

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Comments—Public Safety and Homeland  
Security Bureau Seeks Comment on Whether  
the Commission’s Rules Concerning  
Disruptions to Communications Should Apply  
to Broadband Internet Service Providers and  
Interconnected Voice over Internet Protocol  
Service Providers

ET Docket No. 04-35

WC Docket No. 05-271

GN Docket Nos. 09-47, 09-51, 09-137

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
AND THE PEOPLE OF THE STATE OF CALIFORNIA**

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The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these comments in response to the Federal Communications Commission's (FCC or Commission) Public Notice seeking comments on the extension of outage reporting requirements to advanced service providers.<sup>1</sup> Specifically, the Notice seeks comment and information on whether, and if so how, the Commission should expand its Part 4 outage reporting rules to interconnected Voice over Internet Protocol (VoIP) service providers and broadband Internet Service Providers (ISPs).<sup>2</sup>

## **I. INTRODUCTION**

The FCC's current rules regarding reporting of disruptions to communications services are limited to voice and/or paging communications over wireline, wireless, cable, and satellite communications services. The current rules do not apply to disruptions of interconnected VoIP service or to broadband Internet services.<sup>3</sup> The National Broadband Plan (NBP) recommended that the Commission initiate a proceeding to extend the Part 4 outage reporting rules to broadband ISPs and to interconnected VoIP service providers. The reasoning in the NBP proposed that such reports would allow the Commission, other federal agencies and, as appropriate, service providers to analyze information on outages affecting IP-based networks. The NBP also suggested that

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<sup>1</sup>*Public Safety And Homeland Security Bureau Seeks Comment On Whether The Commission's Rules Concerning Disruptions To Communications Should Apply To Broadband Internet Service Providers And Interconnected Voice Over Internet Protocol Service Providers*, Public Notice, ET Docket No. 04-35, WC Docket No. 05-271

GN Docket Nos. 09-47, 09-51, 09-137, rel. July 2, 2010. (Notice)

<sup>2</sup> Notice, pp. 1-2.

<sup>3</sup> See 47 C.F.R. §§ 4.1-4.13.

gathering this information could help prevent future outages and ensure a better response to actual outages.<sup>4</sup>

The CPUC supports these recommendations in the NBP. Should the FCC determine that it has the authority to do so, the Commission should require Interconnected VoIP service providers and broadband ISPs to promptly inform the Commission of major disruptions of services that significantly affect the services' customers. The FCC also should require these providers to inform the FCC of the causes of such outages. Finally, California urges the FCC to share with appropriate state governmental agencies outage information obtained through application of these requirements to VoIP providers and ISPs.

## **II. DISCUSSION**

As the Commission observes in the Notice, “[t]oday, every sector of our Nation’s economy, including the financial market, operations of most enterprises, and all levels of government, rely on broadband and Internet Protocol (IP) for communications.”<sup>5</sup> The American consumer also relies increasingly on broadband and IP communications services. It is vital, therefore, that policymakers take steps to ensure maintenance of secure and reliable high-quality broadband and VoIP services.

### **A. Interconnected VoIP Service**

The FCC seeks comment on “whether there should be reporting requirements for interconnected VoIP service providers to promptly inform the Commission of major

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<sup>4</sup> Notice, pp. 1-2.

<sup>5</sup> *Id.*, p.1.

outages of interconnected VoIP services that significantly affect customers of those services, and to inform the Commission of the causes of such outages.”<sup>6</sup> In addition, the Commission seeks comment on whether outage reporting should apply to non-facilities-based interconnected VoIP service providers.<sup>7</sup>

The CPUC supports the NBP recommendation to expand the FCC’s Part 4 outage reporting requirements to interconnected VoIP service providers.<sup>8</sup> As of December 31, 2008, over 21 million Americans subscribed to interconnected VoIP service.<sup>9</sup> A little over 2 million of those subscribers, or one-tenth of the total subscriber base, reside in California.<sup>10</sup> Subscribership to VoIP services will only increase as the United States transitions from the legacy circuit-switched network to an all IP network, as anticipated. In its *Order* extending communications disruption reporting requirements to providers of wireless and satellite voice communications, the FCC stated that its decision was based “...on the critical need for rapid, complete, and accurate information on service disruptions that could affect homeland security, public health or safety, and the economic well-being of our Nation....”<sup>11</sup> For the same reasons, it is important for the Commission to require outage reporting by voice service providers who utilize an Internet Protocol.

