

**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 BELLSOUTH CORPORATION**

**BELLSOUTH CORPORATION**

Angela N. Brown

Its Attorney

Suite 4300  
675 West Peachtree Street, N. E.  
Atlanta, Georgia 30375-0001  
(404) 335-0724

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BellSouth Corporation, by counsel and on behalf of itself and its wholly owned subsidiaries (collectively "BellSouth"), respectfully submits these replies to the comments filed in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

The Commission's proposed modifications to its service disruption reporting rules drew significant comments from a wide cross-section of parties – wireline carriers (large and small), wireless providers, satellite providers, the Department of Homeland Security, state commissions, industry groups, and manufacturers. Despite these various interests, there was overwhelming consensus on a number of central issues. First, nearly all of the commenters recognize that network outage reports must be protected from public disclosure in this new environment of heightened national security; and the record shows that the most effective way to ensure this confidentiality is through a voluntary reporting mechanism. Second, the comments make clear that nearly all of the Commission's proposed reporting thresholds are not only problematic

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<sup>1</sup> *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Notice of Proposed Rulemaking*, FCC 04-30 (rel. Feb. 23, 2004) ("*NPRM*").

and/or technically infeasible to implement but also unduly burdensome. Third, there are far less complicated, less costly, and less onerous ways to provide accurate and meaningful outage information. Accordingly, BellSouth urges the Commission not to adopt a number of the proposals set forth in the *NPRM*. Rather the Commission should work closely with all industry segments as well as the Department of Homeland Security to develop a framework that will continue to promote reliability in communications networks and provide the Commission with accurate and meaningful disruption information without threatening national security or imposing undue and unnecessary burdens on providers and their customers.

## **II. THE COMMISSION SHOULD NOT ALLOW THE PUBLIC DISCLOSURE OF NETWORK OUTAGE REPORTS.**

There is near unanimous agreement that the Commission should not make network outage reports generally available to the public and must ensure that such reports are protected from disclosure.<sup>2</sup> As the Department of Homeland Security (“DHS”) points out, while there may have been some merit in making outage reports generally available and easily accessible to the public when the reporting rules were first adopted, “the threat environment following September 11, 2001, dictates that appropriate steps be taken, consistent with law, to safeguard sensitive information, like that included in the outage reports.”<sup>3</sup> To ensure consistency with the Administration’s clear objective and recent laws established to protect the nation’s security, the Commission must make every effort to maintain the confidentiality of network outage reports.

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<sup>2</sup> See, e.g., Alliance for Telecommunications Industry Solutions (“ATIS”) Comments at 33; AT&T Comments at 29-31; BellSouth Comments at 27-28; BloostonLaw Rural Carriers Comments at 8-9; BloostonLaw Paging Group Comments at 12 n.7; Cingular Comments at 10-13; CTIA–The Wireless Association™ (“CTIA”) Comments at 2; GlobalStar Comments at 7-8; Iridium Satellite LLC (“Iridium”) Comments at 8; MCI Comments at 6-7.

<sup>3</sup> DHS Comments at 3.

However, there are legitimate concerns about the Commission's ability to fully protect critical network data given its obligations under the Freedom of Information Act ("FOIA").<sup>4</sup> Although BellSouth believes that network outage data submitted to the Commission could qualify as information exempt from disclosure under the FOIA, to date, the Commission has not treated these reports as confidential under FOIA or its implementing rules,<sup>5</sup> and it is unclear whether the Commission intends to do so in the future. As discussed more fully below, an alternative reporting mechanism that would protect carrier network outage data from public disclosure already exists.

**A. The Record Demonstrates That the Most Effective Means of Protecting Network Outage Reports from Disclosure Is Through Voluntary Reporting to the Department of Homeland Security.**

Aware of the potential for mandatory disclosure by the Commission under the FOIA, a number of commenters have identified an alternative to ensure the confidentiality of service disruption reports.<sup>6</sup> Parties such as Cingular and CTIA point out that, under current law, critical infrastructure information<sup>7</sup> that is submitted *voluntarily* to a covered federal agency is eligible

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<sup>4</sup> See, e.g., BloostonLaw Rural Carriers Comments at 8-9; Cingular Comments at 10-11; MCI Comments at 7.

<sup>5</sup> 5 U.S.C. § 552(b); 47 C.F.R. § 0.457.

<sup>6</sup> See, e.g., AT&T Comments at 29-30; BloostonLaw Rural Carriers Comments at 2, 8; DHS Comments at 2, 10; MCI Comments at 7.

<sup>7</sup> Critical infrastructure information is "information not customarily in the public domain and related to the security of critical infrastructure or protected systems." 6 U.S.C. § 131(3). Critical infrastructure is defined as "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters." 42 U.S.C. § 5195c(e).

for protection from disclosure under the FOIA.<sup>8</sup> Section 133(a)(1) of the Critical Infrastructure Information Act provides as follows:

Critical infrastructure information . . . that is *voluntarily* submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose . . . shall be exempt from disclosure under the [the Freedom of Information Act].<sup>9</sup>

Given the protection afforded by this statute, a number of parties, including the DHS, propose that carriers submit network outage reports directly to a designated entity within the DHS on a voluntary basis.<sup>10</sup> This process is used today for the voluntary trial being conducted by the Network Reliability and Interoperability Council (“NRIC”). Under this trial, companies participating in the Industry-Led Outage Reporting Initiative (“ILORI”) file monthly network outage reports with the National Communications System’s (“NCS”) National Coordinating Center (“NCC”).<sup>11</sup>

The NCC webpage provides a link to the ILORI-reporting webpage, on which a company can enter its username and password to file a report. Each month, a company may file a voluntary report indicating that no events have met the trial’s criteria or a report detailing the outage. The report, which is processed by the NCC and “scrubbed” of any company-identifying data, is provided to the Commission and to the ATIS Network Reliability Steering Committee or

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<sup>8</sup> See, e.g., BloostonLaw Rural Carriers Comments at 8; CTIA Comments at 8-9, n.8; Cingular Comments at 10.

