

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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

COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS

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**COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

**I. INTRODUCTION AND SUMMARY**

The National Association of Broadcasters (“NAB”)<sup>1</sup> submits comments on the above-captioned Second Further Notice of Proposed Rulemaking, in which the Commission proposes to require that all broadcast stations file reports in the Disaster Information Reporting System (DIRS), when that system is activated.<sup>2</sup> The proposals in the Second Further Notice would not only reverse the successful voluntary approach to filing DIRS reports, but impose a new obligation on broadcasters to file reports in the Commission’s Network Outage Reporting System (NORS) when service is disrupted by technical issues instead of a disaster.<sup>3</sup> NAB appreciates the opportunity to provide feedback on behalf of

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

<sup>2</sup> *Resilient Networks; Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications; New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Second Report and Order and Second Further Notice of Proposed Rulemaking, PS Docket Nos. 21-346 and 15-80; ET Docket No. 04-35 (rel. Jan. 26, 2024) (Second Report and Order or Second Further Notice), at ¶¶ 41-48.

<sup>3</sup> Second Further Notice at ¶ 49.

Americans' most trusted source for timely, detailed news and information during times of emergency.<sup>4</sup>

In a nutshell, while clearly well-intentioned, the proposals in the Second Further Notice will likely hinder broadcasters' ability to serve the public rather than help it. Policymakers should want broadcasters above all to focus on providing critical, life-saving news and information in real time when disasters strike. Mandatory reporting during emergencies can only serve to distract broadcasters from this mission with no discernable public benefit. It would be one thing if broadcasters relied heavily on the FCC during times of emergency, but that is simply not the case.

In the 2021 NPRM that preceded the Second Report and Order and Second Further Notice, the FCC sought comment on requiring all communications services providers to file DIRS reports as a means to improving the FCC's situational awareness during disasters, among other issues.<sup>5</sup> In the Second Report and Order, the FCC made DIRS reporting mandatory for certain communications providers.<sup>6</sup> In the Second Further Notice, the FCC considers extending mandatory DIRS reporting and NORS reporting to broadcasters and other entities.<sup>7</sup>

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<sup>4</sup> Megan Brenan, *Local News Media Considered Less Biased Than National News*, Gallup (Nov. 8, 2019); TVB Press Release, *Study of Key Battleground States Reveals Critical Role of Local TV Ads in 2020 Election Results*, businesswire (Dec. 8, 2020), available at <https://news.gallup.com/poll/268160/local-news-media-considered-less-biased-national-news.aspx>.

<sup>5</sup> *Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Notice of Proposed Rulemaking, 36 FCC Rcd 14802, 14813-15 (2021) (2021 NPRM).

<sup>6</sup> Second Report and Order at ¶¶ 11-24.

<sup>7</sup> Second Further Notice at ¶ 39-76 (proposing to extend mandatory DIRS and NORS reporting also to satellite providers and broadband Internet access providers).

Distinguishing broadcasters is appropriate. Unlike other communications providers, radio and television stations cannot simply pass through to subscribers the costs of additional regulatory requirements. Any funds required to implement mandatory DIRS reporting will reduce broadcasters' ability to produce local news and other highly valued content, *including their ability to inform the public during times of crisis*. Broadcasters are also different from other communications providers because they must gather and report timely news and information about a disaster as a situation unfolds. More paperwork obligations as proposed in the Second Further Notice will distract station staff from this core responsibility and possibly risk harm to lives or property by disrupting a station's coverage of a disaster. Moreover, local broadcasters are differently situated from, for example, wireless providers, as the latter do not face any immediate consequences if their service goes down. Broadcasters, on the other hand, must compete for consumers' trust and attention, and if unable to deliver timely, detailed information about a disaster because they are tied up trying to file a DIRS report, stations will immediately lose viewers and listeners to other sources. In addition, DIRS reporting can be uniquely challenging for broadcast stations because broadcasters have limited scale due to FCC regulations, and thus many stations have very few employees compared to their cable, broadband, and wireless counterparts. For many broadcasters, the same individual who is tasked with filing DIRS and NORS reports is also responsible for keeping the station operational.<sup>8</sup>

In the Second Further Notice, the FCC asserts that too many stations, particularly small and medium-sized stations, choose not to voluntarily file DIRS reports, leaving a gap in the Commission's awareness of broadcasters' status during a disaster that could hinder

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<sup>8</sup> The FCC itself notes this distinction in deferring the matter of mandatory DIRS filing for broadcasters to the Second Further Notice. Second Further Notice at ¶ 22.

emergency response efforts of the Commission and other agencies that receive the DIRS data.<sup>9</sup> The FCC also states that the claimed information gaps resulting from the existing approach could affect the ability of emergency response officials to widely disseminate information.<sup>10</sup> The FCC believes that mandatory DIRS and NORS reporting would fill these gaps. However, these concerns and conclusions discount certain realities.

