

**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)	

REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS¹

The comments demonstrate significant concern throughout the industry that the information contained in outage reports remain confidential if state commissions have direct access to NORS. Verizon shares that concern, though it does recognize that administrative burdens and costs for both state commissions and providers can be reduced by allowing state commissions NORS access. As such, the Commission should grant a state commission access to completed outage reports in NORS where the outage originated within the state’s geographic boundary if (i) the state commission makes a showing that it will provide at least the same level of confidentiality and protection as the Commission; (ii) the state commission restricts its use of the outage reports to promoting public health and safety; and (iii) any state outage reporting requirements are identical to the Commission’s.

¹ With the exception of Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly-owned subsidiaries of Verizon Communications Inc. (“Verizon”).

First, the Commission must ensure the confidentiality of the outage reports filed in NORS. In its 2004 *Outage Order*, the Commission observed that the disclosure of outage reports raised national security risks because the reports “could be used by hostile parties to attack those networks, which are part of our Nation’s critical information infrastructure.”² Outage reports are also competitively sensitive “[g]iven the competitive nature of many segments of the communications industry and the importance that outage information may have on the selection of a service provider or manufacturer.”³ Accordingly, the Commission concluded that outage reports should be “presumptively protected from public disclosure” under the Freedom of Information Act (FOIA).⁴

The California Public Utilities Commission (PUC) and the state commission commenters acknowledge the importance of protecting the information in NORS and assert that they can adequately safeguard it.⁵ The California PUC cites California Public Utilities Code § 583 and General Order 66-C as sufficient to protect the outage reports in NORS.⁶ However, as AT&T points out, the protection provided by that statute and order is not as strong as may appear at first glance because they “are subject to amendment by

² *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, ¶ 40 (2004) (“*Outage Order*”).

³ *Id.* ¶ 45.

⁴ *Id.*

⁵ See California PUC Petition at 18-20; Missouri Public Service Commission (PSC) Comments at 3 (“The MoPSC is sensitive to confidentiality concerns and is prepared to comply with any provisions to obtain such access.”); see also Massachusetts Department of Telecommunications and Cable (DTC) Comments at 6-7; New York PSC Comments at 3; PSC of the District of Columbia Comments at 3.

⁶ See California PUC Petition at 18-20.

the state legislature and the CPUC and to interpretation by the CPUC and California state courts.”⁷

Other states may offer even less protection to this sensitive data in spite of the Commission’s national security and competitive concerns articulated in its *Outage Order*. For example, the Maine PUC does not automatically designate state outage reports as confidential and requires carriers to request confidential treatment for each report.⁸ Recently, the Maine PUC denied one such request from Verizon, directly contradicting the Commission’s finding that outage reports are competitively sensitive.⁹ The Maine PUC also failed to acknowledge the national security issues inherent in any public disclosure of outage reports and required a factual showing from Verizon of a “serious” security issue raised by its specific report.¹⁰ The Maine PUC went so far as to claim that its confidentiality designation process is “similar” to the Commission’s even though the burden of proof in Maine is on the provider, rather than the person who requests disclosure.¹¹ But, by shifting the burden of proof to the provider on a case-by-case basis, the level of protection offered by the Maine PUC is less than that of the Commission.

Because the Maine PUC and other state commissions receive outage reports today – including the California PUC which receives the exact reports that are filed in NORS

⁷ AT&T Comments at 6-7.

⁸ See Maine PUC, *Amendments to Chapter 200 Telecommunications Carriers Reporting Requirements for Service Interruptions*, Order Adopting Rule and Statements of Factual and Policy Basis, Docket No. 2007-230, at 8-9 (Mar. 25, 2008).

⁹ See Maine PUC, *MCI Communications Services d/b/a Verizon Business Services et al, Request for Protective Order for Confidential Treatment of Service Outage Information*, Order Denying Request for Protective Order, Docket No. 2009-271, at 4-5 (Mar. 9, 2010) (attached as Ex. 1).

¹⁰ *Id.* at 6.

