

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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May 25, 2004

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SUMMARY

The current mandatory reporting regime for telecommunications service disruptions, supplemented by the industry's existing voluntary reporting initiative, is working. While the Commission identifies legitimate concerns with respect to both, its concerns can be adequately addressed by minor modifications to the mandatory reporting regime buttressed by increased industry activity to improve the quality of the existing voluntary reporting initiative. Moreover, the proposed new common metric would -- both as to wireline technology already subject to mandatory reporting and the technologies proposed for coverage for the first time in the *NPRM* -- over-extend the reporting regime to require a level of reporting not justified by the basic public interest framework upon which the regime was founded. Should the Commission proceed to change the existing metric for wireline technology and extend mandatory reporting to new areas, it should not seek to impose a common metric with applicability across carrier operations and technologies. Instead, it should implement alternative metrics tailored to the specific operations or technologies at issue.

The Commission's other proposals with respect to the existing mandatory regime also require some modification. The proposed change to the special offices and facilities reporting requirements, expanding the definition of airports subject to the requirement to include all airports, is overbroad. Qwest supports an alternative definition proposed by the industry -- requiring reports for disruptions affecting the top prime hub airports as defined by the FAA. Similarly, proposed new Section 4.5(e) goes too far in eliminating any threshold for triggering a 911 special facility reporting obligation. At the very least, the proposed new rule should make clear that there is no reportable outage unless a 911 special facility is impacted and should be

modified to eliminate reporting obligations where an impacted facility has lost ALI-ANI capability but not basic 911 service.

Additionally, several of the Commission's proposals with respect to the required timing, mechanics and content of reports require modification. The Commission should retain a rule model where there is differentiation as to when expedited Initial Reports must be filed versus routine Initial Reports. It should also eliminate the proposed attestation requirement for Initial Reports and allow for a simple declaration rather than a sworn attestation with respect to Final Reports. The proposed electronic filing requirement should also be changed to ensure that essential functionality is provided and that all disruption reports are confidential. Finally, the proposed new content requirements for Final Reports regarding diversity/redundancy and root cause should be eliminated.

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Qwest Communications International Inc. (“Qwest”), through counsel and on behalf of itself and its affiliates, hereby submits the following comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rule Making requesting comment with respect to certain proposed modifications to the Commission’s current service disruption reporting requirements.¹

I. **QWEST SUPPORTS THE EXISTING REPORTING REGIME WITH SOME MINOR MODIFICATIONS**

A. **Current Mandatory Reporting Requirements, Supplemented By Voluntary Initiatives, Are Sufficient**

Qwest appreciates the Commission’s obligation and commitment to make available “a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities . . . for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communication[.]”² Qwest, through its most recent Chair of the Network Reliability and Interoperability Council (“NRIC”), has

¹ In the Matter of New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, ET Docket No. 04-35, FCC 04-30, *Notice of Proposed Rule Making* (“NPRM”), rel. Feb. 23, 2004.

² 47 U.S.C. § 151 (Section 1).

taken a leadership role in overseeing the implementation of the Communications Act's directive as it implicates industry.

As the Commission itself notes in the *NPRM*, the current mandatory disruption reporting regime for wireline services is working.³ According to the Commission, that regime has facilitated the identification and correction of entire categories of disruptions and resulted in a general decline in the number of initial service disruption reports.⁴

Yet, this accomplishment has not been without costs. Communications providers have invested considerable time and resources in developing the staffing and processes necessary to accommodate the current regime. Working with organizations such as NRIC, telecommunications providers have taken the lead in converting data developed as part of the existing reporting regime into best practices for the industry. The Commission acknowledges that this effort has assisted in the development of more than seven hundred best practices currently in use in the industry and has greatly improved the overall reliability of provider networks.⁵

The industry's voluntary reporting regime has produced similar results with respect to best practices and has been bolstered by steadily improving voluntary reporting processes and participation.⁶ Most major communications providers, representing services ranging from wireline, dial-up, cable, DSL, satellite and wireless voice to wireless Internet service, are participating in this effort. And their work is not done. NRIC recently completed a detailed report on the status of carriers' voluntary reporting efforts, containing numerous

³ *NPRM* ¶¶ 6-9.

⁴ *Id.* ¶ 6, and n.15.

⁵ *Id.* ¶¶ 6-9.

⁶ *Id.* ¶ 11.

recommendations for additional improvements. Among these are specific recommendations to improve participation and accountability with respect to completeness of reports -- two primary concerns of the Commission regarding this voluntary reporting effort.⁷

Certainly improvements can almost always be made to any reporting regime. But Qwest opposes the extension of mandatory reporting obligations to those services that are currently subject only to voluntary reporting. An expansion would not provide material benefits beyond those already realized by the current voluntary reporting regime. As shown below in the context of each technology at issue, the *NPRM*'s proposal to extend the mandatory reporting process to non-wireline technologies through the mechanism of a common metric will only result in an unduly onerous (and, in some cases, unworkable) and wholly unnecessary new layer of regulatory burden.

