

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

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In the Matter of

New Part 4 of the Commission's Rules  
Concerning Disruptions to Communications

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ET Docket No. 04-35

**REPLY COMMENTS OF AT&T CORP.**

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**REPLY COMMENTS OF AT&T CORP.**

AT&T Corp. ("AT&T") hereby submits these reply comments in the above-entitled proceeding regarding the extension of disruption reporting requirements to communications providers that are not wireline carriers. In these reply comments, AT&T focuses on: (1) the importance of adopting the industry-generated reporting of the Network Reliability Steering Committee/Industry-Led Outage Reporting Initiative ("NRSC/ILORI"); (2) the importance of confidential treatment of the outage reports, and the need to preserve such confidentiality through submission of reports to the Department of Homeland Security ("DHS"); (3) the need to avoid duplicative federal and state reporting requirements; and (4) the need to refrain from imposing burdensome reporting requirements on VoIP providers.

**INTRODUCTION AND SUMMARY**

In its comments, AT&T demonstrated that the Commission should adopt outage reporting requirements that promote industry cooperation, which can best be accomplished through *voluntary* reporting by the entire industry. Moreover, AT&T

established that through participation in the Network Reliability and Interoperability Council (“NRIC”) and the NRSC/ILORI, the industry has demonstrated cooperation in support of the voluntary reporting initiative (including the industry developed and adopted mechanized template), continued evaluation of the efficacy of existing Best Practices, and support for the development of new Best Practices, where appropriate. AT&T also stressed the need to ensure that all information provided in the outage reports is protected from public disclosure, and that the preferable method of doing so is to make all outage reporting voluntary in order to qualify for the protections afforded through the DHS’ Protection of Critical Infrastructure Information (PCII) Program.

The comments confirm the soundness of AT&T’s position. First, the comments demonstrate that the best way to achieve the Commission’s goal while imposing the least burden on network operators is through adoption of the NRSC/ILORI proposals, thresholds, and processes. *See* Part I. The comments also overwhelmingly agree that national security concerns require that all outage reports be protected from public disclosure in order to avoid providing a “roadmap” to the nation’s critical communications infrastructure. AT&T therefore urges the Commission to protect sensitive outage reports from public disclosure by making such reports voluntary, thus permitting PCII protection. Further, the Commission should adopt the DHS’ proposal that such reports be routed through NCC Telecom-ISAC/PCII first, rather than being filed directly with the Commission. *See* Part II. Several commenters acknowledge the service provider burden imposed by duplicative and inconsistent federal and state reporting obligations. AT&T submits that the Commission should alleviate the burden of duplicative and inconsistent state and federal reporting regimes by sharing federally-filed

outage reports with state agencies on a confidential and “as-needed” basis that preserves their exemption from discovery under FOIA. *See* Part III. Finally, the Commission should not adopt proposals to impose outage reporting requirements on VoIP providers. *See* Part IV.

**I. THE COMMISSION SHOULD SUPPORT THE VOLUNTARY NRSC/ILORI PROGRAM AND CONSIDER THE COSTS THAT WOULD BE BORNE BY SERVICE PROVIDERS TO COMPLY WITH NEW OUTAGE REPORTING REQUIREMENTS.**

AT&T agrees with ATIS that “the real benefit of the existing reporting requirement” is “the cooperative analysis of the data and the studies performed by the industry in the NRSC.” ATIS Comments, p. 7. AT&T therefore urges the Commission to continue the voluntary development of Best Practices and the voluntary Industry-Led Initiative and not to impose an unnecessary regulatory mandate. Compliance with such a mandatory reporting scheme would prove to be an additional cost further burdening the telecommunications industry and, in the end, would not achieve the Commission’s stated goal. As demonstrated below, service providers, including AT&T, overwhelmingly support the view that the reporting mechanism should remain voluntary.

