

**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)	

REPLY COMMENTS OF T-MOBILE

T-Mobile USA, Inc. ("T-Mobile") notes that comments in response to the Notice of Proposed Rule Making (NPRM) in the above-captioned proceeding were submitted by many parties representing every segment of the industry. However, in submitting these reply comments, T-Mobile wishes to focus upon and support the positions taken by the United States Department of Homeland Security ("DHS") in its comments. T-Mobile believes the DHS comments crystallize for the Commission and for the public the important issues posed by the NPRM, and that attention to DHS's concerns can serve to provide the Commission with a road map to the successful resolution of this proceeding.

The commitment of the Commission and indeed all the commenting parties in this proceeding to the reliability of the nation's telecommunications networks is unquestioned. Yet T-Mobile is confident that the Commission would acknowledge the key role DHS now plays in ensuring the reliability of the nation's telecommunications infrastructure. For indeed, it is DHS's statutory responsibility to plan for, mitigate, respond to and coordinate the nation's recovery from events that threaten national security and emergency preparedness. According to DHS,

“collection of [network disruption] information contributes significantly to protecting our homeland and preserving our national and economic security.”¹

This preeminent interest is reflected in Homeland Security Presidential Directive 7 (“HSPD-7”), which designates the DHS as the agency to “lead, integrate and coordinate” the “overall national effort to enhance the protection of critical infrastructure,” while directing sector specific agencies like the FCC to “coordinate and cooperate” with DHS for “protecting critical infrastructure.”² Accordingly, T-Mobile submits that the Commission should extend considerable deference to DHS’ views concerning service disruption reporting and the protection of telecommunications infrastructure.

T-Mobile specifically supports the following DHS positions.

1. At the present time, the Commission should continue to rely on the voluntary reporting process that the wireless industry has established. DHS supports a voluntary reporting framework, provided that all service providers are committed to participating fully in the process.³ As DHS acknowledges, it already has established an “effective relationship with industry” and industry is currently “working to improve its reporting systems and increase participation.”⁴ T-Mobile has already described the numerous benefits of a voluntary framework over a mandatory rules-based arrangement.⁵ As T-Mobile further observed:

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.⁶

¹ DHS Comments at 2.

² See Homeland Security Presidential Directive 7, at ¶¶ 12 and 23 (Dec. 17, 2003).

³ See DHS Comments at 9.

⁴ *Id.* at 9-10.

⁵ See T-Mobile Comments at 2-8.

⁶ See *id.* at 5.

Reflecting the above quote, T-Mobile acknowledges the Commission's frustration with non-wireline participation levels in the voluntary program, and T-Mobile notes above the DHS emphasis on the NCC Telecom-ISAC having timely receipt of data from all industry members. Nonetheless, T-Mobile again urges that the Commission provide industry with a meaningful period of time to enhance and improve the voluntary process.⁷ For example, unlike the prior NRIC reporting process, the new NRSC/ILORI process employs a web-based template that includes reminder notifications regarding reporting deadlines, with escalated notifications to more senior company representatives regarding missed or inaccurate filings.⁸ Industry is clearly working on the concerns expressed by the Commission and DHS.

2. Outage reports should be submitted directly to the NCC Telecom-ISAC. DHS "strongly urges" that the outage data be reported directly into NCS's National Coordinating Center for Telecommunications-Information Sharing and Analysis Center ("NCC Telecom-ISAC") rather than to the Commission.⁹ As DHS observes, the NCC Operations Center is staffed with experts on an around-the-clock basis. In addition, industry representatives sit along side Government staff and serve as liaisons with industry. This process, DHS observes, "significantly augment[s] the utility of outage data by most quickly and efficiently placing it where it can immediately be used for that purpose in real time":

This integration fosters technical working relationships with external liaison partners, both in industry and Government. The technical expertise, collaboration efforts, and evolving analytical capability of the NCC have brought significant value to the information sharing process.¹⁰

⁷ T-Mobile suggests this period of time be no less than 6 months. Comments at 9.

⁸ See ATIS Comments at 11.

⁹ See DHS Comments at 10.

¹⁰ *Id.* at 11 and 12-13 (underscoring in original).

