

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

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

**REPLY COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

Pursuant to Section Rules 1.415 and 1.419,¹ of the rules of the Federal Communications Commission (FCC or Commission), the United States Telecom Association (USTA)² hereby submits reply comments in the FCC docket regarding new part four rules regarding disruptions to communications.

DISCUSSION

In its comments, USTA emphasizes that proposals to increase regulatory reporting requirements should not impose undue financial and administrative burdens on local exchange carriers or expose sensitive critical infrastructure information to misuse. Many share similar concerns, including the United States Department of Homeland Security (DHS), which offers suggestions for reducing administrative burdens and is eager to see appropriate steps taken to protect sensitive information contained in outage reports.

¹ 47 C.F.R. § 1.415 and § 1.419.

² USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

DHS suggests that in order to reduce the administrative burdens that outage reporting requirements impose, the FCC should explore methods of sharing outage information with state public utility commissions so that carriers do not have to contend with redundant and potentially inconsistent reporting schemes across levels of government and across various states.³ USTA agrees and encourages the Commission to explore eliminating duplicative state reporting requirements. USTA submits that one streamlined reporting process would be more beneficial than the multitude of reporting requirements that currently exist. Preempting state reporting requirements would address the issues raised by those such as the Kansas Corporation Commission who point to the lack of consistency among state reporting requirements and the absence of an organized review process that encourages service providers to develop new best practices.⁴ Furthermore, a central repository for outage reports would reduce costs and administrative burdens on service providers and the state agencies who will receive the reports.⁵ Moreover, and perhaps more importantly, much reported information constitutes homeland security information under federal law that should be safeguarded from disclosure to those who might desire to use it for hostile purposes. As DHS points out, sharing this sensitive information would reduce the need for states to collect such information independently.⁶

DHS urges the FCC to require network outage data to be reported directly to the National Coordinating Center for Telecommunications Information Sharing and Analysis

³ DHS Comments at 8.

⁴ Kansas Corporation Commission Comments at 3.

⁵ USTA Comments at 11.

⁶ DHS Comments at 8.

Center (NCC Telecom-ISAC), rather than to the Commission.⁷ USTA supports this suggestion with a point of clarification. The National Coordinating Center (NCC) is a government entity within the National Communications System and DHS. By contrast the NCC Telecom-ISAC is an industry-led information sharing and analysis center that happens to be collocated within the NCC itself. The NCC Telecom-ISAC is a partnership between telecom companies and the federal government whose purpose is to share and analyze physical and cyber threat and vulnerability information related to the nation's telecommunications infrastructure. Therefore, it is the NCC, not the NCC Telecom-ISAC, that is the appropriate government entity to receive outage reports, as the NCC can use its federal powers to protect and secure reports. DHS might not have been aware of this distinction. USTA supports submitting outage reports to the NCC because, as DHS suggests, it augments the utility of outage data by placing it where it can immediately be used to assist with response, recovery and restoration of service in crisis situations.⁸ DHS argues against ready public access to outage reports because such access can make networks vulnerable to attack and is not necessary for the development of best practices. It points out that entities such as the NCC Telecom-ISAC support information-sharing in a safe environment and foster collaboration within industry to develop effective best practices.⁹ USTA agrees.

USTA strongly supports DHS's statement that "any expansion of the outage reporting rule adopted by the Commission must be accompanied by appropriate measures to safeguard reporting data to the maximum extent consistent with applicable information

⁷ *Id.* at 10.

⁸ *Id.* at 12-13.

⁹ *Id.* at 3.

access laws.”¹⁰ To this end, DHS suggests that the FCC require carriers to submit outage reports to the NCC Telecom-ISAC and ensure that outage data be safeguarded from inappropriate disclosure.¹¹ USTA supports this proposition but again notes that the NCC is the appropriate entity to receive outage reports. DHS offers to collaborate with the FCC, saying, “DHS is prepared to work with the Commission to assess what information is most sensitive and requires the greatest protection and to identify appropriate technical and procedural measures to safeguard this information.”¹²

If it is unwilling to allow reports to be submitted to the NCC, then the FCC should follow the suggestion of T-Mobile USA, Inc. (T-Mobile) to use the Communications Act of 1934, as amended (the Communications Act) to protect sensitive outage information from public disclosure. T-Mobile notes that section 4(j) of the Communications Act, “authorizes the Commission to ‘withhold publication of record or proceedings containing secret information affecting the national defense’.”¹³ This section has been used to protect information regarding microwave networks from public inspection. Therefore, argues T-Mobile, it should be used to protect information regarding mobile switching centers, home location registers, and SS7 signaling nodes because outage reports identify not only the location of critical infrastructure components but also describe those components in detail and include information concerning their potential vulnerabilities.¹⁴ USTA urges the FCC to take whatever steps are necessary to ensure protection of this information. As T-Mobile points out, if there is a need for the public to know about

¹⁰ *Id.* at 14.

¹¹ *Id.* at 15.

¹² *Id.*

¹³ T-Mobile Comments at 18.

¹⁴ *Id.*

particular outages, press releases summarizing pertinent, non-sensitive information can be issued. Similarly, Sprint Corporation (Sprint) believes that because the United States is vulnerable to terrorist attacks, it is essential that outage reports disclosing the location of critical communications infrastructure are not disclosed under the Freedom of Information Act¹⁵ or otherwise, but, at the same time, Sprint recognizes the public benefits of allowing public access to information.¹⁶ Sprint proposes to resolve this problem simply by having the FCC “scrub” outage reports of sensitive network information before allowing the public to access the reports and by requiring state governments that want the scrubbed data for their own homeland security efforts to keep it confidential.¹⁷ USTA supports this approach because it allows for public access to outage information while protecting critical infrastructure information.

