

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

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 No. 15-80

ET Docket No. 04-35

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

KAREN CHARLES PETERSON,
COMMISSIONER

1000 Washington Street, Suite 820
Boston, MA 02118-6500
(617) 305-3580

Dated: July 15, 2015

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Amendments to Part 4 of the Commission's Rules
Concerning Disruptions to Communications

PS Docket No. 15-80

New Part 4 of the Commission's Rules Concerning
Disruptions to Communications

ET Docket No. 04-35

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission (“FCC”) on March 30, 2015.² The FCC seeks comment on targeted proposals to improve its Part 4 rules in light of the experience it has gained in administering the Network Outage Reporting System (“NORS”) since the adoption of its Part 4 Rules in 2004.³ The MDTC, as set forth below, supports the FCC’s proposal to grant States read-only access to the NORS database.⁴ The FCC should grant States

¹ The MDTC regulates telecommunications and cable services within Massachusetts and represents the Commonwealth before the FCC. Mass. Gen. Laws ch. 25C, § 1; Gen. Laws ch. 166A, § 16.

² *In the Matter of Amendments to Part 4 of the Comm’n’s Rules Concerning Disruptions to Comm’n*, PS Docket No. 15-80, *Notice of Proposed Rulemaking, Second Report & Order & Order on Reconsideration* (rel. Mar. 30, 2015) (“NPRM”). Silence on any matter not addressed in these comments does not connote agreement or opposition by the MDTC.

³ NPRM, ¶ 1.

⁴ *Id.*, ¶ 51.

access under the same requirements for which the FCC has granted access to other databases containing confidential information⁵. In granting access, the FCC should not preempt States from collecting unique outage information, nor unduly burden States in their access and use of the NORS database.

I. THE FCC SHOULD ADOPT ITS PROPOSAL TO GRANT STATES ACCESS TO THE NORS DATABASE

The FCC proposes to allow State entities to request read-only access to information concerning network outages that occur within that State.⁶ Under the proposal, the FCC's Public Safety and Homeland Security Bureau may grant requests where the State has certified it will maintain the confidentiality of the information, and that it has in place confidentiality protections equivalent to those of the Freedom of Information Act.⁷ The MDTC has long supported granting States access to the NORS database.⁸ "State and local entities often serve as the first line of defense for public safety and emergency situations."⁹ States would benefit from direct access to data rather than awaiting action by the Department of Homeland Security ("DHS") to share the

⁵ Other such databases, as discussed *infra*, include the FCC's Form 477 database, and the North American Numbering Plan Administrator ("NANPA") database.

⁶ NPRM, ¶ 51.

⁷ *Id.*

⁸ See e.g., MDTC Comments, *In re The Proposed Extension of Part 4 of the Comm'n's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Serv. Providers & Broadband Internet Serv. Providers*, PS Docket No. 11-82 (Aug. 8, 2011) at 8-9 ("MDTC VoIP Outage Comments"); MDTC Letter, *In re Pub. Safety & Homeland Sec. Bureau Seeks Comment on Whether the Comm'n's Rules Concerning Disruptions to Commc'ns Should Apply to Broadband Internet Serv. Providers & Interconnected Voice over Internet Protocol Service Providers*, ET Docket No. 04-35 et al (Aug. 16, 2010) at 2-3, 6 ("MDTC VoIP Outage Letter"); MDTC Comments, *In re New Part 4 of the Comm'n's Rules Concerning Disruptions to Communications et al*, ET Docket No. 04-35 et al (Mar. 4, 2010) ("MDTC CPUC Petition Comments").

⁹ MDTC VoIP Outage Comments at 8.

data in its role as intermediary.¹⁰ As States may already receive NORS data indirectly through DHS, granting direct access to the States should reduce concerns over confidential data loss, as the data will no longer transit indirectly between intermediaries. Direct database access to state-specific information makes this process more efficient, and will give States the opportunity to eliminate redundant reporting requirements, potentially reducing costs and administrative burdens on service providers.¹¹

II. THE FCC SHOULD NOT UNDULY BURDEN OR LIMIT STATES IN THEIR ACCESS TO AND USE OF THE NORS DATABASE

The MDTC agrees that the FCC should continue to treat the reported information presumptively confidential and that States' access should be granted on a confidential basis.¹² The FCC can achieve this goal by requiring States to certify that they will keep this data confidential, and that they have adequate confidentiality protections in place to do so.¹³ Granting States access under such terms is consistent with how the FCC has granted States access to confidential information in the Form 477 database, and the North American Numbering Plan Administrator ("NANPA") database.¹⁴ Moreover, as experience with the Form 477 and NANPA databases show, there is no need to place additional restrictions on a State's access to the NORS

¹⁰ *Id.* at 8-9.

¹¹ MDTC CPUC Petition Comments at 4-5.

¹² NPRM, ¶ 51; MDTC VoIP Outage Comments at 8.

¹³ NPRM, ¶ 51.

