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August 7, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB-204
Washington, D.C. 20554

**Re: *Comments of pulver.com/Evslin Consulting in EB Docket No. 06-119:
Recommendations of the Independent Panel Reviewing the Impact of
Hurricane Katrina on Communications Networks***

Dear Ms. Dortch:

Pulver.com and Evslin Consulting, through undersigned counsel, hereby respond to the Federal Communication Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM"), released on June 19, 2006 in the above-referenced docket,¹ by submitting the following documents for insertion into the record: (1) the Petition for Rulemaking (RM-11327) filed by pulver.com and Evslin Consulting ("Petitioners") on March 13, 2006;² and (2) Petitioners' Reply Comments in Docket No. RM-11327, filed on May 12, 2006.³ The Petitioners maintain that these pleadings are relevant to the NPRM and therefore request that the Commission consider those filings as comments in the instant matter.

As Commission Deborah Taylor Tate aptly noted in her Separate Statement to the NPRM, "[w]hen disaster strikes, our first reaction is to reach out to those we love." Adopting the pulver.com/Evslin Consulting proposals will better enable disaster victims and their loved ones to communicate in the event of a catastrophe by mitigating the effects of a widespread,

¹ *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on the Communications Networks*, Notice of Proposed Rulemaking, EB Docket No. 06-119, FCC 06-83 (rel. June 19, 2006).

² *Preserving Post-Disaster Communications*, Petition for Rulemaking, Docket No. RM-11327, filed March 13, 2006, attached hereto as *Exhibit A*.

³ *Preserving Post-Disaster Communications*, Reply Comments of pulver.com/Evslin Consulting, Docket No. RM-11327, filed May 12, 2006, attached hereto as *Exhibit B*.

Marlene H. Dortch
August 7, 2006
Page Two

long-term outage by using either existing PSTN or new VoIP technologies. Specifically, Petitioners' proposal to require E911 providers to establish alternative communications service in the event of a long-term outage through the use of voicemail will create a technically feasible and reasonable means of ensuring that consumers remain connected during emergencies. Moreover, adopting the proposals would aid displaced family members, friends, and colleagues desperately seeking each other in an emergency, help emergency relief workers to avoid wasting time searching homes where residents have already safely evacuated, free shelter operators and volunteers from much of the task of locating missing family members so that they can concentrate on other vital aspects of relief, and dispel the fear of being unreachable as a result of evacuating during an emergency.

The Commission issued a *Public Notice* on April 7, 2006 requesting comments on the pulver.com/Evslin Consulting Petition for Rulemaking.⁴ The comments filed in that proceeding clearly demonstrate that Petitioners' proposals enjoy broad public support. Indeed, of the 48 sets of comments filed in Docket No. RM-11327, 38 of the commenters support the Petitioners' proposals. For instance, the VON Coalition states that "[a]dopting the requests in the pulver/Evslin petition would help to assure that the proper regulatory steps can be taken and that carriers have time to comply before the next hurricane season or other public catastrophe leads to another unnecessary breakdown in communications."⁵ Other commenters agreed, stating that "[w]hile I was personally evacuated from my home in Slidell, LA, it was extremely difficult not knowing the status[] of my friends and family in the area . . . If there was the ability to have automatic messaging and forwarding, I would have known much sooner that my friends and family were all OK,"⁶ and "[t]he Pulver-Evslin petition seeks a common-sense approach to solving a problem that should never have existed in the first place."⁷

The objections to the petition raised by a minority of commentors are not persuasive. These carriers argue that each emergency is different so that no prior regulatory action based on past experience is appropriate.⁸ Were this true, however, there would be no point to having formed the Independent Panel in the first place. These carriers also argue that the

⁴ *Pleading Cycle Established for Petition for Rulemaking to Preserve Post-Disaster Communications*, Public Notice, DA 06-825, RM-11327, rel. April 7, 2006

⁵ Comments of the VON Coalition, filed April 27, 2006, at 12.

⁶ Comments of Chris Callac, filed April 21, 2006.

⁷ Comments of Jim Rogers, filed April 18, 2006.

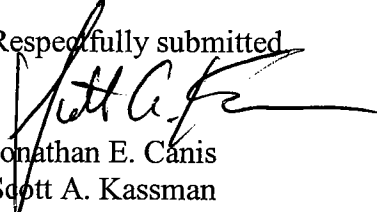
⁸ *See e.g.*, Comments of Verizon, filed April 27, 2006 at 4 ("each disaster presents new demands and will require that carriers have the flexibility to design and implement a solution that accounts for the nature of the disaster, the facilities located near the affected area, and the needs of first responders and affected residents"). *See also, e.g.*, Comments of AT&T, filed April 27, 2006, at 4-5.