The current voluntary regime is already effective while simultaneously being more comprehensive than the proposed mandatory reporting proposals contained in the *NPRM*. The NRIC has demonstrated that it possesses the expert resources to fashion reporting processes that can account for unique characteristics of different technologies -- as opposed to a "one-size-fits-all" solution as suggested in the *NPRM*. The voluntary regime also extends to a broader variety of services as it seeks to incorporate information regarding dial-up and DSL services in addition to the technologies proposed for coverage in the *NPRM*.

To the extent improvements might be made to the existing voluntary reporting regime, these are being addressed by the NRIC. The industry has already invested considerable resources in developing the staffing and methodologies needed to implement the voluntary

⁷ NRIC VII, Group-to-Network-Liability, Final Report, November 17, 2003, pp. 48-49.

regime. Imposing a mandatory regime now will only signal to the industry that similar voluntary commitments in the future are risky.

B. The Common Metric Is Not Workable Across Services/Technologies

Qwest opposes the new “common metric” both with respect to wireline technology currently subject to mandatory reporting and the other technologies addressed in the *NPRM*. The proposed common metric will not produce any material benefits or justify the added costs imposed on providers. Additionally, the type of improvements the Commission seeks can be achieved without implementing an entirely new regime. While it is difficult to come up with precise estimates, Qwest believes that the proposed new, common metric would result in a dramatic increase in reportable incidents. Of course, this consequence is completely at odds with the Commission’s expectation that the “proposed revisions to the threshold criteria are not expected to alter the number of outage reports filed annually to a significant degree.”⁸

The Commission decision to possibly implement a new common metric stems from what it sees as a need to address certain “anomalies” in the current rules.⁹ The primary “anomaly” identified in the *NPRM* is the fact that carriers, in accord with the literal language of the existing rule, have been assessing impacts on “customers” rather than lines in determining whether an outage report was necessary. In some cases, application of this metric creates a cure more substantial than the disease it seeks to address.

The Commission’s new rule would require outage reporting whenever:

The outage duration lasted at least 30 minutes; and

The number of “user-minutes” potentially affected per outage equals or exceeds 900,000.

⁸ *NPRM*, Appendix C ¶ D.

⁹ *Id.* ¶ 22.

As stated above, Qwest opposes mandatory reporting obligations being extended to any carrier operations beyond traditional wireline operations, believing that existing voluntary reporting is sufficient and growing more robust over time. Yet, should the Commission determine that some type of mandatory outage reporting must pertain to non-wireline operations, it must modify its notion that the common metric has applicability across carrier operations and technologies. That is simply not the case, as will be made clear below.

Qwest is mindful of the basic public interest framework upon which the Commission's current reporting regime was founded. That regime is intended to secure information about two types of disruptions: (1) those that could have a direct affect on the safety of life or property or on the national defense and security; and (2) outages that are otherwise sufficiently significant that they warrant reporting.¹⁰ The application of the new common metric as proposed to the respective technologies -- both wireline technology already subject to mandatory reporting and the technologies proposed for coverage for the first time in the *NPRM* -- would over-extend the reporting regime and reach incidents not warranting such reporting.

C. The Commission's Concerns Can Be Adequately Addressed By Minor Modifications To The Existing Regime

In the context of wireline voice telephony, the application of the common metric would be to define the number of potentially affected end users as the sum of assigned numbers (numbers either working in the PSTN or numbers not yet working but under order) and administrative numbers (numbers used by providers to perform internal administrations). This metric is to rectify what the Commission sees as flaws associated with the current reporting structure.

¹⁰ See 47 C.F.R. §§ 63.100(a) (3)-(4), 63.100(c).

The Commission identifies two such flaws. First, the Commission states the current “customer” criterion is ambiguous, citing concern that carriers may define “customer” so as to count only a single customer where an outage affects a large business or governmental customer with a large number of telephone lines. Second, the Commission states that the current rule does not capture outages of any length to the extent they impact 29,999 or fewer customers.

While these concerns may be legitimate in the context of wireline outage reporting, the common metric introduces an entirely new reporting regime when far less drastic and less costly changes would resolve the Commission’s concerns. For example, the Commission’s first concern can be addressed by simply clarifying that going forward the criterion will be “access lines” instead of “customers.”

Similarly, both of the Commission’s expressed concerns are resolved by modifying the current rule slightly to require reports of outages: (1) affecting less than 30,000 or more “lines in service” with a duration of thirty or more minutes and involving a survivable element (host and remote switches) or (2) affecting less than 30,000 “lines in service” where the outage lasts for more than six hours and involves a survivable element. Qwest understands that the Industry-Led Outage Reporting Initiative (“ILORI”) is proposing such a modification and Qwest supports this proposal.

D. If A New Wireline Metric Is To Be Imposed,
Qwest Supports The Industry Alternative

Not only does the common metric proposed by the Commission operate as a carving knife when a scalpel would do, but it is also inherently defective when applied to wireline voice telephony because of its use of assigned telephone numbers in measuring the number of potentially affected end users. “Assigned telephone numbers” bear no correlation with end users. For example, “assigned telephone numbers,” as defined by the Commission, would

include test numbers and pending orders. It would also include multiple numbers assigned to a single line. Also, by way of example, Qwest may, in some instances, have made large blocks of assigned numbers available to large customers that own PBX equipment and Qwest has no knowledge how many of those numbers have actually been activated. The Commission's metric would count all those numbers.

