

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

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

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**COMMENTS OF AT&T**

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July 16, 2015

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	DISCUSSION .....	5
A.	The Commission Significantly Underestimates the Potential Costs of Its Proposals and It Should Revise Upward the Amount of Time Required to Prepare an Outage Report by a Factor of Six. ....	5
B.	The Commission Should Clarify That Certain Outages Are Outside the Scope of Its Reporting Requirements.....	9
C.	The Commission Should Reconsider Its Proposed Revisions to the Major Transport Facility Outage Reporting Requirements.....	10
1.	The Commission Should Revisit the Necessity of its “Major Transport Facility Outage” Reporting Metric. ....	10
2.	The Commission Should Maintain the Status Quo for Simplex Reporting. ....	12
D.	The Commission’s Metric for Reporting Outages Affecting 911 Special Facilities Has Been Functioning Well Over the Past Decade and the Commission Should Proceed Cautiously Before Modifying It. ....	16
E.	The Commission’s TSP Proposal Is Unnecessary and, in the Alternative, Must Be Modified. ....	18
F.	The Commission Has Mixed Success with Its Wireless-Centric Proposals, with One Proposal Warranting Adoption and another Deserving Additional Consideration. ....	22
1.	The Commission Should Replace Its Current Calculation for Its Wireless Outage Metric with Its Disabled Cell Site/Average Number of Users Served Proposal. ....	22
2.	The Commission’s Proposal to Measure Wireless Congestion Could Result in a Significant Increase in Reports of Questionable Value.....	24
G.	States Have Failed to Demonstrate that Access to NORS Is Necessary but If the Commission Is Going to Grant Read-Only Access to State Commissions, It Must First Implement Numerous Safeguards. ....	25
III.	CONCLUSION.....	30

## I. INTRODUCTION

The last time that the Commission performed a comprehensive review of its network outage reporting rules was in 2004.<sup>1</sup> AT&T Services, Inc., on behalf of its operating affiliates (collectively, AT&T), agrees with the Commission that these rules have, for the most part, functioned well for the past decade.<sup>2</sup> However, it is time for a refresh. Since 2004, the communications industry has undergone significant changes. Among other things, most consumers rely on mobile wireless service and very few subscribe only to plain old telephone service (POTS).<sup>3</sup> In addition, as the Commission recognizes, the industry is moving away from TDM-based services to IP-based services.<sup>4</sup> In fact, AT&T indicated that it intends to phase out its TDM-based network in a matter of years.<sup>5</sup> This technology transition is affecting all

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<sup>1</sup> See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830 (2004) (*2004 Part 4 Order*).

<sup>2</sup> *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80, ET Docket No. 04-35, Notice of Proposed Rulemaking, Second Report and Order and Order on Reconsideration, FCC 15-39 (rel. March 30, 2015) (NPRM).

<sup>3</sup> By the end of 2013, 89% of households subscribed to wireless voice, either by itself or in combination with some type of wired voice service, with only 5% of U.S. households subscribing only to POTS. See Anna Maria Kovacs, *The New Network Compact: Consumers Are In Charge*, at 11, Internet Innovation Alliance (July 2014), available at [http://internetinnovation.org/images/uploads/IIA\\_A\\_New\\_Network\\_Compact\\_071714\\_Report.pdf](http://internetinnovation.org/images/uploads/IIA_A_New_Network_Compact_071714_Report.pdf).

<sup>4</sup> See, e.g., *Technology Transitions et al.*, GN Docket No. 13-5 et al., Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433 (2014).

<sup>5</sup> See, e.g., AT&T Inc.'s SEC Form 10-K at 3 (filed Feb. 20, 2015), available at [http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14\\_10k.htm](http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14_10k.htm) (“we have begun the migration of wireline customers in our current 21-state area to services using IP, and expect to continue this transition through at least 2020”).

customers – residential, business, government (including public safety) – alike.<sup>6</sup> Network outage reporting metrics tied to technologies that customers are abandoning must evolve so that the Commission Part 4 rules may stay relevant.

The Commission’s stated goal of its Part 4 outage reporting rules is to “ensur[e] the reliability and resiliency of the Nation’s communications system, and in particular [to strengthen] the Nation’s 911 system.”<sup>7</sup> Outage reports accomplish this objective by, among other things, enabling the Commission to provide industrywide data based on those reports to the Network Reliability Steering Committee (NRSC), a subcommittee of the Alliance for Telecommunications Industry Solutions (ATIS), which, in turn, uses such aggregated data to develop best practices designed to reduce the likelihood and length of network outages.<sup>8</sup> The Commission also uses these reports as the basis for discussion and, potentially, corrective action with specific carriers when Commission staff is troubled by those specific carriers’ reports.<sup>9</sup> The success of these efforts is contingent on the Commission obtaining data based on the networks that providers are deploying and using to serve customers today. If the information the

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<sup>6</sup> See, e.g., *911 Governance and Accountability, Improving 911 Reliability*, PS Docket Nos. 14-193, 13-75, Policy Statement and Notice of Proposed Rulemaking, FCC 14-186, ¶ 10 (rel. Nov. 21, 2014) (“Like communications networks generally, 911 networks are evolving from TDM-based architectures to Internet Protocol (IP)-based architectures. Ultimately, the TDM-based legacy 911 infrastructure will be replaced by NG911 networks that rely entirely on IP-based technologies.”).

<sup>7</sup> NPRM at ¶ 6.

<sup>8</sup> See, e.g., Public Safety and Homeland Security Bureau’s Tech Topic 15: Outage Reporting Systems (explaining that “Aggregate reliability statistics based on NORS data are reviewed with industry on a regular basis in an effort to facilitate a voluntary process of continuous improvement in network reliability and resiliency. For example, recently the FCC analysis team discovered that certain types of transport network outages were higher than would otherwise be expected. After working with industry via the NRSC, the incidence of these outages has dropped sharply.”), available at <https://transition.fcc.gov/pshs/techtopics/techtopics15.html>.

<sup>9</sup> *2004 Part 4 Order* at ¶ 12.

Commission compiles through its Network Outage Reporting System (NORS) is based on measurements of yesterday's technologies, then the Commission will not have an accurate picture of the overall health of the network (either industrywide or provider specific). And merely tweaking outdated metrics, as the Commission suggests in several proposals in the NPRM, will not improve this situation.

