Suzan DeBusk Paiva
Assistant General Counsel
Pennsylvania

1717 Arch Street, 17W
Philadelphia, PA 19103

Tel: (215) 466-4755
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

April 5, 2010

VIA ELECTRONIC FILING
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Proposed Rulemaking for Revision of 52 Pa. Code Chapters 57, 59, 65 & 67;
Amending Utilities' Service Outage Response and Restoration Practices
Docket No. L-2009-2104274

and Proposed Policy Statement Regarding
Utility Service Outage Notification Guidelines
Docket No. M-2008-2065532

Dear Mr. McNulty,

Pursuant to the Commission's Proposed Rulemaking Order and also to the Commission's Proposed Policy Statement in the above named matters, and pursuant to the subsequent Notices in the March 6, 2010 Pennsylvania Bulletin, enclosed please find the Comments of Verizon Pennsylvania Inc., Verizon North Inc. and MCImetro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services ("Verizon") concerning both the Commission's Rulemaking Order and the Commission's Proposed Policy Statement. As indicated in the courtesy copy listing below, Verizon is sending electronic copies of the Comments to Ms. Barnes and to Mr. Searfoorce via electronic mail.

Very truly yours,

Via E-Mail and UPS Delivery
cc: Elizabeth Barnes, Esquire, Law Bureau
Daniel Searfoorce, Bureau of Fixed Utility Services

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking for Revision of 52 Pa. Code Chapters 57, 59, 65 and 67 Pertaining to Utilities' Service Outage Response and Restoration Practices	:	Docket No. L-2009-2104274
Proposed Policy Statement Regarding Utility Service Outage Public Notification Guidelines	:	Docket No. M-2008-2065532

COMMENTS OF VERIZON[1]

By a Proposed Rulemaking Order entered November 10, 2009 at Docket L-2009-2104274, the Commission seeks to amend its regulations at Pennsylvania Code, Title 52, Chapters 57, 59, 65 and 67, to add to its requirements regarding the reporting of service outages. The order indicates that this rulemaking originates from a series of electrical service outages and a subsequent Commission investigation into the service outage response and restoration practices of electric distribution companies. The changes are primarily directed at the electric industry. In fact, the Commission's Regulatory Analysis Form submitted to the Independent Regulatory Review Commission ("IRRC") represented to that committee that the regulatory changes would apply to electric, gas and water utilities, and "telephone companies are encouraged to comply but *are not required.*"[2] Nevertheless, the proposed changes to Chapter 67 apply to all utilities, including telephone companies, and the order notes that "[t] he issue of whether the additional reporting

---

1 The comments are submitted on behalf of the Verizon local exchange carriers ("LECs"), Verizon Pennsylvania Inc., Verizon North Inc. and MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services.

2 IRRC Regulatory Analysis Form, Response 16 (emphasis added); *see also* Letter from Chairman James H. Cawley to the Honorable Arthur Coccodrilli, Chairman of IRRC, February 18, 2010 ("The purpose of this proposal is to establish a more uniform approach for reporting standards among the gas, water/wastewater and electric industries in the event of utility service outages.")

requirements would be limited to electric utilities" or extended to other carriers, including telephone companies, "can be addressed during the review procedure."[3] (11/10/09 Rulemaking Order at 9).

Verizon respectfully submits that the Commission should not increase its service outage reporting requirements for telephone companies. Instead, to comport with the strict statutory limitations on the Commission's authority to require telephone carrier reporting set forth at 66 Pa. C.S. § 3014(f), as well as with the Commission's own representation to the IRRC that the new rules are optional for telephone carriers, the Commission should modify its proposed regulation to limit its application. Rather than increasing its state-specific outage reporting rules for telephone companies, the Commission should follow its sister commissions in a number of other states and should allow telephone companies the option, in lieu of any state-specific reporting, to submit to this Commission the same information they submit to the Federal Communications Commission ("FCC") and Department of Homeland Security ("DHS"), under appropriate confidentiality protection. This result would best serve national security interests, promote efficiency, ensure competitive neutrality and eliminate duplicative and potentially counterproductive reporting burdens that could have the inadvertent effect of directing resources away from restoring service to customers.

