

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matters of</b>	)	
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<b>New Part 4 of the Commission’s Rules Concerning Disruptions to Communications</b>	)	<b>ET Docket No. 04-35</b>
	)	
<b>Petition of California Public Utilities Commission and the People of the State of California for Rulemaking on States’ Access to the Network Outage Reporting System (NORS) and a Ruling Granting California Access to NORS</b>	)	<b>RM-11588</b>
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**REPLY COMMENTS**

The Alliance for Telecommunications Industry Solutions (ATIS) hereby submits these reply comments on behalf of its Network Reliability Steering Committee (NRSC) regarding the *Petition for Rulemaking*, filed November 12, 2009, by the California Public Utilities Commission and the People of the State of California (*CA PUC Petition*). ATIS notes that there is strong support among commenters for the need to appropriately safeguard outage reporting data. Should direct access by states be granted to the Federal Communications Commission’s (Commission) Network Outage Reporting System (NORS), ATIS reiterates its support for safeguards described in its comments and, as described below, also supports additional safeguards that have been proposed by other commenters.

## **I. The Commenters Clearly Acknowledge the Need to Protect Outage Reporting Data**

In its comments, ATIS noted the strong need to protect NORS data from unwarranted disclosure, a view that is shared by CA PUC in its petition.<sup>1</sup> ATIS notes that virtually all commenters also share this view. The sensitive nature of outage reporting data and need to protect this data is acknowledged in the comments filed by CTIA – The Wireless Association®, the District of Columbia Public Service Commission (DCPSC), the Missouri Public Service Commission (MoPSC), California Association of Competitive Communications Companies, the City of New York, United States Telecom Association (USTelecom) and AT&T Inc. (AT&T). Therefore, based on the comments in this proceeding, there can be no question that outage data must be protected.<sup>2</sup>

ATIS believes that strong safeguards must be in place before direct access to NORS data could be granted. As ATIS and other commenters note, the existing protections afforded to sensitive numbering data are insufficient to protect outage data because there are fundamental differences between the risks associated with the disclosure of these two types of data.<sup>3</sup> CTIA- The Wireless Association states that “the value of this numbering data does not compare the damage that could result if outage data is deliberately or inadvertently disclosed to the public.”<sup>4</sup> AT&T notes that, “[t]he damage that could potentially result in the inadvertent or malicious use of NRUF data and NANPA

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<sup>1</sup> ATIS Comments at p.3.

<sup>2</sup> To the extent that a rulemaking is initiated on this matter, ATIS believes that the FCC may wish to consider addressing the issue of state protections for outage reporting data outside of the issue of NORS direct access. ATIS believes that the disclosure of state outage reporting presents the same risk as the disclosure of NORS data. Therefore, certain minimum protections for such data may be appropriate.

<sup>3</sup> For similar reasons, ATIS does not believe that state access to Form 477 data is an example of state access to similar data. Massachusetts Department of Telecommunications and Cable Data at p.6. Form 477 data, while competitively sensitive, does not pose the same risk to public safety and homeland security as outage data.

<sup>4</sup> Comments of CTIA- The Wireless Association at p. 4

database information would pale in comparison to the damage that such disclosures of network outage report data could cause.”<sup>5</sup>

In its comments, ATIS recommended several requirements to help safeguard outage reporting data in addition to the requirements proposed by the CA PUC (i.e. password protected access to NORS, classification of outage data as confidentiality, and state certification regarding state protections for the data). ATIS noted that state access must not, for instance, compromise the protection of the information under the federal Freedom of Information Act (FOIA).<sup>6</sup> ATIS agrees with USTelecom that, to the extent that state FOIA or Public Records Acts do not provide equivalent protection to the federal FOIA, the terms of the federal FOIA should apply.<sup>7</sup>

ATIS in its comments also urged the Commission to prohibit the sharing of NORS outage data with any non-government entity or with any governmental body that has not certified that it can protect such data.<sup>8</sup> ATIS advocated that the Commission limit access only to those persons with a demonstrated need to know. ATIS believes that these restrictions are essential to the protection of data. ATIS is concerned with the interests expressed by some state commenters in this proceeding that data would be shared with other agencies or first responders.<sup>9</sup> While ATIS understands the need for state agencies to coordinate operations, it does not believe that this confidential data should be widely available as such availability would substantially increase the risk of disclosure. ATIS therefore opposes the direct sharing of NORS data with any local agency that does not

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<sup>5</sup> Comments of AT&T at p.4.