¹¹ *Id.* at 5.

from wireline and wireless providers – the Commission should examine whether its policy determination to protect outage reports from public disclosure is being thwarted in certain states. In any event, as a condition for direct access to NORS, states should be required to make a showing that their laws or orders provide the same level of protection as the Commission.

The Commission should also consider the numerous suggestions with respect to confidentiality offered by other commenters.¹² Annual certifications by state commissions and notifications to providers of breaches and third-party disclosures have worked well in other contexts in which confidentiality is imperative, such as CPNI, and would provide the Commission and providers with an enhanced comfort level that the data is being protected.

Finally, this proceeding should only address the issue of state commissions being granted direct access to NORS. Access by local entities other than state commissions, as suggested by the City of New York,¹³ would cause the number of individuals with access to multiply exponentially, thus exacerbating the potential risks of breaches or inadvertent disclosures. Alternative avenues to acquire the information these local entities may legitimately need should be explored separately.

Second, as recommended by numerous commenters,¹⁴ the use of outage reporting data in NORS should be limited to the purpose listed in the California PUC's Petition –

¹² See Alliance for Telecommunications Industry Solutions (ATIS) Comments at 3-5; AT&T Comments at 8-10; CTIA – The Wireless Association® (CTIA) Comments at 4-7.

¹³ See NYC Department of Information Technology and Telecommunications Comments.

¹⁴ See ATIS Comments at 6; AT&T Comments at 9; CTIA Comments at 5.

i.e., “to perform its traditional role of protecting public health and safety through monitoring of communications network functionality.”¹⁵ NORS data should not be used for any other purpose, such as measuring service quality or consumer protection as suggested by the National Association of State Consumer Utility Advocates (NASUCA).¹⁶ In the absence of such a restriction, a provider’s voluntary inclusion in its outage report of background or other facts or details relating to an outage could be chilled as a provider may fear liability in other areas, thus hindering the Commission’s public safety function. And a limitation would provide a further safeguard against inadvertent disclosure of this critical information by limiting its exposure only to those within a state commission that perform this specific function.

Third, a state commission’s access to the NORS database should be conditioned on the state having outage reporting requirements, if any, that are identical to the Commission’s. A number of commenters support this requirement.¹⁷ The efficiencies are significant: providers would be released from the burdensome requirements of filing redundant outage requests, while state commissions would not be required to differentiate between duplicative reports. The Massachusetts DTC observed that the “reduction in states’ duplicative repetitive reporting requirements would significantly reduce the costs and administrative burdens on communications service providers.”¹⁸ The California PUC

¹⁵ California PUC Petition at 14.

¹⁶ See NASUCA Comments at 5.

¹⁷ See, e.g., ATIS Comments at 6; AT&T Comments at 9-10; CTIA Comments at 5; United States Telecom Association Comments at 5-6.

¹⁸ Massachusetts DTC Comments at 5. Even state commissions or advocates that support dual reporting requirements acknowledge that allowing state commissions to have NORS access would minimize the burdens on providers by “reducing inconsistencies among states in outage reporting obligations.” NASUCA Comments at 6;

has adopted the Commission’s NORS reporting requirements, calling two sets of reporting requirements “unnecessarily duplicative and inefficient.”¹⁹ Similarly, the PSC of the District of Columbia, which just released an order requiring providers to file NORS reports,²⁰ believes that its direct access to NORS “would eliminate duplicative reporting.”²¹ Other states desiring access to NORS should follow suit.

State commission commenters that desire NORS access *and* state-specific outage reports offer no explanation why they would need to review two different reports to fully understand the relevant facts of an outage. For example, the Missouri PSC simply states that it “has not had a proceeding to evaluate the matter.”²² That can be easily remedied. To the extent the Missouri PSC desires NORS access, it should hold such a proceeding and eliminate its separate reporting requirements for wireline providers.

see New York PSC Comments at 2 (noting that NORS access would “limit the creation of additional regulatory reporting obligations in multiple state jurisdictions”).

¹⁹ California PUC Decision (D.) 09-07-019 at 64, 7.

²⁰ *See* PSC of the District of Columbia, Formal Case No. 990, *In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 15737, Attach A § 2740.5 - 2740.7 (Mar. 15, 2010).