Again, Qwest believes the minor modifications to the current metric described above would resolve the Commission's concerns. However, if the Commission is intent upon implementing an entirely new metric, Qwest understands that ILORI has proposed another alternative to the Commission's proposal that would permit providers to make reporting determinations based on either of two methodologies. Under the first methodology, for those carriers that have the ability to use blocked call counts or historic traffic data, providers would use the blocked call measurement proposed by the Commission for IXC and LEC tandem outages -- using either real-time (90,000 or more blocked calls) or historic (30,000 or more calls) numbers and requiring, as a baseline condition, in addition to the requirement that an outage last 30 or more minutes, the requirement that an outage involve a survivable element (host and remote switches). Under the second methodology, in those contexts where blocked calls data is unavailable, providers would be required to report outages either: (a) affecting 30,000 or more "lines in service" with a duration of 30 or more minutes and involving a survivable element (host and remote switches) or (b) affecting less than 30,000 "lines in service" with a duration of six hours or more and involving a survivable element (host and remote switches). Qwest would support this alternative metric.

E. The Commission's Proposals Regarding IXC/LEC Tandem Outages Require Some Modification

The Commission proposes modifications to the current reporting requirements for IXC and LEC tandem outages in order to implement the proposed new common metric in that context.¹¹ The current rule requires that providers report IXC and LEC tandem outages “where more than 90,000 calls are blocked during a period of 30 or more minutes for purposes of complying with the 30,000 potentially affected customers threshold.”¹² The Commission essentially proposes to maintain this existing measurement but proposes significant changes to how blocked calls are to be counted in this context.

Qwest opposes two of these proposals as they unnecessarily complicate the required blocked call calculation. First, Qwest objects to the Commission's proposal that all blocked calls be counted regardless of whether they are originating or terminating calls. The recommendation to count both incoming and outgoing peg count for IXC/LEC tandem outages will result in a single call being counted twice. The tandem will count both an incoming register and an outgoing register for a call as it is routed through the tandem to its final termination. This flaw can be avoided by using the Tandem PC register, whether working from historical or real-time call data. This will allow for every call that is handled by the tandem to be counted and is the most reliable count for this measurement. The Commission should modify its proposed rule accordingly.

Second, Qwest opposes the Commission's proposal to use blocked call estimates to address the absence of actual blocked-call data in two types of circumstances. Where a failure prevents the counting of blocked calls in either or both directions, the Commission proposes that

¹¹ *NPRM* ¶ 34.

¹² 47 C.F.R. § 63.100 (g).

three times the actual number of carried calls for the same day of the week or the same time of week be used as a surrogate for the number of blocked calls that could not be measured directly. Similarly, where it is possible to obtain the number of originating blocked calls or the number of terminated blocked calls, but not both, the Commission proposes that blocked call count be doubled to compensate for the missing data -- unless the carrier certifies that only one direction of the call setup was affected by the outage. Use of estimated data is unnecessary and unreliable in both of these circumstances. A reporting requirement based on estimations and conjecture, when the reporting requirement could remain as it is today, utilizing like-day/like-kind historical data, would be counterintuitive. The latter is the more reliable reporting criterion and should be retained in the Commission's rules.

Finally, as discussed above in connection with the wireline voice metric, Qwest supports the ILORI proposal to modify the Commission's threshold measurement in this context slightly to require, as a baseline condition in addition to the requirement that an outage last 30 or more minutes, that the outage involve a survivable element (*e.g.*, host and remote switches).

F. If Mandatory Reporting Is Extended To Wireless Services, Qwest Opposes The Proposed Metric And Supports An Alternative

In the context of wireless services, application of the proposed common metric would result in the number of potentially affected end users being calculated as the mathematical result of multiplying the total call capacity of the affected MSC (mobile switching center) switch by a concentration ratio factor of ten. This concentration ratio is derived from a Commission assumption that typically MSC switches are designed so that, for every ten users eligible to access the MSC switch, there is one channel available to handle calls. The Commission seeks

comment both as to whether this concentration ratio is appropriate and whether there are “possible alternative criteria” for the wireless context.¹³

The *NPRM* reflects an erroneous assumption in fashioning the common metric formula in the wireless context. The result is a seriously flawed measurement tool. The Commission assumes that wireless switches are designed through a process by which an engineer calculates the number of potential users present in the service area of a given MSC switch and then creates a switch with a capacity designed to correlate with that number by using a concentration ratio. Based on these assumptions, the Commission concludes that a concentration ratio of ten is appropriate in the wireless reporting metric.

However, wireless switches are simply not designed or “sized” in this manner. Instead, wireless switches are designed by performing a complicated analysis that evaluates numerous factors to determine the peak number of user minutes that may be expected at any time. There are several reasons this is the more appropriate engineering methodology. To begin with, unlike a wireline switch, the number of users in the service area of an MSC switch is never static, as wireless users are mobile. Additionally, the calculation of a defined number of users is complicated by the fact that wireless phones are designed to “roam” to an alternate switch when a blockage occurs. That alternative switch may or may not have the same service area. Finally, there are a variety of different radio frequency technologies used in wireless systems -- AMPS, NAMPS, GSM, TDMA, CDMA, etc. It is difficult to derive common measurements used across these radio technologies. However, one common measurement used is “minutes of use.” This is the metric used for customer billing and for recording and tracking of traffic.

