

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 )

REPLY COMMENTS

United States Cellular Corporation ("USCC") hereby files its Reply Comments concerning the Notice of Proposed Rulemaking<sup>1</sup> in the above-captioned docket. USCC now provides cellular and PCS service to more than 4.4 million customers in 147 markets in 26 states. These markets are predominantly rural and suburban. As a rural carrier, which must spread its costs of compliance with federal regulations over customers in sparsely populated service areas, USCC is concerned with any federal regulatory mandate whose costs clearly appear to exceed its benefits to the public.

I. The FCC Should Give The Voluntary ILORI Process a Chance to Work Before Imposing a Federal Mandate.

A. Background

As applied to the wireless industry, which is not now subject to mandatory FCC outage reporting requirements, the NPRM proposes a new set of reporting requirements, which will be time consuming and costly. The NPRM proposes: (1) mandatory reporting of outages lasting at least 30 minutes and "potentially affecting 900,000 'user-minutes';" (2) reporting outages of 30 minutes or longer duration potentially affecting virtually any "airport;" and (3) reporting all outages of at least 30 minutes duration which "potentially affect" the "ability to originate,

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<sup>1</sup> See In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Notice of Proposed Rulemaking, FCC 04-30, ET Docket 04-35, released February 23, 2004 ("NPRM").

complete or terminate" 911 calls successfully.<sup>2</sup> The NPRM also concludes that "improvements in filing requirements" as well as electronic filing, "should make it easy" for wireless carriers and other telecommunications providers to file "initial disruption reports" within 120 minutes of discovering a reportable outage.<sup>3</sup>

Pursuant to present Section 63.100(b) of the Rules, those carriers subject to mandatory reporting now must, within 30 days of the outage, submit "final" service disruption reports, containing all available information on the service outage, describing its "root causes," and evaluating the "effectiveness and application" of "any best practices identified by the Network Reliability Council to eliminate or ameliorate outages of the reported type."<sup>4</sup> The NPRM proposes to require that such "final disruption reports" also contain "statements" concerning whether the reported outage "was at least partially caused" by a lack of "full diversity (redundancy)" and describing "all" the causes of the outage, and not merely the "root cause."<sup>5</sup>

B. The Justifications Provided For the New Requirements Are Not Adequate.

The comments of wireless carriers and their trade association demonstrate that the reasons cited in the NPRM in support of the new reporting requirements are not persuasive.

First, the NPRM maintains that it was the data contained in mandatory wireline outage reports which enabled the initial Network Reliability Council (NRC) to develop "best practices," avoid outages and facilitate restoration efforts. However, as has been demonstrated by Cingular and Sprint, and as is noted in the NPRM itself,<sup>6</sup> wireline outage "best practices," were derived, in the main, from voluntary reporting by wireline carriers prior to the imposition of mandatory reporting requirements.<sup>7</sup>

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<sup>2</sup> NPRM, ¶¶ 22-25.

<sup>3</sup> NPRM, ¶ 30.

<sup>4</sup> NPRM, ¶ 27 n.62.

<sup>5</sup> NPRM, ¶ 31.

<sup>6</sup> NPRM, ¶¶ 16-18.

<sup>7</sup> See Comments of Sprint (pp. 1-3) and Cingular Wireless, LLC ( p.5).

Second, the NPRM maintains that wireless carriers have not supplied and will not supply the necessary data on a voluntary basis.<sup>8</sup> Leaving aside the issues of what data are "necessary" and the purposes for which it is to be submitted and used, this contention is inaccurate about the past, as well as premature and almost certainly incorrect about the future. As is pointed out by Cingular, among others, a sufficient number of wireless carriers have participated in the data gathering processing process operated by the Network Reliability and Interoperability Council (NRIC) to generate the 730 wireless "best practices" now listed on the NRIC website. That is already a substantial response. USCC would also note that the NRIC process has been one largely confined to the largest wireless carriers, with small, rural and mid-sized carrier participation neither sought nor encouraged by NRIC or the FCC. To blame wireless carriers as a group for this state of affairs is neither fair nor reasonable. Moreover, it should not be grounds to impose costly new regulations on wireless carriers. If the alternative is onerous mandatory outage reporting, virtually all wireless carriers will participate in a voluntary system which will provide all the information to which the FCC could reasonably wish to have access.

