Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

COMMENTS OF THE CITY OF NEW YORK, NATIONAL LEAGUE OF CITIES, AND NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

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May 25, 2004

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SUMMARY

We commend, and heartily endorse, the NPRM's proposals to (1) revise and strengthen the Commission's current service disruption reporting requirements (¶¶ 19-35 & 46-49), and (2) extend those requirements to wireless, cable circuit-switched telephony, and satellite communications service providers (*id*. at ¶¶ 36-45). We suggest, however, that a 15-minute, rather than a 30-minute, trigger for network failures affecting PSAPs should be imposed.

The NPRM correctly concludes that adequate outage reporting is absolutely essential to homeland security and public safety. Such reporting also serves the important additional public interests of promoting competition, accountability to the public, and economic development.

Painful experience, including the September 11 terrorist attacks and the August 2003 power blackout, attests to the critical importance of full and timely service outage reporting, both for wireline and non-wireline services. NRIC VII's goal of developing non-wireline best practices cannot be achieved without adequate non-wireline service outage reporting requirements. Nor can E-911 be reliably implemented and maintained without such reporting requirements. Equally critical is the increasing reliance of local first-responder public safety agencies on private wireless, data and satellite networks -- a reliance that would be threatened absent adequate outage reporting requirements.

By providing consumers with additional and more reliable information on provider performance, service outage reporting also promotes competition and gives an additional incentive to providers to make the investments necessary to improve network reliability.

But the Commission should go further and seriously consider extending its outage reporting requirements to non-wireline services beyond those listed in the NPRM -- specifically, to public data networks and non-circuit-switched, IP-based telephony provided by cable

operators and others. Otherwise, there will be a rapidly expanding, and increasingly hazardous, hole in the FCC's outage reporting rules.

Service outage reporting requirements must be mandatory. Voluntary reporting would improperly allow providers to externalize the immense costs to society of inadequate reporting. Moreover, absent mandatory reporting, it might well be in an individual provider's own economic self-interest either not to report, or to report selectively, about its outages.

We believe that outage reports should be publicly available. If public disclosure is in any way limited, however, that limitation should not apply to disclosure to local governments, and any public disclosure limitations should not be so broad as to deprive consumers of provider reliability information that will promote an effectively functioning competitive market.

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INTRODUCTION

The City of New York (the "City" or "New York City"), the National League of Cities ("NLC"), and the National Association of Telecommunications Officers and Advisors ("NATOA") respectfully submit these joint comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned matter, released February 23, 2004.

The City is the nation's largest municipality and home to more than 8.1 million residents. NLC is the nation's oldest and largest organization representing the interests of local governments, with a membership of over 1,700 individual cities and, through its state municipal league partners, more than 18,000 cities, villages and towns nationwide. NATOA is a national association representing the interests of local governments across the nation on matters relating to telecommunications and cable television. As the "front line" level of government responsible for responding to the homeland security and public safety needs of residents, as well as

promoters of economic development of which the telecommunications infrastructure is an integral part, the City, NLC and NATOA, like all local governments, share a deep and abiding interest in the goals of NPRM -- "the critical need for rapid, full and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well-being of our Nation." NPRM at ¶ 1.

We commend and support the NPRM's proposals to modify and strengthen the Commission's service disruption reporting requirements,[1] and to extend those requirements to non-wireline communications service providers. Adequate service disruption reporting is essential to public safety, homeland security and other vital interests. Service disruption reports enable not only the Commission, but also local government first responders, to be made aware of service outages and to take corrective action based on identified problem areas and trends. They also provide the public with invaluable information on service provider reliability in an increasingly competitive market. To serve these objectives, the NPRM correctly concludes that service disruption reporting requirements must be mandatory, and that they must be extended beyond traditional wireline communications service providers. Further, the reporting requirements must be revised to have more consistent and sensitive trigger points and metrics in order that service outage reporting more accurately reflects the realities of service disruptions.