²¹ PSC of the District of Columbia Comments at 3. While purportedly interested in lessening providers’ reporting burdens in this proceeding, the PSC of the District of Columbia’s new outage reporting requirements do just the opposite. By requiring providers to report outages far below the Commission’s reporting thresholds, the PSC of the District of Columbia Order No. 15737, *supra*, ¶ 14, makes clear the need for a uniform reporting standard throughout the country.

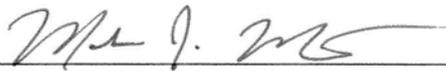
²² Missouri PSC Comments at 2.

CONCLUSION

For the foregoing reasons, the Commission should impose appropriate conditions on state commissions before they are permitted access to the sensitive outage reports that originated in their particular states contained in the NORS database.

Respectfully submitted,

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Dated: March 19, 2010

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EXHIBIT 1

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2009-271

March 9, 2010

MCI COMMUNICATIONS SERVICES
d/b/a VERIZON BUSINESS SERVICES
ET AL
Request for Protective Order for
Confidential Treatment of Service Outage
Information

ORDER DENYING REQUEST
FOR PROTECTIVE ORDER

REISHUS, Chairman; VAFIADES and CASHMAN, Commissioners

I. SUMMARY

In this Order, we deny the request of MCI Communications Services, Inc., d/b/a Verizon Business Services, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and Verizon Select Services, Inc. (collectively, Verizon Business) for confidential treatment of its service outage reports dated June 24, 2009 and November 8, 2009.

II. BACKGROUND

On June 24, 2009, Verizon Business submitted a service outage report pursuant to Chapter 200 of the Commission's Rules. As a part of that filing, Verizon Business requested that the Commission give the June 24 report confidential treatment pursuant to 35-A M.R.S.A. § 1311-B.¹ In response to its request, Staff informed Verizon Business that it should make a specific request for confidential treatment of the June 24 report, or any other report that Verizon Business felt required confidential treatment.

On August 19, 2009, Verizon Business filed a Motion for Confidential Treatment of Service Outage Information (August 19 Motion). The Motion was filed in Docket No. 2009-271. In its August 19 Motion, Verizon Business requested that the June 24 report, "as well as any other service outage information reported under Chapter 200" be treated as confidential.

On November 8, 2009, Verizon Business submitted additional outage reports pursuant to Chapter 200. Subsequent to that filing, on November 10, 2009, Verizon Business filed a Motion for Confidential Treatment of Service Outage Information

¹ We note that while 35-A M.R.S.A. § 1311-B is the appropriate statutory authority for requesting confidentiality for information regarding "public utility technical operations" that "could compromise the security of public utility systems to the detriment of the public interest," the appropriate statutory authority for requesting confidentiality of "proprietary information, trade secrets, or similar matters" for non-security reasons (e.g. information that is competitively sensitive) is 35-A M.R.S.A. § 1311-A.

requesting the Commission designate the November 8 reports as confidential (November 10 Motion). Verizon Business' November 10 Motion was also filed in Docket No. 2009-271.

On December 14, 2009 the Presiding Officer issued, in Docket No. 2009-271, a Notice of Proceeding, Notice of Opportunity to Intervene, and Opportunity to Comment (December 10 Notice).² The December 10 notice set a deadline for petitions to intervene of December 21, 2009 and a deadline for intervenors and interested persons to submit comments of January 4, 2010. The Commission did not receive any petitions to intervene nor were any comments submitted.

On January 25, 2010, the Presiding Officer issued a Recommended Decision in this matter. *MCI Communications Services d/b/a Verizon Business Services et al, Request for Protective Order for Confidential Treatment of Service Outage Information*, Docket No. 2009-271, Recommended Decision, (Jan. 25, 2010). The deadline for submitting comments or exceptions to the Recommended Decision was February 19, 2010.

On February 19, 2010, Verizon Business timely submitted its exceptions to the Recommended Decision. *MCI Communications Services d/b/a Verizon Business Services et al, Request for Protective Order for Confidential Treatment of Service Outage Information*, Docket No. 2009-271, Exceptions of Verizon Business to Recommended Decision, (Feb. 19, 2010).

