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Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 04-36 (IP-Enabled Services)

Dear Ms. Dortch

On May 10, 2005, Jim Kohlenberger, executive director of the VON Coalition, Glenn Richards and Jarrett Taubman, Pillsbury Winthrop Shaw Pittman, outside counsel for the VON Coalition, Jonathan Askin, pulver.com, Kecia Lewis, MCI, Ron Sladon and Lon Johnson, Multi-Link, Staci Pies, Point One, Ron Vidal and Cindy Schonhaut, Level 3, and Todd Daubert, counsel for USA Datanet, met with Tom Navin, Julie Veach and Cristi Shewman all of WCB, to discuss the provision of 9-1-1 by VoIP providers, as detailed on the attachment to this letter.

On May 10, 2005, Jim Kohlenberger, executive director of the VON Coalition, Glenn Richards, Pillsbury Winthrop Shaw Pittman, outside counsel for the VON Coalition, Jonathan Askin, pulver.com, Jim Nixon, T-Mobile, Kecia Lewis, MCI, Staci Pies, PointOne, Ron Vidal, Cindy Schonhaut, and John Morgan, Level 3, and John Turner and Todd Daubert, USA Datanet, met with Commissioner Kathleen Abernathy and her legal advisor, Pete Belvin, to discuss the provision of 9-1-1 by VoIP providers, as detailed on the attachment to this letter.

On May 11, 2005, Jim Kohlenberger, executive director of the VON Coalition, Glenn Richards, Pillsbury Winthrop Shaw Pittman, outside counsel for the VON Coalition, David Svanda, Consultant to the VON Coalition, Jonathan Askin, pulver.com, Jim Nixon, T-Mobile, Praveen Goyal, Covad, Kecia Lewis, MCI, Ray Paddock, Intrado, Ron Vidal, John Nakahata and John Morgan, Level 3, and John Turner and Todd Daubert, USA Datanet, met with Commissioner Michael Copps and his legal advisor, Jessica Rosenworcel, to discuss the provision of 9-1-1 by VoIP providers, as detailed on the attachment to this letter.

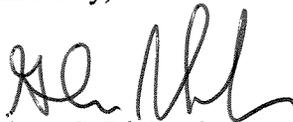
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Coalition, David Svanda, Consultant to the VON Coalition, Staci Pies, PointOne, Jonathan Askin, pulver.com, Jim Nixon, T-Mobile, Praveen Goyal, Covad, Kecia Lewis, MCI, Ray Paddock, Intrado, Ron Vidal, John Nakahata and John Morgan, Level 3, and John Turner and Todd Daubert, USA Datanet , met with Commissioner Jonathan Adelstein and his legal advisors Scott Bergmann and Barry Ohlson, to discuss the provision of 9-1-1 by VoIP providers, as detailed on the attachment to this letter.

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Please direct any questions regarding this matter to the undersigned.

Sincerely,



Glenn S. Richards

cc: Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Kathleen Abernathy
Commissioner Jonathan Adelstein
Dan Gonzalez
Michelle Carey
Jessica Rosenworcel
Pete Belvin
Scott Bergmann
Barry Ohlson
Julie Veach
Tom Navin
Cristi Shewman

Attachment
Document #: 1479153 v.1

ENABLING COMPREHENSIVE VoIP EMERGENCY SOLUTIONS

VoIP providers are actively working to answer the call for 9-1-1 Emergency service in an Internet world, and are committed to ensuring that VoIP subscribers can reach emergency services by dialing 9-1-1. At the very first FCC hearing on VoIP and IP enabled services on December 1, 2003, the VON Coalition used the opportunity to highlight its commitment to 9-1-1 by joining with the National Emergency Number Association (NENA) to forge a voluntary agreement to develop the technical and operational mechanisms for providing VoIP users effective access to emergency services. The VON-NENA agreement not only proactively supports solutions that ensure that 9-1-1 calls will be routed for emergency response today, but that the future will enable even more robust solutions than today's legacy wireline 9-1-1 system can provide.