*First*, some broadcasters choose not to file DIRS reports because doing so rarely, if ever, leads to any government actions that help a station maintain or restore service.<sup>11</sup> *Second*, as mentioned, many stations have very small staffs who simply may not have the bandwidth to log in and file a DIRS report during a disaster. *Third*, any additional data collected through mandatory reporting will be of limited value as relatively few broadcast stations go down during a disaster, and most large stations already file reports that provide a sufficient picture of broadcasting status in an area. Finally, mandatory DIRS and NORS filing will not change the distribution of Emergency Alert System (EAS) warnings or how emergency management officials provide emergency information because authorities already distribute such information as widely as possible. The FCC's cost-benefits analysis of mandating DIRS and NORS reporting, which rests largely on enhancing the FCC's "situational awareness," does not justify the proposed requirements.

Instead of adding more paperwork obligations, the FCC should focus on steps that would actually help stations, such as assisting broadcasters in gaining access to fuel,

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<sup>9</sup> *Id.* at ¶¶ 43 and 45.

<sup>10</sup> *Id.* at ¶ 45.

<sup>11</sup> Comments of NTCA – The Rural Broadband Association at 9-10, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Dec. 16, 2021) (NTCA Comments) (noting similar concerns).

cellular service, and their facilities during a disaster.<sup>12</sup> If the Commission is primarily concerned about small and medium-sized providers, it should target outreach and assistance to these entities during times of emergency.<sup>13</sup> The Commission previously sought comment on whether to require broadcasters to file DIRS reports in the 2021 NPRM.<sup>14</sup> Commenters in that proceeding suggested several impactful actions the FCC could take, all of which the FCC unfortunately ignores in the Second Further Notice in favor of more DIRS paper-pushing.

If the Commission still feels compelled to mandate DIRS reporting, it must at the very least simplify the system. Reporting that a station is unaffected by a disaster should be a “one-click” process, and if possible, DIRS should be made mobile-friendly so that broadcasters can easily update their status from a smartphone. The FCC should also refrain from any enforcement actions against broadcasters that make reasonable efforts to file either DIRS or NORS reports.<sup>15</sup> Lastly, NAB submits that the Commission should track the effectiveness of mandatory DIRS and NORS reporting in terms of how often such filings actually help a station maintain or restore service, and periodically revisit its justification for these new obligations in light of this data.<sup>16</sup>

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<sup>12</sup> Comments of National Public Radio at 7, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Dec. 16, 2021) (NPR Comments); Joint Comments of the State Broadcasters Associations at 12-13, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Dec. 16, 2021) (NASBA Comments).

<sup>13</sup> Comments of ACA Connects at 5-7, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Dec. 16, 2021) (ACA Comments).

<sup>14</sup> 2021 NPRM, 36 FCC Rcd at 14802-04.

<sup>15</sup> Comments of AT&T Services at 18, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Dec. 16, 2021) (AT&T Comments).

<sup>16</sup> The FCC grossly underestimates the time needed to file DIRS and NORS reports. NPRM at note 84. The FCC’s estimate of ten minutes per report is ludicrous, especially for NORS, because, in addition to figuring out the cause of the disruption, stations will need to run certain entries by management and legal counsel before filing.

Finally, NAB explains that mandating NORS reporting for brief outages would be unnecessary and burdensome because there is nothing the FCC can point to that it would do differently with this information in hand.

## **II. MANDATING DIRS REPORTING WOULD BE UNNECESSARY AND COUNTER-PRODUCTIVE**

### **A. The Value of Filing DIRS Reports is Uncertain**

Broadcasters serve their local communities as First Informers during times of emergency<sup>17</sup> Compared to Big Tech and many telecom providers, radio and television stations are embedded in local communities and provide their neighbors with hyper-local emergency news and information. For example, during the deadly Lahaina wildfire last summer, KHON-TV, which is based in Oahu, flew a crew into the teeth of the disaster as soon as it learned about the fire, despite the uncertainty of the early EAS messages issued by authorities. By the next day, they had three news crews on the ground. Kristina Lockwood, General Manager of station, stated that most of the population lives on the main island, but the local TV stations serve the entire state, “so when something happens on the neighbor islands, we are there.”<sup>18</sup> For the same reasons, in May 2023, emergency response officials in Guam directed residents to tune to local radio stations for the latest updates about Super Typhoon Mawar.<sup>19</sup>

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<sup>17</sup> Congress codified broadcasters’ status as “First Informers” in the Consolidated Appropriations Act, 2018. Pub. L. 115–141, §302, 132 Stat. 348 (2018). In turn, broadcasters are designated as an “essential service provider” in the Stafford Act, which entitles them to access federal disaster sites to restore service. Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 100-707, 42 U.S.C. § 5189e(a).

