

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of  
2010 Biennial Review of Telecommunications  
Regulations; Part 4 Regulations Administered by  
the Public Safety and Homeland Security Bureau

PS Docket No. 10-270

**COMMENTS OF AT&T INC.**

AT&T Inc., on its behalf and on the behalf of its subsidiaries, (AT&T) submits these comments in response to the Public Notice requesting input on what telecommunications regulations ought to be modified or repealed as part of the Commission's 2010 Biennial Review.<sup>1</sup>

**I. INTRODUCTION**

**A. THE COMMISSION SHOULD REPEAL OR DRASTICALLY REVISE THE PART 4 "DISRUPTIONS TO COMMUNICATIONS" RULES TO ADDRESS THE COMMISSION'S LEGITIMATE DATA COLLECTION NEEDS.**

The Commission has promulgated a set of Disruptions to Communications rules requiring certain providers, including AT&T's wireline and wireless telecommunications services providers, to file notifications and reports to the Commission on network outages.<sup>2</sup> By means of these rules, the Commission seeks to collect data on outages as a way of meeting its general goal of making available to all Americans a "rapid, efficient, Nation-wide, and world-wide wire and radio communication service."<sup>3</sup> The Commission identified two general aspects of this data collection process: (1) getting information about disruptions arising from terrorist attacks or natural disasters, and (2) obtaining information on network "vulnerabilities" to

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<sup>1</sup> Public Notice, *Commission Seeks Public Comment in 2010 Biennial Review of Telecommunications Regulations; Announces Particular Focus on Data Collection Requirements*, PS Docket No. 10-270 (rel. Dec. 30, 2010).

<sup>2</sup> 47 C.F.R §§ 4.1 *et seq.*

<sup>3</sup> 47 U.S.C. § 151. *See also, 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 ¶ 12 (2004) (*Outage R&O*).

propose long-term “best practices.”<sup>4</sup> Yet, the series of escalating reports—starting with the 120-minute Notification and following through with the 72-hour Initial Report and the 30-day Final Report<sup>5</sup>—is ill suited to this task. The 120-minute Notification appears best designed for those rare occasions involving a terrorist attack or natural disaster, while the 30-day Final Report seems more appropriate for examining trends and recommending best practices.<sup>6</sup> The 72-hour Initial Report seems to serve no real purpose at all.

The aim of the Biennial Review is to repeal or modify any regulations issued under the Act and applied to the operations or activities of any provider of telecommunications service that are “no longer necessary in the public interest as a result of meaningful economic competition between providers of such service.”<sup>7</sup> The Biennial Review process thus presents an excellent opportunity to re-visit these rules to determine whether they are best suited in their present form to address the Commission’s two disparate interests in collecting data on network disruptions. This is especially true because the market is working well to regulate the overall quality and reliability of networks. But it is also true that, given the Commission’s articulated aims, the rules have turned out to be a ham-handed way of getting the Commission the data it legitimately asserts it needs to fulfill its statutory duties.

*First*, while the Commission has a right to be apprised of critical network outages, the Commission can choose to employ regulatory mechanisms that are more focused. To address the Commission’s concerns arising from outages caused by terrorist activities or by natural disasters, the Commission could retain some form of the 120-minute Notification. This would

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<sup>4</sup> *Outage R&O*, ¶¶ 11-14.

<sup>5</sup> 47 C.F.R. § 4.9.

<sup>6</sup> The 120-minute Notification makes sense when notification of an outage is urgent and the Commission may be able to provide assistance to federal and state agencies, such as in the case of terrorist activities and natural disasters. Some form of the 30-day Final Report would appear more appropriate to help the Commission develop best practices and see trends in critical network outages. When urgency is not a factor, the network provider should be allowed to focus on addressing the outage and should be given time to deliberate and provide an informed report.

<sup>7</sup> 47 U.S.C. § 161.

provide the Commission the sort of information needed to address this sort of crisis—whether it involved meeting and advising the Department of Homeland Security or helping carriers get access to alternative communications facilities. Naturally, the Commission would need to develop a more straight-forward criterion for “critical outages” that rise to the level of federal concern.

When, however, the Commission is seeking information to promote “best practices” within the industry, the Commission can either retain a 30-day post-outage Final Report mechanism or rely on established forums and venues. AT&T and many other providers already voluntarily participate in public-private partnerships to share information and to promulgate best practices—such as the Communications Security, Reliability, and Interoperability Council (CSRIC), which is the body created to provide recommendations to the Commission to ensure “optimal security and reliability of communications systems,”<sup>8</sup> and the Network Coordinating Center (NCC).<sup>9</sup> AT&T does so, in large part, because it is in our competitive self-interest to ensure we develop and implement procedures and practices that make our networks as reliable as they can realistically be. In addition to some version of the Final Report or reliance on these industry forums, the Commission can itself periodically invite providers in to discuss the overall reliability and quality of their networks, if the Commission believed that such meetings would help it perform its duties. In short, an elaborate and often confusing data collection mechanism is not the only way for the Commission to meet its legitimate objectives.

