

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Pulver.com and Evslyn Consulting’s Petition for) **RM-11327**
Rulemaking To Preserve Post-Disaster Communications)

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ hereby responds to the Federal Communications Commission’s (FCC or Commission) Public Notice² seeking comment on pulver.com and Evslyn Consulting’s (Pulver) petition (Petition)³ requesting the Commission to initiate a rulemaking proceeding to examine Pulver’s proposal regarding long-term telephone outages. The Commission should decline to open a rulemaking proceeding because the Commission already has enough regulatory authority, and has exercised that authority, sufficient to address long-term telephone outages.

I. INTRODUCTION

On April 7, 2006, the Commission released its Public Notice for comment regarding Pulver’s Petition. Pulver urged the Commission to examine rules that will “mitigate the effect of

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 560 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² Federal Communications Commission Sets Pleading Cycle for Comment On Pulver.com and Evslyn Consulting’s Petition for Rulemaking to Preserve Post-Disaster Communications, RM-11327, DA 06-825, Public Notice (rel. April 7, 2006) (Public Notice).

³ *Petition of Pulver.com and Evslyn Consulting For Rulemaking To Preserve Post-Disaster Communications*, filed March 13, 2006 (Petition).

long-term telephone outages in the event of natural disasters or other public crises.”⁴ Pulver asserts that the Commission should not wait for Hurricane Katrina expert panel reports⁵ and should, instead, act quickly before the upcoming hurricane season starts and more terrorist activities occur.⁶ Pulver claims that the infrastructure is already in place in ILECs’ switches and databases to provide emergency voicemail service, and that no additional action needed for customers who already have voice mail services.⁷ Pulver argues that Hurricane Katrina caused problems because current local number portability (LNP or number porting) restrictions do not allow portability outside of a geographic area or rate center.⁸

To remedy this problem, Pulver asks the Commission to open a rulemaking proceeding to consider Pulver’s proposed modifications to existing Commission rules. Under Pulver’s proposal:

1. Every E911 provider (Provider) should be required to create an alternative communications service for long-term (more than 12 hours or when an evacuation order is issued) outage by either: a) activating a voicemail service accessed by dialing the customer’s number, or b) providing expedited local number porting within 2 hours of a request, even if the port is outside the geographic area or rate center or to another provider.⁹
2. For those who do not have regular voice mail, the Provider will have to establish an emergency voice mail account and register an emergency PIN in the Provider’s database.¹⁰

⁴ Petition, p. 1.

⁵ The FCC's Independent Panel that is reviewing the impact of Hurricane Katrina on communications networks will meet on May 12, 2006 to discuss proposed issues, findings and recommendations to be included in its final report to the FCC which is due by June 15, 2006. The report will address the impact of Hurricane Katrina on communications infrastructure, including public safety communications, and recommendations for improving disaster preparedness, network reliability and communications among first responders. Public Notice, rel. April 26, 2006, DA 06-925.

⁶ Petition, p. 1. Hurricane season in the Atlantic begins June 1 and ends November 30 of each year. Louisiana Security and Emergency Preparedness, “Definition of a Hurricane” available at: <http://www.ohsep.louisiana.gov/factsheets/DefinitionOfaHurricane.htm>

⁷ Petition at 5.

⁸ Id. at 4. See 47 C.F.R. §§ 52.23, 52.31;

⁹ Id. at 5, 7.

¹⁰ Id. at 5-6.

3. The Provider should be required to continue providing the emergency voice mail service until the original service is fully restored or the evacuation order is lifted.¹¹
4. Providers will have to notify their customers in advance of the service's availability. This would include issuing customers a PIN with instructions on activating a temporary voice mail service, as well as posting instructions and information on the Provider's web site or activating a hot line during the emergency.¹²
5. Providers should certify their readiness, similar to E911, CALEA and CPNI certifications. Otherwise, they should not be allowed to market to new subscribers.¹³
6. Any Provider that fails to provide emergency services during a long-term outage should be subject to maximum penalties.¹⁴

II. ARGUMENT

The Commission should decline to open a rulemaking proceeding because the Commission already possesses the legal authority to accomplish all of the Pulver Petition's objectives – i.e., permit the Commission to quickly waive its rules as necessary to meet telecommunications needs in disaster response situations. A Rulemaking is neither necessary nor justified as the Commission already has the authority to suspend, revoke, amend or waive any of its rules for good cause, including the numbering and porting rules under 47 CFR § 1.3.¹⁵

Additionally, the Commission has demonstrated that it will exercise that authority and will weigh the individual characteristics of the disaster before exercising its waiver authority.

¹¹ Id. at 6.

¹² Ibid.

¹³ Id. at 7-8.

¹⁴ Id. at 8.

¹⁵ 47 C.F.R. § 1.3 provides that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.”

