

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Restoring Internet Freedom	)	WC Docket No. 17-108
	)	

**REPLY COMMENTS OF THE  
ALARM INDUSTRY COMMUNICATIONS COMMITTEE**

The Alarm Industry Communications Committee (“AICC”), on behalf of its members, hereby files these reply comments on the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.<sup>1</sup> AICC’s members compete directly with certain large broadband internet access service (“BIAS”) providers in the provision of security monitoring, installation, and other service. At the same time, these companies are dependent upon the BIAS carriers’ transmission services. As a result, the alarm industry is vitally interested in the non-discrimination and fair play decisions which will be made in this proceeding.

In the event that the Commission decides to retreat from the *Title II Order*<sup>2</sup> by reclassifying BIAS as a Title I information service, AICC urges the Commission not to repeal its Bright Line Rules adopted therein. AICC also points out that if BIAS is reclassified as an information service, the Commission does not have the authority to continue or extend its existing forbearance policy, including statutory provisions specific to the alarm industry. Finally, AICC also supports the proposals in the record to adopt expedited complaint processing and equal treatment of fixed and mobile broadband service. These points are discussed in turn below.

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<sup>1</sup> Released May 23, 2017.

<sup>2</sup> *In re Open Internet R&O, Declaratory Ruling, & Order*, 30 FCC Rcd 5601 (Released Mar. 12, 2015).

## **I. Introduction**

AICC is the principal advocacy organization of the U.S. security monitoring and installation industry in telecommunications matters. Its members include: The Monitoring Association (TMA) (formerly known as Central Station Alarm Association), the Electronic Security Association (ESA), the Security Industry Association (SIA), Ackerman Security, ADS, ADT, AES- IntelliNet, AFA Protective Systems, Alarm.com, Alarm Detection Systems, ASG Security, Axis Communications, Bay Alarm, Bosch Security Systems, COPS Monitoring, CRN Wireless, LLC, DGA Security, Digital Monitoring Products, Digital Security Control, Encore Networks, FM Approvals, Honeywell Security, Inovonics, Interlogix, Intertek Testing, iPDatatel, Napco Security, NetOne, Inc., Nortek, Protection One, Rapid Response Monitoring, Security Central NC, Select Security/Security Partners, Stanley Security, Supreme Security Systems, Inc., Telular Corp., Tyco Integrated Security, Tyco Security Products, Underwriters Laboratories, Universal Atlantic Systems, Vector Security, Inc., Vivint, and Wayne Alarm. Accordingly, almost every aspect of the alarm industry is represented within AICC's membership, including central stations, equipment manufacturers, and alarm service dealers.

The necessity of prompt transmission of alarm signals cannot be overstated. AICC member companies protect over 30 million residential, business, and sensitive facilities and their occupants from fire, burglaries, sabotage and other emergencies. Protected facilities include government offices, power plants, hospitals, dam and water authorities, pharmaceutical plants, chemical plants, banks, schools and universities. In addition to these commercial and governmental applications, alarm companies protect a large and increasing number of residential customers from fire, intruders, and carbon monoxide poisoning. Alarm companies also provide Personal Emergency Response System (PERS) services for obtaining medical services and

ambulances in the event of medical emergencies. As the Commission considers reducing or eliminating regulatory controls over providers of broadband services, it is imperative to ensure that vital alarm communications are left unimpeded.

Alarm companies (and indeed, all telecommunications) are inevitably becoming more reliant upon the Internet to provide service. As ADT points out in its comments, state and local laws often impose service standards that alarm companies may not be able to meet without adequate protection of their use of broadband networks.<sup>3</sup> Examples include requirements for visual verification of an alarm event before emergency services will be dispatched, and maximum transmission time for an alarm signal to travel from the premises to the central monitoring station.<sup>4</sup> The Commission should, as a matter of public interest, take care that its actions in this proceeding do not impair the alarm industry's ability to ensure the prompt delivery of its services to protected customers.

