

November 10, 2022

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: *Ex Parte* Presentation, In the Matter of Amendment of Part 4 of the Commission's Rules Regarding PSAP Notification and 911 Reliability Certifications, ET Docket No. 04-35; PS Docket Nos. 13-75, 15-80

Dear Ms. Dortch:

On November 8, 2022, the Alliance for Telecommunications Industry Solutions ("ATIS"), the Competitive Carriers Association ("CCA"), CTIA and USTelecom – the Broadband Association (together, the "Associations") met via video conference with staff of the Public Safety and Homeland Security Bureau ("Bureau") to discuss the above-referenced proceeding. On November 10, 2022, the Associations met with staff of Commissioner Brendan Carr's office to discuss the same issues. Attachment A lists meeting participants.

During the meetings, the Associations expressed support for the Commission's goal of enhancing the situational awareness of Public Safety Answering Points ("PSAPs") in the event of a disruption to 9-1-1 services. In that vein, the Associations suggested ways that the Commission can clarify the *Draft Order* to better achieve that end.

If adopted, the *Draft Order* would require Originating Service Providers ("OSPs") to report "any outages in the networks of OSPs that disrupt or prevent 911 calls from reaching the PSAP, regardless of the reason for the failure."¹ The *Draft Order* represents a significant change in the Commission's Part 4 rules and policies and contains some ambiguity as to the application of these

¹ *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Second Report and Order, FCC-CIRC2211-01, ¶ 11 (Oct. 26, 2022) ("*Draft Order*").

new rules. For this reason, the Associations urged the Commission to clarify that the new requirements in the *Draft Order* will not be applied retroactively.

Further, the Associations encouraged the Commission to make clear that the 30-minute deadline will be applied with reasonable flexibility so that OSPs can provide as much actionable information as possible to affected PSAPs with the initial notification. The Commission should also provide sufficient time for OSPs and PSAPs to make the technical and operational changes that will be necessary to achieve the goals of the *Draft Order*. And the Commission should defer any obligation that OSPs maintain PSAP contact information on an individual basis because a centralized database managed by the Commission would be more efficient and effective for all stakeholders. In the absence of such a database, the Commission should clarify the extent of efforts that meet the “special diligence” required to annually obtain and maintain PSAP contact information. Finally, the Commission should encourage PSAPs to prepare for the increased volume and frequency of communication with and notifications from OSPs that the *Draft Order* will compel.

The Commission should clarify that the *Draft Order* will not be applied retroactively.

The record makes clear that under today’s outage reporting rules, OSPs reasonably understand that the existing Public Safety Answering Point (“PSAP”) notification requirements are limited to outages unique to 9-1-1 and do not extend to general outages in originating access networks.² As such, the Commission should remove any statements in Paragraph 11 of the *Draft Order* that suggest the existing PSAP notification requirements currently extend to general outages in originating access networks (i.e., general network outages).³ The Commission should also modify the *Draft Order* to reflect and confirm the *prospective* nature of the rule and policy change. This can be accomplished by simply adding a new subparagraph (5) to Section 4.5(e) of the

² See Comments of T-Mobile, ET Docket No. 04-35 and PS Docket Nos. 13-75, 15-80, at 5 (July 30, 2021); Comments of USTelecom, ET Docket No. 04-35 and PS Docket Nos. 13-75, 15-80, at 3 n.4 (July 30, 2021); Comments of Verizon, ET Docket No. 04-35 and PS Docket Nos. 13-75, 15-80 at 6 (July 30, 2021).

³ Specifically, the Commission should delete the following sentences and accompanying citations from the *Draft Order*: “Some commenters claim that the scope of the notification requirements does not include general network outages, OSPs, or claim that that PSAPs are not 911 special facilities. This is incorrect.” *Draft Order*, ¶ 11 & n.37.

proposed rules that reads: “(5) There is an outage reportable under Sections 4.9(a)(1), (e)(1)-(2), (f)(1), and (g)(1).”

The Commission’s Part 4 rules currently distinguish between general network outages and outages affecting 9-1-1 special facilities. For example, reporting thresholds for wireless service outages of “a mobile switching center” or that “potentially affect at least 900,000 user minutes” are codified at Section 4.9(e)(1)(i)-(ii), and do not require PSAP notifications. In contrast, reporting thresholds for wireless service outages affecting a “911 special facility” that require PSAP notification are codified separately at sections 4.5(e) and 4.9(e)(1)(v). The FCC confirmed this distinction in the Part 4 rules when adopting outage reporting rules for VoIP services, describing how outages that “affect all interconnected VoIP calls, not just calls to 9-1-1” are distinct from those “that potentially affect a 9-1-1 special facility.”⁴

If OSPs’ current obligations to notify PSAPs were not limited to outages affecting 9-1-1 special facilities but also applied to general network outages, then there would have been no reason for the Commission to make distinctions in its rules and Orders between outages that affect all calls and those that affect a 9-1-1 special facility, or in fact to adopt the *Draft Order*. To the extent there could have been any lingering uncertainty, absent a rule, in 2018, the Bureau recommended that service providers adopt *a best practice* to “notify PSAPs about outages that affect any aspect of 911 service, *including service-wide outages*.”⁵

Even if the Commission adopts the *Draft Order* as proposed, it should clarify that it will not *retroactively* enforce the new rules against OSPs. Due process prohibits the Commission from penalizing companies for violating purported obligations that were not clear to them. As the D.C. Circuit has explained, the Commission may not impose civil liability “[w]here the regulation is not

⁴ *The Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, Report and Order, 27 FCC Rcd 2650, ¶¶ 98-99 & n.214 (2012).

