



November 15, 2011

Ex Parte Notice

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers, PS Docket No. 11-82

Dear Ms. Dortch:

This letter is submitted by the National Telecommunications Cooperative Association ("NTCA") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") to express concern with the proposed adoption of certain outage and service quality reporting requirements. As associations representing hundreds of small rural network operators based in the areas in which they operate, NTCA and OPASTCO are keenly aware of the critical importance of ensuring reliable access to emergency services. Many of the rules in the Commission's Notice of Proposed Rulemaking¹ would go too far, however, imposing burdensome monitoring and reporting obligations without showing how such obligations are reasonably tailored to ensure reliable access to emergency services and without a thorough examination of the relative costs and anticipated benefits of such rules.

With one key exception, NTCA and OPASTCO support the points raised in a letter submitted yesterday in the above-referenced proceeding by CTIA, US Telecom, and a broad group of other industry representatives with respect to the proposed rules (the "Joint Letter"). In particular, NTCA and OPASTCO concur that "the record demonstrates that employing quality of service metrics as a surrogate for network availability is not an efficient or narrowly-tailored approach to identify when IP networks are unable to deliver emergency traffic." NTCA and OPASTCO also agree that the Federal Communications Commission (the "Commission") should "undertake a thorough and careful

¹ *Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers, PS Docket No. 11-82, Notice of Proposed Rulemaking (rel. May 13, 2011), at Appendix A.*

cost-benefit analysis and work with industry to identify a more targeted approach to achieve the Commission's stated goal in this proceeding." Finally, NTCA and OPASTCO agree that the scope of the proposed rules is not properly tethered to their purported purpose, because the rules would compel filing of reports with the Commission "*even where a user is able to communicate with public safety officials.*"

NTCA and OPASTCO differ in one significant respect, however, with the views of the signatories to the Joint Letter. Specifically, as described further below, it is both appropriate and necessary for the Commission to impose certain *reasonable* outage reporting requirements on interconnected VoIP service providers. Unlike broadband Internet service providers ("ISPs"), interconnected VoIP providers are subject to 911 and E-911 access obligations. *See* 47 C.F.R., Part 9. Thus, by definition, an outage with respect to an interconnected VoIP service may deny consumers access to mandated emergency services. Having imposed this access mandate several years ago, the Commission has already concluded that the public safety benefits derived from such access outweigh potential burdens of providing such access.² It follows that the Commission should have reasonable visibility into where an interconnected VoIP service provider is unable to offer such mandated access to emergency services.

This is not to say that the Commission should adopt its proposed rule "as is" with respect to outage reporting by interconnected VoIP service providers. To the contrary, further consideration is warranted before "quality of service" issues – such as packet loss, latency, or jitter – should rise to the level of mandatory reportable incidents. Here again, NTCA and OPASTCO concur with the Joint Letter's comment that the record does not yet support a finding that such quality of service metrics are "a surrogate" for network availability. But requiring interconnected VoIP providers to comply with *basic* outage reporting requirements comparable to those that apply to wireline providers of local exchange services would help ensure that all customers obtain equivalent access to mandated emergency services. *See* 47 C.F.R. 4.9(f). To this end, NTCA and OPASTCO recommend that the Commission adopt proposed Section 4.9(g) in Appendix A of the NPRM, subject to changes in that text as shown in the attachment hereto. The Commission can thereafter evaluate the extent to which additional reporting requirements – including but not limited to reporting on any "quality of service" measurements – may be necessary to achieve the objective of ensuring that customers can access emergency services through interconnected VoIP.

In short, there is good reason to distinguish between broadband ISPs and interconnected VoIP service providers for purposes of mandatory outage reporting. The Commission can and should ensure that interconnected VoIP service providers are subject to *reasonable* outage reporting requirements, comparable to those that apply to carriers offering wireline local exchange service. For both basic local exchange service and interconnected VoIP service, consumers expect to be able to access 911 through such services, and the Commission should have notice of when such access is unavailable.

² *See IP-Enabled Services*, WC Docket No. 04-36, *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking (rel. June 3, 2005), at Appendix C, ¶ 7 ("While the Commission sought comment on, and considered, ways that public safety could be protected through access to E911 services that are less burdensome to small businesses than the imposition of E911 obligations, the Commission concluded that it was important for *all* interconnected VoIP service providers to participate in protecting public safety.") (emphasis in original).

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But the Commission should refrain from adopting any reporting requirements with respect to “quality of service” failures in the provision of interconnected VoIP (or broadband Internet service, to be clear) until the relative benefits and costs of such reporting are better defined. Finally, the Commission should refrain from adopting *any* outage reporting mandates with respect specifically to broadband Internet services until it has evaluated more carefully both the need for such requirements from a public safety perspective and the relative costs and benefits of reporting obligations.

NTCA and OPASTCO members are carriers of last resort, committed to offering quality services in their local communities. They look forward to working with the Commission and other industry stakeholders to identify reasonably tailored reporting requirements that serve the objectives of promoting network reliability, satisfying consumer expectations, and ensuring access to emergency services.

Sincerely,

/s/ Michael R. Romano

Michael R. Romano

Senior Vice President – Policy

National Telecommunications Cooperative
Association (NTCA)

/s/ Stuart Polikoff

Stuart Polikoff

Vice President – Regulatory Policy
and Business Development

Organization for the Promotion and
Advancement of Small Telecommunications
Companies (OPASTCO)

Attachment

**RECOMMENDED CHANGES TO
PROPOSED 47 C.F.R. § 4.9(g)**

(g) Interconnected VoIP Service Providers. All interconnected VoIP service providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration:

(1) Of a Call Agent, Session Border Controller, Signaling Gateway, Call Session Control Function, or Home Subscriber Server:

(2) That potentially affects at least 900,000 user minutes of interconnected VoIP service and results in ~~(i) complete loss of service; or (ii) an average packet loss of 1 percent or greater; or (iii) average round trip latency of 100 ms or greater; or (iv) average jitter of 4 ms or greater, with all packet loss, latency, and jitter measurements taken in each of at least 6 consecutive 5-minute intervals from source to destination host;~~

(3) That potentially affects any special offices and facilities (in accordance with paragraphs (a)-(d) of § 4.5); or

(4) That potentially affects a 9-1-1 special facility (as defined in (e) of § 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 9-1-1 facility as the provider's contact person for communications outages at that facility, and the provider shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility.

Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.