Opposition of the

Alliance for Telecommunications Industry Solutions

The Alliance for Telecommunications Industry Solutions (ATIS) submits this Opposition to the Petition for Reconsideration (Petition) of the California Public Utilities Commission (CA PUC), filed May 28, 2021, in the above-referenced docket. In the Petition, the CA PUC urges the Federal Communications Commission (Commission) to reconsider its decision in the May 18, 2021, Second Report and Order (Second R&O) to maintain the presumption of confidentiality for information contained in Network Outage Reporting System (NORS) and Disaster Information Reporting System (DIRS) filings. As explained more fully below, ATIS opposes this Petition and urges the Commission to reject it.

I. Background

ATIS is a global standards development and technical planning organization that develops and promotes worldwide technical and operations standards for information, entertainment, and communications technologies. ATIS’ diverse membership includes key stakeholders from the Information and Communications Technologies (ICT) industry – wireless, wireline, and VoIP service providers, equipment manufacturers, broadband providers, software developers, consumer electronics companies, public safety agencies, and internet service
providers. ATIS is also a founding partner and the North American Organizational Partner of the Third Generation Partnership Project (3GPP), the global collaborative effort that has developed the 4G Long-Term Evolution (LTE) and 5G New Radio (NR) wireless specifications. Nearly 600 industry subject matter experts work collaboratively in ATIS’ open industry committees and incubator solutions programs.

ATIS’ Network Reliability Steering Committee (NRSC) was formed in 1993 at the recommendation of the Commission’s first Network Reliability and Interoperability Council. The NRSC strives to improve network reliability by providing timely consensus-based technical and operational expert guidance to all segments of the public communications industry. The NRSC addresses network reliability improvement opportunities in an open environment and advises the communications industry through the development of standards, technical requirements, reports, bulletins, best practices, and annual reports. The NRSC is comprised of industry experts with primary responsibility for examining, responding to, and mitigating service disruptions for communications companies. The NRSC also collaborates with public safety associations and works with the Commission to provide input on NORS and DIRS. NRSC participants are the industry subject matter experts on communications network reliability and outage reporting.

I. **Opposition to CA PUC Petition**

ATIS does not believe that the CA PUC has satisfied the requirements for the granting of a petition for reconsideration. As explained in Section 1.429 of the Commission’s rules, a petition for reconsideration will be granted only under the specific circumstances:

1. The facts or arguments relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;
(2) The facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts or arguments relied on is required in the public interest.

The CA PUC claims it satisfies these requirements because the Commission did not seek input on this issue, it had not completed its own confidentiality analysis before the last comment period, and circumstances have “significantly changed”\(^1\) since the adoption of the Commission’s Part 4 rules. As explained below, ATIS disagrees that the CA PUC has satisfied the requirements in Section 1.429 and accordingly asks the Commission to reject this Petition.

A. Input on this Matter was Considered by the Commission

ATIS does not believe that the facts or arguments relied on by the CA PUC relate to events or circumstances that have changed since the last opportunity to present such matters to the Commission or that these facts or arguments were unknown to CA PUC. The Second FNPRM sought information on the proposed extension of the presumption by requiring that participating state and federal government agencies treat NORS and DIRS filings as confidential unless the Commission finds otherwise. \(^2\) There was ample opportunity for CA PUC to raise this issue and, in fact, the CA PUC did raise it, recommending in its comment that “[t]he FCC should consider revisiting its presumption of confidentiality for all information contained in NORS/DIRS filings.”\(^3\) The argument was clearly known to CA PUC and was, as noted by both CA PUC and the Commission, also raised by other parties and the Commission considered these arguments in its Second R&O and was unpersuaded by them. \(^4\)

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\(^1\) CA PUC Petition at p. 4.  
\(^2\) Second FNPRM at ¶28.  
\(^3\) CA PUC Comments to Second FNPRM at p. 9.  
\(^4\) Second R&O at ¶46.
Nor in ATIS’ opinion is it fair to read the *Second FNPRM* or *Second R&O* as a refusal by the Commission to take comments on the issue of the presumption of confidentiality. While the Commission notes that it did not seek comment on the question of which fields contain sensitive data, it does so in the context of addressing comments questioning the presumption of confidentiality. The Commission notes that it is unpersuaded by these comments, noting that “no commenter provides practical guidance on how to distinguish at an operational level those reports that contain sensitive national security information (or sensitive business information) from those that do not.” Moreover, the Commission further notes that the commenters failed to address the possibility that a collection of NORS and DIRS filings may implicate national security by reflecting patterns.

