

**Before the
Federal Communications Commission
Washington, DC 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)

To: The Commission

COMMENTS OF THE
TELECOMMUNICATIONS INDUSTRY ASSOCIATION

I. INTRODUCTION AND SUMMARY

The Telecommunications Industry Association (TIA) submits comments to the Federal Communications Commission (Commission) in the above captioned proceeding.¹ TIA and its members appreciate the opportunity to provide unique stakeholder comment on the issues raised by the NPRM. TIA concurs that communications services delivered to end users over broadband technologies have grown in importance and now carry some of our nation’s most vital communications, and are of increasing importance, and, for this reason, believes the Commission’s inquiry in this matter to be meritorious.

TIA represents the global information and communications technology (ICT) industry through standards development, advocacy, tradeshow, business opportunities, market intelligence and

¹ In the Matter of The 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, *Notice of Proposed Rulemaking*, PS Docket No. 11-82, FCC 11-74 (rel. May 13, 2011) (NPRM).

world-wide environmental regulatory analysis. For over eighty years, TIA has enhanced the business environments for broadband, mobile wireless, information technology, networks, cable, satellite, and unified communications. TIA's 600 member companies' products and services empower communications in every industry and market, including healthcare, education, security, public safety, transportation, government, the military, the environment, and entertainment. TIA is accredited by the American National Standards Institute (ANSI). TIA members produce the equipment that the Nation's evolving communications networks are comprised of, and are affected by a number of issues raised in the NPRM.

II. THE COMMISSION MUST RESOLVE JURISDICTIONAL QUESTIONS REGARDING THE APPLICATION OF OUTAGE REPORTING RULES TO BROADBAND INTERNET SERVICE PROVIDERS AND INTERCONNECTED VOIP PROVIDERS

The Commission requests input on jurisdiction analyses for extending outage requirements to interconnected voice over internet protocol (VoIP) and broadband internet service providers (ISPs) in the NPRM.² TIA notes that these jurisdictional issues raise a variety of questions well beyond the scope of moving forward on the extension of Part 4 outage reporting rules.

²*Id.* at ¶ 67-72.

In the case of interconnected VoIP, the proposed analysis in the NPRM concludes that the Commission has ancillary authority over interconnected VoIP.³ The Commission is urged to address the classification of interconnected VoIP directly, in the appropriate proceeding, before moving forward with the extension of outage reporting rules to interconnected VoIP. TIA has advocated for the Commission classifying interconnected VoIP as an information service, and closing the outstanding IP-enabled services proceeding.⁴ This would be consistent with the Commission's own view of converging IP-based services.⁵ Such an action would spur investment and innovation by reducing uncertainty.

The Commission's analysis of its legal authority over broadband ISPs once again raises outstanding jurisdictional questions. At issue is whether these services ought to be classified as either Title I or Title II. TIA has long held the position that the flexibility allowed before the *Open Internet Order*⁶ protected consumers while fueling aggressive broadband growth, also resulting in greater network reliability.⁷ The policies adopted in the *Open Internet Order* affect the ability of network providers to manage networks and traffic, and the overlap between these issues and the item at hand are far too muddled. TIA believes that these jurisdictional issues are

³*Id.* at ¶ 68.

⁴See Comments of TIA, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 (filed Apr. 18, 2011) at 15-17.

⁵See *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket No. 11-47, *Effects on Broadband Communications Networks of Damage or Failure of Network Equipment or Severe Overload*, PS Docket No. 10-92, *Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119, *Notice of Inquiry*, FCC 11-55 (rel. April. 7, 2011) at ¶ 28 (observing that "...three major industry sectors are converging on ever more extensive use of broadband technologies: public safety, commercial communications, and utilities.").

⁶*Preserving the Open Internet*, GN Docket No. 09-191, WC Docket No. 07-52, *Order*, FCC No. 10-201 (rel. Dec. 23, 2010).

⁷See, e.g., Comments of TIA, GN Docket No. 09-191, WC Docket No. 07-52 (filed Jan. 14, 2010) at 17-22.

best addressed before the FCC adopts any rules relating to the reporting of broadband internet service providers, and in an appropriate venue. TIA does not believe that an item related to outage reporting is the best procedural vehicle for the Commission to make such a determination. For this reason the Commission is urged to resolve all jurisdictional issues related to its proposals in the NPRM are acted upon.