**A. Imposition of Mandatory Reporting Requirements Is Unnecessary.**

As demonstrated below, the industry commenters overwhelmingly support the industry-developed ILORI processes and proposals, because “coordinated industry efforts, such as ILORI, are preferable to regulatory mandates.” Lucent Comments, p. 2. First, there is no evidence that the existing reporting has failed to provide required information about significant outages. BellSouth thus states (p. 7) that it is “not aware of, and the Commission has not documented, any instance in which the Commission was

unaware of a major event and thus unable to satisfy an information request from a stakeholder.” Other commenters support the AT&T and ATIS position that imposing mandatory outage reporting requirements is unnecessary. Lucent, for example, notes (p. 2) that “[i]f given the appropriate opportunity, the widespread adoption of ILORI will lead to the gathering of more comprehensive, accurate, and targeted information, and will result in superior analysis of this information.” Qwest adds that “the current voluntary regime is already effective while simultaneously being more comprehensive than the proposed mandatory reporting proposals contained in the NPRM,” and “[m]ost major communications providers, representing services ranging from wireline, dial-up, cable, DSL, satellite and wireless voice to wireless Internet service, are participating in this effort.” Qwest Comments, pp.2, 3.<sup>1</sup>

As SBC succinctly puts it, “industry groups, such as [the NRSC, NRIC V and VI, and ILORI], through the cooperative efforts of competing carriers, have been crucial in shaping industry-wide Best Practices that contribute to the highly reliable wireline networks in place today.” SBC Comments, p. 20. Thus, “[t]he vast majority of Best Practices were derived either from insight gained through individual companies sharing their experiences or, since September 11, 2001, from providers proactively addressing communications infrastructure vulnerabilities. These industry-wide Best Practices were

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<sup>1</sup> See also Nextel Comments, p. 2 (“voluntary reporting of network outages can effectively ensure high quality service, and the Commission should continue to rely on carriers’ voluntary outage reports rather than impose new mandates on the industry”); ATIS Comments, p. 10 (“ATIS urges the Commission not to expand the outage reporting requirements, but instead to allow the industry to continue through ILORI to develop effective and equitable reporting mechanisms for communications providers . . .”).

obtainable only through voluntary, collaborative efforts between competing carriers and competing manufacturers.” *Id.*, p. 21.

For these reasons, the Commission should refrain from implementing its proposed mandatory outage reporting requirements. Instead, the Commission should support the voluntary NRSC/ILORI process, where industry subject matter experts are the key contributors and participate in the ILORI process to best achieve the mutual goals of both industry and government.

**B. Imposition of Mandatory Reporting Requirements Would Impose Significant Cost Burdens on Providers.**

Many of the NPRM’s proposed requirements would be particularly burdensome in terms of implementation and undue additional cost, requiring system development and the dedication of additional work hours to gather, verify, and report the required information to the FCC in the prescribed timeframe. Imposing such additional requirements would unnecessarily increase carriers’ burdens with little or no concomitant benefits to the public. Moreover, adoption of requests, such as those by NYC/NLC/NATOA (p. 13) and the Kansas Corporation Commission (p. 3), that the FCC consider lowering certain reporting thresholds beyond even the level suggested by the NPRM – and thereby further increase the reporting burden – would surely exacerbate this problem.

The majority of the comments highlight the additional burden created by, and the inappropriateness of some of, the Commission’s proposed reporting requirements. As SBC observes, “many of the proposed changes to those requirements are highly problematic. First, they would dramatically increase the number of reportable incidents,

leading to a commensurate increase in industry costs. Second, they incorporate unworkable standards – standards that not only fail to capture the true impact of an outage on customers, but actually present a misleading picture of that impact. . . . Third, they are administratively infeasible.” SBC Comments, p. 2.

The proposed requirements would increase carriers’ reporting burdens significantly. BellSouth estimates that, under the Commission’s proposed rules, “the number of outage reports filed annually by BellSouth could rise by more than 1000 percent, even though there was no change in network performance,” and that “the complexity of the proposed rules would raise costs further as more time and resources are devoted to the complex calculations developed by the Commission.” BellSouth Comments, pp. 2-3 (emphasis in original). Verizon similarly reports (p. 2) that the proposed reporting requirements would not use “the carriers’ existing reporting systems,” and “are unworkable and . . . not closely tailored to getting the Commission the information it needs to target the most significant network problems.” For example, adoption of the ISUP message metric/threshold would require AT&T to make large systems development and deployment investments to monitor ISUP messages, yet would not provide any more information on the impact of an outage on AT&T’s customers than the blocked call threshold.