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<sup>8</sup> See <http://www.fcc.gov/pshs/advisory/csric/>. Presumably the NORS reporting is used in the CSRIC annual review with the Commission. Because the Commission cannot share any comparative data with the industry members of CSRIC, the government’s contribution is of little real value. Industry members rely on their own more in-depth analysis to generate useful information.

<sup>9</sup> AT&T, along with 51 other members of private industry, already works with the Department of Homeland Security through the Network Coordinating Center (NCC) on network outage events on an around-the-clock basis, 365 days a year, as well as providing so-called “all hazard” event coordination in the event of a catastrophic incident (*e.g.*, hurricane, earthquake). In light of this pre-existing information sharing process with the NCC, it is hard to see what added benefits are derived from the additional burden of alerting the Commission through the network disruption reporting scheme.

*Second*, now, as at the time of promulgation of the rules, there is no evidence of a market failure jeopardizing the quality and reliability of the nation's telecommunications infrastructure. Providers of all stripes have every incentive to maintain their networks and to ensure that they are of the highest quality and reliability. These highly competitive providers vie to distinguish themselves by vaunting the quality and reliability of their networks. Even if these highly competitive providers were not advertising the quality and reliability of their networks, which they are, there would still be anecdotal testimony among their customers and potential customers, as well as media coverage of outage events, bringing market forces to bear on this matter. And the mere fact that all networks undergo occasional outages does not mean either that the market is not working to maintain them or that regulatory fiat would measurably improve them. In the six years that the mandatory reporting rules have been in effect, there has been no evidence that either compliance with the rules or any Commission's actions on the data provided under them has markedly improved overall network quality or reliability.

*Third*, whereas any alleged benefits to the quality and reliability of providers' networks has been non-existent, the costs to providers have been real. As predicted by some commenters, the rules adopted by the Commission in its 2004 *Outage R&O* have dramatically increased the number of reportable incidents.<sup>10</sup> In 2004, the Commission opined that, "in the usual case, the only burden associated with the reporting requirements will be the time required to complete the Notification, and the Initial and Final Reports."<sup>11</sup> The Commission estimated that the total time for a reporting entity to complete these reports "would be significantly less than 5 hours."<sup>12</sup> And that the total number of annual reports would only climb from around 126 outage reports in 2003 to a number "substantially less than 1,000."<sup>13</sup>

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<sup>10</sup> See, for example, Comments of SBC Communications Inc., ET Docket No. 04-35, p. 2 (May 25, 2004).

<sup>11</sup> *Outage R&O*, 19 FCC Rcd at App. D, ¶ 28.

<sup>12</sup> *Id.*, at 16913 ¶ 168 ("(the Notification + the Initial Report + Final Report: 15 minutes + 45 minutes + 2 hours = 3 hours)").

<sup>13</sup> *Id.*

Despite Commission assurances that its expanded reporting requirements would be minimally burdensome, just the opposite has occurred. Besides actually “completing the reports,” AT&T has had to spend considerable time determining whether an event met the threshold criteria for reporting an outage, justifying or explaining that determination both inside the company and to the Commission, and defending its determination—as well as the timeliness of the reports—to the Commission.<sup>14</sup> Just looking at the incident management team within AT&T’s Global Network Operation Center (GNOC), AT&T estimates that it spends on a minimum an estimated 12 hours per NORS reportable outage. This is easily more than double the Commission’s estimate that the paperwork burden “would be significantly less than 5 hours.”<sup>15</sup> And this estimate does not include time spent by AT&T’s other employee teams and vendors or upper management in the same post-outage analysis. In short, the Commission cannot point to or substantiate any tangible improvement in the quality or reliability of the providers’ networks as a result of the adoption of these Part 4 rules, while providers, like AT&T, can easily document real costs they incur without any meaningful return.