**III. IF EXTENDED AS PROPOSED, THE COMMISSION SHOULD
INCORPORATE MAXIMUM FLEXIBILITY INTO REPORTING
THRESHOLDS AND REQUIREMENTS**

If the Commission chooses to extend outage reporting requirements to interconnected VoIP and/or broadband ISPs at this time, caution should be taken to minimize effects that would decrease broadband deployment. TIA urges the Commission not to divorce the relationship between this proceeding and the Commission's priority on removing barriers to broadband infrastructure deployment.⁸ Reporting requirements, if adopted, should be minimized in order to reduce burdens on capital that would otherwise be invested in networks to ensure that outages do not occur, and are suggested by TIA to be voluntary. IP networks differ significantly from the legacy PSTN in terms of construction and intricacy, and are exceedingly more dispersed than it. The Commission will consequently find it more difficult to apply network disruptions with any

⁸See Remarks of FCC Chairman Julius Genachowski, Broadband Acceleration Conference (Feb. 9, 2011) at 1-2 (“One thing government at all levels can do is ensuring efficient, effective regulation. We need rules that serve legitimate public needs without erecting costly or unnecessary barriers...Overly burdensome rules and regulations can slow down deployment and raise costs. It also can limit businesses ability to invest in new technologies and hire new workers.”)

particular communications or application element.⁹ A voluntary system for these technologies, at the least during an initial adjustment period of a reasonable time, would allow for an adequate adjustment to requirements and soften the economic impact on newly covered providers by allowing for phased transitions to new burdens.

TIA has also advocated consistently against one-size-fits-all rules in order to reduce barriers to broadband infrastructure deployment.¹⁰ For example, different outage standards will be appropriate for different technologies, particularly between wireless and wireline,¹¹ and this principle is appropriately acknowledged in the NPRM.¹² The Commission can further minimize the costs and burdens on providers by allowing for exceptions in areas with unique challenges. In addition, as noted in previous TIA comments, intra- and inter-industry voluntary efforts are already currently underway that adequately address reliability and resiliency concerns, including best practices, standards, and public-private efforts.¹³

⁹See USTA Comments at 4-5.

¹⁰See, e.g., Comment of TIA, ET Docket No. 10-237 (filed Feb. 28, 2011) at 4-7; Comment of TIA, WT Docket No. 10-208 (filed Dec. 16, 2010) at 11-15.

¹¹See, e.g., Comments of Laurence Brett Glass D/B/A LARIAT, ET Docket No. 04-35, WC Docket No. 05-271, GN Docket No. 09-47, GN Docket No. 09-51, GN Docket No. 09-137 (filed Aug. 3, 2010) at 1-2 (noting that wireless Internet service providers operating unlicensed under Part 15 are “subject to all manner of interference from other users, both licensed and unlicensed, and the operator of such equipment has little or no recourse in the event of such interference so long as the equipment that creates it is a certified system that conforms to the Commission’s regulations.”).

¹²See, e.g., The Commission recognizes that “wireless and satellite networks include specific latency challenges not found in wireline-only networks” and asks whether “...the thresholds be altered to address the unique architectural characteristics and challenges of wireless, satellite, cable, and wireline systems used by interconnected VoIP service providers”. NPRM at ¶ 28.

¹³Comments of TIA, PS Docket No. 11-60, PS Docket No. 10-92, EB Docket No. 06-119 (filed Jul. 7, 2011) at 10-19.

With regard to defining an “outage”, the Commission proposes use of the phrase “loss of generally-useful availability or connectivity,” and that Internet Engineering Task Force (IETF) metrics be used.¹⁴ Although TIA endorses reporting standards that take into account factors considered by the IETF, it, however, urges the Commission to ensure that “outage” definitions are more realistic, and will allow for certainty in compliance. The complex metrics from IETF would be overly burdensome, and could decrease certainty of compliance by not presenting concrete criteria. TIA believes that for an “outage” as defined for interconnected VoIP and broadband connectivity, thresholds should lie at a significant loss of functionality for primary uses, far away from temporary degradations in service that still allow for basic uses.¹⁵ Further, non-facilities based interconnected VoIP service providers should only be responsible for reporting an “outage” to their own service components. Measuring the quality of service of each link of the broadband service the VoIP service is riding on top of would present a tremendous administrative and technical burden.

Metrics from additional sources should be carefully considered. The SamKnows broadband measurement project could also be consulted in this matter. The definition of an “outage” for purposes of VoIP and broadband services should be consistent with the findings of SamKnows as far as the factors that are measured in determining an outage. While the proposed methodology is very thorough in testing a variety of technical factors and applications, SamKnows does not propose to identify the portion of the broadband network that each provider

¹⁴ NPRM at ¶ 27.

