

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

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

REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS

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TABLE OF CONTENTS

I. WIRELESS PROVIDERS’ RELIABILITY BEST PRACTICES MAKE NEW REPORTING AND COSTLY PERFORMANCE REQUIREMENTS UNNECESSARY..... 2

II. THE COMMISSION SHOULD REJECT PROPOSALS THAT WOULD EXPAND SERVICE PROVIDERS’ REPORTING OBLIGATIONS OR DISCOURAGE INVESTMENT IN NETWORK RELIABILITY AND RESILIENCY..... 6

A. The Record Overwhelmingly Demonstrates How Including Small Cell and DAS Facilities and Consumer-Level Equipment in the Rule Would Mislead Consumers and Penalize the Deployment of More Reliable Networks. 7

B. The Record Supports Verizon’s Comments on Other Threshold Reporting Issues. 9

III. VERIZON WIRELESS STANDS READY TO WORK WITH PUBLIC SAFETY AGENCIES ON VOLUNTARY INFORMATION SHARING DURING DISASTERS. 11

SUMMARY

Wireless industry commenters demonstrate how market forces and consumers' personal experience with their service providers' performance during and after disasters drive service providers to compete for customers based on network reliability and resiliency. Other commenters, though, are dismissive of consumers' personal experience as a driving factor, and argue instead that rules are necessary to inform consumers how service providers performed. The record, however, illustrates how consumers' personal experience will reflect a wireless provider's performance more accurately than the proposed rule, and how the rule risks engendering customer confusion.

Consumers Union's proposal that service providers themselves voluntarily supplement the Commission's proposed public disclosure rule merely highlights the rule's shortcomings; in any case, the rule must bear a rational connection to the problem it seeks to address from the outset. The Commission should also reject more burdensome reporting and back-up power performance regulations as some commenters propose. These commenters draw inapt comparisons with wireline 911 facilities covered in the *911 Reliability Order* and do not account for wireless providers' actual performance. In fact, Commission staff's assessment of wireless providers' performance after the Derecho, and Verizon's own performance, indicate that network reliability and service restoration practices are working well and continue to improve over time.

The Commission should reject proposals to expand service providers' reporting burdens beyond the scope of the DIRS program. The record demonstrates how the proposed rule's inclusion of small cell and DAS architectures and femtocells would mislead consumers and penalize service providers for investing in those facilities and services. Supporters of the rule disregard these facts and instead propose even more burdensome reporting and disclosure requirements, contrary to the Commission's presumption in this proceeding of not imposing burdens beyond the existing DIRS program.

The record supports Verizon's comments on other threshold reporting issues. First, the Commission should exclude roaming sites from the rule; this matter is under discussion within the CSRIC. Second, the Commission should reject proposals to incorporate resellers into the reporting rule, which would pose significant practical implementation difficulties and do not accurately reflect the commercial relationships between facilities-based service providers and resellers. Third, the Commission should not impose a "discount" on COW/COLTs and partially out of service sites, as any Commission rules should reward investment in and deployment of such facilities. And any rule should apply to all facilities-based carriers, regardless of size.

Finally, several state and local government commenters seek more comprehensive information on the operational status of wireless networks during disasters. There is a potential opportunity for sharing such data with those agencies for public safety purposes, subject to appropriate confidentiality safeguards, using voluntary best practices. A voluntary program that builds upon the success of the DIRS program and incorporates all necessary sectors of the communications industry is an appropriate means of addressing this issue.

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COMMENTS OF VERIZON¹ AND VERIZON WIRELESS

Verizon’s comments in this proceeding² explained how the highly competitive wireless marketplace and consumers’ real experiences during and after disaster events provide service providers with ample incentives to invest in the reliability and resiliency of their networks. Verizon also explained how, if the Commission nonetheless proceeds with new outage reporting and disclosure requirements, the rule as proposed should be modified to ensure that the Commission achieves its objective of not imposing reporting burdens substantially beyond those of the Disaster Information Reporting System (DIRS), and that service providers are not penalized for investments in small cell and DAS systems and innovative consumer offerings that improve network reliability. Other industry commenters affirm that the proposed rule poses those risks and could mislead consumers about service providers’ comparative network

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (together “Verizon”).

² See *Improving the Resiliency of Mobile Wireless Communications Networks, Reliability and Continuity of Communications Networks, Including Broadband Technologies*, Notice of Proposed Rulemaking, 28 FCC Rcd. 14373 (2013) (“*NPRM*”).

reliability and performance during and after disaster events. Supporters of the proposed rule, in contrast, ignore or dismiss the proposed rule’s clear flaws, and in some cases would have the Commission impose even more burdensome reporting and performance obligations.