III. DISCUSSION

A. Chapter 200

Chapter 200 requires telecommunications carriers³ to notify the Commission of any service outage, within 120 minutes of discovery of such outage, that lasts at least thirty minutes and affects at least 90,000 user minutes or 1,350 DS3 minutes. 65-407 CMR 200-2(B)(1). The initial notice must include the following information: (1) the name of the telecommunications carrier; (2) the date of the notice; (3) the name, position, and 24x7 contact information of the person completing the notice

² In addition to Verizon Business, the December 10 notice was sent to all members of the service list for *Maine Public Utilities Commission, Amendments to Chapter 200 Telecommunications Carriers Reporting Requirements for Service Interruptions*, Docket No. 2007-230.

³ "Telecommunications Carrier" is defined in Chapter 200 as "any person, association, corporation, or other entity that provides intrastate telecommunications services, whether or not that entity is a public utility. Telecommunications carrier includes all interexchange carriers (IXCs) and all local exchange carriers (LECs)." 65-407 CMR 200-1(D).

or other responsible persons familiar with the situation; (4) the date and time of onset of the outage; (5) a brief description of the problem; (6) the particular services affected; and (7) the geographic area affected by the outage.⁴ 65-407 CMR 200-3(A)(1)-(7). Any final notice to the Commission must contain all of the information in the initial notice, any information that was omitted from the initial notice or has changed since the initial notice was provided, and a description of the actions taken by the carrier to correct the cause of the outage and to prevent it recurrence. 65-407 CMR 200-3(B)(1)-(2).

In our Order adopting Chapter 200, we discussed whether all service outage reports should be designated as confidential. We found that an automatic designation of confidentiality was not warranted. *Maine Public Utilities Commission, Amendments to Chapter 200 Telecommunications Carriers Reporting Requirements for Service Interruptions*, Docket No. 2007-230, Order Adopting Rule and Statements of Factual and Policy Basis (March 25, 2008) (Order) at 8. We noted that we had, for years, “received and handled outage reports without any adverse impact on the security of the network.” *Id.* But, we also recognized that circumstances could arise that “in the view of a reporting carrier, could compromise the security of the network were that information publicly available.” *Id.* at 8-9. In such a circumstance, we advised carriers that they could request, pursuant to 35-A M.R.S.A. § 1311-B, that any such information be designated confidential. *Id.* at 9.

B. Verizon Business’ Motions

In its Motions, Verizon Business cites both competition and national security as reasons to keep its outage reports confidential.⁵ Verizon Business states that under FCC Rules, service outage reports are presumed confidential.⁶ *August 19 Motion* at 2. From a national security perspective, Verizon Business argues that the FCC took this step because it determined that the information “could be used by hostile parties to attack [telecommunications] networks, which are part of the Nation’s critical information infrastructure.” *Id.* (quoting *In the matter of New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, FCC 04-188, Federal Communications Commission, 19 FCC Rcd 16830 (August 4, 2004) ¶¶ 3, 40).

As to competitive harm, Verizon Business states that the FCC was concerned that any disclosure of service outage information that led to a terrorist attack on the submitting party’s facilities would lead to financial harm to the submitting party’s

⁴ This information is general in nature and does not contain circuit or other detailed infrastructure information.

⁵ As grounds for Verizon Business’ November 10 Motion, it “relies on the arguments” in its August 19 Motion.

⁶ The FCC’s rules regarding service outage reporting are contained in 47 C.F.R. §§ 4.1-4.13.

business. *Id.* at 3-4. Further, Verizon Business states that service outage reports have been used by competitors to wage marketing campaigns. *Id.* at 4. Given the potential national security and competitive consequences of publicly disclosing service outage information, Verizon Business echoes the FCC's determination that, in this day and age, the benefits of public disclosure are substantially outweighed by the potential harm to the public and national defense. *Id.*

Verizon Business further argues requiring that its service outage reports in Maine be made public undermines the FCC's efforts to protect national security and to avoid competitive harm. *Id.* Verizon Business argues that, under principles of federal preemption, the Maine Commission may not require a carrier to take an action that conflicts with FCC Rules.⁷ *Id.* at 4-5. Verizon Business states that "[t]he mere act of not affording the material in an outage report the same level of confidentiality as provided by the FCC is a direct assault on the FCC's order and regulations and is subject to preemption by a federal court." *Id.* at 5.