¹³ *NPRM* ¶ 36, ¶ 38.

Because of these unique characteristics of wireless technology, MSC switches are not designed to accommodate a static level of simultaneous user capacity. Instead, the design of wireless switch capacity is based upon RF (radio frequency) layer capacity which is designed using probability tables that calculate anticipated user minutes. In performing that calculation, these probability tables actually anticipate that there will be more users than simultaneous user capacity. There is no attempt to correlate user minutes to a defined number of end users over a defined period of time. As a result of the above, it is simply not possible to calculate the number of potentially affected end users in the wireless context as the Commission suggests.

To reiterate, Qwest opposes the expansion of mandatory reporting to wireless carriers. However, if the Commission is intent on such an expansion, the common metric must be changed within the wireless context. A proper metric for the wireless context would be to require reporting of outages that last at least 30 minutes where the number of “minutes of use” (as opposed to “user minutes”) potentially affected equals or exceeds 900,000, using historical like-time/like-day user minute peg counts. This would result in an accurate measure of the impact of an outage. Because wireless is a radio-based system, there is no ability to measure, in the event of an outage, how many users may be trying to make calls. Accordingly, as in the context of blocked call measurements for IXC and LEC tandem outages, historical call data is the best source for measuring the effect of an outage.

G. The Special Reporting Requirement Proposed For
Wireless E-911 Communications Should Be Modified

The Commission proposes that, in the wireless context, any outage that prevents an MSC from receiving or responding to 911 calls (including the delivery of all associated data -- *e.g.*, Automatic Location Information (“ALI”)-Automatic Number Information (“ANI”)) for at least thirty minutes be reportable. This proposed rule is overbroad. E-911 outages should be

reportable in the wireless context only when there is a complete loss of all E-911 phases for longer than thirty minutes.

In the wireless context, there are three phases of E-911 available to a Public Service Answering Point (“PSAP”) -- Phase 0, Phase I and Phase II. If a PSAP has deployed Phase II with a wireless carrier and there is an outage in the wireless network where Phase II is not available at call setup, the PSAP will be routed and provided Phase I data. The PSAP may continue to query the wireless carrier to obtain Phase II information as long as the wireless call is still active. If there is an outage affecting both Phase I and Phase II, the call will be routed as a Phase 0 call and the PSAP will not have the capability to continue to query the wireless switch to obtain Phase I or II data.

Unless there is a complete loss of all E-911 phases for longer than thirty minutes, there is simply not an outage of a magnitude that falls within the Commission’s conceptual framework for these reporting rules. Accordingly, Qwest requests that the proposed reporting requirement for outages that potentially affect E-911 communications be modified by deleting the parenthetical language “(including the delivery of all associated data)” from the proposed new rule.

H. If Mandatory Reporting Is Extended To DS3 Minutes,
Qwest Opposes The Proposed Metric And Supports An Alternative

The Commission proposes the establishment of additional outage-reporting criteria that would apply to failures of two categories of infrastructure components having significant traffic-carrying capacity. The first proposed criteria would require the reporting of all outages of at least 30 minutes duration that potentially affect at least 1,350 DS3 minutes (counting only

working DS3s -- *i.e.*, those actually carrying some traffic of any type at the time of a failure).¹⁴

This proposed metric is both unduly burdensome and unnecessary. It would result in an unreasonably high number of reportable incidents without producing public interest benefits commensurate with the burden.

Among other shortcomings, the proposal fails to account for the fact that many outages falling within the scope of the proposed new requirement would not result in any service impact for end users (*e.g.*, where traffic bound for a failed OC48 is re-routed to another trunk). Additionally, the determination of whether a reportable outage has occurred is complicated in this context because of the manpower needed to understand the extent of a given outage. For example, in the event of a failure in connection with an OC48, personnel must identify each in-service T3 riding the system, determine the number of T1s in service on each T3 and determine the number of DS0s in service. This process will take considerable time.

While Qwest opposes the expansion of mandatory reporting in this context, should the Commission remain intent upon this expansion, an alternative metric should be used. Qwest understands that ILORI is proposing an alternative along the following lines. If a significant infrastructure transport component (defined as 48 working DS3's) is within a service provider's network and the service provider is responsible for maintenance of the DS3 transport components at both end points, providers would be required to report any failure of 48 working DS3's that lasts for 30 or more minutes within the communications infrastructure and did not switch to protect. If an outage lasts 6 hours or more and involves 24 working DS3's but less than 48 working DS3's then a report would also be required. Anything less than 24 working DS3's

¹⁴ *Id.* ¶ 47.

would not be reportable. Qwest supports this proposed alternative as it eliminates the flaws described above in connection with the Commission's proposed metric.