The Commission also seeks comment at Docket M-2008-2065532 on whether a proposed policy statement containing detailed public notification guidelines for electric service outages should be extended to other utilities, including telephone carriers. For the

---

[3] The proposed changes to 52 Pa. Code § 67.1 on their face would apply to "telephone utilities holding certificates of public convenience." (11/10/09 Rulemaking Order at 9). Accordingly, if compliance were to be made optional for telephone companies, consistent with representation to IRRC, changes to the form of the regulation are required.

same reasons, Verizon respectfully submits that the Commission should not extend this policy statement to telephone carriers. There has been no finding that current telephone industry notification practices are inadequate and no basis to conclude that the Commission must micro-manage the customer notification requirements for only one segment of the telecommunications industry, the certificated wireline carriers. Doing so would be inconsistent with the goals of Chapter 30 to minimize regulation and ensure competitive neutrality. The competitive market will ensure that telephone carriers properly communicate with their customers regarding outages.

BACKGROUND

All Pennsylvania telephone companies are already required to provide substantial service outage reporting to the FCC and DHS under the FCC's *New Part 4 Rules*.[4] In 2004, following the terrorist attacks of September 11, 2001, the FCC adopted these mandatory outage reporting requirements for communications providers, recognizing the critical need for "rapid, complete, and accurate information on service disruptions that could affect homeland security, public health or safety, and the economic well-being of the Nation's communications networks and critical infrastructure."[5] Finding that mandatory reporting of network outages was "the only reliable way to collect this important information for use by this Commission and, where appropriate, for other government entities," the FCC extended reporting to all communications companies that provide voice and/or paging communications.[6] The resulting federal regulations are set forth at 47 C.F.R. § 4.1, et seq.

---

4 *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 (2004) ("New Part 4 Rules Report and Order").

5 New Part 4 Rules Report and Order, 19 FCC Rcd. 16830, ¶ 1 (2004).

6 *Id.* ¶ 32, at 16848. (emphasis added); *Id.* ¶ 2, at 16834.

Under the *New Part 4 Rules*, the FCC mandated carriers to submit outage reports electronically via its Network Outage Reporting System ("NORS") database.[7] NORS utilizes a "fill in the blank" template that allows carriers electronically to submit their service outage reports to the FCC.[8] In addition, the FCC uses a common metric to establish a general outage-reporting threshold for all covered communications providers. The FCC requires all communications providers—including wireline, wireless, and cable—to electronically notify the FCC within 2 hours of discovering a service outage of at least 30 minutes that (i) affects at least 900,000 user minutes, (ii) affects at least 1,350 DS3 minutes, or (iii) potentially affects any special offices and facilities or 911 special facilities.[9] The notice must contain:

> (i) the name of the reporting entity;
>
> (ii) the date and time of onset of the outage;
>
> (iii) a brief description of the problem;
>
> (iv) services affected;
>
> (v) the geographic area affected by the outage; and
>
> (vi) a contact name and contact telephone number by which the FCC's technical staff may contact the reporting entity.

47 C.F.R. §§ 4.9(a) (cable), (c) (satellite), (e) (wireless), and (f) (wireline), § 4.11. Within 72 hours of discovery of the service outage, the provider must submit electronically an Initial Communications Outage Report to the FCC containing the information required in the Notification, as well as "all pertinent information then available on the outage." 47

---

7 *Id.*; *see also* Network Outage Reporting System, http://www.fcc.gov/pshs/outage/

8 New Part 4 Rules Report and Order, 19 FCC Rcd. 16830 (2004).

9 The FCC defines special offices and facilities as "major military installations, key government facilities, nuclear power plants, and those airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airports Systems (NPIAS)." 47 C.F.R. § 4.5(b).

