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VIA ELECTRONIC FILING

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

RE: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure
Deployment, WC Docket No. 17-84

Dear Ms. Dortch:

On May 24, 2018, Holly Borgmann, Head of Government Affairs for ADT Security Services (“ADT”) and the undersigned, had a telephonic conference with Jay Schwartz, Wireline Legal Advisor to Chairman Ajit Pai. The undersigned, and Ms. Borgmann via telephone, separately met with Lisa Hone, Associate Bureau Chief of the Wireline Competition Bureau; Daniel Khan, Division Chief of Competition Policy Division; Terri Natoli, Deputy Division Chief of the Competition Policy Division; and Michele Berlove (by phone), Megan Capasso, and Celia Lewis, of the Wireline Competition Bureau. On May 25, 2018, Holly Borgmann and the undersigned had separate telephonic conferences with Jamie Susskind, Chief of Staff for Commissioner Carr; Amy Bender, Wireline Legal Advisor for Commissioner Michael O’Rielly; and with Travis Litman, Wireline Legal Advisor for Commissioner Rosenworcel.

The purpose of these conferences was to discuss ADT’s concerns regarding the effective elimination of the adequate replacement test that incumbent local exchange carriers (“ILECs”) must currently meet to obtain streamlined treatment for applications to discontinue legacy, TDM-based voice services as part of a technology transition. ADT reviewed the issues set forth in ADT’s ex parte letter of May 23, 2018.¹

During the meeting with the Wireline Competition Bureau, staff asked about the effect of the Commission’s elimination of the “functional test” on the need for replacement services to be interoperable with third party devices. The “functional test”, which the Commission originally adopted in 2014² and eliminated last year as part of the *Wireline Infrastructure Order*,³ has never played a role in assessing whether a discontinuance application meets the public interest. The test was used to determine whether a discontinuance application was required be filed in the first instance in light of the nature of the service being discontinued. Under the functional test, a carrier might have been

¹ See Letter from Michael Pryor, Counsel for ADT, to Marlene H. Dortch, Secretary, FCC, WC Docket 17-84, (filed May 23, 2018) (“May 23rd Letter”).

² *In the Matter of Technology Transitions*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 15015-018, ¶¶ 114-119 (2014) (*2014 Technology Transitions Order*).

³ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11176-87, ¶¶ 128-159 (2017) (“*2017 Wireline Infrastructure Order*”).

required to file a discontinuance application if a network change disabled the ability of its customers to use third party services, such as medical alerts, even if the carrier itself did not offer in its tariff or customer contract to support medical alert devices as part of its discontinued telecommunications service. The test was devised in the wake of Hurricane Sandy's destruction of Verizon's circuit-switched network on Fire Island and Verizon's proposal to replace that network with a fixed wireless service called Voice Link. Verizon's customers complained that the replacement wireless service would not support critical third party devices, such as medical alert devices.⁴ Verizon had argued that it should not be required to file a discontinuance application based on Voice Link's incompatibility with third-party legacy devices.

The elimination of the functional test, however, has no bearing on the Commission's assessment of whether there is an adequate replacement service once it is determined that a discontinuance application must be filed. The Commission cautioned, with respect to the functional test, that one should not "conflate[] the question of when approval for a discontinuance application is required . . . with the question of which factors the Commission must weigh in deciding whether to grant such an application. . . . While the decision of whether to grant a discontinuance authorization is a public interest evaluation that requires us to consider a broad array of factors, the decision of whether an application is required in the first place is much more circumscribed, turning on what 'service' the carrier offers."⁵

The concern raised by ADT here solely addresses the broader "array of factors" that the Commission must consider when assessing an application that FCC has determined must be filed. The Commission has already determined that carriers must submit a discontinuance application when they seek to stop providing legacy, TDM-based voice services as part of a technology transition, a term defined by the FCC rules.⁶ It has further determined that such an application may receive streamlined approval "only if" the ILEC demonstrates compliance with the adequate replacement test, which includes a requirement that the replacement service be interoperable with key applications such as alarm monitoring or medical alert services. The elimination of the functional test thus has no bearing on whether the Commission should assess interoperability in the context of streamlining review of an application that must be filed in order to discontinue a legacy voice service.

As noted, in the context of a discontinuance application as part of a technology transition, the Commission had previously determined that a carrier may only be entitled to seek streamlined treatment and obtain automatic approval pursuant to section 63.71(f) of the Commission's rules if the carrier certified or demonstrated compliance with the adequate replacement test. Section 63.71(f) currently provides that "An application to discontinue . . . an existing retail service as part of a technology transition, as defined in § 63.60(h) of this part, may be automatically granted *only if* . . . the application contains the showing or certification in § 63.602(b) of this part."⁷ Section 63.602(b) codifies the adequate replacement test, including the requirement of interoperability. In other words, an automatic grant of an ILEC application to discontinue legacy TDM voice service as part of a technology transition without meeting the adequate replacement test, including a showing of interoperability for alarm and medical alert applications, would not be authorized.