I. If Mandatory Reporting Is Extended To SS7 Outages,
Qwest Opposes The Proposed Metric And Supports An Alternative

The second proposed new criteria for failures of communications infrastructure components is the Commission's proposed requirement for SS7 disruptions. The Commission proposes that all providers of SS7 service (or its equivalent) be required to report disruptions of at least 30 minutes duration for which the number of blocked or lost ISDN User Part ("ISUP") messages (or its equivalent) was at least 90,000.¹⁵ This proposed measurement is not workable and is unnecessary.

As an initial matter, the proposal would be impossible to implement because providers do not have the ability to collect ISUPs. Even if ISUPs could be collected, ISUPs are not a viable way of measuring outages. The number of ISUPs simply does not correlate in any meaningful way with the number of call attempts failed.

The proposed new requirement is also unnecessary because the outages covered would already be captured in many instances. For example, in the event of an SS7 outage, there would be an outage resulting in blocked calls in a provider's network. In many instances, therefore, the outage would already be reported by both a service provider and a wholesale provider. Those reports would likely identify a signaling failure as the root cause of the outage.

Again, while Qwest opposes the expansion of mandatory reporting in this context also, if the Commission is intent upon this expansion, an alternative metric must be used for measuring SS7 signaling outages. Qwest understands that ILORI is proposing a metric along the lines of the following: If SS7 signaling is within a service provider's network and the service provider is

¹⁵ *Id.* ¶ 49.

responsible for maintenance of the SS7 links at both end points, then providers would be required to report outages meeting the threshold proposed for IXC and LEC tandem switches, *i.e.*, outages resulting in blocked calls of a certain level [historic (30,000) or real-time (90,000)] lasting 30 or more minutes. If a third party SS7 provider is involved and a customer of a third party SS7 provider notifies their provider that they have met or exceeded the threshold proposed for IXC and LEC tandem reporting in their networks, the third party SS7 provider is responsible for any report compliance required in connection with any SS7 failure involved in the outage. Qwest supports this proposed alternative as it eliminates the flaws described above in connection with the Commission's proposed metric.

II. THE COMMISSION'S PROPOSALS REGARDING THE EXISTING MANDATORY REPORTING REGIME REQUIRE SOME MODIFICATION

A. The Proposed Modification To The Special Offices And Facilities Reporting Requirement To Include All Airports Is Overbroad

The *NPRM* proposes to make the current special offices and facilities reporting requirements set forth in Section 63.100(e) applicable to all airports instead of just major airports, as the current rule provides. The *NPRM* characterizes this change as a "minor modification" to the existing rule.¹⁶ However, a change to the existing rule along the lines suggested in the *NPRM* would result in service providers assuming significantly greater burdens without any corresponding material public interest benefit. For example, in Qwest's region alone, instead of the current 11 facilities associated with mandatory outage reporting, 1,319 facilities would potentially be implicated by the proposed change in the reporting requirement. The proposed expansion would cast a reporting net far beyond what is needed to satisfy the Commission's public interest framework for outage reporting. Not all facilities designated as

¹⁶ *Id.* ¶ 24.

airports have the level of traffic, or the type of electronics (*e.g.*, radar) and usage (*e.g.*, operated 24-hours-a-day, seven-days-a-week), to warrant a special reporting requirement as that currently reflected in Section 63.100(e). The present reporting requirement is entirely adequate to capture significant outages and Qwest supports the continuation of that level of reporting.

Still, should the Commission be intent on modifying the current requirement, a definition crafted to better capture more than the present “major” airports but less than all airports would be a better approach. Qwest understands that ILORI will be recommending to the Commission an expansion of the current requirement to a definition that would result in coverage of approximately 140 facilities nationwide instead of the current 69. Under ILORI’s proposal, reports would be required only for disruptions that affect the top 137 prime hub airports (major, medium and small), as listed on the FAA website and URL <http://www.faa.gov/arp/planning/stats/2002/CY02CommSerBoard.xls>. Qwest supports ILORI’s proposal.¹⁷

B. Qwest Supports A Reasonable Modification To The Reporting Requirements For Outages Potentially Affecting 911 Special Facilities

Concluding that the current outage reporting rules affecting 911 special facilities are “overly complex,” the Commission proposes to revise those rules in order to eliminate the current differentiation with respect to criterion for length of outage, number of lines potentially affected and “other factors.”¹⁸ The Commission proposes that “reporting of all communications outages of at least 30 minutes duration that potentially affect the ability to originate, complete, or terminate 911 calls successfully (including the delivery of all associated name, identification, and

¹⁷ Qwest also believes that the ILORI proposal to adopt the NRIC VI Focus Group 2 recommended definition for “outages potentially affecting airports” is worthy of serious consideration.

¹⁸ *NPRM* ¶ 25.

location data)” be undertaken.¹⁹ While Qwest supports a reasonable modification to these rules, the proposed rule needs clarification and modification before it is crafted to secure meaningful information.

