

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

In the Matter of)
)
Amendments to Part 4 of the) PS Docket No. 15-80
Commission's Rules Concerning)
Disruptions to Communications)

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ submits these reply comments regarding the Second Further Notice of Proposed Rulemaking² released by the Federal Communications Commission (Commission) in the above-captioned proceeding. NAB agrees with the Commission that expanding access to the information that broadcasters report through the Disaster Information Reporting System (DIRS) to certain additional federal, state and local authorities could allow these agencies to more effectively support broadcasters' efforts to maintain or restore service during emergencies. We also agree with commenters that provide critical communications services that the Commission must ensure the confidentiality of such information, including by establishing clear standards that allow access only to certain eligible agencies on a "need to know" basis,³ and strict safeguards to protect

¹ NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *In re Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80, Second Further Notice of Proposed Rulemaking (rel. Mar. 2, 2020) (Second FNPRM).

³ Comments of Verizon, PS Docket No. 15-80, at 2 (Apr. 30, 2020); Comments of US Telecom – The Broadband Association, PS Docket No. 15-80, at 1 (Apr. 30, 2020); Comments of AT&T Services, Inc., PS Docket No. 15-80, at 2 (Apr. 30, 2020) (AT&T).

the information from disclosure to unauthorized parties.⁴ The record makes clear that expanding access to DIRS information is a worthy goal, so long as doing so furthers the FCC's objective of using the information only for public safety purposes.⁵

Accordingly, NAB strongly objects to counter-productive proposals that the Commission make DIRS reporting mandatory and make DIRS information available to the public, to the extent these requests apply to broadcast data. DIRS is activated in limited emergency situations, when broadcasters' already-strained resources are dedicated to maintaining or resuming operations in the face of disaster, often at considerable risk to their personal safety. Creating mandatory obligations would further stretch these resources and potentially subject broadcasters to pointless enforcement actions. Further, due to the sensitive nature of DIRS information and the intended purpose of collecting such information, NAB urges the Commission to enact measures that will shield DIRS data from unauthorized public access.

II. BROADCASTERS' PARTICIPATION IN DIRS SHOULD REMAIN VOLUNTARY

Some commenters urge the Commission to make participation in DIRS mandatory.⁶ Making DIRS participation mandatory for broadcasters would do little to further the goals of DIRS and impose undue burdens on broadcasters in times of emergency. Since its inception, DIRS has been a voluntary web-based reporting system for the status of a broad range of communications services, including broadcast services, during severe weather situations and

⁴ Comments of CTIA, PS Docket No. 15-80, at 10 (Apr. 30, 2020); Comments of NTCA – The Rural Broadband Association, PS Docket No. 15-80, at 2-3 (Apr. 30, 2020); AT&T Comments at 7.

⁵ Second FNPRM at ¶ 2.

⁶ See Comments of Free Press, PS Docket No. 15-80, at 3 (Apr. 30, 2020) (Free Press); Comments of the Massachusetts Department of Telecommunications and Cable, PS Docket No. 15-80, at 3 (Apr. 30, 2020) (proposing that the FCC “either: 1) stop waiving NORS reporting obligations for providers reporting through DIRS, or 2) make DIRS reporting mandatory.”).

other emergencies. Broadcasters are proud of their role as First Informers⁷ during natural disasters and understand that participation in DIRS has several benefits, including allowing the FCC and public safety authorities to assess and coordinate assistance to broadcasters impacted by an emergency. For example, reporting their operational status in DIRS has helped some broadcasters obtain a generator, fuel and other supplies needed to maintain or restore service. Information in DIRS also helped to facilitate critical support from the Commission and FEMA to radio stations in Puerto Rico that were knocked off the air by Hurricane Maria. Consequently, broadcasters have voluntarily and routinely reported their status in DIRS each and every time the database has been activated, and no additional mandate to report is necessary.

The Commission itself has noted that, “[w]hile DIRS reporting has been voluntary, in practice there is strong industry participation.”⁸ The Commission also has addressed the reasoning behind the voluntary, incentive-based nature of DIRS, when proposing to extend the outage reporting requirements in Part 4 of the rules to Voice over Internet Protocol (VOIP) service providers and broadband Internet Service Providers (ISPs).⁹ The Commission noted “significant differences” between the purposes of DIRS and a mandatory outage reporting system. The FCC explained that “DIRS is a reporting system for use in disasters where it is important to have maximum flexibility in the types of information requested. DIRS is rarely

⁷ See Randy J. Stine, *Broadcasters Now Guaranteed Access to Disaster Areas*, TVTechnology (March 27, 2018) (The 2018 Consolidated Appropriations Act gave broadcasters First Informer status by updating the definition of “essential service providers” to include radio or television broadcasting services.).

