

TABLE 1 TO § 100.1104—Continued  
[All coordinates referenced use datum NAD 83.]

<b>13. Naples Island Holiday Boat Parade</b>	
Sponsor .....	Naples Island Improvement Association.
Event Description .....	Holiday lighted boat parade.
Date .....	Annually in December.
Location .....	Naples Island, CA.
Regulated Area .....	The waters of Alamitos Bay.
<b>14. Huntington Harbor Holiday Boat Parade</b>	
Sponsor .....	Huntington Philharmonic Association.
Event Description .....	Holiday lighted boat parade.
Date .....	Two nights annually in December.
Location .....	Huntington Harbor, CA.
Regulated Area .....	The waters and canals of Huntington Harbor.
<b>15. Newport Beach Holiday Boat Parade</b>	
Sponsor .....	Newport Beach Chamber of Commerce.
Event Description .....	Holiday lighted boat parade.
Date .....	Five nights annually in mid December.
Location .....	Newport Beach Harbor, CA.
Regulated Area .....	The waters of Newport Beach Harbor.
<b>16. Dana Point Holiday in the Harbor</b>	
Sponsor .....	Dana Point Harbor.
Event Description .....	Holiday festival and lighted boat parade.
Date .....	4 nights annually in December.
Location .....	Dana Point Harbor, CA.
Regulated Area .....	The waters of Dana Point Harbor.
<b>17. Catalina Ski Race</b>	
Sponsor .....	Long Beach Waterski Club.
Event Description .....	Competitive high speed waterski race.
Date .....	Annually in July.
Location .....	Long Beach Harbor, CA, to Santa Catalina Island, CA and back.
Regulated Area .....	The waters of Long Beach Harbor bordered by Queens Way Bridge, the Long Beach Breakwater, and the Alamitos Bay West Jetty.

Dated: September 6, 2013.

**K. L. Schultz,**  
*Rear Admiral, U.S. Coast Guard, Commander,  
Eleventh Coast Guard District.*

[FR Doc. 2013-27557 Filed 11-15-13; 8:45 am]

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**FEDERAL COMMUNICATIONS  
COMMISSION**

**47 CFR Part 4**

[PS Docket No. 13-239; PS Docket No.  
11-60; FCC 13-125]

**Improving the Resiliency of Mobile  
Wireless Communications Networks;  
Reliability and Continuity of  
Communications Networks, Including  
Broadband Technologies**

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** In this document, the Federal  
Communications Commission seeks  
comment on measures to promote the

resiliency and transparency of mobile  
wireless networks. This document  
considers and seeks comment on,  
among other measures, a requirement  
that mobile wireless network providers  
report for public disclosure on a daily  
basis during major disasters the  
percentages of their cell sites that are  
operational. This document also seeks  
comment on alternative informational  
disclosures and on other approaches to  
improving network resiliency.

**DATES:** Submit comments on or before  
January 17, 2014 and reply comments  
by February 18, 2014. Written  
comments on the Paperwork Reduction  
Act proposed information collection  
requirements must be submitted by the  
public, Office of Management and  
Budget (OMB), and other interested  
parties on or before January 17, 2014.

**ADDRESSES:** Submit comments to the  
Federal Communications Commission,  
445 12th Street SW., Washington, DC  
20554. Comments may be submitted  
electronically through the Federal  
Communications Commission's Web

site: <http://fjallfoss.fcc.gov/ecfs2/>. In  
addition to filing comments with the  
Secretary, a copy of any comments on  
the proposed Paperwork Reduction Act  
information collection requirements  
contained herein should be submitted to  
the Federal Communications  
Commission via email to [PRA@fcc.gov](mailto:PRA@fcc.gov)  
and to Nicholas A. Fraser, Office of  
Management and Budget, via email to  
[Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or via  
fax at 202-395-5167. For detailed  
instructions for submitting comments  
and additional information on the  
rulemaking process, see the  
**SUPPLEMENTARY INFORMATION** section of  
this document. Parties wishing to file  
materials with a claim of confidentiality  
should follow the procedures set forth  
in section 0.459 of the Commission's  
rules. Confidential submissions may not  
be filed via ECFS but rather should be  
filed with the Secretary's Office  
following the procedures set forth in 47  
CFR 0.459. Redacted versions of  
confidential submissions may be filed  
via ECFS.

**FOR FURTHER INFORMATION CONTACT:**

Renee Roland, Special Counsel, Public Safety and Homeland Security Bureau, (202) 418-2352 or [renee.roland@fcc.gov](mailto:renee.roland@fcc.gov); Brian Hurley, Attorney Advisor, Public Safety and Homeland Security Bureau, (202) 418-2220 or [brian.hurley@fcc.gov](mailto:brian.hurley@fcc.gov). For additional information concerning the proposed Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, or send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in PS Docket No. 13-239 and PS Docket No. 11-60, released on September 27, 2013, as FCC 13-125. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW., Washington, DC 20554, or online at <http://www.fcc.gov/document/improving-resiliency-mobile-wireless-communications-networks>. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**Initial Paperwork Reduction Act of 1995 Analysis**

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506 (c)(4), the Commission seeks specific comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

*OMB Control Number:* 3060-XXXX.

*Title:* Improving the Resiliency of Mobile Wireless Communications Networks.

*Type of Review:* New Collection.

*Form No.:* N/A.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 60 respondents, 660 responses.

*Estimated Time per Response:* 0.1 hr.-0.5 hr. per response.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority is contained in Section 201(b) of the Communications Act, as amended, among other statutory provisions.

*Total Annual Burden:* 1,570 hours.

*Total Estimated Annual Cost:* None.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* The information will be made available to the public so there is no need for confidentiality with this collection of information.

*Needs and Uses:* The Commission is requesting approval to require mobile wireless providers to report to the Commission for public disclosure, once each day during major disasters, the percentages of their cell sites that are operational in each affected county. The Commission would then disclose this information on its Web site. Such disclosures will give consumers a "yardstick" for comparing the performance of various providers during emergencies, which may influence their choice of provider. Also, by holding providers accountable for their performance, such disclosures could spur improvements to mobile wireless networks to enhance their resiliency. Improving the resiliency of these networks would contribute greatly to the safety of the public, as Americans increasingly rely on mobile wireless networks to communicate during emergencies and to access 9-1-1 for emergency assistance. *See* Improving the Resiliency of Mobil Wireless

Communications Networks, PS Docket No. 13-239, FCC 13-125, Section 4.15 (Disaster Reporting Requirements for Commercial Mobile Radio Services Providers).

**I. Introduction**

1. In this *Notice of Proposed Rulemaking (NPRM)*, the Federal Communications Commission (Commission) considers measures to promote transparency to consumers as to how mobile wireless service providers compare in keeping their networks operational in emergencies, which could in turn encourage competition to improve the resiliency of mobile wireless communications networks during emergencies. Specifically, we seek comment on a proposal to require facilities-based Commercial Mobile Radio Service (CMRS) providers to submit to the Commission for public disclosure, on a daily basis during and immediately after major disasters, the percentage of cell sites within their networks that are providing CMRS. These disclosures would be made with respect to each county in the designated disaster area. We seek comment on whether public disclosure of this information, which can be derived from information many providers already report to the Commission voluntarily, could provide consumers with a reasonable "yardstick" for measuring how well mobile wireless networks maintain service during disasters. We also seek comment on whether other measures of service outages may be appropriate, and on certain other approaches to resiliency.

2. In particular, we seek comment on the following issues:

- Whether the proposed reporting and disclosures would provide consumers with useful information for making comparisons about mobile wireless products and services;
- Whether such disclosures, by holding providers publicly accountable, could incentivize improvements to network resiliency while allowing providers flexibility in implementing such improvements;
- Whether such information would be useful to policymakers at state and local levels;
- Whether the proposed disclosures comport with "smart disclosure" principles;
- Whether the proposed disclosure would lead to adverse unintended consequences for consumers and mobile wireless providers;
- Whether the Commission should consider other measures, including alternative informational disclosures,

performance standards or voluntary measures, or refer issues of what information would be helpful to consumers to an advisory committee before acting.

## II. Background

3. In recent years, a number of major storms, including Superstorm Sandy in 2012, have impaired mobile wireless service in affected regions. Hurricane Isaac hit the Gulf Coast, resulting in more than twenty percent of area cell sites out of service in the aggregate in the designated reporting area. Superstorm Sandy disabled at its peak more than twenty-five percent of cell sites in 158 counties in all or part of ten states and the District of Columbia. The most extensive wireless service impairments from Superstorm Sandy were heavily concentrated in New Jersey and in the New York City metropolitan area, where millions of residents found themselves without reliable and continuous access to mobile wireless communications throughout the storm and its aftermath. Several counties had outages more than double the twenty-five-percent figure for the larger area—some much more—and for the State of New Jersey, all of which was included in the reporting area, aggregated cell site outages were on the order of forty percent. Of course, some service disruption may be unavoidable during major disasters, and surges in demand present added challenges. However, data that mobile wireless service providers submitted to the Commission via the Disaster Information Reporting System (DIRS) and in follow-up meetings with Public Safety and Homeland Security Bureau staff revealed that, as during previous storms such as Hurricane Isaac and others before that, service impacts during Superstorm Sandy and in its aftermath were not evenly distributed among mobile wireless service providers. Moreover, the operational choices and practices of different mobile wireless service providers may account for much of this variation. For example, practices regarding the provision of back-up power supplies at otherwise similar cell sites appear to vary among mobile wireless service providers, which may contribute to the ability of some mobile wireless service providers to provide more continuous and reliable service during the storm than others.