<sup>6</sup> ATIS Comments at p. 5.

<sup>7</sup> Comments of USTelecom at p. 3.

<sup>8</sup> ATIS Comments at p. 5.

<sup>9</sup> See Comments of MoPSC at p. 1; Comments of the City of New York at p. 3.

have a demonstrated need for this confidential data or that has not certified that it is in compliance with all safeguards established for the protection of this data.

Given the sensitive nature of the data, ATIS also supports additional restrictions on access to NORS data proposed by other commenters. ATIS supports AT&T's recommendations that there should be a limit to the number of personnel that may access the data and that the identities of those with such access should be kept on file with the Commission.<sup>10</sup> ATIS also agrees with AT&T that training of these personnel is another key safeguard.<sup>11</sup> Restricting access will do little good if those with access do not understand why the data is to be protected, how it is to be protected and what to do if a breach occurs.

In its comments, ATIS noted the need for states to have in place adequate policies and protections to protect information on state servers or computers from hackers and other unauthorized access.<sup>12</sup> ATIS believes that other safeguards may further enhance security. ATIS supports the recommendations of CTIA- The Wireless Association that the Commission should: (1) create and maintain an audit log for NORS to record what data was accessed, when and by whom; and (2) audit all NORS accounts granted to State Commissions and shut down those that have not been used in the past six months.<sup>13</sup> These safeguards could protect outage data by aiding in the investigation of any data breaches or by eliminating a major vulnerability related to unmonitored active accounts. For similar reasons, ATIS also supports CTIA – The Wireless Association's recommendation that service providers and other NORS filers should be provided with periodic reports on state

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<sup>10</sup> Comments of AT&T at p. 8

<sup>11</sup> *Id.*

<sup>12</sup> ATIS Comments at p. 5.

<sup>13</sup> Comments of CTIA- The Wireless Association at p. 6.

access, including the number of active accounts and the number of reports accessed by each. Finally, ATIS supports the recommendation that State Commissions be required to inform the Commission and all affected NORS filers of any breach or suspected breach of data.<sup>14</sup>

## **II. State Access to NORS Should Be Granted only to States that Do Not Have Inconsistent Reporting Requirements**

In its comments, ATIS urged the Commission to prohibit direct access to NORS data by states that have adopted reporting requirements that differ from those that have been adopted by the Commission.<sup>15</sup> Put another way, if state access is provided, it should be provided only to those states: (1) with consistent reporting obligations that agree to abide by the confidentiality and other restrictions established by the Commission pertaining to this data; or (2) without reporting regulations that agree to abide by the confidentiality and other restrictions established by the Commission pertaining to this data. Such a limitation would minimize both the confusion stemming from separate and inconsistent outage reports and the burden on states and service providers of having to file separate outage reports.

USTelecom agrees with ATIS that states with inconsistent reporting requirements should not be granted access to NORS. “In this way, carriers will be released from the burdens of filing conflicting outage requests with the Commission and any State Commissions, while State Commissions would not be required to differentiate between duplicative reports...”<sup>16</sup> CTIA-The Wireless Association notes that “[a]ny attempt by a state public utility commission to impose state-specific outage reporting requirements in

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<sup>14</sup> *Id.*

<sup>15</sup> ATIS Comments at p. 6.

<sup>16</sup> Comments of USTelecom at p 5.

addition to, or instead of, those associational with NORS is inconsistent with the underlying policy goal of a unified national standard for outage reporting.”<sup>17</sup>

Many State Commissions have also commented on the value of reducing outage reporting burdens by eliminating duplicative or inconsistent filing obligations. The Massachusetts Department of Telecommunications and Cable notes that access to NORS data would “reduce the need for states like California to collect identical outage data independently, and minimize redundant reporting, a goal the FCC established in its first NPRM on this issue.”<sup>18</sup> The National Association of State Utility Consumer Advocates agrees and notes that supplying reports to two different agencies is burdensome on both carriers and state regulatory personnel.<sup>19</sup>

To reduce the burdens on State Commissions and service providers, it is not enough however to simply provide state access to NORS. As AT&T explains in its comments, the reduction in burdens would only exist if the states do not impose more or different outage obligations on reporting entities than are established by the Commission.<sup>20</sup> This would allow, as the DCPSC correctly notes, service providers to “concentrate on restoring service instead of transmitting outage reports.”<sup>21</sup>

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<sup>17</sup> Comments of CTIA – The Wireless Association at p. 4.