I. ADEQUATE WIRELINE AND NON-WIRELINE SERVICE DISRUPTION REPORTING REQUIREMENTS ARE NECESSARY TO PROMOTE VITAL PUBLIC SAFETY, ECONOMIC DEVELOPMENT AND CONSUMER INTERESTS.

The NPRM notes the many substantial benefits resulting from wireline service disruption reporting requirements (NPRM at ¶¶ 2-4 & 6-11) and then requests comment on the conclusion

[1] Currently, Part 63 of the Commission's rules.

that non-wireline service disruption reporting will provide significant benefits similar to those achieved by wireline service disruption reporting (*id*. at ¶ 4). We strongly agree with the NPRM's conclusion.

A. Service Disruption Reporting Promotes Homeland Security and Other Public Safety Interests.

1. NRIC.

The NPRM correctly observes that wireline reporting service disruption reporting has greatly assisted the National Reliability and Interoperability Council ("NRIC" or "Council") in developing wireline industry best practices. *Id*. at ¶¶ 8-10. These best practices have, in turn, frequently been quite valuable in helping local government officials evaluate the underlying reasons for, and ways of addressing and compensating for, wireline outages that have significant potential homeland security and public safety consequences. The wireline best practices were, for example, a useful resource to New York City officials in helping them to assess the underlying nature and scope, and thus to plan and implement corrective action in light of, the immense wireline outages that resulted from the September 11, 2001, terrorist attacks and the August 2003, power blackout. Best practices have enabled local government officials to initiate corrective actions more rapidly in response to these and less widespread outages, and in addition, to develop and evaluate alternative long-term solutions to likely outage problems. However, no comparable best practices have yet been available to local governments with respect to non-wireline and, in particular, wireless outages.

The objectives of the recently chartered NRIC VII include providing "recommendations to the FCC and to the communications industry that ... assure optimal reliability and

interoperability of wireless, wireline, satellite, cable, and public data networks."[2] Central among the NRIC VII's various activities will be the development of improvements and best practices aimed at wireless communications and wireless emergency networks. We firmly believe that, just as wireline service disruption reporting has assisted previous Councils in developing wireline industry best practices, non-wireline service disruption reporting is both timely and necessary to facilitate the work of NRIC VII. As the NPRM correctly notes, the fifth and sixth Councils were hampered in developing non-wireline best practices "by the absence of useful network outage reports from wireless, satellite, and public data network providers." NPRM at ¶ 9.

The stakes could not be greater. NRIC VII seeks to develop recommendations "that shall ensure the security and sustainability of communications networks throughout the United States; ensure the availability of adequate communications capacity during events or periods of exceptional stress due to natural disaster, terrorist attacks or similar occurrences; and facilitate the rapid restoration of telecommunications services in the event of widespread or major disruptions in the provision of communications services."[3] In light of the tremendous growth of non-wireline communications and the increasing substitutability of non-wireline communications for wireline communications, applying service disruption reporting requirements to non-wireline communications is essential to achieving NRIC VII's goal of developing best practices for non-wireline services. And non-wireline best practices, no less than wireline best practices, will be critical to ensuring the availability of communications capacity during the dangerous times in which we now live.

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[2] The Charter of the Network Reliability and Interoperability Council – VII (NRIC VII Charter) can be found at http://www.nric.org/.

[3] NRIC VII Charter, Section B – The Council's Objectives and Scope of its Activity.