In its comments below, AT&T explains how the Commission understates the burden of *all* of its proposals because it proposes to use an inadequate amount of time (two hours) to prepare and file outage reports. Based on AT&T's data, this figure is closer to twelve hours per reportable event and AT&T urges the Commission to modify all of its cost estimates accordingly. AT&T also asks that the Commission endeavor, wherever possible, to provide bright-line guidance to providers about when an outage is reportable. For example, all providers would benefit if the Commission clarifies that outages beyond a provider's network "edge" are not reportable by that provider.

Consistent with AT&T's statement above about the importance of ensuring that outage reporting metrics remain relevant, AT&T requests that the Commission reconsider its two "major transport facility" outage proposals. As we discuss below, counting failed transport capacity (currently, DS3s) is an ineffective means of capturing the effect on customers' service and of evaluating the overall health of the communications network. Instead, the Commission should rely on its existing metrics that capture customer impact (*e.g.*, end office isolations, call blockages, E911 failures). If the Commission nonetheless decides to retain its failed transport capacity metric, AT&T recommends that the Commission increase the capacity threshold from the proposed OC3 to the OC12 level because the former would result in a multitude of reports of "minor disruptions unlikely to have a significant impact on communications or jeopardize public

safety.”<sup>10</sup> For this same reason, the Commission should clarify that carriers should report such outages on the basis of the working capacity of that transport facility. The Commission also proposes to reduce the amount of time providers have to resolve “simplex events” before they have to report them as “outages,” which they are not, from the current five days to 48 hours. Below, AT&T details numerous reasons why the Commission should reject this proposal. Among other things, AT&T explains that the Commission’s premise for its proposal – that a 48-hour restoration interval is an “industry best practice” – is incorrect. AT&T also notes that the Commission’s estimate of the number of additional reports its proposal will generate is woefully understated and there is no practical utility to this new information collection. The Commission’s proposal to classify facilities enrolled in the Telecommunications Service Priority (TSP) program as “special offices and facilities” similarly lacks any practical utility and should not be adopted. As AT&T discusses below, the rule the Commission proposes to modify has been on the books for over twenty years but the federal entity (the National Communications System) and its member agencies responsible for implementing it, never did. Deleting the current rule as obsolete, as the Commission rightfully proposes, thus cannot result in any loss of critical information to the Commission.

AT&T urges the Commission to proceed cautiously before modifying its current 911 reporting metric and creating a new wireless metric to measure congestion resulting from emergency situations. The Commission’s current 911 measurement has functioned well over the past decade and implementing some of the Commission’s 911 proposals could result in significant expense and time to implement. While the Commission’s idea of establishing a

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<sup>10</sup> NPRM at ¶ 19.

wireless metric to track congestion in the event of emergencies is laudable, it is difficult to see how any such metric would not capture significantly more non-emergency situations than true emergencies. AT&T supports the Commission’s proposal to calculate the total number of users potentially affected by a wireless outage based on the number of disabled cell sites and the average number of users a provider has per cell site, and urges the Commission to adopt this common sense proposal. Finally, AT&T does not believe that state commissions have demonstrated that they require direct access to NORS to fulfill their “traditional roles.” However, if the Commission disagrees, it should implement stringent safeguards to protect the national security-sensitive information contained in this database.

## II. DISCUSSION

### A. **The Commission Significantly Underestimates the Potential Costs of Its Proposals and It Should Revise Upward the Amount of Time Required to Prepare an Outage Report by a Factor of Six.**

In its discussion of specific proposals below, AT&T explains how, in some cases, the Commission underestimates the number of new reports its proposals will generate. In this section, AT&T discusses how the Commission underestimates the burdens for *all* of its proposals because it assumes that carriers prepare outage reports in an unrealistically short period of time. Since 2004, the Commission has assumed that “each reportable event requires two hours of staff time to report.”<sup>11</sup> According to the Commission, this estimate “includes the time necessary to file the notification, initial report, and final report” and, presumably, the amount of time required to compile and analyze the data in order to determine that a particular disruption is reportable.<sup>12</sup> Based on AT&T’s experience, that two-hour estimate significantly underestimates the amount of

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<sup>11</sup> *Id.* at ¶ 13.

<sup>12</sup> *Id.* at n.19.

time necessary to compile and analyze data, and report an outage. In fact, on average, AT&T's employees require more than *five times* that amount of time to report a wireline network outage. This is not mere conjecture. For resource management reasons, AT&T monitors the amount of time its employees require to prepare and file outage reports with the Commission.

Based on its most recent data, from start to finish, AT&T required almost eleven hours per wireline report. With its specialized workforce, about a dozen employees, spread across multiple organizations, contribute to the average outage report. With such specialization, it is reasonable to conclude that AT&T's reporting processes are more efficient – and thus require less time – than other carriers, who may not have the same amount of dedicated resources and level of expertise. For these reasons, AT&T recommends that the Commission increase the average reporting burden to twelve hours per report.

The following summary identifies the work steps involved with AT&T's typical wireline outage report preparation, which should make clear that the process simply cannot be performed in two hours.

*First*, AT&T's Technology Reliability Centers (TRC) observe network monitoring and analysis alarms through alarmed systems, equipment, and fiber cables, as well as receive customer trouble reports. Using that information, these employees begin to investigate the scope and impact of the alarm/trouble. Based on that initial data, they create a Network Event Reporting System (NERS) ticket, which is forwarded to AT&T's Global Technology Operating Center (GTOC). GTOC personnel work to identify which organizations are affected by the outage and organize a team of TRC technicians and field technicians to restore the affected service and identify the preliminary customer impact. Based on the initial information compiled

through these efforts, GTOC personnel enter a report in AT&T's Service Disruption Reporting System. This report is the basis for the Notification that AT&T files with the Commission pursuant to the Part 4 rules.

*Second*, other specialized AT&T personnel in AT&T's National Communications Federal Compliance (NCFC) group pull and analyze data from at least five different AT&T databases to update the Notification to the Initial Report status within 72 hours of the Notification filing.