## **II. The Commission Should Not Repeal the Bright Line Rules**

AICC strongly supports the continued application of the Bright Line Rules – no blocking, no throttling, and no paid-prioritization – to broadband Internet access service. The need for such protections is real. As AICC has noted in the past, the Commission has recognized that some communication providers have the ability and incentive to discriminate against alarm companies because of their dependence on the last mile facilities of communication providers and has taken steps to address this.<sup>5</sup> So too has Congress, as evidenced by the fact that it included Section 275 in the Communications Act, which section prohibited Bell company entry into the alarm industry

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<sup>3</sup> Comments of ADT, WC Docket No. 17-108, filed July 17, 2017 at pp. 1-2.

<sup>4</sup> *Id.*

<sup>5</sup> Comments of AICC, GN Docket No. 14-28, filed July 15, 2014, citing *In the Matter of Filing and Review of Open Network Architecture Plans*, 6 FCC Rcd 7646, 7653 (FCC 1991) (expressly declining to conclude that Ameritech's withdrawal of Open Network Architecture services of use to the alarm industry was reasonable).

for five years and continues to prohibit discrimination against alarm monitoring services.<sup>6</sup> The courts have also recognized the ability and incentive of providers to discriminate, as noted in the comments of Data Foundry, Inc.<sup>7</sup>

The situation has not changed with the ongoing transition to IP networks. The ability and incentive to discriminate against the alarm industry remains the case in connection with wireline and wireless, fixed and mobile broadband networks and services. As the Commission is aware, a formal complaint is pending against Verizon that alleges a multitude of discriminatory practices, including blocking certain devices and apps, and a recent article indicates over 35,000 informal complaints have been received as well.<sup>8</sup> The comments of the Voices for Internet Freedom Coalition confirm 34,370 “Open Internet” complaints, with 620 dealing with blocking by ISPs, and 1360 dealing with throttling.<sup>9</sup>

At the same time, the alarm industry competes with the major broadband network providers or their affiliates, including Comcast, AT&T, Verizon and CenturyLink, in the alarm/security marketplace. And, as ADT points out, “[m]any of the large broadband and high-speed access providers ... possess the technical capability to identify customers of non-ISP alarm and security providers, to block or discriminate against the non-ISP alarm and security providers, to block or discriminate against the non-ISP alarm providers’ data on the network, and to engage in further anti-competitive practices to encourage these consumers to utilize the ISPs’ own

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<sup>6</sup> 47 U.S.C. §275.

<sup>7</sup> Comments of Data Foundry, Inc., WC Docket No. 17-108, filed July 17, 2107 at pp. 38-39 (“The D.C. Circuit has twice agreed that abuses are possible, the incentive and ability exists, and that there have been actual abuses...”)

<sup>8</sup> “As net neutrality dies, one man wants to make Verizon pay for its sins.” The Verge. August 9, 2017. Available at <https://www.theverge.com/2017/8/9/16114530/net-neutrality-crusade-against-verizon-alex-nguyen-fcc> (last visited August 16, 2017).

<sup>9</sup> Comments of Voices for Internet Freedom Coalition, et al., WC Docket No. 17-108, filed July 19, 2017 at Appendix D.

security systems.”<sup>10</sup> This makes alarm companies particularly vulnerable to cross-subsidization and hidden preferences.

AICC is particularly concerned about the repeal of the no-blocking and no paid-prioritization rules proposed in the *NPRM*. Alarm companies have an obligation to their customers to make sure that alarm signals are processed and delivered in a timely manner. ADT is correct in its observation that, “[a]bsent protections, broadband providers would be free to block a particular alarm service provider’s messaging content and to discriminate amongst competing alarm service providers.”<sup>11</sup> Paid-prioritization schemes can result in similar harm, where alarm transmissions are de-prioritized, degraded, or interrupted, running contrary to the Commission’s statutory obligation to promote network development to support public safety.<sup>12</sup> In emergency situations, seconds could mean the difference between life and death. Allowing paid-prioritization schemes to de-prioritize non-affiliated alarm traffic in favor of other applications would flatly contradict the Commission’s duty to the public interest. The Bright Line Rules are an effective way of ensuring alarm communications are able to get through, consistent with basic non-discrimination precepts, while fostering a level playing field for all companies in the security monitoring market.

