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October 27, 2020

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: *Ex Parte* Presentation of ACA Connects—America's Communications Association;  
Amendments to Part 4 of the Commission's Rules Concerning Disruptions to  
Communications, PS Docket No. 15-80**

Dear Ms. Dortch:

On October 23, 2020, Ross Lieberman of ACA Connects—America's Communications Association ("ACA Connects") and I met by teleconference with Austin Randazzo and Saswat Misra of the Public Safety and Homeland Security Bureau to discuss the Second Further Notice of Proposed Rulemaking ("Second Further Notice") issued in the above-captioned proceeding.<sup>1</sup>

In the meeting, ACA Connects renewed its support for the Commission's proposal to share confidential outage data with Federal, Tribal, and State agencies in appropriate circumstances to meet legitimate public safety needs, provided that adequate safeguards are put in place to protect the confidentiality and proper use of the data. We discussed ACA Connects' recommendations for strengthening the proposal set forth in the Second Further Notice to ensure that the proposed data sharing meets these objectives.<sup>2</sup>

First, ACA Connects explained that confidential outage data should be made available to Federal, Tribal, and State agencies only to meet clearly defined public safety purposes. Within this limitation, agencies could obtain access to real-time, jurisdiction-specific outage data related to a particular public safety event (e.g., a major storm) to assist the agency in responding to that

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<sup>1</sup> See *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Second Further Notice of Proposed Rulemaking, PS Docket No. 15-80, FCC 20-20 (2020).

<sup>2</sup> See Comments of ACA Connects, PS Docket No. 15-80 (filed Apr. 30, 2020) ("ACA Connects Comments"); Reply Comments of ACA Connects, PS Docket No. 15-80 (filed June 1, 2020).

event.<sup>3</sup> But agencies should not be able to obtain outage data for any purpose not directly related to its preparations for or response to public safety and emergency events, such as for legislative considerations or enforcement proceedings. The Commission should further ensure that data made available to meet public safety and emergency event needs is not used for such other purposes.

Next, ACA Connects urged the Commission to ensure that all agencies and personnel obtaining access to confidential outage data are held accountable for their treatment of the data. To that end, participating agencies should be required to identify by name all individuals that will obtain access, each of whom should be required to certify in writing that they will maintain the confidentiality of the data and use it only for authorized public safety purposes.<sup>4</sup> These certifying individuals could include local public safety officials working under the auspices of a State agency; however, the Commission should not permit such officials to engage in further “downstream sharing” of the data.<sup>5</sup>

Finally, we urged the Commission to make abundantly clear that outage data shall be made available to a State agency only on the condition that it maintains the confidentiality of the data. Under no circumstances should be a State be permitted to disclose confidential outage data based on its independent determination that such disclosure is justified. An agency that fails to maintain the confidentiality and proper use of confidential outage data should face appropriate consequences, which could include loss of access to outage data in the future.

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<sup>3</sup> Agencies might also request access to historical outage data to support preparations for public safety events that are likely to arise in the future, e.g., in advance of hurricane season. If the Commission is to entertain such requests, it should require a heightened showing from the agency that the requested access is necessary to meet a compelling public safety need and that strong safeguards are in place to ensure the data is not improperly disclosed or used for unpermitted purposes. It should also provide an opportunity for public comment on any such requests, which would allow interested parties to raise any concerns that the proposed sharing is overly broad or improper for other reasons.

<sup>4</sup> There is ample Commission precedent for requiring parties to file certifications to obtain access to confidential or highly sensitive data. *See, e.g., Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Protective Order, DA 19-822 at Appx. B (“Acknowledgment of Confidentiality”) (WTB rel. Aug. 26, 2019). Certifying individuals should be required to renew their certifications every two years.

<sup>5</sup> *See* ACA Connects Comments at 6-7.

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please address to the undersigned any questions regarding this filing.

Sincerely,



Brian Hurley

Cc: Austin Randazzo  
Saswat Misra