3. No outage reports should be made available in the public domain. DHS “strongly” recommends that the Commission “change its existing policy of making outage reporting data generally available and easily accessible to the public.”¹¹ As DHS explains, “the errant disclosure to an adversary of this information concerning even a single event may present a grave risk to the infrastructure”:

The potential availability of all reports, across all of the platforms proposed in the Commission’s Notice, could provide a potential adversary with a virtual road map targeting network stress points and vulnerabilities and a field guide to defeating “best practices” and protective measures.¹²

T-Mobile made the same strong recommendation, and it clearly identified the legal basis available to the Commission so the agency can protect from public disclosure highly sensitive outage information.¹³ Indeed, one of the cornerstones of T-Mobile’s comments is that in the event the Commission decides to impose mandatory reporting, that the Commission, consistent with HSPD-7, should withhold from public disclosure any outage report submitted by any telecommunications carrier, regardless of the technology utilized by the carrier.¹⁴ As DHS notes, “the post September 11, 2001 environment” requires a different approach.¹⁵

The DHS recommends that the Commission explore methods to make outage information available to the state public utilities commission (“PUCs”) because such information sharing would “reduce the need for State regulators to collect intrastate outage data independently.”¹⁶ State-specific outage reporting requirements would appear to be incompatible with federal law, including the Homeland Security Act, the Critical Infrastructure Information Act of 2002 and

¹¹ DHS Comments at 3.

¹² *Id.* at 14-15.

¹³ *See* T-Mobile Comments at 17-19.

¹⁴ *Id.* at 3, 10-13, 17.

¹⁵ DHS Comments at 12.

¹⁶ DHS Comments at 8.

HSPD-7. Nevertheless, T-Mobile is not opposed to DHS's recommendation that PUCs obtain outage reports from the Commission. After all, this is the same process the Commission has employed in other areas, such as the collation of Numbering Resource Utilization and Forecast ("NRUF") reports, where national interests are also paramount.¹⁷ While not opposed to the sharing of this data via DHS with state commissions, T-Mobile urges the Commission to carefully consider the logistics and ramifications of distribution of sensitive outage data to as many as 51 jurisdictions, given the risk of inappropriate disclosure or theft of data which, as DHS states, "could jeopardize our security efforts if disclosed to inappropriate recipients."¹⁸

4. Details concerning the appropriate reporting thresholds and the reporting process should be determined by DHS in consultation with the industry and the Commission. DHS legitimately expresses concern that the Commission's proposed "common metric," while attractive in theory, may not be workable in practice given differences among industry segments.¹⁹ DHS further observes that "a number of industry groups have been established to explore technical issues in relationship to specific segments regarding metrics."²⁰

T-Mobile submits that the details of the voluntary outage reporting process should be established, not by FCC regulation, but by DHS, in collaboration with both industry and the Commission. First, because it will be DHS that will be reviewing the reports, that agency is in the best position to determine the types of actionable data required. DHS stated its belief that "the thresholds, as applied to each segment, should be reviewed and specific technical guidance from

¹⁷ See, e.g., 47 C.F.R. § 52.15(f)(7); *First Numbering Resource Optimization Order*, 15 FCC Rcd 7574, 7606-07 ¶¶ 75-76 (2000); *Second Numbering Resource Optimization Order*, 16 FCC Rcd 306, 356-58 ¶¶ 116-19 (2000).

¹⁸ DHS Comments at 3.

¹⁹ See DHS Comments at 16-17.

²⁰ *Id.* at 17.

industry group analysis be duly considered.”²¹ In addition to individualized sector thresholds, DHS oversight via the NCC Telecom-ISAC process affords the benefit of a real-time ability to modify the thresholds or any other part of the process. The Commission, in contrast, is constrained by requirements imposed by the Administrative Procedures Act (“APA”). Under the APA, any changes to outage reporting rules would require the commencement of a new rulemaking proceeding, a process that entails considerable delay.

CONCLUSION

For the foregoing reasons, T-Mobile respectfully requests that the Commission take actions consistent with the views discussed above and in T-Mobile’s comments.

Respectfully submitted,

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²¹ *Ibid.*