4. To address these types of questions, the Commission launched a *Notice of Inquiry (Reliability NOI)* in 2011 to “initiate a comprehensive examination of issues regarding the reliability, resiliency and redundancy of communications networks, including

broadband technologies.” The Commission asked a broad range of questions in the *Reliability NOI* on how to ensure continuity of communications services during major emergencies such as large scale natural and man-made disasters. For example, it sought comment on the need for reinstatement of emergency back-up power requirements of some form on communications providers “to ensure adequate levels of service continuity during major emergencies.” It also asked questions about the impact of inadequate backhaul redundancy on network operations during major emergencies.

5. More recently, in the months following Superstorm Sandy, the Commission held field hearings in New York and New Jersey to further explore the communications impacts of Superstorm Sandy and consider lessons learned. It then held a follow-up field hearing in California to look, in part, at emerging technological solutions for improving communications during such emergencies. Among the concerns raised at these hearings was the lack of information made publicly available during Superstorm Sandy about the operational status of communications networks and the progress being made to rectify service outages.

6. In a May 13, 2013 letter to the Commission, Consumers Union urged the Commission to conduct a rulemaking proceeding to “establish appropriate metrics for measuring a wireless carrier’s network performance,” such as “the number of a wireless carrier’s non-functioning cell towers in each county” within a disaster area, “and the percentage of the carrier’s cell towers in that county that the number represents.” Further, it urged the Commission to disclose such information to the public and to use it “to set a schedule for phasing in improved performance standards [for wireless networks] as rapidly as practicable, with appropriate incentives for achieving them and appropriate penalties for unexcused failure to achieve them.” In *ex parte* presentations filed July 17 and July 19, 2013, respectively, CTIA-The Wireless Association (CTIA) and the Competitive Carriers Association (CCA) argued that the Commission should gather more information before proceeding to a rulemaking on such matters. PCIA-The Wireless Infrastructure Association (PCIA) filed an *ex parte* presentation on August 5, 2013, raising similar concerns.

7. More generally, the Commission relies on periodic reporting from communications providers to gauge

network reliability. Part 4 of the Commission’s rules, established in 2004, requires, *inter alia*, mobile wireless service providers to apprise the Commission of network outages that exceed certain quantitative thresholds, dependent on the type of services provided. The Commission collects this information in its Network Outage Reporting System (NORS), and then uses the information to identify larger trends and vulnerabilities in the nation’s communications infrastructure. In addition, the Commission operates DIRS, created in 2007, which is activated during emergencies to collect near “real-time” status information from mobile wireless and other providers to improve the situational awareness of federal agencies, including the Federal Emergency Management Agency (FEMA), and streamline emergency response. Reporting in DIRS is voluntary; however, the Commission generally suspends the otherwise mandatory NORS reporting obligations of DIRS participants throughout periods when the latter system is fully activated. Information reported to the Commission in either of these reporting systems is afforded a presumption of confidential treatment, a policy the Commission adopted to protect filing parties from competitive harm and prevent terrorist targeting of vulnerable communications assets.

8. To complement these efforts, the Commission has tasked federal advisory committees, chiefly the Communications Security, Reliability and Interoperability Council (CSRIC), with developing and recommending industry best practices to advance, among other objectives, the “security, reliability, and interoperability of communications systems.” CSRIC has developed and recommended to the Commission specific actions to facilitate industry-wide improvements in these areas. The Commission generally encourages mobile wireless service providers, a significant cross-section of which participate in CSRIC, to implement these recommended best practices within their networks to the extent technically and economically feasible. The Commission relies primarily on NORS and DIRS reporting to assess whether network reliability best practices are being effectively implemented or are in need of refinement. The Technological Advisory Council, which is chartered to advise the Commission more broadly on technical matters, is also exploring approaches for improving broadband network resiliency.

### III. Discussion

9. Promoting the “safety of life and property” through the use of radio communications is part of the Commission’s foundational mission. Whether, and how quickly, emergency calls get through and a first responder arrives might make the difference between life and death, so it is imperative that the public be able to reliably access 911, including with wireless phones. The proceeding we initiate today to improve the resiliency of mobile wireless networks builds upon information gathered through extensive prior efforts to address the resiliency of mobile wireless networks. As noted, these efforts began with the Hurricane Katrina panel in 2006, have included the adoption and subsequent withdrawal of mandatory back-up power requirements, followed by our 2011 *Reliability NOI* that sought broad and detailed comment on back-up power and other elements of network resiliency. We have gathered further information in our inquiry into the June 2012 “derecho,” and in our Superstorm Sandy field hearings held earlier this year. While we proceed to consideration of the proposals contained in this *NPRM*, we note that CTIA, CCA and PCIA have raised concerns about some of the proposals. We seek comment on these concerns in the discussion that follows. Ultimately, our objective is to ensure that any disclosure rules adopted in this area are tailored to the needs of consumers, do not impose undue burdens on service providers, and provide incentives that are most likely to lead to improvements in network reliability during emergencies.

#### A. Costs and Benefits of the Proposal

10. We seek to determine the benefits to consumers and other communications users that would result from each proposal and any associated burden on mobile wireless service providers. We therefore request comment on a range of questions that will help us to weigh the costs and benefits of the reporting obligations we propose, as well as the alternative measures we put forward for consideration. For each cost or benefit addressed, we ask that commenters provide specific data and information such as actual or estimated dollar figures, including a description of how the data or information was calculated or obtained and any supporting documentation. All comments will be considered and given appropriate weight; vague or unsupported assertions regarding costs or benefits generally will receive less weight and be less

persuasive than the more specific and supported statements.

11. Quantifying specific benefits and costs of implementing the proposed rule and other proposals involves challenges. These costs and benefits can have many dimensions, including and beyond cost and revenue implications for industry and financial benefits to consumers. We also must consider other less tangible benefits, such as the value of more informed consumer choice and the value of any lives saved or health outcomes improved due to the completion of calls for help due to infrastructure hardening that could result from the increased competitive pressure to deliver reliable service during natural disasters and immediately thereafter. To assess the expected burden on providers, we seek comment on the nature and magnitude of the costs. In complying with the Paperwork Reduction Act, we recently estimated the annual reporting costs to be approximately \$190,000 for all providers inputting wireless county cell site information in DIRS. That figure, however, comprised an estimate for DIRS reporting for considerably more information than is sought here. Moreover, because these carriers are already reporting needed information, they have already incurred the startup costs associated with any reporting system.

12. We estimate that there are fewer than fifty additional providers that are not currently reporting DIRS data. Moreover, we believe that the non-reporting providers mostly are very small companies that typically serve only one or two counties. Therefore, even if we were to require all wireless providers in the disaster areas to file transparency reports—which is a question on which we are seeking comment—we expect the number of additional reporting providers to be below fifty and the counties involved to be relatively few. We estimate the total annual reporting cost for these providers to be \$78,000, consisting of three elements. First is a \$2,000 cost incurred if fifty providers each spend a half hour, at \$80 per hour, to create and enter a user identification when first logging in to our Web site (*i.e.*,  $50 \times 0.5 \times \$80 = \$2,000$ ). Second is a \$4,000 cost incurred if fifty providers each spend a half hour, at \$80 per hour, to file the initial reports on two counties (*i.e.*,  $50 \times 0.5 \times \$80 \times 2 = \$4,000$ ). Third is a \$72,000 cost incurred if fifty providers each spend an hour, at \$80 per hour, to verify and file daily follow-up reports on the two counties for nine additional days of DIRS reporting (*i.e.*,  $50 \times 1 \times \$80 \times 2 \times 9 = \$72,000$ ). We seek comment

on these estimates and their underlying assumptions. We are particularly interested in receiving carrier data that would improve the accuracy of these estimated costs.

13. To assess the expected benefits, we seek comment on the nature and magnitude of the benefits of the proposed rule. If public disclosure increases competitive pressure sufficiently to encourage providers to significantly harden their networks, we assume a likely result will be at least one life saved every five years. We also assume a life has a statistical value of \$9.1 million. We seek comment on these two assumptions because, if they are reasonably accurate, they imply public disclosure would produce an annual benefit of \$1.82 million (*i.e.*, \$9.1 million divided by 5) in lives saved.

14. Moreover, the potential benefits of public disclosure may not be limited to the value of human lives saved if infrastructure is enhanced. Medical outcomes also may be improved and considerable pain and suffering avoided when emergency service providers are able to respond to E-911 calls. The total medical benefits from preserving E-911 services may be substantially greater than the value of lives saved. Further, another benefit of public disclosure may be to enable consumers to better assess the performance of mobile wireless service providers during major emergency events and, thus, enable consumers to make informed decisions that conform better to their preferences when selecting mobile wireless products and services.

15. An alternative way to estimate the potential benefits of public disclosure is to consider the value of services lost each year in storms. Superstorm Sandy, for example, caused a substantial loss of wireless services. We believe that had providers done more to improve infrastructure prior to Superstorm Sandy, a significant number of cell site outages could have been prevented, allowing a substantial number of wireless subscribers in the path of the storm to avoid loss or serious impairment of service. We cannot readily determine the value of that lost service, because we cannot know the value of being able to call more easily loved ones and friends, among others, during the Superstorm and in the days following the destruction. Nor can we know the value of more easily reaching firemen, police, repairmen, and other first responders.

