

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The Proposed Extension of Part 4 of the)	PS Docket No. 11-82
Commission's Rules Regarding Outage)	
Reporting to Interconnected Voice Over Internet)	
Protocol Service Providers and Broadband)	
Internet Service Providers)	
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REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

I. INTRODUCTION AND SUMMARY

CTIA – The Wireless Association® (“CTIA”)¹ hereby submits these reply comments in response to the Commission’s Notice of Proposed Rulemaking (“*NPRM*”) in the above-captioned proceeding. Opening comments in this proceeding reflect the policy and legal concerns previously raised by CTIA and strongly caution the Commission against extending mandatory Part 4 outage reporting requirements to interconnected Voice over Internet Protocol (“VoIP”) service providers and broadband Internet Service Providers (“ISPs”) as currently proposed in the *NPRM*. First, it is not at all clear from the record that mandatory network outage reporting is even necessary. Information on broadband reliability is already collected and shared between industry participants and government entities. Moreover, considering the unique characteristics of IP networks, which are designed to withstand failures and minimize the effect

¹ CTIA is the international association of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

of network disruptions on end users, any data collected under the proposed rules would be impractical and of little use to the Commission or state agencies. Accordingly, imposing mandatory outage requirements on VoIP and Internet service providers is inconsistent with President Obama's recent Executive Order calling on federal agencies to "reassess and streamline regulations."

Second, CTIA opposes the proposals of a small number of commenters that would unfairly burden VoIP providers and broadband ISPs, increase costs for both providers and end users with little benefit, and encourage over-reporting of information that likely will only hinder the development of best practices. Third, the proposed quality of service metrics in the *NPRM* do not necessarily indicate an actual loss of service and risk flooding Commission staff with irrelevant data. The record strongly reflects that the Commission should focus instead on collaborating closely with the industry to develop best practices for VoIP and broadband ISP disruptions, to the extent that additional reporting data is necessary. Fourth, it is not clear that the Commission has authority to implement the rules proposed in the *NPRM*. Finally, mandatory outage requirements on VoIP and Internet service providers are inconsistent with President Obama's recent Executive Order calling on federal agencies to "reassess and streamline regulations."² CTIA respectfully reiterates its recommendation that the Commission engage in meaningful efforts to work with industry and other government stakeholders to develop best practices for reporting wireless VoIP and ISP disruptions.

² See Presidential Memorandum: Regulation and Independent Regulatory Agencies (July 11, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/07/11/memorandum-regulation-and-independent-regulatory-agencies>. See also CTIA Comments at 5; MetroPCS Comments at 2.

II. THE INITIAL RECORD REVEALS A STRONG CONSENSUS IN SUPPORT OF CTIA’S KEY POSITIONS

Commenters join CTIA in cautioning the Commission against extending the outage reporting requirements in Part 4 of its rules to interconnected VoIP service providers and broadband ISPs. First, the *NPRM*’s proposed outage rules simply do not reflect current technological or market realities that obviate the need for mandatory reporting requirements. To the extent that additional data is required, the Commission should engage in meaningful efforts to work with the Network Reliability Steering Committee (“NRSC”) to launch an effort to develop best practices for reporting wireless VoIP and ISP disruptions. Most importantly, commenters strongly agree that the Commission should not impose reporting metrics that would measure *quality* of service, as opposed to *actual loss* of service.

A. Mandatory Reporting Requirements are Unnecessary and Should Not be Imposed on VoIP Service Providers and Broadband ISPs

1. The Initial Record Demonstrates that Relevant and Meaningful Information on Broadband Reliability is Already Collected and Shared

Initial comments submitted in response to the Commission’s *NPRM* document substantial efforts by the industry to collect and share relevant and meaningful information on broadband reliability.³ As CTIA explained previously, today’s highly competitive communications marketplace leaves little need for additional layers of government regulation.⁴ MetroPCS

³ See, e.g., Comments of T-Mobile USA, PS Docket No. 11-82, at 4 (filed Aug. 8, 2011) (“TMUS Comments”); Comments of Verizon and Verizon Wireless, PS Docket No. 11-82, at 6 (filed Aug. 8, 2011) (“Verizon Comments”); Comments of The National Cable & Telecommunications Association, PS Docket No. 11-82, at 12 (filed Aug. 8, 2011) (“NCTA Comments”); Comments of Time Warner Cable Inc., PS Docket No. 11-82, at 3-4 (filed Aug. 8, 2011) (“TWC Comments”); Comments of United States Telecom Association, PS Docket No. 11-82, at 4 (filed Aug. 8, 2011) (“US Telecom Comments”); Comments of Voice on the Net Coalition, PS Docket No. 11-82, at 6 (filed Aug. 8, 2011) (“VON Coalition Comments”).

