

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

<i>In the Matter(s) of</i>)	
)	
<i>Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications</i>)	PS Docket No. 15-80
)	
<i>Petition of California Public Utilities Commission and the People Of the State of California for a Rulemaking on States Access to Network Outage Reporting System (“NORS”) and a Ruling Granting California Access to NORS</i>)	RM No. 1588 (Terminated)

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

The National Association of Regulatory Utility Commissioners (“NARUC”), respectfully submits these comments to (i) support generally initial comments filed by NARUC member commissions in California, Colorado, Massachusetts, Michigan, New York, Pennsylvania, and Puerto Rico,¹ and (ii) respond to other comments filed in response to the Federal Communications Commission’s (“FCC” or “Commission”) March 2, 2020 *Second Further Notice of Proposed Rulemaking* (“FNPRM”).² The FNPRM proposes providing States and other federal agencies access to the agency’s Network Outage Reporting System (“NORS”) and Disaster Information Reporting (“DIRS”).

For over 125 years, NARUC, a quasi-governmental non-profit corporation in the District of Columbia, has represented the interests of public utility commissioners from agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with, *inter alia*,

¹ See, footnote 12, *infra*, for links to all the initial comments filed in April, 2020 including those filed by those seven NARUC members.

² *In the Matters of Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, [Second Further Notice of Proposed Rulemaking](#), PS Docket No. 15-80 (rel March 2, 2020).

overseeing certain operations of telecommunications utilities. NARUC is recognized by Congress in several statutes³ and consistently by the Courts⁴ as well as a host of federal agencies,⁵ as the proper entity to represent the collective interests of State utility commissions.

BACKGROUND

NARUC has already filed extensive comments⁶ responding to two prior rulemakings in this docket which also proposed sharing NORS data with State Commissions based on a February 18, 2015 [NARUC Resolution on State Access to NORS Database](#). Most recently, in November of 2018, anticipating additional FCC action in this proceeding, NARUC filed an extensive *ex parte*⁷ that pointed out, among other things that:

³ See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the DC Circuit explains “Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system).

⁴ See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff’d 672 F.2d 469 (5th Cir. 1982), aff’d en banc on reh’g, 702 F.2d 532 (5th Cir. 1983), *rev’d on other grounds*, 471 U.S. 48 (1985) (where the Supreme Court notes: “The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); Compare, *NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

⁵ Compare, NRC Atomic Safety and Licensing Board Memorandum and Order (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, mimeo at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

⁶ See, [Comments of the National Association of Regulatory Utility Commissioners](#), filed September 13, 2016; [Comments of the National Association of Regulatory Utility Commissions](#), filed July 16, 2015, both filed in PS Docket No. 15-80.

⁷ See *NARUC November 1, 2018 Notice of Ex Parte* filed in PS Docket No. 15-80, online at: <https://ecfsapi.fcc.gov/file/1102211816189/18%201101%20NARUC%20Ex%20Parte%20re%20NORS.pdf>

❖ ***Providing Access to NORS can only Increase the Reliability of the Network.***

- *The States, after all, frequently are better positioned to, and frequently respond more quickly to, communications outages.⁸ As past experience has shown,⁹ communications network outages pose a significant risk to health and safety of the public. State agencies, including NARUC’s member commissions as well as State Offices of Emergency Services, are responsible for maintaining public services, including telecommunications services, before, during and after emergencies.*
- *The States have staff resources around the country that the FCC cannot duplicate which frequently substitute for and can supplement any FCC activity.*
- *Unlike the FCC, in disaster and emergency situations, almost all of NARUC’s members have responsibility for oversight and restoration of not just communications infrastructure, but also multi-sector critical infrastructures – including gas, electricity, communications and often water facilities. Most state commissions are key to post-disaster restoration efforts. Having access to any additional data on the size and scope of any communications outages can only facilitate service restoration for all critical infrastructures.*

❖ ***There is no reason to micromanage state access to data.***

- *The FCC in past proposals has proposed a laundry list of industry-proposed unworkable, inefficient and possibly illegal, restrictions on State access. The characteristic all those industry suggestions share is that – in large measure – they are simply unnecessary and undermine the public interest.¹⁰ All require additional, wasteful and complicated expenditure of both federal and State resources to address a non-existent problem.*