*Third*, another specialized group, the Root Cause Analysis (RCA) team, performs the root cause analysis of the outage in order to prepare the Final Report. On average, the RCA team spends over six hours performing the root cause analysis of an outage – three times the amount of time the Commission claims it takes to prepare and file outage reports. Previously, the Commission declined to include the amount of time a carrier spent on root cause analysis into its burden estimates because it claimed that reporting entities would perform the same analysis independent of any Commission requirement.<sup>13</sup> That has not been AT&T's experience. The data used by AT&T to maintain network reliability are different from the data required by the Part 4 rules. This results in a separate set of activities to assess outages, determine whether the outage is reportable, and to collect and format information on the outage in a manner that may be submitted to NORS. AT&T will perform root cause analyses when it determines that its network is not performing as designed and intended, which may or may not include a disruption in service. That analysis, however, is not identical to the analysis described herein, which is what

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<sup>13</sup> See, e.g., 2004 Part 4 Order at ¶ 166 (“most of the administrative burden is caused by the need for the communications provider to investigate outages and to collect information on these outages for its own internal use. Virtually every telecommunications provider, in the ordinary course of business, collects this type of information for its own internal use in order to operate and maintain its network.”).

AT&T performs for “FCC reportable events.” Because some NCFC employee must certify under oath that the information in the outage reports AT&T files with the Commission is true, accurate, and complete, AT&T’s RCA group spends a significant amount of time cross-checking and validating data. But for the Commission’s Part 4 outage reporting requirements, AT&T’s RCA team would not ordinarily perform the particular analysis described below or perform that type of analysis with the same frequency in which it does today. For that reason, the Commission should include providers’ time spent performing the root cause analysis that is required by the Commission’s Part 4 rules.

Included among the steps that the RCA manager performs are: (1) cross-checking AT&T’s NERS report for the start and end times of the outage, and the equipment or circuit that failed; (2) verifying the start and end times of the outage with AT&T’s Network Dispatch Center; (3) contacting groups in the field to obtain facts about the location of the failure, what the field technicians found, which entity was at fault, and what work was done to restore service; (4) contacting central office personnel, if applicable, to verify issues that occurred in the central office, such as hardware card failures or central office equipment failures; (5) contacting AT&T’s TRC to verify DS3 counts, simplex trouble information, circuit trouble isolation, and when field and work errors occur, obtaining corrective actions; (6) cross-checking all data using about ten different company databases; (7) contacting AT&T’s Risk Management and Damage Prevention groups to verify information on the party at fault and, as a preventative measure, confirming that a Risk Management Claim has been filed to hold third parties responsible for the costs associated with the damage; and (8) preparing the final root cause analysis report for NCFC personnel’s review and approval.

*Finally*, NCFRC personnel review and confirm certain information before filling out the Final Outage Report and filing that report in NORS.

The Commission requires the person submitting the Final Outage Report to be authorized by the provider “to legally bind the provider to the truth, completeness, and accuracy of the information contained in the report.”<sup>14</sup> AT&T’s employees could not make such an assertion if they spent, on average, a mere two hours performing all of the work steps summarized above. AT&T urges the Commission to update its out-of-date “two hours of staff time” estimate to twelve hours per reportable event, which is an estimate that is consistent with AT&T’s data. The Commission should be mindful that any increased reporting caused by changes to its existing Part 4 rules does not merely increase a carrier’s burden by a mere two hours per incremental report. Rather, the Commission should proceed under the assumption that any increase in reporting frequency made pursuant to the NPRM has the possibility of increasing carriers’ reporting burden by at least twelve hours/per report.

**B. The Commission Should Clarify That Certain Outages Are Outside the Scope of Its Reporting Requirements.**

In keeping with the Commission’s desire to provide carriers with bright-line guidance about when an outage is reportable under Part 4, AT&T recommends that the Commission clarify that certain outages are excluded from its rules. Specifically, the Commission should reiterate that a customer-caused outage is not reportable. For example, if a customer powers down its facilities over the weekend or abandons its facilities, any ensuing outage should be outside the scope of the Part 4 reporting requirements. AT&T estimates that approximately ten

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<sup>14</sup> 47 C.F.R. § 4.11 (also requiring the filer to certify under oath that the information is “true, complete, and accurate” to the best of his/her knowledge).

percent of its outages are attributable to customer-abandoned facilities, which means that a customer has physically abandoned the equipment and/or facility and in most cases has turned off power to the equipment. In its *2004 Part 4 Order*, the Commission stated that it “has no intention of asking service providers to report individual DS3 outages where the customer has deliberately turned the DS3 off, or where the customer’s equipment has failed.”<sup>15</sup> Consistent with the Commission’s desire not to impose “unfair” reporting obligations on a carrier because of actions taken by its customers,<sup>16</sup> AT&T recommends that the Commission clarify that outages beyond a carrier’s network “edge” are not reportable by that carrier. Such a statement will provide carriers with bright-line guidance about which outages are outside the scope of the Part 4 reporting requirements.

**C. The Commission Should Reconsider Its Proposed Revisions to the Major Transport Facility Outage Reporting Requirements.**

**1. The Commission Should Revisit the Necessity of its “Major Transport Facility Outage” Reporting Metric.**

The Commission’s current metric to report “failures of communications infrastructure components having significant traffic-carrying capacity” is to count failed circuits of a given capacity.<sup>17</sup> AT&T respectfully submits that this metric neither adequately captures the effect on customers’ service nor provides an accurate portrayal of network health. Rather than counting failed circuits, the Commission should focus on the reporting of events that truly impact service to consumers, which are already captured by other outage reporting metrics, including end office

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<sup>15</sup> *2004 Part 4 Order* at ¶ 138.

<sup>16</sup> *Id.*

<sup>17</sup> NPRM at ¶ 19. *See also* 47 C.F.R. § 4.9(a)(2), (b), (e)(3), (f)(2).

isolations, SS7 isolations, call blockages, and E911 failures. While AT&T is appreciative that the Commission proposes to update its DS3 metric to something more relevant to today's communications networks, by merely requesting a change to the widget (*i.e.*, DS3 to OC3), the Commission is missing an opportunity to comprehensively review what information will best apprise it of the overall health of the nation's networks.

