

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

**In the Matter of** )  
 )  
**Certain Wireless Service Interruptions** ) **GN Docket No. 12-52**  
 )

**COMMENTS OF  
TRIPLE DRAGON COMMUNICATIONS**

Triple Dragon Communications (“Dragon”), pursuant to Public Notice DA-12-311, released March 1, 2012, hereby respectfully submits these Comments in GN Docket No. 12-52 regarding certain wireless service interruptions. The Federal Communications Commission (“FCC” or “Commission”) has narrowed the focus of this proceeding to “situations where one or more wireless carriers, or their authorized agents, interrupt their own service in an area for a limited time period at the request of a government actor, or have their services interrupted by a government actor that exercises lawful control over network facilities.”<sup>1</sup> It is important to distinguish this specific factual situation from other situations where wireless service interruptions may be conducted.<sup>2</sup>

The need for this proceeding is borne out of the fundamental attributes of advancements in technology. Our brilliance in innovation requires a level of responsibility associated with the enjoyment of those innovations that often fail to demonstrate. The beauty of wireless technology is that it permits us to express ourselves in real time to one or many, that it can find us and find us help when we cannot, and that it permits us to be aware of our surroundings at any given moment in ways never before possible. The irony of our own brilliant innovation lies in the use of wireless devices to cause harm and destroy life

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<sup>1</sup> *In re* Commission Seeks Comment on Certain Wireless Service Interruptions, *Public Notice*, GN Docket No. 12-52, DA 12-311 (rel. March 1, 2012).

<sup>2</sup> On April 6, 2011, the Commission issued a Notice of Proposed Rulemaking in WT Docket No. 10-4 to consider the addition of Part 95 to its rules and regulations to govern the use of signal boosters available to consumers on a retail basis. The wide-spread availability of signal boosters on a consumer level opens a potentially new avenue to wireless communications access that in some cases might not have previously existed, and conversely, a new opportunity to interrupt such service access once it becomes expected. Perhaps the Commission will keep the instant proceeding in mind while it considers the formulation of rules governing signal boosters.

and property. The same human intelligence and innovation that designed this magnificent tool of communication, expression and information-gathering also exploits wireless capabilities by turning wireless devices into bomb detonators and venues where like-minded criminals can congregate to plan harm.

The use of wireless services is imbued with First Amendment considerations. It is the new leaf-letting, the new form of assembly, the new congregation; and as such, tampering with the way service is provided and the ways in which we are permitted to enjoy it should be largely prohibited. There are instances, however, where the use of wireless services enjoys no constitutional protections and, in fact, threatens such harms to the public that those uses must be prevented. Wireless service is also a means to disingenuously cry “fire” in a virtual theater. In narrow instances, interruption of wireless service by some means is justified and mandatory. The question becomes what is the means of preventing the anticipated harm that best serves the public interest. Directing the wholesale interruption of wireless service to many in response to an imminent threat posed by one or a few is certainly one means to an end, albeit one that may prove too slow to be effective, or so overly-broad that it creates its own detrimental, collateral results. It is possible, however, to isolate and deny service to only the wireless devices that pose the threat, leaving the service to innocent devices intact.

The wireless service industry shoulders a difficult dual role as both a regulated provider of communications services to the public, with a mandatory duty to Provide, with a capital “P,” and a partner of the government in the protection of the homeland. The wireless service industry has a fundamental interest in preserving the uninterrupted delivery of service. The public has a fundamental interest in preserving a free and open avenue of protected speech. The government has a fundamental interest in protecting life and property. These entities will wrestle with the questions put forth in this proceeding on a path to preserving all these interests that, at times, are at odds. Dragon submits these comments to present a solution to this issue that spares all these interested groups the need to compromise their fundamental interests. As the other commenters in this proceeding will undoubtedly discuss in detail

*Schenck*,<sup>3</sup> *Brandenburg*,<sup>4</sup> *Heffron*,<sup>5</sup> and *Brophy*<sup>6</sup> the Obama inaugural parade route, the past actions of Hosni Mubarak, and the various laws that pertain to the regulated operations of wireless carriers, Dragon will confine its comments to the presentation of the availability of an alternative to the wholesale interruption of wireless service.

