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June 10, 2005

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation in WC Docket Nos. 04-36, 05-196

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this letter is to provide notice in the above-captioned docketed proceedings of an *ex parte* communication on June 9, 2005. I spoke with Michelle Carey, Legal Advisor to Chairman Martin, to verify that the FCC's VoIP E911 Order would not apply to a situation in which a consumer kluged together an inbound VoIP service with a separately offered outbound VoIP service. As I pointed out, the user of such services could not mistake such services in which the inbound and outbound capabilities are clearly unbundled from one another and for which the consumer should have no reasonable expectation that the service is a replacement for traditional POTS service with traditional E911 capabilities.

I expressed concern that those trying to push the limits of IP technology and experiment with cutting-edge applications might become unintended collateral damage in the FCC's understandable efforts to impose reasonable obligations, based on reasonable consumer expectations, on alleged VoIP providers.

While relieved that the FCC is not imposing technologically impossible E911 obligations on peer-to-peer communications applications that no one could reasonable consider POTS-replacement services, I expressed concern over the FCC's tentative conclusion in the Notice of Proposed Rulemaking attached to the VoIP E911 Order that might serve to extend traditional E911 obligations to applications that are primarily peer-to-peer, but might offer

some limited access to and from the public switched telephone network. Devices and applications that a consumer should not expect to behave like a traditional phone service should not be stifled simply because they behave differently than traditional phone service.

I expressed hope that the FCC would continue to promote IP-based innovation and entrepreneurship, and enable IP-based communications providers to improve the public welfare through by experimenting with and deploying cutting-edge IP-based applications. VoIP, by its very nature, should dramatically improve the emergency response capabilities of communications devices, and social policy should not serve to cut off the advanced capabilities that IP technology would afford. IP technology empowers a user to take her service anywhere without having to check with the application provider to verify that the application provider has an arrangement to reach the specific local emergency response center. It is one thing to impose traditional social obligations where the consumer has every right to pick up the phone and expect it to behave like a traditional phone. What logic, however, would be served by turning off the added nomadic capability and other valuable features of a wifi-enabled PDA simply because the user cannot access a local emergency response system when she connects her PDA computer with a softphone program or other IP phone to a WiFi network or other broadband connection at a hotel, a coffee shop or other remote location? Certainly the Japanese tourist in America, with both an inbound and an outbound voice application downloaded to her PDA, has no expectation that the PDA offers a localized E911 capability. That same PDA, however, could be an invaluable aid during a crisis, particularly where no other wireline devices are within reach to contact emergency responders. That user should not have to turn off this functionality, which would only enhance our emergency response capability. Such a conclusion could produce a bizarre world in which the user of that "voice-disabled" device is forced to text (or sign or pantomime if the device is video-enabled) in order to communicate the nature of an emergency to a friend on the other end of the PDA-originated call.

During the tragedy at the World Trade Center on 9/11/2001, emergency response lines were overrun with incoming calls. What if citizens had PDAs with alternative features, functionalities and capabilities that could have allowed them another means to reach emergency responders, or simply friends or family, via text, SMS, IM, IP voice, or even IP video. Shouldn't these functions be encouraged even if the PDA with inbound and outbound voice-enabled software applications cannot offer the user the ability to reach the every local PSAP in the country?

I understand that Open Park is attempting (but beset by bureaucratic intransigence) to install WiFi hotspots across the Mall in Washington, DC.

Imagine how dramatically we could enhance our ability to handle an emergency situation if we could avail ourselves of such public broadband access points. Two weeks ago, Congress and many other Federal offices were evacuated because a small plane strayed off course and into DC airspace. Tens of thousands of government employees fled for the Mall. In a real crisis, 911 lines would again be overrun, as would mobile connections. If, God forbid, this were a real emergency, wouldn't it be great if we had another option – a broadband, IP-enabled public hotspot on the Mall that would allow citizens to avail themselves of the IP technology and the public Internet to obtain and transmit essential information? Frankly, wouldn't it have been great for panicked citizens to have been able to use such a public hotspot to verify that this was a real emergency.

If you have any questions about this matter, please contact me at 631-961-1049.

Respectfully submitted,
/s/
Jonathan Askin

FROM THE DESK OF
Jonathan Askin
631-961-1049
E-mail jaskin@pulver.com