### **III. The Commission Cannot Lawfully Forbear for Non-Telecommunications Services**

Some commenters urge the FCC to maintain or even extend forbearance from Title II regulation for BIAS. This request is *in addition to* the reclassification of BIAS to a Title I information service, as a “prophylactic” or “belt-and-suspenders” method to ensure that a court

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<sup>10</sup> Comments of ADT at p. 7.

<sup>11</sup> Comments of ADT at p. 5.

<sup>12</sup> 47 U.S.C. §151 (“...for the purpose of promoting safety of life and property through the use of wire and radio communications ... there is created a commission to be known as the “Federal Communications Commission”...”)

or future Commission is not able to reinstate the *Title II Order* and its Title II classification of BIAS.<sup>13</sup> AICC submits that this position is untenable. Section 10 simply does not apply to non-telecommunications carriers or services.

Specifically, Section 10(a) states that the Commission “shall forbear from applying any regulation or any provision of this Act to a **telecommunications carrier or telecommunications service**, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets ...”<sup>14</sup> The Commission has explicitly recognized that, “[u]nder section 10, our forbearance authority only extends to telecommunications carriers and telecommunications services. It does not apply to services such as public safety and private point-to-point microwave, which do not involve the provision of “telecommunications service,” i.e., the offering of telecommunications for a fee to the public, or to such classes of users as to be effectively available to the public.”<sup>15</sup> Accordingly, if the Commission reclassifies BIAS as a Title I information service, as it proposes in the *NPRM*, then that service will no longer qualify as a telecommunications service and its providers will no longer be telecommunications carriers.

The parties urging both Title I reclassification and forbearance are attempting to have it both ways where the legal options are mutually exclusive, and are inviting the Commission into perilous legal territory. Reclassifying BIAS as a Title I service while also forbearing from applying Title II would clearly fail the first step of the *Chevron* test<sup>16</sup> by failing to honor the plain meaning of the statute, and would be arbitrary, capricious, and not in accordance with law.<sup>17</sup> The Commission should reject this overreaching argument.

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<sup>13</sup> See, e.g., Comments of CenturyLink, WC Docket No. 17-108, filed July 17, 2017 at p. 31; Comments of AT&T, WC Docket No. 17-108, filed July 17, 2017 at pp. 99-100.

<sup>14</sup> 47 U.S.C. §160 (Emphasis supplied).

<sup>15</sup> *In re: Petition for Forbearance from Section 310(d)*, 13 FCC Rcd 6293 (1998).

<sup>16</sup> *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837 (1984).

<sup>17</sup> 5 U.S.C. 706(2)(A);.

#### **IV. The Commission Should Not Forbear from Section 275 of the Communications Act**

In the event that the Commission chooses to continue to rely on forbearance instead of reclassification for the regulation of BIAS, then it should not under any circumstance forbear from applying Section 275. Nothing in the record suggests, let alone conclusively demonstrates, that the forbearance standard is met regarding Section 275.

Section 275 was originally adopted as part of the Telecommunications Act of 1996 as a compromise between the alarm industry and the Bell operating companies (BOCs).<sup>18</sup> The purpose of this section is to protect the alarm industry, and fair competition within it, against discrimination from the former BOCs.<sup>19</sup> Section 275 provided four main protections for the alarm industry: first, it prohibited the BOCs from entering the alarm industry market for five years (which provision has since expired);<sup>20</sup> second, it requires any incumbent local exchange carrier (ILEC) that is engaged in the provision of alarm monitoring services to provide nonaffiliated entities the same network services it provides to its own alarm monitoring operations on nondiscriminatory terms and conditions;<sup>21</sup> third, it prohibits an ILEC from subsidizing its alarm monitoring services from telephone exchange service operations;<sup>22</sup> and fourth, it required the Commission to establish expedited procedures for the receipt and review of complaints regarding Section 275.<sup>23</sup>