¹⁴ 47 C.F.R. §§ 1.7001(d); 52.15(f)(7); *See also In re of Local Competition & Broadband Reporting*, CC Docket No. 99-301, *Report & Order*, 15 FCC Rcd 7717, ¶ 95 at 7761-7762 (2000); *In re Local Telephone Competition & Broadband Reporting*, WC Docket No. 04-141, *Report & Order*, 19 FCC Rcd 22340, ¶ 26 at 22353 (2004) (retaining the policies and procedures with regard to the data-sharing with States); *In re Numbering Resource Optimization et al*, CC Docket No. 99-200 et al., *Third Report & Order & Second Order On Reconsideration*, 17 FCC Rcd. 252, ¶ 133, at 309 (2001); *In re Numbering Resource Optimization*, CC Docket 99-200, *Report & Order & Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 7574, ¶ 75, at 7606 (2000); MDTC CPUC Petition Comments at 5-6.

database, or limit a State's use beyond accessing only state-specific data.¹⁵ As one of the goals of giving States access to the NORS database is to reduce the collection of redundant information, it follows that some States already receive confidential information comparable to the information reported in the NORS databases, and therefore are capable of maintaining the confidentiality of such information. For example, the California Public Utilities Commission ("CPUC") requires providers to concurrently report all California-specific information submitted to the FCC under NORS.¹⁶ In addition, as stated earlier, the FCC's current rules permit DHS to share information from NORS reports with State and other governmental entities, as DHS deems appropriate.¹⁷ Thus, some State entities are already receiving confidential information concerning outages either directly from providers or through DHS. Adding supplemental requirements for access to NORS data or placing restrictive limitations on its use will discourage States from eliminating their own redundant reporting requirements. States could simply maintain duplicative direct reporting to safeguard their access to and analysis of outage information.¹⁸

III. THE FCC SHOULD NARROWLY TAILOR ANY PREEMPTION OF STATE COLLECTION OF OUTAGE DATA

While granting state-specific access to the NORS database will allow State entities to stop collecting redundant outage reporting information, the FCC should be circumspect in its approach to preempting existing and future State outage reporting requirements. Once State

¹⁵ NPRM, ¶¶ 52-53.

¹⁶ CPUC Petition, *In re New Part 4 of the Comm'n's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35 (Nov. 12, 2009) ("CPUC Petition") at 6-7.

¹⁷ NPRM, ¶ 48; MDTC CPUC Petition Comments at 4.

¹⁸ MDTC CPUC Petition Comments at 4-5.

entities are able to access the NORS database, States should take action to amend or eliminate redundant outage reporting requirements.¹⁹ However, as the FCC is aware, State entities collect different information than is contained in the NORS database, and should not be foreclosed from making their own determinations as to whether data is duplicative.²⁰ Further, because State entities utilize data differently, it is unlikely that NORS data will adequately capture all the State's needs. Indeed, as this NPRM highlights, experience may lead to refinements in data collection and a State entity should not be categorically prohibited from adopting reporting requirements it finds critical to collect, but are not currently available through the NORS database.²¹ The FCC should refrain from preemption, and allow state entities the opportunity to assess their reporting requirements and eliminate any redundancies on their own. To encourage this elimination of redundant rules, the FCC could consider conditioning access to the NORS database on State entities identifying their outage reporting requirements, and explaining why their reporting requirements are not duplicative of the FCC's requirements.

IV. CONCLUSION

Direct access to the NORS database on a confidential basis will give State entities access to a significant additional resource, and will help advance State interests in protecting public health and safety. State access to the NORS database is more efficient than current practices,

¹⁹ *Id.* at 5; CPUC Petition at 6-7; *see also* New York Public Service Commission ("NYPSC") Comments, *In re New Part 4 of the Comm'n's Rules Concerning Disruptions to Communications et al*, ET Docket No. 04-35 et al (Mar. 4, 2010) at 2.

²⁰ Unlike the CPUC, the MDTC's outage reporting rules are not identical to the FCC's rules and the MDTC would need to perform a comparative analysis before determining whether any of the data collected is redundant and should be discontinued. *See* MDTC CPUC Petition Comments at 4 (citing *Petition of over twenty customers of New England Tel. & Tel. Co. d/b/a NYNEX, pursuant to G.L. c. 159, § 24, regarding the quality of tel. serv. in the Mission Hill area*, D.P.U. 96-30, Order, at 21-22 (July 18, 1997)).

²¹ NPRM, ¶ 1.

and does not present any serious concerns about the safeguarding of confidential information. Accordingly, the FCC should adopt its proposal without unduly burdening or limiting States in their access to and use of the information. The MDTC also encourages the FCC to refrain from preempting existing and future state outage reporting requirements, and to allow States to determine whether any requirements are redundant or otherwise unnecessary after gaining access to the NORS database.

Respectfully submitted,

KAREN CHARLES PETERSON, COMMISSIONER

By: /s/ Michael Scott
Michael Scott, Attorney

Massachusetts Department of
Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500
Phone: 617-305-3580
michael.scott@state.ma.us

July 15, 2015