<sup>9</sup> 6 U.S.C. § 133(a)(1) (emphasis added).

<sup>10</sup> See, e.g., DHS Comments at 2, 10; AT&T Comments at 29-30; MCI Comments at 7.

<sup>11</sup> The NCS and NCC are located in the Department of Homeland Security’s Information Assurance and Infrastructure Protection Division.

ILORI participants for evaluation of the data. BellSouth supports the continued use of this process for the filing of voluntary outage reports.

Additional clarification is needed, however, regarding the appropriate entity that should receive voluntary outage reports. The DHS, in its comments, refers to the “NCC Telecomm-ISAC” as the appropriate place to file voluntary reports.<sup>12</sup> However, it is the NCC itself, and not the industry-led information sharing and analysis center (“ISAC”), that has received voluntary outage reports thus far. The NCC, an entity within the National Communications System and the Department of Homeland Security, is the appropriate organization to receive voluntary reports.

BellSouth believes that the NCC is the proper entity to receive initial network outage reports for a number of reasons. First, it is in a position to act immediately in its advisory role to notify government entities and coordinate emergency and service restoration efforts. Second, the NCC has the ability and expertise to ensure that company-identifying information is removed from any reports before making them available. Third, the NCC can work with the Protected Critical Infrastructure Information Program Office to coordinate, as needed, to designate data as protected critical infrastructure information. The NCC (and not the NCC Telecom-ISAC) is ideally equipped to assume responsibility for receipt of voluntary outage reporting data, and the Commission should endorse this arrangement.

Under this suggested framework, the NCC would share network outage data with the Commission within an established and reasonable timeframe. Carriers would not submit outage reports directly to the Commission in order to retain the confidentiality protection that attaches only to reports submitted voluntarily. The NCC also would be in a position to share network

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<sup>12</sup> DHS Comments at 2, 10.

outage information with state and local governments subject to non-disclosure. As DHS points out, it currently is developing procedures to facilitate the handling and sharing of critical infrastructure information among the departments and agencies of the Federal government and between the Federal government and the state and local governments.<sup>13</sup> Thus, state and local agencies need not be concerned that they will be excluded from receiving outage information under a voluntary reporting mechanism.

Any reporting mechanism – whether voluntary or mandatory – must not result in providers submitting multiple or different outage reports to various government entities. Such an approach is excessively burdensome and redundant. Providers should submit reports to the NCC, and the NCC should be responsible for sharing the information with the Commission and appropriate state and local government entities.

In sum, BellSouth, like DHS and others, does not object to the adoption of a voluntary reporting framework given the confidentiality protection afforded by the Critical Infrastructure and Information Act of 2002.<sup>14</sup> The record makes clear that allowing open access to carrier disruption reports poses a significant threat to national security and does not serve the public interest. Given that, under current law, the only way to guarantee the non-disclosure of network outage reports is through voluntary submission, the Commission should not adopt mandatory reporting obligations for non-wireline providers and should replace the current mandatory reporting process for the wireline industry with a comparable, if not identical, voluntary process. There is no reason to treat the wireline industry differently when it comes to protecting sensitive

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<sup>13</sup> *Id.* at 8-9, n.17.

<sup>14</sup> *See, e.g.*, AT&T Comments at 29; Cingular Comments at 8-11; CTIA Comments at 6-8; DHS Comments at 2, 9; MCI Comments at 7.

network data. Indeed, the Commission must ensure that any vulnerabilities in wireline and non-wireline networks that may be exposed in outage reports are not publicly accessible.

**B. Voluntary Reporting Has Other Significant Advantages.**

The record demonstrates that voluntary reporting offers significant benefits. In addition to the confidentiality protection discussed above, voluntary reporting fosters more candid disclosures from service providers than mandatory reporting. BellSouth agrees with ATIS that allowing providers to share information voluntarily “in a cooperative setting free from regulatory mandates”<sup>15</sup> has fostered the development of hundreds of best practices. BellSouth similarly agrees with Lucent Technologies Inc. (“Lucent”) that the “industry-led effort to monitor and avoid network outages is likely to be much more flexible than any Commission mandated regime, and therefore more capable of remaining abreast of new technologies and new public safety and national security needs and considerations.”<sup>16</sup> Even members of the Commission acknowledge that mandatory regulations may not be necessary or appropriate in this arena. In a recent speech discussing the Commission’s initiatives to protect critical infrastructure and Homeland Security, Commissioner Kathleen Q. Abernathy expressed her belief that “we should always explore cooperative approaches and best practices before leaping to the conclusion that heavy-handed regulation would work better.”<sup>17</sup>

There is strong evidence that the voluntary reporting process is working today, and there are on-going efforts to improve its effectiveness. As ATIS and CTIA explain, ILORI has

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<sup>15</sup> ATIS Comments at 9.

<sup>16</sup> Lucent Technologies Inc. (“Lucent”) Comments at 3.

<sup>17</sup> Overview of FCC Initiatives to Protect Critical Infrastructure and Homeland Security, Remarks of Kathleen Q. Abernathy, Workshop on Interdependencies (June 7, 2004).

developed a number of modifications to the current voluntary reporting process that should address any Commission concerns.<sup>18</sup> These modifications include, among other things, the review of filed reports to ensure the completion of important data fields, notice reminders sent to providers to ensure the submission of timely reports, and the implementation of process controls to ensure consistent reporting.<sup>19</sup> The existing voluntary reporting program, which reflects industry expertise and provides valuable network data, also “can be amended rapidly to recognize the need for collection of new information,”<sup>20</sup> as pointed out by CTIA. The existence of this fully functioning voluntary reporting framework mitigates the need for mandatory reporting. BellSouth therefore encourages the Commission to work closely with industry groups such as ATIS and ILORI to become more familiar with the existing voluntary reporting process and its safeguards and to develop any refinements, where necessary.