## I. PETITIONER BACKGROUND

Triple Dragon Communications is a privately-held counter-intelligence/counter-surveillance/counter-terrorism/counter-improvised explosive device (“IED”) technology company, located in Montreal, Quebec, Canada that provides security support to governmental agencies. Dragon’s core business addresses the growing need for advanced mobile geo-location services within the global defense, intelligence and homeland security communities. Dragon provides technology tools for advanced context-based surveillance of mobile devices, with the ability to interdict, disable and disarm discrete wireless devices using a wireless network-based platform as opposed to a RF-based platform, without disruption to wireless service operations or non-targeted wireless devices.

## II. DISCUSSION

### A. Precedents, Bases for, and Risks Associated with Interrupting Wireless Service

Examples of wireless services being used to put the public’s safety at risk are almost too numerous to list. Abroad, especially in Indonesia, Thailand and the Philippines, cell phones are a common choice of terrorists for bomb detonations. On October 30, 2010, police in Dubai received an anonymous tip about a bomb attached to a shipment of ink cartridges destined for Chicago synagogues. The bomb was attached to a cell phone SIM card, configured as a detonator. In November, 2011, prisoners incarcerated within the Georgia Department of Corrections organized a riot using Facebook to

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<sup>3</sup> *Schenck v. United States*, 249 U.S. 47, 39 S.Ct. 247 (1919) (introducing the “clear and present danger” test).

<sup>4</sup> *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827 (1969) (establishing the “modern” “clear and present danger” test).

<sup>5</sup> *Heffron v. ISKON*, 452 U.S. 640 (1981) (discussing time, place and manner considerations of the exercise of First Amendment rights).

<sup>6</sup> *People v. Brophy*, 120 P.2d 946 (Cal.App. 1942).

protest prison conditions, which they accessed via smuggled cell phones.<sup>7</sup> On July 11, 2012, protesters congregated in BART stations in response to a shooting by BART transit police of a knife-wielding man at the Civic Center station, crippling BART service for its riders.<sup>8</sup> In anticipation of a similar event to be held on August 11, 2012, rumored to be organized by wireless communications among a protesting flash mob, BART decided to disable its own wireless service signal transmitters in hopes of preventing the mob from orchestrating the event.<sup>9</sup>

Of this short list of past incidents involving the use of wireless devices, clearly the instances of using cell phones and their components to detonate bombs provides a basis for interrupting the wireless service that would have enabled their success. In those instances, the phones were not instruments of protected First Amendment rights, but rather, weapons of mass destruction worthy of the most aggressive forms of counter-response. In the case of the prison riots and the BART protests, the protection surrounding the use of cell phones becomes murkier. In both instances, the phones served as vehicles of expression, assembly and organization for a cause (whether right or wrong). Only the BART situation, however, requires thoughtful consideration of the appropriateness of the interruption of wireless service.

The BART incident is complex because a previous protest had resulted in proven disruption to the transit system, and BART was concerned for the efficacy of its operations and the safety of its ridership. Additionally, the transmitters that BART disabled in order to prevent wireless communications within its underground system were originally provided by BART, as a convenience to its customers. However, there appeared to be no hard evidence that the assembly of protesters on August 11<sup>th</sup> was a clear and present danger that required the denial of wireless service to all the persons using the BART stations. It is arguable that BART had the right to disable equipment that it had installed as a convenience, given its concerns for the public's safety in tight quarters involving moving trains, and especially given the fact

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<sup>77</sup> Prisoners don't just riot with the aid of wireless communications; they riot over access TO contraband cell phones. See <http://www.wtvm.com/story/16103895/prisoners-riot-over-cell-phones>. Prisoners at Telfair State Prison engaged in a riot over access to smuggled phones, sending several prisoners to the hospital and requiring a facility lock-down.

<sup>8</sup> <http://www.sfexaminer.com/local/2011/07/civic-center-bart-protest-heats-up>

<sup>9</sup> <http://www.bart.gov/news/articles/2011/news20110812.aspx>.

that BART states in its public statement following the August 11<sup>th</sup> incident: “BART accommodates expressive activities that are constitutionally protected by the First Amendment to the United States Constitution and the Liberty of Speech Clause of the California Constitution (expressive activity), and has made available certain areas of its property for expressive activity.”<sup>10</sup> If BART, or any entity or individual, has a right to turn off its own equipment (and this must also be a point of debate), then it is only in hindsight that the appropriate preliminary steps would have included notice to the California Public Utility Commission, the FCC and the affected commercial mobile radio service (“CMRS”) providers.

