



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[ET Docket No. 04-35; FCC 15-39]

Commission Rules Concerning Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission resolves several pending matters in the proceeding that established the network outage reporting rules. The Commission declines to adopt a proposal to expand its “special offices and facilities” outage reporting requirements to cover general aviation airports and it disposes of seven petitions for reconsideration. Each petition is granted, denied, or dismissed to the extent indicated.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Second Report and Order and Order on Reconsideration in ET Docket No. 04-35, FCC 15-39, adopted March 27, 2015 and released March 30, 2015. The full text of this document, FCC 15-39, is available for public inspection online at

<http://www.fcc.gov/document/fcc-adopts-part-4-improvements-item>, or during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554.

SYNOPSIS

I. Second Report and Order

The Report and Order in this docket, 69 FR 70316, established the Commission's part 4 outage reporting rules, which require certain providers of communications to electronically file reports of network outages that exceed specified thresholds of magnitude and duration. In the Further Notice of Proposed Rulemaking (FNPRM) that accompanied that Report and Order, 69 FR 68859, the Commission sought comment on a proposal to extend outage-reporting requirements for special offices and facilities to cover general aviation airports, a category that includes airports smaller than those already covered by section 4.5(b) of the rules. No comments were received on this proposal, and there remains a lack of record support for its adoption. Moreover, adoption of the proposal would run counter to the reasoning underlying some of the proposals in the (NPRM) that accompanies this document. In particular, we sought comment on excluding from the definition of "special offices and facilities" all airports other than the nation's most heavily trafficked airports, because reports of airport-related outages at such airports have not been significant enough to pose a substantial threat to public safety. Alternatively, we consider, among other potential changes to section 4.5(b), the elimination of airport-specific reporting requirements as duplicative of our proposed TSP-based reporting requirements. Accordingly, we decline to adopt the proposal to extend section 4.5(b) to cover general aviation airports.

II. ORDER ON RECONSIDERATION

The Commission received nine Petitions for Reconsideration of various aspects of the Report and Order, seven of which remain pending. The seven Petitioners are Cingular Wireless LLC (Cingular), CTIA-The Wireless Association (CTIA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO); Qwest Corporation and Qwest Communications Corporation (Qwest), Sprint Corporation (Sprint), US Telecom, and, filing jointly, AT&T, BellSouth, MCI, SBC and Verizon (collectively, Joint Petitioners). These seven petitions are disposed of in this Order on Reconsideration. In a companion document, a Notice of Proposed Rulemaking (NPRM) in PS Docket No. 15-80, the Commission seeks comment on modifications to the Part 4 rules to improve their utility.

A. Issues Considered in the Notice of Proposed Rulemaking

Certain proposals considered in the (NPRM) incorporate issues raised in various petitions. As we are considering there the merits Petitioners' requests for relief on these issues, we will incorporate into the record those portions of Petitioners' petitions that present substantive arguments on these issues. We also incorporate into the record those portions of any responsive pleadings filed in connection with the Petitions that present substantive arguments relevant to those issues. Any other aspects of the petitions relating to these issues are dismissed as moot.

B. Other Issues

We now consider those issues raised in the various Petitions that we have not addressed in the (NRPM). We grant or deny each Petition to the extent indicated below.

1. Reporting Obligations of “Pure Resellers”

Before withdrawing its Petition, BellSouth requested therein that the Commission clarify section 4.9(f) to “expressly state that pure resellers (those that do not own, operate, or maintain switching, routing, or transmission facilities) are exempt from the Commission's reporting requirements to the extent that a network failure occurs on resold facilities that are owned, operated, or maintained by an underlying facilities-based provider.” BellSouth argued that pure resellers should not be subject to part 4 reporting obligations because resellers do not have direct access to the outage information that must be reported, and that the only way that a pure reseller becomes aware of a network outage is “typically” through “customer calls, news reports...or from the underlying facilities based provider itself” and that “[n]one of these methods ... are routine or foolproof.” Sprint also addresses this issue in its Petition, focusing on section 4.3(b) of the rules, arguing that pure resellers of wireless service “would not be able to provide any information on the extent and duration of the outage or the cause of the outage.” Rather, Sprint argues, the Commission can obtain this information from reports filed by the underlying facilities-based provider because “customers of these [pure reseller] providers are included in the reports of the affected underlying [facilities-based] wireless carrier.” Sprint argues that the provision “includ[ing] ... affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications” could be read as encompassing a wireless service provider that does not own any wireless facilities or maintain a wireless network. Qwest also supports the position that pure resellers should be exempt from part 4 outage reporting.

NASUCA argued in its responsive pleading, on the other hand, that separate reporting by a pure reseller and its underlying facilities-based communications provider would ensure “that ... the Commission ... will have a deeper understanding of the full impact of the outage.” It maintained that “only the reseller knows how many telephone numbers in the block it acquired from the LEC [local exchange carrier] are operational and thus affected by the outage,” and it therefore “must be obliged to provide that information.”

