

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

COMMENTS OF T-MOBILE

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Table of Contents

Summary of Comments.....	ii
I. Introduction	1
II. The Need For New Regulatory Oversight Is Unclear Given the Newness of The Voluntary Program	4
III. The NPRM Proposals Do Not Reflect the Realities of Today’s Market.....	7
IV. The Commission Should Conform Its Outage Reporting Programs to the Standards Set in Homeland Security Presidential Directive 7.....	10
V. A Recommended Approach That Is Compatible with the Realities of Today’s Market and HSPD-7.....	13
VI. Certain Changes Are Necessary If the Commission Proceeds with the Traditional Regulatory Approach Proposed in the NPRM.....	16
A. The Commission Should Rule Explicitly That Outage Reports Will Be Withheld from Public Disclosure.....	17
B. Initial Outage Reports Should be Filed as Soon as Possible or Within 72 Hours	19
C. The Initial Report Form Should Be Simplified Considerably	20
VII. Conclusion.....	22

Summary of Comments

T-Mobile makes the following five points in its comments:

1. The need for new regulatory oversight is unclear given the newness of the voluntary program. T-Mobile is committed to advancing network reliability and to assisting national efforts to improve homeland security. This commitment is evidenced by T-Mobile's membership and participation on NRIC and the successor NRSC/ILORI voluntary outage reporting programs. The voluntary program was established a little over two years ago. Since it is clear the Commission has concerns about the voluntary process, the Commission should engage with NRSC/ILORI and provide a meaningful opportunity to reform that process. T-Mobile would commit to actively working within such a process. To declare the voluntary program a failure and move to mandatory outage reporting without providing an opportunity for the voluntary process to undergo self-correction would be counterproductive.
2. The NPRM proposals do not reflect the realities of today's market. The proposal fails to consider the revolutionary changes that have occurred in the telecom industry since the wireline mandatory outage rules were adopted 12 years ago. T-Mobile suggests it is not appropriate to extend to competitive sectors rules adopted for a monopoly environment. Wireless carriers operating in a fiercely competitive market have powerful economic incentives to operate reliable networks so as to acquire and keep customers, even without regulation. In addition, the FCC should build upon the strong industry based NRIC/NRSC/ILORI processes before seeking regulatory intervention through mandatory reporting.
3. The FCC should conform its outage reporting programs to the standards set in Homeland Security Presidential Directive 7. Telecom is a critical infrastructure and the FCC is subject to HSPD-7. HSPD-7 envisions a voluntary "collaboration" between federal agencies and the industries they regulate, where the emphasis is on expert-to-expert consultation between industry and government. The voluntary NRSC/ILORI process is emblematic of the type of public-private partnership intended. HSPD-7 specifies that agencies are to protect from disclosure information that would facilitate terrorist targeting of critical infrastructure. This structure is in counterpoint to the FCC's traditional treatment of wireline outage reports.
4. T-Mobile recommends an approach that is compatible with the realities of today's market and HSPD-7. To meet FCC concerns that too few non-wireline carriers are submitting outage reports, T-Mobile advances an alternative solution whereby all carriers would submit reports to NRSC/ILORI for disposition to the Department of Homeland Security via its NCC. T-Mobile explains that the FCC's interests and the overall national interest in protecting the confidentiality of critical infrastructure information is better served by this approach.
5. Certain changes are necessary if the FCC proceeds with the traditional regulatory approach proposed in the NPRM. First, in accordance with Section 4(j) of the Act, the FCC should rule that all outage reports are outside the purview of FOIA. Such action would be consistent with both HSPD-7 and the Critical Infrastructure Information Act of 2002. Second, the FCC should determine that initial outage reports should be filed as soon as possible or within 72 hours (24 hours if the third recommendation is accepted); completion of forms should be deferred until service is restored – or at least until the cause of the outage is identified and steps to repair the outage have been undertaken. Third, the FCC should simplify considerably the information contained in an initial outage report to the elements absolutely necessary. As demonstrated by the

initial outage report developed by the NRIC process and through to NRSC/ILORI, the only information needed for an initial report is contact information and a high level description of the outage and its affected geographic area. Details can be covered in the final report.

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T-Mobile USA, Inc. (“T-Mobile”) submits these comments in response to the Commission’s above-captioned rulemaking wherein the agency proposes to extend to wireless carriers the outage reporting requirements imposed on wireline carriers.¹

I. INTRODUCTION

T-Mobile is committed to advancing network reliability and to assisting national efforts to improve homeland security. T-Mobile has been a member of, and active participant on, the FCC’s Network Reliability and Interoperability Council (“NRIC”) since the Fifth Council (NRIC V), which commenced in January 2000. T-Mobile has been consistently reporting network outages since January 2002, pursuant to the voluntary outage reporting program developed by the NRIC V Data Reporting and Analysis subcommittee Focus Group 2 (FG-2). Further, T-Mobile has been an active participant on the new Industry-Led Outage Reporting Initiative (“ILORI”) team, operated through the Network Reliability Steering Committee (hereinafter “NRSC/ILORI”), which is an outgrowth of the NRIC VI FG-2 recommendations to improve the voluntary outage reporting program. As further evidence of T-Mobile’s commitments to net-

¹ See *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Notice of Proposed Rulemaking*, FCC 04-30 (Feb. 23, 2004), summarized in 69 Fed Reg. 15761 (March 26, 2004)(“*Outage Reporting NPRM*”).

work reliability and homeland security, a Company representative chairs the NRIC VII subcommittee investigating long-term issues for E911 service (Focus Group 1, Subcommittee B).