16. We can estimate, however, a floor value for lost consumer surplus, a portion of which could have been saved had outages been avoided. Given the average-revenue-per-subscriber data

reported by the four major wireless providers for the DIRS reporting counties, we estimate very conservatively that cell-site outages connected to Superstorm Sandy caused a loss of service for which subscribers had paid \$25.8 million. This \$25.8 million could represent what subscribers would normally pay for the lost services, not what those services were worth to them. The net benefit of a good to consumers (*i.e.*, the consumer surplus) can easily exceed what they pay for it. Indeed, a 2012 CTIA study estimates that at the end of 2010, consumer surplus was 3.08 times what consumers pay for wireless service. Based on these payments estimates and the CTIA study, the value of the lost service during Superstorm Sandy alone was at least \$77.4 million (*i.e.*, \$25.8 million  $\times$  3 = \$77.4 million). Because this loss represents the value of such services during normal weather conditions, it likely substantially understates the loss of value during (and a few days after) a storm, at which time the value of access to emergency services and ability to connect with family and friends may be much greater. We invite comment on this analysis and the reasonableness of its underlying assumptions.

#### *B. The Growing Reliance of the American Public on Mobile Wireless Networks*

17. Mobile wireless communications are becoming increasingly central to the day-to-day lives of Americans. In its annual Mobile Competition Reports, the Commission has documented the tremendous growth of the U.S. mobile wireless sector, which now supports over 300 million user connections. Mobile data traffic in particular “increased 270 percent from 2010 to 2011” in the United States and “has more than doubled each year for the past four years,” during which time mobile wireless service providers have continued to upgrade and expand their networks and offer their customers an increasing array of “smartphones” and data-centric devices, such as tablets and e-readers. As mobile wireless technologies have continued to proliferate and evolve, consumers of these services have become increasingly likely to “cut the cord”—to live without residential wireline telephone service, as thirty-eight percent of American households already do.

18. This growing reliance on wireless communications has brought these technologies to the forefront of emergency response. As CTIA noted in its comments on the *Reliability NOI*, “[d]uring the aftermath of major

disasters, many individuals rely on wireless as their sole means of communication because of its mobile nature and the speed in which carriers restore service to affected areas.” With an increasing percentage of 911 calls—already measured at 75 percent within the State of California—originating on wireless networks, the need for reliable wireless service during emergencies is a major public safety priority.

19. While consumers value overall network reliability and quality in selecting mobile wireless service providers, they may not be able to compare how well different mobile wireless service providers’ networks withstand and recover from disaster conditions. As previously noted, the information made available to the Commission on a non-public basis following Superstorm Sandy and Hurricane Isaac revealed that not all mobile wireless service providers’ networks fared the same during the storms, and preparatory efforts and investments to harden networks may account for some of this discrepancy. We thus seek comment on whether mobile wireless customers have adequate means of assessing the resiliency and reliability of mobile wireless networks in disaster conditions, and whether they have reliable basis for evaluating and comparing the network resilience of different mobile wireless service providers.

#### *C. The Use of Informational Disclosures To Improve Consumer Choice*

20. We seek comment in this *NPRM* on the reporting and disclosure of information to enable consumers to compare how well various mobile wireless networks are able to withstand and recover from disaster conditions. There is precedent in the telecommunications sector and in other industry contexts for using informational disclosures of this sort to enhance consumer welfare and drive product and service improvements. A significant recent initiative along these lines is the Commission’s Measuring Broadband America (MBA) Program, under which the Commission tests the actual network speeds delivered to consumers by major wireline broadband providers and discloses its findings in a series of reports. Those providers that have tested favorably have touted the reports’ findings in public statements, while at least one provider that performed poorly during the initial round of testing dramatically improved its performance in time for the second round. In this context and others, the disclosure of targeted information

appears to have driven service improvements, even where the disclosed information pertains only to a limited range of the many considerations that influence consumer decisionmaking.

21. Moreover, the Executive Branch has issued guidance on the use of informational disclosures as a regulatory tool. A recent executive order directed executive branch federal agencies to focus on efforts “to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice.” The OMB Office of Information and Regulatory Affairs then issued a memorandum providing guidance on the use of “smart disclosure,” a regulatory approach defined as “the timely release of complex information and data in standardized, machine-readable formats in ways that enable consumers to make informed decisions.” Such information can be made available directly to consumers or be used by third parties to create tools, such as mobile phone applications, that can “greatly reduce the cost to consumers of seeking out the relevant information from individual companies.” The purpose of “smart disclosure” is to make information “not merely available, but also accessible and usable,” and the memorandum suggested that when designing related regulatory initiatives, agencies should consider making information as accessible as possible to consumers; making the underlying data available in machine-readable formats; standardizing the information; providing the information to the consumer in a timely manner; ensuring that disclosures keep pace with market innovation; promoting interoperability among data sets; and preventing disclosure of personally identifiable information. We seek comment on whether the proposal we set forth and seek comment on below comports with these principles.

22. If the information disclosed is simple and easy to understand, that could make it more relevant and accessible to consumers than more complex and technical information. We seek comment on these matters. The proposal focuses disclosure on a single percentage figure that may provide a snapshot of service capabilities in a particular area at a given time. This information is collected by the Commission from the wireless service providers and considered useful to provide situational awareness to federal participants in disaster response, and the metric in the disclosures that we propose also has precedent in the information that mobile wireless

providers have chosen to highlight in their own public statements. During the course of an emergency in which service is lost, mobile wireless providers in the United States often report the percentages of operational sites as a means of publicizing their progress in restoring service, although such reporting is not standardized.

#### *D. Proposals To Improve Mobile Wireless Network Transparency and Resiliency*

23. In this section, we seek comment on specific elements of a proposal to improve the transparency and underlying resiliency of networks that provide mobile wireless services, by requiring providers of these services to provide for public disclosure the percentages of sites operational in their networks during major emergencies. We also seek comment on possible alternative or complementary measures that could improve wireless network resiliency.

##### 1. Proposed Reporting and Disclosure of Percentages of Mobile Wireless Network Sites in Operation During Emergencies

24. The proposed rule in this *NPRM* would require facilities-based CMRS providers to report to the Commission daily on a county-by-county basis the percentage of their cell sites that are operational for counties in which the Commission has activated DIRS. Under this proposal, operational site percentages submitted by each mobile wireless service provider would be made available by the Commission on its Web site, where consumers could access it directly or where third parties could access it for the purpose of incorporating the data into private sector platforms, such as news reports or mobile phone applications. Appendix A of the *NPRM* contains draft language of a proposed rule. We seek comment on whether this metric provides a reasonable means of comparing how well networks withstand emergency conditions.

25. We first seek comment on the extent to which informational disclosures of this sort would enhance consumer choice and facilitate network improvements. Will consumers value having access to this information? Could the information be meaningful and useful to consumers in making the choice among mobile wireless service providers, and if so, how would it affect their decision making? Would the reported information be particularly important to consumers who may have heightened concerns about maintaining communications during emergencies, such as individuals with serious

medical conditions and their families? In the absence of the disclosures discussed below, do consumers already have sufficient information about service reliability, as CTIA suggests?

26. We also seek comment on whether providing consumers with such information would incentivize mobile wireless service providers to improve the capability of their network infrastructures to survive and continue operating during and after disasters. Is that correct? Would the potential that public disclosure would affect consumers' choice of mobile wireless service provider cause providers to view additional investment in networks as being competitively necessary to attract and retain customers? Could press coverage and knowledge by policymakers of this information foster improved performance by mobile wireless service providers, even if the elasticity of consumer demand for greater network reliability during emergencies is difficult to quantify or is perceived to be small? In other words, would providers nevertheless respond by seeking to improve their performance as a matter of risk management, *e.g.*, to avoid reputational risk in both the business and consumer markets?

27. On the other hand, would disclosure of network performance, in conjunction with outage reporting, lead to unintended negative consequences, such as a reduction of cooperation among providers during emergencies or disincentives to build out facilities, particularly in areas subject to severe weather? For example, would such disclosures favor large-tower architectures over small-cell and other heterogeneous architectures where there may be more towers, each more likely to fail but more resilient in the aggregate? We seek comment on any unintended consequences of adopting such disclosures, with examples of such consequences. We ask commenters to explain how likely and widespread those consequences would be and describe in detail the anticipated impact on consumers and public safety.

28. *Scope.* The proposed disclosures apply only to facilities-based CMRS providers with respect to sites used to provide CMRS. Is this scope reasonable given that the factual basis for the proposal is an observed variation in performance among mobile wireless networks in particular in their ability to withstand disaster conditions? Moreover, because the same companies provide most of the CMRS and mobile data services (*i.e.*, mobile broadband) consumed by the U.S. public, using much of the same underlying infrastructure, would the proposed

reporting on CMRS infrastructure enable reasonable judgments to be made about the operational status of providers' mobile wireless services more generally?

29. In proposing a reporting requirement applicable only to mobile wireless providers, we observe that the great majority of emergency 911 calls originate on mobile wireless networks, and there has been an upward trend in such calls, making mobile wireless service of pre-eminent importance as the preferred method for U.S. consumers to reach out for help when they need it the most. Furthermore, given that most markets across the country are served by multiple mobile wireless service providers, could disclosures based on the proposed metric have a competitive impact that will drive improvements in communications infrastructure? Finally, because the metric tracks the performance of portions of the network that are within mobile wireless service providers' direct control during major emergency events, as opposed to outages that are due to consumers' loss of electric power, is this proposed application to mobile wireless service providers reasonable? We seek comment on our proposed adoption of a reporting metric applicable only to CMRS providers. Should we consider changing the scope of our proposed reporting and disclosure requirements, or developing a separate program, to cover providers in other telecommunications sectors, such as wireline telephone or cable providers? Are some of those services different in important respects, such as whether customer outages are likely to continue due to loss of commercial power at the customer's home, rather than within the service provider's facilities and network? If so, what would be the rationale for applying outage-based reporting obligations to such providers? Is there a simple and easily understood metric that could be used for such disclosures? Are there better alternatives to foster reliability of these other services?