Although the applicability of outage reporting requirements to “pure resellers” of communications services was not expressly addressed in Report and Order, the rules adopted therein require “[a]ll . . . communications providers” in covered categories to file reports upon “discovering that they have experienced” a qualifying outage “on any facilities that they own, operate, lease or otherwise utilize.” Thus, resellers in the covered categories are within the reach of the part 4 rules insofar as they “lease or otherwise utilize” facilities to provide communications services to their customers.

The underlying purpose of the part 4 outage reporting rules is to improve network reliability and resiliency, particularly as it affects the Nation’s 911 system, by providing the Commission with the ability to analyze data regarding significant outages, regardless of the network(s) in which the underlying causal factors lie. This information enables the Commission to analyze how outages in one network affect other networks and to identify adverse trends. “Pure resellers” may lack direct access to the network facilities they use to provide service, but we agree with NASUCA that such providers may be uniquely positioned to provide information on outages affecting their customers. Similarly, outages induced from higher-level issues may stem from resellers’ systems or

applications. Finally, we observe that the Commission routinely receives reports of outages pertaining to facilities not under the direct control or ownership of the filing party, and such reports provide a valuable perspective on the course and impact of outages affecting multiple providers. We therefore deny Sprint's petition with respect to this issue.

2. Reporting of Planned Network Outages

CTIA, Cingular and Sprint request reconsideration of the Commission's decision to treat planned outages related to network maintenance, repair, and upgrades the same as other outages for purposes of its reporting requirements. CTIA and Cingular maintain that planned system outages should not be reportable events, arguing that normal operational and maintenance requirements of providers may require planned service disruptions in order to conduct maintenance, perform upgrades, or complete repair work, and that these disruptions are intended to enhance network reliability. They also argue that mandated reporting of planned outages imposes undue burdens on providers. Sprint does not argue for the elimination of reporting requirements for planned outages, but rather advocates for an alternative filing requirement whereby providers would file a single report 72 hours after a planned outage.

NASUCA opposes any modification to the requirements for reporting planned outages. NASUCA argues that, as far as consumer and national security interests are concerned, a planned outage is still an outage. NASUCA urges the Commission not to weaken Commission authority at a time that it must be exercised more firmly than ever before because of heightened national security concerns.

The arguments raised by Petitioners on this issue were previously considered and

addressed by the Commission in the Report and Order. While the Commission did not specifically consider facts and arguments of Sprint's proposed single field report 72 hours after discovery of a planned outage, the Commission did consider facts and arguments generally concerning the filing requirements. In declining to exempt planned outages from the outage reporting requirements it was adopting, the Commission acknowledged the reliance of both public safety personnel and the general public on wireless services for both emergency and routine communications. Petitioners have not presented facts or arguments in their Petitions that would lead us to reconsider the conclusion that such reliance creates a need for reporting of planned wireless network outages. Indeed, reliance on wireless services for emergency-related communications has only increased since adoption of the Report and Order, making it ever more imperative that wireless network outages are fully reported on a timely basis irrespective of their cause. In addition, the reporting burden associated with such reporting was fully considered in the original rulemaking proceeding. We decline to revisit that issue here. While we acknowledge the difficulties involved in maintaining complex communications networks, we continue to find that exempting planned outages from the scope of reporting would detract from the purposes of part 4. For the foregoing reasons, we deny the Petitions of CTIA, Cingular and Sprint with respect to reporting of planned network outages.

3. Rural Provider Reporting Obligations

OPASTCO requests that the Commission reconsider its Part 4 outage reporting obligations insofar as they apply to rural telephone companies. In support of its Petition, OPASTCO alleges both procedural and substantive deficiencies in the Report and Order. First, OPASTCO contends that the Commission did not provide sufficient opportunity for

comment on the information collections associated with its Part 4 rules before the Office of Management and Budget (OMB) approved them. Second, it alleges that the established 120-minute deadline for filing an initial notification is unduly burdensome as applied to rural providers. Finally, OPASTCO asserts that the Commission's Paperwork Reduction Act (PRA) analysis fails to account fully for the burdens that rural providers will incur in assessing whether they serve "special facilities" as specified in section 4.5(b) or in reporting on their implementation of NRIC best practices. Dobson and TDS Telecom each filed responses in support of OPASTCO's petition.

Neither OPASTCO nor its supporting commenters offer persuasive arguments for reconsideration of the Commission's outage reporting requirements as applied to rural telephone providers. First, any alleged procedural deficiency in OMB's approval of the part 4 information collection has been made moot by the passage of time, as the public has been given subsequent opportunities to comment on the collection as part of OMB's periodic review and re-approval process. We find that this established process is the appropriate forum for addressing perceived deficiencies in the PRA analysis associated with the Commission's part 4 requirements.