In addition, T-Mobile was the first, and until recently, the only wireless carrier that has provided Priority Access Service to national security, public safety authorities and other authorized government agency officials. Initially limited to the New York City and Washington, D.C. areas, T-Mobile's Wireless Priority Service ("WPS") is today available in most of T-Mobile's service areas, and T-Mobile is currently upgrading its WPS software to provide more robust features to WPS customers. Just last month, officials with the National Communications System ("NCS") stated that "T-Mobile has done a superb job of deploying and promoting WPS through its network."²

While T-Mobile wholeheartedly shares the Commission's goal that our nation's telecommunications infrastructure be secure and reliable, it believes that the particular proposals set forth in the NPRM are not necessary to achieve the stated objectives and could, in fact, impede their achievement in an efficient fashion. Instead of rushing to sweep all carriers into an expanded FCC mandatory reporting regime, the Commission should be seeking to build on and support the important work already undertaken by NRSC/ILORI. T-Mobile urges the Commission to work with NRSC/ILORI to identify problems and then provide industry with an opportunity to correct them. Such a collaborative approach is far preferable to the subject NPRM where the Commission proposes to take rules adopted 12 years ago and extend them to competitive carriers in the non-wireline sectors. These 1992 rules, adopted during a much less competitive environment, do not reflect the dynamics of today's marketplace, particularly in the wireless sector. The regime the FCC proposes would replace the current collaborative process whereby network

² NCS Press Release, *National Communications System Looking at Next Phase of WPS Deployment* (April 5, 2004), available at www.ncs.gov/news_main.html.

engineers freely share sensitive information amongst themselves and with government technology experts. Because the mandatory rules proposed would expose carriers to enforcement proceedings, the resulting process would result in more discussions between attorneys instead of the goal of having technical experts across industry segments and government engage in the kind of dynamic review of highly sensitive information necessary to improving network reliability and security.

But there is an even more fundamental problem with the current mandatory wireline outage reporting rules that the NPRM proposes to extend to wireless carriers: the FCC historically has placed outage reports in the public domain – even though such reports identify in considerable detail not only the network components utilized in our nation’s critical telecommunications infrastructure, but also their potential vulnerabilities (*e.g.*, root cause analyses).

Hence, an extension of the Commission’s current practice of making outage reports available for public inspection would clearly not be in the public interest, because the information contained therein could provide a roadmap for those seeking to harm our nation’s critical telecommunications infrastructure. Further, the FCC’s current “open access” practices are also inconsistent with this nation’s explicit homeland security policies. Congress determined in the Critical Infrastructure Information Act of 2002 that information regarding our nation’s “communications network, or any component hardware or element thereof” should be protected against public disclosure.³ President Bush, in executing Homeland Security Presidential Directive 7, has similarly directed agencies like the FCC to withhold from public disclosure information that

³ The Critical Infrastructure Information Act of 2002 is contained in Title II.B of the Homeland Security Act of 2002, Pub. L. No. 107-296. *See also* Department of Homeland Security, *Procedures for Handling Critical Infrastructure Information*, 69 Fed. Reg. 8074 (Feb. 20, 2004).

would “facilitate terrorist targeting of critical infrastructure.”⁴ Indeed, as the National Communications System (“NCS”) recently stated:

Government needs to provide industry with assurances of how the outage data will be used and protected to prevent inappropriate use or mishandling of the data.⁵

T-Mobile discusses below why extending the existing wireline regulatory approach proposed in the NPRM is not necessary and could undermine, rather than facilitate, the objectives the Commission has articulated. T-Mobile urges a collaborative effort, at least in the short term, between the FCC and the NRSC/ILORI participants during which changes could be made to the voluntary program to better address the Commission’s concerns. However, should the Commission ultimately decide to adopt the rules as proposed, T-Mobile emphasizes that, at minimum, the Commission should withhold from public disclosure any outage report submitted by any telecommunications carrier, regardless of the technology utilized by the carrier. The importance of these issues transcends any single industry segment.

II. THE NEED FOR NEW REGULATORY OVERSIGHT IS UNCLEAR GIVEN THE NEWNESS OF THE VOLUNTARY PROGRAM

The voluntary reporting program was initiated just over two years ago. If the Commission has concerns about how the voluntary program is being implemented -- and it apparently does -- the better course is to identify those concerns, work with the industry through the NRSC/ILORI process on how those concerns can be addressed, and then provide industry an opportunity to implement appropriate changes. A period of at least six months would be appropriate. Commission action simply declaring the voluntary process a failure and moving directly to mandatory reporting without providing any meaningful opportunity for dialogue and reform is

⁴ Homeland Security Presidential Directive 7, at ¶ 10 (Dec. 17, 2003).

