

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

Request for Waiver of Section)
64.1601(b) of the Rule – Blocked) CC Docket No. 91-281
Telephone Numbers)

**REPLY COMMENTS OF CHEVRAH HATZALAH
VOLUNTEER AMBULANCE CORPS INC.**

Chevrah Hatzalah Volunteer Ambulance Corps, Inc. (“Hatzalah”) respectfully submits these reply comments in regard to Hatzalah’s Petition for Waiver (“Petition”) of Section 64.1601(b) of the FCC’s rules.^{1/} None of the three comments submitted in response to the public notice of Hatzalah’s Petition present any basis for the Commission to delay granting Hatzalah the requested waiver. Accordingly, the Commission should promptly grant the waiver to improve public safety by allowing Hatzalah to be better able to provide its volunteer ambulance services in response to the over 50,000 emergency calls it receives every year.

I. INTRODUCTION AND BACKGROUND

As described in the *Public Notice* requesting comment on the Petition, Hatzalah is a non-profit corporation that operates an ambulance service in New York City. Hatzalah is the only volunteer ambulance service licensed to serve the entire City of New York, and it is believed to be the largest volunteer ambulance service in the nation. Hatzalah’s Petition seeks a limited waiver of Section 64.1601(b) of the rules, which otherwise requires that carriers block on request a customer’s calling party number (CPN), so it cannot be identified by the called party. Hatzalah

^{1/} Petition for Waiver of Chevrah Hatzalah Volunteer Ambulance Corps Inc., Docket No. 91-281 (filed Sept. 30, 2011) at 9 (“Petition”). *See also Consumer & Governmental Affairs Bureau Seeks Comment on Petition for Waiver of Chevrah Hatzalah Volunteer Ambulance Corps, Inc. Regarding the Transmission of Calling Party Numbers*, Public Notice, Docket No. 91-281, DA-12-210 (rel. Feb. 14, 2012) (“*Public Notice*”).

asked that carriers provide it with CPNs in emergency situations, regardless of a subscriber's CPN blocking request, so that Hatzalah can determine the CPN of callers for its emergency services to be able to return the call if the calling party is disconnected. Access to CPN information will also, at least for wireline calls, allow Hatzalah, through its existing arrangement with its local exchange carrier Verizon, to access caller location information, which often cannot be obtained directly from callers in distress. Although Hatzalah is renowned for its rapid response time and quality emergency care, its inability to receive CPN information from some callers can lead to sometimes tragic delays of emergency care.

Three parties submitted comments in response to the *Public Notice*. Danny Burnstein (“Burnstein”), an emergency medical technician, concluded that “[w]ith Hatzalah being used as an alternative, but very legitimate, emergency response service, I’d agree that they should be given complete access to all caller’s numbers,” but also suggested that Hatzalah share its dispatching software with other private emergency responders.^{2/} ZipDX LLC (“ZipDX”) did not disagree that Hatzalah should have access to CPN, but suggested that as an alternative Hatzalah could acquire a toll-free (8YY) number to be used for emergency calls.^{3/} Only one party – CenturyLink – opposed Hatzalah receiving CPN information from carriers, arguing that the Petition raises questions of general applicability, fails to demonstrate special circumstances, and seeks a rule change rather than a waiver.^{4/} As explained below, however, the Petition meets the Commission’s standards for waivers, as it is narrowly tailored to serve a specific public interest already identified by the Commission and will help to ensure the health and safety of individuals in need of immediate emergency care.

^{2/} Comments of Danny Burstein, Docket No. 91-281 (filed Feb. 27, 2012) (“Burstein Comments”).

^{3/} Comments of ZipDX LLC, Docket No. 91-281 (filed Feb. 24, 2012) (“ZipDX Comments”).

^{4/} Comments of CenturyLink, Docket No. 91-281 (March 15, 2012) (“CenturyLink Comments”).

II. HATZALAH'S PETITION APPROPRIATELY REQUESTS A WAIVER AND DOES NOT REQUIRE A RULEMAKING PROCEEDING

CenturyLink opposes Hatzalah's Petition because, it argues, the Petition raises questions of general applicability, fails to demonstrate special circumstances, and would more appropriately request a rule change rather than a waiver.^{5/} In suggesting this course, CenturyLink misunderstands the nature of the Petition and significantly understates the unique role that Hatzalah plays in providing emergency services in New York.

A. Waiver is the Appropriate Procedural Mechanism for this Matter and the Petition Satisfies the Established Standards for Waiver.