⁸ It is no accident that in the section of the federal legislation that grants the FCC its broadest preemptive power, 47 U.S.C. § 253, Congress also specifically preserves State authority “to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”

⁹ See, e.g., March 18, 2015 FCC News Release *Verizon Agrees to \$3.4 Million Settlement to Resolve 911 Outage Investigation*, at: <http://www.fcc.gov/document/verizon-pay-34-million-resolve-911-outage-investigation-0>; March 18, 2015 FCC News Release *Oklahoma Carrier Fined \$100,000 for failing to direct 911 Calls to Local Emergency Responders*, at: <http://www.fcc.gov/document/oklahoma-carrier-fined-100k-sending-911-calls-autorecording-0>, December 2, 2014 Washington Utilities and Transportation Commission Press Release: *CenturyLink facing (\$2.9 Million in) Penalties for Statewide 911 Outage*, at: <http://www.utc.wa.gov/aboutUs/Lists/News/DispForm.aspx?ID=291>; January 17, 2013 Commonwealth of Virginia, State Corporation Commission, *Staff Report of Final Findings and Recommendations* (Derecho Report) at http://media10.washingtonpost.com/wapo_generic/media/document_cloud/document/pdf/PUC-2012-00042_1-17-13.pdf. *Note both the cited Washington and Virginia investigations provided data to FCC staff critical to their own investigations of those two outages.*

¹⁰ For example, why should the FCC be concerned if data is being used “for any other purpose” as long as confidentiality is not breached? No supposed nefarious/inappropriate State “other purpose” is identified. After all, outage data has a fairly discrete set of possible uses – all lawful– and all related to the

- *States routinely handle crucial information about all critical infrastructure sectors – gas, electricity, water and communications. Many States already have direct access to data on not just telecommunications outages, but on other information of equivalent or perhaps greater sensitivity about telecommunications and those other critical infrastructures.*
- *There is no reason to require any specific training – that is simply another federal mandate to expend scarce taxpayer dollars on duplicative and unnecessary requirements. As noted elsewhere, commenters have not managed to cite to even one instance of State exposure of competitive or confidential information about outages.*
- *The fact is, there simply no evidence in the record before the Commission to support additional restrictions or State use/access. There are only unsupported statements by parties that have a financial interest in constraining oversight and investigations of outages.*
- *NARUC members routinely deal with sensitive information dealing with energy, water, gas and telecommunications services, often participate in outage/disaster tabletop exercises in a range of sectors with other federal and State agencies- including the Department of Homeland Security, and are often a focus point for restoration of all critical infrastructures after disasters and outages of any sort. I did not find in my review of the comments a single cited instance of State “malfeasance” that disclosed crucial industry information in any sector. But to some commenters in this proceeding, telecommunications outages apparently require additional limitations, well beyond competitive or critical infrastructure protections accorded data from other sectors. Several suggest the use of the data (even subject to confidentiality protections) be restricted so that assuming the State agency has a related statutory charge – that is by definition in the public interest – they can litigate at taxpayer expense the internal (and confidential) use of that data. Some suggest the FCC handicap State specific efforts by requiring States to waive their own reporting requirements to access the FCC database.*
- *There is no logical reason (or evidence to support the need) to impose any additional burdensome requirements on State access. All the FCC has to do to avoid concerns raised by the tiny minority of States that have arguably deficient “FOIA” type protections in-place, is to condition access to the data on a State providing some level of confidential treatment. That is the solution. The FCC need do no more. Other industry-proposed restrictions, on either access or use of the data, are simply not necessary. Most, by their own terms, are suggested not to protect competition or assure security of the network, but simply to prevent States from using information to otherwise fulfill their statutory duty to – like the FCC - act in the public interest. Outage data has, after all, a limited “use.” Restrictions can only hamper State outage investigations and State restoration efforts.*

ongoing reliability of the network. It is no accident that no commenter has suggested even a hypothetical potentially “abusive” State use of such data.

