

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
)
New Part 4 of the Commission's Rules) **ET Docket No. 04-35**
Covering Disruptions to Communications)

To: The Commission

**JOINT COMMENTS OF SOUTHERNLINC WIRELESS
AND SOUTHERN TELECOM IN SUPPORT OF
PETITIONS FOR RECONSIDERATION**

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless and Southern Telecom, Inc. (collectively, "Southern"), through their undersigned counsel, respectfully submit these Joint Comments supporting, in part, the Petitions for Reconsideration of the *Report and Order* in the above-captioned docket¹ filed by Cingular Wireless LLC, CTIA, Sprint Corporation, and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"),² pursuant to Section 1.429 of the Federal Communications Commission's ("FCC's") rules.³

¹ In re 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 Rule Making*, 19 FCC Rcd 16830 (2004) [hereinafter *Report and Order*].

² Petition for Reconsideration of Cingular Wireless LLC, ET Docket No. 04-35 (Jan. 3, 2005) [hereinafter *Cingular Petition*]; Petition for Partial Reconsideration and Motion for Partial Stay of CTIA – The Wireless Association™, ET Docket No. 04-35 (Dec. 23, 2004) [hereinafter *CTIA Petition*]; Petition of Sprint Corporation, ET Docket No. 04-35 (Jan. 3, 2005) [hereinafter *Sprint Petition*]; Petition for Reconsideration and Clarification of the Organization for the Promotion and Advancement of Small Telecommunications Companies, ET Docket No. 04-35 (Jan. 3, 2005) [hereinafter *OPASTCO Petition*].

³ 47 C.F.R. § 1.429 (2003).

Although Southern applauds the FCC's efforts to increase network reliability and improve homeland security, it agrees with several proposed revisions or clarifications of the service disruption reporting rules. Specifically, Southern supports the requests of Cingular and CTIA for the elimination of the reporting requirement for planned outages. In addition, Southern concurs with Sprint that wireless providers should not have to report 911 outages that occur on another carrier's facilities and that the FCC should clarify the rules for outages potentially affecting Public Safety Answering Points ("PSAPs") to avoid over-reporting. Finally, Southern agrees with OPASTCO that the two-hour notification requirement should not begin to run until the outage becomes reportable.

I. COMMUNICATIONS PROVIDERS SHOULD NOT HAVE TO REPORT PLANNED OUTAGES

Southern supports the requests of Cingular and CTIA for the elimination of the reporting requirement for planned outages. The new rules require the reporting of any outage that meets the applicable threshold, including scheduled outages for routine maintenance or upgrades.⁴ The FCC should eliminate this requirement because planned outages do not adversely affect wireless subscribers, the reporting of planned outages offers none of the anticipated benefits of the new rules, and planned outages in support of system reliability are in the public interest.

Planned outages do not adversely affect wireless subscribers because wireless providers take numerous measures to protect the integrity of their networks. As Cingular observed, wireless providers "meticulously plan their maintenance activities and software upgrades" for non-peak hours to minimize any impact on their subscribers.⁵ Like Cingular and other wireless

⁴ *Report and Order*, 19 FCC Rcd at 16890-91 ¶ 114.

⁵ *Cingular Petition* at 2; *see CTIA Petition* at 6 ("wireless service providers absolutely attempt to initiate any planned outages at times that will not adversely affect the public").

providers, SouthernLINC Wireless employs switch partitioning to enable engineers to perform as much of their work off-line as possible, while leaving a portion of the switch operational.⁶

Although these protective measures ensure that the actual number of affected subscribers remains small, the new rules could require the reporting of these planned outages by basing the requirement on the number of "potentially affected" subscribers.

Southern further concurs with Cingular and CTIA that the reporting of planned outages offers few, if any, of the anticipated benefits of the new rules.⁷ In the *Report and Order*, the FCC stated that the purpose of the reporting requirements is to "yield outage data on which to base the development of best practices."⁸ But the reporting of planned outages would not assist with the compilation of Best Practices because wireless providers affirmatively initiate these outages. In other words, planned outages are not the result of a terrorist attack, natural disaster, or engineering problem that would require an in-depth investigation or the development of industry-wide corrective measures. Given the high level of competition in the CMRS marketplace, carriers have every incentive to plan and execute such outages in a manner that is transparent to customers.

Finally, Southern agrees with Cingular and CTIA that the reporting requirement should not apply because planned outages are in the public interest. While Cingular noted that planned outages "are critical to continuity of excellent customer service,"⁹ CTIA added that planned outages "serve a valid purpose in seeking to upgrade and improve the communications

⁶ *Cingular Petition* at 2.

⁷ *Id.* at 4; *CTIA Petition* at 7.

⁸ *Report and Order*, 19 FCC Rcd at 16844 ¶ 101.