Marlene H. Dortch
August 7, 2006
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cost of complying with the petition would be excessive but give no evidence to back this contention.⁹ Although Petitioners do not have access to carriers' current costs for providing voice mail, back-of-the-envelope calculations with extremely conservative assumptions make it difficult to see how complying with the proposal would add as much as one cent per month to each consumer bill.

Accordingly, the Commission should give serious consideration to Petitioners' proposals and, consistent with those proposals, enact rules to encourage the deployment of multiple communications networks and technologies to operate in an emergency.

Respectfully submitted,



Jonathan E. Canis
Scott A. Kassman
*Counsel to pulver.com and Evslin
Consulting*

Attachments

⁹ See e.g., Comments of Sprint Nextel, filed April 27, 2006, at 2 (“the imposition of new and costly obligations on carriers . . . appears to be premised on the notion that the Commission is unable to act quickly in a disaster to assist carriers in their efforts to restore communications in the affected areas”).

EXHIBIT A

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March 13, 2006

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Federal Communications Commission
Office of Secretary

BY HAND DELIVERY

Secretary Marlene H. Dortch
Federal Communications Commission
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Washington, D.C. 20554

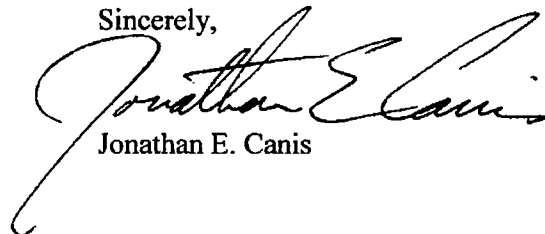
Re: Petition for Rulemaking to Preserve Post-Disaster Communications

Dear Secretary Dortch:

On behalf of Jonathan Askin of pulver.com ("pulver.com"), enclosed for filing with the Federal Communications Commission ("FCC") are an original and four (4) copies of a Petition for Rulemaking to Preserve Post-Disaster Communications ("Petition").

Also enclosed is a duplicate of this filing. Kindly date-stamp the duplicate and return it to the courier. Please contact Jonathan Askin, General Counsel to pulver.com at (631) 748-8236 if you have any questions regarding this filing.

Sincerely,



Jonathan E. Canis

Enclosure

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

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MAR 13 2006

Federal Communications Commission
Office of Secretary

In the Matter of)
Preserving Post-Disaster Communications)
)

WC Docket No. _____

PETITION FOR RULEMAKING
TO PRESERVE POST-DISASTER COMMUNICATIONS

Jonathan Askin
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Dated: March 13, 2006

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**PETITION FOR RULEMAKING
TO PRESERVE POST-DISASTER COMMUNICATIONS**

Evslin Consulting and pulver.com (“Petitioners”) herein request that the Federal Communication Commission initiate a proceeding to mitigate the effects of long-term telephone outages in the event of natural disasters or other public crises. Petitioners commend the Commission’s tremendous efforts in addressing past disaster situations, but urge the Commission to act quickly to ensure that proper procedures are in place to adequately address long-term outages that may occur in the immediate future. While supporting the Commission’s establishment of the independent expert panel reviewing the Hurricane Katrina disaster relief efforts and the creation of a new FCC Public Safety/Homeland Security Bureau, Petitioners fear that if the Commission waits for formation and formal recommendations by either of these groups before taking any further action to address emergency situations, then communications providers will be unprepared in the case of an immediate emergency. With the threat of terrorist action still looming and the next hurricane season right around the corner, Petitioners strongly believe the Commission must act soon to ensure that the consequence of outages to telecommunications services are swiftly mitigated prior to the time communications links can be restored.

I. DESCRIPTION OF PROBLEM: RECENT CATASTROPHES – BOTH NATURAL AND MANMADE – HAVE DEMONSTRATED CRITICAL POINTS OF FAILURE IN THE WIRELINE PUBLIC SWITCHED TELEPHONE NETWORK (“PSTN”) AND DEMONSTRATE THE NEED TO ASSURE THAT PEOPLE – ESPECIALLY REFUGEES – REMAIN REACHABLE EVEN WHEN THEIR PHYSICAL LINES ARE INOPERABLE OR INACCESSIBLE DUE TO EVACUATION ORDERS

As the Commission is well aware, more than three million people lost their phone service during Hurricane Katrina in August/September 2005. Others still had phone service but could not use it because evacuation orders kept them away from the land lines on which their service terminated. Although both wireline and wireless carriers were able to begin restoring service within a few days, many customers remained without reliable communications service for more than a week.¹ Even one month later some 250,000 customer lines, 3 PSAPS, and over 300 wireless cell sites remained out of service.² Months after, people remained in shelters and could not be located or accessed through their PSTN phone numbers.

