

Comments on E-911 Board Outage Reporting Rule
House Committee on Energy and Technology, May 1, 2020
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I want to focus my comments on the backup-power issue, which is the one as a VTel subscriber that I can speak knowledgeably about, and on application of the Public Records Act, which is the one as a citizen that I feel most strongly about. Simply stated, the reference to backup-power needs to be fixed.

With the adoption of new non-line powered broadband and all of its benefits, the telecommunication industry has transferred responsibility for maintaining the electricity dependency of its system to consumers. In a rule following a 2015 proceeding entitled “Ensuring Continuity of 911 Communications” the FCC recognized and countenanced this change, but required telecoms to “offer” a source of backup power, principally batteries, first with 8-hour capacity and then, as of last February, of 24-hour capacity.

The purpose of the backup power is to provide power in the event of a prolonged electric outage to a device that VTel calls an “optical network terminal” (ONT) or generically a “network interface device” (NID). This is attached by a VTel technician at the beginning of broadband service to the exterior of a subscriber’s residence or structure. Exhibit #1 is a photo this equipment on my house.

When the NID was installed I was given an installation agreement form that says “Except for the inside wiring, which VTel considers your property regardless of who installed it, the equipment provided to you by VTel or installed by VTel, belongs to VTel.” This wording is found in Sec. 9 of the VTel installation agreement, a copy of which I’ve supplied as Exhibit #2.

We can and should do away with the reference to backup power in the outage reporting rule and, if necessary, in legislation mandating the rule. But in so doing you must not eliminate the requirement for reporting of outages that result from the loss of functionality of the specific piece of provider-installed and owned equipment on subscriber premises that enables communications and 911 connectivity. These outages are every bit as real – and have just as serious emergency and public safety consequences – as, say, a fire, lightning strike, technical malfunction, or weather event that disables a piece of equipment at a utility facility or along a distribution line – and explicit language must be retained in the rule and in underlying legislation that requires such subscriber premise outages to be reported.

Regarding application of the Vermont Public Records Act, Director Neal has given a persuasive explanation on this aspect of the rule, as she has for the rationale for other provisions of the rule. Outage reporting will of course be subject to the disclosure and exemption provisions of the Public Records Act. But I suggest that this Committee must be aware of and the rule should minimize the likelihood that the companies will make every effort to throw the broadest possible blanket they can over any reports they submit so as to exclude the entire report from public view by local emergency officials, legislators, journalists and the general public. How do we know this? I’ll give two examples.

The first I will provide to you by reference. It concerns a case before the Washington County Superior Court that was decided by Judge Mary Teachout on January 2, 2019. It dealt with a matter involving the wireless affiliate of my very own provider, Vermont Telephone Company. Exhibit #3 is the very informative January 12, 2019 news report by the Valley News. I urge you to read it carefully and consider its implications for the proposed outage reporting rule. I do not know if the Department of Public Service has responded to Judge Teachout’s suggestion of revised reporting forms, but you can inquire.

The other example is closer to home. When educating ourselves about communication issues, our ad hoc telecom working group in Shrewsbury learned the FCC requires outage reporting from carriers and one of our participants filed a Freedom of Information Request with the FCC so we could learn what information about outages in Vermont was being submitted. Despite saying that we had no interest in commercial competitive or security information, the request was rejected and we were denied any information whatsoever. The carriers want the E-911 Board rule to follow the FCC threshold for the scale of reportable outage, so it will come as no surprise that they will want the same threshold for public disclosure of reported information – NONE.

I urge you to give attention to the confidentiality issue generally and to ask that the rule explicitly require the carriers to provide a detailed explanation of why and to what specific information they wish any exemption request to apply.