

October 11, 2017

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VIA ECFS

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: **Notice of Ex Parte Presentation**, In the Matter of *Restoring Internet Freedom*, Docket No. 17-108

Dear Ms. Dortch:

On Tuesday, October 10, 2017, Holly Borgmann, Head of Government Affairs for ADT Corporation ("ADT"), and Al Mottur, Greta Joynes and the undersigned, of Brownstein Hyatt Farber Schreck met with Amy Bender, Legal Advisor for Commissioner Michael O'Rielly. On the same day, Holly Borgmann, Al Mottur and the undersigned met separately with Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Jessica Rosenworcel.

The purpose of the meetings was to discuss ADT's concerns regarding blocking of ADT's alarm data. ADT explained that the agency could rely on Section 275 of the Communications Act to provide ancillary jurisdiction to adopt core net neutrality rules barring blocking, throttling or anticompetitive prioritization by broadband providers offering competitive alarm monitoring services. We discussed the specific points in the attached presentation.

Please contact the undersigned if you have any questions.

Sincerely,


Michael H. Pryor

cc: Amy Bender (via email)
Travis Litman (via email)

MHP:kjs

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Preserving Competition in the Alarm Monitoring Industry

OCTOBER 10, 2017

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Need for Relief

- ADT provides alarm and home monitoring service to more than 7 million customers.
- Increasingly, ADT's services run over broadband internet access services(BIAS). Many of ADT's customers are connected over broadband networks.
- Many of these BIAS providers also offer competing alarm and home monitoring services.
- BIAS providers thus have the incentive and ability to discriminate against competing alarm monitoring service providers.
- Not just a theoretical problem. As examples, BIAS providers blocked ADT's alarm data on at least four occasions over the past year.

Congress, the Courts and the FCC Have Long Protected Independent Alarm Companies

- MFJ Court initially barred BOC entry.
- Commission's Computer Inquiry orders required BOCs to provide non-discriminatory access to network facilities.
- Congress, in Section 275 of the 1996 Act, directed the FCC to protect alarm monitoring services from discriminatory treatment by competing network providers.

Key Protections in Section 275

- Requires ILECs engaged in the provision of alarm monitoring service to “provide non-affiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions.”
- Establishes expedited complaint process including enjoining ILECs and their affiliates from nondiscriminatory behavior within 60 days of a complaint that contains “an appropriate showing that the alleged violation occurred.”
- Bars all ILECs from using alarm messaging information to market their own alarm services.
- Two-part definition of “alarm monitoring service”:
 - the generation of a signal at a residence or place of business regarding a “possible threat at such premises”
 - transmission of those signals using the facilities of a “local exchange carrier or one of its affiliates” to an alarm monitoring center

Section 275 Confers Ancillary Jurisdiction to Protect Alarm Industry

- Two-Part Ancillary Jurisdiction Test Readily Met:
 - Alarm monitoring services fall within the FCC’s general jurisdiction to regulate interstate “communication by wire and radio.” (Section 151)
 - Section 275 confers a statutorily mandated responsibility on the Commission to protect independent alarm monitoring services from discrimination by network providers offering competing alarm services.
- BOC/ILEC broadband affiliates already are subject to section 275, regardless of their classification.
- Predicating ancillary jurisdiction on section 275 does not confer common carrier status.
 - D.C. Circuit precedent distinguishes between broad obligation to serve and narrow provision to address “perceived evil.” *Verizon v. FCC*, 740 F.3d 623 (D.C Cir. 2014).

ADT's Proposal Is Narrowly Tailored to Address only Alarm Monitoring Services

- ADT supports light touch regulation – no need to classify BIAS as a Title II service.
- Ancillary jurisdiction assumes information services classification for BIAS.
- Ancillary jurisdiction based on section 275 would only to apply alarm monitoring services.
- Applies to BIAS providers engaged in the provision of alarm monitoring services.

Core Net Neutrality Principles Equivalent to Nondiscrimination Requirement

- Using ancillary jurisdiction, ADT asks that the Commission apply core net neutrality principles to prevent competing BIAS providers from discriminating against independent alarm companies.
 - No blocking of alarm data (including video verification).
 - No throttling or degradation of independent alarm company data.
 - No anticompetitive prioritization of BIAS-affiliated alarm monitoring services over non-affiliated alarm monitoring service providers.
- Many ISPs have agreed to comply with such requirements even if codified by the FCC using section 706 as authority. ADT concurs that the FCC can adopt these under section 706.
- Our request is narrower – apply these requirements to alarm monitoring services using ancillary jurisdiction predicted on section 275.

Section 275's Expedited Complaint Process Integral to Legislative Scheme

- Ability to seek prompt relief through FCC expedited complaint process provides powerful deterrent effect.
- Smaller alarm companies do not have the resources or stamina to engage in protracted litigation under antitrust laws enforced by FTC, DOJ, or the courts.

THANK YOU

