

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

In the Matter of)	
)	
Resilient Networks)	PS Docket No. 21-346
)	
Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications)	PS Docket No. 15-80
)	
New Part 4 of the Commission's Rules Concerning Disruptions to Communications)	ET Docket No. 04-35
)	
To: The Commission		

**JOINT COMMENTS OF THE
STATE BROADCASTERS ASSOCIATIONS**

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December 16, 2021

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The Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of

Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the “State Associations”) by their attorneys in this matter, hereby file these Joint Comments in response to the Commission’s Further Notice of Proposed Rulemaking released October 1, 2021 in the above-captioned proceeding.¹

INTRODUCTION AND SUMMARY

The State Associations are pleased to participate in this important proceeding. In many states, the State Associations are the foundation and principal provider of resources to their State

¹ See *In the Matter of Resilient Networks, Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications, and New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Notice of Proposed Rulemaking, PS Docket No. 21-346, PS Docket No. 15-80, and ET Docket No. 04-35, FCC 21-99 (“*NPRM*”) (rel. Oct. 1, 2021). These Joint Comments are timely filed pursuant to the revised comment deadline established by the Commission in *In the Matter of Resilient Networks, Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications, and New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Order Granting Extension of Time, PS Docket No. 21-346, PS Docket No. 15-80, and ET Docket No. 04-35, DA 21-1483 (rel. Nov. 30, 2021).

Emergency Communications Committee (“SECC”), with the head of the respective State Association in many cases serving as Chair of their state’s SECC as well. As a result, few organizations have greater familiarity with State EAS Plans and their creation and implementation, and few private organizations have broader experience in dealing with the myriad obstacles to maintaining communications to the public during an emergency. For these reasons, the State Associations support proceedings like the present one, which is aimed at protecting communications capabilities in an emergency.

Having said that, the most important lesson the State Associations have learned in confronting emergencies is the importance of maintaining flexibility while maximizing limited resources. In that regard, the questions raised in the *NPRM* with regard to adding broadcasters to the Wireless Network Resiliency Cooperative Framework (“Framework”) is a classic example of trying to fit a square peg into a round hole (or more specifically, a one-to-many content provider into a Framework designed for monitoring and maintaining common carrier network infrastructure).² As discussed below, there would be no benefit to such a move, and it would instead merely burden precious staff resources that are a fraction of what common carriers can bring to bear in such circumstances.

Similarly, making participation in the Disaster Information Reporting System (“DIRS”) mandatory for broadcasters would, for the numerous reasons discussed below, provide little useful information to the Commission that it doesn’t already possess, while actually interfering with broadcasters’ ability to meet the public’s needs in an emergency. Unlike wireless providers, where maintaining a functional network is *the* critical task, broadcasters must deploy far more limited resources to not just maintain technical operations, but to gather and report emergency

² *NPRM* at ¶ 16.

news and information in the disaster area. An operational station that is unable to marshal its resources to gather and transmit news and information in an emergency is of little value to anyone. However, that is the situation a station will face since its staff (likely made leaner by the emergency) will at some point have to choose between deploying those resources to meet mandatory filing obligations, or for newsgathering and dissemination of that information.

That impact is aggravated by the fact that, unlike large wireless network operators that will have employees located far outside the disaster area to make DIRS filings, individual broadcast stations are likely to be filing such reports from the disaster area itself, and if they lack power and or Internet connections at the station, a mandatory DIRS filing obligation becomes impossible to meet.

There are, however, steps the Commission can instead take that would, with the assistance of DIRS, help ensure continuous broadcast service during emergencies. These are principally connected to ensuring the availability of fuel for station generators and guaranteeing broadcast employees the access to disaster areas needed to keep their stations functioning. These important objectives and their implementation are discussed in more detail below.