<sup>18</sup> Paul Greeley, *How KHON Covered the Lahaina Fire*, TVNewsCheck (Aug. 28, 2023) available at <https://marketshare.tvnewscheck.com/2023/08/28/how-khon-hawaii-covered-the-lahaina-fire/>.

<sup>19</sup> *JIC Release No. 19 - Seek Immediate Shelter; Super Typhoon Mawar Update; USCG Update; Local Radio Stations Providing Updates*, Guam Homeland Security Office of Civil



Broadcasters prepare for emergencies throughout the year. They practice disaster response plans, pre-arrange the sharing of equipment and programming with neighboring stations, if needed, and work with emergency managers to facilitate communications when disaster strikes. Stations also supplement their on-air emergency news with information on their websites and social media. These efforts, together with the reliable one-to-many architecture of broadcast service, allow stations to provide emergency news even when cell phone and wireless networks go down, such as in Hawaii when cell service was unavailable to many residents in the path of the wildfires.<sup>20</sup>

In the 2021 NPRM record, the vast majority of commenters who addressed the matter of mandatory DIRS reporting recommended keeping the current voluntary approach.<sup>21</sup> Even APCO International, the only commenter with actual public safety expertise that the FCC cited in the Second Report and Order as supportive of mandatory DIRS filing, only referenced telecoms reporting, not broadcasters, and even then was fairly lukewarm on the FCC's approach: "While ECC's generally require more timely and detailed information that is provided in NORS and DIRS, improving the information in these important systems will be helpful. . . ."<sup>22</sup> Similarly, the self-styled "public interest" groups the FCC cited in

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Defense, Press Release (May 24, 2023) available at <https://www.ghs.guam.gov/jic-release-no-19-see-immediate-shelter-super-typhoon-mawar-update-uscg-update-local-radio-stations>.

<sup>20</sup> Kelly Hill, *FCC: 95% of cell sites out in areas affected by Maui's wildfires*, RCR Wireless News (Aug. 14, 2023), available at <https://www.rcrwireless.com/20230814/public-safety/fcc-95-of-cell-sites-out-in-areas-affected-by-maui-wildfires>.

<sup>21</sup> Comments of the National Association of Broadcasters at 3-8, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Dec. 16, 2021) (NAB Comments); NPR Comments at 6-8; Comments of REC Networks at 6-9, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Dec. 16, 2021) (REC Comments).

<sup>22</sup> Comments of APCO International at 4, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Dec. 16, 2021) (APCO Comments).

support also focused on reporting by telecom providers, not broadcasters,<sup>23</sup> or worse, seemed unaware that broadcasters already participate in DIRS.<sup>24</sup> Nevertheless, the FCC discounts every fact-based concern provided by on-the-ground communications operators to reach its seemingly pre-determined conclusion in the Second Further Notice that DIRS and NORS reporting should be mandatory for broadcasters.

The Commission asserts that voluntary DIRS reporting reduces the completeness and accuracy of the DIRS data that it shares with other agencies, potentially reducing the effectiveness of emergency responders.<sup>25</sup> The FCC also notes that in the Second Report and Order it mandated DIRS reporting for certain other communications services providers, and states that imposing a similar mandate on broadcasters would produce a “unified mandatory reporting system [that] could minimize duplication of efforts and enable [response] authorities to allocate resources efficiently.”<sup>26</sup>

With all due respect to the critical work of emergency response officials during disasters, NAB is unaware of any instances when a DIRS filing led to government assistance that helped a radio or television station obtain fuel, repair a transmitter or studio, or otherwise maintain or restore service (although some authorities have sought to assist after direct requests from a local station). If there are any, the FCC should cite them. We realize

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<sup>23</sup> Reply Comments of Free Press at 9-10, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Jan. 14, 2022) (Free Press Reply Comments).

<sup>24</sup> Reply Comments of Public Knowledge at 14, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Jan. 14, 2022) (PK Reply Comments) (“As the Commission considers changes to EAS, now would be an ideal time for the Commission to initiate a new proceeding to determine how to incorporate broadcast into the DIRS system.”).