The relief that Hatzalah seeks is not broad in scope and does not require a modification of the Commission's rules. Hatzalah is not asking the Commission to alter its rules to permit the delivery of blocked-CPN to all private emergency service providers. And there is no need, as CenturyLink suggests, for the Commission to "re-evaluate a previously-reached balance" regarding the matter of CPN transmission to public safety answering points ("PSAPs") in response to the Petition.^{6/} To the contrary, Hatzalah agrees with the validity of the rule generally and its general application to private emergency services providers. As the Court of Appeals for the D.C. Circuit observed, "[t]he very essence of waiver is the assumed validity of the general rule" and the "provision for waiver may have pivotal importance in sustaining the system of administration by general rule."^{7/} Although Hatzalah notes in its Petition the important role that many private agencies play in providing emergency services,^{8/} Hatzalah also demonstrates the unique circumstances that apply to Hatzalah that merit a waiver, and not a

^{5/} CenturyLink Comments at 5-7.

^{6/} CenturyLink Comments at 7.

^{7/} *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969).

^{8/} Petition at 9.

modification of the rules, in this case. It is because of those unique circumstances that a waiver, and not a modification, of the FCC's rules is appropriate.

The FCC has generally found that waiver of its rules is appropriate “if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.”^{9/} Similarly, the Commission has established that it “may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.”^{10/}

Hatzalah satisfies these tests. First, Hatzalah has demonstrated that special circumstances exist, which merit waiver of the rule. The rule is designed to protect callers who wish to prevent called parties from viewing their numbers. However, in this case, callers to an emergency service plainly want the emergency service provider to reach them. In order to reach callers, Hatzalah must be able to view a calling party's telephone number. Failure to return a phone call from an emergency caller could lead to disastrous results.^{11/} Second, waiver of the rule would not undermine the policy objective of the rule. A caller to an emergency services number generally has no expectation that their phone number would be kept private in that situation; the caller instead has an interest in the number becoming known to the emergency services operator

^{9/} *Boeing Company Application for Blanket Authority to Operate Up to Eight Hundred Technically Identical Transmit and Receive Mobile Earth Stations Aboard Aircraft in the 14.0-14.5 GHz and 11.7-12.2 GHz Frequency Bands*, Order and Authorization, 16 FCC Rcd 22645, ¶ 12 (2001) (“*Boeing Waiver Order*”).

^{10/} *Boeing Waiver Order* ¶ 12.

^{11/} As noted above, access to CPN will, at least for wireline calls, also give Hatzalah information about a caller's location, which is also invaluable in reaching someone in distress.

in order to speed provision of emergency services.^{12/} Callers would still receive the protection that they elect in all other circumstances. Indeed, because Hatzalah is subject to patient confidentiality rules, it treats all patient information – including CPN – as strictly confidential and only uses the CPN for the limited purpose of providing medical services to the patient. Finally, the Petition demonstrated that the public interest is better served by granting the waiver because it would aid rapid deployment of emergency medical attention and allow the public to make personal choices about their emergency care.^{13/} In addition, enhancing Hatzalah’s ability to provide emergency services will relieve some of the burden on already overburdened municipal emergency services.

B. Hatzalah’s Request is Narrow in Scope and Analogous to the INSIGHT 100 Waiver.

The central element of CenturyLink’s contention that a rulemaking would be more appropriate is its assertion that Hatzalah’s “request is almost unbounded by potentially benefited entities” that CenturyLink suggests will inevitably follow with similar waiver requests, should Hatzalah’s petition be granted.^{14/} But CenturyLink misapprehends Hatzalah’s unique characteristics that differentiate it from other private ambulance services and that would allow the Commission to issue a waiver that embodies a narrow and well-defined standard that would make the waiver “predictable and workable.”^{15/}

^{12/} Petition at 4-6. *See also Rules and Policies Regarding Calling Number Identification Service, Notice of Proposed Rulemaking*, 6 FCC Rcd 6752 ¶ 35 (1991) (holding that recognizing privacy interests associated with caller ID should not interfere with provision of emergency services).

^{13/} *Id.* at 6.

^{14/} CenturyLink Comments at 4.

^{15/} *Id.* at 4 (citing *INSIGHT 100 Petition for Waiver of § 64.1601(b) Regarding the Transmission of Calling Party Number*, Memorandum Opinion and Order, 17 FCC Rcd 223, ¶ 9 (2002)).

Both the scope and characteristics of Hatzalah's emergency services operations differentiate it from other private ambulance companies in the United States. Hatzalah is a non-profit corporation that operates the single largest all-volunteer ambulance service in the United States. It operates in one of the nation's most densely populated urban areas and is the only volunteer ambulance service licensed to serve the entire City of New York.^{16/} Hatzalah and its regional branches service a geographic area that is home to more than eight million people.^{17/} Hatzalah volunteers are on call 24 hours a day, 7 days a week, 365 days per year, ready to provide premium quality pre-hospital emergency medical treatment and transportation at no cost to the patient. By virtue of its size and scope, Hatzalah is different from virtually every private ambulance company in the country. Indeed, the number of calls to which Hatzalah responds – an average of 50,000 per year – is greater than most municipally operated emergency services. Hatzalah also has an extraordinarily fast response time which averages two to four minutes in most areas which it serves, which is about half of the average response time of the New York City 911 emergency medical service.