⁸ *The Uniendo a Puerto Rico Fund and the Connect USVI Fund; Connect America Fund; ETC Annual Reports and Certification*, 33 FCC Rcd 9109, 9176, (2019).

⁹ *Extending Outage Reporting to Interconnected Voice over Internet Protocol Service Providers and Broadband Internet Service Providers*, Notice of Proposed Rulemaking, 26 FCC Rcd 7166 (2011).

activated, and the urgent events that lead to its activation tend to motivate communications providers to cooperate in providing the information that is needed to support the Federal response.”¹⁰ In contrast, the FCC determined that mandatory routine outage reporting was necessary for VOIP and ISP providers because of the importance of the reliability and resiliency of broadband communications for the Nation's 9-1-1 system and overall emergency response.¹¹

Finally, despite the strong incentives for broadcasters to participate in DIRS, and the demonstrated success of the system in facilitating assistance to broadcasters, there may be times during a disaster when broadcasters simply do not have the time, personnel or connectivity to provide the information as requested.¹² If DIRS reporting became mandatory, some broadcasters would be forced to redirect their already-strained, limited resources away from responding to the disaster at hand in order to fill out the DIRS form, merely to avoid Commission enforcement for failing to comply. NAB submits that a broadcaster’s precious time during a disaster is far better spent on maintaining or resuming operations that allow radio and television stations to provide the critical, often life-saving emergency news and information on which Americans rely during times of emergency.

III. INFORMATION REPORTED BY BROADCASTERS THROUGH DIRS SHOULD REMAIN CONFIDENTIAL

Free Press suggests that the public be given greater access to the information provided to the Commission through DIRS in order “to hold telecommunications providers

¹⁰ *Id.* at 7190.

¹¹ *Id.*

¹² See *2017 Atlantic Hurricane Season Impact on Communications Report and Recommendations*, PS Docket No. 17-344, at ¶ 23 (Aug. 24, 2018) (noting that “in Puerto Rico and the USVI, many broadcasters were not even able to report their own inoperability” during Hurricane Irma).

accountable and monitor the communications rights of impacted communities.”¹³

Importantly, Free Press’s claims appear confined to the information provided by telecommunications providers, and broadening public access to information regarding broadcasters would do little to further the commenter’s goals of holding telecommunications providers accountable for outages.¹⁴ Nevertheless, in light of the sensitive nature of the information submitted by broadcasters through DIRS, and the desire to encourage continued broadcaster participation in DIRS, NAB urges the Commission to maintain the confidentiality of broadcasters’ information as proposed in the Second FNPRM.

The Commission repeatedly has recognized the risks of expanding access to DIRS data to the public. When launching the system in 2007, the FCC stated that “the release of this sensitive information to the public could potentially facilitate terrorist targeting of critical infrastructure and key resources. Further, the DIRS filings contain internal confidential information that constitutes trade secrets and commercial or financial information.”¹⁵ In the Second FNPRM, the FCC confirms that these concerns remain valid,¹⁶ and proposes to expand access to such data only to certain eligible state and local authorities on a “need to know” basis to further a specific goal, subject to a comprehensive program for ensuring the confidentiality of the information.¹⁷ The FCC proposes to limit access to the information to certain federal and state agencies that are eligible because they “reasonably require access to the information to prepare for, or respond to, an event that threatens public safety,

¹³ Free Press Comments at 2.

¹⁴ *Id.*

¹⁵ Public Notice, *The FCC’s Public Safety & Homeland Security Bureau Launches Disaster Information Reporting System*, 22 FCC Rcd 16757 (Sep. 1, 2007).

¹⁶ Second FNPRM at ¶ 29 n.49.

¹⁷ *Id.* at ¶ 23.

pursuant to its official duties.”¹⁸ The FCC further clarifies that DIRS information accessed by those agencies “should only be used for public safety purposes.”¹⁹

The need to protect the sensitive information in DIRS must override Free Press’s asserted need for nearly unfettered disclosure of DIRS information.²⁰ As discussed above, broadcasters already have strong incentives to report their status in DIRS. Free Press should not be permitted to use such information to play “gotcha” with communications providers during an emergency when the challenges to maintaining or restoring service are most difficult. Indeed, granting access to DIRS information to groups like Free Press will only serve to chill participation in DIRS, reducing the usefulness of the data and potentially impeding government assistance to broadcasters trying to restore service to Americans during a disaster.

For these reasons, the Commission should reject requests to make DIRS reporting mandatory or make the information that broadcasters report in DIRS publicly available.

Respectfully submitted,

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¹⁸ *Id.* at ¶ 38.

¹⁹ *Id.* at ¶ 23.

²⁰ Free Press Comments at 2.