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November 23, 2005

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Federal Communications Commission
Office of Secretary

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

Re: ***Ex Parte***
E911 Requirements for IP-Enabled Service Providers
WC Docket Nos. 04-36 and 05-196

Dear Ms. Dortch:

On November 22, 2005, Randy Lowe and myself of Davis Wright Tremaine LLP met with Kathy Berthot, Marcy Greene, Sue McNeil, Elizabeth Mumaw, and Chris Olsen of the Enforcement Bureau and Tim Stelzig of the Wireline Competition Bureau to discuss the attached letter which was submitted to Chairman Martin on November 21, 2005.

In accordance with FCC rules, a copy of this letter is being filed electronically in the above-referenced dockets.

Sincerely,

Amber L. Husbands

Amber L. Husbands
Counsel for Third Party Verification, Inc.

Attachment
cc: Kathy Berthot
Marcy Greene
Sue McNeil
Elizabeth Mumaw
Chris Olsen
Tim Stelzig

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November 21, 2005

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Federal Communications Commission
Office of Secretary

Via Courier and E-Mail

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Ex Parte***
E911 Requirements for IP-Enabled Service Providers
WC Docket Nos. 04-36 and 05-196

Dear Chairman Martin:

On behalf of Third Party Verification, Inc. ("3PV"), whose clients include the largest VoIP providers in the industry, we write to respectfully urge the Commission or its Enforcement Bureau to clarify the terms and timetable set forth in the Bureau's November 7, 2005 *Public Notice* in the above-referenced dockets, specifically with regard to the statement therein that the Bureau "expect[s] that [interconnected VoIP] providers will discontinue marketing VoIP service, and accepting new customers for their service, in all areas where they are not transmitting 911 calls to the appropriate PSAP in full compliance with the Commission's rules."[1]

3PV is a provider of independent third party verification services that has, on behalf of interconnected VoIP providers, endeavored for the past four months to attain the maximum possible levels of the customer notifications and acknowledgments mandated by new section 9.5(e) of the Commission's Rules by the Commission's November 28 deadline.[2] Utilizing the services of 3PV, these VoIP providers have diligently and substantially complied with the

[1] *Public Notice*, DA 05-2945, rel. Nov. 7, 2005, at 5 (the "*Public Notice*").

[2] *See IP-Enabled Services and 911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) (*VoIP 911 Order*); 47 C.F.R. §§ 9.5(e), (f).

notification and acknowledgment requirements of new rule 9.5(e). 3PV has been tasked by its clientele with completing over two million individual VoIP E911 acknowledgments. However, as other interested parties have demonstrated, complete compliance with the substantive E911 implementation requirements of rule 9.5 is, at this point in time, impossible.[3]

3PV respectfully proposes that the Commission and the Bureau defer enforcement of the "new customer marketing" element of the informal advice in the *Public Notice* in a manner that will heed the evident will of Congress, recognize the impossibility of 100% compliance with rule 9.5 by many VoIP providers at this time, provide the correct incentives to hasten full implementation of that rule, and, in the meantime, protect consumers by requiring complete and effective customer notification, acknowledgment and consent with respect to limitations to the E911 capabilities of their VoIP services. Specifically, we propose that the Commission or Bureau modify the advice in the November 7 *Public Notice* to clarify that interconnected VoIP providers must discontinue marketing VoIP service and accepting new customers for their service in all areas where they are not transmitting 911 calls to the appropriate PSAP in full compliance with the Commission's rules *unless,* in all such areas, the provider has fully notified all such customers, and certified to the Commission that it has received individual acknowledgments from all such customers; and that the provider maintains and will, upon request, provide the Commission with documentation, in written or recorded form, of any and all such acknowledgments.

3PV assures the Commission that the VoIP providers it represents have labored diligently and to the best of their ability to comply with the Commission's *VoIP 911 Order* in every respect, and are committed to continuing to do so. 3PV respectfully submits and urges that, to the extent that VoIP providers completely and effectively inform all new subscribers of any remaining limitations to their access to E911 services *and* obtain and retain in every case the informed consent of every such subscriber as per the existing rules in 47 C.F.R. § 64.1120, they should not be penalized with the draconian sanction of having to "shut down" all marketing efforts because of circumstances beyond their control; and that the grant of limited additional time, together with additional measures to encourage and if necessary compel recalcitrant ILECs to make all critical elements of their E911 infrastructures available to interconnected VoIP providers to the full extent necessary to enable them to complete their compliance with the Commission's rules, would be in the public interest.

[3] As reflected in S.1063, the "IP-Enabled Voice Communications and Public Safety Act of 2005," the Commission would revisit and revise its VoIP E911 rules to ensure reasonable VoIP provider access to existing ILEC infrastructure, and grant of one-year waivers of the mandatory E911 requirements to VoIP providers who demonstrate that compliance is technologically infeasible, provided that those providers notify subscribers and receive individual acknowledgments of such notification by all affected new subscribers.

3PV deeply appreciates the Commission's and Enforcement Bureau's consideration of this emergency request, and looks forward to continuing to work with the Commission and other parties in the important task of making 911 services universally available to all users of interconnected VoIP services.

Sincerely,

DAVIS WRIGHT TREMAINE LLP

James M Smith /alh

James M. Smith
Counsel for Third Party Verification, Inc.

cc:
Honorable Kathleen Abernathy
Honorable Michael Copps
Honorable Jonathan Adelstein
Michelle Carey
Russell Hanser
Jessica Rosenworcel
Scott Bergmann
Kathy Berthot
Joe Casey
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