30. Moreover, as noted above, we use the term "cell site" throughout this *NPRM* to refer to any land station used to provide CMRS, irrespective of the network configuration under which the site is deployed. We seek comment on this usage, which is incorporated into the definitions of "network site" and "operational site" in our proposed rule. Do these terms, as defined therein, leave any ambiguity as to whether certain facilities would qualify as "sites" for purposes of calculating percentages of sites in operation? We further observe that, as written, the proposal could

apply to providers that operate networks not deployed under a cellular-based network architecture. We seek comment on the potential applicability of the proposed requirements to such providers. Are the requirements well-suited to such providers, particularly any that rely on only a small number of sites to provide service in a given area? Should we consider exempting certain mobile wireless service providers or classes of providers from the proposed requirements? If so, how should we determine which providers or classes of providers should be exempted?

31. We also propose that the requirements apply only to facilities-based mobile wireless providers, *i.e.*, those that own or control at least part of the network infrastructure they use to provide service, as opposed to merely purchasing and reselling service from other providers. We seek comment on this limitation of the scope of the proposed requirement. Should mobile virtual network operators (MVNOs) or other non-facilities-based providers also be required to report outage or other information of some kind for public disclosure during emergencies? Could the disclosure of information about facilities-based providers but not resellers suggest to consumers that facilities-based providers are less reliable than MVNOs (even though MVNOs rely on facilities-based providers for service)? Would it be feasible for non-facilities-based providers to ascertain and report percentages of sites in operation by county for the underlying network infrastructure they use to deliver service? Should such providers instead be required simply to disclose with which facilities-based mobile wireless service providers they have contracted to provide service in a given area? Would extending the reporting obligations and associated disclosures to non-facilities-based providers result in additional incentives for their underlying facilities-based providers to improve the resiliency of their networks?

32. *Reporting Metric.* For consumers to make fair and reasonable comparisons across providers and services, the information must be presented in an accessible and usable form that consumers can process and interpret easily without formal training or technical expertise and that third parties can incorporate into various informational platforms and applications. Our proposal accordingly uses as a standard reporting metric the percentage of a mobile wireless service provider's sites that are operational, *i.e.*, not put out of service as the result of

power loss, damage, interruption of transport, or other causal factors. We seek comment on the appropriateness of this standardized reporting metric as defined. Is there a need to clarify with greater precision what it means for a site to be considered "operational"? Are there ambiguous or borderline cases in which a site may or may not be considered "operational" or "providing service" as such terms are commonly used? Should providers report percentages rounded to the nearest percentage point?

33. We seek comment on requiring mobile wireless service providers to report for public disclosure percentages of operational sites on a per-county basis. This is how this information is currently reported in DIRS. Reporting by county enables the geographic scope of reporting to expand or contract (*i.e.*, by adding or subtracting counties) as a disaster unfolds, while preserving a clear baseline for making comparisons among providers. We seek comment on whether it is more useful to require reporting on a more or less granular level than per-county, and if so, what level? We also seek comment on whether it would be sufficient for reporting providers to specify a single percentage of sites operational for a broader affected area than county level, such as an aggregate of all of the counties selected for reporting in the state?

34. Should mobile wireless service providers also provide the underlying calculation basis to the FCC? Should that happen on a presumptively confidential basis? What additional information, if any, should providers be required to report for disclosure? Should there be a minimum number of cell sites operated by a mobile wireless service provider in a county for reporting of the information to be required? For example, if a provider has only three sites in a county, would the fact that one of these sites is out be probative as a percentage? Should the required reporting further take into account variations in the types of cell sites a provider deploys, *i.e.*, traditional "macro" cells vs. femtocells or other types of "small" cells. If so, how? Does comparing the overall percentage of each wireless service provider's sites that are operating adequately address this potential concern since each provider could have sites of various types? In seeking comment on these matters, we observe that providers themselves generally decline to distinguish among various cell site types when they report publicly during emergencies the percentages of their sites in operation in an affected area.

35. Should we consider alternative metrics? If so, what are the relative costs and benefits of such alternatives in comparison to the proposed metric, keeping in mind our stated objectives in this proceeding? Should we consider requiring reporting for disclosure along more than one metric, or granting mobile wireless service providers more flexibility to tailor the content of their reporting to particular circumstances? Would such flexibility undermine the ability of consumers to compare provider performance readily, thereby defeating one of the critical functions of the disclosure requirement? Could the proposed requirements foster behavior from mobile wireless service providers aimed at "scoring well" on the reporting metric, even where doing so comes at the expense of allocating resources most effectively? How and why might such behavior realistically occur and to what extent? Are there likely to be trade-offs in practice between restoration of the greatest possible number of sites and restoration of those most critical to serving customers? If so, if the proposed metric is used, would providers actually delay restoration of the sites that are most critical to their customers, notwithstanding that their customers will be able to detect whether or not their service is improving? If so, under what circumstances would providers engage in these sorts of behaviors? Please include specific examples in your comments.

36. Should we allow a mobile wireless service provider to count as a site "within" its network any site it actually uses to provide service during an emergency, regardless of whether it owns or controls the site? What effect would counting sites gained through sharing in both the numerator and the denominator of the percentage have on providers' incentives to share? Would this counting result in better or worse service for consumers as providers work to increase their own resiliency? For example, if Provider A has sixty of ninety cell sites operating in a certain county, where Provider B has seventy-five of ninety operating, they would respectively report that sixty-seven percent and eighty-three percent of their sites are operational in that county. If each provider granted the other access to its operational sites in that county, however, both providers' reported percentages would increase substantially: Provider A would report seventy-seven percent  $((60 + 75) \div (90 + 75) = 135/165)$  and Provider B would report ninety percent  $((75 + 60) \div (90 + 60) = 135/150)$  of sites operational in the county. We seek

comment on whether this is the best method for counting such cell sites that are provided from one competitor to another. Would such a provision appropriately account for sharing arrangements of the sort mobile wireless service providers are likely to implement in practice? To the extent a "borrowed" site effectively replaces a site used during normal periods to provide service, should a mobile wireless service provider be permitted or required to discount the latter site when calculating its percentages of sites in operation? Should a mobile wireless service provider be afforded only partial credit for its use of a borrowed site, given that it must share use of the site with the site's operator (and perhaps with other mobile wireless service providers) and the site may not be optimally positioned to perform as a site within its network? Should such a site be counted as one-half site for purposes of calculating the roaming provider's percentage of sites in service?

37. Rather than include such sites as part of its percentage calculations, should a mobile wireless service provider instead report separately the extent to which it used roaming or similar arrangements to augment its provision of service during an emergency? If so, should providers report percentages both with and without adjustments made to reflect such arrangements? If a facilities-based mobile wireless service provider uses roaming on a routine basis to expand its coverage footprint or network capacity in the counties designated for reporting during a disaster, should sites operated or controlled by its roaming partner within the affected area be counted as part of its network for purposes of calculating percentages of sites operational? Are mobile wireless service providers likely to have visibility into the operational status of individual sites they routinely use on a roaming basis to provide service to their customers?

38. Additionally, the proposal would allow providers to count as sites within their network any temporary sites, *e.g.*, Cells on Wheels (COWs) and Cells on Light Trucks (COLTs), that they have deployed to provide supplementary coverage and capacity during an emergency. We seek comment on this proposed treatment of temporarily deployed sites. Rather than be counted as full sites, should such sites be counted on a fractional basis, *e.g.*, as one-half of a site, given any attributes of COWs and COLTs such as coverage limitations? If a mobile wireless service provider uses a COW or a COLT to replace a disabled site entirely, should it be required to count the disabled site

in the percentage? Given the operational complexities involved in deploying these sites, and their provisional and temporary nature, would it be more appropriate for mobile wireless service providers to report separately the extent to which temporary infrastructure is being used to augment their provision of service during an emergency?

39. We seek comment on the appropriateness of the proposed metric. First, we seek comment on whether consumers are likely to find the metric useful or if a different metric better serve consumer needs. Could the proposed metric unintentionally mislead consumers? For example, might consumers think that the percentage of inoperable sites within a county equals the percentage of lost coverage? Could the presence of overlapping coverage, heterogeneous architectures, and roaming arrangements with other carriers and other factors like Wi-Fi offload mean there is no one-to-one correlation between inoperable sites and lost coverage or capacity? If so, could reporting lead consumers to think that some carriers perform particularly well or particularly poorly even if both carriers end of with effectively the same coverage and capacity as one another throughout a disaster? How likely is it that providers reporting widely diverging percentages of sites in operation in a given county would be providing their customers with comparable levels of service within that county?

40. Second, will consumers find this metric easy to understand, given that all mobile wireless service providers would report a single number on a one-hundred-point scale, with higher reported numbers representing a higher proportion of sites in service? Does the metric require only minimal effort from consumers to process such information and use it to make comparisons among mobile wireless service providers?