At bottom, Section 275 is a tailored, unique provision of the Telecommunications Act of 1996 that is still in force (other than the five-year prohibition on BOC market entry). No commenter has suggested forbearance for this section of the Act; much less provided the

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<sup>18</sup> See, e.g., 141 Cong Rec S 8310 (“[Amendment No. 1323] would partially restore an agreement reached in the last Congress through good faith negotiations between the alarm industry and the Bells.”)

<sup>19</sup> *Id.* at S 8356 (“The industry felt it had an excellent chance of developing that level playing field in its prior agreement with the Bells.”).

<sup>20</sup> 47 USC §275(a)(1).

<sup>21</sup> 47 USC §275(b)(1).

<sup>22</sup> 47 USC §275(b)(2).

<sup>23</sup> 47 USC §275(c).

required analysis under Section 10(a) of the Act.<sup>24</sup> Therefore, AICC accordingly urges the Commission not to extend forbearance to Section 275.

**V. The Commission Should Adopt an Expedited Complaint Process**

AICC also supports the adoption of an expedited consideration process for complaints alleging blocking, throttling, or other unfair practices by broadband Internet access providers, as well as mobile Internet access providers, as proposed by ADT.<sup>25</sup> ADT is correct in its assertion that smaller alarm companies could go out of business waiting for their complaints to be heard.<sup>26</sup> Congress recognized and addressed just such a concern when it specifically included an expedited complaint process in Section 275. The Commission should ensure that such a provision applies to BIAS providers.

**VI. The Commission Should Treat Fixed and Mobile Broadband the Same**

The Commission recently recognized in its *Section 706 Report Notice of Inquiry* that mobile broadband is increasingly used by Americans. The Commission there noted: “approximately 80 percent of American mobile subscribers used smartphones, up from approximately 50 percent in 2012.”<sup>27</sup> Indeed, in recent years, mobile carriers have entered the security market through mobile devices and are now a significant competitor for the larger universe of security companies – the vast majority of whom have no carrier affiliation. Against this background, AICC respectfully submits that the need for competitive safeguards are no less compelling than as the case for fixed BIAS providers.

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<sup>24</sup> See, e.g., Comments of CenturyLink, *supra* note 13; Comments of AT&T, *supra* note 13.

<sup>25</sup> Comments of ADT at p.8.

<sup>26</sup> *Id.*

<sup>27</sup> *NOI* at ¶6.



The Commission should recognize that mobile broadband providers equally have as much incentive and ability to discriminate against alarm service providers, with the ability to inflict even greater financial harm when network changes made by mobile providers force alarm companies and their customers to replace wireless devices and equipment at great cost reaching millions of dollars, as has happened in the past.<sup>28</sup> Now that mobile providers have entered the security market, the case for competitive safeguards is even more compelling.

## **VII. Conclusion**

For the forgoing reasons, in the event that the Commission reclassifies BIAS as a Title I information service, AICC urges the Commission not to repeal its Bright Line Rules, and to clarify that the forbearance granted to BIAS in the *Title II Order* is moot, as the Commission does not have the authority to forbear for information services. In that circumstance, the Commission should also adopt the proposals in the record to create an expedited complaint process. If the Commission does not reclassify BIAS as a Title I service and instead continues to rely on forbearance, then it should not extend forbearance to Section 275 of the Act. Finally, in any event, AICC supports the proposal for equal treatment of fixed and mobile broadband service.

Respectfully submitted,



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Communications Committee

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<sup>28</sup> Comments of AICC, *supra* note 5, at p. 4; Comments of AICC, IB Docket No. 13-213, filed May 5, 2014, at p. 3.