Moreover, the Commission need not be concerned that carriers will not comply with a voluntary reporting process. As the record demonstrates, providers are fully committed to ensuring the integrity and reliability of their networks, regardless of the existence of mandatory reporting. Vigorous competition in the communications marketplace demands that providers make every effort to ensure that their customers have access to reliable service. Customers will not tolerate repeated network outages or protracted service restoration. They will seek service elsewhere and/or complain to Federal and state regulatory authorities. Thus, carriers have a clear business incentive to participate in a process that enables them to maintain service integrity and reliability.

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<sup>18</sup> *See, e.g.*, ATIS Comments at 11; CTIA Comments at 6.

<sup>19</sup> *See*, ATIS Comments at 11.

<sup>20</sup> CTIA Comments at 7.

In addition, as the Commission notes, wireline carriers and manufacturers have worked cooperatively for over a decade to understand the causes of service outages and to develop an extensive set of best practices.<sup>21</sup> It is not uncommon for members of the industry to provide equipment, manpower, and other resources to facilitate the rapid restoration of service.<sup>22</sup> This long history of carriers assisting one another during times of crisis and service disruption, regardless of the source of the outage, is not a consequence of the Commission's reporting requirements. Moreover, this cooperation is not limited to wireline carriers, but rather extends across the communications industry. As the record demonstrates, all providers (wireline, wireless, satellite, etc.) work together to share network outage information and to develop best practices designed to facilitate the rapid restoration of service. As CTIA points out, "representatives from all sectors of the communications industry are participating in the ILORI process, working to develop voluntary outage reporting that fully meets the requirements outlined by the Commission."<sup>23</sup> Clearly, providers have an obvious and vested interest in ensuring that their customers have access to secure and reliable communications. The need to protect the nation's communications systems from terrorist activities has only heightened this level of commitment. Thus, the Commission should not be concerned that carriers will not participate in a voluntary reporting process.

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<sup>21</sup> *NPRM*, ¶¶ 8-10.

<sup>22</sup> BellSouth, like many major telecommunications providers, also works collaboratively and on a 24-by-7 basis at the National Coordinating Center to mitigate outages that have a national security, emergency preparedness, or significant public health and welfare impact, including the Northeast blackout (2003), Hurricane Isabel (2003), and the California wildfires (2003).

<sup>23</sup> CTIA Comments at 8.

Notwithstanding the industry's clear incentive and willingness to comply with voluntary reporting, the Commission is fully capable of verifying that all industry segments are participating in a voluntary reporting process. The Commission has never shied away from contacting carriers and requesting information in the absence of mandatory regulations, and the Commission may use this strategy here. The Commission can monitor compliance with voluntary outage reporting by seeking information from individual providers and/or trade or industry associations.

According to the Commission, one of the principal drivers behind the instant *NPRM* is the need to re-examine the current service disruption reporting rules in the wake of September 11, 2001 and the increased emphasis on protecting homeland security.<sup>24</sup> As the Commission undertakes this review, it must consider the evidence demonstrating that the current reporting rules are no longer appropriate in this new environment of increased national security. This evidence weighs heavily in favor of replacing mandatory reporting requirements with voluntary obligations and allowing providers to submit outage reports to the NCC as the initial repository.

### **III. THE COSTS AND BURDENS ASSOCIATED WITH LOWER AND MORE EXPANSIVE REPORTING THRESHOLDS OUTWEIGH ANY BENEFITS.**

The Commission should not establish lower thresholds for the reporting of service disruptions as proposed by the Staff of the Kansas Corporation Commission (“KCC Staff”) and the City of New York, *et al.* The reporting framework established by the Commission was never intended to capture every single network outage, no matter the magnitude. Excessively low thresholds would only result in the submission of an increased number of less useful reports.

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<sup>24</sup> See *NPRM*, ¶ 2.

Accordingly, the Commission should not adopt the KCC Staff's suggestion to reduce the reporting threshold from 30,000 potentially affected users to 5,000 (for a threshold of 150,000 user minutes).<sup>25</sup>

The KCC Staff readily acknowledges that its proposal would significantly increase the burdens imposed on a variety of parties – carriers, the Commission, the National Reliability and Interoperability Council, and vendors.<sup>26</sup> The KCC Staff also admits that it has “no empirical data on which to base” its recommendation.<sup>27</sup> Nonetheless, it claims that the benefits of its proposal outweigh the costs.<sup>28</sup>

BellSouth disputes this assertion. Using a threshold of 5,000 potentially affected users and the current 30-minute trigger, BellSouth estimates that the number of reportable incidents for the first half of this year would have increased by approximately 1000 percent. While reporting on all or most outages may have some limited value, the additional burdens imposed on carriers do not outweigh the perceived benefits. BellSouth agrees with the Independent Telephone and Telecommunications Alliance (“ITTA”), which does not dispute the importance of small system outages, but recognizes that “such outages are less likely to raise the national security concerns that were the driving force behind the *NPRM*.”<sup>29</sup> Moreover, as the ITTA points out, smaller outages are reported elsewhere. According to ITTA, “all carriers required to file ARMIS reports submit information on any downtime of local switches regardless of duration of the system

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<sup>25</sup> Staff of the Kansas Corporation Commission (“KCC Staff”) Comments at 1-2, 3.

<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Id.* at 1.

<sup>28</sup> *Id.* at 3.

<sup>29</sup> Independent Telephone and Telecommunications Alliance (“ITTA”) Comments at 3.

outage.”<sup>30</sup> Thus, the Commission should not lower the reporting threshold as advocated by the KCC Staff.

As an alternative to the threshold of 5,000 customers affected, the KCC Staff recommends establishing separate reporting requirements for urban and rural areas.<sup>31</sup> BellSouth opposes this recommendation because it would be complicated and burdensome to administer. The Commission would have to develop a framework for distinguishing rural and urban areas for reporting purposes. In addition, carriers would have to develop and manage separate processes for urban and rural areas. If a single event affected a large geographic area covering both rural and urban territory, the carrier would have to follow different processes and apply different thresholds to determine the number of users potentially affected in the rural and non-rural area. The complexity of the KCC Staff’s proposed rule would divert resources away from restoring services to customers as quickly as possible. Moreover, such a requirement would disproportionately affect large and small carriers operating in rural areas.