41. Third, we seek comment on whether the percentage of cell sites that are operational would provide a substantively reasonable metric that consumers can use to compare the resiliency of wireless networks and services. Although the percentage of operational cell sites may not correlate precisely to the availability of service, as a general matter, the disabling of any site may at least marginally impair the ability of a network to deliver service to customers in the area covered by the site, and the cumulative impairment of service is likely to increase as the percentage of operational cell sites decreases. Thus, are significant differences in percentages between providers likely to reflect real

differences in the level of service provided to customers? Moreover, are such differences likely to be most apparent during major disasters? Are such circumstances likely to coincide with increases in attempts to communicate over mobile wireless networks, which would amplify the significance of any disparities among providers in the percentages of sites they have in operation? On the other hand, is it possible that the proposed metric risks overstating the degree to which cell site outages affect service availability? If so, are there potential modifications that could be made to the metric to avoid this potential risk?

42. The reporting of *percentages* rather than absolute numbers of sites in operation seems likely to provide a better means for comparing relative performance across mobile wireless service providers because it can account for variations in the propagation characteristics of the spectrum bands in which they operate and the boundaries of mobile wireless service provider service territories. We seek comment on this issue.

43. We recognize that the proposed metric potentially has its limitations. Modern mobile wireless networks are complex enterprises, and the technologies that support them continue to evolve at a rapid pace. If we adopt a rule like the proposal, we would expect to review it periodically as technologies evolve to assess its continued effectiveness, and to determine if there are complementary or better ways to obtain and provide useful information for comparing the resiliency of mobile wireless networks. The proposed metric does not specifically address emerging trends in network design that PCIA identifies, such as the proliferation of "small" cells or distributed antenna systems (DAS), that could improve network performance. As providers continue to deploy a more diverse mix of cell types in their networks, there could be increasing numbers of cell sites that cannot feasibly be equipped with generators or dedicated sources of backup power. That said, is it clear whether such design attributes are being developed and implemented widely throughout the industry, or whether there currently are significant divergences among providers in how they design and configure their networks that would suggest the need for more or more complex metrics that specifically take these potential complications into account as PCIA suggests? Along the same lines, providers uniformly cite the need to prioritize restoration of their most critical sites when responding to a



disaster; would the proposed metric affect this practice. Also, as noted, providers themselves continue to provide the percentage of sites operational to the public from time to time during disasters, and federal agencies continue to use these figures to provide situational awareness. We seek comment on these issues. Could such disclosures provide a reasonable basis for making comparisons among providers even if the metric is not perfectly suited to informing consumers exactly how providers would compare in serving them at any specific location?

44. We seek comment on what metric would provide consumers with the best picture of a network's operational status. For instance, could the proposed metric provide a better indication of overall network health than would a purely coverage-based metric—even if accompanied by detailed coverage maps, *etc.*—given that the mere availability of coverage in an area does not guarantee network capacity sufficient to provide reliable service? What about a metric that focuses on the volume or percentage of access failures (*i.e.*, “blocked calls”) experienced by a network? Is such a metric feasible, given that increases in the volume of traffic in the radio access network can limit the extent to which such measurements can be taken reliably? Does the proposed metric, on the other hand, provide information relevant to assessing both network coverage and the probability of completing a call? As the percentage of its cell sites in service decreases significantly, is a provider increasingly likely to experience both gaps in coverage and diminished capacity? Are providers suffering extensive site outages likely to avoid noticeable deteriorations in service, particularly in relation to competitors that are operating at significantly closer to full capacity? Are there more technically precise or sophisticated informational disclosures the Commission should consider that as easily enable consumers to make comparisons in disasters, in combination with or instead of the proposed metric?

45. *Timing and Frequency.* Under the proposal, DIRS activation would be the trigger for the reporting obligations. That is, beginning with the activation of DIRS and for the period that DIRS is active, mobile wireless service providers operating in counties subject to the DIRS activation would be required to report for public disclosure on a daily basis the percentage of their sites within such counties that are “operational” as we have defined that term. In effect, DIRS activation could define both the temporal and geographic scope of

“emergencies” under which mobile wireless service providers would be required to report this information. The proposal would require such information to be submitted during any DIRS activation that is announced by means of a public notice, whether considered a full or partial activation. This may be appropriate, given DIRS's function as a forum for “report[ing] communications infrastructure status and situational awareness information during times of crisis.” Moreover, DIRS is a well-established reporting system in which almost all major mobile wireless service providers widely participate; those providers that have contact information on file are notified directly of activations, while others can be notified by means of public notice. In addition, the overall extent of communications outages and impacts encountered during an event is a primary factor that drives the decision to activate DIRS; accordingly, we would expect that tying the proposed reporting to activation of DIRS would focus the reporting on circumstances in which it is most likely to generate meaningful information for consumers on the comparative resiliency of mobile wireless networks. As a practical matter, it is not atypical for DIRS to be activated only a few times each year; in the latter half of 2012, for instance, DIRS was activated in whole or in part only in connection with the “derecho” storm, Hurricane Isaac, and Superstorm Sandy. We seek comment on the proposal to use activation of DIRS as a trigger for the reporting we propose in this *NPRM*. Given the projected frequency of DIRS activations based on past experience, should we consider modifying the obligation so that reporting would be triggered more frequently? What would be the advantages, if any, of more frequent reporting? Would such advantages outweigh the benefits of tying the reporting to activation of DIRS? If so, how?

46. If reporting and disclosures are tied to DIRS activation, the proposal would require providers to report the specified information once every twenty-four hours while the DIRS system remains active. These daily updates would enable consumers to assess the overall trajectory of a mobile wireless service provider's network outages and restoration efforts during an emergency without subjecting the mobile wireless service provider to overly burdensome reporting obligations. We seek comment on this frequency of reporting. Would such reporting fail to capture “critical factors” such as those CTIA identifies,

including “a provider's service restoration practices that can make the information outdated in a matter of hours and the reliability of the network during the overwhelming majority of time that DIRS is not activated?” Would reporting on a daily basis provide a sufficiently detailed picture for the overall recovery progress of a provider in responding to a disaster? Could the reporting provide valuable information about network resiliency during major disasters, even if does not address network performance during normal periods of operation? On the other hand, would making the proposed reporting less frequent than once a day discourage providers from keeping up with the daily cycle established for DIRS reporting, leading to reduced situational awareness during disasters?

47. DIRS participants typically provide status updates in DIRS once each day, so adopting a similar schedule for the proposed reporting may generate efficiencies for mobile wireless service providers that participate already in DIRS. To further standardize such reporting and align it with DIRS reporting practices, all reports of operational site percentages would be submitted at a time of day specified by the Commission in the public notice announcing the DIRS activation. We seek comment on these aspects of the proposal.

48. Recognizing that service restoration during an emergency is a complex and dynamic process, should we require providers to make “reasonable efforts” to ensure that submitted information is current and accurate as of the time of filing. To what extent would it differ from carriers do now in reporting under DIRS? Should we consider specifying in more detail the “reasonable efforts” required from providers in verifying the currency and accuracy of submitted information? Should we require providers to submit unsworn declarations attesting to the accuracy of their submissions? We seek comment on this aspect of the proposal.

49. We seek comment on this proposed frequency and schedule for reporting of percentages of sites in operation. Would a requirement to report operational site percentages during an emergency, notwithstanding the voluntary reporting that providers already engage in on the same timetable, significantly divert resources away from service restoration or other emergency response activities? If so, how? Should the Commission consider granting providers additional time to report this information? If so, how long? Would delay in publication of such information diminish its significance and utility for

consumers or impact whether its disclosure would likely drive provider improvements in reliability during disasters? Are consumers more likely to consider such information as a basis for comparing and selecting among providers if the information is made available to them during or shortly after a disaster?

50. Finally, the proposal's reporting and associated disclosures would be programmatically separate from DIRS, and their implementation would leave intact the scope, confidentiality presumptions, and other operational parameters of DIRS. The proposal would make public only a subset of information that can be derived from information contained in DIRS filings, *i.e.*, percentages of sites in operation by county, but they would not make publicly available any DIRS information *per se*. Would the proposal's disclosures be consistent with the overarching purposes of DIRS? Would they threaten the effectiveness of this important, voluntary program? If so, how? The Commission established a presumption of confidentiality protection for DIRS information when it created the program in 2007 in recognition of the fact that "DIRS filings voluntarily report weaknesses in and damages to the national communications infrastructure." The public disclosure of such information, we then determined, could "potentially facilitate terrorist targeting of critical infrastructure and key resources" or "competitively harm the filers by revealing information about the types and deployment of their equipment and the traffic." The network-level public disclosures of operational site percentages by county, however, would not require providers to reveal information about the status of any individual site that could render it more vulnerable to attack, and thus it does not appear that the proposed disclosure could be used to facilitate destructive acts against a provider's network. Similarly, the proposal does not require disclosure of potentially competitively sensitive information about specific deployment and operational practices, which have typically been accorded confidential treatment. Rather, the type of disclosures we propose—percentages of sites in operation by provider—is consistent with the public disclosures that competitors often make of the general performance of their products or services. We seek comment on these issues.

51. In addition, we seek comment on the extent to which the disclosures proposed in this *NPRM* or similar proposals could have any unintended

impact on DIRS reporting. Could such disclosures impair the ability of the Commission to obtain detailed DIRS reports from mobile wireless service providers in the future, or otherwise detract from the effectiveness of the DIRS program? Are there steps the Commission could take to mitigate any such unintended impacts? Are there effective alternative reporting metrics that would not require disclosure of information that may be presumed confidential?