Should the Commission enact the proposed new rule as is, it should also clarify that the proposed new rule does not change the fact that a 911 special facility must be at least potentially involved in an outage as a predicate condition to any reporting obligation. Under the current rule, before any reporting obligation is triggered, an outage must potentially affect a 911 special facility. For example, there must be isolation of a PSAP, the loss of call processing capabilities in an E-911 tandem or the isolation of an end-office switch or host-remote cluster.²⁰

Proposed new Section 4.5(e) is not as clear as it should be that a potential outage must still involve a 911 special facility and that the only material change suggested by the proposed new rule is the elimination of the current threshold requirement that the facility at issue serve 30,000 or more access lines before a reporting obligation is triggered. In other words, the proposed new rule is obviously not intended to apply to the impairment of a single access line or a local loop and the Commission should make this clear.

Even with this necessary clarification, however, proposed new Section 4.5(e) goes too far by eliminating any threshold for triggering a 911 special facility reporting obligation. While the Commission might consider the current rule overly complex and too narrow, a more reasonable modification can be crafted to address these concerns than the one proposed in the *NPRM*.

ILORI has proposed the following new reporting rule for 911 special facility outages, which Qwest supports:

¹⁹ *Id.*

²⁰ 47 C.F.R. § 63.100 (a)(4).

(1) PSAP outages affecting less than 30,000 users shall be reportable if: (a) the outage is caused by a failure in the communications provider's network; (b) no reroute was available; and (c) the outage lasts six (6) hours or more.

(2) PSAP outages affecting 30,000 or more users shall be reportable if: (a) the outage is caused by a failure in the communications provider's network; (b) no reroute was available; and (c) the outage lasts for 30 minutes or more.

(3) The loss of all call processing capabilities in one or more E-911 tandems/selective router for at least 30 minutes duration; or

(4) The isolation of one or more end-office switches or host/remote clusters causing 30,000 or more subscribers to be isolated from 911 for at least 30 minutes duration; or the isolation of one or more end-office switches or host/remote clusters causing less than 30,000 subscribers to be isolated from 911 for at least 6 hours duration.

This proposed rule is a balanced approach to addressing the Commission's concerns.

Finally, any new rule in this context should also be modified to eliminate the phrase "(including all associated name, identification, and location data)." Like the proposed new wireless E-911 requirement discussed above, this proposed new rule is overly broad. In some circumstances, an outage affecting ALI-ANI capability occurs, but the impacted facility has not lost basic 911 service. For example, the impacted PSAP may not have purchased ALI-ANI capability even though the communication provider for the connecting facility is capable of providing it. Similarly, the impacted PSAP may have ordered ALI-ANI capability, but outages may occur that disrupt ALI-ANI capability without disrupting basic 911 service. Where basic 911 service is not disrupted, there is not an outage of sufficient magnitude to compromise the Commission's public interest framework for its outage reporting rules.

C. The Commission's Proposals With Respect To The Required Timing, Mechanics And Content Of Reports Require Some Modification

1. The Current Rule Model In Which Initial Reports Are Filed At Different Times Depending Upon Their Impact Should Be Retained

Under the Commission's current rules, the timing for filing initial reports depends on whether the number of customers potentially affected exceeds a defined threshold. Initial reports must be filed "by facsimile or other record means" within three days when outages affect between 30,000 to 50,000 customers and within 120 minutes when outages affect 50,000 or more customers.²¹ In a radical departure from this existing reporting regime, the Commission proposes a new rule requiring that all initial outage reports be filed "electronically" within 120 minutes of becoming reportable. This new approach improperly fails to take into consideration the notion of substantiality with respect to initial reporting requirements -- a significant factor.

Just as the public interest framework underlying the Commission's reporting regime recognizes that only certain outages need to be reported (*i.e.*, those deemed sufficiently substantial or material to pose harm to networks or users), the current rule requirements regarding the timing of Initial Reports reflects the common sense reality that only certain reportable outages need to be reported on an expedited basis. As discussed above and below, the modifications proposed by the Commission for its disruption reporting rules will undoubtedly result in a much higher number of reportable incidents overall.

To impose a requirement that Initial Reports for **all** reportable outages be filed within 120 minutes, on top of the increased overall reporting burden, is counterproductive and unnecessary. Under all circumstances, the need to be populating and filing a regulatory report creates not only an added burden but a distraction for provider personnel who should be focused on detecting and

²¹ 47 C.F.R. §§ 63.100 (b), (c).

correcting service outages.²² The cost of this distraction should only be imposed in an event where the benefit outweighs the cost -- *i.e.*, in the case of more significant outages.

Accordingly, the Commission's reporting rules should retain a differentiated time calculation for the timing of Initial Reports. Again, Qwest opposes mandatory reporting obligations being extended to any carrier operations beyond traditional wireline operations. As is explained above, should the Commission determine that some type of mandatory outage reporting must pertain to non-wireline operations, it should employ a metric tailored to the different carrier operations and technologies at issue instead of a common metric. Similarly, if a differentiated timeline calculation is to be retained, the threshold for determining when Initial Reports must be expedited would also have to be tailored. This would be easy to accomplish. Employing the metrics Qwest advocates above for each respective operation/technology, Qwest proposes that expedited filing of Initial Reports (*i.e.*, within 120 minutes) be required for the following outages:

For metrics measured by number of lines in service affected (*e.g.*, wireline voice) -- outages that affect 50,000 or more lines in services;

For metrics measured by number of blocked calls (*e.g.*, wireline voice, tandem outages or SS7 failures) -- outages that result in 150,000 or more blocked calls;

For metrics measured by number of minutes of use (*e.g.*, wireless) -- outages that result in 1,500,000 or more minutes of use;

For metrics measured by number of DS3s (*e.g.*, DS3 outages) -- failures of 192 or more DS3s.

