropriate steps to promote improved network performance. We urge the Commission to consider supplementing the disclosure required under the proposed rule with appropriately phased-in performance standards.

Responses to Specific Questions

Benefit of Information to Consumers

The Commission asks [paragraphs 19, 20, 22, 25] whether required public disclosure of the metric, as set forth in the proposed rule – the percentage of sites that are operational, for each day that DIRS has been activated, and for each county affected – would provide consumers with useful information. We believe it clearly would. Currently, consumers have only their own personal experience regarding how their own wireless service performed, along with anecdotal reports from neighbors, family, and friends. The proposed rule, with the modifications we suggest, would replace this with accurate, standardized, comprehensive information, regarding each wireless provider offering service in the affected area. We believe consumers, and especially those living in areas prone to hurricanes and other catastrophic weather events and outage situations, are very interested in having this information, and would likely weigh it as an important factor in choosing a wireless service provider.

Effectiveness of Competitive Incentives

The Commission asks [paragraph 26] if making this information public would incentivize mobile wireless service providers to improve the strength and resiliency of their networks. It stands to reason that provider awareness that consumers will have this information, as they consider which provider's service to subscribe to, will give providers an incentive to improve

network performance. And as the Commission notes, this expectation has been borne out in similar market situations.

Just how strongly increased consumer awareness translates into increased provider incentives will depend on how much the area in question benefits from healthy market competition among providers. The Commission should not rule out the possibility that in some areas, there may not be enough healthy competition for the competitive incentives to work as envisioned. The Commission should stand ready to augment the transparency required in the proposed rule with performance standards if warranted, perhaps based on performance levels reached in areas where healthy competition is strongest, as a measure of what is technically feasible.

Mobile Wireless Service Providers Included

The Commission asks [paragraphs 30, 31, 55] whether the required disclosure should include all wireless service providers, large and small, and all types of wireless service. We believe that it should. The goal should be to include all providers offering service in the affected area, to give consumers a complete picture of their choices.

The required disclosure should include all providers of mobile phone service to consumers – not just carriers who use their own physical network infrastructure, but also providers who use infrastructure owned or controlled by others. In a county where it does not own or control infrastructure, a provider could satisfy the reporting requirement simply by indicating which carriers' facilities it uses in that county. There should be full transparency as to how well whatever network each provider uses holds up, whether the provider owns that network or pays to use it. Non-facilities-based providers would have similar incentives to encourage

improvement in wireless network performance, as their choice of which carrier to arrange carriage with will determine how their service stacks up against the competition.

Similarly, we see no reason to exclude smaller providers from the required disclosure, as in our view the disclosure imposes no appreciable burden. Any carrier using its own facilities will already be monitoring operation of its sites. And providers using other carriers' facilities could satisfy the disclosure by simply listing which carriers' facilities are used.

The rule should cover all types of wireless service that consumers would consider potential competitive alternatives, and all providers of all such types of wireless service.

Possible Changes to Proposed Metric

The Commission asks [paragraphs 34, 35, 42, 43, 59] whether the proposed metric is the best alternative, and whether it should be modified, or replaced or supplemented with other information. We generally favor the proposed metric, with a few modifications discussed below. It is a uniform and easy-to-understand base measure for wireless network reliability and resiliency in the face of a hurricane or similar catastrophic challenge.

Wireless providers who are concerned that the proposed metric falls short of providing a full picture should be free to supplement it by publicizing additional information that they believe puts it in context, so long as the additional information does not mislead or confuse consumers. Such additional information might include, for example, as the Commission suggests, steps a provider is taking to restore operation, prioritization of the most critical sites, etc. In our view, keeping the base metric simple, and leaving it to the providers to decide which additional information to disclose – again, so long as the additional information is not misleading

or confusing – seems preferable to attempting to devise a more complicated metric that takes into account every provider’s preferences.

In our May 13, 2013 letter, we recommended that, in addition to the metric now in the proposed rule, the Commission develop an appropriate metric, also for public disclosure, to “measure a carrier’s performance in maintaining and restoring backhaul and other connectivity for which the carrier is legally or contractually responsible.” If it is feasible to devise such a metric without overly complicating the information disclosed, we would support the Commission doing so. However, the Commission may wish to consider whether it makes more sense to leave it to providers to decide whether and how to publicize this additional, likely more complicated information, with the simpler uniform base metric serving as the yardstick against which to measure this and other additional information.

