

**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

**BELLSOUTH CORPORATION
PETITION FOR RECONSIDERATION AND/OR CLARIFICATION**

BELLSOUTH CORPORATION

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BellSouth Corporation, by counsel and on behalf of itself and its wholly owned subsidiaries (collectively "BellSouth"), respectfully submits this petition asking the Commission to reconsider and/or clarify certain aspects of its *Report and Order* ("Order") released on August 19, 2004 in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

In its August 19, 2004 *Order*, the Commission, among other things: (1) extended its reporting requirements beyond wireline carriers to include wireless, cable, satellite, paging, and Signaling System 7 ("SS7") providers; (2) adopted new thresholds and criteria that would trigger the reporting obligations; and (3) established an electronic filing system for the submission of disruption reports.²

While BellSouth understands and appreciates the Commission's responsibility to ensure reliable communications and network stability and is fully committed to meeting its reporting

¹ *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 16830 (2004) ("Order").

² *Id.*

obligations, it believes that some of the new reporting requirements are unduly burdensome, costly to implement, and provide little, if any, benefit. As discussed more fully herein, there are two requirements regarding which BellSouth seeks reconsideration and/or clarification.³ First, BellSouth requests that the Commission use number of affected cable pairs, instead of the new metric of “user minutes,” for reporting outages involving non-intelligent network elements such as feeder cable and digital loop carrier (“DLC”) systems. Second, BellSouth asks the Commission to clarify whether a pure reseller (one that does not own, operate, or maintain switching, routing, or transmission facilities) is subject to the new reporting obligations for network failures that occur on the underlying resold facilities.

II. THE COMMISSION SHOULD ADOPT A DIFFERENT METRIC FOR THE REPORTING OF OUTAGES INVOLVING NON-INTELLIGENT NETWORK ELEMENTS.

BellSouth requests that the Commission apply a different metric – number of affected cable pairs – instead of the newly adopted “user minutes” metric for outages affecting non-intelligent network elements. Under the Commission’s new rules, a provider must report an outage that lasts at least 30 minutes and affects a minimum of 900,000 potential “user minutes.”⁴ “User minutes” is defined as “the mathematical result of multiplying the outage duration, expressed in minutes, by the number of end users potentially affected by the outage.”⁵ For

³ BellSouth, as a member of two industry coalitions, also is seeking reconsideration of the Commission’s requirement that wireline providers report as “outages” those events in which a DS3 that operates as part of a protection scheme switches to protect mode (commonly referred to as a “DS3 simplex event”). *See* AT&T, BellSouth, MCI, SBC, and Verizon Petition for Reconsideration of DS3 Simplex Reporting Requirement, ET Docket No. 04-35 (filed Dec. 23, 2004); Petition for Reconsideration of the United States Telecom Association, ET Docket No. 04-35 (filed Dec. 16, 2004).

⁴ *Order*, 19 FCC Rcd at 16927, Appendix B (47 C.F.R. § 4.9(f)).

⁵ *Id.* at 16858, ¶ 51.

wireline carriers, the number of “end users” is the sum of “assigned” and “administrative” telephone numbers as currently defined by the Commission’s rules.⁶

As demonstrated more fully below, because non-intelligent elements (*e.g.*, feeder cable and DLC systems) are not equipped to provide counts of assigned or working lines, applying the “user-minutes” threshold to outages affecting these facilities is problematic. Moreover, modifying network facilities to provide such a capability would require BellSouth to spend nearly 23 million dollars in order to capture and report the approximately 24 events involving non-intelligent elements that would rise to the level of reportable outages each year. The Commission can achieve the same objective – the reporting of outages affecting non-intelligent elements – through a far less costly and less burdensome alternative. BellSouth’s proposed alternative is to allow providers to use the number of affected cable pairs as the metric for reporting outages involving non-intelligent elements instead of “user minutes.”