⁵ *Public Safety and Homeland Security Bureau Shares Recommended Practices from September 11, 2017 911 Workshop*, Public Notice, 33 FCC Rcd 11, 11 (2018). Industry best practices also reinforce the above interpretation. ATIS, *Standard Operating Procedures for Updating PSAP Outage Contact Information Tutorial*, slide 13 at 6:30, <https://www.youtube.com/watch?v=GeWCqW95nNY> (rel. Sept. 22, 2020)(distinguishing outages to specific 9-1-1 equipment from general network outages where customers cannot place calls).

sufficiently clear to warn a party about what is expected of it.”⁶ Further, the consent decrees cited by the *Draft Order* covered a broad range of activities and did not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with Commission’s rules.⁷ Where, as here, a regulated party acting in good faith could not identify “with ascertainable certainty” what the Commission expected of it, then it cannot be penalized for any noncompliance prior to the effective date of the *Draft Order*. Such certainty is plainly not evident here given the clear structure of the rule and the Commission’s subsequent pronouncements as to how it applies.

The Commission should modify the *Draft Order* to ensure that OSPs have sufficient flexibility to report meaningful information to PSAPs and achieve compliance.

Apply the 30 Minute Notification Deadline Flexibly. The *Draft Order* helpfully clarifies that the initial outage notification to PSAPs need only include the information “available” within 30 minutes of discovery.⁸ The FCC should also, however, apply the 30-minute reporting deadline with reasonable flexibility to increase the availability of meaningful and actionable information for PSAPs. For example, a reportable outage could affect multiple PSAP jurisdictions—hundreds, and even thousands. If the 30-minute deadline applies to *all* of the affected PSAPs, then OSPs will be required to begin the notification process well before they have actionable information in order to meet the 30-minute deadline for all affected PSAPs. In practice, the 30-minute deadline becomes much shorter. Thus, a more flexible deadline for the initial notification to each potentially affected PSAP would enable OSPs to provide PSAPs with more meaningful and actionable information—for example, by OSP initiation of contact to PSAPs by the 30-minute reporting deadline. In all events, the Commission should ensure that PSAPs are mindful that many of the relevant details that would improve situational awareness regarding originating access network outages will not be available with the initial notification.

⁶ See *Trinity Broadcasting of Florida v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000).

⁷ [T-Mobile USA, Inc.](#), Order and Consent Decree, DA 21-1439, ¶ 26 (EB Nov. 23, 2021); [AT&T Corp. and AT&T Mobility LLC](#), Order and Consent Decree, DA 21-1542, ¶ 30 (EB Dec. 17, 2021).

⁸ *Draft Order*, ¶ 21 (“Service providers must provide 911 special facilities with all available material information they have about the outage 30 minutes from the time of discovery, even if the service provider does not have available all the informational elements . . .”).

Furthermore, the Commission should define the point of “discovery” for purposes of starting the clock on the reporting deadline for PSAP notification. “Discovery” should mean both (i) confirmation that the interruption constitutes a reportable outage under Section 4.9(a)(1), (e)(1)-(2), (f)(1), and (g)(1) and (ii) identification of the potentially affected PSAPs. Providing such an objective measure of “discovery” will mitigate the risk of providers mass notifying all PSAPs in the country for minor and/or localized outages due to the risk of non-compliance and associated penalties. The Commission also should clarify that if an OSP discovers that a PSAP was affected by an outage *after the outage has been resolved*, that OSP is under no obligation to notify the PSAP. There simply can be no “actionable information” for a PSAP in a notification sent after the outage has ended. It is not uncommon for an OSP to discover that a particular PSAP was affected by an outage days after the outage ended. It would not advance the public interest to require OSPs to send initial outage notifications after the fact and doing so will only risk PSAP confusion and/or unnecessary administrative work for the PSAPs.

Provide Sufficient Time for Implementation. For some OSPs, much of the processes required by the *Draft Order* can be automated, although other OSPs may not be equipped with such capabilities. Even in the case of automation, the simple number of PSAPs and covered network infrastructure will require significant technical changes to network reporting systems and modified operational policies for which employees will need training. For example, OSPs will need to develop and maintain sophisticated solutions that can identify PSAPs that could be affected by a reportable outage to ensure that the PSAP’s jurisdictions correlate with the particular originating access network facilities in question. This process will be complicated by the lack of clear jurisdictional lines among PSAPs. And as noted above, smaller providers may need to implement new manual or automated processes from scratch.