⁴ Comments of CTIA – The Wireless Association, PS Docket No. 11-82, at 6 (filed Aug. 8, 2011) (“CTIA Comments”).

clarifies that “with the vast array of competitive offerings in the marketplace, providers simply must provide outstanding service – which requires them to adequately maintain their networks to avoid lengthy service outages – to remain relevant to consumers.”⁵ Accordingly, service providers construct their networks “knowing that it [is] important that the network continue to function despite the existence of disasters or other events that could potentially disrupt service.”⁶ Indeed, there is no incentive that the Commission could provide that would be greater than a service provider’s existing incentive to maintain consumer confidence in its networks.

To further ensure the resiliency of their networks, service providers work closely with federal agencies and governmental bodies that monitor broadband networks. Commenters point out that the National Coordinating Center for Telecommunications (“NCC”) already facilitates the exchange among government and industry participants regarding vulnerability, threat, intrusion, and anomaly information affecting the telecommunications structure, including broadband networks.⁷ Verizon explains that it is engaged with the Communications Sector Coordinating Council (“CSCC”), which works to ensure that the communications networks and systems are secure, resilient, and rapidly restored after a natural or manmade disaster.⁸ Many other industry members also work with both the CSCC and the NCC. In light of these already-established government resources devoted to understanding the availability of broadband

⁵ Comments of MetroPCS Communications, Inc., PS Docket No. 11-82, at 6 (filed Aug. 8, 2011) (“MetroPCS Comments”).

⁶ Verizon Comments at 3.

⁷ *Id.* at 6.

⁸ *Id.* at 7.

networks, CTIA agrees with those commenters that encourage the Commission to work with these government bodies to obtain information directly from them.⁹

2. The Unique Characteristics of Broadband Networks Make the NPRM's Efforts Unnecessary

Commenters overwhelmingly recognize that the Commission's rigid Part 4 network outage reporting rules are not an appropriate model for an IP environment.¹⁰ As an initial matter, the *NPRM* fails to recognize that unlike traditional circuit-switched telephony, next generation wireless standards that rely on packet-switching are designed to be resilient to disruptions. As MetroPCS explains, the Internet "was specifically designed to reroute traffic in the event that portions of the network became disabled, and it is designed with redundancy as a top priority."¹¹ As such, the outage of a broadband facility rarely has any effect on the availability of the network to end users.

Because Internet traffic is not dependent on a single transmission path, commenters emphasize that service providers cannot calculate or determine service outages in the same manner as circuit-switched networking.¹² The "self-healing" nature of the Internet creates difficulties in attempting to calculate or determine service outages. Moreover, given that an outage of a facility for broadband Internet access may, in fact, have little or no effect on the ability of the network to send and receive traffic, it is both burdensome and unnecessary to spend

⁹ See, e.g., NCTA Comments; TWC Comments; US Telecom Comments; VON Coalition Comments; TMUS Comments; Verizon Comments.

¹⁰ See, e.g., Comments of XO Communications, LLC, PS Docket No. 11-82, at 3 (filed Aug. 8, 2011) ("XO Comments"); Comments of Vonage Holdings Corp., PS Docket No. 11-82, at 6 (filed Aug. 8, 2011) ("Vonage Comments"); Comments of Sprint Nextel Corporation, PS Docket No. 11-82, at 5 (filed Aug. 8, 2011); Verizon Comments at 10; TMUS Comments at 3; US Telecom Comments at 6; MetroPCS Comments at 9.

¹¹ MetroPCS Comments at 9.

¹² *Id.*

critical time and resources to prepare reports for broadband “outages” that, in reality, result in no loss of connectivity. As such, mandatory outage requirements on VoIP and Internet service providers are inconsistent with President Obama’s recent Executive Order calling on federal agencies to “reassess and streamline regulations.”¹³

B. Commenters Overwhelmingly Agree that the Commission Should Rely on Industry-Based Standards and Efforts to Develop Reporting Requirements

To the extent that the Commission requires additional data on broadband reliability, CTIA again recommends that the Commission engage in meaningful efforts to work with the NRSC to launch an effort to develop best practices for reporting wireless VoIP and ISP disruptions.¹⁴ Opening comments in this proceeding reveal strong support for voluntary, collaborative efforts to develop an appropriate reporting program.¹⁵ Industry stakeholders can collaborate to establish appropriate thresholds for reporting and reasonable processes for conveying that information to the Commission. ATIS particularly notes the success and effectiveness of voluntary industry collaboration. Indeed, such efforts “are more effective than regulatory mandates in fostering cooperation, promoting innovation and accommodating the flexibility required to meet new and evolving challenges.”¹⁶ If the Commission moves forward

¹³ See Presidential Memorandum: Regulation and Independent Regulatory Agencies (July 11, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/07/11/memorandum-regulation-and-independent-regulatory-agencies>. See also CTIA Comments at 5; MetroPCS Comments at 2.