❖ ***States should have access to all the information from the FCC whatever the region and whatever the title of the FCC outage reporting program – DIRS AND NORS.***

- *The FCC concludes correctly concludes that “direct access to NORS by our state and federal partners is in the public interest.” If access to NORS data is important, similar access to DIRS information when the FCC lifts NORS requirements in favor of DIRS is also in the public interest. The logic and rationale of the FNPRM concerning State access to NORS data, applies with greater force when the FCC suspends NORS in hurricanes and other broader disasters in favor of the DIRS system.*
- *States can only benefit from the full range of outage information providers are already required to report to the FCC for the States and region they operate in. Access to data about outages – in any jurisdiction – can only have one purpose. That is the same purpose underlying the FCC’s NORS/DIRS systems. Access will help States respond to exist outages, anticipate problems involving specific companies and equipment, and permit additional analysis of trends to head off future outage events.*
- *It is also obvious that State access to outage data can only facilitate actual emergency responses (particularly in large scale events) for emergency response officials in around outage areas.*

The most recent FCC *FNPRM* raises basically the same issues addressed in that *ex parte* and in the original 2015 proceedings. That NARUC *ex parte* discussion remain applicable and relevant. While some States do receive certain outage information directly from carriers, all States share the need for immediate, secure and confidential access to the service outage detail provided *across state lines* in NORS and DIRS. Comprehensive analysis of such data is key to understanding the impact of outages on multiple modes of communication and data services within each State’s communications networks.

DISCUSSION

NARUC’s resolution supports a California Public Utilities Commission petition pending before the FCC since 2009, referenced in the 2015 proposed rulemaking,¹¹ seeking direct access to the FCC’s Network Outage Reporting System (NORS). Specifically, NARUC’s resolution urges the FCC to provide NARUC members and other State agencies with “direct and immediate

¹¹ See, *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications; New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, PS Docket Nos. 15-80 and 04-35, Notice of Proposed Rulemaking, Second Report and Order, Order on Reconsideration, 30 FCC Rcd 3206, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-39A1_Rcd.pdf published at: 80 Fed. Reg. 34350 (Jun. 16, 2015), <http://www.gpo.gov/fdsys/pkg/FR-2015-06-16/pdf/2015-14687.pdf>.

secure access to state specific information in the NORS database, subject to appropriate safeguards . . . regarding confidential information.”

In 2016, the Commission found there was broad agreement that state and federal agencies would benefit from direct access to NORS data and that such a process would serve the public interest if implemented with appropriate and sufficient safeguards. All but one¹² of the 24 entities filing initial comments in April 2020 agree with the FCC and NARUC’s resolution’s basic points. It is evident from the record that State agencies should be provided access to both NORS and DIRS data, subject to reasonable safeguards, to enhance public safety.¹³

¹² See, generally, the April 30, 2020 filed [Comments of ACA Connects - America's Communications Association](#), which, instead of endorsing the FCC approach explicitly, at 2, merely “does not oppose the adoption of such a framework, provided that it includes strong confidentiality safeguards and conditions.”

¹³ See, [Comments of the Boulder Regional Emergency Telephone Service Authority](#), at 5, (“The Commission must make outage reporting, disaster information reporting . . . available to state and local public safety authorities, and make such regulatory changes as are necessary to meet the needs of state and local stakeholders who actually respond to emergencies, natural disasters, and homeland security incidents.”); [Comments of The Utility Reform Network](#), at 2, (“The data is essential for public safety agencies to get a complete picture of the extent and nature of outages”); [Comments of Competitive Carriers Association](#), at 2, (“NORS and DIRS are helpful tools for keeping . . . agencies aware of any service outages or disruptions so assistance can be quickly deployed when necessary.”); [Comments of T-Mobile USA, Inc.](#), at 2 (“T-Mobile has long supported jurisdiction-specific state access to NORS data on a read-only basis.”); [Comments of the Alliance for Telecommunications Industry Solutions](#), at 3, (“ATIS NRSC agrees that eligible state and federal agencies may obtain access to DIRS filings.”); [Comments of NCTA - The internet & Television Association](#), at 1, (“NCTA fully supports . . . ensuring that federal and state agencies. . . have timely access to reliable information about service outages. . . The current coronavirus crisis has highlighted the vital role played by these networks in ensuring the safety and well-being of the American public.”); [Comments of New York State Public Service Commission](#), at 2-3, (“[A]ccess will facilitate and enhance rapid and effective responses to major service disruptions.”); [Comments of California Public Utilities Commission](#), at 11, (“[FCC] should amend its Part 4, § 4.2 rule now to provide secure, direct access to NORS and DIRS filings to federal, state, Tribal nations, and local agencies.”); [Comments of AT&T](#), at 7, (“AT&T agrees that sharing NORS/DIRS information with government agencies could . . . provide important benefits.”); [Comments of Verizon](#), at 2, (“Verizon has long supported many of the *NPRM*’s proposals, which would provide state public safety agencies timely access regarding the geographic scope, consumer impact and duration of outages.”); [Comments of International Association of Chiefs of Police](#), at 3, (“[T]his outage and disaster reporting information would be beneficial to state, local . . . agencies.”); [Comments of Pennsylvania Public Utility Commission](#), at 4 (“Pa. PUC agrees with the Commission and the majority of commenters that sharing NORS and DIRS information with state and federal agencies—in a manner that preserves the confidentiality of that information—would provide important public safety benefits.”); [Comments of Communications Workers of America](#), at 4, (“[T]o best serve the public interest, the Commission should provide access to NORS and DIRS data to relevant state and local jurisdictions with confidentiality safeguards. Because state agencies are key to post-disaster recovery and **are often able to respond more quickly to outages than federal agencies**, providing access to this data will protect the public interest and mitigate future outages.”(emphasis added)); [Comments of NTCA - The Rural Broadband Association](#), at 2, (“[A]llowing federal, state and local agencies access to NORS and DIRS filings could help those agencies respond more quickly.”); [Comments of USTelecom](#), at 5, (“[We] recognize the