If the Commission is intent upon eliminating a threshold for determining when expedited reports should be filed, Qwest supports the alternative rule on timing of Initial Reports proposed

²² Qwest reads the requirement stated at paragraph 30 of the *NPRM* that expedited report filing is to occur "within 120 minutes of discovering a reportable outage" to mean the clock for purposes of report timing starts only after the provider has made a determination that a reportable outage has occurred, not necessarily when the outage first occurs.

by ILORI. Qwest understands that ILORI has proposed a three-step reporting process in which providers would have 120 minutes to notify the Commission of an event, 72 hours to submit an Initial Report and 30 days to submit a Final Report. Like Qwest's proposal, this proposal strikes a fair balance in light of the realities described above.

2. Attestation Of Initial Reports Is Unnecessary And Will Insert Needless Delay Into The Reporting Process

The Commission's proposed new Section 4.11 would burden service providers by requiring that each Initial Report submitted be "attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief."²³ This type of attestation obligation -- particularly under oath, as opposed to a simple declaration -- is unnecessary at the point of an Initial Report. Moreover, the "sworn nature" of the attestation will clearly insert delay into the process of preparing and finalizing the Initial Report, and might well result in more generalized information being provided than would otherwise be the case.

Practically speaking, the proposed attestation requirement will only increase the administrative burden on providers in completing and submitting Initial Reports. Such a requirement will also contribute to the pressures already placed on employees who handle outages and distract them from more important work. Provider personnel will understandably seek the review of senior management and, at least in some instances, legal counsel before submitting reports. For example, in many instances, as where disruptions occur during off-hours or weekends, the internal, administrative processing necessary to complete attested-to reports

²³ *NPRM*, Appendix A ¶ 5.

will be impossible to obtain. The consumption of these resources within the context of an Initial Report filing cannot be supported by any meaningful cost/benefit analysis.

Moreover, the proposed attestation requirement is contrary to the deregulatory thrust of the Telecommunications Act of 1996 and the mandate that the Commission reduce unnecessary regulation.²⁴ The imposition of such a requirement, particularly in the absence of any suggestion that providers have engaged in any kind of systematic or routine falsification of disruption reports, is at odds with reasoned decision-making.²⁵ If the Commission is intent upon imposing an attestation requirement in the context of service outage reporting, it should impose that requirement only in the context of Final Reports.

3. The Proposed Attestation Requirement for Final Reports Should Be Modified

The Commission's proposed new rule 4.11 also provides "[e]ach Final report shall be attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief" and requires that each Final Report contain an attestation "that the communications provider on oath deposes and states that this information is true, complete, and accurate."²⁶ The proposed new rule should be modified in two respects. First, the attestation requirement should be modified to require only a simple declaration instead of a sworn oath. The Commission requires only a declaration for ARMIS, Form 477

²⁴ See, e.g., 47 U.S.C. § 161; Joint Explanatory Statement of Managers, Conf. Rep. on S.652, at 113 (1996) (The fundamental principle of the Act is "to provide for a pro-competitive, deregulatory national policy framework").

²⁵ Should the Commission have concerns regarding a particular incident, a particular report or a particular provider, the Commission would be free to impose an attestation requirement as a remedial measure.

²⁶ *NPRM*, Appendix A ¶ 5.

(broadband) and Form 499 (USF) reports.²⁷ A declaration is certainly more than adequate for outage reporting as well. Moreover, unlike some of these other contexts, it is not necessary that these routine outage reports be signed by officers. In fact, such a requirement will only delay the reporting process unnecessarily.

Second, the corporate attestation requirement is not necessary given the required attestation from the person submitting the report. A corporation can only act through its agents. Imposing a corporate attestation requirement for Final Reports, in addition to an attestation requirement from the agent submitting the report, is thus unnecessary and will only inject confusion and additional administrative burden into the process. Provider personnel will feel the added pressure of trying to resolve who might have the authority to submit a corporate oath in the context of each reportable outage.

4. Qwest Supports The Proposed Requirement Of Electronic Filing, With Some Modification

The Commission proposes requiring that all outage reports be submitted electronically with the anticipation that such filing mechanism will, among other things, "...virtually eliminate any burden that would be associated with complying with the proposed reporting requirements."²⁸ Qwest supports an electronic filing requirement. However, certain safeguards must be implemented if electronic filing is to be required.

As an initial matter, the Commission's rules should be modified such that the required electronic filing process have at least the following functionalities:

- The ability to differentiate between Initial and Final Reports;

²⁷ Automated Reporting Management Information System; Local Competition and Broadband Reporting; Telecommunications Reporting Worksheet.

²⁸ *NPRM* ¶ 51 (footnote omitted).

- The ability to have a first step in the filing process in which data could be “entered” but not “submitted” and a second step in which data would be “submitted;”
- The ability to withdraw a report electronically;
- The ability to have an identifying number assigned automatically when a report is submitted and to give providers written documentation of receipt of the report by the Commission; and
- The ability to have a filed/confirmed copy delivered to providers in a format that can be saved electronically.