⁵ See NRIC VI – NCS Comments on FG-2 Discussion on Outage Reporting (Dec. 2003).

unnecessary, precipitous, and counterproductive. T-Mobile stands ready to work with the Commission on this reform process and to work within industry to implement changes to the voluntary program that could be responsive to the Commission's needs without sacrificing the substantial benefits of keeping the wireless reporting program voluntary. If, however, after a reasonable period of time is afforded to the current reform route, the Commission still believes the voluntary program is deficient, it can always impose mandatory outage reporting at that time.

T-Mobile is concerned that the expansively regulatory measures proposed in the NPRM may not be warranted given the quality and reliability of today's telecommunication networks. The wide sweep of the proposed regulatory regime would suggest a telecommunications infrastructure fraught with problems. The available evidence, however, shows improving network reliability.

The NPRM states that the new outage reporting proposals are being made to “ensur[e] that the United States has reliable communications.”⁶ In this regard, the Commission adopted its wireline reporting rules over a decade ago because, at the time, there had been a significant increase in the number of major network outages.⁷ However, all evidence before the Commission today suggests that network reliability continues to improve.⁸

There is also evidence that the quality and reliability provided by wireless networks is improving. Last year, the Government Accounting Office (“GAO”) published the results of a wireless call quality survey it had commissioned.⁹ The GAO found that 83 percent of the cus-

⁶ See *Outage Reporting NPRM* at ¶ 3.

⁷ See *First Outage Reporting NPRM*, 6 FCC Rcd 5531 ¶ 2 (1991); *First Outage Reporting Order*, 7 FCC Rcd 2010, 2010-11 ¶¶ 4-5 (1992).

⁸ See Focus Group 2 Network Reliability, Network Reliability Steering Committee findings reported to NRIC VI based upon all outages reported over the ten-year period 1Q93 through 2Q03. Presentation made to FCC on Sept. 15, 2003, viewable at www.nric.org/meetings.

⁹ See GAO, *FCC Should Include Call Quality in Its Annual Report on Competition in Mobile Phone Services*, GAO-03-501 (April 2003).

tomers surveyed were satisfied with their wireless service, while only 9 percent were dissatisfied.¹⁰ As importantly, the GAO estimated that “about 47 percent of adult mobile phone users believed their call quality was improving, while about 5 percent believed that their call quality was getting worse.”¹¹

The Commission’s own data strongly suggests that the overwhelming majority of wireless customers are satisfied with the reliability and quality of their services. The FCC tracks customer complaints, including wireless customer complaints over service quality and coverage. In its most recent quarterly report (covering 3Q03), the FCC received a total of 647 informal complaints from wireless customers involving service quality.¹² At the time these complaints were lodged, the wireless industry served approximately 148 million customers.¹³ Thus, on an annualized basis, the Commission receives approximately 17 service quality complaints for every one million (1,000,000) wireless customers. And this low number of quality complaints comes at a time when the usage of wireless services is skyrocketing. This result is not surprising. Wireless carriers, driven by the demands of the competitive marketplace have been investing in their networks to increase capacity, quality, and reliability in order to attract and retain customers. The pro-competitive policies the Commission has pursued have been successful for the wireless industry without the “command and control” style intervention the agency is proposing in this proceeding.

As noted earlier, T-Mobile is not suggesting that there is no room for improvement or that the outage reporting process is not important. In fact, T-Mobile is committed to operating a

¹⁰ See *id.* at 28, Figure 6.

¹¹ *Id.* at 27-28.

¹² See FCC News, *Quarterly Report on Informal Consumer Inquiries and Complaints Released* (Nov. 20, 2003).

¹³ See CTIA Semi-Annual Wireless Industry Survey, Estimated Number of Subscriber on June 30, 2003.

reliable network, and it is precisely for this reason that it has participated in the voluntary outage reporting program for over two years. Given that available data suggests that the reliability of wireless networks is good – *and is improving*, the Commission should step back at this time from imposing regulatory intervention as proposed in the NPRM into the competitive wireless market. Instead the Commission ought to permit the voluntary process in which the wireless sector is currently engaged to move forward for a reasonable period of time during which issues can be addressed and corrected. Such caution is necessary so as not to impose regulation that may needlessly increase consumers' costs of service with minimal or no corresponding public benefit.

III. THE NPRM PROPOSALS DO NOT REFLECT THE REALITIES OF TODAY'S MARKET

The NPRM proposes to take the wireline outage reporting rules adopted over a decade ago and, with some modifications, extend their application to wireless and other non-LEC carriers. The NPRM fails, however, to consider the revolutionary changes that have occurred in the telecommunications industry since the wireline rules were adopted. Any rules the Commission may adopt in this docket should reflect the realities of the market today, rather than the market that existed in 1992.