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<sup>6</sup> *Id.*, p. 2.

<sup>7</sup> *Id.*, p. 3.

<sup>8</sup> See Federal Communications Commission, National Broadband Plan: Connecting America, Recommendation 16.6 at 321 (rel. Mar.16, 2010).

<sup>9</sup> Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Local Telephone Competition: Status as of December 31, 2008* (June 2010), Figure 4, p. 7.

<sup>10</sup> *Id.*, Table 8, p.19.

<sup>11</sup> *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 FCC Rcd 16830 (2004) (*Part 4 Report and Order*), para.1.

California recommends that the FCC require both facilities-based and non-facilities-based VoIP service providers to report service disruptions. Voice service is an essential communications service no matter how it is provisioned. Consequently, the Commission should monitor the provisioning of voice service in all its forms. Furthermore, as we discuss below, a State's responsibility to ensure that its residents have access to reliable and secure voice service will be best facilitated if all voice providers are held to the same standard, and thus, required to report disruptions.

## **B. Broadband Internet Service Providers**

The FCC seeks comment on whether it should require broadband ISPs to promptly report to the Commission major broadband Internet service outages when they significantly affect customers of such services. In that same vein, the FCC asks whether broadband ISPs should inform the Commission of the causes of such outages.<sup>12</sup>

The CPUC supports the recommendation in the NBP to require broadband ISPs to report on major service disruptions and degradations.<sup>13</sup> As both the NBP and the Commission have noted, Internet access service is now vital to the economic well-being of the Nation, with the Internet now serving as a major channel for both business and social communications. To business customers, loss of Internet access service for an extended period can mean substantial lost revenues as well as significant missed opportunities. For financial and other vital industries, loss of Internet access for even a modest period could have serious repercussions for the Nation's economy. And, for a

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<sup>12</sup> Notice, p. 3.

<sup>13</sup> NBP, Recommendation 16.6 at 321.

residential customer, a temporary loss of service may not be as onerous, but still can lead to great confusion and inconvenience, and can create health or safety risks where individuals depend on web-based services for care. Such risks would be exacerbated for a residential consumer subscribing to voice service transmitted via the Internet (over-the-top VoIP), because loss of Internet access would leave the subscriber without access to 9-1-1 emergency services. For some disabled consumers relying on web-based services, such as Video Relay Service, loss of Internet access would shut down their communications capability. In California, all of these types of effects were realized when sabotage produced an outage in the Gilroy area in 2009. Consequently, the CPUC supports requiring broadband ISPs to report on significant outages and degradations of Internet service, and see such reporting as potentially enabling the Commission to address communication system vulnerabilities and help prevent future disruptions.

### **C. Legal Issues**

Consistent with our comments on the “Third Way”, the CPUC’s position is that the FCC legally can exercise authority as proposed in the Notice, to expand its Part 4 outage reporting requirements to interconnected VoIP service providers or Internet access service providers. Nonetheless, the Commission should first resolve the issue of its authority, before it extends the Part 4 reporting requirements.

### **D. Outage Notifications/Reporting Process**

The FCC asks whether it should share interconnected VoIP and ISP outage information with state governmental agencies should the Commission choose to expand

its Part 4 rules to apply to those service providers. The CPUC strongly urges the FCC to share outage reports of interconnected VoIP service providers with appropriate state agencies. Further, if the FCC determines that the States should have a role in monitoring Internet Access service providers for purposes of protecting public health and safety, the FCC then also should share with the States ISP outage reports. To ensure that this information is shared with the States in a timely manner, the FCC should provide state public utilities commissions, or other appropriate state agencies, password-protected access to state-specific information in the NORS database.

