



Michael B. Fingerhut
General Attorney

401 9th Street, Northwest, Suite 400
Washington, D.C. 20004
Voice 202 585 1909
Fax 202 585 1897
PCS 202 607 0624
michael.b.fingerhut@mail.sprint.com

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BY E-MAIL

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington D.C. 20554

**Re: *EX PARTE* PRESENTATION: New Part 4 of the Commission's
Rules Concerning Disruptions to Communications, ET Docket No. 04-
35**

Dear Ms. Dortch:

On October 27, 2004, Sprint filed a letter in the above-referenced proceeding regarding an October 26, 2004, meeting with Ed Thomas, Chief of the Office of Engineering and Technology (OET) and Jeffrey Goldthorp, Chief of OET's Network Technology Division to discuss certain issues raised by the Commission's *Report and Order*, FCC 04-188 released August 18, 2004 ("*Outage Decision*"). Sprint respectfully requests that, pursuant to 47 CFR §1.108, the Commission on its own motion reconsider or clarify the *Outage Decision* in accordance with Sprint's October 26 *ex parte* presentation and as further detailed below.¹

A. Protect Circuits

In the *Outage Decision* (at ¶134), the Commission notes that DS3s provided as "part of a protection scheme such as a SONET ring" will switch to the "protect-path" within seconds if the communications cannot be carried over the "primary path." Although the Commission recognizes that "[t]he communication services being provided over the DS3 will not be immediately affected," it states that because the services are not

¹ Sprint's proposal here is based on its willingness to provide data that the Commission believes is necessary for monitoring network reliability without imposing burdens on carriers to generate and file reports that have nothing to do with outages. Sprint reserves the right to file for reconsideration depending on how the Commission acts.

protected, "DS3s that switch to protect" should "be counted in DS3 outage minutes until such time as the DS3s are restored to normal service."

Sprint is deeply concerned that even though a requirement that carriers count DS3 protect circuit minutes as outage minutes is nowhere set forth in Part 4 of the Rules, carriers will, according to language in paragraph 134, have to deem the activation of DS3 protect circuits as an outage for reporting purposes. Providing communications over protect circuits cannot be considered an outage since there has not been a "significant degradation in the ability of an end user to establish and maintain a channel of communications." Indeed, in the *Outage Decision* the Commission recognized that even when traffic is switched from the primary path to the protect path, the end user has not suffered any disruption in service.

Once communications are switched to the protect path, Sprint is instructed by its customers whose traffic is affected to wait until a pre-designated "maintenance window" to move the traffic back to the primary path. Such maintenance usually occurs sometime after midnight when traffic flows are minimal. As a result, even if what caused Sprint to switch traffic from the primary path to the protect path is remedied in a few minutes, Sprint would not be able to return the traffic to the primary path for several hours. And this in turn could trigger an "outage report" regardless of the fact that no outage had occurred and the end user's ability to establish a "channel of communications" was unaffected. Such "non-outage" reports could number in the several hundreds if not thousands each month.

Sprint recognizes the Commission's desire to be informed when DS3 traffic is switched to the protect path because the reliability of the network may be diminished and the risk of an actual outage due to a protect path failure may increase. This is especially the case if a carrier takes months to move the communications from the protect path back to the primary path. But the Commission's concern here can be accommodated without imposing significant reporting burdens on the industry.

Specifically, Sprint recommends that when carriers switch DS3 traffic from the primary path to the protect path and such switched traffic meets the outage reporting criteria threshold, carriers be required to report such "switching events" only when the carrier fails to restore the traffic to the primary path within a reasonable period of time, specifically within three business days or five calendar days. Sprint further recommends that only one report be filed for each such event and that such filing not be deemed an outage report since no outage has occurred. This proposed approach will enable the Commission to monitor the reliability of carriers' networks and at the same time reduce the number of reports that will otherwise have to be filed by carriers to a manageable amount.

B. The PSAP Reporting Metric for Wireless Carriers.

Under 47 CFR §4.5(e)(1), carriers are required to report “an outage that potentially affects a 911 special facility” when, *inter alia*, “[t]here is a loss of communications to PSAP(s) potentially affecting at least 900,000 user minutes.” Sprint urges the Commission to clarify this metric as applied to wireless carriers. This is so because many PSAPs may subtend a wireless carrier’s mobile switching center (MSC) and a wireless customer dialing 911 will, depending upon his location, be routed to the appropriate subtending PSAP. If there is an outage affecting just one of the subtending PSAPs, only those wireless customers whose calls would have been routed to such PSAP would be potentially affected. Sprint suggests a formula to enable wireless carriers to calculate the potential end user minutes affected by an outage to each subtending PSAP, and recommends such formula should be the capacity of the MSC, as defined in the Rules, divided by the number of subtending PSAPs.

C. Whether Outage Reports Need To Be Filed By Wireless Providers Who Do Not Own Any Facilities.

Sprint also requests clarification as to whether providers of wireless services that do not own or maintain any facilities and instead provide services by offering the services of an underlying facilities-based wireless carrier, *i.e.*, resellers or virtual network operators, should be required to file a separate outage report. The customers of these providers are included in the report of the affected underlying carrier.

Sprint’s request for clarification here is based upon the definition of wireless carriers set forth in 47 CFR §4.3(b) which defines wireless service providers as “includ[ing] ... affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications.” This sentence might be read as encompassing a provider of wireless services that did not own any wireless facilities or maintain a wireless network even though such provider would not be able to provide any information as to extent and duration of the outage or the cause of the outage.

D. Special Offices and Facilities

The Commission has exempted wireless carriers from reporting outages that potentially affect airports because “the critical communications infrastructure serving airports is landline based.” *Outage Decision* at ¶166. However, wireless carriers will be required to file outage reports that potentially affect the other special offices and facilities defined in 47 CFR §4.5(b). Thus, wireless carriers will be required to report outages that potentially affect major military installations, key government facilities and nuclear power plants.

The same reasoning that led the Commission to exempt airports from the reporting obligations being imposed upon wireless carriers applies with equal force to the

other special offices and facilities. Unless a wireless carrier provided a dedicated access line to a special office or facility, it would have no way of knowing if one of its phones was being used by personnel at such office or facility. For this reason, Sprint recommends that the Commission on its own motion expand the airport exemption granted wireless carriers to include all special offices and facilities as defined in §4.5(b), unless the wireless carrier had dedicated infrastructure installed at such office or facility.

E. Reports of Planned Outages

In its *Outage Decision* (at ¶114), the Commission found that planned outages meeting the threshold must be reported. Although Sprint is not asking the Commission to reconsider this finding, it believes that carriers should not have to file a notification and two subsequent reports for planned outages. Rather, carriers should be required to file one report of any planned outage meeting the reporting criteria with 72 hours of the outage. Sprint requests that the Commission modify the rules on its own motion accordingly.

F. Withdrawal of Outage Reports

In the *Outage Decision* (¶156), the Commission agreed that “companies need to be able to withdraw notifications and initial reports in legitimate circumstances.” In fact, it stated that it would not require “a formal retraction letter” for withdrawing “two-hour notification reports.” However, the Commission’s discussion is not reflected in the Rules. Thus, as Sprint recommended at the October 26 meeting, the Commission should modify 47 CFR §4.11 to provide for withdrawal of the notification and/or initial report in appropriate circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'M. B.', written over a diagonal line that crosses the signature.

c: Ed Thomas (by email)
Jeffrey Goldthorp (by email)