<sup>25</sup> Second Further Notice at ¶ 45.

<sup>26</sup> *Id.* at ¶ 46.

that emergency response officials may rightfully devote their resources during a disaster toward rescue efforts and the restoration of health, power, water, and other vital services.

In comments on the 2021 Notice, NAB, NTCA, and NCTA all questioned the tangible benefits to providers of DIRS reporting,<sup>27</sup> to which the FCC responded in the Second Report and Order that such contentions “are contradicted by a significant factual record identified in the 2021 [NPRM] and in the Commission’s Disaster Communications Fall 2021 Field Hearing.”<sup>28</sup> However, the examples cited by the FCC reveal nothing of the kind. For example, FCC points to information in the 2021 NPRM that “Commission personnel communicated with the Louisiana Association of Broadcasters to determine unmet fuel, communications, and power needs of state broadcasters and to facilitate the provision of much needed resources and services.”<sup>29</sup> However, this communication apparently did not result from DIRS reporting and consisted of a phone call from a Commission staffer to the state association, and another call to FEMA on behalf of the association. Although the FCC staffer’s outreach was appreciated, their effort did not lead to any such “much needed resources and services.”<sup>30</sup> The FCC also cites testimony by a public interest advocate who supports more coordination among telecom providers in advance of a disaster and recommends changes

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<sup>27</sup> NAB Comments at 6-7; NTCA Comments at 9-10; NCTA Comments at 8-9; Reply Comments of NCTA – The Internet & Television Association at 16, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Jan. 24, 2021) (NCTA Reply Comments).

<sup>28</sup> Second Report and Order at ¶ 18 citing FCC, Disaster Communications Field Hearing, (Oct. 26, 2021) (2021 Field Hearing), <https://www.fcc.gov/disaster-communications-field-hearing>.

<sup>29</sup> 2021 NPRM, 36 FCC Rcd at 14807.

<sup>30</sup> See also NASBA Comments at 12 (“However, the State Associations can bear witness to a number of occasions when state or local officials, and sometimes even Federal officials, failed to assist stations in obtaining fuel, but prevented station employees and fuel deliveries from reaching a station located in a disaster area.”).

to the Wireless Emergency Framework, but this advocate provided no examples of government actions that helped broadcasters restore service.<sup>31</sup>

### **B. Mandatory DIRS Reporting Could Decrease Public Safety**

Mandatory DIRS reporting may run counter to the Commission’s over-arching purpose of “promoting safety of life and property through the use of wire and radio communications.”<sup>32</sup> The Commission is primarily interested in increasing its situational awareness of small and medium-sized entities, given that most larger providers already participate in DIRS,<sup>33</sup> and seeks comment on whether the benefits of requiring small broadcasters to file DIRS reports outweighs the costs.<sup>34</sup> The answer is decidedly no. Small broadcasters are least equipped to step away from their core duties during a disaster to gather the needed information, log into DIRS, and file reports.<sup>35</sup> Thousands of radio stations can only afford to employ a limited number of employees so that, at many of these stations the individual who is responsible for maintaining or restoring operations during a disaster is also responsible for DIRS reporting. Broadcasters, especially small and medium-sized stations, must be allowed to focus their limited resources during a disaster on the safety of their staff, restoring operations, and reporting emergency news to the public. A daily requirement to file DIRS reports could disrupt such efforts. As REC Networks states, small stations should not be “bogged down” with a daily paperwork burden, especially to merely report that all is well.<sup>36</sup>

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<sup>31</sup> Testimony of Harold Feld at 3-4, Public Knowledge, FCC Field Hearing on Network Resiliency, PS Docket Nos. 21-346, 15-80, ET Docket No. 04-35 (Oct 26, 2021).

<sup>32</sup> Second Further Notice at ¶ 1 note 1 citing 47 U.S.C. § 151.

<sup>33</sup> *Id.* at ¶ 45.

<sup>34</sup> *Id.*

<sup>35</sup> NCTA Reply Comments at 18; NTCA Comments at 9.

<sup>36</sup> REC Comments at 6.

NAB also agrees with NASBA that requiring DIRS may reduce the system's effectiveness by drowning out reports from stations in dire need in a sea of reports from unaffected stations.<sup>37</sup> The existing voluntary process highlights for FCC and other agencies stations in dire need of assistance. If the stated purpose of DIRS is to notify the FCC and response officials of situations where they may be of help,<sup>38</sup> requiring stations unaffected by a disaster to file DIRS reports would not be helpful.

