

**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
Concerning Disruptions to)	
Communications)	
)	
Petition of California Public Utilities Commission)	R. _____
and The People of the State of California for)	
Rulemaking on States' Access to the Network)	
Outage Reporting System ("NORS") and a ruling)	
Granting California Access to NORS)	

**INITIAL COMMENTS OF THE NATIONAL ASSOCIATION OF STATE
UTILITY CONSUMER ADVOCATES SUPPORTING THE PETITION OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE
STATE OF CALIFORNIA**

The National Association of State Consumer Utility Advocates ("NASUCA"),¹ files its initial comments in support of the *Petition of the California Public Utilities Commission and the People of the State of California for Rulemaking on States' Access to the Network Outage Reporting System ("NORS") Database and a Ruling Granting California Access to NORS* ("California Petition"), filed in this docket on November 12, 2009. The petitioners are referred to collectively here as "California."

¹ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

I. INTRODUCTION

The California Public Utilities Commission (“CPUC”) issued an order in 2009 concluding that it could best balance the state’s need for robust service outage reporting and a policy favoring streamlined reporting requirements by adopting the FCC’s NORS reporting requirements and substituting those requirements for the state’s independent guidelines for disruption and outage reporting.² The CPUC directed its staff to seek direct access to the NORS database from the FCC, which was accomplished by the filing of the Petition here. Until and unless its staff’s request is granted, however, California carriers must file the same outage reporting information twice: once with the FCC, and then again with the CPUC by email.³

In the Petition, California notes that dual reporting is both impractical and burdensome for the carriers and for the CPUC’s staff.⁴ The same holds true for other state commissions and utility regulators. The most efficient way for states to obtain NORS information is through secure access to the NORS database itself. Direct secure access is also consistent with the access to the numbering resources databases that the FCC grants states.

² See California Petition, at 6, citing *Decision Adopting General Order 133-C and Addressing Other Telecommunications Service Quality Reporting Requirements*, D.09-07-019, 2009 Cal. PUC LEXIS 320 (Cal. P.U.C., July 16, 2009).

³ *Decision Adopting General Order 133-C and Addressing Other Telecommunications Service Quality Reporting Requirements*, D.09-07-019, 2009 Cal. PUC LEXIS 320 (Cal. PUC 2009) (“Telephone Service Quality Rulemaking”).

⁴ California Petition, at 12-13.

A. THE FCC’S NORS REQUIREMENTS.

Under the Commission’s Part 4 rules,⁵ all voice telephony providers must report to the Commission any outages that last 30 minutes or more and potentially affect 900,000 or more user minutes.⁶ Notification of outages meeting these criteria must be filed within two hours of the provider’s discovery of the outage.⁷ This notification is followed by a more detailed Initial Report that providers must file within 72 hours of the outage’s discovery, and a Final Report must be submitted to the FCC within 30 days of that date.⁸ In the Final Report, providers must identify, among other things, whether a failure to comply with engineering standards for network redundancy was a contributing cause of the outage.⁹

California’s Petition provides a brief but valuable history of outage reporting at the FCC, showing that the first FCC-required outage reports were generally made available to the public.¹⁰ In its 2004 Outage Reporting Order, the FCC took a bold – and practical – step forward, extending mandatory outage-reporting requirements (previously applicable only to wireline carriers) to all communications providers (cable, satellite, and wireless providers) that provide voice and/or paging communications.¹¹ But the FCC then took a very large step backward – reversing its policy of making service outage

⁵ See 47 C.F.R. Part 4.

⁶ *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 04-35, 19 F.C.C.R. 16830, 16834 n. 5 (Aug. 19, 2004) (“*Outage Reporting Order*”).

⁷ *Id.* at 16870 ¶73.

⁸ *Id.* at 16870-71 ¶73.

⁹ *Id.*

¹⁰ California Petition at 3-5.

