

January 15, 2015

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

Re: Notice of Ex Parte Communications, GN Docket Nos. 10-127, 14-28

Dear Ms. Dortch:

On January 13, 2015, I spoke with Stephanie Weiner of OGC with regard to the above captioned proceedings.

The Definition Of “Public Switched Network” Is Not Frozen For All Time

In recent weeks, wireless network operators and CTIA have insisted that – despite clear statutory language stating that the term “public switched network” shall have the meaning given it by the Commission – was so clearly understood as meaning only a traditional circuit switched network that it’s meaning is forever frozen in a “narrow range.”

As an initial matter, this argument appears to prove too much. If the term “Public Switched Network” was so well understood, why did Congress explicitly require that the *Commission* define it. Either the term was sufficiently understood so that it required no definition, or Congress could have removed the ambiguity by defining the term. As the D.C. Circuit has advised, “statutes written in broad, sweeping language should be given broad sweeping application,”¹ and that only in a “very rare situation” can legislative history be “more probative than text.”² Here, the wireless interests do not even rely on legislative history, but on evidence of consistency of regulatory interpretation. Such “legislative history” is even more unreliable as a guide.³

Nor was history as fixed as wireless providers maintain. To the contrary, Congress was well aware of the dramatic shift even then taking place within the context of the “circuit switched telephone network,” as reflected by the passage of CALEA one year later to ensure that this shift to digital would not impair the ability of law enforcement to intercept communications pursuant

¹ Consumer Electronics Association v. FCC, 347 F.3d 291, 298 (D.C. Cir. 2003) (*CEA*).

² *Id.*

³ See Office of Communications, Inc. of the United Church of Christ v. FCC, 327 F.3d 1222 (D.C. Cir. 2003).

to a properly issued warrant. As stated by Senator Leahy on introducing the “Digital Telephone Act of 1994,” he and his colleagues had been considering the evolution and change in the phone system as early as 1992.

Recognition of the evolution of the phone system in the digital age manifested itself in two ways in these nearly contemporaneous statutes. In the case of what would ultimately become CALEA, congress included the “substantial replacement provision.”⁴ In Section 332, Congress included the authority for the Commission to define the definitions of “interconnected” and “PSN.” That Congress passed in quick succession laws designed to deal with the rapid evolution of the traditional phone system in the digital age which discarded the traditional interpretations the terms “public switched network” is precisely the kind of “mixed signal” that mitigates against a presumption that Congress intended the traditional meaning of the term to remain fixed forever.⁵

Verizon’s reliance on 47 U.S.C. 1422(b) is misplaced. As an initial matter, when Congress passes two completely different statutes, directed at completely different agencies, using different language, and to achieve entirely different ends, it is entirely rational for the Commission to interpret them differently.⁶ If anything, Congress’ use of the Public Internet and the Public Switched Network as having equal significance affirms the arguments of PK, OTI and others that the evolution of communications networks is continuing and that these two networks are merging together.

In accordance with Section 1.1206(b) of the Commission’s rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Harold Feld
Senior Vice President
PUBLIC KNOWLEDGE

cc: Stephanie Weiner

⁴ See *American Council on Education v. FCC*, 451 F.3d 226, 232-33 (D.C. Cir., 2006) (*ACE*).

⁵ See *UCC*

⁶ See *ACE*