### **C. Mandatory DIRS Reporting Will Not Significantly Improve Situational Awareness**

As NPR noted, requiring all broadcast stations to file DIRS reports will not meaningfully enhance the FCC's awareness because relatively few broadcast stations go off the air during emergencies.<sup>39</sup> Broadcasting is built on a relatively simple, reliable architecture that is uniquely resilient during a disaster, and stations ensure continuous service through redundant facilities, such as backup or mobile antennas, auxiliary transmission sites, alternative studio facilities, and backup power sources like solar panels or generators and stored fuel.<sup>40</sup> Moreover, most larger communications providers, including broadcasters, already file DIRS reports under the existing voluntary system because they have the resources to do so.<sup>41</sup> Thus, the FCC and other agencies already collect information through DIRS sufficient to assess the state of communications in a specific area hit by a disaster. Requiring all broadcasters to file DIRS reports, especially smaller stations that may

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<sup>37</sup> NASBA Comments 13-14.

<sup>38</sup> Second Report and Order at ¶ 16 (“DIRS data associated with an impacted area is of particular importance, since it . . . enables the optimization of the allocation, prioritization, and deployment of response and restoration personnel and resources.”).

<sup>39</sup> NPR Comments at 7.

<sup>40</sup> *Building resilient infrastructure for disaster recovery in radio broadcasting*, Utilities One (Nov. 6, 2023), available at <https://utilitiesone.com/building-resilient-infrastructure-for-disaster-recovery-in-radio-broadcasting>.

<sup>41</sup> Second Further Notice at ¶ 9.

reach only a portion of a market, would only modestly supplement the actionable data that is already available,<sup>42</sup> and certainly not be enough justify the burden on small entities to file DIRS reports.

**D. Mandating DIRS Filings Will Not Affect Emergency Authorities' Dissemination of Emergency Warnings or Information**

The Commission discusses the important role of broadcasters in disseminating Emergency Alert System (EAS) warnings and providing timely news about disasters and the status of public infrastructure, services, and emergency response efforts.<sup>43</sup> The FCC posits that the current voluntary DIRS system may leave gaps in the FCC's awareness of stations that may not be transmitting EAS alerts or government announcements during a disaster.<sup>44</sup> The FCC believes that mandating DIRS will close these gaps and facilitate a coordinated effort to disseminate emergency information effectively.<sup>45</sup>

The FCC's concerns are unfounded because it is hard to imagine that any additional information collected under a mandatory DIRS regime will prompt any changes to the government's response. We understand that more timely information may be useful when a wireless carrier's network fails, so the FCC can facilitate roaming arrangement with other carriers.<sup>46</sup> However, broadcasting is different. Unlike telephone service, consumers have alternatives when a local radio or television station is knocked off air. Numerous other stations usually remain operational, providing coverage of the event at hand and transmitting EAS alerts and announcements from emergency response authorities.

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<sup>42</sup> ACA Comments at 10.

<sup>43</sup> Second Further Notice at ¶ 42.

<sup>44</sup> *Id.* at ¶ 43.

<sup>45</sup> *Id.* at ¶ 45.

<sup>46</sup> NASBA Comments at 7.

Regarding EAS, it is unclear why alert originators would change their process because a few local stations are down. Government authorities trigger EAS alerts based on the nature of an event, not how a message will be disseminated. The only possible exception may be when an EAS Primary Entry Point or Local Primary station goes down, affecting the EAS monitoring assignments of stations down the chain. However, this is a rare situation, and to our knowledge, such stations already file DIRS reports under the current approach and also use other means to notify FEMA and other officials that service has been disrupted.

Similarly, we do believe that having such information would change the way officials distribute emergency announcements. In our experience, emergency managers already try to disseminate such updates (e.g., evacuation or shelter-in-place instructions) as widely as possible. Governors do not grant “exclusives” when it comes to informing the public about a disaster. Moreover, we understand that many stations already make voluntary arrangements to share emergency news programming if one station goes down, to help ensure public access to emergency information.<sup>47</sup>

Thus, although NAB appreciates the FCC’s well-intentioned proposal, we do not believe that merely enhancing the FCC’s “situational awareness” of broadcasters’ status during a DIRS activation is reason enough to overhaul the longstanding, successful voluntary process. Doing so will not produce any tangible benefits for broadcasters or the public, while imposing more paperwork burdens on broadcast staff during times when they should be focused on maintaining their facilities and reporting the latest emergency news.

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<sup>47</sup> Comments of the National Association of Broadcasters at 7-9, EB Docket No. 04-296 (May 28, 2014).