One of the primary reasons behind the Commission’s adoption of the new “user minutes” threshold was the belief that some providers were not reporting major outages due to a very narrow interpretation of the term “customer” under the old rule. The prior reporting criteria based a carrier’s obligation to file a service disruption report upon the number of “customers” potentially affected.⁷ According to the Commission, some providers would count “a large business or governmental customer with tens of thousands of telephone lines” as a single customer for reporting purposes, thereby avoiding the submission of an outage report.⁸

⁶ *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Notice of Proposed Rulemaking*, 19 FCC Rcd 3373, 3385, n.53 (2004) (“*Notice*”).

⁷ See 47 C.F.R. 63.100(b) and (c).

⁸ *Order*, 19 FCC Rcd at 16857, ¶ 49.

In its initial comments on the *Notice*, BellSouth agreed that no carrier should misstate the number of customers affected by an outage and proposed a less complicated and less burdensome method of addressing this concern than application of the “user minutes” criterion.⁹ Specifically, BellSouth and others recommended that the Commission allow wireline carriers (LECs) to report outages based upon the number of affected access lines.¹⁰ The Commission rejected this proposal and retained the “user minutes” criterion. Although BellSouth continues to believe that the “user minutes” metric has significant flaws that could result in over- and under-reporting, it submits that its use is more appropriate and technically feasible for reporting outages involving intelligent network elements such as switches rather than those involving non-intelligent elements such as feeder cable and DLC systems.

BellSouth wishes to make clear that it is not asking the Commission to eliminate in its entirety the reporting requirement for outages involving non-intelligent elements. Rather, it suggests a slight modification that would replace the “user minutes” criterion with the number of affected cable pairs. One of the stated reasons that the Commission decided to rely on telephone numbers was its determination that “[a]ll wireline carriers continuously keep track of assigned and administrative numbers” for each switch to facilitate the proper routing of calls.¹¹ While this conclusion might be correct for intelligent elements such as switches, it is incorrect for non-intelligent elements.

An intelligent element utilizes telephone number records to determine where to send a call. Because of this feature, the number of working lines can be identified mechanically in

⁹ BellSouth Comments at 6 (filed May 25, 2004).

¹⁰ *See, e.g.*, BellSouth Comments at 6; Independent Telephone & Telecommunications Alliance Comments at 5; Qwest Comments at 6; SBC Comments at 6; Verizon Comments at 9; BellSouth Reply Comments at 15-16 (filed June 24, 2004).

¹¹ *Order*, 19 FCC Rcd at 16879, ¶ 91.

order to calculate “user minutes” for reporting purposes. In addition, due to the large number of access lines served by intelligent elements, alarms are built into the network in order to alert a carrier’s network management center of an outage

Non-intelligent network elements such as feeder cable and DLC systems, on the other hand, do not utilize telephone number data to route calls. Rather, the function of feeder cable and DLC systems is simply to act as conduit to carry traffic from a central office to individual customer locations. As such, these non-intelligent elements simply pass calls from one point to another without any processing. Because telephone numbers are not used by these non-intelligent elements to facilitate or route calls, there is no way to calculate or ascertain the number of assigned/working lines directly from these network facilities. Additionally, because feeder cable is a passive element that is incapable of electronic failure, it is not equipped with alarm devices and is not monitored at a company-wide level. Outages involving this type of network plant are usually identified by customer reports or visual sightings and are repaired at a local level.

In order to count “user minutes” as defined by the Commission, BellSouth must manually determine the number of assigned/working telephone numbers associated with non-intelligent elements. First, BellSouth must identify the feeder cable and/or DLC systems affected by an event. Next, BellSouth must manually review its number assignment records to determine what circuits are working and/or assigned. Once the working lines have been identified, an event clock must be started and monitored to determine if/when an event rises to the level of a reportable outage.

Manual processes by their very nature are time-consuming. The burden associated with reconciling records in order to capture telephone numbers associated with feeder cable and DLC

systems is significant. BellSouth must go through the manual process described above for every single event (whether reportable or not) in order to calculate “user minutes” and ensure that only those outages that meet the new threshold are reported.