As a result, families who ended up in different shelters could not reestablish contact. Loved ones outside the stricken area could not reach refugees. The Red Cross was overwhelmed with requests to locate missing people. Rescue people had to spend precious time and risk their own lives looking in the wreckage for people who were actually safe somewhere else but couldn't be located because their phone numbers as well as phone lines were inoperable.

Locating refugees by name proved as difficult as it has always been. The magnitude of the catastrophe made this solution even more unworkable than usual. The

¹ FCC Chairman Kevin J. Martin, *Statement on the Effects of Hurricane Katrina*, FCC Open Meeting (September 15, 2005).

proliferation of volunteer locator boards and lists on the Internet actually made the problem worse rather than better because there was no single authoritative listing and no single database. The phone numbers of the evacuees could have been the means to reach them if those numbers had not gone out-of-service along with the local lines. Unlike names, phone numbers are unambiguous.

Those who had mobile and VoIP phones could be located quickly. They took their phones with them when they evacuated. They left greetings saying where they were so that, even when their phones weren't operable, loved ones could be reassured and rescuers could be spared searching for them. Even those who had voice mail and call forwarding as features of their PSTN service could quickly reestablish communication. But, as the tragedy made plain, a large percentage of low income people do not have any mobile phones, VoIP, or even the premium features of the PSTN. Their numbers became useless once their local lines were inoperable or inaccessible.

II. THE PULVER.COM/EVSLIN CONSULTING PROPOSAL: RAPID MITIGATION OF THE WORST EFFECTS OF OUTAGES USING EXISTING TECHNOLOGY

A. CURRENT FCC POLICIES DISCOURAGE EFFECTIVE USE OF EXISTING PSTN AND VOIP TECHNOLOGIES TO MITIGATE THE EFFECT OF OUTAGES IN AN EMERGENCY

Some of the Commission's rules should be modified to promote access to multiple technologies before another widespread emergency arises. For example, the current number porting restrictions can undermine the use of number porting and other technologies to restore individual communication despite physical outage. The Commission's rules require

² Kenneth P. Moran, FCC Director of Homeland Security, *Statement at the Hearing on Hurricane Katrina and Communications Interoperability*, Before the Senate Committee on Commerce, Science and Transportation (September 29, 2005).

customers to port numbers upon request, but they do not currently allow portability outside of a geographic area or rate center. In disaster circumstances, these rules can inhibit timely restoration of service, by prohibiting customers from porting their numbers, even temporarily, to another service outside of the affected rate center. While the FCC acted with commendable speed to waive its number porting rules during the Katrina emergency, further progress must be made to ensure network interoperability and interchangeability.

Many VOIP providers contacted Petitioners and offered to provide free voice mail services on subscribers' existing numbers, a service which can be provided on both the PSTN and VoIP. However, with no quick way to port the affected numbers to new providers – even on a temporary basis – it was not possible for the volunteering companies to set up voice mail on the numbers corresponding to the inoperable local lines. It is not clear why the PSTN providers who had provisioned the affected lines did not voluntarily add the voice mail feature to these numbers for the benefit of the subscribers who were both unreachable and unable to be located. The fact is, however, that they didn't.

It is vital for the Commission to recognize that it is not sufficient to handle future crises in a stop-gap manner. Instead, the Commission should immediately adopt procedures so that providers know their own responsibilities during disaster relief and can work to ensure customers maintain adequate access to their communications service even if local lines or switches are inoperable or unreachable.

B. SERVICE PROVIDERS MUST OFFER EMERGENCY SERVICES TO CUSTOMERS EXPERIENCING LONG-TERM OUTAGES

Petitioners urge the Commission to address these emergency situations by requiring local telecom service providers to take steps to ensure that customers can remain connected to friends and family via their phone numbers even if their actual phone service

suffers a long-term outage. Petitioners propose that the Commission define a “long-term outage” to include any situation where an actual outage has occurred for more than 12 hours for any reason or where an evacuation order has been issued for a particular geographic area, as in the case of an impending or ongoing natural disaster or emergency. In other words, a “long-term outage” would be deemed to have occurred where an evacuation order has been issued and residents are urged to leave their homes, even though wireline phone service may still remain technically operational in the area. In these cases, customers are displaced from their homes and unable to utilize their phone service; therefore, other means of maintaining contact must be established.