We also find that OPASTCO misstates the burden that accrues to rural providers in complying with the 120-minute deadline for filing initial notifications. This obligation extends to outages that last for at least 30 minutes and potentially affect at least 900,000 user minutes, but the 120-minute timeframe for filing an initial notification of the outage commences only upon discovery that a reportable outage exists. Although providers have an obligation to take reasonable steps to discover outages, there is no prescribed timeframe for detecting the presence of an outage, only for reporting on outages that the

provider has determined meet the reporting criteria. This discussion further clarifies when the 120-minute timeframe begins, as OPASTCO requests. In practice, providers often have much longer than 120 minutes from the onset of an outage to file the notification. Our experience administering NORS has demonstrated that the established 120-minute deadline sets an appropriate balance between the Commission's need to be timely apprised of critical outages and the needs of providers to deploy scarce resources effectively when these outages occur. In the nine years since the rules went into effect, we are unaware of any small rural provider that has been significantly challenged in complying with the 120-minute deadline. We are therefore not persuaded that this requirement is too burdensome as applied to rural providers.

For the foregoing reasons, we deny the OPASTCO Petition.

4. DS3 Simplex Outage Reporting

Several Petitioners seek reconsideration of the requirement that providers report "DS3 simplex" outages and propose relaxation of the requirement. In the Partial Stay Order the Commission rejected arguments that this requirement should be eliminated outright, but it stayed the reporting obligation insofar as it applied to outages rectified within five days of their discovery. Petitioners have not presented facts or arguments beyond those considered and rejected in the Partial Stay Order that would support reconsideration of the DS3 reporting obligation as applied to outages that persist longer than five days. In fact, as explained in the (NPRM) that accompanies this document, the volume of DS3 simplex outages reported in recent years has led us to propose tightening our DS3 simplex reporting requirements. Accordingly, Petitioners' request for reconsideration of this matter is denied.

5. Withdrawal of Notifications and Initial Reports

In its Petition, Sprint requests that the Commission codify in section 4.11 its stated policy that providers may “withdraw notifications and initial reports in legitimate circumstances,” such as when the filing was made mistakenly. Although the Commission has consistently followed this policy throughout the tenure of NORS, we agree that codifying it in our rules may provide greater assurance to providers. Accordingly, on this issue we grant Sprint’s request and amend section 4.11 accordingly.

III. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (RFA),¹ the Commission has prepared a Final Regulatory Certification (Certification) for the Second Report and Order and Order on Reconsideration. The Certification is set forth as Appendix E. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Second Report and Order and Order on Reconsideration and their Certification to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

B. Paperwork Reduction Act of 1995

The rules adopted in the Second Report and Order and Order on Reconsideration in this document contain no new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

C. Congressional Review Act

The Commission will not send a copy of this Order on Reconsideration pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A) *et seq.*, because the adopted rule

¹ See 5 U.S.C. - 603.

is a rule of “agency organization, procedure, or practice” within the meaning of 5 U.S.C. 804(3)(C).

IV. ORDERING CLAUSES

ACCORDINGLY IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a-1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a-1, and 615c, this Final Rule, Second Report and Order and Order on Reconsideration in ET Docket 04-35 and PS Docket 15-80 is ADOPTED, effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 302, 303(e) 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302a, 303(e), 303(f), 303(g), 303(r), and 405, the Petitions for Reconsideration filed by Cingular Wireless, CTIA-The Wireless Association, Qwest Communications, the Organization for the Promotion and Advancement of Small Telecommunications Companies, Sprint and the United States Telecom Association, and the Petition for Reconsideration filed jointly by AT&T, BellSouth, MCI, SBC and Verizon, in ET Docket No. 04-35, ARE GRANTED, DENIED and DISMISSED to the extent indicated herein.

IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 302, 303(e) 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302a, 303(e), 303(f), 303(g), 303(r), and 405, the Commission’s rules ARE HEREBY AMENDED.

IT IS FURTHER ORDERED that the Commission’s Consumer and

Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Second Report and Order and Order on Reconsideration, including the Final Regulatory Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

V. FINAL REGULATORY CERTIFICATION

The Regulatory Flexibility Act of 1980, as amended (RFA)² requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."³ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁶

The Second Report and Order and Order on Reconsideration adopt the following rules:

- The Second Report and Order declines to adopt a proposal to expand the

² The RFA, *see* - 5 U.S.C. S 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

³ 5 U.S.C. - 605(b).

⁴ 5 U.S.C. - 601(6).

⁵ 5 U.S.C. - 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. S - 632). Pursuant to 5 U.S.C. - 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁶ Small Business Act, - 15 U.S.C. S 632.

range of airports classified as “special offices and facilities” for purposes of outage reporting under Part 4.

- The Order and Reconsideration codifies in section 4.11 the Commission’s longstanding policy of allowing providers to withdraw outage report filings under appropriate circumstances.

The first of these involves a determination not to adopt a substantive rule, while the second merely codifies an existing policy. We thus certify that neither of these rules will have a significant economic impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 4

Airports, Communications common carriers, Communications equipment, Disruptions to communications, Network outages, Reporting and recordkeeping requirements, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 4 as follows:

PART 4 – DISRUPTIONS TO COMMUNICATIONS

1. The authority citation for part 4 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 154, 155, 201, 251, 307, 316.

2. Section 4.11 is amended by adding a sentence at the end of the paragraph to read as follows:

§4.11 Notification and initial and final communications outage reports that must be filed by communications providers.

* * * Notifications and initial reports may be withdrawn under legitimate circumstances, *e.g.*, when the filing was made under the mistaken assumption that an outage was required to be reported.

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