Verizon also concludes that “[b]y sharply increasing the reporting requirements, the Commission’s proposal would expand the number of reportable outages from the present 19-25 to 500 or more annually for Verizon alone.” *Id.* Verizon further estimates that it would need at least 5 additional administrative employees “for round-the-clock coverage to receive the needed data from the repair personnel and prepare and file the



initial outage reports.” *Id.*, p. 7. The first priority of AT&T or any service provider is to restore critical service to the community, not to gather data to file an outage report.

**C. The Commission Should Adopt the Industry’s Performance Measurements for Outages Affecting Wireline Communications.**

The proposed mandatory reporting requirements would also impose reporting requirements that are inappropriate and simply unworkable. In its comments, AT&T pointed out (p. 10) that determining the numbers of “end users” would be burdensome. The comments establish that it may also be impossible to determine the proper threshold using assigned telephone numbers because there is no way of determining the number of lines a customer is using. For example, Verizon notes (p. 9) that “many customers subscribe to blocks of numbers that they activate only as needed, such as when the number of stations behind a PBX is increased, or that they retain to prevent other customers from using certain telephone numbers.” It therefore “has no way of knowing how many numbers the customer is actually using.” *Id.*, pp. 9-10. WilTel similarly observes (pp. 7-8) that IXC’s who provide services to resellers face a similar technical hurdle because they will not know the number of assigned telephone numbers unless a reseller shares this information. USTA likewise “does not agree . . . with basing the impact of an outage on the number of assigned telephone numbers because LECs have no way of knowing how many numbers a customer is using. LECs can measure only the number of lines and trunks that they deliver to a customer’s premise. More specifically, the number of assigned numbers does not correlate with the number of customers or

access lines.” USTA Comments, p. 17.<sup>2</sup> In sum, the proposed reporting change simply cannot be implemented in its proposed format.

## **II. ALL OUTAGE REPORTS MUST BE PROTECTED FROM PUBLIC DISCLOSURE.**

The comments establish overwhelmingly that outage reports should not be made available to the public, because such disclosure would create grave risks to the Nation’s critical infrastructure security. Such risks far outweigh any benefit that might conceivably be attained through public disclosure of such critical communications infrastructure information. Indeed, the comments demonstrate that voluntary, confidential sharing of outage information – rather than mandated, public outage reports – has successfully lead to improved industry reliability. In its comments, AT&T proposed that all reporting, including current mandatory reporting requirements, should be made voluntary and should be routed through the DHS’ National Communications System (“NCS”), which in turn would provide reporting to the Commission. This process would enable qualification for Protection of Critical Infrastructure Information

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<sup>2</sup> See also ATIS Comments, p. 17 (“FCC’s proposed use of “assigned telephone numbers” is troublesome because “assigned numbers” has little correlation to the number of customers or customer lines in today’s environment”); BellSouth Comments, p. 7 (“the quantity of ‘assigned’ numbers held by a carrier has little correlation to the number of customers or customer lines”); Qwest Comments, p. 6 (“‘Assigned telephone numbers’ bear no correlation with end users”); SBC Comments, p. 4 (“The number of ‘assigned telephone numbers’ has little correlation to the number of customers or customer lines in use . . . .”); Sprint Comments, p. 10 (“Neither the LECs nor the IXC’s can determine such impact simply by referring to assigned telephone numbers”); Verizon Comments, p. 9 (Basing outage reports on the number of telephone numbers that are affected by an outage “would be an inherently unreliable measure of the impact of the outage”).

(PCII) protection and would ensure that information provided in the outage reports, which contain critical infrastructure information, would be protected from public disclosure. AT&T accordingly strongly endorses DHS' proposal that all outage reports be filed directly with the National Coordinating Center for Telecommunications-Information Sharing and Analysis Center ("NCC Telecom-ISAC"), rather than with the Commission, and that the Commission receive these reports through the NCC.