There have been two major developments over the past decade of special relevance to the subject of outage reporting. First, over the past 12 years, the telecommunications market has been transformed from a monopoly to a robust competitive market. Although the FCC's wireline reporting rules applied to "any local exchange or interexchange common carrier," for the most part, incumbent LECs faced no competition in 1992. With respect to the interexchange carrier ("IXC") segment in 1992, the top three providers controlled 84 percent of the market, with

the largest IXC carrier cornering 58 percent.¹⁴ Today, there are over 100 competitive LECs collectively serving 15 percent of all switched access lines.¹⁵

Even more dramatic has been the growth in wireless telecommunications. In 1992, customers at most had a choice of two cellular carriers, and the total number of wireless customers was 11 million.¹⁶ Today, 83 percent of all Americans can choose among five or more wireless carriers,¹⁷ and the number of wireless customers has mushroomed to over 160 million.¹⁸

The development of this robust competition is important to network reliability in two respects. First, network reliability and service quality are important to customers – and, therefore, are necessarily important to their service providers. Competitive carriers have a strong economic incentive to build and operate reliable networks because their self-interest is served by keeping the customers they acquire. Experience shows that customers will “walk with their feet” if they think their provider has an unreliable network or otherwise provides a substandard level of service. T-Mobile devotes considerable resources to resolving any outage situation as rapidly as possible both to prevent outages from happening and to restore services promptly with as little impact on our customers as possible. We also analyze carefully the causes of any outages, and use the results to implement corrective internal measures, while insisting that our suppliers do the same. It is absolutely in our competitive interests to do so.

¹⁴ The outage reporting requirements also applied to interexchange carriers (“IXCs”). In 1992, AT&T generated 58 percent of all toll revenues, while its next two largest competitors (MCI and Sprint) collectively generated 26 percent of all toll revenues. Note also that AT&T was reclassified as a non-dominant carrier in October 1995. *See AT&T Reclassification Order*, 11 FCC Rcd 371 (1995). Prior to that time, AT&T was deemed to be a dominant carrier in the toll market because it possessed market power. Regarding CLECs, *see Trends in Telephone Service*, at 9-12, Table 9.7 (May 2004).

¹⁵ *See Trends in Telephone Service*, at 8-3, Table 8.1, 8-5, Table 8.3 (May 2004).

¹⁶ *See CTIA Semi-Annual Wireless Industry, Estimated Subscribers in December 1992*.

¹⁷ *See Eighth Annual CMRS Competition Report*, 18 FCC Rcd 14783 ¶¶ 18, 84 (2003).

¹⁸ *See CTIA Semi-Annual Wireless Industry, Estimated Subscribers in December 2003*.

Second, the deployment of multiple, diverse facilities-based networks is the best solution to address network reliability and homeland security concerns. Even if one national wireless network were to go down completely, customers would still have access to the other five national networks. And, customers of the disabled network could still roam on compatible operational networks and could still make emergency (911) calls on other networks. Similarly, numerous wireless networks may be operational even if an incumbent LEC network in an area goes down.¹⁹

Another major development has been the growth in scope and responsibility of the FCC's own Network Reliability and Interoperability Council ("NRIC"). During its LEC outage reporting rulemaking, the Commission formed NRIC's precursor, the Network Reliability Council, specifically to develop "industry and user-fashioned solutions to reliability challenges."²⁰ The NRIC has been active in all facets of network reliability and in conjunction with the NRSC recently formed the Industry-Led Outage Reporting Initiative ("ILORI") to implement recommendations that will further improve the industry-driven voluntary outage reporting program.

Given the economic incentives carriers possess to build and operate reliable networks, T-Mobile urges that the Commission consider giving the NRSC/ILORI process some meaningful period of time (no less than six months) to address the data comprehensiveness and reporting concerns expressed by the NPRM. In this manner, the significant framework already developed by T-Mobile and other industry participants can be optimized. This approach is preferable to relying upon and expanding an outage reporting regime developed for what had been a largely monopoly market.

¹⁹ Indeed, this very situation occurred just last week. Verizon customers in Keller, Texas lost service for four hours when a capable was cut. During this outage, Keller residents used their wireless services. *See* COMMUNICATIONS DAILY (May 21, 2004); FORT WORTH STAR-TELEGRAM (May 20, 2004).

IV. THE COMMISSION SHOULD CONFORM ITS OUTAGE REPORTING PROGRAMS TO THE STANDARDS SET IN HOMELAND SECURITY PRESIDENTIAL DIRECTIVE 7

President Bush signed the Homeland Security Presidential Directive 7 (“HSPD-7”) on December 17, 2003. This directive establishes “a national policy for Federal departments and agencies to identify and prioritize United States critical infrastructure and key resources and to protect them from terrorist attacks” (¶ 1). Telecommunications is identified as a “critical infrastructure sector” (¶ 15), and the FCC is accordingly subject to this directive.²¹

HSPD-7, among other things, prescribes the following:

- The Department of Homeland Security (“DHS”) is designated to “lead, integrate and coordinate” the “overall national effort to enhance the protection of the critical infrastructure” (¶ 12);
- Sector-specific agencies like the FCC “will coordinate and cooperate” with DHS “for protecting critical infrastructure” (¶ 23);
- The DHS and sector-specific agencies like the FCC “will collaborate with appropriate private sector entities” and “encourage the development of information sharing and analysis mechanisms,” including the development of “best practices” to “protect against and mitigate the effects of attacks against critical infrastructure” (¶¶ 19, 25);
- Sector-specific agencies like the FCC “shall work with the sectors relevant to their responsibilities to reduce the consequences of catastrophic failures not caused by terrorism” (¶ 22(i)); and

²⁰ See Public Notice, *FCC Establishes Advisory Committee to Enhance Network Reliability* (Dec. 13, 1991); FCC News, *Sikes Names Industrialist Paul Henson Chairman of the Network Reliability Council* (Dec. 13, 1991).

²¹ In addition to executive departments, HSPD-7 applies to “independent establishments.” See HSPD-7 at ¶ 6(d). The FCC has recognized that it “is an ‘independent establishment.’” See *Migratory Bird NOI*, 18 FCC Rcd 16938 n.30 (Aug. 8, 2003).

- Sector-specific agencies like the FCC “will appropriately protect information associated with carrying out this directive, including handling voluntarily provided information and information that would facilitate terrorist targeting of critical infrastructure” (¶ 10).

The regulatory approach proposed in the NPRM is incompatible with HSPD-7 in two fundamental respects. First, the directive envisions a voluntary “collaboration” between federal agencies and the industries they regulate. The NPRM, in contrast, proposes a mandatory process whereby specified carriers would be required by FCC rules to report specified network outages at a level of detail that the FCC prescribes.

There is a major difference between regulator-industry “collaboration” and a mandatory rules-based process. A voluntary process facilitates a true public-private partnership, whereby private industry is encouraged to share sensitive information freely with government officials on an expert-to-expert basis. A mandatory rules-based process, in contrast, creates a “we-them” arrangement that introduces caution and suspicion into the regulator-industry relationship. Particularly because regulated companies are subject to enforcement liability for not complying with rules, as a practical matter, carriers will be compelled to involve their legal departments in all aspects of the outage reporting process to ensure full compliance. The benefits of direct expert-to-expert consultations would be lost once lawyers control the process. What makes the mandatory approach proposed in the NPRM counterproductive is that, as discussed above, carriers have a strong economic incentive to improve the reliability of their networks and, as citizens of this country, carrier employees have a strong incentive to aid in improving this nation’s homeland security.

The approach discussed in the NPRM is incompatible with HSPD-7 in a second way. HSPD-7 directs agencies like the FCC to “protect information associated with carrying out this directive, including handling voluntarily provided information and information that would facilitate terrorist targeting of critical infrastructure” (¶ 10). HSPD-7 recognizes that it is not possible to eliminate the vulnerability to terrorist attacks, but it correctly observes that “security improvements can be rapidly implemented to deter, mitigate, or neutralize potential attacks” (¶ 5).

The FCC has historically made wireline outage reports available to the public – even though these reports identify critical infrastructure components with precision and identify in detail possible vulnerabilities in these components.²² Yet, at a time when the FCC should be reducing the amount of sensitive information made available to the public, the Commission is proposing to expand considerably the amount of critical infrastructure component information (including their potential vulnerabilities) to the public.²³

The compilation and centralization of information on network outages, together with root cause analyses and the location of failing elements, could provide a roadmap or “how to” manual to those who would like to damage the nation’s critical telecommunications infrastructure. Indeed, by expanding the scope of reporting obligations (including to events below designated thresholds), the proposal could facilitate the ability of such people (whether terrorists or hackers) to identify and disable vital telecommunications infrastructure components that this nation and its citizens rely upon.

²² See *Outage Reporting NPRM* at ¶ 52.

²³ In contrast, since 9-11, the Federal Energy Regulatory Commission (“FERC”) has taken steps to remove from public access categories of documents that detailed specifications of energy facilities that it licenses or certifies. See, e.g., FERC, *FY 2005 Congressional Performance Budget Request*, at 27-28 (Feb. 2004); FERC, *Critical Energy Infrastructure Information*, 68 Fed. Reg. 9857 (March 3, 2003).

T-Mobile submits that the most important step the Commission can take in this proceeding is to remove outage reports from any public disclosure so that information about critical network infrastructure components is not disclosed.