I. WIRELESS PROVIDERS’ RELIABILITY BEST PRACTICES MAKE NEW REPORTING AND COSTLY PERFORMANCE REQUIREMENTS UNNECESSARY.

The comments and actions of wireless service providers reflect broad acknowledgement that market forces already are driving them to compete for customers based on the reliability and resiliency of their networks.³ Consumers Union (“CU”), however, is dismissive of consumers’ and their communities’ “own personal experience regarding how their own wireless service performed” during disasters, asserting that the Commission should “replace this” with the proposed rule.⁴ In a similar vein, the California Public Utilities Commission supports the rule and further suggests that consumers may need state regulatory agencies to “interpret” the data for them.⁵ These comments reflect not just a paternalistic view of consumers (who know full well how they feel about their provider’s performance during and after a disaster), but the mistaken understanding that the data would meaningfully inform consumers about providers’ comparative network reliability and resiliency practices.

³ See AT&T Comments at 1-6, 9-10; Competitive Carriers Association and NTCA (“CCA/NTCA”) Comments at 4-6; Blooston Rural Carriers Comments at 6; Verizon Comments at 2-5; *see also* Remarks of Dan Hesse, Chief Executive Officer, Sprint, at UBS 41st Annual Global Media and Communications Conference, at 3 (because voice service “is what drives churn” Sprint is “focused on improving the voice quality of the network ...”) (Dec. 10, 2013) <http://seekingalpha.com/article/1890611-sprints-ceo-presents-at-ubs-41st-annual-global-media-and-communications-conference-transcript>.

⁴ Consumers Union (“CU”) Comments at 4.

⁵ California Public Utility Commission (“California PUC”) Comments at 7.

In fact, the comments provide numerous examples of how consumers’ “own personal experience” would often be more reflective of their provider’s network reliability and resiliency and thus more effectively achieve the *NPRM*’s desired “comparative shopping” function than the proposed rule.⁶ In its comments Verizon offered the example of two service providers, both serving an entire county with 10 macrosites, with 72 hours of battery and generator backup power for each; the second provider, however, has an additional 10 overlapping small cells in an urban part of the county with battery backup but no generators due to siting limitations; an outage that affects the small cells alone could result in the first provider reporting 100 percent of its sites in service, the second only 50 percent.⁷ The second provider’s customers would be perfectly justified, based on their personal experience, in believing it performed well, as no overall coverage was lost during the event, but the Commission’s proposed rule would erroneously suggest otherwise. Conversely, if the first provider had instead lost service at 50 percent of its macrosites in the county, one of its adversely affected customers looking at the Commission’s website would see no difference between its provider and the competitor’s; both would report 50 percent even though the competitor’s customers did not lose coverage. In both cases, the consumers’ personal experiences would be a more accurate indication of network reliability and resiliency.

CU’s apparent remedy to the rule’s deficiencies is that, if a provider believes the information fails to fully inform consumers, it can voluntarily disclose more information to

⁶ See Verizon Comments at 4 n.10, 8, 9; AT&T Comments at 12-14; Blooston Rural Carriers Comments at 4; CTIA Comments at 14; Sprint Comments at 2; T-Mobile Comments at 5-7.

⁷ Verizon Comments at 8.

ensure that customers are not misinformed.⁸ CU, in effect, would have service providers themselves voluntarily fix the shortcomings of the proposed rule. Any Commission rule, however, must bear a rational connection to the underlying problem it seeks to address from the outset.⁹ That service providers have their own First Amendment rights to communicate with their customers to mitigate the damage of a flawed rule does not make it any less invalid.

In addition to more burdensome reporting rules, AARP and CU support more burdensome performance requirements, such as back-up power regulations, based on the wireless industry's Hurricane Sandy experience and, in AARP's case, on the Commission's findings in the *911 Reliability Order*.¹⁰ But that proceeding was expressly focused on the wireline 911 facilities provisioned for PSAPs, not on retail wireless services in today's highly competitive marketplace.¹¹

In fact, consumers' experience with wireless networks reflects that, as CU itself put it, providers are "making it a top priority to reduce the occurrence of outages, and to reduce the extent and duration of outages that do occur" and "learning the lessons from each disaster, and putting those lessons into practical application as quickly as possible to be better prepared for the

⁸ See CU Comments at 6 ("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 ...").