Hatzalah's services are also unique because although Hatzalah responds to calls from anyone who calls Hatzalah's private dispatch number without regard to race or religion, it provides specialized emergency services for Holocaust survivors and the ever-growing Hassidic and Sabbath observant Jewish populations in its coverage region. In recognition of the role that Hatzalah plays in meeting the unique needs of these populations, the New York State

^{16/} NYS DOH Ambulance Service Certificate, Agency Code Number 7191. Hatzalah is certified to operate in the five boroughs of New York City in accordance with provisions of Article 30 of New York Public Health Law.

^{17/} Hatzalah responds to anyone in the five boroughs of the City of New York who calls the Hatzalah emergency telephone numbers in need of assistance and transports patients to local hospitals.

Department of Health has determined that there is a significant and legitimate need for Hatzalah's services in the State of New York that cannot be addressed by existing services.^{18/}

Hatzalah is also the only non-governmental ambulance service in the country to meet the criteria for an Essential Service classification under the Telecommunications Service Priority (TSP) for National Service and Emergency Preparedness (NS/EP).^{19/} In recognition of the essential and critical services that Hatzalah provides, and in the interest of maintaining a minimum number of services necessary for maintaining law and order and the health and safety of the U.S. population in times of any national, regional, or serious local emergency, Hatzalah has been assigned Category C TSP priority by the federal Office of Priority Telecommunications. Category C priority is granted only to those services for which a telecommunications service interruption ranging from a few minutes to one day would have serious adverse impact on the supported NS/EP functions.^{20/} Further, in recognition of its unique circumstances, the FCC has waived its rules to permit Hatzalah to use a specially created frequency assignment (not otherwise specified in the FCC's regulations) within a band generally permitted only for railroad operations and not otherwise designated for public safety use.^{21/} All these facts demonstrate that Hatzalah's services are unique and that it is not like other entities – even other private ambulance services – that might request a waiver for access to blocked numbers.

^{18/} NYS DOH Public Health Law Article 30, Section 3010(d).

^{19/} Granted by the United States Department of Health and Human Services on Oct. 21, 2001, after Chevra Hatzalah's vital presence on Sept. 11, 2001 at the World Trade Center disaster.

^{20/} See Telecommunications Service Priority, TSP Eligibility, <http://tsp.ncs.gov/eligibility.html>. (Last visited March 27, 2012).

^{21/} See call signs WPRF775 and KFM561, authorized by 1985 FCC waiver to operate on the 160.2800 MHz frequency at several locations in the metropolitan New York City area.

Given these facts, it is clear that CenturyLink is just wrong when it argues that “Hatzalah’s request is almost unbounded by potentially benefited entities” and that Hatzalah’s situation is unlike “the INSIGHT 100 situation” where “the Commission found that the benefitted parties constituted ‘only a narrow and well-defined class of public institutions,’ thus rendering the standard associated with granting the waiver ‘predictable and workable.’”^{22/} In fact, Hatzalah presents a situation directly analogous to INSIGHT 100 because the Commission may, for example, limit the waiver to only Hatzalah and make clear that it will not entertain similar petitions from other private emergency services unless they are of similar size and scope, serve unique populations, have similar state recognition, and have also been assigned Category C TSP priority by the federal Office of Priority Telecommunications.

CenturyLink is similarly wrong in its contention that Hatzalah’s Petition is unlike the *INSIGHT 100 Waiver* because “the CPE utilized by the INSIGHT 100 Petitioners was in the nature of a common-carrier piece of switching equipment, *i.e.*, equipment that carriers were routinely already terminating calls to and displaying both CPN and any privacy-imposed restrictions,” while Hatzalah uses a “proprietary state-of-the-art computer-aided dispatch system.”^{23/} Aside from the fact that Hatzalah’s use of a state-of-the-art dispatch system presents another means for the Commission to narrow the scope of the waiver and distinguish Hatzalah’s situation from that of other potential petitioners, the use of the proprietary dispatch system presents no obstacle to grant of the waiver.^{24/}

^{22/} CenturyLink Comments at 4.

^{23/} CenturyLink Comments at 4 (internal citations and quotation marks omitted).