¹⁵ An “outage” is currently defined as “a *significant* degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider’s network” (emphasis added). 47 C.F.R. § 4.5(a). This phrasing is at odds with the Commission’s proposed use of “loss of generally-useful availability or connectivity.”

is responsible for and isolating certain tests to just that portion in a way that statistically models the consumer experience for a given service provider and service tier. Although this is a challenging task, it would aid in differentiating across providers and service tiers by acknowledging that providers use different broadband technology platforms and architectures.

Based on SamKnows' research, the Commission's recently-released report analyzing data from the Nation's first consumer wireline broadband report should be considered.¹⁶ The report reflects a number of metrics that TIA supports for inclusion in broadband measurement. These include broadband throughput, latency, the use of transient performance enhancements, and peak times of the day.¹⁷ TIA also notes that this report appears to demonstrate improvements in broadband service due primarily to voluntary industry-driven effort.¹⁸

IV. IF ADOPTED, ANY NETWORK OUTAGE REPORTING REQUIREMENTS FOR INTERCONNECTED VoIP OPERATORS AND BROADBAND ISPs SHOULD APPLY ONLY TO LICENSED SERVICE PROVIDERS

TIA supports that regulations adopted consistent with the Commission's priorities should be clear and straightforward to promote innovation and the deployment of broadband networks. In its proposed regulations in the NPRM, the Commission offers that "those equipment

¹⁶FCC, *Measuring Broadband America* (rel. Aug. 2, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308828A1.pdf.

¹⁷*Id.* at 12-13.

¹⁸ For example, since 2009, the Commission's report states that "actual download speeds are substantially closer to advertised speeds than was found in data from early 2009 and discussed in a subsequent FCC white paper..." *Id.* at 4.

manufacturers or vendors that do not maintain or provide communications networks or services used by communications providers in offering communications” be excluded from the proposed outage requirements.¹⁹ TIA strongly believes that including equipment vendors who maintain portions of communications networks as part of a service contract under outage reporting rules would be a grave mistake. In light of the complexity of service contract relationships which vendors have with customers, it would not be clear how such a rule would apply to equipment.²⁰ In addition, this proposal raising the possibility of a staggering amount of duplicitous filings that could implicate Paperwork Reduction Act issues, and would likely skew NORS data analysis.

In addition, the uncertainty from threatened increases to regulatory burdens would create barriers to innovation and curtail investment into the development of new networking equipment. By applying these rules to certain vendors as proposed in the NPRM and exposing them to liability for outage reporting, the speed at which equipment is developed will be slowed and per-unit costs will be increased across the industry. This will in turn be passed on to the carriers who purchase the equipment, raising the cost of network deployment, and discouraging investment in new infrastructure.

Because networks often use equipment supplied by multiple vendors, the only parties able to supply accurate and complete information about their networks are the service providers, and not vendors who may have a service contract with the network operator. Through the arrangements

¹⁹NPRM at Appendix A, § 4.3(k).

²⁰ For example, under the proposed § 4.3(k) language, the potential exists for the Commission to decide that a vendor who sells even a single piece of network equipment to a network operator and maintains the equipment under warranty could be exposed to liability to report to the NORS.

that already exist between the vendors and network providers, coordination can occur and one report for one outage, more accurate than duplicitous and/or inconsistent information that may be provided from multiple reports on the same outage, can be provided to the Commission. TIA's suggested exclusion is also consistent with the policy of holding licensees responsible for adherence to its rules.

TIA is not alone in supporting this request. In response to a proposal from the Commission to impose outage reporting requirements to vendors with whom service providers have contracted in 2004,²¹ the Kansas Corporation Commission stated:

We suggest that the reporting requirements remain with the certificated service provider. With the continued emergence of more sophisticated technologies, the trend toward outsourcing these services will most likely increase. The fact that a service provider may outsource certain services is a contractual matter between the service provider and the respective vendor. However, the certificated service provider is responsible for providing the service and accountable to its end users.²²

TIA urges the FCC to exclude non-affiliated entities that maintain or provide communications systems or services used by the provider in offering such communications from their definition of broadband and VoIP providers who must report to NORS.

²¹In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, *Report and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 04-35, FCC 04-188 (rel. Aug. 9, 2004) at ¶ 81.

²²Comments of the Kansas Corporation Commission, ET Docket No. 04-35 (May 25, 2004) at 4.