But from that general agreement on granting access and imposing reasonable measures to assure the confidentiality of data, opinions diverge almost immediately.

The FCC should avoid the invitation to attempt to preempt separate or more detailed State reporting requirements or requests.

NCTA – The Internet and Television Association (“NTCA”), in their comments at page 11, argue “the Commission should make clear that states may not impose outage reporting obligations on providers that are duplicative of, inconsistent with, or exceed the Commission’s requirements.” T-Mobile USA, Inc. (“T-Mobile”), at page 10 of their comments, asks the FCC to “preempt state laws requiring the submission of outage data,” arguing state laws “often establish different thresholds for triggering outage reporting and could cause public confusion.” Verizon’s

legitimate interest of an information sharing framework [to] provide state and federal “need to know” public safety agencies with access to NORS and DIRS information.”); [Comments of CTIA](#), at 3, (“CTIA shares the Commission’s view that providing public safety stakeholders access to certain outage reporting data can “improve the situational awareness and ability” of public safety stakeholders to respond more quickly to outages.”); [Comments of Michigan Public Service Commission](#), at 5, (“(G)ranting states access to the databases . . . will allow for a more robust picture into service outages that effect both end users and public safety efforts.”); and the [Comments of Montrose Emergency Telephone Service Authority](#) at 2, (“In July, 2019, a fiber cut impacted 9-1-1 service in multiple locations across Colorado. METSA . . . [was] notified that service in our jurisdiction was impacted. . . with NORS access, the COPUC could have assisted with generalized information regarding areas which were truly impacted by the outage.”); all filed on April 30, 2020. *See also*, [Comments of National Association of State 911 Administrators](#), at 23, (“When disasters or large-scale emergencies involving multiple contiguous states occur, access to NORS and DIRS data may allow impacted states to coordinate emergency responses with each other’s 911 systems to facilitate continuity in cross-border services as well as planning for future action for similar events.”); [Comments of Colorado Public Utilities Commission](#), at 12, (“[D]ata obtained through the data-sharing process [would allow] development of aggregated and anonymized statistical analysis of outage data that may reveal trends in the frequency, size, and duration of outages affecting the public’s ability to call 911 in an emergency. . . . immediate use in improving emergency management response to disasters and large-scale emergency, thereby potentially saving lives and property.”); [Comments of Telecommunications Regulatory Bureau of Puerto Rico](#), at 2, (“DIRS. . . is most helpful in responding to public health and safety needs immediately following a disaster . . . NORS will be helpful for both short-term network assessment and longer-term system analytics”); [Comments of the Massachusetts Department of Telecommunications and Cable](#), at 6, (“Direct access to NORS data would have provided the MDTC . . . local official and town residents, businesses, and government offices—with timely, and therefore, actionable information.”); all filed on April 29, 2020.

comments are more subtle, suggesting, at 4, “providing states a single, uniform method of obtaining this information could have the added benefit of easing administrative burdens on service providers during and after major outage events.” Similarly, USTelecom’s comments, at 5, suggest if a State can access the FCC’s databases, it should be contingent upon eliminating “State specific” outage reports.

