

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the matter of:)
)
The Proposed Extension of Part 4 of the) PS Docket No. 11-82
Commission’s Rules Regarding Outage)
Reporting to Interconnected Voice Over)
Internet Protocol Service Providers and)
Broadband Internet Service Providers)

REPLY COMMENTS OF LAURENCE BRETT GLASS, D/B/A LARIAT

Laurence Brett (“Brett”) Glass, a sole proprietor doing business as LARIAT, a wireless Internet service provider serving Albany County, Wyoming, respectfully submits the following reply comments in response to the Commission’s Notice of Proposed Rulemaking,¹ comments, and prior reply comments in the above captioned proceeding. LARIAT has also filed comments in response to the Public Notice which preceded the NPRM,² which see.³

As explained in LARIAT’s earlier comments, and as also stated in the reply comments of WCAI,⁴ the Internet and its protocols, from their inception, were designed to offer “best effort,” not 100% reliable,

¹ *Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket 11–82, *Notice of Proposed Rulemaking*, 26 F.C.C.R. 7166 (2011), 76 Fed. Reg. 33686 (June 9, 2011), *erratum*, 76 Fed. Reg. 36892 (June 23, 2011) (“NPRM”).

² *Public Safety and Homeland Security Bureau Seeks Comment on Whether the Commission’s Rules Concerning Disruptions to Communications Should Apply to Broadband Internet Service Providers and Interconnected Voice over Internet Protocol Service Providers*, ET Docket 04–35 *et al.*, *Public Notice*, 25 F.C.C.R. 8490 (PSHSB July 2, 2010) (“Public Notice”).

³ Public Notice Comments of Laurence Brett Glass, d/b/a LARIAT, ET Docket 04–35 *et al.* (filed Aug. 2, 2010), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020652526>.

⁴ Reply Comments of The Wireless Communications Association International, PS Docket 11-82 (filed October 7, 2011), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021713485>, at 2.

delivery of data.⁵ Due to this design characteristic, disruptions to communications over the Internet are not only normal but expected, and should not trigger a reporting requirement on the part of the ISP. The NPRM's proposed definitions of an "outage" – packet loss in excess of 1%, latencies in excess of 100 ms to any point on the global Internet, or jitter in excess of 4% – are especially onerous in that such conditions are already common on mobile wireless networks today (a typical 4G "aircard" on Verizon's wireless network has latencies of 120 ms or more to many locations within the US) and are not within the control of any network operator once packets leave the portion of the Internet which it owns and controls.

As mentioned in LARIAT's earlier comments, such requirements would be especially inappropriate for wireless Internet service providers operating on unlicensed spectrum. Due to the structure of the FCC's spectrum auctions – which requires lump sum payments rather than more reasonable "pay as you go" terms, offers insufficient preferences for small operators and new entrants to offset the "foreclosure value" of spectrum, and allows incumbents to hoard spectrum – most wireless Internet service providers (WISPs) cannot secure licensed spectrum and therefore operate on frequencies where unlicensed operation is permitted by Part 15 of the Commission's rules. According to these rules, an operator using such frequencies has no recourse in the event that service is interrupted by interference. It is simply not reasonable for the Commission to impose a requirement to report interruptions upon operators when it has, effectively, mandated that their service be subject to interruptions which they have not been granted the power to prevent or halt.

As noted by LARIAT and also by WISPA,⁶ a reporting requirement would also, by increasing the

⁵ "The design principles of the Internet protocols assume that the network infrastructure is inherently unreliable at any single network element or transmission medium and that it is dynamic in terms of availability of links and nodes. No central monitoring or performance measurement facility exists that tracks or maintains the state of the network.... As a consequence of this design, the Internet Protocol only provides best effort delivery and its service can also be characterized as unreliable." *Internet Protocol*, Wikipedia, available at http://en.wikipedia.org/wiki/Internet_Protocol.

⁶ Comments of WISPA, PS Docket 11-82 (Filed August 8, 2011), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021701149>, at 3.

regulatory and financial burdens upon ISPs, be unreasonably burdensome for small ISPs and would be contrary to the goals of the National Broadband Plan – particularly the deployment of high speed Internet service to unserved areas and the stimulation of competition in others.⁷

Finally, as noted by many commenters,⁸ the Commission lacks authority to impose outage reporting requirements upon broadband Internet service providers. The NPRM’s argument that such authority would be ancillary to its authority to ensure reliable 9-1-1 service is irreparably flawed; by the same logic, the Commission would also have authority over an expansive range of other entities from power companies to coffeehouses and hotels that maintained Wi-Fi hotspots, because disruption of their service might likewise interrupt VoIP 9-1-1 service! Such claims of unbridled ancillary authority are contrary to *Comcast v. FCC*⁹ and related case law. Because Internet service providers are not “telecommunications” providers but providers of information services, the imposition of reporting requirements is beyond the scope of the Commission’s authority.

For all of these reasons, LARIAT urges the Commission not to pursue the proposed reporting requirement with respect to ISPs in general and WISPs in particular. To best fulfill its statutory mandate to promote the reliability of emergency communications carried via over-the-top VoIP, the Commission should amend its auction procedures and spectrum policies to make it possible for small and local providers to use licensed spectrum. It should modify its Part 15 rules to allow rural wireless broadband links to operate with greater effective isotropic radiated power, as proposed by Commissioner Jonathan Adelstein in

⁷ “Competition is crucial for promoting consumer welfare and spurring innovation and investment in broadband access networks. Competition provides consumers the benefits of choice, better service and lower prices.” *Connecting America: The National Broadband Plan*, FCC (March 16, 2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (Broadband Plan), at 36.

⁸ See, for example, Comments of XO Communications, PS Docket 11-82 (Filed August 8, 2010), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021701149>; Reply Comments of WISPA, PS Docket 11-82 (Filed August 8, 2011), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021713391>; Reply Comments of US Internet Service Provider Association, PS Docket 11-82 (Filed August 8, 2011), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021713522>.

⁹ See *Comcast v. FCC*, No. 08-1291, slip op. (DC Cir. April 6, 2010) (“*Comcast v. FCC*”).

2005,¹⁰ so as to be more capable of overcoming harmful interference from consumer devices. It should take prompt and decisive action on the issue of Special Access,¹¹ so that the performance of competitive broadband providers is not constrained by excessive bandwidth costs imposed by predatory pricing on the part of incumbent local exchange carriers. And it should refrain from excessive regulation in all respects, lest the burden of such regulation slow ISPs' efforts to innovate and to provide the highest quality of service possible.

Respectfully submitted,

/s/

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¹⁰ Remarks of Commissioner Adelstein at WISPCON VII on March 21, 2005, "WISPs: Providing Opportunities for Rural America through Access to Broadband," available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-257737A1.pdf, at 3.

¹¹ See WC Docket 05-25.