2. E-911.

Wireless network outage reporting is integral to the *reliable* implementation of wireless E911 services. Congress and the Commission have unambiguously determined that extending E911 services to wireless subscribers, including the ability to locate callers, serves a vital public safety interest. Thus, Congress enacted the Wireless Communications and Public Safety Act of 1999 to "promote and enhance public safety through the use of 9-1-1 as the universal emergency assistance number, further deployment of wireless 9-1-1 service, support of States in upgrading 9-1-1 capabilities and related functions, encouragement of construction and operation of seamless, ubiquitous, and reliable networks for personal wireless services, and for other purposes."[4] And in a series of orders dating back to 1996, the Commission has promulgated rules for wireless carriers to provide both basic and enhanced 911 services.[5] This focus is more than justified, given the overall volume and ever increasing percentage of 911 calls that are being made by wireless subscribers.[6]

The public has the right to know that reasonable measures are being implemented to ensure that wireless E911 services -- which the public is, after all, underwriting as subscribers and taxpayers -- will be available to serve them if and when they need such services. At a most fundamental level, this accountability to the public must encompass wireless service outage reporting. Under rigorous "Phase II" guidelines, wireless carriers must transmit the location of a

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[4] Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, Preamble, 113 Stat. 1286 (Oct. 26, 1999).

[5] *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Notice of Proposed Rulemaking, 11 FCC Rcd. 18676 (1996).

[6] The NPRM (at ¶ 14) reports that, in 2001, more than 128 million wireless subscribers placed nearly 57 million wireless 911 calls.

wireless 911 caller within specified accuracies.[7] This, in turn, has necessitated considerable investment both by commercial wireless service providers and by the governmental agencies responsible for the public safety answering points ("PSAPs") that handle wireless E911 calls. As noted by the Commission, "the deployment of E911 requires the development of new technologies and upgrades to local 911 PSAPs, as well as coordination among public safety agencies, wireless carriers, technology vendors, equipment manufacturers, and local wireline carriers."[8] The public is bearing the substantial costs associated with Phase II, through increased rates, surcharges and taxes. The reporting of wireless service outages, which can disable wireless E911 networks precisely when the public most needs them, should rightfully be part of the bargain.

Regrettably, during large scale events, including the September 11, 2001, terrorist attacks and the August 2003, power blackout, wireless (and wireline) networks functioned intermittently at best. That is to say, the networks were unfortunately unable to perform the essential role that is increasingly being expected of them. In this regard, it is also worth reflecting on a principal finding of the "Hatfield Report," related to the importance of having a functioning wireless network for the provision location information during extraordinary and conventional emergencies:

> Even before the events of September 11, 2001, the importance of wireless E911 to those who must react to emergencies was clear and increasing. PSAPs, and the public safety community, are on the front lines in the defense against these emerging threats, as well as in handling conventional emergencies. Accurate position reporting is essential in both types of situations. In the case of terrorist activity, for example, accurate position information is essential to allowing law enforcement units to respond quickly to reports of suspicious activity. Indeed, a

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[7] *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Third Report and Order, 14 FCC Rcd 17388 (1999).

[8] FCC, www.fcc.gov/911/enhanced.

> timely response to a call conveying such a report could make the difference between a foiled or successful attack. In the event of an actual attack, it is almost certain that a large number of emergency calls would be placed to the PSAP.[9]

The point is not to blame wireless carriers for these outages, but to emphasize the need for a mandatory, and sufficiently comprehensive, reporting mechanism that will enable government officials and industry efficiently and accurately to identify the underlying causes and to develop potential future remedies and improvements. It is important to note that accurate reporting of wireless outages does not necessarily reveal that the wireless network itself was the primary cause. Some wireless service outages are due to problems in the wireless networks themselves, while others are not. In the wake of the 2003 blackout, for example, the New York City task force determined that many of the wireless service disruptions were rooted in central office failures.[10] In other cases, losses in cellular service were due to an overload of the cellular network immediately following the emergency and, subsequently, cellular repeater sites failing following the loss of power.[11]

But these critical determinations cannot be made, and corresponding corrective action and long-term planning cannot be implemented, without adequate outage reporting. Given local government's limited regulatory authority over the industry, local government should not have to be put in the position of being primarily responsible for tracking down and assessing the validity of the many, and often conflicting, explanations by wireline and wireless carriers for such

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[9] D. Hatfield, "Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services," Section 3.1.1 – Principal Findings and Recommendations – Background (October 15, 2002).

