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August 8, 2011

Filed electronically Via ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Re: PS Docket No. 11-82, New York State Public Service Commission
Initial Comments

Dear Ms. Dortch:

On behalf of the New York State Public Service Commission, I have enclosed the Initial Comments of the New York State Public Service Commission for filing in the referenced proceedings.

Thank you for your attention. Please contact me at (518) 474-2510 if you have any questions.

Respectfully submitted,

A handwritten signature in black ink that reads 'Peter McGowan'.

Peter McGowan
General Counsel

Enclosure

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

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)

INITIAL COMMENTS OF THE
NEW YORK STATE PUBLIC SERVICE COMMISSION

INTRODUCTION

The Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (NPRM) proposing to extend its outage reporting requirements (47 C.F.R. Part 4) to include interconnected Voice over Internet Protocol (VoIP) service providers and broadband Internet service providers (ISPs).¹ This action is intended to improve the reliability of 9-1-1 emergency systems,² preparation for responses to disasters and the development of industry best practices to reduce the number of communications outages. The FCC maintains that the need for this action arises from the increased reliance of the public on

¹ In preparation for this NPRM, the FCC issued a Notice of Inquiry (NOI) on the issues relating to extension of Part 4 coverage to these providers (PS Docket No. 10-92, Effects on Broadband Communications Networks of Damage To or Failure of Network Equipment or Severe Overload, 25 FCC Rcd 8490 (2010)).

² Since 2005, the FCC has required interconnected VoIP service providers to supply 9-1-1 capabilities to their customers. In the absence of an outage reporting requirement, no formal mechanism exists to identify VoIP service outages and reduce their occurrences.

broadband communications technology and acceptance by consumers of this technology as a substitute for traditional telephone services, recent significant outages to broadband networks and services, and the need to find opportunities to reduce outages and improve network performance similar to the achievements that resulted from outage reporting by wireline networks. The NPRM raises issues relating to, among other things, extension of the outage reporting requirement to interconnected VoIP service providers and ISPs, proposed definition of significant outages subject to the reporting requirements, mandatory or voluntary reporting and sharing of information and confidentiality.³

The New York State Public Service Commission (NYPSC)⁴ supports the FCC's proposal to extend its outage reporting requirements to interconnected VoIP service providers and ISPs. It proposes that the FCC consider modifications to the definitions of the significant outages subject to reporting requirements. It supports the FCC's proposal to impose mandatory, instead of voluntary, outage reporting requirements on interconnected VoIP service providers and ISPs. Finally, to maximize the usefulness of this outage reporting information, it recommends that the FCC adopt procedures for states to

³ Other issues raised involve the definitions of interconnected VoIP service providers and broadband ISPs, application of the rules to new wireless technologies, reporting processes and legal authority.

⁴ The NYPSC filed comments in response to the FCC's NOI (Letter to Marlene H. Dortch, Office of the Secretary (FCC) from Peter McGowan, General Counsel (NYPSC) (June 25, 2010)). The comments filed in response to the NPRM contain recommendations that are similar to the ones expressed in the NYPSC comments on the NOI.

simultaneously access certain information (interconnected VoIP service providers) on a presumptively confidential basis.

DISCUSSION

The NYPSC requires local exchange telephone corporations⁵ certified by the Commission to report major service interruptions to the Department of Public Service Staff under Guidelines issued by the Director of the Office of Telecommunications⁶ and take actions consistent with accepted industry guidelines and best practices.⁷ Companies are not currently required to obtain certification from the Commission prior to offering interconnected VoIP service in New York State. The questions relating to the need for and extent of federal and state regulation of voice service through interconnected VoIP by cable television companies and telephone corporations is pending at the FCC.⁸ Although the NYPSC outage reporting requirement does not apply to the cable television companies providing interconnected VoIP service in New York State, these companies voluntarily provide notification of network outages.⁹

⁵ Defined as a telephone corporation certified in New York State and providing local exchange switched telecommunications service within a defined geographic area using its own or leased facilities (16 NYCRR §603.1(a) and (c)).

⁶ 16 NYCRR §603.5(b)(2).

⁷ 16 NYCRR §603.5(b)(3).

⁸ In February 2004, the FCC adopted its first Notice of Proposed Rule Making to ascertain the legal and regulatory framework for Internet-Protocol (IP) enabled services, including VoIP (In Re IP-Enabled Services, 19 FCC Rcd 4863 (2004)).

⁹ Major wireless carriers also voluntarily provide notification of network outages to the Department. The NYPSC's jurisdiction relating to terms and conditions of service

Extension of FCC Outage Reporting Requirements

The NYPSC supports the FCC's proposal to extend its outage reporting requirements (47 C.F.R. Part 4) to interconnected VoIP service providers and ISPs. As it stated in its Intermodal Competition Order:¹⁰

However, the existence of competition, even if it is effective and thriving, may not ensure reliable networks, and there is too much at risk for the people and the State to conclude otherwise. Protecting public health, safety and welfare remains essential and requires that we continue monitoring and enforcing network reliability, consistent with our responsibilities under the Public Service Law. As we move forward, we need to monitor reliability and be aware of major service outages to ensure that public health and safety continue to be protected, while promoting a competitive environment that encourages investment in New York State.

As the FCC recognizes, the public is shifting to digital services provided by interconnected VoIP service providers in increasing numbers; services provided by governments, financial institutions, other carriers, first responders and public safety entities increasingly rely on the use of IP facilities; and, broadband technologies are now widely accepted as a substitute for legacy communications technologies. Accordingly, it is crucial that interconnected VoIP service providers and ISPs report network outage information on a real-

provided by telephone corporations providing wireless service is suspended (Public Service Law (PSL) §5(6)); and, the outage reporting requirement does not apply to wireless service.

