

25 providers. ATIS is also a founding partner and the North American Organizational Partner of the
26 Third Generation Partnership Project (3GPP), the global collaborative effort that has developed
27 the 4G Long-Term Evolution (LTE) and 5G New Radio (NR) wireless specifications. Nearly 600
28 industry subject matter experts work collaboratively in ATIS' open industry committees
29 and incubator solutions programs.

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

42 **I. Opposition to CA PUC *Petition***

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

46 **(1)** The facts or arguments relied on relate to events which have occurred or
47 circumstances which have changed since the last opportunity to present such
48 matters to the Commission;

49 (2) The facts or arguments relied on were unknown to petitioner until after his last
50 opportunity to present them to the Commission, and he could not through the exercise of
51 ordinary diligence have learned of the facts or arguments in question prior to such
52 opportunity; or

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

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

60 **A. Input on this Matter was Considered by the Commission**

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

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.

72 Nor in ATIS’ opinion is it fair to read the *Second FNPRM* or *Second R&O* as a refusal by
73 the Commission to take comments on the issue of the presumption of confidentiality.⁵ While the
74 Commission notes that it did not seek comment on the question of which fields contain sensitive
75 data, it does so in the context of addressing comments questioning the presumption of
76 confidentiality. The Commission notes that it is unpersuaded the by these comments, noting that
77 “no commenter provides practical guidance on how to distinguish at an operational level those
78 reports that contain sensitive national security information (or sensitive business information)
79 from those that do not.”⁶ Moreover, the Commission further notes that the commenters failed to
80 address the possibility that a collection of NORS and DIRS filings may implicate national
81 security by reflecting patterns.⁷

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

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

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.*

93 conclusion that the information in NORS/DIRS is too general to warrant confidential treatment.
94 ATIS NRSC members have filed a significant number of NORS and DIRS reports over the past
95 17 years and can confirm that many of these reports do contain sensitive data.

96 CA PUC also fails to explain how the threat that hostile parties could use outage
97 information to attack the Nation’s critical information infrastructure has diminished over the past
98 17 years. There remain bad actors who could misuse sensitive information, and publicly
99 disclosing sensitive outage data would only make it easier for these actors to do bad things.⁸ It is
100 hard to see how information, such as the specific equipment that has failed and whether there are
101 any deficiencies in Best Practices, would not pose a threat if released publicly.

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

103 ATIS strongly disagrees with the CA PUC that the public disclosure of outage reporting
104 information would promote national security.⁹ ATIS NRSC notes that CA PUC does not explain
105 how the public disclosure of outage data would “better protect public safety” but simply provides
106 examples of where similar data has been made public. It does not demonstrate how this public
107 disclosure improved public safety or how it is more effective at promoting public safety than the
108 current rules, which permit access to this information by relevant Federal and state agencies.

109 ATIS believes that the current rules more effectively protect public safety by allowing access by
110 appropriate regulatory bodies but restricting this information from access by potential bad actors.

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

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.

114 Commission’s presumption of confidentiality would discourage providers from voluntarily
115 taking meaningful incremental steps to make more information available.¹⁰

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

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

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

¹⁰ *Second R&O* at ¶47.

¹¹ CAP PUC at pp. 20-22.

¹² 47 CFR §4.9.

135 Natural/manmade disasters may impact one provider’s network more significantly based purely
136 on geography, unrelated to network reliability or resiliency measures. If the public were to see
137 this data, it may unfairly draw conclusions about the reliability or performance of specific
138 service providers. The Commission’s current outage reporting rules are focused on providing
139 actionable information to regulatory authorities that have the training and expertise to understand
140 the data and its limitations. Making this same information available to the public, who do not
141 have this training or expertise, could significantly and negatively impact competition,¹³ or public
142 perception of the efficacy of the activities of the state and federal government in addition to
143 perceptions of overall network reliability.

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

146 Finally, the CA PUC urges the Commission to abandon all confidentiality presumptions
147 and revert to its original policy of disclosure of NORS reports.¹⁴ ATIS notes that this “original”
148 policy on public disclosure of outage reports was in place only when the Commission’s outage
149 reporting requirements were voluntary. ATIS NRSC recommends that, if the Commission were
150 to revert to original policy regarding this matter, it should also revert to its original policy of
151 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.

153 **II. CONCLUSION**

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

157 Respectfully submitted,

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