In a little more than a year's time, the VoIP industry is stepping into the marketplace with 9-1-1 and Enhanced or E9-1-1 solutions that are more technologically sophisticated than were available at the time the agreement was developed – a level of functionality that took the wireless industry more than 16 years to offer.

VoIP providers are implementing 9-1-1 solutions on their own, without regulatory fiat. A recent VON Coalition survey of providers of a residential VoIP service found that 100 percent of the signatories to the VON-NENA agreement, and 100 percent of VON Coalition members are providing basic 9-1-1. In addition, 60 percent of companies are providing E9-1-1 for fixed services where the telephone number matches the rate center boundary.

We are encouraged by the Commission's recent attention and focus on this issue. Leadership from the Commission will help remove barriers and advance solutions necessary for enabling E9-1-1 solutions that result in feature rich emergency response system.

However, today, no communication network is technically capable of offering nationwide E9-1-1 coverage – nor has the Commission ever required universal E9-1-1 access for any communications technology on a 120-day timetable. Despite 40 years of progress, consumers in more than 150 counties throughout the country don't yet have E9-1-1 service from their wireline phones. We estimate that twice as many wireline telephone users lack access to E9-1-1, as there are total nomadic VoIP subscribers. Only about 40 percent of the nation's PSAPs have Phase II E9-1-1 from at least one wireless carrier¹. Eleven years into an FCC proceeding, multi-line telephone systems (MLTS) such as PBXs are only required to provide E9-1-1 in 13 states.² Mobile Satellite Service (MSS) providers began offering service in the mid-1990's but were not required to provide any emergency calling capability until February 2005.³ In that case, the FCC did not mandate even basic 911, choosing

¹ National Emergency Number Association testimony to House Rural Caucus, March 9, 2005.

² It has been 11 years since the FCC first sought comment on E-911 capability for MLTS. According to NENA, only 13 states have legislation and some require only limited E-9-1-1 access from MLTS stations. (Communications Daily, March 3, 2005)

³ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, IB Docket No. 99-67, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340 (December 2003) ("*MSS ECC Order*"). The decision took effect one year after the decision was published in the *Federal Register*.

instead to require MSS operators to implement emergency call centers.⁴ Similarly, it is not technically feasible for VoIP providers to provide nationwide E9-1-1 access for all nomadic customers – which is not surprising since not all PSAPs can process E9-1-1 calls.

Despite the impressive progress to date, the rapid development and adoption of VoIP services requires the industry to further develop solutions to address consumer access to emergency services. We understand and support the FCC's desire to move quickly to set expectations for emergency services for VoIP users.

The FCC has an opportunity to focus on the specific challenges at hand. Recent news stories concerning emergency calls from VoIP phones do not implicate the availability of E9-1-1; but appear to arise from the inability to complete a basic 9-1-1 call and reach an emergency call taker.

As the FCC moves quickly to act, however, it needs to carefully ensure that it does not inadvertently limit VoIP's lifesaving abilities by 1) undermining voluntary industry efforts to achieve NENA I2 and I3 solutions that enable E9-1-1 type functionality for both fixed and nomadic VoIP services and a host of advanced emergency service applications, 2) creating insurmountable financial, operational or technical barriers for domestic VoIP providers, (many of which offer basic 9-1-1 functionality today), leaving consumers with access to only foreign VoIP providers who are more likely to offer emergency services that are operational only outside the United States 3) eliminating nomadic VoIP options (because nomadic E9-1-1 options are not yet universally available).

- The technical, operational and economic challenges in implementing E9-1-1 on a 120 day timetable could drive existing VoIP providers from the market, deter new entrants, and limit providers' access to capital. For example, millions of dollars would be required for a VoIP providers to access the approximately 450 selective routers throughout the country. Although we don't know the true costs, press reports indicate that it will cost Vonage \$1 million a month and \$10 million up front to gain access to just two selective routers in New York City.⁵ If the FCC requires national E9-1-1 coverage, VoIP providers would need to spend tens of millions of dollars to meet this requirement even though we understand that the FCC may find that it does not have the authority to require access to the essential ILEC-owned selective router and other emergency services infrastructure. The VON Coalition estimates that, excluding Vonage, there are approximately 103,000 nomadic VoIP subscribers in the U.S. (4Q04 – latest estimate available by Bernstein and Associates) – with one company serving 53,000 nomadic VoIP customers and the rest generally serving less than 10,000 customers each. If the FCC were to order selective router access, (which, again, we understand it is not

