

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

*Re: New Part 4 of the Commission's Rules Concerning Disruptions to Communications;
ET Docket No. 04-35, Report and Order*

One of this Commission's most important responsibilities is to seek to "make available, so far as possible" a nationwide and worldwide wire and radio communication service "for the purpose of the national defense" and "for the purpose of promoting safety of life and property." 47 U.S.C. § 151. In order to fulfill that responsibility, the Commission in 1992 established network outage reporting requirements for telephone companies and cable companies providing common carrier services. The information gathered through this reporting has led to the development of best practices to reduce the severity and number of telecommunications outages and has enabled the Commission to determine whether and how network reliability is improving.

However, the world has changed a great deal since the early 1990s. Since then, wireless and satellite communications – which have not been covered by our reporting requirements – have become ubiquitous. Moreover, these communications are now the first choice of many (including Government and public safety officials) for use in emergencies. It is thus crucial that we ensure the reliability of these communications. And, as the Commission found with respect to wireline communications, an important part of ensuring reliability is obtaining network outage information.

The most difficult question for me in this proceeding concerned how the Commission should obtain this information. In particular, I am sympathetic to the call from many in industry to rely on voluntary submissions. I have been impressed with the development of the Industry Led Outage Reporting Initiative ("ILORI"), which seeks to accomplish our goals through voluntary reporting. While the Initiative is not yet a perfect solution, it is certainly a good start, and I generally encourage these kinds of industry led solutions.

In addition, a voluntary reporting scheme could provide greater protection for the information we obtain, as the Critical Infrastructure Information Act of 2002 protects only information voluntarily submitted to the Department of Homeland Security (DHS). There is no question that America's communications network is an essential component of the country's critical infrastructure and that sensitive information about the network must be kept out of the hands of bad actors. Thus, in this proceeding, DHS "urge[d] the Commission to make safeguarding the sensitive information that will be contained in the outage reports a highest priority."

On the other hand, DHS made clear that obtaining outage information is of paramount importance – that such information is "critical to national and homeland security functions central to DHS' mission including planning, incident prevention, impact analysis and mitigation, and improving incident response and recovery." Moreover, there have been problems with voluntary outage reporting in the past. At the

same time, the Commission has taken steps to ensure the confidentiality of the information we collect, and I am advised that the Freedom of Information Act should provide ample legal protection. Accordingly, I support this item.