52. The competitive concerns that partially underlie the confidential treatment afforded to DIRS and NORS filings may be inapposite in this proceeding. In establishing confidentiality protections for NORS filings, the Commission acknowledged the concerns of some providers that publicly reported outage information "[h]ad been used by competitors to wage marketing campaigns." The limited informational disclosures may apply competitive pressure to providers to bolster the resiliency of their mobile wireless network infrastructure. Accordingly, would the incorporation of such disclosed information into "marketing campaigns" improve public safety rather than detract from the effectiveness of these disclosures? Moreover, the proposal's disclosure would not likely contain trade secrets or other privileged information, such that its disclosure would compromise the operation of the mobile wireless marketplace. In reporting its percentages of sites in operation, a provider would not be required to reveal anything about its underlying practices or techniques for achieving network resiliency. The focus of the reporting is on outcomes—how well networks withstand disaster conditions—not on the business judgments or other factors that determine these outcomes. Would such disclosures discourage competition or innovation? Would such disclosures encourage more robust competition among providers to improve the resiliency of their networks? In short, would such disclosures improve consumer welfare? We seek comment on these questions.

53. *Manner of Disclosure and Associated Recordkeeping.* The proposal would require that mobile wireless service providers report their operational site percentages to the Commission in a machine-readable format. The Public Safety and Homeland Security Bureau, with any necessary support from other bureaus and offices, would compile the reported information and to post it on the Commission Web site in an easily accessed location, in a format that

enables comparisons to be made among providers. We seek comment on ensuring that reported information is effectively disclosed and made available to consumers. Could the Commission undertake additional efforts to make the information more accessible to consumers or to third parties that may seek to incorporate the information into "apps" or other tools for consumers? How likely is it that mobile wireless service providers would also provide additional information and analyses by other means, including by posting it on their Web sites or citing it in press releases or advertisements.

54. We seek comment on whether we should establish rules requiring providers to maintain adequate records for some limited period of time of the internal processes and deliberations that support the operational site percentages or any other information they are required to report. If so, what sorts of records should we require providers to keep, and in what form? What time period for retention might be sufficient and why? Do providers already keep records of information that supports their reporting in DIRS? If so, what sorts of records and for how long? Are there incentives for providers to voluntarily keep records, for instance, to provide evidentiary support for their reported percentages in the event of a dispute or enforcement action? What costs and benefits would be associated with the adoption of any recordkeeping requirements the Commission might adopt? Are there ways of minimizing such costs while ensuring that adequate records are kept?

55. *Applicability to Smaller Mobile Wireless Service Providers.* Finally, we seek comment on the applicability of the proposed reporting obligations and associated disclosures to smaller mobile wireless service providers. We observe that many small mobile wireless service providers routinely file daily reports in DIRS as do larger providers. We seek comment on whether it would be particularly costly or difficult for smaller mobile wireless service providers to comply with these proposed obligations or similar ones. Should our requirements make special provisions for these mobile wireless service providers? Do they need extended periods of time in which to report the information and, if so, why? Would relaxed treatment for smaller providers unfairly limit their customers' ability to compare their providers' performance with that of their competitors? If we decide that smaller mobile wireless service providers merit special treatment under our rules, how should we delineate this class of mobile

wireless service providers? In seeking comment on these matters, we observe that the Regulatory Flexibility Act of 1980, as amended, (RFA) specifically directs us to consider the effects of proposed rules on small entities. Our Initial Regulatory Flexibility Analysis is set forth as Appendix B.

56. *Further Study.* Alternatively, should the Commission refer the question of providing greater transparency into network recovery efforts of CMRS providers to CSRIC or TAC before adopting any reporting or disclosure requirements? Are there some issues that should be carved off for further study while the Commission proceeds with others? Why? We ask that commenters define with specificity any issue on which either advisory body should be charged with developing recommendations, the timing anticipated for such work, and the value that such recommendations would be expected to provide. Could the efforts of CSRIC and TAC effectively lead to similar benefits for consumers and improvements to network resiliency that the proposed reporting in this NPRM is aimed at providing?

## 2. Other Measures

57. We also seek comment on whether there are alternative or complementary measures for improving wireless network reliability that the Commission should consider in this proceeding or subsequently. Commenters identifying such measures should address their associated costs and benefits, and whether such measures should be considered as alternatives to or as complements of the reporting and disclosures we propose in this NPRM.

58. *Alternative Informational Disclosures.* We first seek comment on whether the Commission should consider informational disclosures that differ in kind from the sorts of disclosures we have proposed. One possibility is to require mobile wireless providers to make available, as many electrical utilities already do, outage maps that document the availability of coverage within their service territories on an ongoing basis. We seek comment on adopting a requirement that mobile wireless providers make such maps available, during disasters and perhaps during normal periods of operation as well. How burdensome would it be to provide such maps, and how useful would they be to consumers?

59. Another possibility is that the Commission require mobile wireless service providers to report or disclose information about the practices they have implemented to promote the reliability of their networks. Under this

option, the Commission might require mobile wireless service providers to report detailed information about their provisioning of back-up power (e.g., percentages of sites equipped, duration of supply, technologies used) as well as available supplementary deployments (e.g., quantities of COWs and COLTs, portable generators) they undertake to improve the resiliency of their networks. Were we to require disclosures along these lines, would consumers be able to understand and use the information to draw reasonable inferences about the comparative resiliency of wireless networks, or would such disclosures inundate consumers with more information than they could reasonably be expected to process? Would consumers understand which of these practices lead to different results, or is it preferable to focus on public reporting of a simple measure of comparative results among providers rather than on a number of dimensions of preparation? Would public disclosure of certain details of a provider's plans and resources for handling emergency situations pose a security risk? Are there other types of informational disclosures we have not identified, consistent with sound security policies, that would be useful to consumers or would otherwise advance network reliability? Are there less costly or less burdensome alternative measures that would accomplish the same intended objectives as the proposal?

60. *Relationship with Mobile MBA Program.* Next, we seek comment on the interplay between the reporting and disclosures proposed herein and the Commission's Mobile Measuring Broadband America (Mobile MBA) program. Under the Mobile MBA program, mobile wireless customers will voluntarily install an "app" that enables their devices to take direct measurements of network performance (e.g., throughput, latency, cell site availability) at specified intervals and upload the data to a central server. Such a program could complement or replace the proposed disclosures by providing information on day-to-day network performance. We seek comment on the relationship between the two initiatives. Could the robust implementation of the Mobile MBA program eventually generate sufficient participation and information that would obviate the need for mobile wireless service provider reporting and associated disclosures of the sort we envision in this NPRM? Are there additional ways in which the two programs can serve complementary purposes? If so, how?

61. *Performance Standards.* In its May 13 letter, Consumers Union recommends that the Commission use reporting metrics such as those considered herein "to set a schedule for phasing in improved performance standards as rapidly as possible." As an initial matter, we seek comment on whether successful implementation of the proposed reporting and disclosure rule could obviate the need for adoption of such standards. Would reporting and disclosure alone be sufficient to facilitate wireless network resiliency while enabling wireless providers to maintain the operational flexibility they claim is necessary to effectively implement back-up power solutions? Alternatively, should we consider performance standards of the sort Consumers Union proposes? Would the burden and cost of adopting performance standards exceed the benefits, particularly given the frequency or infrequency, or duration, of commercial power outages? Could the Commission take other complementary steps, short of adopting specific requirements, to encourage mobile wireless service providers to provide more robust back-up power for their cell sites or other critical communications facilities?

62. If we should consider performance standards as a possible alternative, we seek comment on what form such standards should take. For example, should we consider emergency back-up power requirements similar to the requirements the Commission previously adopted for mobile wireless networks but never made effective? Could we grant mobile wireless service providers greater flexibility than the previous rule, for example, by applying global back-up power standards to networks as a whole rather than to each individual site? If we were to specify a minimum duration for provision of back-up power, what would be a reasonable threshold, taking into consideration the capability of currently available back-up power technologies, including batteries? Since loss of backhaul service (i.e., the connectivity between a site and the rest of the network) is also a major cause of cell site unavailability during emergencies, should the Commission consider adoption of performance standards to promote more redundant backhaul provisioning and what should those standards include? What are the incremental benefits of such standards and do they exceed the costs and burdens? Finally, if performance standards are appropriate, should we

consider phasing in such standards over time?

63. *Voluntary Industry Measures.* We also seek comment on whether heightened transparency and resiliency of mobile wireless networks could be achieved adequately through voluntary measures. We note one recent example of voluntary measures undertaken by industry to address consumer issues by empowering consumers through greater transparency. In light of concerns that substantial numbers of wireless consumers had experienced “Bill Shock”—a sudden, unexpected increase in their wireless bills—the Commission in October 2010 proposed rules requiring carriers to alert consumers as they approach, and again as they reach limits of plan minutes, texts, data, and international roaming. In October 2011, the Commission announced an agreement between it, Consumers Union, CTIA, and certain wireless carriers that these carriers would provide free, automatic Bill Shock alerts on a voluntary basis, pursuant to CTIA’s Code of Conduct. The alert requirements were phased in, culminating in the April 2013 announcement that all participating carriers now provide the alerts as promised. As a result, CTIA states that approximately 97 percent of consumers are protected against Bill Shock for voice, text, data, and international roaming services. The Commission established a Web site to enable consumers to easily identify participating carriers’ specific Bill Shock alert policies and thresholds.