I. Making Broadcast Stations Participants in the Framework Would Have No Benefit, and Any Limited Benefit of Making DIRS Reports Mandatory for Broadcasters Would Be Outweighed by the Associated Diversion of Critical Resources

A. Including Broadcasters in the Framework Would Serve No Useful Purpose

As the name itself indicates, the Wireless Network Resiliency Cooperative Framework is about *networks*. It ideally facilitates cooperation between parties operating such communications networks (generally telecommunications common carriers) to (a) share their resources to restore

service as quickly as possible in discrete areas where another Framework participant's network is down, and (b) through roaming arrangements, allow a participant whose network has failed to continue providing service to its customers through the use of a competitor's still-functioning network. The Framework's essential goal is to maintain the public's common carrier communications connectivity in an emergency, even where a portion of that public is the customer of a common carrier whose network is down. As a result, the main features of these common carrier cooperation arrangements are allowing another common carrier's customers to access the functioning networks of other carriers, and, where possible, making lineworkers available to work on restoring a competitor's network when they are no longer needed for repairs on their own employer's network.³

Given that, it is fairly obvious that making broadcasters part of the Framework would be helpful to neither the common carrier network operators, nor to broadcasters. Broadcasters do not have large crews of lineworkers (or any lineworkers for that matter) to lend to common carriers to install new utility poles, string new cable, or repair network systems. Nor do broadcasters have wireless or wired networks that common carriers can borrow as a means of restoring service to customers of a common carrier whose network is down. Conversely, if a broadcaster's tower collapses in a hurricane, an army of lineworkers is not going to be particularly helpful in getting that station back on the air.

³ See *NPRM* at ¶ 8 (“The Framework commits its participants to five prongs: providing for reasonable roaming arrangements during disasters when technically feasible; fostering mutual aid during emergencies; enhancing municipal preparedness and restoration; increasing consumer readiness and preparation; and improving public awareness and stakeholder communications on service and restoration status.”).

In such circumstances, broadcasters have time and again worked together during disasters to keep their stations on the air and delivering emergency information.⁴ Whether it is lending broadcast engineers to repair a transmitter, providing a spare studio so a station whose studio has been flooded can keep delivering news to its viewers,⁵ or even allowing a station to temporarily deliver its content to the public via a competitor's multicast channel after an antenna failure, broadcasters have found that the flexibility inherent in these voluntary arrangements has worked extremely well over the years to keep stations on the air and serving the public. In each of the examples above, the key is working cooperatively to determine who can spare a broadcast engineer, has extra studio space, or has the spectrum capacity for an additional multicast.

Attempting to formalize these voluntary arrangements through the Framework, the bulk of whose participants have none of the above capabilities or capacities, will merely reduce the current flexibility and slow down the process of restoring broadcast service to the public. The *NPRM's* contemplation of mixing broadcast station apples with common carrier network oranges via the Framework would be helpful to neither group, and would merely complicate the task of a damaged station quickly finding the broadcast apple it needs to restore service from among a pile of common carrier oranges.

⁴ See, e.g., *Comments of National Public Radio, Inc.*, PS Docket No. 21-346 (filed Dec. 6, 2021) at 3-4 (citing specific examples of cooperation between public radio and network television stations during recent weather emergencies); *Reply Comments of National Association of Broadcasters*, PS Docket No. 17-344 (filed Feb. 21, 2018) at 6-7 (citing specific examples of station cooperation during the 2017 hurricane season).

⁵ See *New Beginnings for KHOU 11, 18 Months After Harvey* (Feb. 15, 2019) (<https://www.khou.com/article/news/khou-11-is-moving-on-up-to-the-west-side/285-e0910f7b-32f1-44d4-8881-958ee83ac6c0>) (last visited Dec. 3, 2021).

B. Making DIRS Filings Mandatory for Broadcasters in an Emergency Would Divert Critical Resources With Little Benefit

Just as there are consequential differences between broadcast stations and common carrier networks that make them a poor fit for participating in a mutual aid Framework, the Commission's Disaster Information Reporting System is designed primarily to monitor failures in the common carrier networks to facilitate cooperation and coordination in restoring common carrier service to the public.⁶ While broadcasters have been included as voluntary DIRS participants since its inception, broadcast service is fundamentally different in an emergency from common carrier networks.

For example, when a portion of the Verizon Wireless network goes down in an emergency, it is important for the FCC to know where that outage is and to facilitate roaming and repair arrangements with other wireless common carrier network operators to restore service quickly. The reason is that in the absence of a roaming arrangement, having Verizon cell towers fail largely cuts off Verizon Wireless customers in that area from all cellular service, leaving them unable to communicate with the outside world, even if they are standing at the base of an operating T-Mobile tower.