USCC recognizes the need to improve wireless "best practices" to prevent outages. Accordingly, USCC is in the process of joining the Industry Led Reporting Initiative ("ILORI"), organized by NRIC, which will certainly provide valuable data in order to improve wireless network reliability. The FCC ought to wait at least a year and give the ILORI process a chance to demonstrate its worth before imposing mandatory reporting requirements.

Third, the NPRM is premised on the idea that the wireless industry is fundamentally like the wireline industry and would benefit from comparable mandatory reporting requirements. But, as has been pointed out by other wireless carriers, this premise is false.<sup>9</sup> The wireless industry is not a monopoly. It is and always has been fiercely competitive and each carrier has

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<sup>8</sup> NPRM, ¶¶ 11-12.

<sup>9</sup> See Comments of Sprint, p. 4, and T-Mobile, p. 5.

the strongest possible economic incentive to improve its network reliability, namely that of acquiring and keeping customers in competition with other carriers. In fact, wireless carriers have a far stronger incentive to do so than did monopoly wireline carriers before mandatory reporting was imposed on such carriers. There is thus no reason to believe that having to file thousands of outage reports a year will improve wireless network reliability in the same way it allegedly did for wireline network reliability.

The federal government does not exercise control over the wireless industry's technological development. The FCC does not dictate where wireless base stations are sited, or how antennas are configured for maximum "gain," or how handsets will be modified in light of increasing data capabilities. Likewise, the FCC does not oversee which digital transmission formats carriers will choose, or the amount of "redundancy" they must build into their systems. Since 1983, these matters have been wisely left to the free market. It may be helpful for wireless carriers to utilize certain "best practices" to improve their network reliability and for the government to be aware of and promote those practices, but there is no reason why they cannot be implemented voluntarily. Unless the FCC is planning far more extensive regulation of wireless operations than it has adopted for the past twenty years, it has no need for information at the level of depth and complexity proposed in the NPRM.

II. Homeland Security Considerations Undermine the Case for Mandatory Wireless Outage Reporting.

The NPRM generally reflects the pre-September 11, 2001 paradigm that it is always in the public interest for the government to collect information from the industries it regulates and then to make that information available to inquiring members of the public with few, if any, questions asked. However, in light of the terrible events of September 11, and what we have

subsequently learned about the workings of terrorist organizations, that paradigm must be substantially modified in light of unpleasant contemporary realities.

As is discussed by CTIA, the best way to protect information held by the government concerning telecom infrastructure, which might otherwise be vulnerable to terrorist sabotage, is to utilize the provisions of such statutes as the Critical Infrastructure Protection Act of 2001 ("CIPA")<sup>10</sup> and Homeland Security Act of 2002. These statutes allow for, and indeed require, protection by the government of information voluntarily submitted regarding the "security and survivability of these infrastructures."<sup>11</sup> However, such information evidently cannot be protected in the same way if it is mandatorily submitted to government agencies. For example, it is evidently not covered by any exception to the Freedom of Information Act ("FOIA"),<sup>12</sup> as voluntary submissions are. If the FOIA is not amended to correct this problem, the risk of disclosure of such information to evildoers is reason enough not to go forward with mandatory wireless outage reporting.

There is no public interest to be served by permitting terrorists to file successful FOIA requests, enabling them to pinpoint vulnerable places in the nation's wireless networks. Nor, for that matter, is there any public interest reason in competitors being able to do so for advertising or other purposes.<sup>13</sup> There is certainly a public interest in strengthening wireless infrastructure through implementation of voluntary "best practices," as well as in the government being aware of the steps being taken as a result of that process. Both of those goals can be achieved with voluntary reporting through the ILORI process.

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<sup>10</sup> 42 USCA § 5195(c).

<sup>11</sup> CTIA Comments, p. 10.

<sup>12</sup> 5 USCA § 552 et seq.

<sup>13</sup> See Nextel Comments, p. 5.