BellSouth also opposes the proposal by the City of New York, *et al.* to lower the reporting trigger for outages affecting 911 service from 30 minutes to 15 minutes.<sup>32</sup> The 30-minute trigger has been in place for more than 10 years,<sup>33</sup> and there is no demonstrated need for reducing this interval. Moreover, lowering the threshold would significantly increase the volume

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<sup>30</sup> *Id.* at 3-4 & n. 9 (citing ARMIS Form 43-05, Table IV, IV.A (table summarizes the loss of local switch processing capability for total downtime durations less than two minutes and greater than two minute respectively)).

<sup>31</sup> KCC Staff Comments at 2.

<sup>32</sup> City of New York, *et al.* (“NY *et al.*”) Comments at 13.

<sup>33</sup> *See Amendment of Part 63 of the Commission’s Rules to Provide for Notification by Common Carriers of Service Disruptions*, CC Docket No. 91-273, *Report and Order*, 7 FCC Rcd 2010 (1992).

of reports filed without providing commensurate benefit. Based on very preliminary data, BellSouth estimates that application of the City of New York, *et al.*'s reduced trigger would have resulted in BellSouth filing approximately 50 reports during the first half of this year instead of one. The requirement to file excessive reports as proposed above would be extremely burdensome, hamper the ability of carriers to focus on service restoration, and provide information with little or no value compared to the costs of compliance.

#### **IV. THE COMMISSION SHOULD REAFFIRM ITS DECISION NOT TO IMPOSE REPORTING OBLIGATIONS ON DATA NETWORKS.**

The Commission should reiterate its decision not to impose reporting obligations on public data networks.<sup>34</sup> In addition, the Commission should expressly find that Voice Over Internet Protocol ("VoIP") providers are not subject to network outage reporting requirements, contrary to the requests of a few commenters.<sup>35</sup>

The *NPRM* explicitly states that the Commission is not proposing to adopt reporting requirements for public data networks at this time.<sup>36</sup> However, as BellSouth pointed out in its opening comments, the Commission's proposed rules would do just that – impose outage reporting obligations on the Internet and data networks.<sup>37</sup> Subjecting the Internet and information services to these requirements is in direct conflict with the national policy of keeping

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<sup>34</sup> *NPRM*, n.4.

<sup>35</sup> *See, e.g.*, ITTA Comments at 6; NY *et al.* Comments at 10-11. There is currently an open rulemaking proceeding underway to determine the appropriate regulatory classification of IP-enabled services. Regardless of the classification of IP-enabled services, such as VoIP, the Commission should adopt a deregulatory policy to minimize regulations imposed on these services.

<sup>36</sup> *NPRM*, n.4.

<sup>37</sup> BellSouth Comments at 22-23.

information services free from regulation. Congress has made clear that the Internet and other information services should be insulated from regulation. Section 230 of the Communications Act, as amended, explicitly announces the policy of the United States: “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”<sup>38</sup> To remain consistent with the statute, its own policy, and the statement in the instant *NPRM*, the Commission should refrain from establishing outage reporting obligations for the Internet and other data services.

There also are technical impediments to imposing reporting obligations on VoIP providers. VoIP calls are transported over the Internet, which reaches across the globe, using interconnected networks. Taking the enterprise market as an example, published reports indicate that VoIP will not likely surpass traditional enterprise PBX adoption until 2009.<sup>39</sup> At this time, it is premature to presuppose a VoIP outage reporting scheme provides real value to the Commission. Instead, outage reporting may slow adoption or discourage companies from embracing this technology as it grows in functionality and service quality. In light of the foregoing, the Commission should reaffirm its decision not to impose reporting obligations on public data networks and expressly exclude VoIP providers from any reporting requirements.

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<sup>38</sup> 47 U.S.C. § 230(b)(2).

<sup>39</sup> Ellen Muraskin, *VoIP Phones Won't Gain Lead Until 2009*, eWeek (June 18, 2004) (citing Insight Research Corporation report), at <http://www.eweek.com/article2/0,1759,1614774,00.asp>.

**V. THERE IS BROAD CONSENSUS THAT THE COMMISSION SHOULD MODIFY A NUMBER OF THE PROPOSALS IN THE NPRM.**

**A. The Proposed Common Metric – User Minutes – Is Fundamentally Flawed and Should Not Be Adopted.**

An overwhelming majority of commenters object to the Commission's proposal to modify its disruption reporting requirements by adopting a newly defined metric – “user minutes” – and applying it across industry segments.<sup>40</sup> Even the DHS, which does not have a stake in which metric is used for reporting, “questions whether the 30-minute/900,000-user minutes threshold is suitable or appropriate.”<sup>41</sup>

The comments of BellSouth and others demonstrate that the use of “assigned” (and “administrative”) numbers as the basis for the Commission's proposed metric is significantly flawed. The deficiencies include misleading reports that do not accurately reflect customers impacted by an outage and the potential for over- and under-reporting. Consequently, BellSouth and a number of other parties propose an alternative metric for wireline carriers. Specifically, these parties recommend that the Commission base outage reporting for wireline carriers (LECs) on the number of affected access lines.<sup>42</sup> BellSouth agrees with Verizon that “[t]he best surrogate for individuals affected is the current method of using actual in-service line counts

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<sup>40</sup> See, e.g., ATIS Comments at 13-15; AT&T Comments at 11-14; BellSouth Comments at 5-10; BloostonLaw Rural Carriers Comments at 4; BloostonLaw Paging Group Comments at 3; CTIA Comments at 12; Cingular Comments at 14-15; ITTA Comments at 5; Intelsat Global Service Corporation Comments at 2; MCI Comments at 2-3, 5-6; Qwest Comments at 6-7; SBC Comments at 3-5; Sprint Comments at 6-12; USTA Comments at 9-11; Verizon Comments at 9-10.

<sup>41</sup> DHS Comments at 16.