The only way to gather telephone number data directly from the appropriate systems when an outage involving a non-intelligent element occurs and simultaneously avoid any manual processes is to create a fully mechanized system. Such a system, however, would require BellSouth to modify its existing legacy systems to look up the appropriate number assignment records and monitor events based upon the number of “user minutes.” When a certain threshold was met, alarms would automatically generate a trouble report that would result in the automatic creation of an outage report.

BellSouth estimates that such a mechanized system would cost approximately \$23 million to develop and implement. Although mechanization would reduce the human resource commitment and potential for errors associated with a manual reporting process, the costs of such mechanization to accommodate a single aspect of reporting (outages affecting non-intelligent elements only) far exceed the benefits.

In sum, both the manual and automated processes used to report outages involving non-intelligent elements based upon assigned/working telephone numbers are unduly burdensome and costly to providers such as BellSouth. This is especially true given the small number of reportable outages involving non-intelligent elements that would satisfy the 900,000 “user-minutes” threshold. It is uneconomical to force BellSouth to expend significant human and financial capital to capture data based on telephone numbers in order to generate approximately 20 outage reports annually for this limited category of service disruptions. As demonstrated more fully below, a more practical, less costly, and equally effective alternative exists – allowing

providers to quantify an outage involving a non-intelligent element in terms of number of cable or derived¹² pairs affected instead of the common metric “user minutes.”

Specifically, a wireline LEC should be required to report an outage affecting a non-intelligent element such as feeder cable or a DLC system if 600 or more cable or derived pairs are out of service for more than five calendar days after discovery as a reportable outage.¹³ The 600-pair threshold is a standard reporting threshold commonly used throughout the industry.

Such a modification is fully consistent with the Commission’s finding that there may be instances in which it is reasonable to deviate from the common “user minutes” metric. In the *Notice*, the Commission explicitly recognized that differences among providers or communications systems “may necessitate variations in developing the metric for these communications systems or even alternative approaches.”¹⁴ BellSouth submits that the reporting of outages involving non-intelligent elements is a perfect candidate for the use of a different metric.

Thus, BellSouth proposes that a wireline provider (LEC) report an outage affecting non-intelligent elements such as feeder cable and DLC systems if the outage: (1) affects 600 or more cable or derived pairs and (2) lasts longer than five calendar days after discovery as a reportable

¹² A “derived” pair is equivalent to a copper pair except it is associated with a DLC system instead of feeder cable.

¹³ The five-day threshold is consistent with the Commission’s recent decision to grant a partial stay of its DS3 simplex reporting requirement. Until the Commission completes an investigation, wireline providers are required to report DS3 simplex events only if they are not restored to full service within five days of their discovery as reportable outages. *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Order Granting Partial Stay*, FCC 04-291, ¶ 3 (rel. Dec. 22, 2004). Similar to a DS3 simplex event, an outage involving a non-intelligent element is typically restored within five days of discovering the outage.

¹⁴ *Notice*, 19 FCC Rcd at 3385, ¶ 21.

outage. This approach continues to provide the Commission with disruption information without imposing undue burdens and costs upon providers and their customers.

III. THE COMMISSION SHOULD CLARIFY ITS RULES REGARDING THE REPORTING OBLIGATIONS OF RESELLERS.

It is unclear under the Commission's new rules whether resellers that do not own, operate, or maintain any facilities of their own are subject to the Commission's reporting requirements. Consequently, BellSouth asks the Commission to clarify its intent. Sprint recently sought similar relief for wireless providers when it asked the Commission to clarify "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 of virtual network operators" are required to file separate outage reports.¹⁵

The confusion regarding the obligations of pure resellers stems from inconsistencies among the old rules, the rule proposed in the *Notice*, and the final rule adopted in the *Order*. The previous rule, 47 C.F.R. § 63.100, stated as follows:

Any local exchange carrier or interexchange common carrier that operates transmission or switching facilities and provides access service or interstate or international telecommunications service, that experiences an outage . . . on any facilities which it owns, operates, or leases, must notify the Commission¹⁶

Pursuant to the above rule, only wireline facilities-based LECs and IXC's that operated switching or transmission facilities were subject to the Commission's reporting requirements.