The industry commenters similarly recognize the threat to the nation's critical communications infrastructure posed by public access to outage reports. As BellSouth warns (p. 27):

National security is not protected by permitting the public to have access to sensitive information regarding network reliability and vulnerabilities of the communications infrastructure of the United States. . . . An open, public process not only discourages candid disclosures but also creates a security risk by providing a roadmap to sensitive failure locations and critical equipment in the nation's telecommunications network.

These warnings were echoed across the industry through the many telecommunication service provider comments including those of ILECS, CLECS, rural carriers, wireless providers, satellite providers and industry forums:

The proposed reporting requirements "could make communications networks more vulnerable by exposing sensitive critical infrastructure information to those who would misuse it." ATIS Comments at 8.

The Commission's proposal could create an "inadvertent compilation of a 'roadmap' of wireless network vulnerabilities for terrorists and others who wish to inflict damage to the nation's infrastructure . . . ." BloostonLaw Rural Carriers at 8.

"[T]he NPRM risks providing a roadmap for bad actors seeking to disable critical components of our information infrastructure by aggregating and making publicly available detailed information on communications network vulnerabilities." CTIA Comments at 5.

“Given that a terrorist attack can cripple these telecommunications services, it is not at all clear why the Commission would even consider exposing any vulnerabilities in the networks to the public.” Globalstar Comments at 6.

“It would seem contrary to the National interest to require public disclosure of any vulnerabilities of such [satellite] systems . . . .” Iridium Comments at 4.

“[T]errorists, hackers, or other miscreants could exploit sensitive network data to compromise or even bring down a telecommunications network. It is therefore essential that outage information be kept from public disclosure.” MCI Comments at 6.

“Specific information detailing the vulnerabilities of CMRS providers’ networks could be exploited by those who seek to undermine the country’s homeland security.” Nextel Comments at 4.

The requested information “could provide a roadmap to potential bad actors intent upon doing damage to the nation’s communications infrastructure.” Qwest Comments at 24.

“Outage reports may contain highly sensitive, critical infrastructure information. If that information falls into the wrong hands, it could be used as a basis for attacking our nation’s communications infrastructure.” SBC Comments at 2.

“[G]iven today’s realities, the public dissemination of information regarding the location, type and vulnerabilities of specific equipment, along with data regarding the potential number of users impacted and their location, would be a potential bonanza to those with ill intentions. Rather than enhancing network security, public access to mandatory reports would be a direct threat to homeland security.” Sprint Comments at 5.

“The compilation and centralization of information on network outages, together with root cause analyses and the location of failing elements, could provide a roadmap or ‘how to’ manual to those who would like to damage the nation’s critical telecommunications infrastructure.” T-Mobile Comments at 12.

“Public access to outage information could be misused or make communications networks vulnerable to attack.” USTA Comments at 25.

“Public dissemination of outage reporting data filed pursuant to the Commission’s reporting requirements could be misused by those seeking to attack our nation’s interests.” Verizon Comments at 22.

As the above comments indicate, the industry, as a whole, is concerned with public availability of critical communications infrastructure information contained in outage reports, and the Commission should eliminate all consideration of these reports being made publicly available.

More importantly, DHS, whose mission is to “lead the unified national effort to secure America” and to “prevent and deter terrorist attacks and protect against and respond to threats and hazards to the nation,”<sup>3</sup> cautions that permitting public access to outage reports would threaten the security of the United States. DHS similarly “strongly believes” that the Commission should abandon its current policy of making outage reporting data generally available and easily accessible to the public, and warns that “[t]he same outage data that can be so useful for the purpose to identify and remedy critical vulnerabilities and make the network infrastructure stronger can, in hostile hands, be used to exploit those vulnerabilities to undermine or attack networks.” DHS Comments, p. 3. DHS therefore “strongly urges” the Commission to have outage reports filed directly with the National Coordinating Center for Telecommunications-Information Sharing and Analysis Center (“NCC Telecom-ISAC”), rather than directly to the Commission. *Id.*, p. 10.