<sup>42</sup> See, e.g., BellSouth Comments at 6; ITTA Comments at 5; Qwest Comments at 6; SBC Comments at 6; Verizon Comments at 9.

from the service provider's central office or remote switch at the time of the outage."<sup>43</sup> This line count data is readily available and updated frequently, thereby making it a more accurate measure of the number of users potentially affected by an outage. Moreover, use of access lines addresses the Commission's concerns about underreporting the number of customers potentially affected by an outage. Accordingly, BellSouth supports the retention of the current reporting threshold with a slight modification – an outage is reportable when 30,000 or more access lines (instead of customers) are affected for 30 or more minutes.

Recognizing the technical differences and capabilities among wireline carriers, BellSouth and others propose that the Commission permit carriers to report outages based either on blocked calls or access lines.<sup>44</sup> BellSouth fully supports the following industry-developed threshold as endorsed by commenters including ATIS, AT&T, Qwest, SBC, USTA, and Verizon:

1. For those communications providers that have the ability to use blocked-call counts, an outage affecting wireline voice communications would be reportable if it: (1) lasts for 30 or more minutes; (2) generates 90,000 blocked calls based on real-time traffic data and (3) involves a survivable element (*i.e.*, host and remote switches). If real time traffic data is unavailable, a communications provider would report an outage if it: (1) lasts for 30 or more minutes; (2) affects 30,000 calls based on historical traffic data; and (3) involves a survivable element.
2. For those communications providers that do not have the ability to identify blocked calls, a different threshold would be available. For these providers, an outage would be reportable if it: (1) lasts for 30 or more minutes and affects 30,000 or more network access lines or lasts for at least six hours and affects 30,000 or fewer lines; and (2) involves a survivable element as defined above.<sup>45</sup>

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<sup>43</sup> Verizon Comments at 9.

<sup>44</sup> *See, e.g.*, ATIS Comments at 18; SBC Comments at 7; USTA Comments at 10-11; Verizon Comments at 10-11.

<sup>45</sup> *See, e.g.*, ATIS Comments at 16; AT&T Comments at 12-14; Qwest Comments at 7; SBC Comments at 7; USTA Comments at 10; Verizon Comments at 10-11.

This dual reporting threshold (blocked calls or access lines) is preferable because it allows providers with different call tracking abilities increased flexibility. Not all providers are capable of tracking blocked calls. This industry-developed proposal ensures that no carrier is placed at a disadvantage or is overburdened. It is critical that the Commission grant carriers this flexibility as it appropriately recognizes that carriers are not all the same.

**B. Parties Agree That the Commission Should Modify Its Proposal for DS3 Outage Reporting.**

A significant number of commenters demonstrate that the use of the proposed “user minutes” metric for DS3 outage reporting is problematic.<sup>46</sup> As Qwest points out, “[a]mong 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).”<sup>47</sup> In addition, both BellSouth and Verizon explain that many DS3 circuits are at least partially under control of the customer.<sup>48</sup> According to Verizon, “[i]t is not uncommon for customers to inadvertently or purposely disable their DS3s.”<sup>49</sup> Under the Commission’s proposal, carriers would be required to report an outage if, for example, the customer intentionally turned off its facilities for a weekend or vacation to save power.<sup>50</sup> Surely, the Commission could not have intended this result.

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<sup>46</sup> *See, e.g.*, ATIS Comments at 22-23; BellSouth Comments at 23-25; SBC Comments at 9-10; Qwest Comments at 12-13; USTA Comments at 22-23; Verizon Comments at 18-20.

<sup>47</sup> Qwest Comments at 13.

<sup>48</sup> BellSouth Comments at 24-25; Verizon Comments at 19.

<sup>49</sup> Verizon Comments at 19.

<sup>50</sup> *See id.*

To avoid the unnecessary reporting described above, BellSouth supports the proposal advocated by parties such as ATIS, AT&T, Qwest, SBC, and Verizon for DS3 outage reporting.

A DS3 outage would be reportable if it:

1. lasts for thirty (30) minutes or more, affects forty-eight (48) working DS3s or more, does not switch to protect mode within a service provider's network, and the service provider owns, operates, and maintains the electronic terminal equipment at both end points; or
2. lasts for six (6) hours or more, affects at least twenty-four (24) (but less than forty-eight (48)) working DS3s, does not switch to protect mode within a service provider's network, and the service provider owns, operates, and maintains the electronic terminal equipment at both end points.<sup>51</sup>

To address the concern about inadvertent reporting due to inadvertent or purposeful actions by customers owning DS3s, the Commission must make clear that service disruption reporting for DS3s is limited to infrastructure circuits only. In addition, consistent with its prior decision, the Commission should explicitly state that the disruption of service to public data networks, which typically consist of DS3s, is excluded from any outage reporting requirements.

**C. Parties Agree That the Commission's Proposal for SS7 Outage Reporting Is Technically Infeasible and Should Be Modified.**

There is broad agreement that the Commission's proposed reporting threshold for SS7 services – 90,000 blocked or lost ISDN User Part ("ISUP") messages of at least 30 minutes duration – is flawed. Numerous parties demonstrate that blocked or lost ISUP messages is not an effective measure and does not accurately reflect how the SS7 technology works.<sup>52</sup>

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<sup>51</sup> ATIS Comments at 22; AT&T Comments at 22; Qwest Comments at 13-14; SBC Comments at 9-10; Verizon Comments at 20.

<sup>52</sup> *See, e.g.*, ATIS Comments at 23-24; AT&T Comments at 23-24; BellSouth Comments at 25-26; Qwest Comments at 14-15; SBC Comments at 10-11; Sprint Comments at 22; USTA Comments 23-24; Verizon Comments at 20-21.

Accordingly, the Commission should require an SS7 provider to report an SS7-related event when the event: (1) is not reported by that carrier under another category; (2) lasts 30 minutes or longer; and (3) results in 90,000 or more blocked calls on a real-time basis. If real-time data is not available, historical like-day data could be used and the proposed threshold would be 30,000 blocked calls. For third-party providers that do not have access to their customer blocked-call data, the providers shall query their customers for blocked call-data to determine if an event is reportable. In addition, if a previously unrecognized event that resulted in 90,000 or more blocked calls is reported to a third-party provider, the third party provider should have the responsibility to submit an outage report.

