

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)
Whether the Commission’s Rules Concern-) ET Docket No. 04-35
ing Disruptions to Communications Should) WC Docket No. 05-271
Apply to Broadband Internet Service Pro-) GN Docket Nos. 09-47, 09-51, 09-137
viders and Interconnected Voice over Inter-)
net Protocol Service Providers.)

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON NOTICE OF INQUIRY**

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ submits these reply comments on the Federal Communications Commission (“FCC” or “Commission”) Public Safety and Homeland Security Bureau (“PSB”) request for comment on whether the Commission’s rules concerning disruptions to communications should apply to broadband Internet service providers (“BISPs”) and interconnected voice over Internet protocol service (“VoIP”) providers (collectively, “the providers”).² These reply comments respond chiefly to the providers’ assertions that no regulation is needed, i.e., the Commission disruption rules should not apply to them.

The first and perhaps most crucial point here is to challenge the providers’ claims that “competition within the ... market motivates providers to ensure high-quality, secure, reliable

¹ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

² DA 10-1245 (rel. July 2, 2010).

service.”³ As explained elsewhere by NASUCA, the economic justification to ensure such service is limited, and ignores network externalities.⁴ Indeed, this claim is undercut by the providers’ own acknowledgement of the complexity of the network.⁵

Another theme running throughout the providers’ comments is essentially that “our networks are fine, so there is no need for regulation.”⁶ Verizon asserts that “[b]roadband networks are newer and thus **should** be even more dependable than today’s highly-reliable PSTN voice networks.”⁷ Newness, of course, is no guarantee of dependability. The quality of one network in a competitive environment does not provide assurance that all providers strive for the same high quality, especially where the owners or managers of the network have decided that investment is **not** economically justified.

As stated in the NASUCA Wireless Bill Shock Reply Comments,

The problem with relying on competition to eliminate [such] phenomena ... is that competition **requires** customers to have an unpleasant experience before they move on and make the offending carrier suffer the loss of customers. But even if the accumulation of lost customers eventually changes carrier behavior, this is a slow process, and in the meantime consumers will suffer.⁸

It may be that “[i]t is far from clear what would be appropriate ways to define outages and disruptions in IP networks.”⁹ And it may also be true that “[s]ervice outages could be caused by

³ Comments of the VON Coalition (“VON Coalition”) at 5; see also Comments of the United States Telecom Association (“USTelecom”) at 3; Comments of Vonage Holdings Corporation (“Vonage”) at 6.

⁴ See, e.g., *In the Matter of Effects on Broadband Communications Networks Of Damage to or Failure of Network Equipment Or Severe Overload*, PS Docket No. 10-92, NASUCA Reply Comments (July 26, 2010); *In the Matter of Measures Designed to Assist U.S. Wireless to Avoid “Bill Shock”*; Consumer Information and Disclosure, WT Docket No. 09-158, NASUCA Reply Comments (July 19, 2010) (“NASUCA Wireless Bill Shock Reply Comments”).

⁵ See VON Coalition Comments at 1.

⁶ See, e.g., Comments of Verizon and Verizon Wireless (“Verizon”) at 1, 3-6; USTelecom Comments at 1; Comments of the National Cable & Telecommunications Association (“NCTA”) at 4-5.

⁷ Verizon Comments at 2 (emphasis added).

⁸ NASUCA Wireless Bill Shock Reply Comments at 3 (emphasis in original, footnote omitted).

⁹ Comments of the United States Internet Provider Association (“USIPA”) at 2; see also *id.* at 4. NASUCA fundamentally disagrees with the VON Coalition’s assertion that only outages caused by the failure of the provider’s equipment should be reported. VON Coalition Comments at 7.

multiple factors, all of which may be out of the control of and unknown to the” provider.¹⁰ But given the increasing importance of the Internet in the American economy and American life in general,¹¹ it may be necessary to define and report such outages.¹² Indeed, **especially** if the cause is unknown to the provider, reporting is necessary. All BISPs and VoIP providers should be required to report.¹³

The calls for a “light regulatory burden” here¹⁴ also ignore the growing importance of these services. Any diversion of “critical resources away from investment, innovation and broadband deployment....”¹⁵ would be more than outweighed by the knowledge gained by regulators about weaknesses in the system.

The VON Coalition advocates for a number of limitations on outage reporting, such as guaranteed confidentiality¹⁶ and an assurance that the reporting will not be used to impose punitive measures on providers.¹⁷ As to the former, keeping outages secret defeat a primary purpose of reporting requirements (and reinforces NASUCA’s point about customers having to suffer before they will move to the competition). And if the outage is caused by imprudent

¹⁰ VON Coalition Comments at 1; see also *id.* at 7; Vonage Comments at 2, 3; NCTA Comments at 7-9; USTelecom Comments at 4-5. Clearly, if the provider is unaware of the outage (VON Coalition Comments at 3), no reporting will be possible. And if a provider’s customer reports an outage to the provider (*id.* at 3-4), the provider will have to investigate, regardless of the cause. Reporting by “over-the-top” VoIP providers would not be “duplicative” (Vonage Comments at 2); it will give a more accurate assessment of the extent of the outage.

¹¹ See DA 10-1245 at 1.

¹² This is true whatever the security implications of the outage. NCTA Comments at 10; VON Coalition Comments at 4-5.

¹³ See Vonage Comments at 3 (asserting that over-the-top VoIP providers should be required to report only outages caused by network components controlled by the over-the-top providers). Verizon asserts that reporting will miss “problems with consumers’ equipment or outages in the facilities used by third-parties to provide Internet-based content, applications, and services.” Verizon Comments at 2. On the one hand, a problem in the consumer’s equipment will impact only that one consumer (who will likely contact the provider anyway); on the other hand, if an application has an outage, the consumer will likely seek another application (much simpler a matter than seeking another BISP).

¹⁴ VON Coalition Comments at 1; see also *id.* at 6.

¹⁵ USIPA Comments at 4; see also VON Coalition Comments at 1; Vonage Comments at 6-7.

¹⁶ VON Coalition Comments at 8; see also NCTA Comments at 12-13.

¹⁷ VON Coalition Comments at 8.

provider action, making reporting conditional on “immunity from prosecution” will provide no disincentive for such imprudence (again requiring consumers to suffer).

USIPA notes the “many sources of information” that supposedly “make ISP outage reporting unnecessary.”¹⁸ Similarly, USIPA notes the “numerous bodies, both within the government and in the private sector, that are working to ensure that network operators employ the best practices for dealing with challenges.”¹⁹ But that is part of the problem: These varied sources collect and provide varied information, and the various bodies work on various aspects of the problems. There should be a central repository for information, both as to outage information and as to industry efforts.

Respectfully submitted,

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¹⁸ USIPA Comments at 3; see also NCTA Comments at 11-12; USTelecom Comments at 7-10; Verizon Comments at 2, 9-11.

¹⁹ USIPA Comments at 3.