⁴ Under the MSS emergency call center (ECC) requirement, MSS customers must be allowed to dial 9-1-1 to reach an MSS ECC. The MSS ECC personnel ask for the emergency caller's phone number and location and then transfer or otherwise redirect the call to an appropriate public safety answering point. The FCC has not required MSS operators to implement E911. Instead, the FCC has directed the Network Reliability and Interoperability Council (NRIC) to study the technical feasibility of requiring MSS operators to be E911 compliant. *MSS ECC Order* ¶¶ 38-39.

⁵ See <http://www.vonage-forum.com/article1804.html>

contemplating), and, hypothetically, the FCC could cap at \$1 million per month the price for access to each RBOC (which we understand it cannot do) , and VoIP providers had free access to independent and rural LEC facilities (which we are not proposing), these smaller VoIP service providers would have to raise their rates about \$400 per month per subscriber to recover the estimated \$4 million per month cost to access selective routers in just the four former Bell company territories. While some VoIP service providers may be able to pass through these charges if they have a larger customer base, many would simply have to shut down service.

- Under such a scenario, subscribers might be expected to switch from their current VoIP service provider who may already be providing a basic 9-1-1 service to a lower cost foreign provider who does not. There is no technical limitation for a foreign subscriber to serve U.S. customers. In fact, there are already four times more residential VoIP subscribers in Japan than there are in the U.S.⁶

5 Ways for Overcoming Obstacles and Enabling 9-1-1 and E9-1-1 for VoIP in an Expeditious Manner

1. NENA Stages and Standards.

Two Different Types of 9-1-1 Service In the Market Today.

- For VoIP services that are provided from a single, fixed location and that use a telephone number from the fixed location's assigned rate center, VoIP providers are able to offer an E9-1-1 solution that provides automatic callback and location information for the call taker, similar to a traditional wireline phone.
- VoIP services that are nomadic (the service may be provided from a broadband connection at another location), or that are assigned phone numbers that are not from a fixed location's assigned rate center, typically do not use the dedicated 9-1-1 network and database system. In these cases, calls are routed to an emergency communications center via a predefined 10-digit phone number corresponding to the location the user has given to the service provider.

The Industry is Developing Standards Enabling E9-1-1 for Both Fixed and Nomadic Services.

In order to provide E9-1-1 service for nomadic VoIP services, or those using a phone number that is not assigned from the fixed location's rate center, industry must develop and implement technical standards (I2). NENA has a process underway, to develop these I2 standards. I2 will enable E9-1-1 for fixed and nomadic VoIP services. However, requiring the build out of an overly broad interim solution within 120 days will divert resources and potentially slow and delay the potential to build even more advanced emergency solutions as the I2 standards become available within the year – thus delaying the life saving potential of future VoIP E9-1-1 solutions.

⁶ Eighty percent of the world's Internet-based voice telephone users are in Japan, April 21, 2005, Japan Leads World In Net-Based Telephony, By The Associated Press.

Because industry has yet to finalize standards for E9-1-1 for nomadic VoIP services, and two of the essential elements for provision of E9-1-1 -- nondiscriminatory access to selective routers and deployment of connections to those systems have not yet been provided on a nationwide basis, a timeline for implementation cannot be reasonably defined. NENA has suggested, in its May 11, 2005 ex-parte, the development of a national plan to facilitate workable timetables and more comprehensive solutions for advancing emergency solutions. The VON Coalition is prepared to actively participate in a 90 day process with the participants that NENA has identified.

Definitions are Critical.