Finally, Verizon Business argues that two provisions of the Maine Freedom of Access Act (FoAA)⁸ requires that service outage reports be given confidential treatment. *Id.* at 5-6. First, Verizon Business contends that the privilege against discovery exception to FoAA, 1 M.R.S.A. § 402(3)(B), applies to service outage reports because they constitute "trade secret[s] or other confidential research, development, or commercial information." *Id.* at 6. Second, Verizon Business contends that 1 M.R.S.A. § 402(3)(M) applies to service outage information because they constitute "records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems." *Id.*

C. Verizon Business' Exceptions to Recommended Decision

In its Exceptions, Verizon Business essentially restates the arguments it made in its Motions.

IV. DECISION

We are not persuaded by Verizon Business' argument that a general policy of public disclosure of service outage reports would put it at a competitive disadvantage or otherwise single it out for competitive harm. The public disclosure rules apply equally to all telecommunications carriers, and as such create a "level playing field" for all concerned. In fact, the possibility that a competitor could use service outage

⁷ 47 C.F.R. § 4.2 states: "Reports filed under this part will be presumed to be confidential. Public access to reports filed under this part may be sought only pursuant to the procedures set forth in 47 CFR § 0.461. Notice of any requests for inspection of outage reports will be provided pursuant to 47 CFR 0.461(d)(3)."

⁸ Title 1 M.R.S.A. §§ 401-412.

information to its advantage may provide an incentive for carriers to make every effort to minimize the number and duration of such outages.

We do, however, agree with Verizon Business that public access to its service outage reports could theoretically lead to a misuse of such reports. However, the information required to be disclosed by Chapter 200, is limited. Chapter 200 does not require the reporting of detailed infrastructure information; only general information regarding the services and customers and geographic area affected by the outage. Any press coverage of a major service outage would likely disclose much more detailed information than what is required by Chapter 200. As discussed below, if, for any particular outage, Verizon Business fears that information it is required to report would present an undue risk to national security, it may file the report with a request for confidential treatment that explains the factual basis for why that particular outage report should not be publicly disclosed.

However, Verizon Business has made no argument that the particular service outages at issue in this matter would present security issues. Absent such a showing, we have no way of determining whether the public disclosure of these particular outages would have national security implications. Additionally, absent such a showing, we have no way of determining whether the public disclosure of these particular outages would “directly conflict with” or “undercut” the FCC’s Rules, thus leading to preemption. See *Verizon New England, Inc., v. Me. Pub. Util. Comm’n*, 509 F.3d 1 (1st Cir. 2007). This same reasoning applies with equal force to Verizon Business’ blanket request that all future service outage reports filed pursuant to Chapter 200 be designated confidential.

Furthermore, the FCC’s Rules do not *prohibit* public disclosure of service outage information; they merely contain a rebuttable presumption that such information will be kept confidential. Under 47 C.F.R. § 0.461, persons desiring to inspect service outage reports may submit a request to the FCC’s Managing Director. Upon receiving such a request, the FCC will determine how much, if any, of the report may be released. 47 C.F.R. § 0.461(f). At the Maine Commission, we have the opposite presumption. Our presumption, however, does not necessarily conflict with the FCC’s Rule.

When a person makes a request to the FCC to inspect a service outage report, that person, under FCC Rules, must include “a statement of the reasons for inspection and the facts in support thereof.” 47 C.F.R. § 0.461(c). FCC Staff then presumably reviews the basis for the request and the supporting facts, reviews the report in question, determines if there are national security or serious competitive implications, and, if there are no such implications and there is a valid basis for the request, releases the report to the person making the request. We follow a similar procedure. When a carrier files an outage report, they may also file a request to treat the report as confidential. We then review the basis for the request and the supporting facts, review the report to determine if there are any security or serious competitive implications and, if such implications exist and there is a valid factual basis for the request, we designate

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 21 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.