Additionally, the Commission’s proposed delegation of authority to the Chief of the Office of Engineering and Technology to make revisions to the report filing system and report template going forward must be qualified. Qwest opposes this delegation unless the Commission’s new rules also expressly give providers the ability to comment on any changes to the filing system or report template that may be proposed by the Office of Engineering and Technology over time.

5. All Reports Should Be Confidential

The Commission seeks comments on whether outage reports filed by wireless, wireline, satellite, or cable providers should be made available to the public.²⁹ There is no doubt that much of the information contained in the report should **not** be made publicly available. To begin with, this information could provide a roadmap to potential bad actors intent upon doing damage to the nation’s communications infrastructure. For example, the Commission’s rules may require the disclosure of potentially sensitive information about provider customer volume, infrastructure capacity, service quality, etc.

This same information is also potentially confidential and commercially valuable to providers. In fact, this is the kind of proprietary information that the Commission’s rules already

²⁹ *Id.* ¶ 52.

acknowledge could well be imbued with a confidential mantle.³⁰ Some disruption information has been made publicly available in the past under the existing reporting regime. However, the Commission's proposed new regime expands the type of information submitted and greatly increases the number of incidents and types of services covered. The release of such information is contrary to the norms of business competition and is not generally engaged in by non-regulated entities. Moreover, the Commission's proposed rules would increase the level and types of information required of regulated wireline providers at a time when that industry should be moving towards lesser, not greater, regulatory burdens.

If the Commission does not make it very clear that submitted information claimed to be confidential will be treated as such, or if carriers are concerned that the Commission's will on this matter is not resolute in favor of protection of this information, providers completing required reports will undertake, as a matter of business imperative, the added burden of trying to scrub or refine the data they will be submitting to avoid dissemination of confidential and proprietary information. For all these reasons and in order to encourage full and timely reporting by providers of all required information, provider reports should be submitted and maintained on a confidential basis.

The public need not be deprived of adequate disruption information in order to protect these national security and provider confidentiality concerns. In the event the Commission deems to make data derived from disruption reports publicly available, it can do so in a scrubbed form. This would be accomplished simply by including in the report filing process a stage in which certain information contained in the reports is scrubbed before making reports publicly

³⁰ *See, e.g.*, 47 C.F.R. § 0.457(d).

available. Providers should receive advance notice of precisely what report template fields will receive confidential treatment and be given an opportunity to comment on that subject.

6. The Current Rules With Respect To The Content Requirements For Final Disruption Reports Are Adequate

The Commission proposes to modify the existing requirements for final disruption reports. It would require an additional statement regarding whether the outage was at least partially caused because the network did not follow engineering standards for full diversity (redundancy), as well as a statement of all the causes of the outage, instead of just a root cause, as currently required.³¹ These proposed new requirements are also unnecessary, unduly onerous and, to some extent, impossible to comply with.

The Commission's current rules require that Final Reports contain a statement regarding whether or not best practices could have avoided an outage, including best practices for diversity/redundancy capabilities. Thus, the current rule already adequately encompasses diversity/redundancy. This is all the more true since a change from reporting based on best practices to one based on engineering standards is impossible to implement. There currently are no engineering standards in the industry regarding diversity/redundancy. Accordingly, the proposed new rule would be impossible to comply with.

With respect to the proposed addition of a statement of all the causes of the outage, Qwest opposes this requirement in lieu of the current obligation to identify a root cause for a given outage. There generally is always a single root cause associated with an outage, although there may be many, many contributing factors. It's a matter of the forest and the trees. Service providers should spend their limited resources and work efforts focusing on root cause analyses,

³¹ *Id.* ¶ 31.

not attempting to identify each possible (because it might not always be able to be ruled out) cause of an outage.

Moreover, this requirement is a trap for the unwary to the extent the Commission retains an attestation requirement with respect to Final Reports. Employees of service providers are certain to over-worry and overwork an outage to the extent they must attest that they have captured “all the causes” of an outage. Clearly, legal counsel would be sought on the penalties associated with omissions (be they accidental or negligent) consuming even more resources on tangential causation issues. Such a reporting requirement would not be supported by reasoned decision-making.

Accordingly, Qwest believes that the current rule should remain unchanged. If the Commission is intent upon requiring a description of causes or factors beyond the root cause, Qwest requests that the new rule require, in addition to that description, the identification of a single root cause and the elimination of any attestation obligation.

III. CONCLUSION

As described above, the existing mandatory reporting regime buttressed by the voluntary industry reporting initiative is adequate and should be maintained with minor modification. Should the Commission proceed to change the current metric and extend mandatory reporting to new areas, a common metric is simply not workable. Instead, the Commission should craft alternative metrics better tailored to the operations and technologies at issue. Finally, the

Commission's other proposed modifications to the existing mandatory regime require some modification.

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May 25, 2004

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System in ET Docket No. 04-35, and 2) served, via email on the FCC's duplicating contractor Qualex International, Inc. at qualexint@aol.com.

Richard Grozier
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May 25, 2004