¹⁴ CTIA Comments at 7.

¹⁵ See, e.g., Comments of The Alliance for Telecommunications Industry Solutions, PS Docket No. 11-82, at 3 (filed Aug. 8, 2011) (“ATIS Comments”); Comments of L3 Communications, LLC, PS Docket No. 11-82, at 4 (filed Aug. 8, 2011) (“L3 Communications Comments”); Comments of Telecommunications Industry Association, PS Docket No. 11-82, at 5 (filed Aug. 8, 2011) (“TIA Comments”); Comments of CenturyLink, PS Docket No. 11-82, at 20 (filed Aug. 8, 2011) (“CenturyLink Comments”); Comments of NCTA at 12; TIA; TWC Comments at 1; Verizon Comments at 6; TMUS Comments at 5.

¹⁶ ATIS Comments at 3.

with its proposed, mandatory rules, it is likely to “stifle cooperation by creating an environment in which industry participants must focus limited resources inwardly toward compliance with reporting requirements, rather than on the proactive development of Best Practices, standards, and guidelines.”¹⁷

C. The Initial Record and the Commission’s Recent Workshop on Proposed Outage Reporting Confirm that the Quality of Service Metrics Proposed by the Commission to Measure Outages are Flawed

The proposed metrics in the Commission’s *NPRM* addressing packet loss, round-trip latency, and jitter are unsupported and largely unworkable. Commenters agree that metrics to measure outages should be based on *actual loss* of service, not *quality* of service.¹⁸ Instead, as T-Mobile observes, the *NPRM*’s proposed metrics would “effectively convert [outage] reports into ‘performance’ reports, as opposed to actual loss of service reports.”¹⁹

In the *NPRM*, the Commission asks whether there should be a threshold based on lost or delayed packets and proposes metrics such as packet loss, round-trip latency, and jitter.²⁰ As CTIA argued in its initial comments, these metrics more accurately relate to quality of service metrics – not availability of service.²¹ Moreover, the *NPRM* “provides no basis for the specific

¹⁷ *Id.*

¹⁸ *See, e.g.*, Comments of Wireless Internet Service Providers Association, PS Docket No. 11-82, at 4 (filed Aug. 8, 2011) (“WISPA Comments”); Comments of AT&T Inc., PS Docket No. 11-82, at 23 (filed Aug. 8, 2011) (“AT&T Comments”); Comments of American Cable Association, PS Docket No. 11-82, at 8 (filed Aug. 8, 2011) (“ACA Comments”); Comments of Comcast Corporation, PS Docket No. 11-82, at 4 (filed Aug. 8, 2011) (“Comcast Comments”); ATIS Comments at 11; MetroPCS Comments at 12; NCTA Comments at 7; TWC Comments at 7; US Telecom Comments at 6; CenturyLink Comments at 6; TMUS Comments at 10; Verizon Comments at 20; Vonage Comments at 7.

¹⁹ TMUS Comments at 10.

²⁰ *NPRM* at ¶ 27.

²¹ CTIA Comments 9.

values proposed for the reporting triggers.”²² After all, any attempt to define a level of performance degradation that would trigger a reportable event would be arbitrary.

The *NPRM*’s proposed standards for packet loss, latency, and jitter simply would not constitute the type of outage that should be of interest to the Commission. Vonage explains that “it has designed its network to accommodate packet loss, latency, and jitter above each of [the proposed] thresholds without significant degradation in call quality.”²³ By imposing these kinds of quality of service metrics, the proposed rules only serve to assess a higher standard on VoIP service providers and ISPs than on wireline and wireless service providers today. This in turn only will increase the costs of wireless broadband services, making them significantly more expensive, with little countervailing benefit. Of course, consumers will ultimately bear such increased costs.