**D. Parties Agree That the Commission's Proposal for 911 Outage Reporting Is Overbroad and Should Be Modified.**

Commenters overwhelmingly agree that the Commission's proposed 911 reporting rule is overbroad and should be modified. BellSouth's proposal, similar to those suggested by ATIS, AT&T, Qwest, and others,<sup>53</sup> is as follows:

1. A failure of one or more end office(s), 911 tandem(s), Public Safety Answering Point(s) ("PSAP(s)"), or 911 connecting facility(ies) that affects more than 100, but less than 30,000, users and is caused by a failure in the provider's network where no reroute was available should be reported if the incident lasts for 6 hours or more.
2. A failure of one or more end office(s), 911 tandem(s), PSAP(s), or 911 connecting facility(ies) that affects 30,000 or more users and is caused by a failure in the provider's network where no reroute was available should be reported if the incident lasts 30 or more minutes.

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<sup>53</sup> See, e.g., ATIS Comments at 27-28; AT&T Comments at 18-20; BellSouth Comments at 15-17; Qwest Comments at 16-18; SBC Comments at 12-14; Sprint Comments at 13-15; USTA Comments at 13; Verizon Comments at 13-14.

3. The isolation of one or more end office switches or host/remote clusters causing 30,000 or more subscribers to be isolated from 911 should be reported if the incident lasts 30 or more minutes.
4. The isolation of one or more end office switches or host/remote clusters causing less than 30,000 subscribers to be isolated from 911 should be reported if the incident lasts for 6 hours or more.
5. The loss of 911 call processing capabilities in one or more 911 tandems should be reported if the incident lasts 30 or more minutes and affects 30,000 or more 911 subscribers.
6. The loss of 911 call processing capabilities in one or more 911 tandems should be reported if the incident lasts for 6 hours or more and affects less than 30,000 911 subscribers.

While similar in most respects to the ATIS proposal, BellSouth's recommendation for 911 outage reporting differs in two areas. First, under the ATIS proposal, a carrier would report an incident involving the loss of all call processing abilities in one or more tandems/selective routers for at least thirty (30) minutes duration.<sup>54</sup> The BellSouth proposal offers a subtle distinction by defining an event as reportable, if 911 call processing capabilities in a 911 tandem are lost for a specified period of time. Although these two thresholds are essentially the same and achieve the same objective, BellSouth suggests that, for purposes of clarity and to eliminate any ambiguity, the Commission should specify that an event is reportable, if it involves the loss of 911 call processing abilities in a 911 tandem if: (1) the incident lasts 30 or more minutes and affects 30,000 or more 911 subscribers; or (2) the incident lasts for 6 hours or more and affects less than 30,000 911 subscribers.

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<sup>54</sup> ATIS Comments at 28 (emphasis in original).

The second difference is that the BellSouth proposal includes a minimum threshold under which carriers would not be required to submit a 911 outage report. In its comments, BellSouth proposed the following threshold:

A failure of one or more end office(s), 911 tandem(s), Public Safety Answering Point(s) (“PSAP(s)”), or 911 connecting facility(ies) that affects more than 100, but less than 30,000, users and is caused by a failure in the provider’s network where no reroute was available should be reported if the incident lasts for 6 hours or more.<sup>55</sup>

BellSouth supports the adoption of a floor for 911 outage reporting (*i.e.*, no report required for 911 outage affecting 100 customers or less). In the absence of a threshold designating a minimum number of customers, a carrier would have to report a 911 outage if only a single customer were affected. Injecting a sense of magnitude into the calculation helps avoid filing excessive and useless outage reports.

BellSouth also agrees with parties such as AT&T, SBC, USTA, and Verizon, that the inability to deliver name, identification, and location data (Automatic Name Identification (“ANI”)/Automatic Line Identification (“ALI”)) does not constitute a “significant degradation” as defined by the Commission.<sup>56</sup> The absence of this data does not affect the ability of a carrier or end user to complete a call. Accordingly, the Commission should modify its proposal to reflect this fact.

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<sup>55</sup> BellSouth Comments at 16 (emphasis added).

<sup>56</sup> *See, e.g.*, ATIS Comments at 28; AT&T Comments at 20; BellSouth Comments at 17; SBC Comments at 13-14; USTA Comments 13-14; Verizon Comments at 14.

**VI. ANY REPORTING OBLIGATIONS IMPOSED ON PROVIDERS THAT LEASE FACILITIES FROM OTHER PROVIDERS MUST TAKE INTO ACCOUNT THE LIMITED NETWORK OUTAGE INFORMATION AVAILABLE TO LESSEES.**

The Commission must clarify the reporting obligations of providers that lease facilities from other providers. The Commission's proposed rules require wireline providers to report outages experienced "on any facilities that they own, operate, lease or otherwise utilize" according to specified thresholds.<sup>57</sup> The Commission should refine this proposed requirement to reflect the fact that lessees do not have access to the type of network outage data sought by the Commission. Only the operators of facilities have access to the requested information.

In light of this fact, the Commission should reject the proposals of WilTel. Specifically, WilTel asks the Commission to require private line resellers to report outages that affect their end users (or those of the reseller's customers), even when the actual cause was a fiber cut or other failure of the IXC's network.<sup>58</sup> According to WilTel, "[t]he reseller is best placed to know whether an outage will affect end users, and to prevent such effect by providing switched services only over protected circuits."<sup>59</sup> BellSouth strongly disagrees with WilTel's proposed assignment of reporting responsibilities. As BellSouth has indicated, comprehensive information on underlying leased facilities is not available to lessees/resellers. In the case of a fiber cut, the reseller does not have any information on the cut or its root causes. Therefore, it is unreasonable to require the reseller to file an outage report.

As BellSouth pointed out in its comments, it is common in today's competitive communications marketplace to have a facility that is owned by Company A, operated by

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<sup>57</sup> *NPRM*, Appendix A (Proposed Rule 47 C.F.R. §§ 4.9(e), (f)).

<sup>58</sup> WilTel Communications, LLC ("WilTel") Comments at 6.