¹¹ *Id.* at 16833-34 ¶2.

reporting data publically available and instead declaring such information to be exempt from the Freedom of Information Act's disclosure provisions.¹²

B. CALIFORNIA'S OUTAGE REPORTING REQUIREMENTS.

Prior to 2009, the CPUC collected outage data in its Major Service Interruptions ("MSI") reporting rules, pursuant to rules that did not apply to wireless carriers.¹³ In its 2002 Service Quality Rulemaking, the CPUC noted that many carriers were not even aware of the California procedures and reporting requirements for major service interruptions.¹⁴ Then in 2009 California's Telephone Service Quality Rulemaking eliminated the MSI reports. In the Telephone Service Quality Rulemaking, the CPUC directed staff to "initiate steps to submit a formal request to the FCC requesting password-protected access to all California-specific NORS data."¹⁵ Until the time such access is granted, however, the CPUC's decision requires carriers to submit copies of NORS reports to the CPUC by way of email.

II. DISCUSSION

It is generally understood and beyond serious dispute that large-scale communications service outages jeopardize the public's health and safety. Likewise it cannot be gainsaid that such service outages greatly inconvenience the public and cause

¹² *Id.* at 16834 ¶3. The Commission readily acknowledged that "[t]his action is the most significant revision to our original proposal that we have adopted in this Report and Order." *Id.*

¹³ See CPUC's *Order Instituting Rulemaking on the Commission's Own Motion into the Service Quality Standards for All Telecommunications Carriers and Revisions to General Order 133-B*, R. 02-12-004, Dec. 12, 2002, at 34-35.

¹⁴ *Id.*

¹⁵ Rulemaking 02-12-004, Decision 09-07-019, July 9, 2009, at 90.

significant economic disruption, even when public health and safety are unaffected. States need to have ready, “always on” access to a database containing accurate information about communications service outages to maintain homeland security and emergency response functions.

Similarly, states should have access to such information in order to closely monitor the quality of service being provided to their citizens by communications providers subject to their jurisdiction, and to ensure that those communications service providers’ marketing and advertising statements regarding the quality and availability of their services are not misleadingly or deceptively overblown or inaccurate. While the price of service is a major factor in consumers’ decisions regarding what provider to select, clearly non-price factors like service quality, reliability, availability and adequate network maintenance and repair influence a consumer to select one particular provider (or communications technology) over another.

Information about service outages is necessary for state commissions and utility regulators to maintain a robust telecommunications infrastructure and monitor communications providers’ service quality and marketing practices. California’s Petition correctly points out that the states are as much concerned with network outages that affect their citizens’ health and safety, and their local economies, as is the FCC or DHS.¹⁶

The CPUC’s adoption of the FCC’s Part 4 outage reporting requirements is consistent with that state’s policy of relying upon FCC reporting under the CPUC’s

¹⁶ California Petition at 11.

Uniform Regulatory Decision.¹⁷ This policy was intended to eliminate many state-specific regulatory reporting requirements in favor of carrier-specific reports that are filed with the FCC. The FCC often hears industry complaints – usually exaggerated – of “Balkanization” and the burden imposed on them by having to comply with multiple different state regulatory regimes. And indeed, the FCC has been all too willing to give credence to those complaints.¹⁸

While there are instances where it is essential for states to implement state-specific requirements and to carry out state-specific policy objectives, states generally do not seek to avoid broad consistency among their regulatory regimes. The CPUC’s decision to utilize the FCC’s Part 4 network outage reporting requirements and NORS database should be seen by the FCC – and even industry – as having the salutary effect of reducing inconsistencies among states in outage reporting obligations. Denying states access to providers’ service outage reports would frustrate that goal and lead to inconsistent reporting requirements among states or redundant reporting systems to “work-around” the FCC’s current limitation on the availability of the NORS reports (*e.g.*, California’s requirement for service providers to send copies of FCC NORS reports to the CPUC). In addition, giving states “always on” access to the FCC NORS database would

¹⁷ “With respect to monitoring reports, [we] eliminate all [New Regulatory Framework] NRF-specific monitoring reports and choose to rely on the FCC ARMIS data.” URF Phase I Decision [D.06-08-030] at 217; Conclusions of Law 57 at 279.

¹⁸ *See, e.g., Truth-in-Billing and Billing Format: National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CG Docket No. 04-208, 20 F.C.C.R. 6448, 6449 ¶2 (March 18, 2005); *see also id.* at 6460 ¶24; *id.* at 6466-67 ¶35. Portions of this particular Commission order – including many of the passages citing “Balkanization” as support for preemption – were vacated by the Eleventh Circuit on appeal by NASUCA. *See Nat’l Ass’n of State Utility Consumer Advocates v. FCC*, 457 F.3d 1238 (11th Cir. 2006), *cert denied sub nom. Sprint Nextel v. Nat’l Ass’n of State Utility Consumer Advocates*, 128 S.Ct. 1119 (2008).

be consistent with the access given to state utility commissions to the North American Numbering Plan Administrator (“NANPA”) database.¹⁹ As noted by the FCC, NANPA’s release of data is subject to confidentiality restrictions.