⁹ *Cingular Petition* at 2.

network."¹⁰ The reporting of planned outages is also contrary to the public interest because it would increase the number of reports filed per year, imposing unnecessary administrative burdens and expenses on wireless providers and the FCC.¹¹

II. THE FCC SHOULD REVISE THE REPORTING REQUIREMENTS FOR 911 OUTAGES

Southern concurs with Sprint that wireless providers should not have to report 911 outages that occur on another carrier's facilities and that the FCC should clarify the rules for outages potentially affecting PSAPs to avoid over-reporting.

A. Wireless Providers Should Not Have to Report 911 Outages that Occur on A Local Exchange Carrier's Facilities

The FCC should limit the 911 reporting obligations to elements within the wireless provider's control. In the *Report and Order*, the FCC excluded "outages caused by 'failures at the PSAP(s) or on the premises of the PSAP(s)'" from the reporting requirement after declining to "hold providers accountable for determining whether their transmissions were in fact received by the PSAP(s)."¹² But the FCC "disagree[d] with the contention that some of the threshold criteria should be limited to only those outages that are caused by a failure in the reporting communications provider's network."¹³ The FCC instead concluded that communications providers must report "all significant outages that affect PSAPs, regardless of the network(s) in which the underlying causal factors lie."¹⁴

¹⁰ *CTIA Petition* at 7.

¹¹ *Cingular Petition* at 3.

¹² *Report and Order*, 19 FCC Rcd at 16866 ¶ 64.

¹³ *Id.*

¹⁴ *Id.*

Wireless providers should not have to report outages that occur on a local exchange carrier's ("LEC's") facilities for the same reason that they currently do not have to report outages at a PSAP or on a PSAP's premises. The FCC presumably exempted communications providers from reporting these outages because the providers lack control over PSAP facilities or premises. As Southern and others noted during the comment cycle,¹⁵ wireless providers similarly lack control over LEC facilities involved in delivering 911 calls from a wireless end user to the PSAP.

In addition, this reporting requirement conflicts with the general rules on filing outage reports. Section 4.9(b) of the rules requires wireless providers to report outages that they "discover."¹⁶ Because wireless providers lack control over the end-to-end elements of a 911 call, they frequently have no knowledge of outages on a LEC's facilities that would impact call delivery. Wireless providers also lack access to data from the LEC that is necessary to report an outage, including the direct or root cause, the extent or duration, the methods used to restore service, or the steps taken to prevent recurrence.¹⁷

Although the FCC stressed that "it is vitally important that we be informed of all significant outages that affect PSAP(s),"¹⁸ the exemption of wireless providers from reporting outages on LEC facilities will not diminish the amount of information available. The FCC will have complete reports of the outage because the underlying LEC will report the outages. Even if the wireless provider were to learn of the outage, a wireless provider's report will not provide any

¹⁵ Comments of Sprint Corporation, ET Docket No. 04-35, 26 (May 25, 2004); Comments of CTIA – The Wireless Association™, ET Docket No. 04-35 14 (May 25, 2004); Comments of Nextel Communications, Inc., ET Docket No. 04-35, 7-8 (May 25, 2004).

¹⁶ 47 C.F.R. § 4.9(b).

¹⁷ *Report and Order*, 19 FCC Rcd at 16932-35, Appendix C.

¹⁸ *Id.* at 16866 ¶ 64.

additional benefit because the information will undoubtedly come directly from the LEC and will provide no greater insights into the outage than the LEC itself can provide.

B. The FCC Should Clarify the Reporting Requirements for Outages Potentially Affecting PSAPs

Southern agrees with Sprint that the new rules could result in the over-reporting of outages potentially affecting PSAPs. Section 4.5(e) of the rules requires communications providers to report "[a]n outage that potentially affects a 911 special facility," which generally includes the loss of communications to a PSAP that lasts for 30 minutes or more and potentially affects at least 900,000 user-minutes.¹⁹ Based on the language of the rules, and the methodology for calculating the number of potentially affected end users, the risk of over-reporting exists on two fronts: (1) outages occurring between the end user and the Mobile Switching Center ("MSC") and (2) outages occurring within the MSC or between the MSC and the incumbent local exchange carrier ("ILEC").

1. Outages Occurring between the End User and the MSC

The FCC should clarify that communications providers need not report PSAP outages that occur between the end user and the MSC, even though such outages could potentially affect a 911 call. In the *Report and Order*, the FCC indicated that it would not require outage reporting at the cell-site level because "the RF portions of wireless networks are time variant and operate in dynamic environments that make evaluations of failures within the RF portion of wireless networks more difficult."²⁰ The new rules also appear to exclude cell-site outages from the reporting requirements because they cover (1) the loss of communications *to a PSAP*; (2) the loss of 911 call processing capabilities *in one or more E-911 tandems/selective routers*, and (3) the

¹⁹ 47 C.F.R. § 4.5(e).

²⁰ *Report and Order*, 19 FCC Rcd at 16888 ¶ 111.

isolation of *one or more end-office or MSC switches or host/remote clusters from 911 service*.²¹

These outages all occur either within the MSC or between the MSC and the PSAP.