<sup>18</sup> Comments of the Massachusetts Department of Telecommunications and Cable at p. 5.

<sup>19</sup> Comments of the National Association of State Utility Consumer Advocates Supporting the Petition of the California Public Utilities Commission and the People of the State of California at p. 7.

<sup>20</sup> Comments of AT&T Inc. at pp. 9-10.

<sup>21</sup> Comments of the Public Service Commission of the District of Columbia at p.2.

### **III. Outage Reporting Data Must Be Used Only for Public Health and Safety**

In its comments, ATIS urged that, should the Commission grant state-level direct access to NORS data, use of such outage reporting data should be limited to the protection of public health and safety.<sup>22</sup> As ATIS and other commenters correctly note, the CA PUC itself has identified the goal of its petition as simply to obtain the data necessary to “protect health and safety.”<sup>23</sup> This restriction also appears consistent with the proposed use described by most of the state public service commission commenters, including the DCPSC, which notes that NORS data would “assist the DCPSC in fulfilling its statutory obligation to protect the public safety and welfare of District of Columbia residents...”<sup>24</sup>

ATIS strongly disagrees with the suggestion made by the National Association of State Utility Consumer Advocates that NORS data should be used to monitor marketing and advertising statements made by service providers.<sup>25</sup> ATIS believes that this suggested use is entirely inappropriate. The Commission’s outage reporting requirements and thresholds were not established for this purpose and trying to use them in this way would create confusion. Such use could also negatively impact the close and effective cooperation that exists among the communications industry and between the industry and federal and state regulatory agencies regarding the identification, evaluation and resolution of network outage issues.

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<sup>22</sup> ATIS Comments at p. 6.

<sup>23</sup> *See Id.*; Comments of AT&T Inc. at p. 9; Comments of CTIA-The Wireless Association at p. 6.

<sup>24</sup> Comments of the Public Service Commission of the District of Columbia at p. 2.

<sup>25</sup> Comments of the National Association of State Utility Consumer Advocates Supporting the Petition of the California Public Utilities Commission and the People of the State of California at p. 5.

#### **IV. State Access to NORS Data Must Be Limited to Outages Affecting Customers within that State and for Services Regulated by that State**

ATIS reiterates its recommendation that, if direct state access to NORS is granted, individual states should only have access to data for providers and services that serve customers in the state, only for outages occurring in that state (regardless of the reporting party).<sup>26</sup> This recommendation is supported by AT&T, CTIA – The Wireless Association, and USTelecom.<sup>27</sup> Such access is not related to a state’s role in protecting the safety or health of its citizens and, as USTelecom notes, “[a]llowing State Commission to have access to significant numbers of outage reports outside of their jurisdiction would unnecessarily increase the risk of inadvertent disclosures.”<sup>28</sup>

Similarly, as ATIS noted in its comments, if the Commission grants direct state access to NORS, this system should be modified to limit the access to those services that are regulated by the state. Therefore, ATIS opposes the scope of access being sought by the MoPSC, which seeks information “for a broader array of providers not covered by the MoPSC rules.”<sup>29</sup> Enlarging the scope of access as requested by the MoPSC to include providers not regulated by the State Commission would expand the scope of review even beyond the state’s own regulation.

#### **V. Conclusion**

There is strong support among commenters for the need to appropriately safeguard outage reporting data. Therefore, important safeguards must be established before direct

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<sup>26</sup> ATIS Comments at p. 7.

<sup>27</sup> See Comments of AT&T Inc. at p. 9; Comments of CTIA – The Wireless Association at p. 8; Comments of USTelecom at p. 4.

<sup>28</sup> Comments of USTelecom at p. 4.

<sup>29</sup> Comments of the MoPSC p.2.

access by states could be granted to NORS. These safeguard must include: sufficient protections of data under state laws; restrictions on the sharing of NORS data; protections related to access of this data; and restrictions on the use of this data. ATIS also believes that any state access should be limited only to those states: (1) with consistent reporting obligations that agree to abide by the confidentiality and other restrictions established by the Commission pertaining to this data; or (2) without reporting regulations that agree to abide by the confidentiality and other restrictions established by the Commission pertaining to this data. Finally, ATIS reiterates its recommendation that state access must be limited to data for providers and services that serve customers in the state, only for outages occurring in that state and only for services regulated by the state.

Respectfully submitted,

Alliance for Telecommunications Industry Solutions

By:



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