In contrast, when a broadcast transmitter/tower becomes inoperable, the public will typically have numerous alternative broadcast information sources available at the turn of a knob or push of a button; the public isn't cut off from broadcast service even if multiple broadcast

⁶ See *NPRM* at ¶ 5 (“In 2007, in the wake of Hurricane Katrina, the Commission established DIRS as a web-based means for service providers, including wireless, wireline, broadcast, and cable providers, to voluntarily report to the Commission their communications infrastructure status, restoration information, and situational awareness information specifically during times of crisis.”).

stations in the area suffer equipment failure.⁷ In addition, as noted above, broadcasters have a long history of mutual cooperation in emergency situations, and unlike lineworkers sent in from distant places, broadcasters' personnel live and work in the area, so local stations are far better positioned than the FCC or anyone else to know which competing local station has the equipment/personnel/resources needed to provide assistance. In such a circumstance, stopping to file a DIRS report only slows the process of locating the needed resources to get the station back on the air.

Moreover, if the cause of the station failure is a hurricane-induced power outage that has also affected wireless service,⁸ such a station might not even be able to access the Internet and DIRS. Unlike a common carrier with hundreds or thousands of employees, a number of which are located outside the disaster area, many stations will have no one outside the station, much less the disaster area, to submit such filings. As the Commission knows well from station EEO filings, a significant number of stations have fewer than five full-time employees, and many more have fewer than eleven full-time employees. During a disaster where some employees' homes are destroyed or endangered, or where employees can't physically reach the station because of storm damage, that station will be operating with less than its full contingent of employees, making those employee resources even more precious.

Add on to that the fact that those employees' mission is not merely to keep the station's technical facilities functional, but to gather emergency news and information and to present it on

⁷ Even in the very rare scenario where the failed station is literally the only station that was serving the area, any FCC effort to facilitate cooperation among broadcasters to expedite repairs would likely be futile, since in such a situation, there is by definition no other nearby broadcaster to render such cooperation and assistance in the disaster area.

⁸ See, e.g., *NPRM* at ¶ 11 (“Immediately after the storm, 28.1 percent of cell sites were down across the affected counties. Louisiana was hardest hit in this respect, with more than 50 percent of sites down in the affected counties on August 30.”).

air for the public, and it is easy to understand how making DIRS filings mandatory actually interferes with, rather than assists, stations in serving the public during such dire circumstances. As recently quoted by Poynter following the widespread tornado damage in Kentucky, the news director of WPSD-TV, Paducah, Kentucky noted:

We have big sections of whole towns gone. We don't even know how bad some places were hit. We have [news] crews everywhere, and they were already exhausted before this.⁹

DIRS certainly has its place and can be useful for broadcasters in certain situations discussed below, but imposing a universal mandatory filing requirement for broadcast stations would often interfere with getting emergency information out to the public more than it would assist with it.

In that regard, DIRS has limitations as it pertains to broadcasters, and is in some ways redundant with other Commission mechanisms triggered in such circumstances. For example, if a station is knocked off the air or is unable to operate at its licensed parameters, it must already submit a notification to the Commission if it appears it will not be able to resume normal operations within ten days.¹⁰ If it can only operate with modified parameters (e.g., at lower power), the licensee must seek Special Temporary Authority from the FCC to do so. To be clear, FCC staff have been spectacular in moving quickly to grant such requests during an emergency, but such submissions are made through other Commission channels, not through DIRS. So to the extent the FCC wishes to be notified when a station is dark or unable to transmit at its licensed parameters, the FCC already has mechanisms in place requiring such notifications, and additional mechanisms for granting Special Temporary Authority to permit a station to operate

⁹ *Exhausted Journalists Are Rising to the Kentucky Tornado Disaster* (Dec. 11, 2021) (<https://www.poynter.org/reporting-editing/2021/exhausted-journalists-are-rising-to-the-kentucky-tornado-disaster>) (last visited Dec. 14, 2021).

¹⁰ See 47 C.F.R. §§ 73.1740(a)(4) and 73.1560(d).

with alternate parameters during an emergency. In light of these mechanisms, DIRS reporting is often redundant, and therefore not necessarily the best use of station (or Commission) resources when an emergency strikes.

II. DIRS Has an Important Role to Play for Broadcasters, But One Which Would Be Undercut by Making DIRS Reporting Mandatory

The State Associations wish to make clear that the discussion above is not intended in any way to diminish DIRS itself. DIRS has an important role to play in promoting continuity of broadcast service, but it is a much different role than DIRS might have with regard to wireless common carrier networks in a disaster area. Because of this, the issue is not DIRS, but any proposal to make DIRS reporting mandatory for broadcast stations. Where a station is operational but running with a skeleton staff in a disaster area, stepping back from keeping the station operational, gathering news and emergency information, and getting that information to the public, merely in order to file a DIRS report saying “all good here” diverts station resources with no upside for the public and a limited informational benefit to the FCC (since there is nothing the FCC can or needs to do).