- **Fixed Versus Nomadic.** The Canadian definition of fixed VoIP service is the most workable. Canada defined a fixed VoIP service as a service that is incapable of being nomadic: "In using the term fixed to describe local VoIP services, whether it is provided with a native or a non-native telephone number, the Commission is referring to services without nomadic capability." Canada separately defined "Fixed/non-native and nomadic service" and applied a different set of obligations.
- For purposes of the Commission's initial rules, it should apply 9-1-1 requirements to services that only have two-way connectivity to the PSTN and that utilize NANP numbers. For example, if a VoIP provider is offering outbound service within the US that connects to the PSTN (like this yellow page click-to-call directory being developed on Amazon.com <http://www.estara.com/livedemo/a9/>), the consumer would not have an expectation that she could make an emergency services call while utilizing Amazon. Moreover, the lack of a call back number would make the delivery of E9-1-1 impossible. Would Amazon.com have to ensure that its customers can call E9-1-1 under the initial rules
- The Commission should apply obligations to retail service providers, not wholesale service providers.
- The Commission should apply initial requirements to retail residential VoIP services that are offered as real-time, two-way, switched voice communications services, for a fee, using NANP numbers, providing access both to and from the PSTN. It should also be limited to those VoIP services that provide, or enable use of, traditional CPE or CPE that, like traditional CPE, is always on and has dial tone. This definition meets consumer expectations regarding the ability to reach 9-1-1 services.

2. Access to Incumbent 9-1-1 Network Essential

- In order to deliver more advanced emergency solutions, VoIP providers must have cost-based, non-discriminatory access to the 9-1-1 network. This includes access to equipment, network, databases, interfaces and other capabilities for delivery of 9-1-1 and E9-1-1 including access to the selective router, ANI & ALI databases, and all follow-on or successor technology. When the ILEC provides selective router access, it must not be exclusively tied to the purchase of other carrier services unrelated to the provision of 9-1-1. (i.e. TipTop) Moreover, the ability of VoIP providers to purchase access to these essential facilities must not be dependent on any traditional CLEC interconnection or build-out requirements.

- Without universal access to the predominantly ILEC-owned E9-1-1 network and infrastructure, which despite some initial BOC press announcements is in no way nationally available on a 120 day timetable, VoIP providers do not have the ability to deliver E9-1-1 calls for nomadic services or where the telephone number does not match the rate center boundary.

3. Need Access to PSAP for Any 9-1-1 call.

VoIP providers today are often delivering basic 9-1-1 calls to the PSAP in the same manner as Telematics Service Providers reporting an Automatic Crash Notification (e.g., OnStar), mobile satellite services, or a 9-1-1 transfer from a PSAP in another system – through a PSAP designated “emergency” 10-digit telephone number. There are cases where PSAPs are refusing to accept emergency calls from VoIP customers through 10-digit lines. While the industry will move beyond these interim solutions, PSAPs must be encouraged to accept all emergency calls through designated “emergency” lines until the transition to I3 is complete. Warm dial tone that uses an existing PSTN connection may also be an option for delivering emergency calls to the PSAP.

4. Equivalent Liability Relief.

- VoIP providers (and possibly PSAPs) do not have the benefit of the same liability protection as wireline and wireless providers. PSAPs have suggested that this is a concern in accepting 10-digit calls. To remedy this, the FCC should explore all options to extend protection to VoIP service providers.

5. Focus on Making Transition to IP Enabled Emergency Network.

- The FCC should make the transition to an IP enabled emergency calling network a top priority. This will enable an even more feature rich emergency response system, capable of delivering a host of improvements in emergency response technologies. By migrating to an IP based emergency network, 9-1-1 calls could one day be accompanied by much more information, such as:
 - a caller’s medical status
 - emergency contacts
 - language preference
 - real-time video of emergency site, and
 - maps of commercial buildings.

The VON Coalition is committed to working with the FCC and other stakeholders to facilitate expeditious solutions for the delivery of robust emergency services. To move forward, the FCC, in conjunction with VON, NENA, the ILECs and others, should work with the newly created E9-1-1 Program Office to develop a national plan for migrating to a national IP Enabled Emergency Network capable of receiving and responding to IP based emergency communications. The plan should outline the potential benefits of such a migration, barriers that must be overcome, a proposed timetable, costs and potential savings, and specific regulatory and legislative language if necessary for achieving the plan.