### III. INSTEAD OF ADDITIONAL INFORMATION COLLECTIONS, THE FCC SHOULD FOCUS ON ACTIONS THAT WOULD HELP BROADCASTERS MAINTAIN SERVICE AND SIMPLIFY FILING

There are several steps the FCC could take to promote public safety that would be more productive than requiring more paperwork. Most importantly, the FCC could help facilitate broadcasters' access to power following a disaster.<sup>48</sup> The FCC has noted that the number of events that cause power failures has increased in recent years,<sup>49</sup> and that lack of power is the most common cause of communications services outages.<sup>50</sup> Although many stations invest in back-up generators and maintain fuel reserves that allow them to operate for several days, there are often prolonged weather events that can outlast the a station's fuel reserves, such as Hurricane Ian, which left more than half a million businesses and residents without power for five days in the Fort Myers area in 2022.<sup>51</sup> Polly Prince Johnson of the Louisiana Association of Broadcasters highlighted these challenges at the FCC's 2021 Field Hearing.<sup>52</sup> NAB has previously asked the FCC to coordinate with state and local emergency managers to help prioritize fuel access and restoring electricity for broadcasters.<sup>53</sup> Even a simple email or phone call to the right official could make a difference to stations in need.

Commenters have also urged the FCC to consider ways to help broadcasters access their studios and transmitters during emergencies. For example, the FCC should educate

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<sup>48</sup> NPR Comments at 7.

<sup>49</sup> 2021 NPRM, 36 FCC Rcd at 14815.

<sup>50</sup> *Id.*

<sup>51</sup> *Power Outages After Hurricane Ian*, NASA Earth Observatory (Sep. 30, 2022), available at <https://earthobservatory.nasa.gov/images/150431/power-outages-after-hurricane-ian>.

<sup>52</sup> Testimony of Polly Prince Johnson, President/CEO, Louisiana Ass'n of Broadcasters, FCC Field Hearing on Network Resiliency, PS Docket Nos. 21-346, 15-80, ET Docket No. 04-35 (Oct 26, 2021), at 1-2.

<sup>53</sup> NAB Comments at 13-14.



state and local emergency managers about facilitating such access when presented with the courtesy “Access Coordination Letter” that the Cybersecurity and Infrastructure Security Agency issues during certain events.<sup>54</sup> The news and information that broadcasters provide is never more important than during an emergency, and any Commission effort to help stations perform this critical function would be welcome.

Finally, NAB supports ACA’s suggestion that the FCC should try to assist small and medium-sized entities during emergencies. The FCC should work with other agencies on a process for contacting such entities prior to a storm’s arrival and invite their participation in response efforts.<sup>55</sup> The Commission could also share emergency best practices with small operators and staff a dedicated hotline for small broadcasters who need help during an emergency.<sup>56</sup>

These and other useful suggestions were all submitted in the record on the 2021 NPRM but ignored in both the Second Report and Order and Second Further Notice in favor of more information reporting obligations. If the FCC’s end goal is to better allow emergency responders to help broadcasters restore operations during a disaster, the FCC’s first step should be to reduce the frequency of broadcasters needing such aid.

**A. Implementing Mandatory DIRS Should Be Contingent on Certain Improvements to the System**

The FCC should streamline DIRS reporting. In the Second Further Notice, the Commission seeks comment on creating a “simplified reporting requirement,” but in the next breath seeks comment on proposed new rules that would require broadcasters to (1)

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<sup>54</sup> *Id.*, ACA Comments at 4 and 9; NCTA Comments at 5 and 9; see *also* <https://www.cisa.gov/resources-tools/resources/cisa-access-coordination-request-letter>.

<sup>55</sup> ACA Comments at 6.

<sup>56</sup> *Id.* at 6.

notify the FCC within 24 hours of going silent, (2) notify the FCC within 24 hours of resuming service, (3) notify the FCC if a station's EAS alerting capabilities have been impacted, (4) notify the FCC if a station's access to IPAWS has been affected even if the station is still on the air, (5) file additional DIRS reports when service via translators or boosters is affected,<sup>57</sup> and (6) file after actions reports within 24 hours following a DIRS deactivation.<sup>58</sup>

Shifting to mandatory filing will require changes to the system. Above, NAB describes the challenges that small and medium-sized stations face during a disaster and why mandatory DIRS reporting could reduce public safety by distracting station staff from their core duties. NAB submits that broadcasters should be able to file DIRS reports through a one-click process that indicates whether they are operational or not. Stations that are inoperable should have the choice whether to provide additional information about the problem and request assistance.