**V. NETWORK OUTAGE REPORTING TEMPLATES SHOULD NOT INCLUDE
A FIELD REQUIRING THAT THE REPORTER LIST FAILED EQUIPMENT**

Pursuant to Part 4 Rules, NORS includes a field titled “Name and Type of Equipment Failed.”²³ As TIA has previously noted, this field presents significant challenges.²⁴ The field can lead to erroneous inferences or direct falsehoods about the source of network outage. Since outages can be caused by any number of factors, “Name and Type of Equipment Failed” should not be used as the required presumptive identification of the failure’s source.²⁵

Further, while the name of the vendor supplying the equipment is not explicitly required, the Commission has stated that “the name of the equipment is usually uniquely identified with a particular vendor.”²⁶ Requiring an entry in this field when equipment has not played a role in the outage, aside from prejudicing vendors in the eyes of the Commission, would also distort NORS data analyses that attempt to identify trends in outage reporting. The Commission could move NORS away from this effect by explicitly noting in NORS, both in guidance to reporters and in the phrasing of the field’s description itself, that (1) the field need only be filled out if equipment actually caused the outage, and (2) that the equipment vendor’s company and equipment brand name is not to be included in the response.

²³*New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order & Further Notice of Proposed Rulemaking, FCC 04-188 at Appendix C (August 19, 2004) (Part 4 Order).

²⁴ See TIA Ex Parte, ET Docket No. 04-35, WC Docket No. 05-271, GN Docket Nos. 09-47, 09-51, 09-137 (Sept. 15, 2010) at 2-3.

²⁵ See NSTAC, *Next Generation Networks Task Force Report* (rel. Mar. 28, 2006) at G-1 to G-10.

²⁶Part 4 Order at ¶ 157.

VI. ALL NETWORK OUTAGE REPORTING DATA SHOULD REMAIN COMPLETELY CONFIDENTIAL

The Commission also requests input on whether data submitted from broadband ISPs and interconnected VoIP providers be presumed confidential, as with current data received.²⁷ TIA fully supports this critical aspect of NORS. In addition, TIA believes very strongly that the Commission should *not* be “publicly reporting aggregated information across companies, e.g., total number of incidents by root cause categories.”²⁸ Further, TIA agrees that any sharing of this information with other agencies should be done on a confidential basis.²⁹

The Commission has already acknowledged that “disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity,”³⁰ and that the record on outage reporting has clearly established that reports should be protected by the Freedom of Information Act.³¹ Also, TIA believes that the record reflects wide consensus for maintaining confidentiality for data submitted through the NORS system.³² TIA urges that the

²⁷ NPRM at ¶ 66.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Part 4 Order at ¶ 3.

³¹ *Id.*

³² *See, e.g.*, California Public Utilities Commission Comments, ET Docket No. 04-35, WC Docket No. 05-271, GN Docket Nos. 09-47, 09-51, and 09-137 (filed Aug. 2, 2010) at 9; District of Columbia Public Service Commission Comments, ET Docket No. 04-35, WC Docket No. 05-271, GN Docket Nos. 09-47, 09-51, and 09-137 (filed Aug. 2, 2010) at 3; Comments of Massachusetts Department of Telecommunications and Cable, ET Docket No. 04-35, WC Docket No. 05-271, GN Docket Nos. 09-47, 09-51, 09-137 (filed Aug. 16, 2010), New York Public Service Commission Comments, ET Docket No. 04-35, WC Docket No. 05-271, GN Docket Nos. 09-47, 09-51, and 09-137, at 3 (filed Aug. 2, 2010); Qwest Communications Comments, ET Docket No. 04-35, WC Docket No. 05-271, GN Docket Nos. 09-47, 09-51, and 09-137, at 12-14 (filed Aug. 2, 2010).

Commission extend this protection to data received under any new outage reporting rules, and that no data be publicly released consistent with rules over data currently received by the Commission on outage causes.³³

³³47 C.F.R. § 4.2.

VII. CONCLUSION

For the foregoing reasons, TIA urges the Commission to adopt policies consistent with the recommendations above.

Respectfully submitted,

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

By: /s/ Danielle Coffey

Danielle Coffey
Vice President, Government Affairs

Mark Uncapher
Director, Regulatory and Government Affairs

Brian Scarpelli
Manager, Government Affairs

TELECOMMUNICATIONS INDUSTRY ASSOCIATION
10 G Street N.E.
Suite 550
Washington, D.C. 20002
(202) 346-3240

August 9, 2011