If the Commission insists on maintaining its failed transport capacity metric, it should permit carriers to report such outages on the basis of the working capacity of failed optical carrier (OC) circuits, and it should consider setting that threshold at the OC12 level, rather than merely the OC3 level. First, under the Commission's full bandwidth proposal, an OC3 failure becomes reportable in 667 minutes (or eleven hours) even if only one SONET transport signal (STS) slot is provisioned. By contrast, if the Commission were to adopt AT&T's suggestion, that same transport capacity becomes reportable in 2000 minutes (or thirty-three hours). Of course, the more STS slots are provisioned on a circuit, the sooner a failure would be reportable. This suggestion would ensure that the Commission is not inundated with reports of "minor disruptions unlikely to have a significant impact on communications or jeopardize public safety."<sup>18</sup>

Second, AT&T strongly encourages the Commission to increase the capacity threshold of the OC-level circuit to an OC12. It is AT&T's experience that OC3s are used for local loop and access service, not interoffice services. In other words, AT&T does not consider an OC3 to be a "major transport facility" with "significant traffic-carrying capacity."<sup>19</sup> As such, the

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<sup>18</sup> NPRM at ¶ 19.

<sup>19</sup> *Id.* at ¶ 19.

Commission should set this metric at the OC12 level. Like AT&T's suggestion above to report based on the working capacity of a transport facility, and not the full bandwidth of transport facilities, reporting at the OC12 level will ensure that the Commission is not flooded with reports of minor disruptions. Moreover, OC3-level outages will, for the most part, be captured by the Commission's existing 900,000 user minute metric because this level of facility is predominantly used for access circuits. Thus, OC3-level reports largely will be duplicative of reports carriers are currently required to file, which means the Commission may be unable to demonstrate to the Office of Management and Budget (OMB) that it has taken every reasonable step to ensure that the proposed information collection "is not duplicative of information otherwise accessible to the agency."<sup>20</sup>

## **2. The Commission Should Maintain the Status Quo for Simplex Reporting.**

The Commission proposes to reduce the amount of time providers have to resolve "simplex events" before they have to report these events as "outages" from the current five days to 48 hours.<sup>21</sup> This proposal is a solution in search of a problem and should not be adopted. The Commission bases its 48-hour proposal on a decade-old record that the Commission claims demonstrates that carriers' "best practice" is to resolve simplex events generally within 24 to 48 hours and "[n]eglecting to address simplex outages within forty-eight hours of their discovery would thus contravene an established industry best practice."<sup>22</sup> However, the only true industry

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<sup>20</sup> 5 C.F.R. § 1320.5(d)(1)(ii).

<sup>21</sup> NPRM at ¶ 24. The Commission defines a "simplex event" as occurring "when circuits that are configured with built-in path protection . . . lose one of the paths." *Id.*

<sup>22</sup> *Id.* at ¶ 28 (citing a NASUCA *ex parte* to support that statement).

“best practices” cited by carriers in their joint petition for reconsideration were NRIC Best Practices 6-5-0693, 6-5-0697, and 6-6-8087 “addressing performing work on in-service equipment or high-risk operations during low traffic periods,” which say nothing about resolution intervals.<sup>23</sup> Even the BellSouth affidavit, on which the Commission relies in part to support its assertion that 24 to 48 hours is the industry standard, qualifies the statement about resolving simplex events “in the next maintenance window” by stating that resolution is “typically” scheduled for the next window.<sup>24</sup> Rather than relying on information submitted by carriers under penalty of perjury, the Commission seems to rely on an *ex parte* filed by NASUCA, a self-described organization representing residential consumers, which thus cannot and should not be the Commission’s definitive source for industry best practices.<sup>25</sup>

AT&T has recently reviewed its simplex event resolution times and can confirm that it “typically” does resolve simplex events within 48 hours. However, as SBC explained in its 2004 affidavit, “[d]etermining the best time to resolve a DS3 simplex event depends on a combination of many factors, such as the customer’s usage pattern, the availability of established maintenance windows, and the proximity of the event to weekends and holidays.”<sup>26</sup> Based on the particular set of facts around a simplex event, AT&T can and does on occasion take up to five days – or longer – to resolve the affected facilities. Additional factors that may contribute to longer

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<sup>23</sup> See AT&T, BellSouth, MCI, SBC, and Verizon Petition for Reconsideration of DS3 Simplex Reporting Requirement, ET Docket No. 04-35, Attach. C at ¶ 6 (Declaration of Robin B. Howard, Verizon) & Attach. E at ¶ 8 (Declaration of William C. Leach, AT&T Corp.) (filed Dec. 23, 2004) (Joint Petition).

<sup>24</sup> *Id.*, Attach. D at ¶ 10 (Affidavit of Archie C. McCain, BellSouth).

<sup>25</sup> See ATIS/NRSC’s industry best practices web page *available at* <http://www.atis.org/bestpractices/Tutorial.aspx#1>.

<sup>26</sup> Joint Petition, Attach. B at ¶ 8 (Affidavit of Ray M. Luke, SBC).

restoration intervals include obtaining: access to customer sites in order to access equipment, permits if any work must be performed in a public right of way, and replacement equipment, particularly if the vendor no longer manufactures that equipment. As the Commission knows, a simplex event is not an outage at all. Unlike a real outage, with a simplex event, customers do not experience *any* disruption in or degradation of service. While AT&T and other carriers treat a real outage as an emergency, simplex events are not real outages and, as a consequence, they have a lower priority when it comes to resolving them.

Contrary to the Commission’s belief, reducing the amount of time carriers have to resolve simplex events before they have to report these events as “outages” is unlikely to cause carriers to invest additional – perhaps significant – resources to resolve these facilities sooner.<sup>27</sup> And, as noted above, carriers may be unable to do so due to circumstances beyond their control (*e.g.*, lack of access to customer premises and public rights of way). Instead, if the Commission adopts this proposal, the result will be an unwarranted increase in the number of reports filed by wireline carriers. These additional reports will tell the Commission nothing about the health of the industry’s network because, again, the overwhelming majority of simplex events do not result in true “outages.” Furthermore, customers are abandoning these facilities in favor of IP-based facilities, which is another reason why carriers are unlikely to make further investments to shorten the restoration interval. The Commission estimates that the number of additional reports its proposal will generate is about 1,000/year. This purported industrywide estimate is

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<sup>27</sup> NPRM at ¶ 30 (“We believe that this proposed change would create incentives for providers to repair simplex outages in a timelier manner, without imposing an undue cost burden.”).

significantly understated. AT&T estimates that it alone could have this many additional reports per year if the Commission adopts this proposal, which it should not.

