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November 18, 2011

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Oral and Written *Ex Parte* Communications, PS Docket No. 11-82

Dear Ms. Dortch:

On November 17, David Young, Mark Montano, and I met with Louis Peraertz, legal advisor to Commissioner Clyburn, to discuss the Commission's proposal to require interconnected voice over IP providers and broadband service providers to submit reports to the Commission during certain events.

We explained that Verizon opposes any extension of the outage reporting requirements to interconnected voice over IP providers and broadband Internet service providers because such an extension would be redundant and burdensome. We advised that the proposed rules are overly broad and are not narrowly tailored to the Commission's stated goal of ensuring reliable access to 9-1-1 systems. The proposed rules would establish specific service quality thresholds that would result in reporting even where a user is able to communicate with public safety officials. We advised that instead of regulatory mandates, the Commission should engage industry and public safety stakeholders in a more deliberate process to develop outage reporting criteria that are designed to provide meaningful information about actual service disruptions that affect end user access to emergency services. The discussion was consistent with the attached ex parte filed on November 14, 2011.

Pursuant to section 1.206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), this *ex parte* notification is being filed for inclusion in the public record of the above referenced proceeding.

Please let me know if you have any questions.

Sincerely,

Nneka Ezenwa

Attachment

cc: Louis Peraertz

November 14, 2011

Via Electronic Filing

James Arden Barnett, Jr., Rear Admiral (Ret.)
Chief, Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Oral and Written *Ex Parte* Communication, PS Docket No. 11-82

Dear Admiral Barnett:

As you know, our group (eight associations and 11 individual companies), which is comprised of large, mid-sized and small broadband Internet service providers, interconnected voice over Internet Protocol providers, and backbone providers, represents hundreds of billions of dollars of investment in the nation's communications networks. On Thursday, November 10, 2011, we met with you and Josh Gottheimer in the Office of Chairman Julius Genachowski; Austin Schlick and Julie Veach of the Office of General Counsel; Jeffery Goldthorp, Lauren Kravetz, and John Healy of the Public Safety and Homeland Security Bureau; and Chuck Needy of the Office of Strategic Planning and Policy Analysis. We appreciate your willingness to engage and listen to our concerns in that meeting.

At the meeting, we explained that we understand the critical importance of providing reliable interconnected voice over Internet Protocol ("VoIP") and broadband services and share the Commission's goal of promoting policies and programs that ensure Americans have access to emergency services in times of national emergency, local disaster, and public health crises. However, we emphasized our strong concern with the Public Safety and Homeland Security Bureau's proposal to mandate the proposed outage reporting requirements on interconnected

VoIP providers and broadband service providers as set forth in the Notice of Proposed Rulemaking.[1]

The record in this proceeding demonstrates that the rules proposed are unnecessarily broad and are not narrowly tailored to the Commission's stated goal of ensuring reliable access to 9-1-1 systems. Indeed, the record demonstrates that employing quality of service metrics as a surrogate for network availability is not an efficient or narrowly-tailored approach to identify when IP networks are unable to deliver emergency traffic. Accordingly, if adopted, the proposed reporting obligations will impose significant, unnecessary costs on the industry when other more effective approaches could satisfy the benefit of ensuring the reliability of IP networks to access 9-1-1. Further, the proposed rules are inconsistent with the Administration's policy goals of regulatory flexibility, simplification of reporting and compliance requirements, and reducing regulatory burdens on businesses. Before proceeding with any action on outage reporting, we strongly urge you to undertake a thorough and careful cost-benefit analysis and work with industry to identify a more targeted approach to achieve the Commission's stated goal in this proceeding.

President Obama has clearly expressed a desire for government agencies to adopt new regulations "only after consideration of their costs and benefits (both quantitative and qualitative)."[2] The President also has indicated that government agencies should "identify and use the best, most innovative, and *least burdensome* tools for achieving regulatory ends."[3] Under Chairman Genachowski's leadership, the Commission has embraced this objective and reviewed, eliminated or refrained from imposing unnecessary regulation in a variety of areas. Last week, the Chairman reaffirmed his commitment to "removing needless burdens on industry, enabling the agency to efficiently promote competition and empower consumers, and unleashing innovation and investment across the broadband economy."[4] The Chairman expressed his willingness to "proactively explore[] creative alternatives to rules."[5] Just last month, the Commission analyzed the costs and benefits associated with mandating new wireless usage alerts, and appropriately recognized an opportunity for a non-regulatory solution to satisfy the Commission's public policy objectives.

We ask you to apply that same flexibility, innovative thinking, and willingness to engage with industry to develop creative solutions in this proceeding. The proposed rules for outage reporting of broadband networks and interconnected VoIP are not narrowly-tailored and would establish specific service quality thresholds related to latency, jitter, and packet loss that would require providers to file outage reports with the Commission *even where a user is able to communicate with public safety officials*.