The FCC should also create a DIRS app or a more mobile-friendly website that would allow filings by stations that only have access to the internet via a smartphone.<sup>59</sup> The FCC should also reduce the number of entries needed to complete a DIRS filing,<sup>60</sup> and modify the system to automatically populate a filer's stations in the covered counties into a grid that would allow a filer to provide the requested data about individual stations through a simple box-checking process. NAB agrees with NCTA that it can be challenging for filers to gather and report the necessary information by the next morning when DIRS is activated late in the day. We support NCTA's proposal that DIRS activations before noon should request filings by

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<sup>57</sup> Second Further Notice at ¶ 49.

<sup>58</sup> *Id.* at ¶¶ 77-79.

<sup>59</sup> REC Comments at 8; NAB Comments at 8-9.

<sup>60</sup> NAB Comments at 8-9.

10:00 a.m. the following day, and activations after noon should request filings by 4:00 p.m. the following day.<sup>61</sup>

Regarding potential enforcement, NAB endorses AT&T's argument that mandatory reporting should be based on a "best efforts" standard and there should be no penalty for failure to meet any deadlines established for specific events.<sup>62</sup> REC and NAB have both noted the obstacles to filing that small and medium-sized stations face during disasters, with REC explaining that some small stations may not comply with a mandatory filing requirement, subjecting them to potentially high fines from the FCC's often untethered Enforcement Bureau that could force them out of business.<sup>63</sup>

The Commission in the Second Report and Order agrees with claims by Free Press that the Commission can partially manage filers' burdens filing through its authority to waive mandatory DIRS requirements on a case-by-case basis.<sup>64</sup> The FCC states that, in "situations instances where extraordinary circumstances prevent filing due to operational limitations," providers should call the Operations Center or otherwise notify the Commission if they are unable to file, and make a filing as soon as they are capable, but no later than the final report due upon deactivation of DIRS.<sup>65</sup>

This *ad hoc* approach provides little comfort, and not merely because Free Press has no real-world expertise whatsoever in the demands on communications providers during a disaster. In recent years, the Enforcement Bureau has imposed increasingly crippling fines

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<sup>61</sup> Letter from Steven F. Morris, NCTA, to Ms. Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (Jan. 18, 2024).

<sup>62</sup> AT&T Comments at 18.

<sup>63</sup> NAB Comments at 2-3; REC Comments at 7 and 9.

<sup>64</sup> Second Report and Order at ¶ 17 citing Free Press Reply Comments at 9-10.

<sup>65</sup> *Id.*

on broadcasters for simple paperwork violations, including for isolated instances of inadvertent, self-disclosed mistakes. For example, earlier this year, the FCC fined a radio station \$26,000 for failure to upload one EEO Annual Public File Report on time, even though the station created the report on time but failed to upload it because of staff turnover, no one noticed that the report was delayed, and the station voluntarily disclosed the mistake.<sup>66</sup> It also unclear what kind of “extraordinary” circumstances would excuse a timely DIRS filing. NAB believes the better approach is for the FCC to clearly codify that DIRS filers will *not* be subject to enforcement penalties if they made reasonable efforts to comply given their personnel resources and the severity of the disaster at hand. As stated above, this would be a reasonable approach given that stations already have every incentive to try to maintain operations and reach out for help if needed.

The confidentiality of DIRS data filed by broadcasters should also be enhanced. In the Second Report and Order, the Commission rejected calls by Public Knowledge and others for public disclosure of outage information reported in DIRS by telecom carriers.<sup>67</sup> The Commission noted the existing presumption of confidentiality that applies to such DIRS data, and stated that public disclosures of this data are “already made on an aggregated basis, providing a level of transparency to consumers to effectuate the primary purpose of DIRS – the collection and dissemination of disaster specific outage impact information.”<sup>68</sup> The FCC found that shifting from voluntary to mandatory reporting is not a compelling reason to change that presumption of confidentiality.

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<sup>66</sup> *Cumulus Licensing LLC*, Forfeiture Order, File No.: EB-IHD-20-00031223 (rel. Jan. 15, 2024).

<sup>67</sup> Second Report and Order at ¶ 24.

<sup>68</sup> *Id.*

However, no such presumption exists for broadcasters' DIRS data. The daily public communications status reports issued by the FCC list the operational status of individual radio and television stations by call letters,<sup>69</sup> while showing the status of other kinds of providers by the number of inoperable cell sites in a county or the number of cable subscribers without service. An individual broadcast station's status during an emergency may be competitive information. The FCC should instead publish broadcast-related DIRS data in an anonymous manner (e.g., "15% of FM radio stations in [the affected counties] report being out of service") or permit filers to opt out of public disclosure of their DIRS information. This approach would enhance consistency across telecommunications sectors, and still fulfill the purpose for DIRS.

