

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF FREE PRESS

Free Press respectfully submits these comments in response to the Second Further Notice of Proposed Rulemaking in the above-captioned docket.¹ We agree that sharing infrastructure status information provided through the Commission’s Network Outage Reporting System (“NORS”) and Disaster Information Reporting System (“DIRS”) more directly with other federal agencies and state governments “might improve the situational awareness and ability of state and local authorities to respond more quickly to outages impacting their communities and to help save lives.”²

However, access to information is only part of the puzzle. It also matters greatly how the data is collected; how and whether that information is analyzed and verified by the Commission; how it actually reflects, in a timely manner, the realities on the ground in a given area; which stakeholders participate and are trained and prepared to do so; and what unnecessary or potentially dangerous barriers to data are erected by the Commission.

The Commission must consider these questions, in part informed by the long overdue assessment of the resilience of our networks in light of the vulnerabilities exposed by Hurricanes

¹ See *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, PS Docket No. 15-80, Second Further Notice of Proposed Rulemaking, FCC 20-20 (rel. Mar. 2, 2020) (“Second FNPRM”).

² *Id.* ¶ 3; see also *id.* ¶ 15.

Irma and Maria and other disasters, to ensure that the information available to first responders and state and local agencies is useful, timely, and complete.

I. The Commission’s Prioritization of Protecting the Confidentiality of NORS and DIRS Data Shared by Communications Providers Does Not Adequately Account for the Public’s Role in Public Safety.

In this proceeding, the Commission recognizes the vital importance of sharing outage data with those most likely to need it and able to act on it, but nonetheless says that “access to NORS and DIRS must be balanced against a need to safeguard and protect the presumed confidentiality of that information.”³ While acknowledging there could be some valid concerns over disclosure of some aggregated information held by the Commission, Free Press and other public interest commenters have previously rebutted calls to shield service-related information from analysis or independent verification and assessment by other parties.⁴ The Commission should expand access to data related to the status of our communications networks — providing advocates, researchers and the public with a critical mechanism to hold telecommunications providers accountable and monitor the communications rights of impacted communities.

³ *Id.* ¶ 23. Various *ex parte* presentations also discuss the claimed sensitive nature, proprietary interests, and the national security concerns related to public disclosure of NORS and DIRS information. *See, e.g.*, Letter from Jamie Tan, Director, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, PS Docket Nos. 04-35 & 15-80 (filed Nov. 5, 2018) (expressing “concerns with the disclosure of information from network outage reports filed pursuant to Part 4 of the Commission’s rules” because the “location of network outages and their root cause analyses may have significant implications for national security” and because of its “highly competitively-sensitive nature”); *see also* Letter from Robert G. Morse, Associate General Counsel, Federal Regulatory & Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket Nos. 15-80 & 04-35 (filed Nov. 20, 2018).

⁴ *See* Comments of Free Press, WC Docket Nos. 19-195 & 11-10, at 12 n.22 (filed Sept. 23, 2019) (asserting that the Commission “should have a general policy of making the data it collects available to the public[,] . . . except in certain circumstances such as when the data are competitively sensitive[,]” and “the FCC should implement a process to make additional data that is not accessible by the public available to academic researchers and others”).

DIRS can be made more useful, timely, and complete if the Commission orders mandatory participation. The Puerto Rico Telecommunications Regulatory Board (“PRTRB”) indicated earlier in this proceeding that “DIRS should be mandatory” in order to make disaster-related outage information provided by the Commission useful.⁵ We agree, and we recently supported legislation directing the Commission to “issue rules requiring all providers to participate in DIRS.”⁶ Unlike NORS, participation in DIRS is voluntary with the exception of recipients of Stage 2 funding from the Uniendo a Puerto Rico Fund or the Connect USVI Fund.⁷

Participants at the Commission’s workshop more than two years ago, held to “identify critical information needs during disasters and to facilitate access to such information in support of preparedness and response activities,”⁸ also explained that DIRS should be mandatory. For example, Jarrett Devine, Regional Emergency Communications Coordinator for FEMA Region I, said about the existing voluntary regime:

[W]e’ve heard a lot of things today. Folks saying “voluntary.” Folks saying “trend analysis” . . . [.] This is life-safety equipment. We have to do better. Post-disaster, we have an extremely fragile environment with a vulnerable population. This “voluntary” word needs to go away. We have commercial entities selling themselves as public safety grade. If you are going to make a profit saying you are serving the community with public safety grade communications, then you need to be able to prepare an answer and response as

⁵ Letter from Sandra Torres Lopez, Chairwoman, Puerto Rico Telecommunications Regulatory Bureau, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket Nos. 15-80 & 04-35 (filed Nov. 20, 2018); *see also* Second FNPRM ¶ 20.