⁹ See *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 571 (D.C. Cir. 2004) ("While a rational rule that would otherwise be impermissibly broad can be saved by 'safety valve' waiver or exception procedures, the mere existence of a safety valve does not cure an irrational rule."); *ALLTEL v. FCC*, 838 F.2d 551, 561 (D.C. Cir. 1988) ("The FCC cannot save an irrational rule by tacking on a waiver procedure.").

¹⁰ See AARP Comments at 21-22, 27-29; CU Comments at 3-4, and Attachment at 1.

¹¹ See *Improving 911 Reliability, Reliability and Continuity of Communications Networks, Including Broadband Technologies*, Report and Order, 28 FCC Rcd. 17476, ¶ 36 (2013).

next disaster.”¹² Verizon Wireless’s network has been tested and performed increasingly well in the wake of numerous disasters in recent years, including major events such as Hurricane Sandy and the Derecho. The Public Safety and Homeland Security Bureau’s 2013 report on the Derecho concluded that “compared with our observations in other events of similar magnitude, impacts on service were not nearly as pervasive as might have been expected, and most outages were rectified relatively quickly.”¹³ The Bureau explained:

[O]utages were most extensive on June 30, when roughly 10.8 percent of cell sites were out of service in the affected reporting area. Hurricane Isaac, which hit the gulf coast in August, resulted in 21.8 percent of area cell sites out of service, and during Hurricane Gustav in 2008 that figure was 28.9 percent—with outages comparable to the worst of the derecho still lingering even four days after restoration efforts had begun. By contrast, only roughly 2 percent of cell sites in the derecho’s affected area remained out of service as of July 3.¹⁴

By that same measurement, Verizon’s service restoration success after Hurricane Sandy was comparable to the Derecho, despite Hurricane Sandy’s far more devastating impact.¹⁵ Thus, by the Commission’s own metrics, wireless providers’ network reliability and service restoration practices perform well and have continued to improve over time – exactly how best practices are supposed to work – and obviate the need for a rule in the first instance.¹⁶

¹² CU Comments, Attachment at 1.

¹³ FCC Public Safety and Homeland Security Bureau, *Impact of the June 2012 Derecho on Communications Networks and Services: Report and Recommendations*, at 36 (PSHSB Jan. 10, 2013).

¹⁴ *Id.* at 37.

¹⁵ See Verizon Wireless News Release, *Verizon Wireless Supporting Impacted Communities Coping With The Effects Of Hurricane Sandy* (Nov. 1, 2012), <http://www.verizonwireless.com/news/article/2012/11/pr2012-11-01.html> (reporting only 4 percent of sites still out of service three days after Hurricane Sandy struck).

¹⁶ See *Home Box Office v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1976) (“a ‘regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.’”) (quoting *City of Chicago v. FPC*, 458 F.2d 731, 742 (D.C.Cir.1971), *cert. denied*, 405 U.S. 1074 (1972)).

Back-up power regulations, in contrast, will increase the cost of service to consumers, and could pose feasibility problems for diverse network configurations in which zoning, topology, and design considerations preclude the use of traditional back-up power resources. As Verizon and other parties explained, traditional back-up power resources such as generators will be infeasible for many small cell facilities, which will be placed indoors, on rooftops, the sides of buildings and lampposts.¹⁷ In any event it would be inappropriate to impose those burdens on wireless licensees alone, as such a policy would impose a competitive burden on only one communications industry sector and risks penalizing service providers that choose to compete in the marketplace and serve customers by investing in small cell deployment and their own networks generally. The Commission should instead encourage recently-initiated efforts within the CSRIC to develop best practices for service providers to share back-up power and other resources during disasters, as various commenters suggest.¹⁸

II. THE COMMISSION SHOULD REJECT PROPOSALS THAT WOULD EXPAND SERVICE PROVIDERS' REPORTING OBLIGATIONS OR DISCOURAGE INVESTMENT IN NETWORK RELIABILITY AND RESILIENCY.

Several commenters gloss over the proposed rule's failure to account for small cell configurations and consumer-level equipment, and recommend unnecessary reporting requirements that are substantially more burdensome than the current DIRS program. The Commission should reject those proposals for the reasons discussed below and in Verizon's comments.

¹⁷ See Verizon Comments at 7-8; PCIA Comments at 12.

¹⁸ See CTIA Comments at 22-23; T-Mobile Comments at 10-11.

A. The Record Overwhelmingly Demonstrates How Including Small Cell and DAS Facilities and Consumer-Level Equipment in the Rule Would Mislead Consumers and Penalize the Deployment of More Reliable Networks.