The illicit use of cell phones by inmates absolutely rises to the level of activity that would justify wireless service interruption, if such was the only means by which this specific use of cell phones could be eliminated. In federal facilities, it is illegal for inmates to possess cell phones,<sup>11</sup> and nearly all the states have enacted similar laws. Inmates are restricted to the use of specifically-provided phone systems for placing outbound-only calls, and calls on the inmate phone service system are devoid of privacy expectations, with very narrow exceptions. Calls placed or received by inmates on illegally obtained cell phones enjoy no protections under the law. The act of possessing a cell phone is illegal, the act of communicating on a contraband cell phone is illegal, and no use of a contraband cell phone is protected by the regulatory obligations of CMRS providers or federal or state law. Federal and state governments have been struggling for at least five years with the public safety threat posed by inmates’ use of contraband cell phones. In addition to cell phones being configured to serve as weapons, inmate use of contraband cell phones is an absolute basis for denial of wireless service.

If wireless service interruptions were the only means to foil certain cell phone activities, then only activities that pose a clear and present danger to human life or property, or that are would be illegal or criminal on their face would be suited for this interdiction.

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<sup>10</sup> <http://www.bart.gov/news/articles/2011/news20110812.aspx>

<sup>11</sup> Cell Phone Contraband Act of 2010, P.L. 111-225, 124 Stat. 2387.

There are risks associated with the wholesale interruption of wireless service, ranging from simple inconvenience to cell phone subscribers to serious consequences to health and safety stemming from an inability to contact a PSAP by dialing 9-1-1. Risks are also related to the geographic scope and length of downtime associated with a planned service interruption. In certain instance, as was proven on September 11, 2001, following the attacks on the World Trade Center, the availability of alternative forms of communication is critical. The public payphones at the Port Authority bus and train terminals were invaluable on that day, when cell phone service was unobtainable. A world where we are considering sanctioning the planned interruption of wireless service is one in which we need to return attention to the greatly ignored public interest payphone program. A simple, yet indispensable requirement that should arise out of any set of regulations emanating from this proceeding is a mandatory rule for display signage. Especially for those location where cell phone service is made possible by the location management, and not the CMRS industry, signs that indicate to cell phone users that service is provided as a convenience and may not be guaranteed at all times could mitigate liability for both the location management and the CMRS industry in the event that a lawful service interruption takes place.

#### **B. Authority to Interrupt Wireless Service and Legal and Regulatory Issues So Related**

The same governmental bodies that currently bear the responsibility to monitor the homeland for threats and take action to prevent or respond to criminal or public-safety threatening activity should be the authorities capable of requesting or requiring a wireless service interruption. Those entities not falling into one of the categories, but aware of an imminent threat to life or property that could be mitigated by wireless service interruption must be required to report the threat to one of the authoritative agencies for their intervention and assistance. No use of cell phones that falls within the protected sphere of First Amendment rights should ever be the subject of wireless service interruption.

The Department of Homeland Security (“DHS”), Department of Defense (“DoD”), Federal Bureau of Investigations (“FBI”), Department of Justice (“DoJ”), State Departments of Correction (“DOC”), State Attorneys General and State Police, and each of these organizations’ sub-agencies should

bear the authority to request or require a wireless service interruption, but only pursuant to a vetted process that includes notification to, and feedback from, the FCC, the state utility commission where the interruption is requested, and all CMRS carriers that would be involved in the service interruption.

Because of the dozens of laws and regulations that pertain to the provision of common carrier telecommunications service, many of which have failed to keep pace with technology and technology providers, and certainly many of which are often irreconcilable or contradictory among themselves, it would be optimal to create from whole cloth a provision pertaining only to this issue that would preempt all conflicting laws and regulations, for the sole purpose of treating the issue with the expediency it requires.