In two specific respects, we believe the proposed metric can be improved. First, as the Commission suggests, disclosing the number of sites, alongside the percentage of sites, could further illuminate the extent of the network outage, including for providers who have only a minor infrastructure presence in a county. Second, we believe “operational site” should be carefully defined to ensure that it accurately indicates that the site is operating, in whatever manner, to provide functionally equivalent service at essentially full normal capacity, and accurately describes and measures sites that are partially but not fully operational.

Other considerations that would affect the metric are discussed below.

County-Level Reporting

The Commission asks [paragraph 33] whether county-level reporting is the best geographic scope. We believe county-wide measurements will be sufficiently informative, and

have the advantage of following the approach already taken under DIRS. If carriers are already measuring in some smaller geographic scope, such as five-digit postal zip code, or if doing so would be relatively easy for carriers, the Commission may want to consider whether information on that smaller scope would be more informative to consumers. In any event, we do not see a reason to enlarge the geographic scope, as that would not result in any cost savings to the providers and would, we believe, reduce the usefulness of the information to consumers.

Use of Other Carriers' Sites

The Commission asks [paragraphs 36, 37] how the proposed metric should account for a carrier who also uses some sites owned or controlled by other carriers. We believe this should be addressed consistent with the twin objectives of giving the most useful information to consumers and creating the best competitive incentives to providers. We suggest that the Commission consider treating a carrier who relies on another carrier's network facilities, to the extent of that reliance, as a non-facilities-based provider.

Thus, such a carrier would be treated as a hybrid, and would disclose per the metric for counties in which it operated any sites of its own, and would make the disclosure required of non-facilities-based providers in counties in which it used another carrier's facilities. In some counties, the carrier might be making both kinds of disclosures, and could also choose to supplement the required disclosures by publicizing additional information that more fully explains how the combination has affected its wireless service in the county involved.

Temporary Replacement Sites and Substitute Arrangements

The Commission asks [paragraphs 38, 39] how temporary replacement sites and other

temporary substitute arrangements should be counted. We believe they should be counted as an appropriate fraction, reflecting the approximate percentage of lost capacity they effectively replace. Providers could also choose to publicize supplementary information to more fully explain the substitute arrangements being made.

Alternatives to DIRS Activation as Trigger

The Commission asks [paragraph 45] whether the required disclosure should be limited to days when, and counties where, its Disaster Information Reporting System (DIRS) has been activated. While that scope is quite limited, using DIRS-activation as the trigger has the advantage of already being up and running. Certainly, consumers in other situations would be interested in accurate information regarding wireless network performance in their area. We would encourage and support Commission efforts to broaden the scope to cover more situations, as long as the result remained at least as useful for consumers. But we also believe the proposed rule is a constructive step in its own right, on which further improvements can be built subsequently.

Frequency and Timing of Reports

The Commission asks [paragraphs 46, 47, 49] about the best frequency, timing, and promptness of reports.

As to frequency, we believe the reports should be at least daily, as they are already made privately to the Commission with that frequency. And it should be clear that the reports are to be made for each day during any part of which DIRS has been active. As discussed below, the Commission should be open to requiring reports at more frequent intervals, if providers or others

believe that would give a more accurate picture. We do not see any reason for less frequent reporting.

As to timing, we understand the advantages of setting a standardized time for all providers, and with one important caveat, we generally support that approach. The caveat is that relying on a single-moment snapshot for each day could result in misleading information gaps, as the operational status of sites changes during the course of a day. There might be major network disruptions that would not be counted at all if they last less than a day, or are intermittent.

The Commission should consider whether it is feasible, and might be more informative, to publish the percentage and number of sites, for each county, that are **not** operational during all or any significant part of each calendar day in which DIRS is activated in that county – or instead of each day, to have more frequent reporting intervals, or some other more precise measure, so as to more accurately capture the changes.