[10] *See* New York City Emergency Response Task Force, "Enhancing New York City's Emergency Preparedness: A Report to Mayor Michael R. Bloomberg" (October 28, 2003) (found at www.nyc.gov/html/om/pdf/em_task_force_final_10_28_03.pdf).

[11] *Id*. at 11-12.

potentially devastating outages. Rather, mandatory and adequate service outage reporting requirements imposed and enforced by the FCC would help relieve local governments of this burden and ensure uniform and comprehensive reporting by *all* affected service providers.

3. **First Responder Networks.**

Commercial wireless services, and other non-wireline services, are used not only by the public, but to significant and ever-increasing degree, by public safety agencies to support traditional voice and data needs. These networks are currently also being evaluated as a means of transmitting to first responders information requiring greater bandwidths than most public safety wireless networks can accommodate. Examples include the transmission of large data files, high-resolution photographs and, in some cases, limited- and full-motion video. In addition, satellite services are increasingly being used to more accurately locate and route emergency vehicles. Over time, opportunities may exist for public safety agencies to team with private commercial carriers for the transmission of such information as micro-sensor detection of nuclear, biological and chemical agents; biometric identification of criminals and terrorists; and advanced surveillance applications. That such public/private partnerships might hold promise was suggested in the 1996 report of the Public Safety Wireless Advisory Committee ("PSWAC") to the FCC and National Telecommunications and Information Administration.[12] The PSWAC report emphasized, however, that the "use of commercial services and private contracts should be facilitated, *provided the essential requirements of coverage, priority access and system restoration, security, and reliability are met*."[13]

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[12] Public Safety Wireless Advisory Committee, *Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission and the National Telecommunications and Information Administration* (Sept. 11, 1996).

[13] *Id.* at 4 (emphasis added.)

These "essential requirements" cannot be met without adequate service outage reporting. Non-wireline service outage reporting is an invaluable tool to public safety agencies that must be able to evaluate the reliability of various commercial networks in order to make informed decisions as to the feasibility of relying on wireless providers' networks to carry out critical homeland security and public safety functions. To further this objective, outage reporting should be embraced, rather than resisted, by industry.

B. Service Disruption Reporting Promotes Competition, Accountability To The Public and Economic Development.

Service outage reporting requirements foster competition and public accountability. To function efficiently, a competitive market needs more than multiple service providers; it also requires (and, indeed, assumes) that subscribers have full and accurate information. Furnishing consumers with more complete and accurate service disruption information about different competing providers permits them to make more informed choices in selecting providers. We are particularly concerned that certain large scale events, like the attacks of September 11 and the blackout of 2003, have been quickly followed by at best, wholly unverifiable, and at worst, misleading statements by particular wireless carriers suggesting that their service performed "better" than that of their competitors. We believe that reporting of non-wireline service disruptions will introduce much greater provider accountability in this area, and help to rectify the current situation, where the public has no independent, reliable source of information to assess the reliability of different providers' competing services and claims.

Moreover, because commerce depends so heavily on robust and reliable communications, outage reporting and prompt remedial action is vital to the health of the economy, particularly in this era of global competition. Ultimately, the United States could find itself at a tremendous competitive disadvantage unless our non-wireline carriers improve the reliability of their

networks. The knowledge that service outage and reliability information is publicly available will give providers an additional economic incentive to make the investments required to improve the reliability of their networks.

II. THE COMMISSION SHOULD CONSIDER EXTENDING SERVICE DISRUPTION REPORTING TO CERTAIN OTHER COMMUNICATIONS TECHNOLOGIES.

The Commission should seriously consider extending service disruption reporting requirements to other communications technologies beyond wireline carriers and the specific classes of non-wireline communications service providers (wireless, cable circuit-switched telephony, and satellite service) to which the NPRM proposes to extend those requirements. The NPRM cogently notes the nation's increasing reliance on "public data networks" (at ¶¶ 2-3 & n.4), but does not propose to extend reporting requirements to such networks. This will create a large and growing gap in the Commission's service disruption reporting requirements, as an ever-growing segment of business and residential users are shifting to such networks for their communications needs.