Finally, the Commission goes to great mathematical lengths to justify its proposal to mandate DIRS filing.<sup>70</sup> However, the Commission makes no attempt to quantify the benefits, stating only that mandatory DIRS reporting would fill an information gap that hinders the ability of other agencies to direct emergency response efforts and gauge avenues for communicating with the public.<sup>71</sup> NAB agrees with ACA that the FCC should be more transparent about the benefits of participating in DIRS.<sup>72</sup> NAB submits that the Commission should track every DIRS activation for instances when a broadcaster's DIRS filing leads to an official emergency response that actually helps a broadcast station maintain or restore service. This data should be part of a periodic Commission review of the effectiveness of

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<sup>69</sup> See, e.g., *Communications Status Report for Areas Impacted by Hurricane Idalia* (Aug. 31, 2023), available at <https://docs.fcc.gov/public/attachments/DOC-396566A1.pdf>.

<sup>70</sup> Second Further Notice at ¶ 51.

<sup>71</sup> *Id.* at ¶ 45.

<sup>72</sup> ACA Reply Comments at 9.

mandatory DIRS reporting. If very few such instances result, the new obligation should be reconsidered and possibly retracted.

#### **B. Forcing Broadcasters to Participate in NORS Would be Unnecessary and Duplicative**

The Commission proposes to require broadcasters to file reports in NORS. The Commission notes that its rules require television stations to notify the Commission within 10 days of discontinuing operations, limiting its ability to know on a timely basis when a station's operations have been affected by non-disaster situations like equipment or power failures, or cybersecurity disruptions. The Commission believes mandatory NORS filings would help it "see outages across a geographic area via NORS, including so-called 'sunny day' outages, and address a supposed gap into its awareness regarding the readiness of the EAS system."<sup>73</sup>

Again, this begs the question of what the Commission would do differently with this information in hand. The Commission has no ability to help stations repair such problems. Moreover, EAS alert originators are not going to change their process for disseminating alerts because a few broadcast stations are off the air, and EAS PEP and LP stations already notify officials. Originators would still issue alerts as widely as possible.

Regarding the burden, NAB has previously explained that broadcasting differs considerably from the telecom carriers that currently must file in NORS. First, the staff size of most broadcast stations pales in comparison to telephone providers, particularly technical staff capable of gathering and reporting the needed information. Second, broadcasters differ from telephone providers because their workforces are located locally, and they typically lack a corporate infrastructure that can handle NORS filings. Finally, the FCC itself

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<sup>73</sup> Second Further Notice at ¶ 48.

has found that mandatory NORS reporting is important for VOIP and ISP providers because of the importance of the reliability and resiliency of broadband communications for the nation's 911 system and overall emergency response.<sup>74</sup> However, as discussed above, broadcasting is different than telephone and broadband service because members of the public can always access other broadcast stations for emergency information. Without telephone service, individuals cannot access 911 service or contact friends and family.

In addition, filing in NORS will be at least a partial duplication of efforts, given upcoming statutory requirements under the *Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA)*<sup>75</sup> to notify the Cybersecurity and Infrastructure Security Agency (CISA) of cyber-related incidents that disrupt broadcast service or EAS.<sup>76</sup> CIRCIA imposes several requirements upon CISA related to the sharing of information with other Federal agencies. CISA has noted its committed to working with its federal partners to share cyber threat information across the Federal government. Thus, the FCC will already have access to information about many of the most troubling problems that can disrupt broadcast service. Again, it seems that the FCC seeks to impose additional reporting obligations on radio and television stations without sufficient justification.

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<sup>74</sup> *Id.*

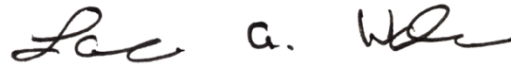
<sup>75</sup> Public Law 117–103, Div. Y (2022) (codified at 6 U.S.C. §§ 681–681g).

<sup>76</sup> *Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA) Reporting Requirements*, 89 Fed. Reg. 23644 (Apr. 4, 2024).

#### IV. CONCLUSION

For the reasons stated above, NAB submits that broadcaster participation in DIRS should remain voluntary, and broadcasters should not be required to file reports in NORS.

Respectfully submitted,

Handwritten signatures of Rick Kaplan and Larry Walke in black ink.

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Larry Walke

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