Numerous commenters echoed or supplemented Verizon’s comments to demonstrate how the proposed rule’s inclusion of small cell and DAS architectures and femtocells would mislead consumers about the reliability and resiliency of their networks, and penalize providers for making investments in their networks that promote reliability.¹⁹ This risk is not just speculative. In 2014 Verizon Wireless expects to deploy over 3000 small cells across the country and already is deploying DAS facilities in many markets. Even supporters of the rule tacitly or explicitly acknowledge that the rule poses such risks – but their untenable solution is to expand the current NORS and DIRS programs and make them more burdensome.²⁰

Supporters of the rule, moreover, ignore or gloss over these aspects of the rule that would mislead consumers. As noted above, CU would have service providers voluntarily supplement the data “by publicizing additional information that they believe puts it in context”²¹ But it is that very “context” – or the absence of it – that makes the rule deficient in the first place.²² The

¹⁹ AT&T Comments at 13; CCA/NTCA Comments at 11-12 (exclude small cells); CTIA Comments at 14-15; PCIA Comments at 11-12; Sprint Comments at 6-7 (small cells) and 11-12 (exclude femtocells); Utilities Telecom Council (“UTC”) Comments at 5 (giving small cell same weight as macrosite “would skew the results”); *see also* APCO Comments at 3 (“a coverage-based metric ... would be more useful than raw percentages” to indicate “a network’s operational status.”); California PUC Comments at 14 (acknowledging “consumers might confuse the percent of operational cells with the percent of coverage”).

²⁰ *See* AARP Comments at 9-10; California PUC Comments at 13-19 (“The most immediate goal is to get *some* functioning disaster reporting system launched”); CU Comments at 3, 6-10; UTC Comments at 4-6.

²¹ *See* CU Comments at 6.

²² CU’s proposal would also seem to limit the content of any information provided by a service provider to “supplement” the data by imposing an as-yet undefined “not misleading or confusing” standard. *See id.* at 6-7. Applying such a standard would be unworkable in practice, and would potentially implicate First Amendment concerns by restricting the free speech of the

Utilities Telecom Council (“UTC”) also supports the rule despite acknowledging that it “could paint a misleading picture of the nature of the outage and the responsibility for it.”²³ And the AARP states that “it would be more helpful for consumers to also see comprehensive information on wireless carrier coverage and service availability.”²⁴

To the extent that AARP, CU and some public safety stakeholders view the Commission’s proposed rule as flawed or seek to “improve” it, their solution is to make the reporting and disclosure requirements *more* burdensome. Imposing more burdens on providers would be counterproductive and violate the *NPRM*’s overarching presumption of not imposing regulatory burdens beyond the existing DIRS program.²⁵ Indeed, AARP, while nominally supporting the Commission’s rule, suggests that competition based on network quality and reliability is undesirable in the first instance – contrary to the proposed rule’s *raison d’être*.²⁶ AARP would nonetheless require disclosure of detailed coverage, dropped and blocked call and data throughput information – but the Commission is already looking at performance metrics such as these in the Mobile Measuring Broadband America program, and there is no need to re-evaluate the voluntary, collaborative nature of that program. In short, these commenters offer no basis for regulations beyond what the Commission has proposed other than conclusory,

service provider to communicate to its customers the proper context of any data required to be provided.

²³ UTC Comments at 4-6.

²⁴ See AARP Comments at 13-14.

²⁵ See *NPRM* ¶ 11.

²⁶ See AARP Comments at 24-26.

unsupported assertions regarding the reliability of wireless networks that are inconsistent with the Commission's own findings.²⁷

B. The Record Supports Verizon's Comments on Other Threshold Reporting Issues.

Roaming. Small carriers as well as Verizon oppose including roaming sites in the reporting rule.²⁸ Including such sites would be counterproductive insofar as service providers' incentives to invest in the reliability and resiliency of their own networks is undermined. In addition, roaming arrangements, which are handled on a business-as-usual basis and allow for 911 calling regardless of whether roaming arrangements exist, are already under discussion within CSRIC Working Group 9.²⁹

Resellers. The Commission should reject proposals to incorporate resellers into the reporting and disclosure regime. Resellers, by definition, do not compete based on network quality, and do not typically identify their underlying carriers in advertisements or customer-facing collateral. Thus, such entities have no place in a rule designed to encourage service providers to compete by investing in network reliability and resiliency. There are also practical problems with proposals by the California PUC and CU to require resellers to report the service providers they use in a particular county or to require providers to report their resellers.³⁰

Reseller arrangements are not geographically organized in this manner, so such a rule could effectively require that either (1) every facilities-based carrier disclose every single one of its

²⁷ See *supra* at 4-5 (discussing Bureau's *Derecho Report* findings).