Although the rules appear to apply primarily to outages within the MSC or between the MSC and the PSAP, the rules could be interpreted to require the reporting of outages at individual cell sites. In particular, because every cell-site outage potentially affects a 911 call to a PSAP, such outages could be deemed "a loss of communications to a PSAP." This interpretation would conflict with the *Report and Order* and rules, resulting in the over-reporting of outages. If the FCC were to require wireless providers to calculate the number of end users based on the methodology designed for the entire MSC switch, it would exacerbate the over-reporting problem by requiring the filing of a report even though the number of user-minutes potentially affected would almost never reach the 900,000 user-minute threshold when viewed from the perspective of the cell site. Southern therefore urges the FCC to clarify that section 4.5(e) is directed to outages within the MSC or between the MSC and the PSAP, and is not intended to create a cell-site outage reporting requirement just because calls to 911 are potentially affected.

2. Outages Occurring within an MSC or between the MSC and the ILEC

The FCC should also clarify the method for calculating the number of end users that are potentially affected by a PSAP outage occurring between the MSC and the ILEC. Although the FCC stated that wireless providers must calculate user-minutes for the failure of an MSC switch using a concentration ratio of 8,²² it has not prescribed a method by which wireless providers should calculate user-minutes for outages that affect a single PSAP. As Sprint noted, "the

²¹ 47 C.F.R. § 4.5(e).

²² *Id.* § 4.9(b); *Report and Order*, 19 FCC Rcd at 16887 ¶ 108.

Commission's definition of 900,000 user-minutes is based upon total switch capacity in the wireless environment."²³ Because an MSC switch encompasses several PSAPs, and an outage affecting a single PSAP would only potentially impact those subscribers whose calls would be routed to that PSAP, the FCC should not require wireless providers to calculate the number of user-minutes for a PSAP outage based on the calculation methodology for the entire MSC switch. If the FCC were to require the attribution of all MSC users to the affected PSAP, it "would mean that the 900,000 user-minute threshold would likely be reached even though, in reality, the number of user-minutes potentially affected by the PSAP outage may not ever reach that level."²⁴ Thus, Southern agrees that the FCC should develop a separate methodology for these outage scenarios.

III. THE TWO-HOUR NOTIFICATION PERIOD SHOULD BEGIN RUNNING FROM THE DISCOVERY OF THE OUTAGE AS REPORTABLE

Southern agrees with OPASTCO that the FCC should clarify when the two-hour time period begins for providing notification of an outage.²⁵ In the *Report and Order*, the FCC adopted a proposal requiring notification of "all outages *believed to be reportable* . . . within two hours of carrier knowledge . . ." ²⁶ Although the FCC clarified that this notification must occur "within two hours of the provider's first knowledge of the outage,"²⁷ it never elaborated on the meaning of the phrase "believed to be reportable."

²³ *Sprint Petition* at 3.

²⁴ *Id.*

²⁵ *OPASTCO Petition* at 5.

²⁶ *Report and Order*, 19 FCC Rcd at 16870, 16871 ¶¶ 73, 75 (emphasis added).

²⁷ *Id.*

The FCC should clarify that communications providers must file the initial notification within two hours after the outage becomes reportable, based on a specific reporting threshold. The use of the threshold itself as the triggering mechanism for filing a notification offers numerous benefits. For example, this interpretation of the rule will provide communications providers with regulatory certainty, giving them a bright-line rule for when to file an outage notification. It is also a more objective test, since a carrier's *belief* that an outage might become reportable is highly subjective. This interpretation will also increase efficiency and decrease burdens for communications providers and the FCC by limiting the number of notifications withdrawn after the outage fails to meet the threshold. In addition, this interpretation will permit quicker restoration of outages because communications providers will not have to divert personnel for the preparation and filing of a notification until the outage becomes reportable. The FCC will also benefit from this interpretation because a bright-line rule will provide an enforceable standard.

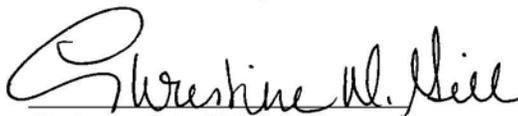
IV. CONCLUSION

Southern believes that the FCC should clarify and revise the service disruption reporting rules to minimize the burdens on communications providers, while preserving the advances to network reliability and homeland security. In particular, Southern supports the requests of Cingular and CTIA for the elimination of the reporting requirement for planned outages. Southern also concurs with Sprint that the FCC should exempt wireless providers from reporting 911 outages that occur on a LEC's facilities and should clarify the rules for outages potentially affecting PSAPs to avoid over-reporting. Finally, Southern agrees with OPASTCO that communications providers should file an initial notification within two hours after the outage becomes reportable.

WHEREFORE, THE PREMISES CONSIDERED, Southern respectfully requests that the FCC consider these Joint Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christine Biso, do hereby certify that on this 2nd day of March 2005, a copy of the foregoing “Joint Comments of SouthernLINC Wireless and Southern Telecom in Support of Petitions for Reconsideration” was sent by first-class mail, postage prepaid, to each of the following:

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