C.F.R. § 4.11. Within 30 days of discovering the outage, the provider must submit electronically a Final Communications Outage Report to the FCC including the information contained in the Notification and "all pertinent information on the outage, including any information that was not contained in, or that has changed from that provided in, the Initial report." *Id.* The form requires the telephone carrier to provide information on steps, if any, that the company will take to prevent such an occurrence in the future.

Following the FCC's adoption of its *New Part 4 Rules*, several states have replaced their own state-specific outage reporting requirements and allowed telephone carriers instead to provide the same information that they provide to the FCC through the NORS database. As the California commission explained, "[b]alancing the Commission's need for robust service outage reporting and a policy favoring streamlined reporting requirements, wherever possible, we determine that we can achieve both objectives by conforming our reporting requirements to the FCC's."[10] This is consistent with the approach recently taken in Virginia.[11]

The FCC also determined in the *New Part 4 Rules* that outage reports containing sensitive data would require confidential treatment under the Freedom of Information Act ("FOIA").[12] To support its change in policy, the FCC found that the national defense and public safety goals that it sought to achieve by requiring these outage reports would be

---

10 *Order Instituting Rulemaking on the Commission's Own Motion into the Service Quality Standards for All Telecommunications Carriers and Revisions to General Order 133-B, Decision 09-07-019; Rulemaking 02-12-004*, 2009 Cal. PUC LEXIS 320; 275 P.U.R.4th 70 (CA PUC, July 16, 2009). The California Commission has also petitioned the FCC to allow it and other state commissions to have direct access to the NORS database. (ETC Docket 04-35).

11 *See* 20 VAC5-428-60 ("A LEC shall inform the staff of a service outage in Virginia by providing all reports required by the Federal Communications Commission (FCC) under 47 CFR Part 4. A LEC shall comply with all provisions of 47 CFR Part 4 related to report content, processing and delivery."). *See also* N.J.A.C. 14:10 1A.14(f) (New Jersey); OAC Ann 4901:1-5-13 (2009) (Ohio).

12 *New Part 4 Rules Report and Order*, ¶ 3, at 16834.

seriously undermined if it were to permit these reports to fall into the hands of terrorists who seek to cripple the nation's communications infrastructure[13]

COMMENTS

A. The Commission Should Modify 52 Pa. Code § 67.1 To Provide Telephone Companies The Option To Submit Their FCC Reporting In Lieu Of Any State-Specific Service Outage Reporting

Chapter 30 of the Public Utility Code imposes a unique limitation on the reporting that this Commission is authorized to require of telephone companies, in contrast to its broader authority to require reporting from other types of utilities.[14] Under 66 Pa. C.S. § 3015(e), only certain specified reports may be required, and a service outage report is not one of the reports that the Legislature enumerated. The Commission's authority to require additional reporting from telephone carriers beyond the specifically enumerated reports is strictly limited. Section 3015(f)(1) makes clear that "no report, statement, filing or other document or information, except as specified in subsection (e), shall be required" unless the Commission first makes specific written findings that the report is necessary to ensure that the company "is charging rates that are in compliance with this chapter and its effective alternative form of regulation" ***and*** that "the benefits of the report substantially outweigh the attendant expense and administrative time and effort required . . . to prepare it." 66 Pa. C.S. § 3015(f)(1).[15]

---

13 *Id.* ¶ 45, at 16855.

14 While Chapter 30 applies only to incumbent local exchange carriers, it would be counterintuitive to impose more onerous reporting requirements on competitive local exchange carriers.

15 In a previous Commission proceeding various parties, including two of the state legislators instrumental in the drafting of these provisions of Chapter 30, explained that both conditions must be satisfied in order for the Commission to require additional reporting, and that the test is not "either, or." The Commission did not decide the issue. *Section 3015(F) Review Regarding The Lifeline Tracking Report, Accident Report And Service Outage Report*, Docket No. M-00051900, 2005 Pa. PUC LEXIS 39 (Opinion and Order entered December 30, 2005).