¹⁰ Case 05-C-0616, Transition to Intermodal Competition, Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings (issued April 11, 2006), p. 90.

time basis, similar to Public Switched Telephone Network (PSTN) outage reporting at the state and federal levels. The information ascertained through outage reporting may assist federal, state and local governments to coordinate responses to major disasters and emergencies and make possible identification of best practices and improvements to decrease outages and improve the continuity of 9-1-1 services in an emergency.

The potential for widespread service disruptions due to failures in an IP network is significant. The Department of Public Service Staff has observed numerous outages in IP networks due to single points of failure at a centralized call processing or critical signaling facility, or a damaged fiber cable carrying concentrated traffic that often results in a more severe impact on customers than a similarly caused failure over the legacy circuit PSTN. IP networks may rely on the facilities of other providers using different types of telecommunications technologies, both IP and PSTN based. Therefore, outages to one type of communications network may result in a cascading impact on other networks, potentially affecting millions of end-users. The data obtained through outage reporting can provide additional information to satisfy any concern regarding geographical redundancy or powering issues and identify system reliability improvement opportunities.

Definition of Significant Outage Subject to Reporting Requirements

The FCC proposes specific threshold criteria for the definition of a significant outage that is subject to the reporting requirements for interconnected VoIP service providers and ISPs. The FCC's proposed definition includes loss of connectivity for at least 30 minutes and other criteria, such

as, affected number of users or number of DS3 circuits impaired. The NYPSC recommends the addition of other criteria related to the effect of a significant outage on the public, similar to two of the standards included in the NYPSC rules and Guidelines¹¹ that provide expectations for major service outage reporting. These standards include: a service problem affecting public access to 9-1-1, emergency services and utilities and other telecommunication providers. To the extent the FCC does not include certain criteria in its outage reporting requirements, the NYPSC may seek this information on a state basis.

Mandatory/Voluntary Reporting

The NYPSC supports the FCC's proposal for a mandatory federal outage reporting requirement applicable to interconnected VoIP service providers and ISPs. Based upon our experience, voluntary reporting does not ensure that carriers will provide timely, accurate outage information. A mandatory outage reporting system would be more effective because it compels communications carriers to report outages in accordance with a uniform set of criteria, standardizes outage reporting requirements, and establishes the priority and attention within company operations necessary for this critical function.

Mandating outage reporting requirements for all types of communications services and providers will make outage reporting information across the entire spectrum of communications services and providers available. The establishment of a central collection point, the FCC's Network Outage Reporting System (NORS), for outage reporting information will make possible the identification and analysis of trends and

¹¹ 16 NYCRR §603.5.

possible causes of outages across the communications industry to foster methods to avoid outages or mitigate their impacts in the future. Voluntary reporting may not provide the same comprehensive data, opportunities for reliable analysis, and prospects for development of industry best practices and technological improvements and innovations.

Sharing Federal Outage Reporting Data

The FCC's rules require that data collected pursuant to the NORS is presumptively confidential (47 C.F.R. §4.2). Any sharing of information is done pursuant to procedures for sharing information not generally available for inspection (47 C.F.R. §0.461). The NYPSC supports the FCC's proposal to classify the outage information collected from interconnected VoIP service providers and ISPs as presumptively confidential. This classification will assist in safeguarding sensitive information regarding the nation's critical communications infrastructure from release into the public domain, to the potential detriment to public safety and national security.

However, the NYPSC supports a classification of outage reporting information for interconnected VoIP providers that also includes simultaneous sharing on a presumptively confidential basis.¹² The Department of Public Service Staff serves as the single point-of-contact for reporting and monitoring of telecommunications disruptions, regardless of technology deployed and provides staffing and expertise to the State's Office of Emergency Management. Emergency first responders often turn to the states first for information on

¹² To be clear, the NYPSC does not seek the release of ISP outage information on a simultaneous confidential basis.

network outages; and, the Department of Public Service Staff needs reliable information to assist in managing the response to major disasters and emergencies. If the State does not receive comprehensive outage information provided by all types of communications carriers, this will cause fragmented and incomplete reporting of outages that may be caused by a singular or common incident, potentially impeding response time and frustrating efforts to improve the reliability of communications networks. Sharing of information is critical to support state and local entities responsible for emergency response as the use of wireless and IP based technologies becomes more prevalent in emergency communications.

To protect the confidentiality of this information, it is recommended that the FCC establish security protocols, such as state password-protected access to state-specific FCC outage information.¹³

The FCC envisioned broader intergovernmental sharing of NORS outage data and did not preclude state access when it implemented revisions to its rules on outage reporting in the new Part 4 Rules proceeding in 2004.¹⁴ The Department of Homeland Security (DHS), the only other entity granted password-

¹³ See Letter to Marlene H. Dortch, Office of the Secretary (FCC) from Peter McGowan, General Counsel (NYPSC) (March 4, 2010) (ET Docket No. 04-35, 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).

¹⁴ 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 (August 19, 2004).

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protected access to the NORS database, recommended in that proceeding that the FCC make available NORS outage information directly to governmental entities other than DHS. Granting presumptively confidential access would streamline the reporting process for state commissions and carriers, and, reduce the need for states to consider expansion of state-specific mandatory reporting requirements to include all communications providers and services.

CONCLUSION

The NYSPSC strongly supports the extension of outage reporting requirements to interconnected VoIP service providers and ISPs on a mandatory, rather than voluntary, basis. It urges the FCC to consider modifications to its definition of significant outage to include any outage affecting 9-1-1 service and highly sensitive facilities, and to authorize states to access the FCC's database to simultaneously obtain outage interconnected VoIP outage reporting information on a presumptively confidential basis.

Respectfully submitted,



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