The Commission’s stated rationale for this proposal is to “improve[] Commission awareness of the extent of industry best practices implementation in this area.”<sup>28</sup> As explained above, the Commission’s premise that there is an “industry best practice” of resolving simplex events within 48 hours simply is incorrect. The true industry best practice is to perform work on in-service equipment during low traffic periods.<sup>29</sup> If adopted, the Commission’s 48-hour reporting proposal will generate significantly more reports than it claims and, with a more realistic amount of time to prepare and file these reports – twelve hours per report, not two – the cost of this proposal clearly outweighs any benefit. Indeed, AT&T questions what the practical utility is of these additional reports given that only a small number of simplex events ever become “outages.”<sup>30</sup> The Commission has long recognized that “burdensome reporting requirements that provide[] little useful information and might interfere with attempts to restore service [are] in no one’s interest.”<sup>31</sup> Finally, the Commission’s existing outage reporting metrics

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<sup>28</sup> *Id.*

<sup>29</sup> See CSRIC Best Practices 9-8-8087, 9-9-0693, & 9-9-0697, available at <https://www.fcc.gov/nors/outage/bestpractice/BestPractice.cfm>.

<sup>30</sup> For any new information collection, the Commission must certify to OMB that a proposed information collection “has practical utility,” which OMB defines as:

the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account accuracy, validity, adequacy, and reliability, and the agency’s ability to process the information it collects (or a person’s ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion . . . In the case of recordkeeping requirements . . . ‘practical utility’ means that actual uses can be demonstrated. 5 C.F.R. § 1320.3(l).

<sup>31</sup> *Amendment of Part 63 of the Commission’s Rules to Provide for Notification by Common Carriers of Service Disruptions*, CC Docket No. 91-273, Order on Reconsideration, 10 FCC Rcd 11764, ¶ 8 (1995) (*Part 63 Reconsideration Order*).

that are based on user minutes provide a more accurate gauge of network health than measuring whether a carrier resolved a simplex event within two days instead of five.

**D. The Commission’s Metric for Reporting Outages Affecting 911 Special Facilities Has Been Functioning Well Over the Past Decade and the Commission Should Proceed Cautiously Before Modifying It.**

Carriers have been filing outage reports covering 911 facilities for several decades. During that period of time, the Commission has modified its 911 reporting metric numerous times, each time with the stated goal of simplifying reporting. In 1994, the Commission adopted rules requiring carriers to file reports when “an outage disrupts more than 25% of the lines to any PSAP, without providing automatic rerouting to an alternative PSAP.”<sup>32</sup> The Commission eliminated the percentage of lines metric the following year in response to a petition for reconsideration.<sup>33</sup> The Commission explained that it was modifying the rule to eliminate the percentage requirement because it was “confusing,” “burdensome,” and “sometimes impossible to apply.”<sup>34</sup> In its place, the Commission defined a “significant service degradation” as one “where rerouting to the same or an alternative answering location was not implemented, and involves one or more of the following situations: (i) Isolation of one or more [PSAPs] for 24 hours or more, if the isolated PSAPs collectively serve less than 30,000 or more access lines, based on the carrier’s database of lines served by each PSAP; or . . . (iii) Isolation of one or more PSAP(s), for 30 minutes or more minutes, if the isolated PSAPs collectively serve 30,000 or

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<sup>32</sup> *Amendment of Part 63 of the Commission’s Rules to Provide for Notification by Common Carriers of Service Disruptions*, CC Docket No. 91-273, 9 FCC Rcd 3911, ¶ 35 (1994) (*1994 Outage Reporting Order*).

<sup>33</sup> *Part 63 Reconsideration Order*.

<sup>34</sup> *Id.* at ¶¶ 11, 22, 24.

more access lines, based on the carrier's database of lines served by each PSAP. . . ."<sup>35</sup> This reporting framework remained in place until the Commission again "simplified" 911 outage reporting in 2004 to define a "significant degradation" as one where there is a "loss of communications to PSAP(s) potentially affecting at least 900,000 user minutes and (a) the failure is neither at the PSAP(s) nor on the premises of the PSAP(s); (b) no reroute for all end users was available; and (c) the outage lasts 30 minutes or more . . . ."<sup>36</sup>

Each time the Commission scraps its 911 reporting metric, it imposes significant costs on the reporting entities, which must implement IT and ordering, provisioning, and maintenance systems changes in order to begin tracking the data in the manner required by the latest version of this rule. Carriers also must re-train their employees on the new reporting metrics, particularly since these employees may have to track the new data on a manual basis, at least until systems work that might automate the collection is complete. All of these items take time and, of course, resources. The Commission's proposed revisions would have the same result: carriers would require months to implement the new reporting metric and the associated systems work would consume significant resources. For example, both the Commission's 900,000 user minute and its 30-minute proposals would require carriers to begin tracking every single 911 trunk as soon as there is a disruption in service, no matter how fleeting or how *de minimis* its effect, and notwithstanding the fact that the majority of these disruptions likely will never become reportable events. The idea that these proposals would cost the entire industry a mere \$1,600/year is as astounding as it is utterly incorrect.<sup>37</sup> AT&T has not attempted to estimate its

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<sup>35</sup> 47 C.F.R. § 63.100(a)(4) (2003).

<sup>36</sup> 2004 Part 4 Order at ¶ 64.

<sup>37</sup> NPRM at ¶ 13.

costs but if the Commission adopts one of these proposals, AT&T believes that it will spend more than that amount *per day* for many months to implement the necessary systems work.

The Commission's rationale for proposing to modify this reporting metric for a fourth time is that it is concerned that some providers are reporting only when there is a complete outage, which the Commission states is not consistent with the meaning of a "significant degradation."<sup>38</sup> However, as noted above, for almost a decade, the Commission defined a "significant service degradation" to a PSAP as one where a PSAP was "*isolated*" for a certain period of time. The Commission changed that metric in 2004 because it wanted to "simplify" its 911 reporting, not because it was concerned that reporting PSAP isolations was inconsistent with reporting a "significant degradation."<sup>39</sup> AT&T questions the utility of modifying this reporting metric for a fifth time but it looks forward to reviewing other commenters' proposals that might offer reasonable alternatives that carriers could implement sooner and at significantly less cost than the Commission's suggestions.

**E. The Commission's TSP Proposal Is Unnecessary and, in the Alternative, Must Be Modified.**

Section 4.13 of the Commission's rules, requires providers to report "mission-critical" outages of "special offices and facilities" if the outage lasts more than 30 minutes.<sup>40</sup> As the Commission explains in its NPRM, it adopted this rule with the expectation that the NCS would

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<sup>38</sup> NPRM at ¶¶ 9-10.