III. The Specific Mandatory Reporting Requirements Proposed Are Impractical and Unnecessary.

The wireless industry has demonstrated that the NPRM's proposal to require wireless carriers to report signal outages is unnecessary, as well as ill conceived and dangerous, given the current state of world politics and American law. The Commission should not adopt it.

If, however, the FCC does require mandatory wireless outage reporting, it should reconsider and modify some of the specific proposals it has made, as many of them are unnecessarily burdensome and/or unworkable.

The FCC proposes to substitute the term "user" for "customer" in Section 63.100 of the FCC's Rules and count as a "user" anyone "potentially affected" by an outage. Outage "events" exceeding 30 minutes in duration would become reportable if they exceeded "900,000 user-minutes." However, as has been pointed out by other wireless carriers,<sup>14</sup> that "metric" is unworkable. Wireless carriers have no definitive way of measuring the number of "users" potentially affected by an outage, owing to the inability of wireless systems to "see" customers whose phones are turned off. USCC concurs in the recommendations of Cingular and Sprint that the criteria for having to report an outage should be changed to having to report an unplanned failure of a mobile switching center which lasts for 30 minutes or more and/or which causes 90,000 blocked originating calls. That would be a more manageable reporting standard.

USCC also objects to the NPRM's proposal to report all outages "potentially affecting" the "origin[ation], complet[ion], and termina[tion] of 911 calls." As Cingular points out, that requirement would essentially mean that all outages were reportable, since all outages may affect 911 calls.<sup>15</sup> There is no need for this separate requirement, which is too vague and would sweep much too broadly. Similarly, the FCC's proposal that outages of 30 minutes or more affecting

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<sup>14</sup> See, e.g. Comments of Sprint, pp. 9-11.

<sup>15</sup> Cingular Comments, p. 16.

virtually all "airports" must be reported<sup>16</sup> is much too broad and would, in practice, lead to unnecessary reporting, as carriers struggled to determine whether an outage would potentially affect an "airport," no matter how small. That proposal is derived from the wireline-centric world in which "airports" could be shut down by telephone and hardwire data service outages. Loss of wireless service would not have a comparable impact on airport operations.

The FCC's proposals concerning the time within which outage reports must be filed and the content of such reports are also unduly onerous. As is pointed out by T-Mobile,<sup>17</sup> the FCC's proposal that all initial reports be filed "within 120 minutes of becoming reportable" will force carriers to concentrate on filing a government report rather than on restoring service to the public. The NPRM nowhere identifies the benefit to the public in having carriers file an electronic form with the FCC within 120 minutes of an outage. Since the FCC will not instruct carriers in how to get their systems back on the air, what is the need for this requirement?

USCC also agrees with T-Mobile that the filing of initial outage reports should be delayed until service has been restored for at least 72 hours. Carriers should be given time to get their systems back on the air before having to file such reports. We also believe the information requested in the "initial" report is unnecessarily voluminous. It is we submit, regulatory overkill to require carriers struggling to restore service to have to tell the FCC (within two hours of the beginning of the outage) about the "applicable best practices that might have prevented the outage." If such information is to be submitted, it should be included only in the final report, submitted 30 days after service is restored.

And, with respect to the "final reports," we also submit that requiring discussions of whether the outage was "at least partially caused" by an absence of "full diversity" and

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<sup>16</sup> NPRM, ¶ 24.

<sup>17</sup> T-Mobile Comments, pp. 19-20.

concerning all the "causes" of the outage, rather than its "root cause," do not comport with the appropriate scope of such reports. To reiterate, the FCC does not and should not act as the supervisor of national wireless network "reliability" through the mechanism of required "outage" reports. As long as the FCC is made aware of the time and duration of an outage, the carrier's method of rectifying it and perhaps of any "best practices" used in doing so or of any practices used which may become "best practices," it has been provided with enough information for any legitimate regulatory purpose.

CONCLUSION

The proposals contained in the NPRM, if implemented, would be an ill advised act of regulatory overreaching. They should be rejected in favor of voluntary reporting, and if implemented, should be modified as discussed above.

Respectfully submitted,

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