V. A RECOMMENDED APPROACH THAT IS COMPATIBLE WITH THE REALITIES OF TODAY'S MARKET AND HSPD-7

Current outage reporting (both the mandatory reports filed by LECs and IXC's and the voluntary reports submitted by wireless and other carriers) has been successful in many respects as the Commission has observed. These reports permit industry to identify and correct the causes of outages, with carriers and manufacturers learning from each other's outage experiences.²⁴ Industry has also used these reports in developing (and revising) voluntary "best practices" that can be utilized to reduce the likelihood of network outages in the future and to facilitate service restoration.²⁵

Nevertheless, the Commission in the NPRM identifies what it perceives is a problem with the current regime: wireless and other non-LEC carriers are not required by FCC rule to report outages and as a result, the Commission believes that an insufficient number of these non-LEC carriers are participating fully in industry's voluntary reporting program:

The results of this [voluntary] effort have not provided us with the quality or quantity of information that we need to accurately track outages. Less than three dozen service providers have enrolled in the trial, and few participated actively throughout the entire trial.²⁶

If the Commission deems the problem to be that too few non-wireline carriers are submitting outage reports, then T-Mobile submits that the solution is to require all carriers to submit reports to NRSC/ILORI for disposition to the Department of Homeland Security via its NCC. In this

²⁴ See *Outage Reporting NPRM* at ¶¶ 6-7.

²⁵ See *id.*

²⁶ *Outage Reporting NPRM* at ¶ 11.

regard, the Department of Homeland Security has announced that reporting of outage events “should continue to be made to the National Coordinating Center for Telecommunications (the NCC). This information is critical to the operational NS/EP planning, response and recovery from events such as terrorist activity, the Blackout and Hurricane Isabel.”²⁷

T-Mobile has been consistently reporting network outages, first to NRIC and then to NRSC/ILORI since that entity’s inception, for over two years, so it would not likely be impacted by adoption of a new rule requiring non-wireline carriers to submit outage reports to the NCC. Nevertheless, T-Mobile believes several observations are appropriate and consistent with urging the Commission to provide the industry with an opportunity to address the agency’s concerns.

First, T-Mobile submits that the Commission’s criticism of the current voluntary process is overstated. While the number of carriers participating in the voluntary trial may seem small compared to the total number of carriers operating in the country, those participating serve the overwhelming majority of customers in this country.²⁸ In addition, as the Commission recognizes, the NRSC/ILORI process and its NRIC voluntary program predecessor, is currently making “improvements” in the voluntary program in order to increase both the quantity and quality of outage reports filed.²⁹ As noted, T-Mobile believes it is best to continue to give NRSC/ILORI a chance to implement improvements, with the Commission intervening later if the improvements are not deemed to be effective.

²⁷ NRIC VI – NSC Comments on FG-2 Discussion on Outage Reporting (Dec. 2003).

²⁸ There are over 400 cellular, PCS and ESMR wireless carriers. *See Trends in Telephone Service*, at 5-5, Table 5.3 (May 2004). However, the six national wireless carriers - all of whom participate in the voluntary program - today serve approximately 80 percent of all wireless customers. *See Merrill Lynch, The Next Generation VIII*, at 12, Table 7, and 25 (March 15, 2004).

²⁹ *See Outage Reporting NPRM* at ¶ 11. T-Mobile also notes that the FCC proposes adoption of a new outage reporting form, notwithstanding that NRSC/ILORI has already developed initial and final reporting forms that carriers have begun utilizing. Similarly, the NPRM proposes development of a new electronic reporting process, but NRSC/ILORI has already developed a web-based reporting system that carriers, including T-Mobile, are already utilizing.

Second, a FCC rule requiring carriers to submit outage reports would present complications under the Critical Infrastructure Information Act of 2002 (“CII Act”).³⁰ Congress enacted this legislation to protect from public disclosure information pertaining to critical infrastructure, including “communications network[s], or any component hardware or element thereof.”³¹ So as to encourage private industry to share voluntarily sensitive details with homeland security officials, Congress exempted from the Freedom of Information Act (“FOIA”) and any ex parte rules information that firms submit to homeland security officials.³² Under implementing rules adopted by the Department of Homeland Security (“DHS”), information submitted to “any other Federal agency pursuant to a Federal requirement” (e.g., a mandatory FCC outage report filing requirement) is “not to be marked as submitted or protected under the CII Act of 2002 or otherwise afforded the protection of the CII Act of 2002.”³³ While the DHS rules further specify that sensitive information “separately submitted” to DHS “may be” treated as protected under the CII Act,³⁴ there is a sufficient ambiguity in this process that there is a significant potential that information submitted pursuant to a mandatory FCC outage report filing requirement would not be eligible for CII protection. This result could very easily inhibit carriers sharing critical infrastructure information with homeland security officials – thereby undermining the very purposes Congress sought to achieve in enacting the CII Act.

Finally, an industry-driven process operating under DHS aegis would allow for the protection of the confidentiality of sensitive information involving critical infrastructure compo-

³⁰ The Critical Infrastructure Information Act of 2002 is contained in Title II.B of the Homeland Security Act of 2002, Pub. L. No. 107-296.

³¹ CII Act at § 212(6)(B).

³² See CII Act at § 214.

³³ 6 C.F.R. § 29.3(a). See also Department of Homeland Security, *Procedures for Handling Critical Infrastructure Information*, 69 Fed. Reg. 8074, 8084 (Feb. 20, 2004).