In its proposed changes to 52 Pa. Code § 67.1, the Commission would significantly expand its service outage reporting requirements, and the new reporting specifically applies to all "telephone utilities holding certificates of public convenience." 52 Pa. Code § 67.1(a) (proposed). These requirements go far beyond what telephone companies provide to the Commission under Section 67.1 today.[16] The proposed new regulation would require detailed reporting within five working days indicating the "approximate number of outage cases and trouble cases," the "approximate number of sustained outages for each county," specific details for each outage exceeding 6 hours (such as geographic location, total customers affected, duration, dates and times), listing of workers (including contract and mutual aid workers) deployed by function, descriptions of physical damage, weather reports, and historical ranking of the event in comparison to other outages. 52 Pa. Code § 67.1 (proposed). But the Commission has made no finding that this substantial additional level of detail for service outage reporting meets the strict standards of 66 Pa. C.S. § 3015(f)(1). Verizon respectfully submits that this state-specific additional outage reporting proposed through the revised Section 67.1 does not satisfy the statutory standard and cannot be required of incumbent telephone companies.

In light of the fact that the current level of information has been sufficient to ensure that the companies are "charging rates that are in compliance with this chapter and its effective alternative form of regulation" for more than five years now, there is no basis to conclude that the substantial additional information and details that would be required by the proposed new regulation are now suddenly needed for that purpose, and the

---

[16] In 2005, the Commission found that the lesser degree of service outage reporting required under the presently effective form of Section 67.1 satisfied the exceptions set forth in 66 Pa. C.S. § 3015(f)(1). *Section 3015(F) Review Regarding The Lifeline Tracking Report, Accident Report And Service Outage Report*, Docket No. M-00051900, 2005 Pa. PUC LEXIS 39 (Opinion and Order entered December 30, 2005).

Commission does not so conclude in its Rulemaking Order. Further, in light of the substantial information that can already be provided to the Commission with little additional effort as a result of the FCC's mandatory service outage reporting, there is no basis to conclude that "the benefits of" the proposed new state-specific reporting "substantially outweigh the attendant expense and administrative time and effort required . . . to prepare it." 66 Pa. C.S. § 3015(f)(1).

The best resolution of the service outage reporting issue for telephone carriers would be for this Commission to follow the lead of California and other state commissions and provide telephone carriers with the option to submit their FCC reporting to this Commission in lieu of any state-specific reporting. The FCC has performed an in depth investigation to balance its need (and the Department of Homeland Security's need) for reporting information from communications providers on outages with the degree of cost and effort to produce that information. Rather than setting out to increase the state-specific service outage reporting requirements for telephone companies that differ from the mandatory FCC reporting, the Commission should instead modify its rules to provide those carriers with the option to avoid this Commission's reporting requirements and submit the FCC reporting to this Commission. There is no benefit to be gained by imposing state-specific reporting requirements that are overly burdensome, conflict with or are duplicative of federal rules, when this Commission could instead obtain the same information that is provided to the FCC with little additional burden on the carriers.

It is impractical and a significant waste of resources to subject telephone carriers to a patchwork of disparate state outage reporting requirements. The very detailed federal outage reporting rules apply both to wireline providers and intermodal providers, such as

wireless and cable telephony providers.[17] The FCC Office of Engineering and Technology Staff has recently reaffirmed that its rules provide the right balance in requiring providers to submit the needed information.[18] The FCC has also specifically cautioned that with respect to reporting requirements, there is a legitimate need for national, uniform outage-reporting systems.[19] This Commission has not identified any deficiency in the federal reporting requirements that would warrant imposing onerous state specific variances to these requirements. The only proposed rule that should be adopted is a rule that would provide the option to submit to the Commission, on a confidential and electronic basis, the outage information that the provider submits to the FCC, in lieu of any state-specific reporting rules.