Whether or not the FCC has authority to impose such a requirement or limitation on State collections of outage data, it is a bad idea from a policy perspective. Even the FCC, in the seminal Report and Order in this proceeding, recognized that:

With respect to the issue of potential duplication of the efforts of the states, we emphasize that we do understand the potential value of having one outage template instead of 50 different templates. Individual states, however, may have their own unique needs that could necessitate their collection of outage-reporting data that may differ from that needed by the Commission. For example, South Dakota requires many more outage reports than our criteria would generate. But since South Dakota is a small state, it may need tighter criteria in order to generate more than a handful of useful outage reports.

New Part 4 of the Commission's Rules Concerning Disruptions to Communications, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830 (2004) at 16909, ¶ 158.

As this FCC statement concedes, it is a fact that outages that may not meet the high reportable thresholds under FCC requirements can nevertheless endanger the safety of local communities, particularly when outages prevent communities from accessing 9-1-1 services or receiving emergency notification.

A broad federal mandate purporting to block State rules and requirements, if upheld on review, would be a magnet for unnecessary litigation at taxpayer (and ratepayer) expense – whenever a state was seeking data to maintain the safety and integrity of the networks – whether through required regular reports or investigation-instigated specific requests.

For States that lack resources to impose and monitor their own requirements, access to NORS and DIRS may be the only avenue for regular outage reporting, but it is clear from the comments filed, some states impose their own reporting requirements.

And even where there are no regular state level reporting requirements, state outage investigations are certainly not uncommon.

It is clear that any FCC preemptive statement will become the default carrier response to any State request for regular reports or specific data about a particular outages or outage trends/history.

It is also clear that State and local public safety authorities will, in some circumstances, need additional data for a variety of reasons, *e.g.*, NORS data is not reported in real time, and service providers do not report on the status of equipment functioning on back-up power; NORS data does not, nor is it intended to, provide a complete portrait of communications infrastructure during a disaster; DIRS reporting is voluntary so some carriers may not provide reports to the FCC; DIRS reports are typically delivered 24 hours after the operational period, and cannot be used to support near real-time outage reporting.

Accordingly, to avoid unnecessary and counterproductive litigation, the FCC should include an affirmative statement in any final order in this proceeding, that the FCC's rules cannot be the basis for not complying with outage inquiries from State officials.

Moreover, it is far from certain that any preemptive mandate dealing, as this does, with public safety and disaster recovery, would be upheld in the inevitable appeal.

Congress and the FCC have recognized state's police power to regulate conduct to protect the health and welfare of state residents. These powers, recognized in Tenth Amendment to the United States Constitution, are reflected in the Congressional template for cooperative FCC and state action – which specifies that States can “impose, on a competitively neutral basis . . . requirements necessary to preserve and advance universal service, *protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.*” (47 U.S.C. § 253.) (emphasis added). Similarly, 47 USC 332(c)(3) expressly reserved to states the right to “regulate[] the other terms and conditions of commercial mobile services.”

Congress recognized States must be free to protect the public safety, including by requiring carriers to supply critical outage information to emergency management agencies necessary to protect lives and property, *e.g.*, with outages that are otherwise unreportable under FCC standards nevertheless cut off entirety communities from accessing 9-1-1 services.

Certainly, in the context of any traditional statutory analysis, the FCC lacks authority to preempt different State reporting requirements. There is no question that outages involve and include, not just *telecommunications services*, but all “intrastate communications services by wire

or radio.”¹⁴ And it is clear, there is no possible conflict preemption here. It obviously possible for carriers to respond to different regular and specific requests for data from both State authorities operating as *parens patriae* and the FCC.¹⁵ Indeed, the Washington State and Virginia Corporation Commission outage investigations cited in footnote 8, *supra*, were simultaneously the subject of separate FCC investigations which both relied upon in part and referenced data collected by State authorities during their independent outage investigations.¹⁶

Any effort to limit on State independent authority to require reports will only inhibit carrier cooperation to State outage investigations and invite counterproductive and wasteful lawsuits at taxpayer and ratepayer expense. It will, long term, cost lives and undermine public safety.

There is no reason to micromanage state access to data.

