

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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

**COMMENTS OF  
QWEST COMMUNICATIONS INTERNATIONAL INC.  
REGARDING THE PETITIONS OF SPRINT CORPORATION,  
BELLSOUTH CORPORATION AND ORGANIZATION FOR  
THE PROMOTION AND ADVANCEMENT OF  
SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION AND SUMMARY**

Qwest Communications International Inc. ("Qwest"), through counsel and on behalf of itself and its affiliates, submits the following initial comments in connection with the petitions for reconsideration and/or clarification filed by Sprint Corporation ("Sprint"), BellSouth Corporation ("BellSouth") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO")<sup>1</sup> regarding the Federal Communications Commission's ("Commission") *Report and Order and Further Notice of Proposed Rulemaking* in the above-referenced docket (hereafter, the "*Service Outage Order*" or "*FNPRM*" as appropriate).<sup>2</sup> Specifically, Qwest supports the position of Sprint and BellSouth that resellers of facilities-based carrier services should have no outage reporting obligation under the final service

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<sup>1</sup> Petition of Sprint Corporation filed Jan. 3, 2005; BellSouth Corporation Petition for Reconsideration and/or Clarification filed Jan. 3, 2005; Petition for Reconsideration and Clarification of the Organization for the Promotion and Advancement of Small Telecommunications Companies filed Jan. 3, 2005.

<sup>2</sup> *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 16830 (2004).

outage rules. Qwest also supports the position of Sprint that only critical infrastructure facilities are covered by the reporting rules for airport outages. Finally, Qwest supports the position of OPASTCO that the 120-minute reporting threshold only begins once a provider has knowledge that an outage has occurred that exceeds one of the reporting metrics.

## **II. QWEST SUPPORTS THE POSITION OF SPRINT AND BELLSOUTH THAT RESELLERS OF FACILITIES-BASED CARRIER SERVICES SHOULD HAVE NO OUTAGE REPORTING OBLIGATION UNDER THE FINAL SERVICE OUTAGE RULES**

Qwest supports the positions of Sprint and BellSouth that resellers of finished services of other carriers have no obligation to report service outages.<sup>3</sup> Virtual mobile operators (“VMOs”), *i.e.*, resellers of services of facilities-based wireless providers such as Sprint, have no reliable source of information regarding the failure of their underlying carriers’ networks.<sup>4</sup> Whatever information VMOs might glean about such outages, other than information provided to them by their facilities-based provider, would most likely stem from repair calls that their customers might make to the VMOs in their position as retail carriers.<sup>5</sup> Even these kinds of reports, coming in as they would one at a time through different wireless carrier employees, will mean nothing to the VMO operator in the absence of a substantial number of calls and someone’s realization that

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<sup>3</sup> See Sprint Petition at 1, 5; BellSouth Petition at 2, 8-12. Qwest supports the position of both these carriers, but is of the opinion that a “clarification” is not essential on this matter. A carrier’s determination that reseller reporting is not required by the Commission’s *Service Outage Order* is a reasonable conclusion of the *Order* itself, as well as the Commission’s treatment of resellers of other carriers’ services in other contexts.

<sup>4</sup> Sprint raised this issue even prior to its filed petition in a Letter from Michael B. Fingerhut, General Attorney, Sprint, to Marlene Dortch, Secretary, FCC, in *Ex Parte* Presentation: New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, ET Docket No. 04-35, dated Nov. 8, 2004, at 3.

<sup>5</sup> Compare BellSouth Petition at 11 (addressing resellers more broadly and observing that “Typically, the only way 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.”).

the volume of calls suggests some kind of larger network outage. All of this is serendipitous and without any disciplined or predictable context on which to base a reporting obligation.<sup>6</sup> Thus, it seems clear that the Commission would not have intended VMOs to have service outage reporting obligations independent of the underlying network provider.