⁶ *See* Joseph Torres, Free Press & Free Press Action, “Strengthening Communications Networks to Help Americans in Crisis,” before the Committee on Energy & Commerce, Subcommittee on Communications & Technology, 116th Cong. (Feb. 27, 2020) (testimony of Joseph Torres, Senior Director of Strategy and Engagement, Free Press).

⁷ *See Uniendo a Puerto Rico Fund and the Connect USVI Fund*, et al., WC Docket No. 18-143, et al., Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, 9174, 9176-77, ¶¶ 133, 138-140 (2019).

⁸ *See FCC’s Public Safety and Homeland Security Bureau announces the agenda for the April 13, 2018, public workshop to identify critical communications information needs to improve communications during disasters*, Public Notice, DA 18-357 (rel. Apr. 10, 2018).

to where your communications are available. Specifically post disaster response events.⁹

While the current proceeding proposes better access to data, the Commission here strikes a lopsided balance that ignores the public's role in public safety, and the needs of people in outage or disaster affected areas to make informed decisions for the safety of their families and businesses.

After Hurricanes Irma and Maria, the Commission's daily communications status reports, drawn from aggregated DIRS information, were subsequently circulated on social media by the public, and especially used by Puerto Ricans attempting to ascertain their ability to contact friends or family.¹⁰ Further, news coverage of communications disruptions since Hurricanes Irma and Maria have regularly cited DIRS information as an indicator of the severity of damage and accessibility of communications services.

The Commission proposes limits on the public disclosure of data under several circumstances without proposing adequate substitutes or assessing those limits' impact on members of the public.¹¹ We recognize that for areas with four or fewer communication providers, aggregation and anonymization may not prevent competitors or third-parties from determining proprietary information. However, we recommend that the Commission conduct a

⁹ Federal Communications Commission, "Improving Critical Information During Disasters Workshop" (April 13, 2018), <https://www.fcc.gov/news-events/events/2018/04/improving-critical-information-during-disasters> (advance video to 42:30).

¹⁰ Various Facebook groups founded to disseminate news from the islands also regularly disseminated DIRS reports. For example, one group, "Puerto Rico Maria Updates," garnered hundreds of thousands of followers. And a search within this group for "FCC," "communications status," and "DIRS" shows links to the FCC's Hurricane Maria website directing individuals to the communication status report for the day; postings of the reports themselves; or excerpts, graphics and other data from the reports.

¹¹ See Second FNPRM ¶¶ 44-46.

risk assessment, and determine the impact of disparate access to potentially more granular life saving information, assessing which people, communities, and geographic areas would be disproportionately impacted by adopting excess protections for areas precisely because they are under-served and lack choice among carriers.

Only once it has done so can the Commission determine the proper balance and the extent to which data from certain areas might be kept from public view. Yet if it still prevents full publication of aggregate outage information in such areas, the Commission should allow public safety officials, researchers, and public interest representatives to monitor proprietary information under protective orders if necessary. As Commissioner Starks explained in his statement in this proceeding, expanding public access to outage information is in the public interest and critical to protecting people's lives.¹²

In sum, the public needs more information about outages, not less. This kind of information is a matter of life and death in real-time during disasters, and it's also crucial to assessing the resilience of our networks. As we stressed in an earlier filing,¹³ we still do not have sufficient data to address the following open questions about the reliability of outage data, the public's access to it, and carriers' attention to repairing the damage:

- How accurate was information collected by the Commission through DIRS and what insights were gained on how each communications provider restored services?

¹² See, e.g., *id.*, Dissenting Statement of Commissioner Geoffrey Starks, (“Securing and maintaining the confidentiality of [NORS and DIRS] systems remains important, but I believe we can provide adequate protections while still expanding access to this lifesaving and recovery-enhancing information.”).

¹³ Letter from Leo Fitzpatrick, Policy Counsel, & Carmen Scurato, Senior Policy Counsel, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket No. 15-80 (filed Oct. 23, 2019) (“Free Press October 2019 Ex Parte”) (internal quotations and citations omitted).

- How did inaccuracies or lack of access to granular DIRS information for state and local authorities, as well as the public, slow down or impede recovery efforts? And how can the Commission improve accuracy and usefulness of DIRS?
- Should DIRS or any alternative reporting arrangements continue to be entirely voluntary?
- How did Puerto Ricans use and rely on DIRS information to make decisions for their families or businesses?
- Were the supposed benefits of keeping DIRS voluntary, to incentivize provider participation, effective for this purpose in the aftermath of Hurricanes Irma and Maria?¹⁴

We continue to believe that those lingering questions would be best resolved by an independent panel, closely scrutinizing both the Commission's response and an industry that has worked very hard to avoid the blame for its failures in Puerto Rico. But mandating DIRS participation by carriers, and making that information public as broadly as possible, is essential too.