*Fourth*, the data derived from the present set of network outage rules is of dubious value. Providers, especially wireless carriers, are reporting so-called outages that have no real impact on their customers and thereby unintentionally presenting a misleading picture of what is actually taking place within the network. It is not only that providers often have redundant or

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<sup>14</sup> As noted in previous comments in another proceeding, rather than producing any purported network reliability benefits, the reporting obligations have been the source of industry confusion and aggressive enforcement action by the Commission. In fact, since 2007, the Commission has collected over \$2,000,000 from reporting entities for alleged infractions of these rules. *See, Verizon Consent Decree*, 22 FCC Rcd 13356 (2007); *T-Mobile Consent Decree*, 23 FCC Rcd 5092 (2008); *Windstream Consent Decree*, 24 FCC Rcd 5458 (2009); *Bluegrass Consent Decree*, 25 FCC Rcd 1301 (2010); *Centennial Consent Decree*, 25 FCC Rcd 1309 (2010); *XO Communications, LLC Consent Decree*, DA 10-2303, File No. EB-09-SE-246 (rel. Dec. 10, 2010). This is an odd result for a new mandatory process that was intended “to streamline compliance with the reporting requirements through electronic filing with a ‘fill in the blank’ template and by simplifying the application of that rule.” *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, Notice of Proposed Rulemaking*, 19 FCC Rcd 3373 ¶ 1 (2004).

<sup>15</sup> *See* footnote 6 *supra*.

back-up facilities to address outages, it is also true in the case of wireless networks that these networks are themselves so dynamic and flexible that reporting on certain so-called outages is essentially meaningless in many cases. If the goal of these regulations is to apprise the Commission of critical outages and to provide useful information about them, then these rules fall woefully short of the mark.

In sum then, the Commission should use the 2010 Biennial Review process to revisit these rules and to develop a more focused data-collection mechanism geared to addressing the Commission's legitimate regulatory goals. Given the burdens these rules impose, the Commission should repeal them in favor of an alternative and less costly system that would still allow the Commission to acquire the data needed to fulfill its duties under the Act.

**B. AT A MINIMUM, THE COMMISSION SHOULD MODIFY SECTION 4.9(E) OF THE "DISRUPTIONS TO COMMUNICATIONS" PART 4 RULES TO CLARIFY THE COMMISSION'S INTENT AND TO EASE THE BURDEN ON REPORTING ENTITIES.**

Absent a repeal and wholesale revision of these network disruption regulations, the Commission should consider modifications that would both clarify the Commission's intent and reduce the burden on reporting entities.

***1. Rule 4.9(e): Timing of Initial Report***

In Commission Rule 4.9(e), the Commission requires reporting entities to submit electronically an Initial Communications Outage Report to the Commission no later than 72 hours after discovering the outage.<sup>16</sup> While this requirement does not necessarily obligate reporting entities to file such reports in the middle of the night or on weekends and on holidays, it does force them to choose between doing that or having less time—in some cases significantly less time—to prepare the Initial Report. A more common sense approach would allow reporting entities to file the Initial Report no later than the third business day following the discovery of a

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<sup>16</sup> 47 C.F.R. § 4.9(e).

reportable outage. The rule could be re-written thus: “Not later than ~~72 hours~~ three business days after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission.”<sup>17</sup> This modification would ease the burden on reporting entities, not unduly burden the Commission, and be more in line with the Commission’s general policy regarding the timing of filings.<sup>18</sup>

## **2. *Withdrawing the 120-Minute Notification.***

In the *Outage R&O*, the Commission agreed with the BellSouth suggestion that providers be allowed to withdraw the 120-minute or two-hour notification reports “without requiring a formal retraction letter.”<sup>19</sup> The Commission plainly saw the reasonableness of allowing reporting entities to withdraw such notifications easily, quickly, and cheaply in situations where withdrawal is warranted (*e.g.*, where a notification was filed under the mistaken assumption that the outage was required to be reported). The current practice, however, is different. Contrary to the patent intent of the *Outage R&O*, the Bureau only allows withdrawal of the notification after the provider has filed a 72-hour Initial Report. To simplify the process and to reduce costs associated with this data collection procedure, the Bureau should return to the original intent of the *Outage R&O* and allow providers to be able to withdraw notifications and/or initial reports in legitimate circumstances without requiring a formal retraction letter or, as is the present procedure, filing a separate preceding report.<sup>20</sup>

## **II. CONCLUSION**

The Commission should take the opportunity afforded by the Biennial Review process to repeal and undertake a wholesale revision of these Part 4 Disruption to Communications rules.

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<sup>17</sup> For example, in the case of an outage discovered on January 2, the Initial Report would be due anytime on January 5, unless January 5 was not a “business day,” in which case it would be due on the next business day.

<sup>18</sup> *See* 47 C.F.R. § 1.4

<sup>19</sup> *Outage R&O*, 19 FCC Rcd at 16906 ¶ 153.

<sup>20</sup> *Id.*, 19 FCC Rcd at 16908 ¶ 156.

Absent such a revision, however, AT&T urges the Commission to quickly adopt modifications that would greatly ease the burdens on the reporting providers, such as changing the timing of the 72-hour Initial Report and allowing providers to withdraw the 120-minute Notification without filing any formal retraction letter and/or filing additional reports.

Respectfully submitted,

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