



Alarm Industry Communications Committee

November 9, 2017

WRITTEN EX PARTE
VIA ECFS

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

Re: Accelerating Wireline Deployment by Removing Barriers to Infrastructure Investment
WC Docket No. 17-84

Dear Ms. Dortch:

The Alarm Industry Communications Committee (“AICC”), on behalf of its members, writes to provide additional comments for the Commission’s consideration regarding the draft *Report and Order* in WC Docket No. 17-84,¹ which is tentatively included on the agenda for the next Open Meeting. Specifically, AICC is concerned that the Commission’s draft decision to eliminate the prohibition on communicating information about upcoming network changes to affiliated entities, prior to the public notice date, will frustrate the nondiscrimination provisions of Section 275 of the Communications Act of 1934, as amended, and will have a negative impact on competition in the alarm industry. AICC is also concerned that the Commission’s decision to reverse the “functional test” is not in the public interest. These points are discussed in turn.

Section 275 requires ILECs to “provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions,” among other things.² By prohibiting ILECs from disclosing information about network changes ahead of public notice, Section 51.325(c) supported Section 275’s goal of ensuring that all alarm providers – affiliated or not – would have an equal opportunity when it came to utilization of ILEC network services. AICC is concerned that the absence of Section 51.325(c) may be interpreted as permission for ILECs to give their alarm service affiliates a clear competitive advantage over non-affiliates by providing advance

¹ *Accelerating Wireline Deployment by Removing Barriers to Infrastructure Investment*, DRAFT Report and Order, Declaratory Ruling, and Notice of Proposed Rulemaking, WC Docket No. 17-84, FCC-CIRC1711-04 (rel. Oct. 26, 2017) (*Draft Order*).

² 47 USC 275(b)(1).

notice of network changes and, in turn, additional time to accommodate and market based on such changes. In order to meaningfully preserve the level playing field that Section 275's nondiscrimination requirement creates, those unaffiliated alarm companies should be accorded the same access to information as affiliates, and the Commission should not permit ILECs to choose who receives information about network changes and who does not in advance of public notice. Accordingly, the Commission should make clear that, at a minimum, ILECs who choose to disseminate information about network changes to their alarm company affiliates, in advance of public notice, must provide the same information to non-affiliated companies as well.

According to the *Draft Order*, anti-competitive concerns are adequately allayed by the fact that “intermodal competition is more prevalent than ever.”³ However, the *Draft Order* does not contain any discussion about the state of competition in the relevant markets.⁴ Instead, it is clear the Commission analyzed its proposal in the context of long distance or equipment manufacturing affiliates.⁵ AICC has previously demonstrated that the Commission, Congress, and the courts have all recognized the incentive and ability for communications providers to discriminate against alarm companies because of their dependence on the last mile facilities of communication providers.⁶ Against this background, the absence of any relevant analysis on the score surely undercuts the legality of the proposed rule elimination under the arbitrary and capricious standard.

AICC is also concerned about the Commission's draft declaratory ruling reversing the “functional test” for determining whether a service is being discontinued. Much of the Commission's stated rationale for reversing the functional test fails to take into account the fact that alarm customers rely on their alarm equipment and services to protect their lives and their property. Indeed, the Commission's finding that “service providers *do not* bear the burden of ensuring compatibility with third-party devices,”⁷ when viewed in the context of alarm services, goes much further than perhaps the Commission intended.

The functional test was originally adopted in the wake of Hurricane Sandy, when consumers found that their alarm systems did not function on Verizon's alternative product.⁸ There, the Commission recognized that “taking such factors into account when determining whether a service change amounts to a discontinuance, reduction, or impairment helps ensure that the Commission's discontinuance process fulfills the statutory purpose of section 214,

³ *Draft Order* at ¶27.

⁴ See, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113 (rel. June 22, 2010).

⁵ *Draft Order* at ¶27.

⁶ See, e.g., Reply Comments of the Alarm Industry Communications Committee, WC Docket No. 17-108, filed August 30, 2017.

⁷ *Draft Order* at 136. Emphasis in original.

⁸ *In re Ensuring Customer Premises Equip. Backup Power for Continuity of Communs. et al.*, 29 FCC Rcd 14968, 2014.

including protecting public safety and consumers.⁹ By contrast, *Carterfone*, on which the Commission relies in justifying its finding, concerned a device that allowed someone on the radio to talk to someone on the phone.¹⁰ Alarm services failing to function are not, as the Commission puts it, merely an “inconvenience to customers,”¹¹ and the Commission should not abdicate its responsibility for public safety. Accordingly, AICC urges the Commission not to adopt its proposed declaratory ruling, taking into account the important public safety policy issues at hand.

Sincerely,

**ALARM INDUSTRY
COMMUNICATIONS COMMITTEE**

A handwritten signature in black ink, reading "Louis T. Fiore". The signature is written in a cursive, flowing style.

Louis T. Fiore
Chairman

⁹ *Id.* at para. 116.

¹⁰ *In the Matter of Use of The Carterfone Device in Message Toll Telephone Service*, 13 F.C.C.2d 420, 1968.

¹¹ *Draft Order* at para. 137.