II. The Commission's Continued Failure to Fully Examine the Communications Outage After Hurricanes Irma and Maria in Puerto Rico Must be Considered in this Proceeding to Ensure a More Fulsome Record.

In the weeks and months following Hurricanes Irma and Maria, the public safety communications systems failures and the attendant lack of access to life-saving information contributed greatly to between 3,000 to 5,000 deaths.¹⁵ The near-total blackout of

¹⁴ See Letter from Frank Pallone, Chairman, U.S. House Committee on Energy and Commerce, to Gene Dodaro, Comptroller General, U.S. Government Accountability Office at 2-3 (Oct. 3, 2019).

¹⁵ See New England Journal of Medicine, "Mortality in Puerto Rico after Hurricane Maria" (July 12, 2018).

communications exacerbated the suffering and death toll,¹⁶ making Hurricane Maria one of the deadliest disasters in U.S. history, and severely hindered recovery work.¹⁷

Free Press has previously commented in numerous proceedings to explain that the Commission must fully examine the events in Puerto Rico in order to adequately understand the vulnerabilities that exist in our communications networks.¹⁸ We stressed the need to hold public

¹⁶ See Milken Institute School of Public Health, George Washington University, “Ascertainment of the Estimated Excess Mortality from Hurricane Maria in Puerto Rico” (2018); Nishant Kishore *et al.*, “Mortality in Puerto Rico after Hurricane Maria,” 379 *New Eng. J. Med.* 162, 162-170 (2018); see also Nidhi Prakash, “A New Study Says Nearly 6,000 Died In Puerto Rico After Hurricane Maria. The Government Still Says 64 People Died,” *BuzzFeed News* (May 29, 2018) (noting that the collapse of cell networks “prevented many people from seeking help if they were unwell,” and that those “who relied on home oxygen and dialysis machines or refrigeration for diabetes medication were left vulnerable, cut off from medical professionals and unable to call for help”); Danica Coto, “Puerto Rico Unveils New Emergency Preparations After Maria,” *Associated Press* (Sept. 11, 2018) (noting installation of direct emergency lines to nursing homes to address fact that many people who died as a result of Maria were elderly).

¹⁷ See, e.g., Federal Emergency Management Agency, “2017 Hurricane Season FEMA After-Action Report” (2018) (FEMA conveyed its struggle, along with other federal agencies, “to gain situational awareness and assess the status of critical infrastructure, in part due to communications outages across Puerto Rico”); Danica Coto, “Puerto Rico Lures Tech Developers as Hurricane Season Looms,” *Associated Press* (Mar. 20, 2019) (quoting Nazario Lugo, president of Puerto Rico’s Association of Emergency Managers, who said that the “biggest crisis after Maria was communication. . . . [T]hat unleashed an endless number of problems”).

¹⁸ See Free Press October 2019 Ex Parte; Letter from Joseph Torres, Free Press, to Marlene H. Dortch, Secretary Federal Communications Commission, PS Docket No. 18-339 & WC Docket Nos. 09-197, 11-42 & 17-287 (filed Dec. 17, 2018); Letter from Carmen Scurato, Free Press, to Federal Communications Commission (filed Nov. 8, 2018); Letter from Matthew F. Wood, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 18-143 & 17-287; PS Docket No. 17-344, MB Docket No. 17-318 (filed Oct. 29, 2018); Letter from Center for Media Justice, Collective Action for Puerto Rico, Color Of Change, Defend Puerto Rico, Free Press, May First/People Link, et al., PS Docket No. 17-344 & WC Docket No. 18-143 (filed Sept. 20, 2018); Comments of Free Press, PS Docket No. 17-344, *et al.* (filed Sept. 17, 2018); Letter from Joseph Torres, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-144 (filed July 20, 2018); Letter from Carmen Scurato, National Hispanic Media Coalition, PS Docket No. 17-344 & WC Docket No. 17-287 (filed May 25, 2018); Comments of National Hispanic Media Coalition & Free Press, PS Docket No. 17-344 & WC Docket No. 17-287 (filed Apr. 17, 2018); Comments of Free Press, WC Docket Nos. 17-287, 11-42 & 09-197 (filed Feb. 21, 2018); Letter from

hearings in affected areas — in Puerto Rico — so Puerto Ricans directly impacted by the loss of communications services on the islands could inform the agency’s policies, as opposed to relying on the assurances of self-interested communications providers.