Limiting service disruption reporting requirements to cable circuit-switched telephony (*id*. at ¶ 41) will create a similar, and growing, gap in the Commission's reporting requirements. As the Commission is well aware, cable operators will be increasingly relying on Internet protocol-based, voice-over Internet protocol ("VoIP") technology, rather than circuit-switched technology, to provide voice and related services to the public in competition with traditional wireline carriers. Just yesterday, for example, it was reported that Cablevision, one of New York City's cable franchiseholders, "has emerged as the early cable leader in the VoIP business, at

least in terms of customers" and "boasts 71,000 IP telephony subscribers in the N.Y.C. area, after adding 42,000, or 3,200 per week, [during the] first quarter [of 2004]."[14]

Service disruptions to such cable-provided VoIP services will become just as damaging, and dangerous, as service disruptions in circuit-switched networks. Not only cable operators, but other providers, including traditional phone companies, will increasingly rely on non-circuit switched, Internet protocol-based technologies, in the years ahead.

While we recognize that the Commission is elsewhere addressing issues relating to IP-enabled services,[15] the Commission cannot hope to achieve the proper and vital policy objectives of its service outage reporting rules unless those rules are also applied to IP-enabled and other data networks. Absent such an expansion of the rules' application, there will always be an ever-expanding, and increasingly hazardous, hole in those rules.

III. SERVICE OUTAGE REPORTING MUST BE MANDATORY.

Given the critical nature of service disruption reporting, as described above, we strongly oppose industry's preference for a "voluntary reporting regime." NPRM at ¶ 12. The Commission's own experience with voluntary reporting -- which resulted in low participation and the submission of reports of insufficient quality or quantity to track outages reliably -- demonstrates that this approach simply will not work. *Id*. at ¶ 11. Nor can we conceive of any means by which to "assure" that voluntary reporting of major outages would routinely take place or, for that matter, that the contents of voluntarily submitted reports could be expected to satisfy the crucial needs of homeland security, public safety and other decisionmakers.

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[14] "Cable MSOs Pick Up VoIP Pace, Shrug Off Vonage," *Communications Daily* at p. 3 (May 24, 2004).

[15] *See, e.g., IP-Enabled Services*, Notice of Proposed Rulemaking, FCC 04-28, WC Dkt. No. 04-36 (rel. March 10, 2004).

Ultimately, voluntary reporting suffers from an inherent "free rider" problem. The social costs of failing to report, or to report fully -- less reliable information for homeland security, public safety and other decisonmakers -- are externalized, and thus an individual service provider has little or no incentive to comply voluntarily. Instead, an individual service provider has significant potential economic incentives either not to report at all, or only to report selectively. Such an approach would (a) lower or eliminate the provider's cost of complying with reporting requirements; and (b) enable the provider to avoid the bad publicity, and possible adverse marketplace reaction, stemming from making known to the public the true scope and frequency of its own service disruptions.

IV. THE NPRM'S PROPOSALS FOR STRENGTHENED AND MORE CONSISTENT REPORTING REQUIREMENTS ARE FUNDAMENTALLY SOUND.

We are in overall agreement with the NPRM's recommendations and underlying logic for more "consistent reporting" and strengthened reporting requirements. In particular, we endorse the proposed new common metric, which would base reporting criteria on the number of user-minutes potentially affected and consider the number of end users potentially affected by the outage. *See* NPRM at ¶¶ 22-23. We further endorse the following NPRM proposals:

- The proposed revisions relating to special offices and facilities and 911 services. NPRM at ¶¶ 24-25.
- Requiring all initial reports to be filed within 120 minutes, and final reports to be filed within 30 days. *Id*. at ¶¶ 27-30.
- Modifying the final disruption report requirements, particularly (i) required identification of all causes, both root and direct, of the service disruption, and (ii) required reporting by entities providing SS7 to carriers. *Id*. at ¶ 31.