³⁴ See 6 C.F.R. § 29.3(a).

nents. If reports are submitted to the Department of Homeland Security and/or its designees, the sensitive information contained therein would be protected from public disclosure. As discussed above, under the Critical Infrastructure Information Act of 2002, network outage report details would be exempt from the Freedom of Information Act (“FOIA”) and from ex parte rules.³⁵ This may not be the case with mandatory reporting to the Commission.

It is important to note that the NRSC/ILORI approach represents an effort to provide the Commission with timely actionable data that would allow the agency to meet the public interest obligations it identifies with its rules proposal. The Commission’s original reason for adoption of its outage reporting rule was to obtain such information on “on a realtime basis.”³⁶ This objective can be achieved by permitting Commission access to the electronic outage reporting system that NRSC/ILORI has established, where the Commission can retrieve instantaneously initial outage reports as they are submitted.³⁷ Hence, the Commission’s interest in acquiring outage information rapidly would be served by use of a well-designed industry-driven process.

VI. CERTAIN CHANGES ARE NECESSARY IF THE COMMISSION PROCEEDS WITH THE TRADITIONAL REGULATORY APPROACH PROPOSED IN THE NPRM

As noted, T-Mobile believes that the best approach the Commission can pursue to achieve its stated objectives and to improve network reliability and security would be to rely as much as possible on the NRSC/ILORI industry process. If, however, the Commission decides to adopt a more regulatory approach like the one discussed in the NPRM, then T-Mobile encourages the Commission to address the subjects below.

³⁵ See CII Act at § 214.

³⁶ See *First Outage Reporting Order*, 7 FCC Rcd 2010 ¶ 5 (1992).

³⁷ The FCC may also want to maintain contact information of carrier network operation centers (“NOCs”) involved in outage monitoring and service restoration, so it can contact NOC personnel in a time of an emergency.

A. THE COMMISSION SHOULD RULE EXPLICITLY THAT OUTAGE REPORTS WILL BE WITHHELD FROM PUBLIC DISCLOSURE

The Commission, noting that “[h]istorically, outage reports from wireline carriers have been available to the public,” asks whether the same policy should be applied to wireless and other service providers.³⁸ No outage report, regardless of the carrier submitting the report and regardless of the technology it utilizes, should be made available to the public.

In adopting its LEC outage reporting rules 12 years ago, the Commission determined that such reports, despite the sensitive detail they contain, should generally be made publicly available under the Freedom of Information Act (“FOIA”):

The public is entitled to full and forthcoming explanations of these events. Concerns of potential litigation or aiding saboteurs resulting from disclosure are not supported. . . . [W]e do not anticipate that there will be a basis for granting confidential treatment to the reports [under FOIA].³⁹

The events of 9-11 have radically changed the worldview on which the Commission’s conclusions were based. As we have noted earlier, public disclosure of outage reports, which contain details about critical infrastructure components and their potential vulnerabilities, could provide a roadmap to saboteurs on how to attack this nation’s critical telecommunications infrastructure. In this regard, HSPD-7 specifically directs agencies like the FCC to protect from public disclosure “information that would facilitate terrorist targeting of critical infrastructure.”⁴⁰ Similarly, in the Critical Infrastructure Information Act of 2002, Congress explicitly listed information pertaining to “communications network[s], or any component hardware or element thereof” as the type of information that should be protected from public disclosure.⁴¹

³⁸ See *Outage Reporting NPRM* at ¶ 52.

³⁹ *First Outage Reporting Order*, 7 FCC Rcd 2010, 2016 ¶ 31 (1992). As a practical matter, it would be difficult for a carrier to make a FOIA exemption showing if the initial report must be filed within two hours.

⁴⁰ HSPD-7 at ¶ 10.

⁴¹ See CII Act § 213(6)(B).

Should the Commission impose mandatory outage reporting as proposed in the NPRM, it should reverse its conclusion from 1992 concerning confidential treatment of such reports under FOIA.⁴² Such a step is prudent in practice and is fully consistent with applicable laws. Section 1 of the Communications Act charges the Commission with ensuring there exist “adequate facilities . . . for the purpose of the national defense [and] for the purpose of promoting safety of life and property.”⁴³ Section 4(j) of the Act explicitly authorizes the Commission to “withhold publication of records or proceedings containing secret information affecting the national defense.”⁴⁴ For example, the Commission has ruled that information concerning microwave networks should be “withheld from public inspection” under this national defense confidentiality statute.⁴⁵

If information concerning the location of microwave towers is properly withheld from disclosure under the national defense confidentiality statute, certainly information concerning mobile switching centers (“MSCs”), home location registers (“HLRs”), and SS7 signaling nodes should similarly be withheld from public disclosure. This is especially the case given that outage reports not only identify the location of critical infrastructure components, but also describe those components in detail and include information concerning their potential vulnerabilities (the very information that terrorists or others could use to disable this nation’s critical telecommunications infrastructure).