**B. The Underlying Facts Have Not Changed**

The CA PUC has also failed to explain what facts have changed that would require the Commission to revisit the presumption of confidentiality. When the Commission adopted this presumption, its decision was based on the nature of the information being sought. While the Commission has modified its rules over the years, it has never changed the type of information that must be reported. Service providers must still report sensitive data such as: the direct and root cause of the outage, the duration of the disruption; the range and types of services affected, the scope and gravity of the impact across all platforms and geographic area; specific equipment failures; the specific network element impacted; remedial measures; and an appraisal of the effectiveness of Best Practices. ATIS does not believe that the CA PUC’s review of a limited subset of outage reports that have been made available to it is sufficient for it to justify the

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5 CA PUC Petition at p. 4 (“Accordingly, the CPUC urges the FCC to reconsider its decision not to take comments on the issue of whether its presumption of confidentiality of NORS and DIRS filing should be maintained.”)  
6 Second R&O at ¶46.  
7 Id.
conclusion that the information in NORS/DIRS is too general to warrant confidential treatment. ATIS NRSC members have filed a significant number of NORS and DIRS reports over the past 17 years and can confirm that many of these reports do contain sensitive data.

CA PUC also fails to explain how the threat that hostile parties could use outage information to attack the Nation’s critical information infrastructure has diminished over the past 17 years. There remain bad actors who could misuse sensitive information, and publicly disclosing sensitive outage data would only make it easier for these actors to do bad things. It is hard to see how information, such as the specific equipment that has failed and whether there are any deficiencies in Best Practices, would not pose a threat if released publicly.

C. Public Disclosure of Outage Reporting Data Will Not Promote Public Safety

ATIS strongly disagrees with the CA PUC that the public disclosure of outage reporting information would promote national security. ATIS NRSC notes that CA PUC does not explain how the public disclosure of outage data would “better protect public safety” but simply provides examples of where similar data has been made public. It does not demonstrate how this public disclosure improved public safety or how it is more effective at promoting public safety than the current rules, which permit access to this information by relevant Federal and state agencies. ATIS believes that the current rules more effectively protect public safety by allowing access by appropriate regulatory bodies but restricting this information from access by potential bad actors.

ATIS further notes that, contrary to CA PUC’s claims, public disclosure of sensitive outage data may actually decrease the utility of reports. Under the current rules, providers can and do voluntarily share information. ATIS agrees with the Commission that a rollback of the

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8 It will never be known how many bad actors have been thwarted by the existing rules or how many would be emboldened to act should the rules change.
9 CA PUC Petition at pp. 19-20.
Commission’s presumption of confidentiality would discourage providers from voluntarily taking meaningful incremental steps to make more information available.¹⁰

Public disclosure of outage reporting is not necessary to promote public safety or national security. The Communications sector works closely with associations, state, and federal agencies in a variety of forums to review major events and outage trends while analyzing them for potential vulnerabilities. These forums include ATIS NRSC, National Coordinating Center for Communications (NCC) Comm ISAC, Communications Sector Coordinating Council, the Commission’s Communications Security, Reliability and Interoperability Council, NCTA – The Internet & Television Association, NTCA – The Rural Broadband Association, CTIA, Society of Cable Telecommunications Engineers, Emergency Support Function #2 (ESF-2), and Emergency Support Function #14 (ESF-14).

D. Public Disclosure of Outage Reporting Data Will Not Promote Competition

ATIS also strongly disagrees with the CA PUC that disclosing outage information would promote competition.¹¹ Nor is it the goal of the Part 4 rules to promote competition; the purpose of the NORS reporting requirement is to advance network reliability and restoration. Moreover, ATIS believes that the disclosure of outage information would be harmful to competition because NORS and DIRS reports contain information that could be misunderstood. Under the Commission rules, providers are required to report outages within minutes of discovery of an outage.¹² These notifications may relate to outages not caused by the provider who submits the outage report and/or may relate to disruptions that may not actually impact consumers. Additionally, in many cases, outages have nothing to do with network reliability.

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¹⁰ Second R&O at ¶47.
¹¹ CAP PUC at pp. 20-22.
¹² 47 CFR §4.9.
Natural/manmade disasters may impact one provider’s network more significantly based purely on geography, unrelated to network reliability or resiliency measures. If the public were to see this data, it may unfairly draw conclusions about the reliability or performance of specific service providers. The Commission’s current outage reporting rules are focused on providing actionable information to regulatory authorities that have the training and expertise to understand the data and its limitations. Making this same information available to the public, who do not have this training or expertise, could significantly and negatively impact competition, or public perception of the efficacy of the activities of the state and federal government in addition to perceptions of overall network reliability.

E. If the Commission Reverts to its Original Policy on Public Disclosure, It Should Revert to its Original Policy Regarding Voluntary Reporting

Finally, the CA PUC urges the Commission to abandon all confidentiality presumptions and revert to its original policy of disclosure of NORS reports. ATIS notes that this “original” policy on public disclosure of outage reports was in place only when the Commission’s outage reporting requirements were voluntary. ATIS NRSC recommends that, if the Commission were to revert to original policy regarding this matter, it should also revert to its original policy of voluntary outage reporting.

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13 ATIS believes that there is no way to make outage data public without revisiting what information must be reported and when it should be reported.
14 CA PUC Petition at 23.
II. CONCLUSION

ATIS NRSC opposes the CA PUC Petition. ATIS NRSC does not believe that granting this Petition would serve the public interest, but instead would pose significant harm to critical information infrastructure and competition.

Respectfully submitted,

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