The CPUC has determined that its preferred method for obtaining the FCC’s NORS data would be through password-protected access to the FCC’s NORS database. This should address sufficiently the FCC’s concerns regarding public disclosure of outage data. As discussed above, the CPUC directed its staff to submit a formal request to the FCC for password-protected access to California-specific NORS data. Until that permission is granted, California carriers must submit outage reports to two different agencies: to the FCC for NORS and to the CPUC for copies of the NORS reports.

As discussed in the Petition, this approach is burdensome for both state regulatory personnel and communications providers in the state. California’s “work around” for the secrecy adopted by the FCC for NORS reports is burdensome to carriers who must submit outage reports to NORS and then email information about each outage to the CPUC. California’s “work around” is also burdensome on the state commission’s staff, since it requires staff to open emails and enter information from each email into a database. Furthermore, the e-mails received from the carriers must be entered manually into a database or spreadsheet. It was for precisely this reason – to eliminate duplication in carrier reporting efforts – that the FCC granted states’ access to the NANPA data base:

We granted states access to mandatorily reported forecast and utilization data to eliminate the need for them to require carriers to report separately and duplicatively, utilization and forecast data that they are already

¹⁹ *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, et al, *Second Report and Order, Order on Reconsideration* et al., FCC 00-429 (rel. December 29, 2000), ¶¶ 116-119.

reporting to the NANPA on a regular basis. In doing so, we considered the need for states to have this information as well as the considerable burden such requests could place on carriers. We also considered the burden on the NANPA in responding to excessive individual state request for information. We recognize, however, that some state commissions may desire to have access to carrier-specific data on file with the NANPA more frequently or in different formats.²⁰

The same reasoning applies here. With direct access to NORS, CPUC staff could simply download the data that is submitted to the FCC, in the same spreadsheet format. This would allow NORS data, stored at the FCC, to be used immediately by the CPUC – eliminating the additional burden on the carriers, extra work for both carriers and state commission, delay, and possible data entry errors.

The same process should apply to other state commissions. Granting state commissions password-protected direct access to the NORS database relieves providers of the burden of having to affirmatively duplicate and transmit their NORS reports to state commissions.

The California Petition further notes that the FCC granted DHS access to network outage data and permission for DHS to share these reports with other government agencies. As the California Petition points out, DHS recommended that states be given the same access to NORS that the DHS enjoys.²¹ The DHS also agreed that this access would reduce burdens on state regulators and reduce reporting by carriers.²² The California Petition is consistent with the DHS' comments to the FCC.

²⁰ *Id.*, ¶ 117.

²¹ *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd. 16830 (2004) (“New Part 4 Rules Report and Order”), ¶ 47, at 16856.

²² *New Part 4 Rules Report and Order*, 19 FCC Rcd. 16830, ¶ 25, at 16845.

NASUCA agrees with California's explanation, in its Petition, of why states should not be required to get this information from the DHS. States should not be required to get information held by the FCC from a third party because it would "lengthen the time and complicate the process for states to obtain the information. It simply is not logical for each state to obtain NORS outage reports secondhand from DHS."²³ In recognition of the proprietary nature of NORS information, the California Petition emphasizes that state laws in California are sufficient to safeguard providers' truly confidential network information. Other states should be able to make the same showing as California's and obtain access to this vital information.

III. CONCLUSION

For all the foregoing reasons, the FCC should grant the CPUC's Petition.

Respectfully submitted,

/s/David C. Bergmann

David C. Bergmann

Assistant Consumers' Counsel

Chair, NASUCA Telecommunications
Committee

bergmann@occ.state.oh.us

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, OH 43215-3485

Phone: (614) 466-8574

Fax: (614) 466-9475

NASUCA

8380 Colesville Road, Suite 101

Silver Spring, MD 20910

Phone: (301) 589-6313

Fax: (301) 589-6380

²³ California Petition, at 12.