Given the availability of this federal information, the Commission cannot conclude that "the benefits of" the proposed new state-specific reporting "substantially outweigh the attendant expense and administrative time and effort required . . . to prepare it." 66 Pa. C.S. § 3015(f)(1). The proposed state-specific reporting would be costly to implement without adding any benefit to customers over the reporting standards and requirements adopted by the FCC and, in fact, by adopting the FCC reporting structure the Commission can analyze

---

17 *See* 47 C.F.R. §§ 4.9(a), (e), and (f).

18 "These rules serve a public interest purpose because they provide the Federal Government with information necessary to oversee the reliability and security of the Nation's telecommunications networks. The rules employ a user-minute reporting metric that properly balances both the duration of the outage and the number of users affected by the outage to determine whether the event is significant enough to warrant reporting to the Federal Government. The reports themselves require only the information necessary to oversee the reliability and security of the Nation's telecommunications networks and are treated in a confidential manner. Thus, we do not conclude that such regulations are no longer necessary in the public interest as the result of meaningful economic competition between telecommunications service providers." *2006 Biennial Regulatory Review*, ET 06-155, DA 07-668, February 14, 2007, Office of Engineering and Technology, *Staff Report*, 2007 WL 489496 (F.C.C.), at *13.

19 *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, FCC 04-188, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd. 16830, Rel. August 19, 2004, par. 170.

state-specific trends against national trends using FCC statistics released quarterly by the FCC. The Commission must consider whether the expedited and expanded reporting requirements contained in the proposed revisions would compete for the same carrier resources being used to restore service to customers, and it should avoid implementing revised reporting requirements that are so onerous that they would jeopardize restoration of customer service or, in the alternative, create such a burden as to require service providers to increase resources (and costs) solely to meet reporting requirements for the Commission. The proposed rules would require Verizon to expend significant resources to develop a separate set of systems and procedures for Pennsylvania, as well as divert employees from providing customer service in favor of collecting, documenting, verifying, and reporting service outages for the Commission. Verizon is already obligated to report to the FCC and should not be required to divert resources to additional report-filing on the state level rather than focusing on repairing and restoring the outage. Verizon's resources are better spent responding to and resolving service outages in a timely manner, which should be the Company's and the Commission's priority.

Not only would an option to provide the FCC data in lieu of state-specific reporting avoid conflict with the restrictions of 66 Pa. C.S. § 3015(f)(1), but it would also advance Chapter 30's policy goal of "recogniz[ing] that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers," 66 Pa. C.S. § 3011(13), as well as the competitive neutrality requirements of 47 U.S.C. § 253(b) ("Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis . . .requirements necessary to . . . protect the public safety and welfare, ensure

the continued quality of telecommunications services, and safeguard the rights of consumers."). The Commission's proposed revisions to 52 Pa. Code § 67.1 are not competitively neutral, given that Verizon and other certificated telephone companies compete for customers against cable, VOIP, wireless, and system integrators who are not similarly regulated and are not required to report service outages to this Commission. The FCC has interpreted "competitive neutrality" as requiring competitive neutrality among "the entire universe of participants and potential participants in a market."[20] The FCC has also determined that the market in which Verizon competes includes intermodal providers such as system integrators, cable telephony, mobile wireless service providers, and providers of certain VOIP services.[21] Since the draft Pennsylvania rules only apply to certificated wireline providers, they would violate both the policy goals of Chapter 30 and the requirements of federal law because they are not competitively neutral.[22] By contrast, an option to submit the FCC information to this Commission is competitively neutral because the FCC's reporting requirements apply to a broader array of carriers and this rule would not impose substantial report preparation burdens and costs just on the certificated wireline segment of the market.

Verizon therefore offers the following language as an alternative to the proposed revisions to the pertinent portions of 52 Pa. Code § 67.1. The following changes would render the proposed regulations more consistent with the Commission's representation to

---

20 *In the matter of Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, 13 FCC Rcd. 16356, FCC 98-205, released August 24, 1998, par. 10.

21 *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, 20 FCC Rcd 18433; 2005 FCC LEXIS 6386, released November 17, 2005, pars. 75-80.