As was pointed out in the meeting, the adequate replacement test has never become effective because it has not received OMB approval. An admittedly peculiar situation in that compliance with the test was to be the prerequisite for obtaining streamlined treatment. The Commission is once again proposing the adequate replacement test, which the Commission recently resubmitted for OMB approval,⁸ as one of two options for obtaining streamlined

⁴ 2014 *Technology Transitions Order*, ¶ 116.

⁵ 2017 *Wireline Infrastructure Order*, ¶ 139.

⁶ 47 C.F.R. § 63.60(h), re-designated as 63.60(i) but otherwise not revised in the 2017 *Wireline Infrastructure Order*. 32 FCC Rcd at 11202.

⁷ 47 C.F.R. § 63.71(f) (emphasis added).

⁸ 83 Fed. Reg. No. 96, 22979 (May 17, 2018).

treatment. The alternative option requires the applicants provide interconnected VoIP service and show that another facilities-based voice service is available in the market.

As stated in ADT's May 23rd ex parte letter, the *Draft Order's* suggestion that the new alternative option "complements" the adequate replacement test ignores the likely real world outcome that the adequate replacement test, and its requirement of interoperability, will become a dead letter. The alternative option will always be the preferred route to obtain streamlined treatment of legacy TDM voice discontinuance applications because the ILECs have vociferously denounced the adequate replacement test as overly burdensome. By contrast, the alternative option of obtaining streamlined treatment is readily met, and does not require a showing of interoperability.

The lack of interoperability has real world consequences. Most IP networks are not compatible or interoperable with much of the installed base of legacy alarm monitoring or medical alert monitoring devices. ADT, and its customers, must thus incur the expense of modifying or replacing installed equipment when an ILEC replaces copper based TDM service with an interconnected VoIP service. Often, however, the customer does not realize that the transition to an IP network has rendered its alarm equipment inoperable until the alarm system fails to work, an obviously dangerous situation.

The *Draft Order* dramatically ups the ante. It contemplates, and in fact articulates as its goal, the rapid conversion to legacy voice networks to IP. The alarm industry has not been confronted with the rapid and relatively sudden elimination of a TDM network on a community-wide basis and will struggle to quickly replace equipment rendered inoperable by the transition. The ILEC, in the meantime, having the advantage of knowing in advance where it intends to discontinue service, can much more readily be prepared to offer customers the ILECs' own alarm or medical alert products, effectively turning the discontinuance event into a marketing opportunity to the disadvantage of the independent alarm industry, the majority of which consists of small businesses.

ADT is also concerned that the alternative option would allow streamlined treatment without any requirement that the ILEC notify its customers in advance that their line will no longer be powered. As currently written the FCC's rules would require, as eligibility for an automatic grant, a showing that the ILEC has notified its customers in advance of the discontinuance that the replacement service "may not provide line power" and to include the information related to backup power required under Section 12.5(d)(1).⁹ Under revised rules, these advanced notifications would not be required where the carrier chooses the alternative option, to be codified in 63.71(f)(2)(ii).¹⁰ Although section 12.5(d) requires notice to customers of backup power options, that notice is only required "at the point of sale" to new subscribers and annually thereafter.¹¹ Carriers may thus obtain an automatic grant of their application to replace TDM-voice service with VoIP without notifying their customers in advance that this transition may leave their alarm or medical devices inoperable during a power outage unless they purchase backup power.

It is for these reasons that ADT respectfully requests that the Commission retain the requirement of interoperability for alarm and medical monitoring equipment and include it as part of its new alternative option for streamlining legacy voice discontinuance applications.

⁹ See 47 C.F.R. § 63.71(a)(6) (for planned discontinuances as part of a technology transition in which the carrier seeks an automatic grant of its application under section 63.71(f) the carrier must have notified customers in advance about line power and backup power options.)

¹⁰ Section 63.71(a)(6) would be revised to read, "For applications to discontinue ...an existing retail service as part of a technology transition . . . *except for applications meeting the requirements of paragraph (f)(2)(ii)*, to be eligible for automatic grant under paragraph (f)(1) of this section: (i) A statement that any service offered in place of the service being discontinued . . . may not provide line power; (ii) The information required by § 12.5(d)(1) of this chapter. *Draft Order*, App. A. Section (f)(2)(ii) codifies the alternative option. Section (f)(2)(i) would require the adequate replacement test.

¹¹ 47 C.F.R. § 12.5(d).

Ms. Marlene Dortch
May 25, 2018
Page 4

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