Similarly, resellers of services of wireline carriers should not have (and Qwest believes do not have) outage reporting obligations. As BellSouth notes, under the Commission’s prior rules, “only wireline facilities-based [local exchange carriers] LECs and [interexchange carriers] IXCs that operated switching or transmission facilities” had reporting obligations.<sup>7</sup> And, as BellSouth further notes, the original *Service Outage NPRM* in this proceeding maintained the distinction associated with the operation of transmission, routing or switching facilities.<sup>8</sup> The *Service Outage NPRM* created a conjunctive predicate to a reporting obligation – specifically, (a) a tie to the telecommunications infrastructure element associated with an outage, as well as (b) the element that the carrier burdened by the reporting obligation owned, operated, leased or otherwise utilized the facility.<sup>9</sup>

As BellSouth observes, the final rule might be read to depart from the approach reflected in the *Service Outage NPRM*. But if a departure were intentional, the departure is wholly unexplained – a strange phenomenon when a final rule materially departs from a proposal

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<sup>6</sup> *Id.* (“None of these methods, however, are routine or foolproof.”).

<sup>7</sup> BellSouth Petition at 8. *And see 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) (holding that only resellers that operated their own switches had a reporting obligation).

<sup>8</sup> *Id.* at 10, citing to the *Service Outage NPRM*. *See In the Matter of New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, Notice of Proposed Rulemaking*, 19 FCC Rcd 3373, 3409, Appendix A (Proposed 47 C.F.R. § 4.9 (f)) (2004) (“*Service Outage NPRM*”).

<sup>9</sup> BellSouth Petition at 10.

contained in a Notice of Proposed Rulemaking. Such a departure would certainly have warranted some discussion in the final *Service Outage Order* and there is none. Moreover, as BellSouth observes, if the departure were intentional, an Administrative Procedure Act (“APA”) challenge would be warranted.<sup>10</sup>

More likely, any ambiguity in the final service outage rule language is a matter of unfortunate drafting and not intended to substantively change either the *status quo* before the issuance of the *Service Outage NPRM* or the concepts reflected in that *Service Outage NPRM* itself. Under both approaches, a reseller would have no obligation to report outages of its underlying facilities-based carrier.

Qwest’s opinion that the Commission never intended to capture resellers as reporters of service outages is buttressed not only by the arguments above but by the Commission’s estimate of costs/burdens associated with its outage reporting regime. The costs of establishing the type of intra-carrier communications infrastructure that would be necessary to enable a reseller to report an outage within 24 hours, for example, would be significant. As the Commission’s previous outage reporting regime imposed no reporting obligation on resellers, it is most likely the case that – while some outage information flows from a facilities-based carrier to its resellers in the event of major outages – the form, transmission mechanism, and timing of any information exchange between resellers and their facilities-based service providers will be quite varied. There is nothing to suggest that the Commission intended to formalize such information exchanges so that resellers could report outages. Nor is there any suggestion that the

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<sup>10</sup> *Id.* at 11 (BellSouth does not specifically reference the APA but it does state that an interpretation that captures all resellers in an outage reporting regime would involve a situation where carriers “were never afforded adequate notice and an opportunity to comment.”).

Commission considered the costs of such a major initiative in either its proposed or its final rules.

For all of the above reasons, Qwest believes the Commission had no intention to impose a new reporting obligation on resellers.<sup>11</sup>

### **III. QWEST SUPPORTS THE POSITION OF SPRINT THAT ONLY CRITICAL INFRASTRUCTURE FACILITIES ARE COVERED BY THE REPORTING OBLIGATION FOR AIRPORTS**

Qwest also supports the position of Sprint that the Commission did not, by its new rules, intend to extend the reporting obligation for airports beyond critical infrastructure facilities.<sup>12</sup> As Sprint states in its petition, the only modification to the airport reporting rule discussed in the *Service Outage Order* was the expansion of the definition of covered airports.<sup>13</sup> Indeed, the Commission explicitly states in the *Service Outage Order* that, in making the “minor” modification necessary to expand the definition of covered airports, it intends to otherwise “keep this [airport reporting] requirement substantively intact.”<sup>14</sup> Also, in framing the pending *FNPRM* on airport communications, the Commission states that the “the record does not support further extending outage reporting requirements in this area.”<sup>15</sup> In that same paragraph, the Commission makes clear that it intends, with the current framework of the rules effective in January of 2005, to cover “commercial

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<sup>11</sup> Still, if the Commission intended to impose such an obligation, it should reconsider its position since such a decision would stem from a procedurally infirm administrative process and one uneducated about the significant costs and minimal benefits of such an approach.