In that regard, such mandatory filings in DIRS are akin to the FCC’s former use of FCC Form 317 (the Annual DTV Ancillary/Supplementary Use Services Report). For many years, all TV stations were required to file it annually even though only a tiny percentage of stations had any Ancillary/Supplementary revenues to report. Recognizing the enormous inefficiencies of that approach, the Commission stopped requiring all TV stations to file the form annually, and

instead required only those stations that provided such services in the past year to file it.¹¹ While there might be a benefit to the FCC hearing from a wireless provider that its network remains fully operational (letting the FCC know that network could handle roaming duties for a damaged competitor and that the filer might have idle lineworkers available to assist in repairing a competitor's network), no such benefit accrues with regard to broadcast stations. A DIRS report from a broadcaster containing an "all good" message provides little actionable information to the FCC. The principal effect of flooding DIRS with such reports is to merely make it harder for the FCC to spot the reports of stations that actually are actively seeking help.

Even where a station goes dark, in most cases the public will still have ready access to numerous alternate broadcast signals. As a result, notifying the FCC via DIRS of such equipment failure (particularly where, in most equipment failure situations, there is very little the FCC can do about it) has limited utility, especially if the resources spent trying to file a DIRS report could be better spent by the broadcaster trying to repair or replace the failed equipment, or seeking Special Temporary Authority from the FCC to operate with alternate facilities.

The benefit of DIRS with regard to broadcast stations is therefore less about making sure the FCC has reams of reports indicating the status of each and every station than about ensuring the FCC is made aware of situations where it is in a position to help. While there may be relatively little the Commission can do where a station suffers disaster-related equipment failure, as Polly Prince Johnson, President/CEO of the Louisiana Association of Broadcasters, recently testified at the Commission's *Virtual Field Hearing on Improving Communications Resiliency*

¹¹ See *Amendment of Section 73.624(g) of the Commission's Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services*, Report and Order, 33 FCC Rcd 3702, 3704-05 (2018).

During Disasters,¹² the Commission has a big role to play in ensuring stations have ready access to fuel for generators to keep those stations on the air during power outages, and that station employees have the necessary access to disaster areas to keep their station operating and delivering emergency news and information to the public.¹³

As the *NPRM* itself notes, widespread power outages are by far the most likely source of a communications outage.¹⁴ Because of the importance of staying on the air under even extreme circumstances, a great many stations have backup generators that keep them operating during power outages. That makes broadcast stations extremely resilient in disaster areas as long as their tower remains standing and the station is above water. They can operate indefinitely as long as the station has continued access to fuel for its generator, and station employees can reach the station and transmitter site to perform their duties. However, the State Associations can bear witness to a number of occasions when state or local officials, and sometimes even federal officials, not only failed to assist stations in obtaining fuel, but prevented station employees and fuel deliveries from reaching a station located in a disaster area.

¹² See *FCC Announces Agenda for October 26 Virtual Field Hearing on Improving Communications Resiliency and Recovery During Disasters*, Public Notice (rel. Oct. 19, 2021).

¹³ See *Message to FCC From Radio: Broadcasters Need Better Access to Fuel During Disasters*, Inside Radio, Oct. 27, 2021 (http://www.insideradio.com/free/message-to-fcc-from-radio-broadcasters-need-better-access-to-fuel-during-disasters/article_55baf298-36f4-11ec-91d9-57ade19b2b8a.html) (last visited Dec. 2, 2021).

¹⁴ *NPRM* at ¶ 34 (“NORS and DIRS data collected by the Commission in the aftermath of Hurricane Ida and other recent disaster events reveal that a lack of commercial power at key equipment and facilities is the single biggest reason why communications networks transmitting 911 service and related emergency information fail in the aftermath of disaster events. For example, the Commission’s DIRS data show that the majority of cell site outages in the immediate aftermath of Hurricane Ida’s central disaster region were due to a lack of commercial power availability. More generally, Commission analysis of DIRS data shows that over 50% of cell site outages that occurred during major 2020 earthquakes, hurricanes, and storms were due to power failures.”).