Consistent with this recommendation, California notes that on November 12, 2009, the CPUC filed a Petition with the FCC requesting that the Commission grant state public utilities commissions direct access to the FCC Network-Outage Reporting System (“NORS”) database.<sup>14</sup> The CPUC specifically requested password-protected access to the NORS database limited to California-specific outage data.

NORS is the Internet-based filing system through which communications service providers covered by the *New Part 4 Rules* electronically report information about significant disruptions to their communications systems when specified thresholds are met. The Commission implemented NORS after the September 11, 2001 terrorist attacks

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<sup>14</sup> 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, ET Docket No. 04-35 (Nov. 12, 2009) (“Petition”).

to help ensure stable, reliable communications in crisis situations.<sup>15</sup> In the *New Part 4 Rules*, the FCC granted the Department of Homeland Security (“DHS”) direct access to NORS information and acknowledged that release of the NORS reports by DHS to other governmental agencies may be appropriate.<sup>16</sup> However, the Commission was silent as to whether it would grant other governmental agencies the same access to NORS information.

In the FCC’s *New Part 4 Rules Report and Order*, the FCC recognized the vital need for reliable communications during times of crises, including access to the Internet. The Commission noted that during the 9/11 crisis “[a]ll levels of government (municipal, county, state, and Federal) coordinated their restoration and Homeland Defense efforts through wireless and wireline phones, public data networks (including dial-up telephone, wireless, and cable modem access to the Internet), and pagers.<sup>17</sup> The Commission also acknowledged the Nation’s complete dependency on communications services essential to the operation of virtually all government, business, and critical infrastructures throughout the United States.<sup>18</sup> For these reasons, the FCC found that it was required “to obtain information about communications disruptions and their causes to prevent future disruptions that could otherwise occur from similar causes, as well as to facilitate the use

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<sup>15</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 Rulemaking*, 19 FCC Rcd. 16830 (2004) (“New Part 4 Rules Report and Order”).

<sup>16</sup> *Id.* ¶ 47, at 16856.

<sup>17</sup> *Id.* ¶ 10, at 16836.

<sup>18</sup> *Id.* ¶ 11, at 16836.

of alternative communications facilities while the disrupted facilities are being restored.”<sup>19</sup> These reasons equally apply to California.

As we stated in our Petition, the receipt of information about communications disruptions is no less critical to state regulatory commissions than it is to the FCC.<sup>20</sup> This statement is equally true for information about disruptions of interconnected VoIP service and Internet access service. The public health and safety, as well as California’s economy, depend heavily on reliable and well functioning wireline and wireless voice and data communications networks, networks that are virtually ubiquitous, interconnected, and interdependent. Comprehensive analysis is key to understanding the effect of outages on the multiple modes of communication and data services which comprise the State’s, and the Nation’s, communications network(s).<sup>21</sup>

Because the public disclosure of disruption and outage data contained in the NORS reports creates serious implications for the nation’s critical information infrastructure, any state agency accessing this information should be required to treat such information as confidential.<sup>22</sup>

### **III. CONCLUSION**

If the Commission determines that it has the authority to expand its Part 4 outage reporting rules to Internet Service Providers and interconnected VoIP service providers,

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<sup>19</sup> *Id.* ¶ 11, at 16836.

<sup>20</sup> Petition, p. 7.

<sup>21</sup> *Id.*, pp. 13-14.

<sup>22</sup> As noted in our Petition, the FCC has authorized password-protected state access to state-specific numbering data maintained by the North American Numbering Plan Administrator (NANPA). The Commission conditioned such access on each state’s commitment to maintaining the confidentiality of the state-specific carrier data.

the CPUC urges the FCC to do so. In order to maintain the reliability and security of the Nation's communications networks, the FCC should permit direct access by state public utilities commissions, or other appropriate state agencies, to the outage reports contained in the NORS database. Should the Commission require interconnected VoIP providers to report under its Part 4 rules, States should be given access to the reports of the VOIP providers in their states. States should also have access to NORS reports of ISPs to the extent States have a role in ensuring that these now vital communications entities provide reliable and secure Internet service.

Respectfully submitted,

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