<sup>39</sup> See, e.g., 2004 Part 4 Order at ¶ 58 (describing the prior 911 reporting requirements as "overly complex").

<sup>40</sup> See 47 C.F.R. § 4.13(c) (requiring providers to submit final reports to the now-defunct National Communications System (NCS) within 28 days of the outage).

identify “major military installations” and “key government facilities,” and the NCS’s member agencies would self-identify to carriers “mission-affecting” outages, which could, in turn, be reported to the Commission.<sup>41</sup> According to the Commission, before the NCS was eliminated in 2012, none of its member agencies ever identified which of their facilities should be deemed “major military installations” or “key government facilities.”<sup>42</sup> Nor, *in the twenty years that this rule has existed*, did the NCS ever forward to the Commission any outage reports that special offices and facilities were required to report to NCS.<sup>43</sup>

The Commission rightfully proposes to delete section 4.13 of its rules as obsolete. However, it is unnecessary for the Commission to rush to fill any perceived void in its outage reporting rules by requiring providers to file special reports for outages affecting facilities enrolled in or eligible for the Telecommunications Service Priority (TSP) program.<sup>44</sup> The Commission’s current rules demonstrate that a “special offices and facilities” outage reporting rule has little to no practical utility<sup>45</sup> and eliminating these rules simply cannot have any effect on the Commission’s ability to obtain information about critical outages because the current special offices and facilities rules were never implemented by the NCS and its member agencies during the twenty years the rules were in effect. Moreover, the Commission is required to

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<sup>41</sup> NPRM at ¶ 38; *see also* 47 C.F.R. § 4.13(a) (requiring special offices and facilities to contact their providers about “mission-affecting” outages).

<sup>42</sup> NPRM at ¶ 38.

<sup>43</sup> *Id.* at ¶ 41; *see also* 1994 Outage Reporting Order (adopting the “special offices and facilities” and NCS-related reporting rules).

<sup>44</sup> *See* NPRM at ¶ 39 (proposing to classify facilities “enrolled in or eligible for the [TSP] program” as “special offices and facilities”).

<sup>45</sup> *See supra* at n.30.

perform a cost-benefit analysis that shows the benefits of requiring providers to report outages of “special offices and facilities” outweigh the costs.<sup>46</sup> In its NPRM, the Commission asserts that it “do[es] not believe that redefining the term ‘special offices and facilities’ as considered in this *Notice* would have an appreciable cost impact.”<sup>47</sup> But the Commission offers no quantitative support for that statement. And this statement is particularly curious because changing from the existing definition (essentially, a “null set”) to the proposed definition (which may involve hundreds or thousands of individual facilities) will require both time and resources to implement, possibly, on a customer-by-customer basis. Because of its involvement with the TSP program, the Commission should have some idea what the universe is of facilities enrolled in the TSP program. Together with its significant experience analyzing outage report data, the Commission should be able to provide an estimate of the anticipated number of reports it will receive involving TSP-enrolled facilities. Whatever that estimate may be, it is unlikely to be *de minimis* as the Commission suggests in the NPRM.

In the event that the Commission is able to demonstrate that there is a practical utility to maintaining separate reporting requirements for “special offices and facilities,” which AT&T does not believe there is, it should reject its proposal to treat “facilities enrolled in *or eligible for*

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<sup>46</sup> In January 2011, President Obama released Executive Order 13563 that called on all executive agencies to “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify).” Executive Order, *Improving Regulation and Regulatory Review* (Jan. 18, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>. In July 2011, the President took this burden-reducing initiative a large step further by calling on independent regulatory agencies – including the FCC – to follow these same requirements. Executive Order 13579, *Regulation and Independent Regulatory Agencies* (July 11, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/07/11/executive-order-regulation-and-independent-regulatory-agencies>.

<sup>47</sup> NPRM at ¶ 40.

the [TSP] program” as special offices and facilities.<sup>48</sup> Instead, the Commission should limit the definition of “special offices and facilities” to facilities that are actually enrolled in the TSP program. Providers simply do not know which facilities are “eligible” for the TSP program and having the Commission serve as a clearinghouse for that information would seem to introduce unnecessary security risks as that information would have to be made available to a large number of providers. Additionally, requiring providers to remain current on which facilities are “eligible for” the TSP program is likely to impose a significant administrative burden on providers, with an enforcement action as the possible consequence of a carrier being unsuccessful, despite its best efforts, in maintaining current information about “eligible” TSP facilities.

Finally, as the Commission notes, the TSP program was established to “prioritize[] the restoration and provisioning of circuits used by entities with National Security/Emergency Preparedness (NS/EP) responsibilities and duties.”<sup>49</sup> This program was not designed to isolate TSP circuit failures for purposes of reporting those outages in NORS. For that reason, AT&T recommends that the Commission maintain the requirement in section 4.13(a) that the “affected facility” “call the communications provider” (or otherwise use the provider’s established trouble reporting procedures) about the disruption in service. That TSP customer-initiated contact would enable the provider to commence its network outage reporting processes. Additionally, if it is the Commission’s expectation that each TSP circuit be alarmed for purposes of outage reporting, then the cost of its proposal to the industry (and, ultimately, to the TSP users) will increase

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<sup>48</sup> *Id.* at ¶ 39 (emphasis added).

<sup>49</sup> *Id.*

exponentially.<sup>50</sup> Monitoring and alarming capabilities generally exist at the DS3 level and above because the Commission has deemed outages at this level and above to be reportable events. On the other hand, a significant number of TSP customers have purchased circuits below the DS-3 level, which means such circuits likely do not have existing alarming and monitoring capabilities. Implementing these capabilities on such facilities would require significant IT development work – not only to extend these alarming and monitoring capabilities to sub-DS3 circuits, but also to enable various systems involved with outage reporting to associate specific circuits with TSP customers. Reporting entities will need a significant amount of time to implement such a requirement and are likely to pass the associated cost along to their TSP customers.