Unlike DHS, USTA does not agree that requiring outage data to be filed electronically will necessarily facilitate more rapid and efficient reporting.¹⁸ The FCC believes that its proposals will make it so easy to file initial disruption reports that communications providers should be able to do so within 120 minutes of discovering a reportable outage. This conclusion ignores the fact that outage reports require individuals to research the cause of an outage and manually enter material into a computer at the same time their company must focus on restoring service.¹⁹ Requiring reports to be filed electronically does not change the logistics of gathering and entering this information.

¹⁵ 5 U.S.C. § 552.

¹⁶ Sprint Comments at 28.

¹⁷ *Id.*

¹⁸ See DHS Comments at 13.

¹⁹ See USTA Comments at 16.

DHS questions the 30-minute/900,000-user minutes common metric proposed by the FCC and asks whether it would be appropriate to apply it to all industry segments.²⁰ It believes that the proposed thresholds should be reviewed in light of specific technical guidance from industry groups.²¹ USTA agrees. Many satellite companies such as Iridium Satellite LLC (Iridium), Intelsat Global Service Corporation (Intelsat), Globalstar LLC (Globalstar), wireless companies such as Cingular Wireless LLC (Cingular), and other companies representing distinct industry groups question the logic of applying a common metric across service platforms, noting that the distinctions and special characteristics of different platforms make it difficult to adopt a “one-size-fits-all” approach.²²

Like many others commenting in this proceeding, USTA believes that the FCC should determine the magnitude of an outage based on in-service access lines rather than on “users” and that the FCC should use an alternative reporting threshold based on duration and blocked calls in conjunction with the existing reporting threshold.²³ The reason, as USTA, Qwest Communications International Inc. (Qwest), BellSouth Corporation (BellSouth), SBC Communications (SBC), Sprint and others point out,²⁴ is that the FCC’s proposed common metric would lead to an incorrect statement of the

²⁰ DHS Comments at 16.

²¹ *Id.* at 17.

²² *See* Iridium Comments at 6-7; Intelsat Comments at 2; Globalstar Comments at 3-5; and Cingular Comments at 15.

²³ *See* USTA Comments at 6, 10. *See also* BellSouth Comments at 6, 11; Qwest Comments at 6-7; SBC Comments at 6-7; and Verizon Comments at 9, 11.

²⁴ *See* USTA comments at 7-8; Qwest Comments at 4-5; BellSouth Comments at 7; SBC Comments at 4; and Sprint Comments at 8-10. *See also* Sprint Comments at 24. Sprint says, “the proposed 900,000 end user minute formula would create ambiguity and irrelevant data in the wireless arena.”

number of users potentially affected by an outage and cause a dramatic expansion in the number of reportable incidents.²⁵ Furthermore, the metric is unlikely to produce any benefits that justify the added reporting and cost burdens imposed on carriers.

Because the proposed common metric would distort reports on the number of users affected by outages and would increase the number of reportable incidents, USTA strongly opposes any proposal to reduce the reporting threshold, such as that proposed by the Kansas Corporation Commission to reduce the reporting threshold to 5,000 affected users at 150,000 user minutes. The Kansas Corporation Commission believes that this threshold will capture more rural outages, but, as the state commission itself, admits, the proposal is not based on any empirical evidence.²⁶ Furthermore, the state's proposal will exponentially increase the number of reportable outages, thereby increasing the administrative burdens on carriers, and will overwhelm the FCC with reports on insignificant outages, thereby interfering with any meaningful outage analysis by the FCC. To avoid the distortions that would be caused by reduced reporting thresholds, USTA again urges the FCC to seriously consider the performance metric espoused by USTA, ATIS, SBC, BellSouth, and others in their comments.²⁷

²⁵ See also Comments of the Rural Incumbent Local Exchange Carriers (ILECs) on the Initial Paperwork Reduction Act of 1995 Analysis at 4. The Rural ILECs observe, "the proposed rules would now apply to roughly 3,000 communications service providers that previously were not subject to outage reporting requirements."

²⁶ See Kansas Corporation Commission Comments at 1.

²⁷ See USTA Comments at 10. USTA proposes two feasible metrics for measuring customer impact. First, carriers that have the ability to use blocked call counts or historic traffic data would report an outage if it (1) lasted at least 30 minutes, (2) affected a survivable element (*i.e.*, host and remote switches), and (3) real-time traffic data showed 90,000 or more blocked calls, or historic traffic data showed 30,000 or more blocked calls. Alternatively, carriers who do not have the ability to use blocked-call data would report an outage when (1) the outage duration was at least 30 minutes, (2) the outage

CONCLUSION

For the foregoing reasons, USTA urges the FCC to resist implementing any new reporting metrics unless it can maximize the value of information obtained in such reports while minimizing the expense to local exchange carriers and other communications providers in terms of time and money spent producing the reports and the risks to national security that could be caused by dissemination of the reports.

Respectfully submitted,

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affected a survivable element (*i.e.*, host and remote switches), and (3) the number of access lines affected equaled or exceeded 30,000 or the duration of the outage exceeded six (6) hours, regardless of the number of access lines affected, and affected a survivable element.

CERTIFICATE OF SERVICE

I, Meena Joshi, do hereby certify that on June 24, 2004, the aforementioned Reply Comments of the United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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