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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: *New Part 4 of the Commission's Rules Concerning Disruptions to Communications* (ET Docket No. 04-35)

Dear Ms. Dortch:

BellSouth respectfully submits this written *ex parte* to reiterate several key points made in its comments and reply comments filed in the above-captioned proceeding.

I. NETWORK OUTAGE REPORTS SHOULD BE PROTECTED FROM DISCLOSURE.

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. Under current law, the most effective means of protecting network outage reports from disclosure is through voluntary reporting to the Department of Homeland Security. BellSouth therefore urges the Commission to refrain from imposing mandatory reporting obligations on non-wireline providers and to replace the current mandatory reporting process for the wireline industry with a comparable, if not identical, voluntary process. However, if the Commission continues to require mandatory reporting, it should take whatever steps are necessary to ensure that network outage reports are not disclosed to the public.

II. THE PROPOSED COMMON METRIC BASED ON ASSIGNED TELEPHONE NUMBERS IS PROBLEMATIC AND SHOULD NOT BE ADOPTED.

Parties overwhelmingly agree that the use of "assigned" (and "administrative") telephone numbers as the basis for the Commission's proposed common metric is significantly flawed. The deficiencies include misleading reports that do not accurately reflect customers impacted by

an outage and the potential for significant over- or under-reporting. A solution that would both address the Commission's concerns about under-reporting the number of customers potentially affected by an outage and avoid the problems associated with the use of "assigned" telephone numbers would be the use of access line minutes, which would be the product of total access lines times the outage duration in minutes.

If the Commission insists upon a common metric to be used across all technologies, the obvious choice is blocked calls. Requiring all providers to use blocked calls to measure an outage is the only approach that recognizes the technical differences and capabilities among wireline, wireless, cable, and satellite providers.

III. THE COMMISSION'S PROPOSED RULE FOR REPORTING SS7 OUTAGES IS TECHNICALLY INFEASIBLE.

Nearly all parties agree that the Commission's proposed use of blocked or lost ISDN User Part ("ISUP") messages as the basis for SS7 outage reporting is fundamentally flawed because it does not accurately reflect how the SS7 technology works. Not only is there no established correlation between the number of blocked or lost ISUP messages and the number of blocked calls but also network equipment is not designed to capture information on the number of blocked or lost ISUP messages. It would be far more accurate, less costly, and less burdensome to establish a reporting threshold based upon outage duration and the number of blocked calls. For example, the Commission could 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 or 30,000 blocked calls based on historical like-day data.

IV. THE REPORTING THRESHOLD FOR DS3 OUTAGES IS TOO LOW AND OVERLY BROAD.

The proposed reporting threshold for "major infrastructure failures" is written in such a way as to require the reporting of minor failures affecting a single customer. The Commission's order and accompanying rules must clarify this threshold in order to limit outage reporting to major network failures in accordance with the stated intent of the *NPRM*. To avoid the unnecessary reporting described above, BellSouth and others support a threshold that would require reporting if an event:

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.

Finally, 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.

V. THE COMMISSION SHOULD SIMPLIFY AND CLARIFY ITS 911 REPORTING PROPOSAL.

BellSouth supports the Commission's desire to simplify the 911 outage reporting requirement. However, the proposed rule needs further refinement. For example, the proposed requirement provides no measure of magnitude or impact. If the rule is applied literally, a carrier would be required to file a report for an outage affecting only a single line. Moreover, BellSouth opposes the Commission's proposal to classify the inability to provide name, identification, and location data (Automatic Name Identification ("ANI")/Automatic Line Identification ("ALI")) as a reportable outage. The absence of this data does not affect the ability of a carrier or end user to complete a call. Moreover, the lack of such information does not meet the definition of an "outage," which the Commission describes as "a significant degradation in the ability of an end user to establish and maintain a channel of communications."¹ Finally, many of the failure modes that would require a carrier to file a report involve events or circumstances beyond the control of the provider. While it is reasonable to require the reporting of failures due to carrier service, it is unreasonable to require the reporting of failures caused by customer action, customer premises equipment, or customer choices regarding backup plans – all of which are beyond the control of the carrier.

VI. THE RESPONSIBILITY FOR REPORTING ANY GIVEN MAJOR NETWORK OUTAGE SHOULD LIE WITH THE ENTITY RESPONSIBLE FOR MAINTENANCE AND RESTORATION OF THE AFFECTED FACILITY.

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.² 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.

¹ *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Notice of Proposed Rulemaking*, FCC 04-30, Appendix A (Proposed Rule 47 C.F.R. § 4.5(a)) (rel. Feb. 23, 2004) ("*NPRM*").

² *Id.* (Proposed Rule 47 C.F.R. §§ 4.9(e), (f)).

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Accordingly, BellSouth proposes that the Commission revise its rules to require providers to report outages experienced “on any major infrastructure facilities that they operate.” The Commission should explicitly limit the reporting responsibility to the entity designated as the operator, defined as the organization with maintenance and restoration responsibility for the facility (commonly referred to as maintenance control or “MCO”). This approach is preferable because it places the responsibility for reporting with the entity that has access to the relevant information.

Should you have any questions, please feel free to contact me.

Respectfully submitted,



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