**F. The Commission Has Mixed Success with Its Wireless-Centric Proposals, with One Proposal Warranting Adoption and another Deserving Additional Consideration.**

**1. The Commission Should Replace Its Current Calculation for Its Wireless Outage Metric with Its Disabled Cell Site/Average Number of Users Served Proposal.**

The Commission’s current wireless outage metric requires providers to calculate the number of users potentially affected by an outage via multiplying the simultaneous call capacity of the affected equipment by a concentration ratio of 8.<sup>51</sup> According to the Commission, it has determined that wireless providers using different technologies have begun using different

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<sup>50</sup> At least twice, the Commission has considered and rejected requiring carriers to report TSP circuit failures because of cost. See *1994 Outage Reporting Order* at ¶ 50 (“Requiring reports of TSP-qualified circuit failures would substantially increase the costs of the TSP system.”); *Amendment of Part 63 of the Commission’s Rules to Provide for Notification by Common Carriers of Service Disruptions*, CC Docket No. 91-273, 7 FCC Rcd 2010, ¶ 29 (1992) (*1992 Outage Reporting Order*) (“We are concerned that this additional reporting requirement could add significant costs to the TSP system, and may be infeasible.”).

<sup>51</sup> See 47 C.F.R. §§ 4.7(e)(2), 4.9(e).

methodologies to perform this calculation.<sup>52</sup> To address this inconsistency in reporting, the Commission proposes two alternatives to achieve “more reliable and consistent data than is currently being reported.”<sup>53</sup>

AT&T supports the Commission’s proposal to modify the current rules by requiring wireless providers to begin calculating the total number of users potentially affected by an outage by “multiplying the number of cell sites disabled as part of an outage by the average number of users it serves per site.”<sup>54</sup> This metric is simpler than the current measurement and could be implemented across the industry at little to no additional cost, in contrast to the Commission’s Visitor Location Register (VLR) proposal, discussed below. This proposal also has the virtue of being technology neutral, which the Commission states is the foundation of the Part 4 rules.<sup>55</sup> Not only will this proposal lead to consistent reporting across wireless providers, it also should provide the Commission with a better representation of consumer impact because providers will be basing their reports on their average users per site, not a static aggregation factor of 8 that does not change to accommodate changes in the underlying network.

AT&T does not support the Commission’s proposal to require wireless providers to use their VLR to determine the actual number of users that were being served at a disabled cell site when the outage began.<sup>56</sup> Among other things, implementation of a VLR-based measurement

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<sup>52</sup> NPRM at ¶ 31.

<sup>53</sup> *Id.* at ¶ 32.

<sup>54</sup> *Id.* at ¶ 33.

<sup>55</sup> *Id.* at ¶ 31.

<sup>56</sup> *Id.* at ¶ 33.

may vary from provider to provider, which, contrary to the Commission’s intent, could lead to inconsistent reporting. This, of course, could undermine the Commission’s effort to “reliably detect wireless network outage trends.”<sup>57</sup> This proposal also would require providers to implement sophisticated and expensive data tools, which will require extensive employee training to operate. In order to view the data in the VLR for this purpose, carriers would need to engage network suppliers to develop specialized software to obtain current subscriber counts in the VLR and then integrate these counts into their IT systems to develop the reporting metrics.

**2. The Commission’s Proposal to Measure Wireless Congestion Could Result in a Significant Increase in Reports of Questionable Value.**

The Commission requests comment on establishing a new metric to report “systemic wireless call failures that result from RAN overloading,” which, most likely, would be based on a percentage of failed calls.<sup>58</sup> While the Commission’s stated rationale for proposing this new reporting metric is to give it “a more complete understanding of the problem [of call failures] . . . during and in the immediate aftermath of major disasters,” it should understand that a metric designed to measure congestion could catch significantly more non-disasters (*e.g.*, increased calling on holidays, local radio contest generated calls) than disasters in its net. The Commission should proceed cautiously in this area so as not to impose “burdensome reporting requirements

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<sup>57</sup> *Id.* at ¶ 31.

<sup>58</sup> *Id.* at ¶¶ 14, 16.

that provide[] little useful information. . . .”<sup>59</sup> AT&T looks forward to reviewing proposals by other commenters designed to exclude reports of “typical” RAN congestion.<sup>60</sup>

**G. States Have Failed to Demonstrate that Access to NORS Is Necessary but If the Commission Is Going to Grant Read-Only Access to State Commissions, It Must First Implement Numerous Safeguards.**

The Commission seeks comment for a second time on the California Public Utilities Commission’s (California Commission’s) request for direct access to the Commission’s NORS database.<sup>61</sup> In 2010, AT&T and other commenters detailed concerns with the Commission permitting such access.<sup>62</sup> The primary concern related to states’ inability to guarantee the safeguarding of carriers’ commercially and national security-sensitive confidential information as the Commission does today. For example, states cannot guarantee that carriers’ reports would not be subject to public information requests. The inability to make that guarantee stems from the fact that any current state rule or law is subject to the vagaries of the state legislature, which could easily undo any current exemption outage reports may have under the state’s open-record laws. States also have not made the case that direct access to NORS is “necessary to perform [their] traditional role of protecting public health and safety through monitoring of communications network functionality.”<sup>63</sup> AT&T’s operating affiliates provide service in all 50 states and in the District of Columbia yet only five states require these affiliates to file outage

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<sup>59</sup> *Part 63 Reconsideration Order* at ¶ 8.

<sup>60</sup> NPRM at ¶ 15.

<sup>61</sup> *Id.* at ¶¶ 48-53; Petition of the California Public Utilities Commission and the People of the State of California, ET Docket No. 04-35 (Nov. 12, 2009) (Petition).

<sup>62</sup> *See, e.g.*, AT&T Comments, ET Docket No. 04-35, RM – 11588 (filed March 4, 2010); AT&T Reply Comments, ET Docket No. 04-35, RM – 11588 (filed March 19, 2010).

<sup>63</sup> NPRM at ¶ 49 (quoting Petition at 14).

reports. Clearly, most state commissions are managing to accomplish their core missions without access to this information. The Commission has developed an effective and efficient means of disseminating aggregated outage data to NSRC, which uses such data to develop best practices followed by communications providers. Consequently, even though a state commission does not have direct access to NORS, it nonetheless benefits from this database via improved practices of carriers providing service in its state.<sup>64</sup> Additionally, as noted earlier, the Commission will convene carrier-specific meetings when it has concerns with a particular carrier's reports, which may result in corrective action by the carrier.<sup>65</sup> Any resulting corrective action also would benefit the state(s) where that carrier is providing service.