<sup>59</sup> *Id.*

Company B, and leased by Company C.<sup>60</sup> To recognize these different interests, BellSouth proposes that the Commission revise its rules to require SS7 providers and wireline providers to report outages experienced “on any major infrastructure facilities that they operate.” By limiting the reporting responsibility to the operator, and defining the operator as the organization with maintenance and restoration responsibility for the facility, there will be a clear definition of a single provider that is responsible for reporting any given event. Moreover, under this approach, the responsibility for reporting lies appropriately with the entity that has access to the relevant information.

Even with the adoption of this proposed rule change, reporting challenges for certain facilities would remain. For example, for “dark fiber,” the owner or lessor may have little or no visibility of the physical fiber, yet have full responsibility for maintenance and restoration in the event of a facility cut. BellSouth suggests that, in such cases, the operator of the optical and electronic multiplexers used to provision the circuits onto dark fiber (also known as the terminal equipment operator) be responsible for filing the notification and initial reports in accordance with BellSouth’s proposed three-stage reporting process.<sup>61</sup> The terminal equipment operator also should be required to provide these reports to the dark fiber provider. The final report should be a cooperative effort between the terminal equipment operator and the dark fiber provider and should be filed jointly.

WilTel further requests that the Commission require a reseller purchasing voice services from a facilities-based IXC to provide to the IXC in writing a variety of different information, including: (1) the number of voice switches that the reseller is attaching to the underlying

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<sup>60</sup> BellSouth Comments at 33.

<sup>61</sup> See BellSouth Comments at 18-22.

network, together with the number of “end users” being serviced through each switch; and (2) each time the reseller adds a new switch to the network, or removes a switch from the network.<sup>62</sup>

BellSouth objects to mandating the provision of such information. First, providing the quantity of switches is unnecessary. The underlying facilities-based provider already has access to this information. A facilities-based carrier leasing its facilities to a reseller is fully aware of the number and locations of switches attaching to its network. Notification of the addition or removal of a switch by a lessee is a standard part of the business relationship between a lessor and lessee. Thus, WilTel’s suggestion that it does not possess switch information for its providers using its network is specious.

Second, the Commission should not require lessees to provide facilities-based IXCs with the number of end users served by each switch. This information constitutes competitively sensitive information that is confidential and proprietary. In addition, such information is not needed by the IXC to fulfill its reporting obligation. Accordingly, the Commission should reject WilTel’s proposal regarding resellers’ reporting obligations.

**VII. IF THE COMMISSION CONTINUES MANDATORY NETWORK OUTAGE REPORTING, IT SHOULD PREEMPT THE STATES TO ENSURE CONSISTENCY.**

As indicated above, BellSouth believes that there are compelling reasons to establish a voluntary process for submitting network outage reports for all providers. However, if the Commission elects to retain mandatory reporting for some or all providers, it should preempt the states to avoid inconsistent or duplicative reporting requirements. The ITTA provides a

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<sup>62</sup> WilTel Comments at 9.

summary of the service outage notification requirements of various state commissions.<sup>63</sup>

Disparity among state outage reporting rules is demonstrated by the following example:

“California requires carriers to report all outages affecting 1,000 customers or more for 10 minutes or more, while Alabama requires carriers to report outages that affect 50 or more customers.”<sup>64</sup> To eliminate divergent requirements and achieve consistency, if the Commission retains mandatory reporting, it should establish a single national outage reporting framework that preempts state outage reporting requirements. Uniform reporting thresholds and metrics would not only minimize the burdens on carriers but also provide regulators with consistent means of measuring outages across the nation.

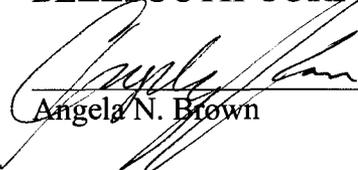
## VIII. CONCLUSION

For all of the foregoing reasons, BellSouth urges the Commission to take the actions requested herein.

Respectfully submitted,

**BELLSOUTH CORPORATION**

By:

  
Angela N. Brown

Its Attorney

Suite 4300  
675 West Peachtree Street, N. E.  
Atlanta, GA 30375-0001  
(404) 335-0724

June 24, 2004

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<sup>63</sup> See ITTA Comments at Appendix A.

<sup>64</sup> *Id.* at 4 (citing Appendix A).

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 24<sup>th</sup> day of June 2004 served the following parties to this action with a copy of the foregoing **REPLY COMMENTS** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed on the attached service list.

  
\_\_\_\_\_  
Juanita H. Lee

**Service List ET Docket 04-35**

David J. Robinson  
Manager-Public Policy  
Syniverse Technologies, Inc.  
One Tampa City Center #700  
Tampa, Florida 33602

Brian F. Fontes  
Vice President-Federal Relations  
Cingular Wireless  
1818 N Street, Suite 800  
Washington, D.C. 20036-2478

Alan R. Shark, President  
American Mobile Telecommunications  
Association, Inc.  
200 N. Glebe Road, Suite 1000  
Arlington, VA 22203

Elizabeth R. Sachs, Esq.  
American Mobile Telecommunications  
Association, Inc.  
Lukas, Nace, Gutierrez & Sachs, Chartered  
1111 19<sup>th</sup> Street, N. W., Suite 1200  
Washington, D. C. 20036

Megan L. Campbell  
General Counsel  
Alliance for Telecommunications  
Industry Solutions, Inc.  
1200 G Street, N. W., Suite 500  
Washington, D. C. 20005

Adam Kupetsky  
WilTel Communicaitons, LLC  
One Technology Center TC15-H  
Tulsa, OK 74103

Lawrence J. Lafaro  
Stephen C. Garavito  
Martha Lewis Marcus  
AT&T Corporation  
Room 3A225, One AT&T Way  
Bedminster, New Jersey 07921

Harold Mordkofsky  
Richard D. Rubino  
BloostonLaw Paging Group  
Blooston, Mordkofsky, Dickens, Duffy  
& Prendergast  
2120 L Street, N. W., Suite 300  
Washington, D. C. 20037

