

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Petition of California Public Utilities)	RM-11588
Commission and The People of the State of)	ET Docket No. 04-35
California for Rulemaking On States’)	
Access to the Network Outage Reporting)	
System (“NORS”) and a Ruling Granting)	
California Access to NORS)	

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)¹ is pleased to comment on the Public Notice (Notice)² issued by the Public Safety and Homeland Security Bureau (Bureau) of the Federal Communications Commission (Commission) in the above referenced proceeding. USTelecom’s member companies recognize the legitimate interest that the California Public Utilities Commission (CPUC) has in obtaining federally-collected outage reports for its jurisdiction. However, the CPUC’s proposal to obtain direct access to the NORS database³ raises certain concerns regarding any state’s access to the NORS database that the Commission should address, particularly with respect to the treatment of the highly confidential information contained in NORS, the

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² Public Notice, *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking by the California Public Utilities Commission Requesting that State Public Utilities Commissions be Granted Direct Access to the Commission’s Network Outage Reporting System*, DA 10-220 (February 2, 2010) (*Notice*).

³ 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, RM-11588, ET Docket No. 04-35, dated November 12, 2009 (*CPUC Petition*).

scope of CPUC’s request, as well as procedural mechanisms necessary to ensure the smooth and efficient sharing of relevant information.

The Bureau seeks comment on the CPUC Petition filed on November 12, 2009, which requests that the Commission grant state public utilities commissions direct access to the Commission’s Network Outage Reporting System (NORS) database. The CPUC also requests that the Commission allow it password-protected access to the NORS database that is “limited to California-specific disruption and outage data.”⁴

I. Access to NORS Data Should be Subject to Stringent Confidentiality Provisions To Ensure Protection of Competitively Sensitive and National Security Information

As the CPUC acknowledges in its Petition, the information contained in the Commission’s NORS database is highly sensitive both in the national security context and for competitive reasons.⁵ USTelecom shares the CPUC’s and the Commission’s view that the national defense and public safety objectives that are advanced requiring these outage reports would be “seriously undermined if we were to permit these reports to fall into the hands of terrorists who seek to cripple the nation’s communications infrastructure.”⁶

For this reason alone, any access by a state Public Utilities Commission (PUC) or Public Service Commission (PSC) (collectively, “State Commission”) to data in NORS should be subject to stringent confidentiality provisions to ensure the protection of this sensitive information. The CPUC – and any other State Commission granted similar

⁴ *CPUC Petition* at pp. 1, 13-20.

⁵ *See e.g., CPUC Petition*, pp. 18-19.

⁶ *CPUC Petition*, p. 4. *See also, New Part 4 Rules Report and Order*, 19 FCC Rcd. 16830, ¶ 45, at 16855 (2004).

access to this information – should be required to guarantee no less than the same level of confidentiality and protection provided by the Commission.

When the Commission adopted outage reporting requirements for carriers, it amended its rules to provide that outage reports are presumptively protected from public disclosure under Freedom of Information Act (FOIA).⁷ In addition, the Commission encrypts the data when it transmits it to the Department of Homeland Security in encrypted form.⁸

The same protective measures should be required of a State Commission. Specifically, to the extent the state FOIA or Public Records Acts do not provide equivalent protection as the federal FOIA, the terms of the federal FOIA should apply to the data in NORS. And if the State Commission were required to transmit the data, it must take appropriate protective measures.

Finally, to ensure the security of this information, access to the NORS database should be limited to specifically identified State Commission personnel with a need to know. This restriction would safeguard against inadvertent disclosure of this sensitive information by limiting its exposure only to those within the State Commission that are authorized to access this information.

II. NORS Information Accessible to State Commissions Should be Limited

USTelecom is sensitive to the CPUC’s rationale for gaining access to the NORS database for California specific outage reports, rather than waiting for carriers to provide them to the CPUC. Any State Commission access to NORS, however, should be limited

⁷ Report and Order and Further Notice of Proposed Rule Making, New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, 19 FCC Rcd. 16830, ¶46 (2004) (*Part 4 Order*).