In the event the Commission determines that there is a demonstrated need for states to have state-specific, read-only access to NORS, it is essential that the Commission impose stringent and enforceable requirements on states that elect to obtain this access. *First*, the Commission should require states to certify annually that providers' outage reports are not subject to any state open-record laws and to notify the Commission within 48 hours if the state's laws or rules no longer exempt these reports from public disclosure so that the Commission may eliminate that state's access to the NORS database. If the Commission eliminates a state's access to its NORS database, it also should require the state to return (or to certify that it has destroyed) any copies of NORS database information its authorized employees may have made. This includes any materials that incorporate data derived from the NORS database. If a state is

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<sup>64</sup> According to the Commission, by 2004, over "seven hundred 'best practices' had been developed for use by carriers and manufacturers in reducing the likelihood, and length, of network outages, for facilitating the restoration of failed communications services, and for improving the security of communications networks." *2004 Part 4 Order* at ¶ 15.

<sup>65</sup> *Id.* at ¶ 12.

unwilling to make that certification, the Commission should deny it access to the NORS database. In the alternative, the Commission could preempt state open-record laws as they apply to the use and disclosure of any data obtained from the NORS database.<sup>66</sup> This alternative is administratively simpler for both the Commission and state commissions.

*Second*, the Commission should impose a limit on the number of state commission personnel who have access to the NORS database. AT&T recommends that this limit be no more than three individuals unless the state can provide adequate justification for more employees. The Commission should require the state commissions to supply the identities of authorized state commission staff and obligate state commissions to keep this information current. The state commissions should require their employees to sign a non-disclosure agreement (NDA) before they may access the NORS database, copies of which should be provided to the Commission. Additionally, each authorized state commission employee should be required to have individual logins and passwords (no generic state commission logins should be allowed). This will allow the Commission to manage and track the usage of the database through appropriate access controls.

*Third*, the Commission should require states to train their authorized employees on the proper handling of NORS database information and what steps the employee should take if he/she believes the data has been disclosed in violation of those safeguards. States should be required to train their authorized employees before they may access the NORS database and annually thereafter. If a state determines that one of its employees has improperly handled

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<sup>66</sup> The Homeland Security Act similarly preempts critical infrastructure information voluntarily submitted to a covered federal agency from state or local public disclosure laws if the federal agency, in turn, provides that information to a state or local government. *See* 6 U.S.C. § 133(a)(1)(E)(a).

NORS information, the state should be required to notify the Commission within 24 hours of discovery so that the Commission could deactivate that employee's credentials to access the NORS database. The Commission also should require the state commission to perform an investigation of that employee and report the results of its investigation to the Commission and, possibly, to law enforcement. The Commission should consider suspending that state's access to the NORS database until the Commission receives report of the state's investigation to ensure that the violation was limited to that one employee.

*Fourth*, the Commission should restrict state commissions' use of the NORS data to evaluating the cause of outages in order to monitor communications network functionality within a state.<sup>67</sup> The Commission should not permit state commissions to disseminate NORS data absent prior written approval by the Commission. In its request, the state commission must identify the individuals to whom it seeks to provide such data along with an explanation why sharing the data with these individuals furthers the state commission's evaluation of an incident or incidents. With its request, the state commission also should supply copies of NDAs signed by the individuals to whom the state commission is requesting approval to provide NORS data. The state commission also should certify that it will require these non-state commission individuals to return the NORS data to it at the completion of the individuals' review.

*Fifth*, the Commission should condition a state's access to the NORS database on that state agreeing not to impose state-specific outage reporting requirements on reporting entities. In

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<sup>67</sup> See Petition at 28 (stating that, if it had access to NORS data, it could analyze that data "to determine whether an incident . . . is a one-time occurrence, outside the control of the [provider]. Alternatively, the incident might indicate a broader organic and/or systemic problem with certain facilities that should be investigated on a carrier-specific, industry-segment, or industrywide basis to determine what, if any, corrective measures need to be taken.").

its Petition, the California Commission quoted with support a Department of Homeland Security statement that state access to NORS would “reduce the reporting burden on communications providers.”<sup>68</sup> This can only be true if the state commission is not permitted to impose its own outage reporting requirements on providers. If a state is unwilling to certify on an annual basis that it does not have state-specific outage reporting requirements, the Commission should not permit that state access to the NORS database.

While AT&T’s list of conditions may seem extensive, AT&T believes such safeguards are warranted. As the Department of Homeland Security explained in comments it filed with the Commission,

Depending on the disruption in question, the errant disclosure to an adversary of this information concerning even a single event may present a grave risk to the infrastructure. The potential availability of all reports, across all of the platforms proposed in the Commission’s Notice, could provide a potential adversary with a virtual road map targeting network stress points and vulnerabilities and a field guide to defeating “best practices” and protective measures. . . . Safeguarding this information – especially the location, root cause, provider and other sensitive information – should be a paramount consideration in the final rules adopted by the Commission.<sup>69</sup>

The Commission agreed and in its *2004 Part 4 Order* concluded,

This [outage] data, though useful for the analysis of past and current outages in order to increase the reliability and security of telecommunications networks in the future, could be used by hostile parties to attack those networks, which are part of our Nation’s critical information infrastructure. The disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity. We therefore will treat the information that will be provided as confidential.<sup>70</sup>

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<sup>68</sup> *Id.* at 10.

<sup>69</sup> Comments of the Department of Homeland Security, ET Docket No. 04-35, 14-15 (June 2, 2004).

<sup>70</sup> *2004 Part 4 Order* at ¶ 3.

For the reasons provided above, AT&T questions whether state commissions truly require direct access to the NORS database to fulfill their missions. But if the Commission disagrees, AT&T respectfully urges the Commission to implement the safeguards described above in addition to any other safeguards proposed by other commenters.

### **III. CONCLUSION**

AT&T respectfully requests that the Commission take action in accordance with AT&T's recommendations outlined above to ensure that any modification the Commission makes to its Part 4 network outage reporting rules is designed capture customer impact and provide the Commission with an accurate view of the health of the communications network. Additionally, any modification must be consistent with the Commission's obligations under the Paperwork Reduction Act, as well as its obligation to make a "reasoned determination that [the proposal's] benefits justify its costs."

Respectfully Submitted,

/s/ Cathy Carpino

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July 16, 2015

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