64. We seek comment on whether a similar voluntary initiative might feasibly achieve the improvements to consumer choice and network resiliency that are the objectives of this proceeding. If so, how might such an initiative work in practice? Could a voluntary initiative involving wireless industry and consumer advocacy groups timely develop additional or improved metrics about service availability and network performance during natural disasters that result in extensive service outages that would meet the objectives of providing consumers with information that they may find useful, and spurring comparisons and competition that result in greater reliability? Would such an initiative be likely to produce candid and transparent reporting of information to consumers, even from providers that must report poor performance? Additionally, are there opportunities for public-private initiatives that could help achieve the objectives? Could a real-time crowdsourcing approach work?

### E. Legal Authority

#### 1. Statutory Considerations

65. We seek comment on whether reporting requirements of the sort proposed in this *NPRM* would be within the Commission’s authority under the Communications Act of 1934, as amended. In particular, we note that section 201(b) the Act authorizes the Commission to “prescribe rules and regulations as may be necessary in the public interest to carry out the provisions” of the Act. These provisions include the requirement that the practices of common carriers, including CMRS providers, are “just and reasonable” and not “unjust or unreasonable.” The Commission has asserted this authority in other contexts as a basis for requiring carriers to make available to the public information that enables consumers to make informed decisions about whether to purchase or retain a service. To the extent they promote “just and reasonable” practices relating to the resiliency of mobile wireless networks during emergencies, would the reporting and disclosures proposed in this *NPRM*, or similar proposals, advance the foundational purpose of the Commission articulated in section 1 of the Communications Act, namely that of “promoting the safety of life and property through the use of wire and radio communications”?

66. Are there other Title II or Title III provisions that would provide a legal basis for the adoption of requirements of the sort we propose insofar as they extend to the provision of CMRS services? Could such mandatory reporting of network reliability data for public disclosure be grounded in section 214(d)’s requirement that a common carrier “provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier” and to “undertake improvements in facilities” to meet public demand? Would the proposed requirements also fall within the Commission’s authority under section 218 to obtain from common carriers “full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created?” With respect to CMRS service, would such proposals be within the scope of our “broad authority” under Title III? We seek comment in particular on the applicability of sections 301 and 316, and our authority under section 303(b) to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class.” Section 301 provides for licensing of CMRS providers, and

section 316 authorizes the Commission to modify such licenses “if in the judgment of the Commission such action will promote the public interest, convenience, and necessity.” Would the foregoing sources of authority, when coupled with our authority to “generally encourage the larger and more effective use of radio in the public interest,” and to adopt rules “as may be necessary to carry out the provisions of th[e] Act,” extend to the proposed disclosure requirements, as less restrictive ways of promoting more reliable service by wireless providers?

67. Also, we seek comment on the applicability of the Commission’s authority over 911 service. The Nation’s 911 system is part of its critical communications infrastructure, and the Commission plays a key role ensuring that the communications networks, including those of mobile wireless service providers, promote public safety, especially on matters involving national security and emergency preparedness of the United States. Indeed, Congress established the Commission in part to promote the “safety of life and property.” Consequently, the Commission also enjoys “broad public safety and 9–1–1 authority.” With mobile wireless service subscribers originating an increasing share of the nation’s 911 calls—already the great majority and measured at as high as 75 percent in some areas—the resiliency of mobile wireless networks is becoming ever more critical to the reliable provision of 911 service. Accordingly, we seek comment on the extent to which the Commission’s authority over 911 service could provide additional support for the adoption of requirements proposed in this *NPRM* or similar requirements.

#### 2. First Amendment

68. We seek comment on whether the reporting requirements proposed in this *NPRM*, like the “anti-cramming” rules the Commission adopted in 2012, could withstand scrutiny under the First Amendment to the U.S. Constitution. In general, government regulation of commercial speech will be found compatible with the First Amendment if it meets the criteria laid out in *Central Hudson*: (1) There is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest. Under the standard set forth in *Zauderer*, compelled disclosure of “purely factual and uncontroversial” information is permissible if “reasonably related to the State’s

interest in preventing deception of consumers.” We seek comment on which of these two standards, or any other standard, would apply to the proposals set forth in this *NPRM*, and whether the proposals would satisfy that standard.

69. In particular, we seek comment on whether reporting obligations of the sort we propose in this *NPRM* would meet the *Central Hudson* criteria. The Commission has previously observed that “the government has a substantial interest in ensuring that consumers are able to make intelligent and well-informed commercial decisions in an increasingly competitive marketplace.” The government also has a substantial interest, enshrined in section 1 of the Communications Act, in protecting the safety of the public through the use of radio communications. We seek comment on whether the reporting requirement proposed in this *NPRM* would directly advance these interests by making available for public disclosure information about the operational status of mobile wireless networks during emergencies, where designed to create incentives for mobile wireless service providers to improve the resiliency of these networks. What sort of additional factual record, if any, would the Commission need to develop to establish that the proposed reporting “directly advances” these substantial government interests?

70. We note that the proposed requirements would require reporting only of a single, fact-based metric, one that can be calculated from information that providers already tabulate and routinely report in DIRS filings. Such regulation is different in kind from minimum back-up power requirements previously adopted by the Commission, or other forms of direct regulation of wireless network facilities or practices. Moreover, in other contexts the proposed reporting of information to the government for purposes of compilation and disclosure that has been deemed less restrictive than requiring “companies themselves to publicly post detailed information in a particular format.” In addition, we observe that the proposed reporting would in no way restrict providers from disclosing information of their own choosing directly to the public, as many already do, to provide a fuller context for assessing the performance of their networks during an emergency. We seek comment on the relevance of these considerations.

71. Finally, we seek comment on the applicability of the *Zauderer* standard to reporting obligations of the sort proposed in this *NPRM*. Would the

reported information qualify as “purely factual and uncontroversial,” provided that the reporting metric is defined with sufficient clarity and precision? Would the prevailing usage of operational site percentages among providers as a means of reporting progress in disaster recovery undermine any claim that such information is non-factual or controversial? Could the proposed reporting be construed as being “reasonably related to the State’s interest in preventing deception of customers?” What sort of additional factual record, if any, would the Commission need to develop to establish such a relationship? Could such a relationship be established even in the absence of evidence of any intent to deceive? For instance, would the proposed reporting “reasonably relate[]” to preventing deception of customers insofar as disclosure of the reported information alerts customers to deficiencies in network resiliency of which they were previously unaware and which may have affected their prior purchasing decisions had the information been made available to them? Are there are other ways of establishing a reasonable relationship between reporting of the sort we propose and the prevention of consumer deception?

#### Procedural Matters

##### Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the recommendations in this *Notice of Proposed Rule Making (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in “Comment Period and Procedures” of this *NPRM*. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

##### A. Need for, and Objectives of, the Proposed Rules

72. The American public relies increasingly on mobile wireless networks to communicate, with the great majority of calls to 911 already originating on wireless networks and a large and growing number of households having only wireless

phones. Notwithstanding these trends, during Superstorm Sandy and other recent storms, mobile wireless networks suffered extensive site outages, seriously impairing the ability of millions of customers to summon emergency assistance, receive emergency information, and reach their loved ones. Although some service disruptions may be unavoidable during a major emergency, and surges in demand for wireless service at those times present added challenges, the current state of affairs is not acceptable and requires action. We believe that better service and hardening of mobile wireless networks is feasible and could dramatically reduce the severity of these problems, which are not incurred in equal measure by all mobile wireless providers.

73. Accordingly, our central proposal in this *NPRM* is to require facilities-based commercial mobile radio service (CMRS) providers to report to the Commission for public disclosure, on a daily basis during and following major emergencies, the percentage of cell sites within their networks that are providing CMRS. These disclosures would be made for each county in the designated disaster area. This information is currently included in voluntary reports provided electronically to the Commission by mobile wireless service providers in disasters, but on a presumptively confidential basis. For the reasons discussed below, we believe that requiring reporting and public disclosure of the information proposed could benefit consumers while also advancing public safety. First, public disclosure could enable consumers to reasonably compare the performance of mobile wireless service providers on a sufficiently similar basis during major emergencies to help consumers to make more informed decisions when selecting mobile wireless products and services. Second, empowering consumers with this information on an ongoing basis could in turn apply competitive pressure on mobile wireless service providers to invest in material improvements to their respective network infrastructures or take other actions to improve the reliability and resiliency of their networks. Third, the standardized disclosure of such information could provide policymakers with useful information and potentially spark an honest and more informed public safety and communications dialogue, perhaps including consideration of possible barriers to greater reliability of mobile wireless networks.

74. In addition to seeking comments below on specific transparency

proposals, we also explore alternative or complementary approaches and seek more general comment on other steps the Commission could take if necessary to achieve the goals of greater mobile wireless network transparency and reliability.

#### *B. Legal Basis*

75. The legal basis for the rules and rule changes proposed in this *NPRM* are contained in sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a-1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a-1, and 615c.