¹⁵ Letter from Michael B. Fingerhut, General Attorney, Sprint, to Marlene Dortch, Secretary, FCC, *Ex Parte* Presentation: New Part 4 of the Commission's Rules Concerning Disruptions to Communications, ET docket No. 04-35, at 3 (dated Nov. 8, 2004).

¹⁶ 47 C.F.R. 63.100(b), (c), and (d) (emphasis added).

The Commission affirmed this interpretation of its rule in a later order in which it clarified that the service disruption reporting requirements were limited to facilities-based carriers that owned or operated the affected facilities. Specifically, the Commission stated that “when an outage affects both a LEC and the connecting IXC, the carrier which owns or operates the affected facilities must report the outage.”¹⁷ The Commission also required “interexchange carriers that operate either transmission or switching facilities which experience an outage” to submit service disruption reports.¹⁸ Included among those wireline carriers subject to the Commission’s reporting requirements were “[r]esale common carriers who operate their own switches.”¹⁹ Not included among those carriers, however, were pure resellers (*i.e.*, those that do not own, operate, or maintain their own switching or transmission facilities).

The Commission retained this distinction between carriers that operate transmission or switching facilities and those that do not in the proposed rule included in the *Notice*. Proposed Section 4.9(f) reads as follows:

All wireline communications providers that operate transmission, routing, or switching facilities and provide interstate or international communications service shall submit electronically an Initial Communications Outage Report to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize”²⁰

This proposed rule, though more expansive than Section 63.100, retained the condition that, in order for a wireline carrier to be subject to the reporting requirements, it must “operate

¹⁷ *Amendment of Part 63 of the Commission’s Rules to Provide Notification by Common Carriers of Service Disruptions*, CC Docket No. 91-273, 7 FCC Rcd 2010, 2015, ¶ 25 (1992) (emphasis added).

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.* (emphasis added).

²⁰ *Notice*, 19 FCC Rcd at 3409, Appendix A (Proposed 47 C.F.R. § 4.9(f)) (emphasis added).

transmission, routing, or switching facilities.”²¹ The Commission specifically added the term “routing” to the list of facilities a carrier must operate in order to fall under the reporting obligations. In addition, the Commission proposed to expand the reporting requirement to encompass outages experienced on facilities that carriers “own, operate, lease, or otherwise utilize.”²² Note that prior Section 63.100 did not include the phrase “otherwise utilize” in describing facilities affected by an outage.

Thus, under the proposed rule in the *Notice*, two conditions had to be met in order to subject a wireline carrier to the Commission’s reporting requirements. First, the wireline carrier had to “operate transmission, routing, or switching facilities.” Second, that wireline carrier had to experience an outage on facilities that it owned, operated, leased, or otherwise utilized. Both conditions had to be satisfied to invoke the reporting obligation.

The Commission’s final rule, however, eliminated the first condition. New Section 4.9(f) reads as follows:

All wireline communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes”²³

The Commission eliminated from the final rule the phrase “that operate transmission, routing, or switching facilities and provide interstate or international communications” – language that was included in the proposed rule. The omission of this phrase arguably subjects all resellers, even those that do not operate their own transmission, routing, or switching facilities, to the Commission’s reporting requirements. However, it is not clear whether the Commission

²¹ *Id.*

²² *Id.*

²³ *Order*, 19 FCC Rcd at 16927, Appendix B (47 C.F.R. § 4.9(f)).

intended to eliminate this long-standing distinction between pure resellers and resellers that owned or operated their own switching and transmission facilities or whether this omission was an oversight.