⁸ *Part 4 Order*, ¶47.

in scope to that which is truly needed to ensure continuity of the nation's communications infrastructure.

First, USTelecom agrees with the CPUC that if it gains access to the NORS database it should be limited to those outage reports identifying California as the originating point of the outage. Such an approach will ensure that this sensitive information is limited to that which is relevant to the CPUC -- or any other State Commission -- for the area within its respective territorial authority. Allowing State Commissions to have access to significant numbers of outage reports in NORS outside their jurisdiction would unnecessarily increase the risk of inadvertent disclosure.

Second, a State Commission's access should be restricted to a *read-only* segment of the NORS database, thus ensuring the continuing accuracy of carriers' reports by preventing inadvertent changes. The Commission may need to add this functionality to the NORS database.

Third, only completed reports in the NORS database should be viewable by a State Commission.⁹ That is, draft reports should not be accessible or viewable at any time by a State Commission. This is a critical, version-control requirement that will ensure that the State Commission is receiving and reviewing only the most up-to-date information. Failure to implement such a measure could result in a State Commission gaining access to incomplete and potentially inaccurate information that is not intended to be utilized for informed decision making.

Fourth, carriers' contact information listed in their outage reports should be redacted from what State Commissions may view. Because the appropriate carrier

⁹ In particular, only the most recent Notification Reports, Initial Reports, Final Reports and Withdrawn Reports should be accessibly by the CPUC.

employee for the State Commissions to contact is typically different than the employee the Commission contacts, such a mechanism will ensure that communications between the State Commissions and its existing carrier contacts within the state are not inadvertently or mistakenly removed from outage issues relevant only to the State Commission.

III. Redundant State-Based Network Outage Reporting Requirements Should Be Eliminated

A State Commission should only be allowed access to the NORS database if its State's outage reporting requirements are identical to the Commission's. In this way, carriers will be released from the burdens of filing conflicting outage requests with the Commission and any State Commissions, while State Commissions would not be required to differentiate between duplicative reports (*i.e.*, one submitted to the Commission and another submitted to the CPUC).

As the CPUC itself notes, redundant reporting is “neither a practical nor efficient use of staff resources,” since it “requires carriers to provide information to the FCC and then separately to provide copies to the CPUC.”¹⁰ Because such an approach is “unnecessarily duplicative and inefficient,”¹¹ the CPUC adopted the Commission's NORS reporting requirements.¹² The CPUC should therefore not alter these requirements in the future, since that would be inconsistent with Commission policy and undermine any benefits achieved through the sharing of this uniform information. USTelecom agrees that, with proper safeguards, controls, and limitations, the sharing of the

¹⁰ *CPUC Petition*, p. 12.

¹¹ *Id.*, p. 7.

¹² CA PUC Decision (D.) 09-07-019 at p. 64.

Commission's NORS data as outlined above "would be faster, more efficient, and would not require the carriers to submit the same material to two separate agencies."¹³ Other states desiring access to NORS should follow the CPUC's lead.

It follows that if a State's outage reporting requirements are identical to the Commission's and the State Commission has access to NORS, a carrier should not be required to make separate notifications to each entity. To further efficiency, responsibility for providing alerts to the State Commission of new or modified outages should reside with the Commission via its NORS database.

IV. Conclusion

USTelecom's member companies are committed to ensuring that stable and reliable communications are available during outage situations. USTelecom believes strong safeguards are needed for reasonable measures to ensure continuity in our Nation's critical communications infrastructure, so long as these measures are consistent with the need to secure sensitive and confidential NORS database information, and harmonize the scope of such reporting obligations amongst all Federal and state stakeholder agencies.

¹³ *CPUC Petition*, p. 7.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

A handwritten signature in blue ink that reads "Jonathan Banks". The signature is fluid and cursive, with the first name and last name clearly legible.

By: _____

Jonathan Banks
Robert Mayer
Kevin Rupy

607 14th Street, NW, Suite 400
Washington, D.C. 20005