The FCC should thus provide OSPs at least 12 months to implement the new rule changes from publication of a notice in the *Federal Register* announcing the relevant effective date following review by the Office of Management and Budget pursuant to the Paperwork Reduction Act, rather than the 60 days provided in the *Draft Order*.⁹ This approach would be more consistent with the

⁹ *Draft Order*, ¶¶ 32-33. The 60-day period seems to reflect the assumption that the necessary system changes are limited to updating the reporting and monitoring systems already in place for OSPs. But as discussed above, the *Draft Order* would significantly expand the types of outages requiring PSAP notification.

9-18-month implementation period adopted for the most recent outage reporting rule changes adopted in 2016,¹⁰ and better reflect the additional technical and operational changes necessary to comply, as well as the upcoming end of year holiday season.¹¹

Focus Resources on a Commission-Led Centralized Approach to Collecting PSAP Contact Information or, At Minimum, Clarify the new “Special Diligence” Requirement. To facilitate timely notifications of reportable outages to PSAPs, the *Draft Order* would require OSPs to gather and maintain up to date contact information for the 9-1-1 special facilities in areas they serve.¹² The record demonstrates that a centralized database of PSAP contact information managed by the Commission would be a more efficient and effective way to maintain up to date PSAP contact information.¹³ Rather than subjecting PSAPs to incessant requests for such information from multiple covered 9-1-1 service providers and OSPs, the Commission should defer these obligations until the Commission can develop a centralized database of such contact information.¹⁴ Deferring the proposed requirements would not affect an obligation to notify affected PSAPs of a reportable outage and the Associations support the Commission expediting its consideration of the development of a centralized PSAP contact database.

In the absence of a centralized database of PSAP contact information, the *Draft Order* proposes to require OSPs and covered 9-1-1 service providers to annually use “special diligence” to obtain a 9-1-1 special facility’s contact information and maintain it up to date. The *Draft Order* explains that “special diligence” is “the diligence expected from a person practicing in a particular

¹⁰ *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 31 FCC Rcd 5817, ¶¶ 35, 42 & 64 (2016).

¹¹ The Commission should also consider that the *Draft Order* may be adopted at the end of the calendar year, a period during which many OSPs avoid significant technical changes to their networks. Thus, adopting the *Draft Order* at the Commission’s November 2022 Open Meeting may further limit the time that OSPs will need to achieve compliance.

¹² *Draft Order*, ¶¶ 8-9.

¹³ See Comments of AT&T, ET Docket No. 04-35 and PS Docket Nos. 13-75, 15-80, at 13-15 (July 30, 2021) (noting that the increased cost to the Commission should be negligible as it could build off of its existing 9-1-1 Master PSAP Registry, which it frequently updates as it receives PSAP updated information).

¹⁴ *Draft Order*, ¶ 8 n.26 (“We defer for later consideration the proposals in the *Third Notice* related to the creation and maintenance of a centralized contact database for 911 special facilities.”).

field of specialty under circumstances like those at issue,” but that language does not provide OSPs and covered 9-1-1 service providers with ascertainable certainty about how to achieve compliance.¹⁵ Instead, the Commission should include the following: “service providers will have demonstrated ‘special diligence’ by attempting to obtain and maintain a 911 special facility’s contact information by making at least three (3) attempts to contact the 911 special facility using a at least two (2) different types of media (email, phone, text, etc.).”

Prepare PSAPs to Receive and Process More Notifications. Some PSAPs may not be prepared for the increased volume and frequency of notifications from OSPs, including for outages with no impact on 9-1-1 availability in their jurisdictions. The Commission should prepare PSAPs for this outcome and remain open to further modifications to its rules should PSAPs later raise concerns about the increased cadence of notifications. To lay the groundwork for this effort, the Commission should seek comment on alternative notification methodologies such as coverage-based notification formulas or other matters that would closely tailor reporting obligations to providing actionable information to PSAPs. In addition, the Commission should clarify that if to the extent an OSP is able to determine that such an outage in fact does *not* affect 9-1-1 availability to a particular PSAP, notification should not be required.

¹⁵ *Draft Order*, ¶ 9.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Michael Mullinix

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cc: Nicole McGinnis
Austin Randazzo
Erika Olsen
James Wiley
Scott Cinnamon

Attachment A

The following individuals attended the November 8, 2022, meeting with staff of the Public Safety and Homeland Security Bureau.

ATIS

Tom Goode
Michelle Kelley

CTIA

Michael Mullinix
Christiaan Segura

CCA

Alexandra Mays

USTelecom

Morgan Reeds

PSHSB

Scott Cinnamon
Nicole McGinnis
Erika Olsen
Austin Randazzo
James Wiley

The following individuals attended the November 10, 2022, meeting with staff of Commissioner Brendan Carr.

ATIS

Tom Goode
Michelle Kelley

CTIA

Michael Mullinix
Christiaan Segura

CCA

Alexandra Mays

USTelecom

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Danielle Thumann