In addition, the NCC should explore means to share such information with state agencies on a confidential basis. DHS thus “specifically recommends that the Commission explore methods to make outage information available to State public utilities commissions (PUCs).” *Id.*, p. 8. “[S]haring the information with State

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<sup>3</sup> See DHS’ mission statement at [http://www.dhs.gov/dhspublic/theme\\_home1.jsp](http://www.dhs.gov/dhspublic/theme_home1.jsp).

authorities through such channels would also facilitate more effective safeguarding of this sensitive information against disclosure to those who might desire to use it for hostile purposes,” because much of the reported data “would likely constitute ‘homeland security information’ under Federal law.” *Id.* In this regard, industry has already developed and implemented an electronic filing method and database that may be transitioned to the NCC to manage and protect this critical information. As discussed below, AT&T disagrees with the proposal to extend QuEST Forum’s current extensive data collection system to include the Commission’s outage reporting database (QuEST Forum Comments, p. 3), as this would not be consistent with the DHS PCII Program.

AT&T endorses the DHS’ proposal that outage reports be routed through NCC Telecom-ISAC, rather than being filed directly with the Commission. If this proposal is not accepted, AT&T would strongly urge the Commission to ensure that sensitive reporting data be protected against public disclosure and that the data submission is afforded the utmost security protections. At minimum, if the Commission decides to have the outage reports filed directly with it, the Commission should: (1) ensure protection from inadvertent disclosure or potential access by hostile entities (*e.g.*, through use of a secure server); (2) avoid duplication of reporting to multiple federal agencies; and (3) provide confidential access to state agencies in order to eliminate duplicative and inconsistent state reporting requirements.

**A. Voluntary Submission of Outage Reports Is Critical to Obtaining PCII Protection.**

Outage report information must be submitted on a voluntary basis in order to protect its confidentiality, because “[o]nly information that is submitted voluntarily is

eligible for critical infrastructure protection.” Cingular Comments, p. 10 (emphasis in original). Other industry commenters support such an approach. As CTIA urges (p. 6), “the FCC should, like a host of other government agencies, reduce the existence of open-source data by allowing information on outages to be collected voluntarily and submitted to the Department of Homeland Security (‘DHS’).” Under the ILORI scenario, data would be “accessible by the National Coordinating Center within DHS, and could be shared with the FCC and the NRSC under the protection afforded by the Critical Infrastructure Information Act.” CTIA Comments, p. 7. MCI similarly urges the Commission to ensure “that any outage information that is collected be submitted through [DHS], so that it can be protected from public disclosure as Protected Critical Infrastructure Information.” MCI Comments, p. 2. T-Mobile likewise endorses submission of reports “to NRSC/ILORI for disposition to the Department of Homeland Security via its NCC.” T-Mobile Comments, p. 13. Through this reporting mechanism, the Commission could obtain real-time access to outage reports via “access to the electronic outage reporting system that NRSC/ILORI has established, where the Commission can retrieve instantaneously initial outage reports as they are submitted.” *Id.*, p. 16.

In light of the national security concerns expressed by DHS and others, AT&T respectfully submits that the Commission should adopt DHS’ recommendation that outage reports be routed through NCC Telecom-ISAC, rather than being filed directly with the Commission. In addition, such information must be submitted on a voluntary basis in order to be eligible for PCII protection.

**B. Any Benefits of Public Access to Outage Reports Are Minimal and Are Far Outweighed by the Risks to Critical Communications Infrastructure.**

Comments recommending that sensitive outage reports be made available to the public at large were those of NYC/NLC/NATOA, which claim (p. 14) that local governments “need prompt and complete access to the full contents of all outage reports.” NYC/NLC/NATOA, however, do not demonstrate why local governments need access to the “full contents” of all outage reports, especially when they freely acknowledge (p. 7) that “local governments have limited regulatory authority” over network operators and, indeed, do not want to be in the position of assessing the outage analyses of service providers. Moreover, NYC/NLC/NATOA’s claim that outage reports should be publicly available to allow consumers to make informed purchasing decisions is misguided. Leaving aside the national security concerns (as discussed above) that would be raised by public disclosure of reports, outage reports are technical documents that require engineering or other industry subject matter expertise to be understood properly. As DHS observes, the data to be provided in an outage report “includes information concerning the direct and root cause(s) and duration of the disruption; the range and types of services affected; the scope and gravity of the impact across all platforms and geographic area; specific equipment failures; the specific network element(s) impacted; remedial measures and/or best practices applied; and an appraisal of the effectiveness of the best practices.” DHS Comments, p. 14.