T-Mobile’s Comments, at 4-5, urge the FCC to limit data sharing by a credential individual only with other officials from the credentialed individual’s agency. NCTA’s Comments, at 11, urge the FCC to adopt a laundry list of preconditions for State access NORS and DIRS data, including that an agency must (i) attest to its “relevant public safety responsibilities citing the statutory and regulatory basis for that claim”; (ii) not use NORS and DIRS information for regulatory or enforcement purposes; (iii) describe how it intends to use the information in practice”; (iv) designate specific employees who can access NORS and DIRS data, and limit access only to those individuals; and (v) describe safeguards against unauthorized disclosure of NORS and DIRS. Other comments offer similar restrictions. For example, T-Mobile’s Comments at 8, also specify that State agencies “should have access only to NORS and DIRS data provided by

¹⁴ 47 U.S.C §152(b)(1991).

¹⁵ See, e.g., *Louisiana Public Service Commission v. FCC*, 476 U.S. 356 (1986). There the FCC claimed Section 220 of the Act, which expressly directed the FCC to prescribe depreciation practices, operated to pre-empt inconsistent state depreciation regulations for intrastate ratemaking purposes, or that, as an alternative ground, federal displacement of state regulation was justified as being necessary to avoid frustration of validly adopted federal policies. The Supreme Court said neither argument held water and reversed.

¹⁶ See, e.g., Appendix A of *The Impact of the June 2012 Derecho on Communications Networks and Services, A Report of the Public Safety and Homeland Security Bureau Federal Communications Commission* (January 2013), available online at: <https://www.fcc.gov/document/derecho-report-and-recommendations> ("The Virginia State Corporation Commission Staff Report of Preliminary Findings released September 14, 2012, announced numerous findings consistent with this report and helpful to the Bureau in its inquiry.")

carriers on a forward-looking basis” and that the FCC should “consider requiring agencies to delete the NORS/DIRS data immediately after the public safety need has been resolved.”

This last suggestions, like many of the other carrier proposed restrictions, is illogical on its face. As the Pennsylvania Public Utility Commission points out in its comments, at 9:

The Pa. PUC supports the Commission’s intuition to immediately provide historical NORS and DIRS information to agencies when they begin participating. Access to such information will allow them to identify trends in outages and infrastructure status that might enhance their real time recovery and restoration efforts as well as establish baseline levels in their jurisdictions. *Second FNPRM* at ¶ 35. The Pa. PUC does not believe it is necessary for the Commission to limit agencies’ access to information to timeframes relevant to specific disasters or other events that threaten public safety for which those agencies are contemporaneously preparing or responding. *Second FNPRM* at ¶ 36. Access to historic information, with safeguards in place to protect against improper disclosure, should be broad enough to enable agencies to be well-informed. Further, when crafting recovery or after-action documents, agencies may need to review historical information (e.g., for post-disaster relief verification or to develop corrective action plans.)

NARUC respectfully suggests the FCC look at these suggestions askance. At a minimum, most of the proposals are inefficient. As NARUC argued in the 2018 ex parte cited, *supra* at pages 3 - 5, the characteristic most share is that – in large measure – they are simply unnecessary and undermine the public interest. All require additional, wasteful and complicated expenditure of both federal and State resources to address a non-existent problem.

When considering these varied proposals, the FCC must consider context. States routinely handle crucial information about all critical infrastructure sectors – gas, electricity, water and communications. Many States already have direct access to data on not just telecommunications outages, but on other information of equivalent or perhaps greater sensitivity about telecommunications and those other critical infrastructures.

NARUC continues to be unable to find a citation to even one instance of State exposure of competitive or confidential information about outages in the comments filed to date. The fact is, there simply no evidence in the record before the Commission to support additional restrictions or State use/access. There are only unsupported statements by parties that have a financial interest in constraining oversight and investigations of outages. All the FCC has to do to avoid concerns raised by the tiny minority of States that have arguably deficient “FOIA” type protections in-place, is to condition access to the data on a State providing some level of confidential treatment. That is the solution. The FCC need do no more.

CONCLUSION

The FCC should enhance public safety and emergency responses by expediting State agency access to NORS and DIRS data subject to reasonable confidentiality measures. It should avoid legally suspect limitations on existing state authority to seek regular or specific reports from carriers about outages. Finally, it should consider the extensive list of restrictive proposals proffered by carriers in context. The States have long experience with handling sensitive information about a range of critical infrastructures and there is nothing in the record, other than unsupported statements, that demonstrates there is a problem that requires all the additional conditions.

Respectfully submitted,

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