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[1] *The 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,* Notice of Proposed Rulemaking, PS Docket No. 11-82 (2011) ("*NPRM*").
[2] President Barack Obama, Executive Order 13579 (July 11, 2011), 76 FR 41857 (2011).
[3] President Barack Obama, Executive Order 13563 (Jan. 18, 2011), 76 FR 3821 (2011) (emphasis added).
[4] Chairman Genachowski, "Remarks of Chairman Julius Genachowski at The Georgetown Center for Business and Public Policy's Evolution of Regulation series," *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310876A1.pdf, at 2 (Nov. 7, 2011).
[5] *Id.* at 6.

In addition to being unduly broad, the proposed requirements will impose significant economic burdens on broadband service providers and VoIP providers. The assertion in the Notice that these rules would not be burdensome because companies already collect and possess the required data is not supported by any evidence in the record. To the contrary, broadband service providers and VoIP providers do not routinely monitor network performance at the level of granularity that would be required by the rules proposed in the Notice, and it would cost hundreds of millions of dollars for the industry to implement such a regime, costs that will ultimately have an impact on consumers. This is not the first time the Commission has misjudged the burdens of outage reporting. In 2004, when the Commission established today's Part 4 rules, the Commission estimated that the industry's total annual costs associated with submitting outage reports would be $41,600.[6] As it turns out, this was a gross underestimate of the costs associated with filing outage reports. While the burden varies from carrier to carrier, the industry estimates that annual labor costs alone can run as high as $5 million *per carrier*.[7]

In light of these burdens, the Commission is obligated to explore less burdensome alternatives to the proposed rules. Specifically, the Commission should first work with industry and Public Safety to develop a set of outage reporting criteria that is designed to provide meaningful information about actual service disruptions that affect access to emergency services. Using such a framework, which has seen great success in other contexts,[8] the Commission and interested stakeholders, including APCO and NENA, can develop a voluntary trial program for routine outage reporting that can be used by the Commission to evaluate the efficacy of the reporting criteria and to determine whether and how to refine the process for such reports.

Public access to emergency services is critical. The Commission should take the time now to ensure that the right set of voluntary outage reporting parameters are developed, and not rush prematurely to adopt the proposed flawed rules. The undersigned companies believe strongly that the Commission's proposed application of Part 4 reporting requirements to broadband Internet access providers, Internet backbone providers, and interconnected VoIP providers ignores the technical realities of broadband networks and would place an unnecessary burden on providers with limited countervailing benefit, in contravention of the President's directive and Commission policy. We look forward to future collaborative efforts and urge the Commission to rely on these efforts in the instant proceeding and in the future.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Respectfully Submitted,

/s/ Barbara Esbin	*/s/ Anisa Latif*
Cinnamon Mueller for American Cable	*/s/ Joe Marx*
Association	**AT&T**

[6] Report and Order and Further Notice of Proposed Rulemaking, ET Docket 04-35, released Aug. 19, 2004 (Outage Reporting Report and Order), Appendix D at ¶ 24.
[7] See Comments of Alliance for Telecommunications Industry Solutions ("ATIS"), PS Docket No. 11-82 at 9.
[8] *See, e.g.*, MEASURING BROADBAND AMERICA at 30, *available at* http://www.fcc.gov/measuring-broadband-america ("This Report benefited from the voluntary participation of a number of parties. The contribution of their expertise to the development of the methodologies employed in this Report materially increased its quality.").

/s/ Melissa Newman
/s/ Lawrence Sarjeant
CenturyLink

/s/ Mary Albert
COMPTEL
/s/ David Malfara
Consultant to **COMPTEL**

/s/ Mike Saperstein
Frontier

/s/ Erin Boone
Level 3 Communications, LLC

/s/ Ray Rothermel
Sprint Nextel

/s/ Harold Salters
T-Mobile USA

/s/ Glenn Reynolds
/s/ Anthony Jones
US Telecom

/s/ Glenn Richards
VON Coalition

/s/ Tiki Gaugler
/s/ Lisa Youngers
XO Communications

s/ Mary McManus
Comcast Corporation

/s/ Brian Josef
CTIA-The Wireless Association®
/s/ Chuck Jackson
Consultant to **CTIA**

/s/ Micah Caldwell
Independent Telephone and Telecommunications Alliance

/s/ Steve Morris
National Cable and Telecommunications Association

/s/ Terri Natoli
Time Warner Cable

/s/ Kate Dean
United States Internet Service Provider Association

/s/ Donna Epps
/s/ Nneka Ezenwa
/s/ David Young
Verizon

/s/ Malena Barzilai
Windstream

cc: Josh Gottheimer
Austin Schlick
Julie Veach
Jeffery Goldthorp
Lauren Kravetz
John Healy
Chuck Needy