The public release of such outage information to consumers – who lack an expert’s understanding of the analyses and underlying circumstances – would serve no useful purpose and instead could unjustifiably influence consumer choice. There may be



many reasons for a reportable outage, not all of which are controllable by the individual service provider reporting the outage. Moreover, telecommunications service providers have differing magnitudes of customer accounts, services offered, and a quite varied network topology. These varying profile characteristics would make a like-to-like comparison of even a pure number of outages reported in a given timeframe a meaningless comparison and would do nothing to increase the reliability or resiliency of service provider networks.

In contrast to the questionable reliability benefits of public disclosure of outage reports, the comments demonstrate that a tangible reliability benefit has been achieved through “the cooperative analysis of the data and the studies performed by the industry in the NRSC” to foster the creation of industry supported Best Practices. ATIS Comments, p. 7. Examples of such voluntary cooperation include the industry advocacy program to create a national “One Call” law and special studies undertaken to address periods during which there was an increase in power and common channel signaling outages to analyze causes and applicable Best Practices. All these activities were worked by the industry voluntarily and without identifying specific service or equipment providers in order to improve the overall telecommunications platform using the expertise of individuals who possessed specific subject matter knowledge; they were not based on the fact that an outage report was made public. Indeed, “the vast majority of all Best Practices have been derived from insights from either individual company technical support experience or from proactively addressing communications infrastructure vulnerabilities in light of Y2K issues and the September 11, 2001, terrorist attacks,” not outage reporting. *Id.*, p. 9

Moreover, it must be emphasized that this information was developed on a voluntarily basis by carriers, equipment manufacturers, and others with a stake in the telecommunications industry:

[T]he initial wireline industry best practices were developed by the NRC utilizing massive amounts of data that were provided voluntarily by wireline carriers. . . . [W]ireline carriers voluntarily supplied detailed data regarding outages going back several years before mandatory reporting came into effect. It was through the analysis of this voluntary data that the initial set of best practices was developed.

Cingular Comments. pp. 4-5 (emphasis in original).<sup>4</sup> And, “[o]nly information that is submitted voluntarily is eligible for critical infrastructure protection,” because Section 5(a)(1) of the Critical Infrastructure Protection Act of 2001 and Section 724 of the Homeland Security Act of 2002 “provide[] protection against public disclosure for critical information that is voluntarily supplied to a federal agency.” *Id.*, p. 10 (emphasis in original). Furthermore, as DHS points out, the NCC Telecom-ISAC and NCS’ Network Security Information Exchange (“NSIE”) did not exist when the original outage reporting requirement was implemented. DHS Comments, p. 15. These bodies “enable members of industry to share information with one another and with Government experts on both anomaly and systemically based vulnerabilities and provide an effective context supporting the development of best practices.” *Id.* In addition, “the ongoing efforts of

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<sup>4</sup> See also SBC Comments, p. 22 (“It is not public access, but cooperative analysis of the data and studies performed in the NRSC that have led to a greater understanding of network reliability issues and the development of Best Practices. . . . [SBC] firmly believes that frank, open discussions between carriers leading to improvements in the network serves the public needs better than access to information that most will find difficult to understand, while others may use for nefarious purposes”).

the NRIC with public posting of industry best practices will continue and be made available to all industry providers and vendors. For these reasons, public availability of the detailed outage data is neither desirable nor is the need for it as compelling as it may have been in the past.” DHS Comments, pp. 15-16.