We further support the proposed revision to wireline outage reporting requirements and the proposed new wireless and satellite reporting requirements. *Id*. at ¶¶ 32-40. With respect to wireless reporting, we also believe that *both* the lessor and lessee of wireless licenses should be subject to reporting requirements. *Id*. at ¶ 36 n. 78.

Although we strongly endorse the NPRM's tentative conclusion that local network failures and degradations should be reported to the affected PSAPs in real time (*id*. at ¶ 40), we think the FCC should go a step further. With regard to network failures affecting PSAPs, we recommend that the Commission consider more aggressive reporting rules, such as requiring that a 15-minute, rather than a 30-minute, outage will trigger reporting. *Id*. In New York City, for example, it is not uncommon for the City's PSAP to receive in excess of 5,000 calls per hour in a busy period (and, of course, far more than that during a relatively large-scale emergency). That translates into more than 2,500 calls per 30 minutes, and more than 1,250 calls per 15 minutes. As noted, a substantial percentage of these calls originate from wireless subscribers. Given the critical E911 function and the substantial resources that are devoted to assuring E911 network reliability, we believe a 15-minute outage should be a sufficient trigger for reporting. The loss of any 911 call due to outage is potentially life-critical. While we recognize that requiring a separate report for every single-call 911 outage may not be feasible, a 15-minute outage in 911 service, potentially affecting the lives of hundreds, if not thousands of persons, is simply too large to be ignored.

We further support amending the rules to make explicit that the reporting requirements apply to cable operator-provided, circuit-switched telephony. *Id*. at ¶ 41. As noted in Part II above, however, both the Commission and first responders will increasingly lose much of the benefit of applying the reporting requirements to cable-provided telephony unless those

requirements are also extended to non-circuit switched, IP-based telephony provided by cable operators.

We strongly endorse the new proposed rules concerning major infrastructure failures. *Id*. at ¶¶ 46-49. As the NPRM notes (at ¶ 46), in major metropolitan areas like New York City, DS0-equivalent, or "special services" outages often dwarf dialtone line service outages in terms of the amount of communications capacity and traffic affected by an outage. And this trend is likely to continue, if not accelerate, in the future. We also agree that the proposed new 1,350 DS3-minute reporting threshold should be in addition to, and not in lieu of, the blocked-call/user-minute reporting threshold. *Id*. at ¶ 47. We likewise endorse the proposed new SS7 disruption reporting requirements. *Id*. at ¶¶ 48-49.

We support electronic filing of outage reporting (*id*. at 50-52), but note that electronic filing capability itself is sometimes disrupted. For that reason, the rules should also require filing by alternative means, such as facsimile, if for any reason the electronic filing system is inoperative.

Finally, we agree with the historic practice of making all outage reports available to the public. *Id*. at ¶ 52. If, however, the Commission is inclined to limit public disclosure of outage reports, it should do so only for legitimate security reasons and subject to at least two paramount conditions. First, any limit on public disclosure should not be applicable to disclosure to local government first responders. Local governments need prompt and complete access to the full contents of all outage reports. Anything less would seriously handicap local governments' ability to carry out their first responder responsibilities. Second, any limits on public disclosure should apply only to those portions of outage reports that are genuinely security-related, and not

to information about the relative service reliability of various providers. Otherwise, consumers will be denied information that is essential to an effectively functioning competitive market.

CONCLUSION

We welcome and endorse the NPRM's proposed revisions to the service outage reporting requirements and, in particular, the extension of those requirements to non-wireline service disruptions. We also applaud the policy objectives that are the basis for the proposals. While we expect that some members of industry may not share our enthusiasm, we urge the FCC to stand firm and adopt the NPRM's proposal, with the modifications suggested herein. Anything less would be a retreat from what should be the paramount objectives of protecting the public in these increasingly perilous times, and promoting greater and more accurate information in competitive markets.

Respectfully submitted,

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