22 47 U.S.C. §. 253; *In the Matter of the Public Utility Commission of Texas*, 13 FCC Rcd. 3460, FCC 97-346, Released October 1, 1997, ("*Texas Preemption Order*"), pars. 21 and 82.

IRRC that "telephone companies are encouraged to comply but are not required."

(Regulatory Analysis Form, Response 16):

§ 67.1. General provisions.

(a) Electric, gas, **and** water ~~and telephone~~ utilities holding certificates of public convenience under 66 Pa.C.S. §§ 1101 and 1102 (relating to organization of public utilities and beginning of service and enumeration of acts requiring certificate) shall adopt the following steps to notify the Commission with regard to unscheduled service interruptions.

(b) All electric, gas, **and** water, ~~and telephone~~ utilities shall notify the Commission when 2,500 or 5.0%, whichever is less, of their total customers have an unscheduled service interruption in a single [incident] event for [six] 6 or more projected consecutive hours. Written notification shall be filed with the Commission within [five] 5 working days after the total restoration of service. Where storm conditions cause multiple reportable interruptions as defined by this section, a single composite report shall be filed for the event. Each report shall contain the following information:

*** * * [no changes suggested to omitted portions]**

(f) A telephone utility holding a certificate of public convenience under 66 Pa. C.S. §§ 1101 and 1102 (relating to organization of public utilities and beginning of service and enumeration of acts requiring certificate) shall have the option of either complying with subsections (a), (b) and (c), above, or in lieu of such reporting, may give notice to the Commission that it intends to mirror Federal Communications Commission outage reporting obligations set forth at 47 CFR Part 4, for outages originating in Pennsylvania. Once this option is elected, the telephone utility shall provide to the Commission, on a proprietary and confidential basis, copies of outage reporting information sent to the Federal Communications Commission for outages originating in Pennsylvania, contemporaneously with the submission to the Federal Communications Commission, and the telephone company shall not be required to comply with subsections (a), (b) and (c), above.

B. The Commission's Service Outage Notification Policy Statement Should Not Apply To Telephone Companies

In addition to modifying its proposed changes to 52 Pa. Code § 67.1 as set forth above, the Commission should also clarify that its proposed policy statement regarding utility service outage public notification guidelines, to be set forth at 52 Pa. Code § 69.1901 and 69.1902, does not apply to telephone companies. The Commission's November 10, 2009 Policy Statement Order stated that "[t]he Commission invites comment regarding whether this policy statement should be applied across other utilities." (11/10/09 Policy Statement Order at 7).

The proposed policy statement contains an extreme level of detail regarding how utilities should communicate with their customers and the public in the event of a service outage. These recommendations derive from a staff report on service outage and restoration practices *for electric distribution companies*. There has been no study of the outage notification practices in the *communications industry*, and there is no basis to conclude that present practices are in any way insufficient. There has been no finding that the competitive market is not already working to provide a sufficient incentive for telephone carriers to notify the public and customers of outages. Given the lack of any demonstrated need for such a policy statement in the telephone industry and in light of Chapter 30's clearly stated goal to avoid additional regulatory burdens on the telephone industry, particularly where those burdens are not competitively neutral because the Commission does not regulate a large segment of the market, the Commission should clarify that the proposed policy statement does not apply to telephone companies.

CONCLUSION

For the foregoing reasons, the Commission should: (1) modify its proposed changes to its regulation at 52 Pa. Code § 67.1 to provide telephone companies with the option of providing their FCC reporting in lieu of any state specific reporting requirements, on a confidential and proprietary basis, as set forth above; and (2) clarify that its proposed policy statement on service outage notification practices does not apply to telephone companies.

Suzan D. Paiva (Atty No. 53853)
Verizon
1717 Arch Street, 17th Floor
Philadelphia, PA 19103
(215) 466-4755
Suzan.d.paiva@verizon.com

Dated: April 5, 2010

Attorney for Verizon