See Katrina Porting Waiver Order, p. 1, n. 1 (denying suspension of rules for Florida carriers because the telecommunications infrastructure damage from the August 2005 Florida hurricanes was not as severe as the damage from the Katrina hurricane in Alabama, Mississippi, and Louisiana). Furthermore, the Commission's rules already provide for emergency requests for 30-day Special Temporary Authority (STA) for restoring telecommunications service under 47 USC § 309(c)(2)(G). See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260835A1.pdf. Additionally, the Commission has already established and maintains a website to address consumer, industry and governmental emergency needs arising from Hurricanes Katrina, Rita and Wilma.¹⁶

The Commission also demonstrated that it can act with amazing speed to exercise its discretion in waiving its rules. As Chairman Martin testified before Congress on September 29, 2005:

“Almost immediately after Hurricane Katrina subsided, the Commission notified all communications providers of expedited treatment for requests of special temporary authority (“STA”). We have granted more than 90 STA requests and more than 100 temporary frequency authorizations for emergency workers, organizations and companies to provide wireless and broadcast service in the affected areas and shelters around the country. In most cases these requests were granted within 4 hours, with all requests approved within 24 hours. The Commission released several public notices and quickly adopted orders to provide temporary relief, and we waived numerous rules to enable telephone companies to re-route traffic, disconnect and reconnect lines, and switch long distance providers so that consumers’ phone calls could get through. We have extended filing deadlines, construction requirements, and discontinuance of service rules for wireless licensees in the affected areas.”¹⁷

¹⁶ “Hurricane Katrina Emergency Information,” available at <http://www.fcc.gov/cgb/katrina/>. This website contains links to disaster information for victims of Hurricanes Rita and Wilma, as well. These web sites contain valuable information for consumers who find themselves without phone service.

¹⁷ Testimony of FCC Chairman Kevin J. Martin, on Public Safety Communications from 9/11 to Katrina; Critical Public Policy Lessons, before the House Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, on September 29, 2005 (Martin Testimony), p. 4. A copy of the Martin Testimony is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-261417A1.pdf. Kenneth P. Moran, Director, Office of Homeland Security, Enforcement Bureau, FCC, submitted similar testimony on Hurricane Katrina and

The Commission has demonstrated that it can and will weigh the size, scope and severity of the damage and the resources available to the impact region before waiving local number portability rules. No further rule amendment or modification is necessary. Opening a rulemaking proceeding to create authority that already exists would be a waste of valuable, limited resources by the Commission and the interested parties.

Pulver.com's "one-size-fits-all" approach to emergency communications does not fit all scenarios or all carriers. For example, Pulver urges the Commission to require E911 providers to offer temporary voice mail or to complete all number porting requests within two hours of the request, regardless of the size and resources of the carrier, the type and location of the customer, the type of port involved, and the expense involved in the number port. The Commission should review the Regulatory Flexibility Act's provisions in considering financial impacts on small carriers.¹⁸ The Commission should evaluate each disaster on its own merits to determine whether to suspend its LNP rules. Not all carriers have the resources of the Bell Companies to reroute traffic, create emergency voicemail, or to port numbers on two hours' notice, and not all disasters are of the magnitude of Hurricane Katrina. The Commission needs the flexibility to defining a "long-term" outage. Pulver's suggestion that "long-term" means 12 hours does not reflect the realities of past and future natural disasters.

The Commission is already informing consumers that they should be prepared for emergencies by keeping more than one type of phone service available, especially if they have a

Communications Interoperability, before the Senate Committee on Commerce, Science and Transportation, on September 29, 2005 (Moran Testimony), p. 5. A copy of the Moran Testimony is available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-261418A1.pdf.

¹⁸ The Regulatory Flexibility Act of 1980, as amended, requires that the Commission consider less burdensome regulations for small companies. 5 U.S.C. § 603, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121 (1996).

cell phone or VoIP phone.¹⁹ The Commission's Katrina, Rita and Wilma Emergency Information web sites also give information to the telecommunications industry on how to apply for STA waivers, report outages, and other emergency regulations.²⁰ Given the publicity and devastation that surrounded the Hurricane Katrina, Rita and Wilma disasters, E911 providers already have a market-based incentive to consider offering back-up communication systems. No further rulemaking is needed.

III. CONCLUSION

The Commission should use its waiver authority to address disasters based on their individual characteristics, and the Commission already has rules in place to accomplish this objective. For the reasons set forth, the Commission should decline to open a rulemaking proceeding to consider pulver.com's request and should deny the Pulver Petition.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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¹⁹ See "FCC Consumer Facts - Communicating During Emergencies" available at: <http://www.fcc.gov/cgb/consumerfacts/emergencies.html>.

²⁰ See <http://www.fcc.gov/cgb/katrina/Industry.html>.

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in RM-11327, DA 06-825 was served on this 27th day of April 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons.

/s/ Gail Malloy

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