Though the Commission neglected to analyze fully what happened in Puerto Rico in 2017 and since then, less than a week after Category 4 Hurricane Michael made landfall in Florida 2018, Chairman Pai directed his agency to investigate the failure of communications providers to restore service quickly.¹⁹ He demanded that some communications providers disclose to Florida residents how they planned to restore service. The Commission acknowledged that communications providers’ interests do not always align with the public’s interests and public safety needs. While the Commission took some promising steps to oversee communications providers’ failings and spur them to action after Michael, a thorough and independent investigation of Hurricane Maria by the Commission could have provided a wealth of lessons to avoid such communications providers’ failures in the first place.²⁰

Indeed, we see in the Second FNPRM a continued failing to fully examine the disasters in 2017. The Commission describes this item as “part of [its] overarching effort to promote the

National Hispanic Media Coalition, Center for Media Justice, Color of Change, Free Press & Public Knowledge, to Ajit Pai, Chairman, Federal Communications Commission (filed Oct. 6 2017).

¹⁹ See “Statement of Chairman Pai on Hurricane Michael Restoration Efforts,” Press Release (rel. Oct. 16, 2018).

²⁰ *Compare Public Safety and Homeland Security Bureau Seeks Comment On Hurricane Michael Preparation and Response*, PS Docket No. 18-339, Public Notice, 33 FCC Rcd 11239, 11241 (rel. Nov. 16, 2018) (asking “[w]hat do service providers believe were the obstacles to restoring communications systems almost a week after Hurricane Michael”), *with Public Safety and Homeland Security Bureau Seeks Comments on Response Efforts Undertaken During 2017 Hurricane Season*, PS Docket No. 17-344, Public Notice, 32 FCC Rcd 10245, 10247 (2017) (asking about the “major causes for communications outages due to the hurricanes” but remaining silent on causes for a months-long service restoration).

reliability and redundancy of communications service in the United States.” It suggests this is all part of a comprehensive re-examination of the Wireless Resiliency Cooperative Framework, and the ongoing work of the Broadband Deployment Advisory Committee and the Communications Security, Reliability, and Interoperability Council VII. It also notes the Public Safety and Homeland Security Bureau’s investigation into “the preparations for and impact of [] Hurricane Michael on communications services” and the Bureau’s request to some mobile service providers regarding their preparations for electric power shut-offs and wildfires in California, as well as outreach with communications and electric industry stakeholders to assess lessons learned.

These are all lessons that could have been learned, or at least greatly informed by, a truly comprehensive review of the Commission’s and carriers’ responses to Puerto Rico, to one of the longest and most extensive communications outages in modern U.S. history. That the Commission is still fumbling for answers like this in an ambiguous passing mention is striking.²¹

III. The Commission Proposal to Condition Access to Critical Public Safety Information on Issues Related to 911 Fee Diversions May Create Unacceptable Tradeoffs for Public Safety.

The Second FNPRM asks whether it should consider additional criteria to determine which entities can access NORS and DIRS filings²² and asks whether to “exclude from eligibility agencies located in states that have diverted or transferred 911/Enhanced 911 (E911) fees for purposes other than 911/E911.” We take no position on the merits of other substantive proposals for addressing the issue of 911 fee diversion — acknowledging the serious harms these diversion

²¹ See Letter from Ajit Pai, Chairman, Federal Communications Commission, to Rep. Yvette D. Clarke, U.S. House of Representatives (filed Feb. 14, 2020) (suggesting that telecommunications providers learned lessons from Hurricane Maria that allowed them to restore service more quickly following these earthquakes, without reference to what those lessons were or where Congress or the public should go to find them if they indeed exist).

²² See Second FNPRM ¶ 26.

may have for public safety²³ — and instead express our concerns with the combination of these two issues in the instant proceeding. The proposal would set a dangerous precedent in two respects: it would place the Commission in a position of potentially withholding life-saving information, and impair safety twice over when communities’ safety was significantly diminished by both the absence of critical information and the ongoing impacts of fee diversion.

Conclusion

As we experience repeated stress to our communications networks from hurricanes, wildfires, earthquakes, and other natural events — as well as the significant uptick in our reliance on those networks due to the COVID-19 pandemic — the Commission must consider more than the present questions in this proceeding and conduct a comprehensive review of the accuracy and sufficiency of the NORS and DIRS outage reporting systems for all stakeholders, including the public.

Respectfully Submitted,

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April 30, 2020

²³ See Letter from Luis M. Benítez-Burgos, Staff Representative, Telecommunications & Technologies, Communications Workers of America, to Geoffrey Starks, Commissioner, Federal Communications Commission 1-2 (filed Feb. 25, 2020) (explaining that “the lack of a structured plan, infrastructure, and funds made emergency communications a challenge[,]” during Hurricanes Irma and Maria, and that fee diversion meant “[t]he [Puerto Rican] 9-1-1 bureau didn’t have any reserves to be able to respond adequately to our citizens”).