⁴² See 47 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

⁴³ See 47 U.S.C. § 151. The FCC has noted that it is “required to consider national defense needs and concerns when exercising our regulatory responsibilities under the Communications Act.” *Second Priority Access Service Order*, 15 FCC Rcd 16720, 16733 ¶ 27 (2000). See also FCC News, *Commissioner Andrew C. Barrett Named Defense Commissioner*, Report No. GN-50 (Jan. 12, 1990)(“[N]ational defense was one of the fundamental reasons for creating the FCC.”); *AT&T Divestiture Order*, 96 F.C.C.2d 18, 84 ¶ 155 (1983).

⁴⁴ See 47 U.S.C. § 154(j). FOIA does not apply to materials “specifically exempted from disclosure by statute.” See 5 U.S.C. § 552(b)(3).

⁴⁵ See 47 C.F.R. § 0.457(c)(1).

T-Mobile therefore encourages the Commission to hold that under Section 4(j) of the Act, any outage reports filed with it (including those filed by LECs) and/or any outage reports it obtains from the NRSC/ILORI process will not be made publicly available. If there is a need to notify the public of particular outages, that need can be met through press releases that summarize pertinent facts contained in an outage report (but delete sensitive details).

B. INITIAL OUTAGE REPORTS SHOULD BE FILED AS SOON AS POSSIBLE OR WITHIN 72 HOURS

Current FCC rules require LECs and IXCs to submit their initial outage report “within 120 minutes of the carrier’s first knowledge that the service outage potentially affects 50,000 or more customers.”⁴⁶ Outages affecting fewer than 50,000 customers are due “within 3 days of the carrier’s first knowledge.”⁴⁷ In its NPRM, the Commission proposes that all initial reports be filed “within 120 minutes of becoming reportable.”⁴⁸

The two most important functions that must be performed when an outage arises are cause identification and service restoration. It would be completely counterproductive should the completion of outage reports detract carrier personnel from identifying the cause of an outage and implementing corrective measures. Accordingly, T-Mobile submits that completing outage reports should be deferred until service is restored – or at least until the cause of the outage is identified and steps to repair the outage are underway. If the outage involves a potential national security matter, carriers certainly will report the development as soon as possible to appropriate officials. Similarly, if the Commission learns of an outage it thinks may be significant and if an

⁴⁶ See 47 C.F.R. § 63.100(b).

⁴⁷ *Id.* at § 63.100(c).

⁴⁸ See *Outage Reporting NPRM* at ¶ 30. The FCC’s explanation for proposing a two-hour deadline for all initial reports is that electronic filing “should make it easy . . . to file initial disruption reports within 120 minutes” and would enable carriers to “file reports more rapidly and more efficiently.” *Id.* at ¶¶ 30, 50. In fact, it takes the same amount of time to compile and enter the information on an initial report – whether the data is typed on a type-

initial outage report has not been submitted, it can directly contact the carrier's network operations center ("NOC"). But for the vast majority of outages, there is no reason to require service providers to submit initial reports within two hours, especially if such action would delay service restoration.

T-Mobile therefore recommends that if initial outage reports are to be filed with the Commission, the initial reports should be submitted as soon as practical, and/or within 72 hours of the discovery of the outage. If, however, the Commission adopts the simplified initial report form discussed immediately below, that initial form could be submitted within 24 hours (as opposed to 72 hours).

C. THE INITIAL REPORT FORM SHOULD BE SIMPLIFIED CONSIDERABLY

The purpose of an initial outage report is limited, principally to "contact information so that additional information can be obtained if necessary."⁴⁹ Yet, the Commission proposes to begin using for the initial report the same form it proposes be utilized for the final report.⁵⁰ Among other things, the Commission proposes that carriers would be required to complete the following information in an initial outage report:

- Number of customers (users) potentially affected by the outage;
- Location of customers (users) potentially affected by the outage, listing each county;
- Identification of "direct," "root" and "other" causes of the outage;
- Methods used to restore service;
- Steps taken to prevent reoccurrence;
- Applicable best practices that might have prevented the outage or reduced its effects;
- Best practices used; and

writer, entered on a computer word processing system or spreadsheet, or entered on a web page. If anything, electronic entry may be slower depending on usage of the Internet at the time of entry.

⁴⁹ *Outage Reporting NPRM* at ¶ 27.

⁵⁰ *See id.* at n.114 and Appendix B.

- An analysis of best practices.

T-Mobile submits this is too much information for an initial report. T-Mobile can state with confidence that in many circumstances, much of this information will not be known within 120 minutes, and even when known, it would be physically impossible for a carrier to assemble and file all of the information within 120 minutes. This is especially the case since carrier NOC personnel will be busy attempting to identify the cause of the outage and thereafter implement corrective measures.

Simply put, most of the proposed data fields are simply not germane to an initial report. As demonstrated by the initial outage report form developed by the NRSC/ILORI process, the only information needed for an initial report is contact information and a high level description of the outage and its affected area. Details can always be covered in the final report. T-Mobile urges the Commission to limit the fields contained in an initial report to those that are deemed absolutely necessary.

VII. CONCLUSION

For the foregoing reasons, T-Mobile respectfully requests that the Commission take actions consistent with the views discussed above.

Respectfully submitted,

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