While the State Associations recognize that the federal government may have limited abilities to force uncooperative state and local officials to work with broadcasters, such officials are unlikely to interfere with federal deliveries of fuel, even where they might block a private delivery of fuel arranged by a broadcaster. It is here where the benefits of a voluntary DIRS can shine if implemented properly. Instead of serving as a mandatory reporting system, DIRS is far more valuable as a mechanism for stations seeking resources that the FCC can provide in a disaster area. Consider the following four scenarios:

1. Station has power from the electrical grid and is operating (at least from a technical standpoint) normally. There isn't much the FCC can or need do other than wish the station well.
2. Station's tower has collapsed and the station is off the air. Again, there isn't likely much the FCC can do to get the station back on the air again during the emergency that the station isn't already pursuing on its own.
3. Station is operating normally from a technical perspective, but is running on a generator. It has 36 hours of fuel left and needs assistance in securing more fuel, or has arranged for a fuel delivery but has learned the fuel delivery is being prevented by law enforcement personnel who have blocked off the area in which the station is located.
4. Same situation as Scenario 3 above, but law enforcement is also blocking the station's essential employees from reaching the station or its transmitter site to maintain operations.

In Scenario 1, mandatory DIRS filings would divert precious resources from station operations while providing little actionable information to the FCC. Having such stations make mandatory filings would merely increase the total number of such filings, making it harder for Commission staff to locate the DIRS filings from stations actually seeking FCC assistance.

In Scenario 2, the non-operational station will be notifying the FCC pursuant to Section 73.1740(a)(4) of the FCC's Rules that it is dark, and will shortly file a request for Special

Temporary Authority to remain dark until an alternate tower can be located. A mandatory DIRS filing would be redundant with these submissions.

In Scenarios 3 and 4, the station would make a voluntary filing in DIRS seeking the Commission's assistance. The filing does not get lost in a sea of mandatory DIRS filings by fully-operational stations, and the FCC can focus its limited resources on these cases where help is needed and is being requested.

For these reasons, the State Associations respectfully urge the FCC to leave the existing system of voluntary participation in DIRS in place for broadcasters. It strikes an excellent balance between gathering sufficient information to assist stations in need while not unnecessarily burdening other stations as they work to maintain operations and serve the public.

Far more useful than mandatory filings in terms of promoting communications resiliency in future disasters would be expanding efforts by the FCC to work with other federal (and for that matter, state and local) agencies to refine the processes for providing fuel to stations and access to the station and its transmitter site to station personnel during an emergency. Part of that effort will need to be educational. While the letters of passage provided to stations by the Cybersecurity and Infrastructure Security Agency have been helpful in promoting station employee access during an emergency, state and local officials in some states have accepted them, and in other states have not. Establishing DIRS-based fuel and personnel protocols and then educating officials now as to their importance during an emergency will be the best way of protecting broadcast service during a disaster.

Ideally, stations needing assistance can channel those requests through voluntary filings in DIRS, triggering a precise response from the FCC and the rest of the federal government that all state, local and federal officials in a disaster area acknowledge and understand. The State

Associations, which have been instrumental in obtaining laws in many states granting “First Informer” status to broadcasters in an effort to overcome exactly these obstacles during disasters, would be happy to work with the FCC in that effort. The State Associations recognize that given the wide diversity of law enforcement, public safety, and other personnel from a variety of jurisdictions that may be present in a disaster area, accomplishing this may not be a simple task. However, it is the single most important element for ensuring resilient and continuous broadcast service to the public during emergencies.

CONCLUSION

For the numerous reasons discussed above, the Commission should reject any consideration of including broadcast stations in the Framework, which is focused on communications networks rather than one-to-many technologies like broadcasting. Similarly, the current system of voluntary DIRS participation for broadcasters strikes the correct balance between providing the FCC with helpful, actionable information while minimizing unnecessary administrative burdens on stations struggling to meet the needs of the public during an emergency. Making such reporting mandatory would upset that delicate balance. The highest and best utilization of DIRS as it relates to broadcast stations is as a form of FCC helpline for those situations where the FCC can provide assistance in an emergency, such as facilitating station access to fuel during power outages, and working with public officials to ensure station employees can reach their station and its transmitter site during an emergency. The State Associations would be pleased to work with the Commission in facilitating such planning,

outreach and education, which is essential if these important goals are to be achieved under the stresses of emergency conditions.

Respectfully submitted,

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