^{24/} CenturyLink argues that it could be extremely costly for carriers to have to isolate the numbers of “hundreds and hundreds of telephone number across the country” in the event that the waiver was extended to all private emergency services companies. CenturyLink Comments at 6. But as explained above, the scope of a waiver to Hatzalah should be tailored sufficiently narrowly as to not generate many (or possibly even any) additional waiver petitions from private emergency services providers.

Hatzalah has already laid the groundwork with its local exchange carrier for a seamless transition to unblocking CPN for emergency calls. Several years ago, after the New York Public Service Commission approved a tariff that allowed Hatzalah to obtain ALI information from the incumbent local exchange carrier, a dedicated and protected secure underground cable was installed between Hatzalah's dispatch center and the carrier's central office. Modifications were made to the carrier's database to enable it to accept Hatzalah's Caller ID queries, along with integration of the data into the Hatzalah computer aided dispatch system. Thus only a waiver of the regulatory blocking requirement, and not any technical obstacle, stands in the way of significant improvement to Hatzalah's emergency services.

III. HATZALAH CANNOT MAKE ITS SOFTWARE AVAILABLE TO OTHERS

Burnstein suggests that "inasmuch as Hatzalah's integrated phone/address/subscriber records dispatch system was financed in part through taxpayer grants, that they consider offering a version of it to other . . . *de facto* PSAPs."^{25/} Hatzalah licenses and maintains an Emergency Dispatch System obtained from Ness Technologies ("Ness"), a global IT services provider based in Israel. Hatzalah's agreements with Ness prohibit it from sharing this proprietary system with others. The fact that Hatzalah may have received public funds for certain limited capital expenditures does not abrogate its agreements with Ness, and merely because an entity accepts public funding does not mean that all assets it acquires, including intellectual property rights, become publicly accessible. In this case, Hatzalah's acceptance of public funding was not

^{25/} Burnstein Comments at 2. Founded in 1965, Chevrah Hatzalah had been funded entirely and exclusively through private donations for the first 45 years of its operations. In 2010, for the first time ever, the organization accepted public money in the form of a \$445,000 capital grant from the New York State Assembly. See Adam Dickter, *Hatzalah, In A First, Takes Public Money*, THE JEWISH WEEK, July 13, 2010, available at http://www.thejewishweek.com/news/new_york/hatzalah_first_takes_public_money_story_and_video.

conditioned on its ability to make the Ness system available to others and so it must continue to abide by its agreements with Ness.

IV. USING AN 800 NUMBER IS NOT A PRACTICAL ALTERNATIVE

In response to the request in the *Public Notice* for “comment on whether there are technical or other solutions that might enhance Hatzalah’s ability to locate callers that have blocked CPN without the necessity of waiving the Commission’s rules,” ZipDX suggests that Hatzalah could acquire a public a toll-free (8YY) number to be used for emergency calls.^{26/} Hatzalah’s experience has shown that this proposal is impractical and would endanger the health of Hatzalah’s clients.

Hatzalah itself previously evaluated this option and experimentally implemented a toll free 800 number for its upstate New York callers, believing that some people might be reluctant to pay for a “long distance” call to the Hatzalah central dispatch center located in Brooklyn, New York. The number was well-publicized but rarely used. In contrast, Hatzalah’s main emergency hotline number has been ingrained in the minds of millions of people for three generations. In many orthodox Jewish communities – a key portion of the population that Hatzalah serves – children learn and memorize Hatzalah’s emergency number simultaneous to learning how to dial 911, and the bright orange stickers that advertise Hatzalah’s emergency number can be found attached to thousands of home telephones across the region.

Switching to an 800 number would inevitably create consumer confusion and could result in many consumers not being able to reach Hatzalah. Even if Hatzalah maintained an 800 number along side of its current emergency telephone number, experience has shown that consumers will continue to use the traditional number – the number many memorized in

^{26/} ZipDX Comments at 1.

childhood – which does not provide unblocked CPN information. While the FCC may wish to suggest the option of 8YY service to entities initiating new emergency services, this solution is simply not workable for an organization as well-established and well-known as Hatzalah.

V. CONCLUSION

As demonstrated above, concerns that granting Hatzalah’s waiver request would generate a significant number of similar petitions better handled through a rulemaking process are unfounded, as Hatzalah’s unique situation allows the FCC to narrowly tailor a waiver for Hatzalah. Hatzalah has demonstrated in its Petition and above that its request complies with the Commission’s standards for granting a waiver and that the requested waiver would be in the public interest. Consequently, Hatzalah’s petition for waiver of the Caller ID blocking requirement with respect to its emergency services dispatch system should be granted.

Respectfully submitted,

/s/ Russell H. Fox

Russell H. Fox
Ernest C. Cooper
Mary Lovejoy
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 434-7300

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