Section 301 of the Communications Act of 1934, as amended (the “Act”), wrests control of channels of radio communication from all but the “United States,” which delegates authority to the FCC to oversee the regulated presence of all sources of communications.<sup>12</sup> Section 303 lists the actions that the Commission may take in order to fulfill its responsibilities, none of which states, in plain language, that it retains the unilateral ability to order the interruption of service.<sup>13</sup> Section 214 of the Act prohibits the carriers from making a decision to interrupt wireless service.<sup>14</sup> If wireless service is to be interrupted, the order must come from a law enforcement agent (“LEA”) with a compelling reason for the request.

The National Communications System (“NCS”) and the National Security Telecommunications Advisory Committee are the best organizations to consider the most appropriate method for determining whether a wireless service interruption is warranted, and how it should be effectuated. These organizations should consider the proper vehicle for presenting the regulations that would prescribe how a wireless service interruption would be conducted. Given the nature of the activity that would spur a

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<sup>12</sup> 47 U.S.C. § 301.

<sup>13</sup> 47 U.S.C. § 303(a)-(x). It is possible to argue that subsection (f) could provide the FCC with the authority to order service interruption out of public necessity. (“Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this chapter: Provided, however, That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this chapter will be more fully complied with;” 47 U.S.C. § 303(f)).

<sup>14</sup> 47 U.S.C. § 214(a)(3).

service interruption consideration, the addition of provisions to the Communications Assistance for Law Enforcement Act (“CALEA”) would be an appropriate.

### **C. Alternative Means to Wireless Service Interruption**

Dragon provides the ability for government agencies to anticipate illegal or terrorist activities before they occur, and surgically isolate the actors directly involved. Dragon’s solution is deployed via network embedding rather than radio-frequency emission, which design prevents Dragon from interfering with wireless network service. Dragon’s technology monitors the context of targeted actors in real-time, and discerns patterns of interests that will provide the basis for probable cause to investigate suspect behavior in greater detail. Numerous agencies can utilize customized analytics from a single, strategically-placed deployment, making the access to the information economically feasible.

Dragon’s solution consolidates network-based sensors in a single, combined database, so that the authorized agencies are able to see detailed behavior of individual actors as they operate in real-time across any number of platforms. Depending on the environment in which the observed wireless actor is operating, LEA’s can obtain a single court order to gain access to more detailed intelligence, or in the case of phones known to be operating in a restricted environment with no legal protections, such as a prison, immediately access additional data related to a particular device.

A government authorized, independent, trusted third party,<sup>15</sup> would enable LEAs to make a single contact for cell phone data or lawful intercept encompassing multiple carriers, without needing to interface with individual carriers or secure multiple court orders. Dragon’s ability to precisely provide information associated with the specific behavior of each and every device operating within the geographic footprint of each Dragon deployment all but eliminates the need to conduct a wholesale interruption of wireless service. In the rare instance where a service interruption might be necessary, making that determination based on the data provided and analyzed by Dragon refines the appropriateness

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<sup>15</sup> *In re Communications Assistance for Law Enforcement Act and Broadband Access and Services, Second Report and Order and Memorandum Opinion and Order*, ET Docket No. 04-295 (rel. May 12, 2006), paras. 23-26.

of that choice of action, and helps ensure that the service interruption is truly warranted and not unnecessarily infringing on protected cell phone use.

### III. CONCLUSION

The legitimate use of wireless service for its intended purposes is an activity that should never be intentionally denied, except in the rarest of circumstances. Examples of instances when wireless service might require and justify interruption include the use of a wireless device for non-communication or information-access purposes, such as when a cell phone is configured to act as an explosive detonator. Additionally, the use of a wireless device as a means of communication when such use is prohibited by law also rises to a circumstance in which service interruption is warranted.

In situations where service interruption would be warranted, it must still be determined whether service interruption is the least intrusive, effective means of disrupting a perceived harm, which requires a carefully crafted set of rules detailing when and how a service interruption is permitted. In order for an interruption to be lawful and mindful of public safety considerations, careful coordination among law enforcement agencies with the highest authorities, public utility agencies and wireless service providers must take place in a fashion timely enough to make a service interruption effective for dealing with the problem.

It is always preferable to avoid a wireless service interruption, and technology exists that can successfully achieve the same objective of preventing a harm without creating a collateral impact on innocent actors. Triple Dragon provides such an alternative and can provide details about its solution upon request.

Respectfully submitted,

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