Specific Suggestions:

Progress that Can Be Made Within 120 Days:

- **Capture Residential VoIP Providers Who Are Not Currently Providing Basic 9-1-1.** Although all of the signators to the VON-NENA agreement and VON Coalition members who provide a residential replacement broadband VoIP service are today providing, at a minimum basic 9-1-1, there are others who have not yet joined the VON Coalition or adopted its principles and are not providing basic 9-1-1. The Coalition supports efforts to bring all VoIP providers up to the standards of the VON-NENA agreement and provide basic 9-1-1. In this case, VoIP providers would, at a minimum, deliver 9-1-1 calls to the PSAP designated 10-digit "emergency" telephone lines that most, if not all PSAP's maintain to receive emergency calls from outside of the 9-1-1 system, such as from a Telematics Service Provider reporting an Automatic Crash Notification, or a 9-1-1 transfer from a PSAP in another system. Such an obligation could apply to VoIP service that is offered as real-time, two-way, switched voice communications services, for a fee, using NANP numbers, and providing access both to and from the PSTN. It should also be limited to those VoIP services that provide, or enable use of, traditional CPE or CPE that, like traditional CPE, is always on and has dial tone. In this case providers can deliver basic 9-1-1 emergency service where the PSAP will accept the emergency call.
- **For "Truly" Fixed VoIP Services, VoIP Providers Offer Equivalent Level of E9-1-1 Capability as Fixed Wireline Service.** For services that are fixed, use telephone numbers that match the rate center boundary, and are incapable of being nomadic, VoIP providers can provide an E9-1-1 type service capable of delivering location and call back information. This is a level of emergency service equivalent to that provided by the fixed wireline phone the VoIP service may replace. This also ensures that the U.S. and Canada (who also uses the 9-1-1 designation) have equivalent requirements for "truly" fixed VoIP providers.
- **Advancing More Capable Emergency Solutions for VoIP.** The VON Coalition supports and encourages a 90-day process which includes the players as outlined in NENA's May 11, 2005 ex-parte to develop longer term solutions. The FCC can commit itself to a process that includes the E9-1-1 National Program Office, the VON Coalition, NENA, ILECs, and other stakeholder and industry groups to accelerate short term 9-1-1 and E9-1-1 solutions including the I2 and I3 solutions. This process would include efforts to ensure selective router access (as described above), to develop and implement standards, and produce a workable timeline for more advanced solutions.
- **Providing Consumer Notice:** For VoIP providers that cannot provide 9-1-1 or E9-1-1 on this timetable (whether because of technological, financial or operational limitations or because the PSAP will not accept basic 9-1-1 calls), VoIP providers should provide conspicuous notice to customers at the time of service activation about the limitations of their 9-1-1 capability.

Regulatory Flexibility Analysis

Finally, given the large number of VoIP providers that would be impacted by the 9-1-1 rules contemplated, the VON Coalition urges the Commission to engage in the analysis required by the Regulatory Flexibility Act of 1980, as amended (RFA) and make any adjustments to the requirements necessary to ensure RFA compliance. In its Initial Regulatory Flexibility Analysis (IRFA), the FCC provided descriptions of several types of service providers that may be affected by the rules. The Commission did not establish a separate category or define the unaffiliated, unregulated VoIP provider. The FCC is obligated to contact SBA's Office of Size Standards to determine the appropriate size standard for VoIP providers. It is reasonable for the FCC to conclude that the majority of the unaffiliated, unregulated VoIP providers affected by the contemplated obligations are "small businesses."

To this end, the VON Coalition respectfully suggests that to meet its RFA obligations, the FCC must consider alternatives for compliance deadlines and timetables taking into account the minimal resources available to small entities. Importantly, the Commission must consider the important role that industry standards do and will continue to play in the provision of E9-1-1 services for small VoIP providers and delineate alternatives that take into consideration the fact that industry standards have not yet been developed for the provision of E9-1-1 for all VoIP services. Because the VON Coalition does not have an accurate and clear understanding of the possible initial requirements, it is difficult, if not impossible to submit our own evidence regarding the effect of the rules on small entities. The Commission, therefore, must consider these rules in light of the lack of record evidence and ensure that alternative rules accommodate the small entities affected.