The omission of the phrase – “that operate transmission, routing, or switching facilities and provide interstate or international communications” – from the final rule has an enormous impact on pure resellers and completely changes their reporting obligations. From a procedural standpoint, the *Notice* never suggested that the Commission was considering such a change. In fact, as indicated above, the proposed rule expanded upon the language contained in the old rule by adding “routing” to the list of facilities that a carrier had to operate in order to be subject to the reporting obligations.²⁴ In addition, under the old rule and even the proposed rule, a reseller that did not operate any switching, routing, or transmission facilities was not required to submit outage reports for network failures on the underlying resold facilities. However, with the removal of this phrase from the new rule, pure resellers find themselves potentially subject to new reporting obligations about which they were never afforded adequate notice and an opportunity to comment.

In addition to the inconsistencies between the treatment of pure resellers under the Commission’s current and prior rules, there is a practical reason for excusing these providers from reporting outages that occur on underlying resold facilities. Typically, the only way that a reseller is aware of a network outage involving the underlying facilities purchased from another provider is through customer calls, news reports of an outage, or from the underlying facilities-based provider itself. None of these methods, however, are routine or foolproof.

²⁴ See *Notice*, 19 FCC Rcd at 3409, Appendix A (Proposed 47 C.F.R. § 4.9(f)).

Consequently, pure resellers do not have access to the information sought by the Commission under its new rules. For example, a pure reseller has no way of knowing the direct or root cause of an outage, the methods used to restore service, or the steps taken to prevent reoccurrence when resold facilities are involved. Such information is within the domain of the underlying facilities-based provider, not the pure reseller. Because the underlying facilities-based provider must comply with the reporting obligations, the Commission will be informed of any reportable events through the underlying carrier. Moreover, the reports filed by the underlying facilities-based carrier will be complete and thorough given that these providers have full access to the data sought by the Commission.

In light of the foregoing, the Commission should clarify and/or reconsider requiring pure resellers to submit network outage reports for failures on underlying resold facilities. Specifically, the Commission should expressly state that pure resellers (those that do not own, operate, or maintain switching, routing, or transmission facilities) are exempt from complying with the Commission's reporting requirements to the extent that a network failure occurs on resold facilities that are owned, operated, or maintained by an underlying facilities-based provider. Such a determination would be consistent with the Commission's prior rules as well as the proposed rules set forth in the *Notice*. In addition, such an exemption would avoid the burdens and inefficiencies associated with requiring pure resellers to file reports that lack the detailed information sought by the Commission. Moreover, the Commission still will have available to it the information on service disruption affecting the customers of pure resellers because the underlying facilities-based provider remains subject to the reporting requirements.

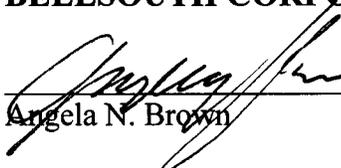
IV. CONCLUSION

BellSouth respectfully requests that the Commission reconsider and/or clarify two aspects of its *Order* governing service disruption reporting. First, BellSouth asks the Commission to allow a wireline provider to report an outage affecting non-intelligent elements such as feeder cable and DLC systems if the outage: (1) affects 600 or more cable or derived pairs and (2) lasts longer than five calendar days after discovery of the outage. Second, BellSouth urges the Commission to expressly state that a pure reseller (*i.e.*, one that does not own, operate, or maintain switching, routing, or transmission facilities) is not required to submit reports for those network failures that occur on resold facilities that are owned, operated, or maintained by an underlying facilities-based provider.

Respectfully submitted,

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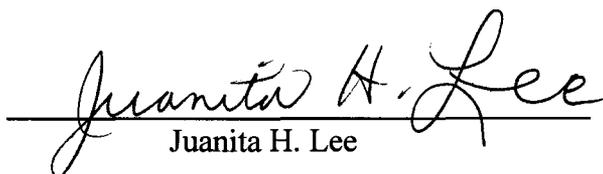
January 3, 2005

CERTIFICATE OF SERVICE

I do hereby certify that I have this 3rd day of January 2005 served the following parties to this action with a copy of the foregoing **PETITION FOR RECONSIDERATION AND/OR CLAIRIFCATION** by electronic filing and/or by placing a copy of same in the United States Mail, addressed to the parties listed below.

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