Harold Mordkofsky  
Cary Mitchell  
The BloostonLaw Rural Carriers  
Blooston, Morkofsky, Dickens  
Duffy & Prendergast  
2120 L Street, N. W., Suite 300  
Washington, DC 20037

J. R. Carbonell  
Carol L. Tacker  
M. Robert Sutherland  
Cingular Wireless LLC  
5565 Glenridge Connector  
Suite 1700  
Atlanta, Georgia 30342

Tillman L. Lay  
City of New York, National League  
Of Cities, NATOA  
Miller, Canfield, Paddock and  
Stone, P.L.C.  
1900 K Street, N. W., Suite 880  
Washington, D C. 20006

Agostino Cangemi  
Deputy Commissioner & General Counsel  
Department of Information Technology  
And Telecommunications  
City of New York  
75 Park Place, 9<sup>th</sup> Floor  
New York, New York 10007

Michael F. Altschul  
Christopher Guttman-McCabe  
Assistant Vice President, Regulatory  
Policy and Homeland Security  
CTIA - The Wireless Association  
1400 16<sup>th</sup> Street, N.W., Suite 600  
Washington, D. C. 20036

Walter H. Kroeze, Director  
Telecom Policies and Regulations  
Ericsson, Inc.  
Office of Public Affairs  
1634 I Street, N. W., Suite 600  
Washington, D. C. 20006-4083

Elisabeth H. Ross  
Marjorie K. Conner  
Ericsson, Inc.  
Birch, Horton, Bittner & Cherot  
1155 Connecticut Avenue, N. W.  
Suite 1200  
Washington, D. C. 20036

Tina M. Pidgeon  
Lisa R. Youngers  
General Communications, Inc.  
1130 17<sup>th</sup> Street, NW  
Suite 410  
Washington, D. C. 20036

William D. Wallace  
GlobalStar LLC  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N. W.  
Washington, D. C. 20004

William F. Adler  
GlobalStar LLC  
461 S. Milpitas Blvd.  
Milpitas, CA 95035

Robert A. Mansbach  
Assistant General Counsel  
Intelsat Global Service Corporation  
3400 International Drive, N.W.  
Washington, D. C. 20008

Mary Boyd  
Vice President Government  
And External Affairs  
Intrado, Inc.  
1601 Dry Creek Drive  
Longmont, Colorado 80503

Patricia A. Mahoney  
Vice President, Regulatory and  
Spectrum Affairs  
Iridium Satellite LLC  
6701 Democracy Blvd., Suite 500  
Bethesda, MD 20817

Karen Brinkmann  
Jeffrey A. Marks  
Independent Telephone &  
Telecommunications Alliance  
Latham & Watkins, LLP  
555 Eleventh Street, N. W., Suite 1000  
Washington, D. C. 20004

Eva Powers  
KCC Staff  
1500 SW Arrowhead  
Topeka, KS 66604

Charles B. Mathias  
Director, Global Government Affairs  
Lucent Technologies, Inc.  
1100 New York Avenue, NW  
Suite 640 West Tower  
Washington, DC 20005

Dennis W. Guard, Jr.  
Karen M. Johnson  
MCI, Inc.  
1133 Nineteenth Street, N. W.  
Washington, D. C 20036

Robert S. Foosaner  
Laura L. Holloway  
Jared M. Carlson  
Nextel Communications, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191

L. Marie Guillory  
National Telecommunications  
Cooperative Association  
4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203

Kalpak Gude  
Vice President & Associate General Counsel  
Panamsat Corporation  
1801 K Street, N. W.  
Suite 440  
Washington, D. C. 20006

Don Pickens  
QuEST Forum  
Chief Operating Officer  
4526 Peachtree Dunwoody Road, N.E.  
Atlanta, Georgia 30342

Andrew D. Crain  
Kathryn Marie Krause  
Timothy M. Boucher  
Suite 950, 607 14<sup>th</sup> Street, N. W.  
Washington, D. C. 20005

Susan J. Bahr  
Rural Incumbent Local Exchange Carriers  
Law Offices of Susan Bahr, PC  
P. O. Box 86089  
Montgomery Village, MD 20886-6089

Jennifer Brown  
Gary Phillips  
Paul K. Mancini  
SBC Communications, Inc.  
1401 Eye Street, NW  
Suite 1100  
Washington, D. C. 20005

Michael B. Fingerhut  
Luisa Lancetti  
Sprint Corporation  
401 9<sup>th</sup> Street NW, Suite 400  
Washington, D.C. 20004

Charles McKee  
Sprint Corporation  
6450 Sprint Parkway  
Overland Park, KS 66251-6101

Robert Power  
Director, Regulatory & Government  
Initiatives  
1601 Telesat Court  
Ottawa, Ontario Canada K1B5P4

Thomas J. Sugrue  
Harold Salters  
T-Mobile USA, Inc.  
401 Ninth Street, N.W.  
Suite 550  
Washington, D.C. 20004

James W. Olson  
Indra Sehdev Chalk  
Michael T. McMEnamin  
Robin E. Tuttle  
United States Telecom Association  
1401 H Street, NW, Suite 600  
Washington, D. C. 20005

Ann H. Rakstraw  
Verizon  
1515 North Court House Road  
Suite 500  
Arlington, VA 22201

Blaine Gilles, Ph.D  
WilTel Communicaitons, LLC  
9525 W. Bryn Mawr  
Suite 140  
Rosemont, IL 60018

+Best Copy and Printing, Inc.  
The Portals, 445 12<sup>th</sup> Street, S. W.  
Room CY-B402  
Washington, D. C. 20554

+Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
The Portals, 445 12<sup>th</sup> Street, S. W.  
Room TW-A325  
Washington, D. C. 20554

David Zesiger  
Executive Director  
Independent Telephone & Telecommunications  
Alliance  
1300 Connecticut Avenue, N.W.  
Suite 600  
Washington, D.C. 20036

Nancy J. Eskenazi  
Vice President & Associate General Counsel  
Four Research Way  
Princeton, N. J. 08540

**+ VIA ELECTRONIC FILING**