In addition, “one of the primary reasons for collecting outage data is to support response, recovery, and restoration of service in crisis situations.” *Id.*, p. 12. Submitting the reports to the NCC Telecom-ISAC will “significantly augment the utility of outage data by most quickly and efficiently placing it where it can immediately be used for that purpose in real time, while the event is unfolding. Directing the information in this way will also serve to enhance industry partnership, ensure effective reporting, enhance NS/EP [national security/emergency preparedness] planning and expand the collaborative efforts between DHS, the NCS and the Commission, thereby expediting and strengthening the analysis and collaboration that will lead to a more complete and more effective set of ‘best practices’ for all service providers and private network operators.” *Id.* at 12-13 (emphasis in original).

In short, public disclosure of outage reports would threaten the security of the nation’s critical information infrastructure and would provide minimal public benefits. The Commission accordingly should adopt DHS’ proposal and have outage reports submitted to the NCC Telecom-ISAC on a confidential basis.

**C. QuEST Forum’s Suggestion that It Administer the Outage Reporting Database Should Not Be Adopted.**

In its comments, QuEST Forum suggests that it should work with the FCC to develop outage reporting requirements as well as administer the outage reporting

database. As demonstrated above, however, all reporting, including the current mandatory reporting requirements, should be made voluntary and should be routed through the DHS' National Communications System, and then to the Commission, to ensure that all the information provided in the outage reports is protected from public disclosure. The proposal to extend QuEST Forum's current extensive data collection system to include the Commission's outage reporting database (QuEST Forum Comments, p. 3) would not be consistent with the DHS PCII Program, and the Commission therefore should not consider adoption of QuEST Forum's proposal.

Moreover, there is no need to adopt QuEST Forum's proposal. Today, industry providers submit outage reports to NCS/NCC via an electronic reporting mechanism to a secure server maintained by an industry member. Access to the database is strictly controlled through login/password requirements. The host server is secure and provides end-to-end encryption equivalent to that used for banking transactions. Furthermore, the industry recognizes that the server should be moved to a non-industry-member site and intends to do so. Such action is consistent with DHS' recommendation – and those of other commenters – that all outage reports be submitted to the NCC Telecom-ISAC on a confidential basis.

### **III. THE COMMISSION SHOULD ELIMINATE DUPLICATIVE AND INCONSISTENT REPORTING OBLIGATIONS.**

Several commenters express concern regarding duplicative and inconsistent reporting obligations between the federal and state regimes. The Kansas Corporation Commission thus acknowledges “while many states have local reporting requirements in place, they lack state-to-state consistency, have little or no organized review process that

engages vendors and other service providers and do not equal the best practices developed by the Network Reliability and Interoperability Council (NRIC).” KCC Comments, p. 3.<sup>5</sup> USTA cogently summarizes the problems with the existing dual reporting system:

USTA submits that there should be a central repository for all outage reports. Because each state has different reporting requirements, the reporting process is cumbersome. Simplifying the process so that communications providers could submit reports to a central repository, rather than filing multiple reports with both federal and state regulatory agencies, would relieve some of the burdens imposed by the new rules.

USTA Comments, p. 11.

Sprint in a similar vein suggests that “the Commission should find that ‘it occupies the field’ with respect to outage reporting, and accordingly require governmental entity [sic], *e.g.*, State governments, State PUCs, to obtain outage information from the Commission.” Sprint Comments, p. 1. Sprint also recommends that “any reporting standards established by the Commission should be exclusive and other governmental entities, including especially the States not be permitted to create other or different reporting obligations.” *Id.*, p. 6. DHS supports such an approach for two reasons. As discussed above, DHS believes that states should receive reporting information from the Commission in order to safeguard sensitive infrastructure

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<sup>5</sup> See also CTDPU Comments, p. 4 (“CTDPUC supports the removal of unnecessary, duplicative reporting requirements . . .”). Other commenters also express concern regarding the overlapping federal and state reporting requirements. See NTCA Comments, p. 7 (“To limit confusion, duplication, reduce administrative burdens and allow carriers, especially small rural companies, to direct the bulk of their resources to fixing any network outages instead of filing multiple reports, the Commission and the states should coordinate their outage reporting requirements”); Rural ILECS Comments, p. 2.

information. At the same time, such a process would relieve the burden on carriers created by inconsistent and duplicative reporting regimes. As DHS states, “[s]uch information sharing would reduce the need for States regulators to collect intrastate outage data independently,” which “would address a key concern expressed by carriers relative to the costs and administrative burdens associated with potentially redundant reporting schemes across levels of government and among multiple States.” DHS Comments, p. 8 (emphasis added).