<sup>12</sup> Sprint Petition at 4-5. As with the BellSouth reseller issue discussed above, Qwest supports Sprint’s position, but is of the opinion that a “clarification” is not essential on this matter.

<sup>13</sup> *Id.* at 4; *Service Outage Order*, 19 FCC Rcd at 16867 ¶ 65.

<sup>14</sup> *Service Outage Order*, 19 FCC Rcd at 16862-63 ¶ 57.

<sup>15</sup> *FNPRM*, 19 FCC Rcd at 16867 ¶ 67.

communications links ... used by airports to support navigation, traffic control, maintenance, and restoration.”<sup>16</sup>

In other words, the Commission clearly did not intend to broaden the airport reporting obligation to cover other commercial communications links that might happen to be located at an airport – for example, a retail pizza outlet in an airport passenger terminal. To construe the *Service Outage Order* as doing away with the limitation under the prior rules that carriers report only outages affecting the critical communications facilities serving airports would also create a defect under the APA. Qwest’s opinion that the Commission did not intend this inadvertent expansion of the reporting rules for airports is again buttressed by the Commission’s estimate of costs/burdens. There is nothing to suggest that the Commission considered, in either its proposed or its final rules, the costs of an expansion of the scope of communications links covered by the airport reporting obligation.

For these reasons, Qwest supports Sprint’s position that only critical infrastructure facilities are covered by the reporting rules for airport outages.

#### **IV. QWEST SUPPORTS THE POSITION OF OPASTCO THAT THE 120-MINUTE THRESHOLD BEGINS WHEN A PROVIDER HAS KNOWLEDGE THAT AN OUTAGE HAS OCCURRED THAT EXCEEDS ONE OF THE REPORTING METRICS**

Finally, Qwest supports the position of OPASTCO that the 120-minute threshold begins under the new rules when a provider has knowledge that an outage has occurred that exceeds one of the reporting metrics.<sup>17</sup> Indeed, it is difficult to conceive of how one could find any ambiguity about that issue. Each of the new reporting rules set forth in the various subsections of Section

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<sup>16</sup> *Id.*

<sup>17</sup> OPASTCO Petition at 5. As with the reseller and airport communications issues discussed above, Qwest is of the opinion that a “clarification” is not essential on this matter.

4.9 ties the 120-minute reporting obligation to the time of a provider “discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes...” that meets one of the various reporting thresholds.<sup>18</sup> Qwest submits that the only reasonable reading of this language is that the 120-minute threshold begins under the new rules when a provider has knowledge that two things have happened – (1) that an outage of at least 30 minutes duration has occurred on a facility that the provider owns, operates, leases, or otherwise utilizes; and (2) that the outage has exceeded one of the reporting metrics. To construe this language as creating a provider obligation to report an outage before it exceeds one of the reporting metrics is simply not consonant with the rules and would impose excessive burdens on both providers and the Commission.

For these reasons, Qwest supports the position of OPASTCO that the 120-minute reporting threshold only begins once a provider has knowledge that an outage has occurred that exceeds one of the reporting metrics.

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<sup>18</sup> See, e.g., *Service Outage Order*, 19 FCC Rcd at 16927, Appendix B § 4.9(f).

V. **CONCLUSION**

For the foregoing reasons, Qwest respectfully requests that the Commission take the actions described herein.

Respectfully submitted,

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March 2, 2005

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. REGARDING THE PETITIONS OF SPRINT CORPORATION, BELL SOUTH CORPORATION AND ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES** to be: 1) filed with the FCC via its Electronic Comment Filing System in ET Docket No. 04-35; 2) served via email on the FCC's duplicating contractor, Best Copy and Printing, Inc. ([fcc@bcpweb.com](mailto:fcc@bcpweb.com)); and 3) served via First Class United States Mail, postage prepaid, on the parties listed on the attached service list.

/s/ Richard Grozier  
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