²⁸ CCA/NTCA Comments at 12-13; see also PCIA Comments at 8-9 (counting roaming sites poses problems).

²⁹ See *CSRIC IV Working Group Descriptions and Leadership*, at 8-9 (updated Jan. 10, 2014), http://transition.fcc.gov/bureaus/pshs/advisory/csric4/CSRIC_IV_Working_Group_Descriptions_011014.pdf.

³⁰ California PUC Comments at 12-13; CU Comments at 5-6.

resellers for every DIRS activation, or (2) every reseller of a nationwide facilities-based carrier's service file a report for every DIRS activation – either of which would create even more customer confusion. Moreover, resellers do not have detailed access to outage information from Verizon Wireless. The Commission should simply exclude resellers from any reporting and disclosure regime as set forth in the draft rule, and work with service providers as needed to include language for the Commission's website that explains their exclusion from the reports.

COWs/COLTs and Partially Out of Service Sites. For the reasons stated in Verizon's comments and those of other commenters,³¹ the Commission should reject the California PUC's and CU's recommendation that a "discount" be imposed on COW/COLTs and partially out of service sites.³² Any Commission rules should reward service providers for investing in and deploying such facilities, and should not second-guess service providers' judgment about factors such as site placement and power levels that will affect their coverage.

Small Carrier Exemptions. Finally, Verizon agrees with the California PUC and CU that any rule should apply to all facilities-based carriers,³³ and opposes CCA's and the Blooston Carriers' call for a small carrier exemption.³⁴ To the extent that a rule would impose unusual burdens on a carrier or not serve the rule's purpose, those circumstances may be the basis for narrowly-tailored waiver relief, but not a whole cloth exemption.

³¹ See Verizon Comments at 11-13; AT&T Comments at 12; CCA/NTCA Comments at 10-11.

³² California PUC Comments at 17-18; CU Comments at 7, 8.

³³ California PUC Comments at 9; CU Comments at 5.

³⁴ See Blooston Rural Carriers Comments at 2-3; CCA/NTCA Comments at 13.

III. VERIZON WIRELESS STANDS READY TO WORK WITH PUBLIC SAFETY AGENCIES ON VOLUNTARY INFORMATION SHARING DURING DISASTERS.

Several state and local government commenters seek more comprehensive access to information about the operational status of wireless networks during disaster events,³⁵ a subject outside the scope of this docket. Verizon appreciates and understands state and local government public safety agencies' interest in such data. These commenters have hit upon a potential opportunity for collaboration between industry, public safety, the Commission, and other Federal agencies such as FEMA and the Office of Emergency Communications within the U.S. Department of Homeland Security (DHS) to examine potential methods, protocols, and appropriate confidentiality safeguards for sharing information more broadly with affected jurisdictions during and after disaster events.

Verizon has not opposed further sharing of NORS data with state commissions under certain conditions, specifically: sharing would be limited to reports where the outage originated within the jurisdiction's geographic boundary and conditioned on, for example, confidentiality protection at least as strong as the Commission's, and use of the outage reports solely to promote the agency's public health and safety responsibilities.³⁶ A voluntary program subject to similar conditions that builds upon the success of the DIRS program and cuts across all relevant sectors of the communications industry could potentially further the Commission's public safety responsibilities and state and local agencies' public safety efforts.

³⁵ See APCO Comments at 2-3 ("reporting of specific types of data would be useful concurrent with a disaster or catastrophic event."); Comments of the City of New York at 2-3 ("Local authorities need to know specifically which areas are suffering wireless outages in the event of a disaster.").

³⁶ See Reply Comments of Verizon and Verizon Wireless, ET Docket No. 04-35, at 2-6 (Mar. 19, 2010).

As with stakeholders' efforts to develop best practices for back-up power resource sharing in CSRIC Working Group 9 and to examine network reliability matters in the Commission's Technological Advisory Council, this may be another example of how collaboration and cooperation could be more effective than new regulatory mandates in giving service providers incentives to take actions that directly benefit consumers' public safety interests. Addressing these proposals in the more adversarial confines of Commission rulemaking, however, discourages those efforts. Indeed, as several commenters explain, disasters present the very circumstances in which the Commission should promote cooperative efforts to maintain and expeditiously restore service.³⁷

Respectfully submitted,

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³⁷ See Alliance for Telecommunications Industry Solutions Comments at 6; AT&T Comments at 6-9; CTIA Comments at 7-8, 22-23; CCA/NTCA Comments at 13; Sprint Comments at 10-11; T-Mobile Comments at 7-8.