#### *C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply*

76. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

77. Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA. In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may

qualify as “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

78. The disclosure obligations proposed in the *NPRM* would apply exclusively to facilities-based CMRS providers, *i.e.*, providers of CMRS that own or operate at least part of the network infrastructure that provides the service. The SBA size standard that most clearly applies to this class of providers is that established for Wireless Telecommunications Carriers. Under that standard, a business with 1,500 or fewer employees is considered small. Census Bureau data for 2007 show that there were 1,383 firms in this category that operated for the entire year. Of this total, 1,368 had employment of 999 or fewer, and 15 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Wireless Telecommunications Carriers can be considered small.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

79. The *NPRM* proposes requiring mobile wireless providers to submit to the Commission for purposes of public disclosure, on a daily basis during designated emergencies, the percentage of their cell sites in each affected county that are operational. Providers would need to make “reasonable efforts” to ensure that such disclosures are accurate and up-to-date as of the time they are made. A large number of CMRS providers, including many smaller providers, already report such information on cell site outages in DIRS. In the *NPRM*, however, we have estimated the costs the proposed requirements would impose on providers that do not currently provide such information in DIRS. We have estimated that a \$78,000 total nationwide annual expense would be imposed on an assumed fifty additional providers that currently are not reporting DIRS data, many of whom would likely qualify as small. Under this estimate, an average of only \$1,560 in annual costs would be imposed on each provider, of which there would be only fifty—out of an estimated 1,368 small providers—and not all of whom would necessarily qualify as small. We therefore do not believe that the proposal would have a significant economic impact on a substantial number of small entities. We seek comment on this analysis.

80. In addition, the *NPRM* seeks comment on whether there is a need to

impose requirements on providers to keep adequate records of the internal processes and deliberations that support their required disclosures. The *NPRM* seeks comment on ways of minimizing the costs of any such recordkeeping, and on whether providers have adequate incentives to keep such records voluntarily (*i.e.*, to ensure there is adequate evidentiary support for their disclosures in the context of an enforcement proceeding).

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

81. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

82. The disclosure obligations we do propose are minimally extensive, and for several reasons we do not believe that their implementation would have a significant economic impact on any mobile wireless providers, including those that qualify as small. First, the disclosures would be required only during serious emergencies, and even then only once a day. The content of the disclosure, a single percentage figure for each affected county, is minimal both in terms of size and complexity. Also, the information subject to disclosure is already routinely reported on a voluntary basis by mobile wireless providers, including many small providers, in the Commission’s Disaster Information Reporting System (DIRS). For such providers, compliance with the reporting obligation would require no additional effort. We further observe that the disclosure requirement would not prescribe a design standard, as providers would be required to report statistics on the resiliency of their networks but retain wide flexibility to implement the strategies they deem most effective in achieving sufficient resiliency.

83. The disclosure requirements proposed in the *NPRM* are among the least burdensome of available options for promoting mobile wireless network resiliency. One alternative option we might have proposed is to require

providers to supply cell sites or other critical facilities with minimum supplies of back-up power to be used in the event of commercial power loss. The Commission previously adopted requirements along these lines, although they were ultimately vacated at the Commission's request in the face of legal challenge from the mobile wireless industry. Although we seek general comment in the *NPRM* on back-up power requirements as an alternative to, or possible complement of, the proposed disclosure obligations, we do not propose moving forward with adoption of such requirements at this time. Another alternative we consider in the *NPRM* is to require reporting of information other than operational site percentages, such as information about the efforts a provider has undertaken to harden its network and prepare for disasters. The relative economic impact of such reporting on small providers in comparison to the proposal is difficult to gauge in the absence of specific details, but we do not have reason to believe it would be significantly less burdensome than the minimal reporting discussed.

84. Finally, notwithstanding these observations, we seek comment in the *NPRM* specifically on the potential impact of the proposed obligations on small mobile wireless providers and on steps that could be taken to minimize the burden on such entities. We renew our request for comment on these matters in this IRFA. In doing so, we observe that many small mobile wireless service providers routinely file daily reports in DIRS as do larger providers, which suggests that such mobile wireless service providers would not find it particularly burdensome to comply with the sorts of reporting obligations discussed. Nevertheless, we seek comment on whether it would be particularly costly or difficult for smaller mobile wireless service providers to comply with these proposed obligations or similar ones. Should our requirements make special provisions for these mobile wireless service providers? Do they need extended periods of time in which to report the information and, if so, why? Would relaxed treatment for smaller providers unfairly limit their customers' ability to compare their providers' performance with that of their competitors? If we decide that smaller mobile wireless service providers merit special treatment under our rules, how should we delineate this class of mobile wireless service providers?

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

85. None.

*Comment Filing Procedures:* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments should be filed in PS Docket No. 13–239. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

*Confidential Materials:* Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in section 0.459 of the Commission's rules. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the

procedures set forth in 47 CFR section 0.459. Redacted versions of confidential submissions may be filed via ECFS.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 4 as follows:

#### **PART 4—DISRUPTIONS TO COMMUNICATIONS**

■ 1. The authority citation for part 4 continues to read as follows:

**Authority:** Sec. 5, 48 Stat.1068, as amended; 47 U.S.C. 154, 155, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b).

■ 2. Add § 4.15 is added to read as follows:

##### **§ 4.15 Disaster reporting requirements for commercial mobile radio services providers.**

(a) *Definitions.* For purposes of § 4.15 only, the following definitions apply:

(1) *Network site.* Any land station controlled or operated by a Commercial Mobile Radio Service (CMRS) provider and used by it during periods of normal operation to provide CMRS; any land station deployed by such provider on a temporary basis during a period of activation of the Disaster Information Reporting System (DIRS) for the purpose of providing CMRS; or any land station not under the operation or control of such provider but actually used by it to provide CMRS during a period of DIRS activation, under a roaming agreement or other arrangement. Co-located transmitters or antennas used by the same provider to provide CMRS using different technologies shall be treated as a single network site.

(2) *Operational site.* A network site that is providing CMRS, notwithstanding commercial power loss, physical damage, backhaul or transport service disruption, or any other factor.

(b) Facilities-based CMRS providers are required to report the information specified in paragraph (c) of this section during periods of activation of the DIRS system, but only when such activation is announced by means of a public notice.

(1) In carrying out the reporting specified in paragraph (c) of this section, providers shall report only with respect to counties subject to the DIRS activation.

(2) The reporting specified in paragraph (c) of this section shall be made at the time specified in the public notice announcing the DIRS activation,

or as soon as possible thereafter, each day the DIRS system remains activated unless otherwise specified by the Commission.

(c) Under the circumstances specified in paragraph (b) of this section, CMRS providers shall report to the Commission the percentage of their network sites in each county that are operational sites at the time the percentage is reported. Providers shall make reasonable efforts to ensure that all reported information is accurate and current as of the time it is reported.

(d) Providers shall carry out the reporting required under paragraph (c) of this section by submitting the required information to the Federal Communications Commission in a machine-readable format, and in accordance with any guidance the Public Safety and Homeland Security Bureau (Bureau) may issue with respect to such submissions.

(e) The Bureau shall compile the information reported under paragraph (c) of this section and publicly disclose the information on the Federal Communications Commission Web site, <http://www.fcc.gov>, in a prominent and easily accessed location and in a manner that enables comparisons to be made among providers. The Bureau may also take additional measures as appropriate to make this information more accessible and useful to consumers.

[FR Doc. 2013-27453 Filed 11-15-13; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Ocean and Atmospheric Administration

#### 50 CFR Parts 223 and 224

[Docket No. 130808698-3698-01]

RIN 0648-XC809

#### Endangered and Threatened Wildlife; 90-Day Finding on Petitions To List the Pinto Abalone as Threatened or Endangered Under the Endangered Species Act

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** 90-day petition findings, request for information, and initiation of status review.

**SUMMARY:** We, NMFS, announce 90-day findings on two petitions received to list the pinto abalone (*Haliotis kamtschatkana*) as a threatened or

endangered species under the Endangered Species Act (ESA) and to designate critical habitat concurrently with the listing. We find that the petitions and information in our files present substantial scientific or commercial information indicating that the petitioned action may be warranted. We will conduct a status review of the species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to this species from any interested party.

**DATES:** Information and comments on the subject action must be received by January 17, 2014.

**ADDRESSES:** You may submit comments, information, or data, identified by “NOAA-NMFS-2013-0158” by any one of the following methods:

- **Electronic Submissions:** Submit all electronic comments via the Federal eRulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter “NOAA-NMFS-2013-0158” in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Mail or hand-delivery:** Protected Resources Division, West Coast Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

Instructions: All comments received are a part of the public record and may be posted to <http://www.regulations.gov> without change. All personally identifiable information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or other information you wish to protect from public disclosure. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Corel WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Melissa Neuman, NMFS, West Coast Region, (562) 980-4115; or Lisa Manning, NMFS, Office of Protected Resources, (301) 427-8466.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 1, 2013, we received a petition from the Natural Resources Defense Council (NRDC) to list the pinto abalone (*Haliotis kamtschatkana*) as threatened or endangered under the ESA. The petitioners also requested that

critical habitat be designated for the species under the ESA. On August 5, 2013, we received a second petition, filed by the Center for Biological Diversity (CBD) to list the pinto abalone under the ESA and designate critical habitat. Both petitions bring forth much of the same or related factual information on the biology and ecology of pinto abalone, and raise several similar issues regarding potential factors affecting this species. As a result, we are considering both petitions simultaneously in this 90-day finding. Copies of the petitions are available upon request (see **ADDRESSES**, above).

#### ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a “positive 90-day finding”), we are required to promptly commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the status review with a finding published in the **Federal Register** as to whether or not the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a thorough review of the available information, as compared to the more limited scope of review at the 90-day stage, a “may be warranted” finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination may address a species, which is defined to also include any subspecies and, for vertebrate species, any distinct population segment (DPS) which interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS-U.S. Fish and Wildlife Service (USFWS) (jointly, “the Services”) policy clarifies the agencies’ interpretation of the phrase “distinct population segment” for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is