The existing scheme of duplicative and inconsistent state and federal reporting schemes unnecessarily burdens carriers and increases the risk of disclosure of critical infrastructure information to those seeking to cause harm to the Nation’s communications infrastructure. For this reason, AT&T strongly endorses DHS’ recommendation that the Commission explore ways to share federally reported information with state agencies on a confidential basis in order to reduce or eliminate such redundant reporting.

#### **IV. THE COMMISSION SHOULD NOT IMPOSE REPORTING REQUIREMENTS ON VOIP PROVIDERS.**

Some commenters have suggested that the Commission should impose mandatory outage reporting requirements on providers of voice over Internet protocol (“VoIP”) services,<sup>6</sup> even though some of the same commenters seek exemption from the outage reporting obligation.<sup>7</sup> The Commission should not address this issue in this proceeding.

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<sup>6</sup> ITTA Comments, p.6; KCC Comments, p. 2; NTCA Comments, pp. 2-3; NYC/NLC/NATOA Comments, pp. 13-14.

<sup>7</sup> See NTCA Comments, p. 7 (“small telecommunications carriers [such as NTCA members] should be exempt from the federal requirements”).

The Commission currently has a rulemaking proceeding pending in which it will determine the nature and scope of the regulatory obligations that will apply to VoIP providers.<sup>8</sup> The Commission's goal in that proceeding "is to facilitate this transition [to IP-enabled services], relying wherever possible on competition and applying discrete regulatory requirements only where such requirements are necessary to fulfill important policy objectives." *IP-Enabled Services NPRM* at 5, ¶ 5. Whether VoIP providers should be subject to outage reporting requirements should be determined based on the outcome of that proceeding.

Deferral of such a decision is particularly appropriate given the nascent state of VoIP competition. The latest analyst's reports estimate that there are only 300,000 VoIP customers nationwide.<sup>9</sup> According to the Commission's latest report on the state of local telecommunications services, there were 189.5 million local access lines nationwide as of December 31, 2003.<sup>10</sup> Thus, VoIP providers currently serve less than 2/10<sup>th</sup>s of 1 percent of United States local exchange customers. The *de minimis* nature of VoIP penetration demonstrates that resolution of this issue can await conclusion of the *IP-Enabled Services NPRM*. However, should the Commission believe that a decision is needed in this

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<sup>8</sup> *IP-Enabled Services*, Notice of Proposed Rulemaking, WC-04-36 (rel. Mar. 10, 2004) ("*IP-Enabled Services NPRM*").

<sup>9</sup> National Journal's Technology Daily PM, "Internet Telephony Expected to Lead Wave of New Services" (6/8/04)

<sup>10</sup> FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2003* (Jun. 2004) at Table 1.

docket, AT&T respectfully submits that the Commission should refrain from applying such burdensome regulation to nascent VoIP services.<sup>11</sup>

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<sup>11</sup> NYC/NLC/NATOA also requests (p. 10) that the Commission extend the outage reporting requirements to public data networks, which the Commission has defined as including dial-up telephone, wireless and cable modem access to the Internet. NPRM ¶ 2. The Commission appropriately determined not to impose outage reporting requirements on such networks (NPRM n.3), and the Commission should maintain that approach.



## CONCLUSION

For all of the foregoing reasons, AT&T urges the Commission to: (1) adopt the NRSC/ILORI voluntary process; (2) protect sensitive outage reports from public disclosure by making such reports voluntary and adopting DHS' proposal that the reports be routed through NCC Telecom-ISAC, rather than being filed directly with the Commission; (3) alleviate the burden of duplicative and inconsistent state and federal reporting regimes by sharing federally filed outage reports with state agencies on a confidential basis that preserves their exemption from discovery under FOIA; and (4) not adopt proposals to impose outage reporting requirements on VoIP providers.

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Dated: June 24, 2004

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The undersigned hereby certifies that a copy of the foregoing Reply  
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