As to promptness, we note that the primary purpose of the public disclosure is not to take immediate responsive action, but to inform consumers so they can better evaluate their provider in comparison to others in deciding which provider to subscribe to. So a reasonable delay in publishing the information might be warranted – for example, if it enables providers to better gather additional information that they believe helps place the required disclosure in clearer context. We therefore believe the Commission should be open to considering explanations by the providers or others why allowing for a reasonable delay would improve the quality and usefulness to consumers of the information provided, as long as the information would still reach consumers in time to be meaningfully considered in their choices among alternative providers.

Protection of Sensitive Information

The Commission asks [paragraphs 50, 52] whether required disclosure might result in the revelation of sensitive information. In our view, the level of disclosure proposed – county-level aggregates of percentages (and perhaps numbers) of sites operational (or not) during all or part of a given day – is not sensitive from a security perspective, nor does it reveal any sensitive “trade secret” information. So we do not believe there would be any undue risk in its disclosure.

Alternative Approaches

The Commission asks [paragraphs 57, 58] about alternative approaches for promoting stronger wireless networks. We believe the disclosure as set forth in the proposed rule, or with the modifications we have recommended, is fully consistent with the objectives the Commission sets forth – tailored to consumer needs, no undue burdens, effective incentives. We would support additional measures to promote improved wireless network performance, as a complement to the required disclosure, such as the real-time outage maps suggested by the Commission.

Mobile Measuring Broadband America Program

The Commission asks [paragraph 60] whether its Mobile Measuring Broadband America (Mobile MBA) program might be an effective alternative to the proposed rule. The prospect that Mobile MBA might eventually grow to provide useful information on wireless network performance should not be a reason to forgo implementing the proposed disclosure now. If the Mobile MBA program should ever reach the point where it is providing such useful information, and on such a comprehensive basis, as to render the proposed disclosure superfluous, the

proposed disclosure can be discontinued at that time. Meanwhile, Mobile MBA can serve as a complementary source of information alongside the proposed disclosure.

Performance Standards

The Commission asks [paragraphs 61, 62] if it should consider implementing required performance standards for mobile network reliability and resiliency, as our May 13, 2013 letter recommended that it consider. We continue to support development of appropriate performance standards, over time, based on input from providers, consumers, and other knowledgeable sources. We believe the required disclosure under the proposed rule will provide a useful springboard for considering such standards, and help bring a more informed consumer perspective to the effort. The Commission might also enlist the help of the Communications Security, Reliability, and Interoperability Council (CSRIC), and the Technical Advisory Council.

We share the Commission's view that the required disclosure under the proposed rule can be a strong competitive spur to improved wireless network performance. The extent and pace of such improvement, however, will depend on the strength of the competition at play among the wireless providers; and the wireless marketplace is less competitive in some places than in others. We would urge the Commission to adopt the proposed rule, but also to stand ready to develop appropriate performance standards if warranted in light of the results of the required disclosure.

Voluntary Measures

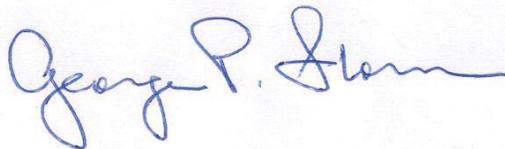
The Commission asks [paragraphs 63, 64] about voluntary measures as either an alternative or as a supplement to the required disclosure. As we discuss above, we believe

voluntary measures could be part of an appropriate reliability and resiliency initiative, in conjunction with required disclosure of the metric as the uniform foundation. The metric involves information already available and provided to the Commission, and it has the additional advantage of being easily understood and easily verified. Wireless providers may conclude that additional information would help them place the metric in context. The Commission should ensure that any additional information publicized by providers is helpful to consumers' understanding of the metric.

Conclusion

The proposed rule sets forth a promising approach for promoting improved reliability and resiliency of wireless networks, in situations where reliable wireless service is of particular personal and public safety importance, at nominal cost, utilizing already available information, and harnessing the power of sunshine and competitive market forces. We urge the Commission to adopt it, with the further improvements we recommend.

Respectfully submitted,

A handwritten signature in blue ink that reads "George P. Slover". The signature is fluid and cursive, with the first name being the most prominent.

George P. Slover
Senior Policy Counsel