Moreover, commenters largely agree that attempting to base outage reporting on quality of service metrics will result in nearly constant reporting.²⁴ The unique characteristics of wireless broadband networks, proposed threshold sets, short timeframes for assessing outage circumstances for initial filings, and high costs of Commission enforcement for failure to file or inaccurate filings will result in significant over-reporting at tremendous cost. The initial record demonstrates that service providers will likely be caught up in reporting small events that may in fact result in no loss of broadband connectivity for the end user rather than directing their attention to restoration – defeating the very purpose behind the proposed rules.²⁵

²² TMUS Comments at 11.

²³ Vonage Comments at 6.

²⁴ *See, e.g.*, Verizon Comments at 14; CTIA Comments at 10; Vonage Comments at 8.

²⁵ Verizon Comments at 15.

Most importantly, representatives of state public service commissions noted during the Commission's September 8, 2011 Workshop on Proposed Outage Reporting that these kinds of performance metrics are simply not meaningful to them and are less important than actual loss of service metrics.²⁶ Considering the shortcomings of the *NPRM*'s proposals as described above and the fact that the very agencies that would use these reports agree that quality of service metrics would not provide useful data, the Commission should not adopt a regulatory scheme for VoIP service or broadband Internet service that would treat perceived or actual performance degradation as a reportable outage.

III. THE LIMITED RECORD SUPPORT FOR THE NPRM PROPOSALS IS INSUFFICIENT TO ALLOW THE PROMULGATION OF NEW REGULATION

The limited comments in support of the proposed extension of mandatory reporting requirements to interconnected VoIP and broadband ISPs are deeply flawed.²⁷ To be certain, these comments fail to address the significant shortcomings of the *NPRM*'s proposals highlighted above in Section II. More importantly, these commenters' attempts to prop up the Commission's legal authority to adopt the *NPRM*'s proposals are unavailing.

²⁶ FCC Workshop/Webinar on Proposed Extension of Outage Reporting to Interconnected VoIP and Broadband ISPs and Network Reliability and Continuity, Webcast, at 129:20 (September 8, 2011), *available at* <http://www.fcc.gov/events/workshopwebinar-proposed-extension-outage-reporting-interconnected-voip-and-broadband-isps-an> (Panelist from New York Department of Public Service explaining that "degradation metrics," including jitter, are less important to regulators given that providers measure these performance criteria on their own).

²⁷ *See, e.g.*, Comments of Michigan Public Service Commission, PS Docket No. 11-82 (filed Aug. 8, 2011) ("Michigan PSC Comments"); Comments of Massachusetts Department of Telecommunications and Cable, PS Docket No. 11-82 (filed Aug. 8, 2011) ("MDTC Comments"); Comments of The National Association of State Utility Consumer Advocates and The New Jersey Division of Rate Counsel, PS Docket No. 11-82 (filed Aug. 8, 2011) ("Consumer Advocates Comments"); Comments of New York State Public Service Commission, PS Docket No. 11-82 (filed Aug. 8, 2011) ("NY PSC Comments").

MDTC argues that collecting outage information is “‘reasonably ancillary’ to ensuring that the providers are able to satisfy their statutory 9-1-1 obligations.”²⁸ As CTIA and other parties demonstrated, the Commission cannot stretch its express or ancillary authority to extend the Part 4 rules to VoIP providers and broadband ISPs.²⁹ Verizon states that “the Commission is a creature of statute and thus can only exercise authority delegated to it by statute.”³⁰ AT&T explains that none of the cited provisions in the *NPRM*, which “do not contemplate giving the Commission the authority to impose reporting obligations,” are a basis for jurisdiction in this instance.³¹ Moreover, “the fact that networks are on occasion temporarily disrupted is no grounds for asserting that alleged disruptions are preventing VoIP Providers from meeting their statutory obligation to offer 911 Service.”³² Indeed, if these provisions could be stretched to justify extending the Part 4 rules to VoIP providers and broadband ISPs, then “the Commission’s authority would effectively be unbridled.”³³

IV. CONCLUSION

Commenters strongly agree that the Commission should not extend the outage reporting requirements in Part 4 of its rules to interconnected VoIP service providers and broadband ISPs. Instead, the Commission should initiate an effort with the NRSC on broadband outage reporting. An effort with broadband wireless providers and the NRSC is the logical first step for

²⁸ MDTC Comments at 6.

²⁹ *See, e.g.*, CTIA Comments at 12; MetroPCS Comments at 13; TIA Comments at 2; AT&T Comments at 1; Verizon Comments at 25-32.

³⁰ Verizon Comments at 24.

³¹ AT&T Comments at v.

³² *Id.* at iv.

³³ *Id.*