Petitioners propose that the Commission require any provider obligated to provide E911 services to establish an alternate communications service for affected customers via either: (1) activating for each customer a voicemail service that would be accessed by incoming callers dialing the customer’s phone number, or (2) providing expedited local number porting to an alternate service provider selected by the customer, including porting to a number outside of the geographic area and/or rate center. Either of these proposals would provide a technically feasible and reasonable means of ensuring that consumers remain connected during emergencies.

The capability to provide such voicemail services already resides in the switches and associated databases maintained by most PSTN voice carriers, and so the infrastructure is already in place to provide emergency voice mail service for all subscribers. For customers that already purchase voice mail service from the PSTN carrier, of course, no additional actions need be taken. For customers that do not take voice mail service from the carrier, their voice mail account would have to be established, and an emergency PIN registered in the carrier’s

database.³ Therefore, to provide emergency voicemail as proposed, a carrier would merely need to activate the service for those customers suffering a long-term outage. The carrier would then be required to continue providing that service to the customer until the original communications service has been fully restored or the applicable evacuation order has been lifted.

To facilitate provisioning of this service when necessary, service providers would be required to give advanced notice to customers that such a service will be available in case of an emergency and/or long-term outage. The provider would need to issue PIN numbers to customers and instructions on how to activate their temporary voicemail service at the appropriate time. Furthermore, the provider must readily supply this information to customers at the time of the long-term outage, such as posting instructions and information on its website or activating a telephone hotline during the long-term outage. This will ensure that customers are not delayed in activating their emergency voicemail service and maintaining contact if they have forgotten or misplaced the procedures for activating service. In this way, even if affected customers do not have outgoing telephone service, they can either receive incoming forwarded calls or can record an outgoing voicemail message communicating their whereabouts to incoming callers.

Alternatively, providers that choose not to offer temporary emergency voicemail service should be required to provide expedited local number portability to customers affected by a long-term outage, to allow those customers to quickly port their numbers to an alternative provider and remain connected to their family and friends. In this case, a customer suffering a

³ There will be some additional costs associated with setting up these emergency accounts – additional voice mail capacity will need to be reserved in the switch, and PIN information will have to be established for all subscribers, and programmed into the voice mail database. It is appropriate for the Commission to consider if, and to what extent, these costs should be subsidized by the Universal Service Funds or other funding sources.

long-term outage would request emergency service from an alternate provider, including an IP-based provider or provider outside of the affected rate center, that then would request expedited porting from the customer's primary provider to be completed within 2 hours. The Commission has already recognized that number porting is both a feasible and reasonable means of restoring service when it temporarily waived its local number portability and number assignment rules last fall to allow Katrina victims to port their numbers outside of the affected rate centers.⁴

Approximately 2,000 telephone numbers were ported across LATA boundaries after Hurricane Katrina, and about 300 blocks of existing numbers (1,000 per block) were moved across LATA boundaries using number pooling.⁵ Moreover, Neustar recently reported that "Local Number Portability (LNP) is a viable method of restoring incoming calls to a customer that has lost service in a disaster, [and] [a]lthough using LNP to move telephone numbers outside the rate center in such instances can create certain issues, (for instance with billing), problems are somewhat muted by its limited use and the temporary nature of this recovery service."⁶

Therefore, the Commission should not hesitate to adopt this proposal to require that providers offer at least one of these emergency services to customers who experience long-term outages.

Providers should be required to certify their readiness to comply with these procedures in a manner similar to certifications required by the Commission's CPNI, E911, and CALEA rules. Any provider that does not provide adequate certification should be treated

⁴ Order, *In the Matter of Telephone Number Portability; Numbering Resource Optimization*; CC Docket Nos. 95-116 and 99-200 (FCC 05-161) (rel. Sept. 1, 2005) ("Katrina Waiver").

⁵ North American Numbering Council Local Number Portability Administration Working Group, *Interim Report on Out of LATA Porting & Pooling For Disaster Relief After Hurricane Katrina* (November 16, 2005).

⁶ Neustar, *Report on Utilizing LNP for Disaster Recovery Call Termination and Mitigating Possible Originating 911 Issues*.

similar to VoIP operators who do not provide E911 access: the Commission should expect that those providers will not market to new subscribers in areas where they cannot provide this basic level of emergency service. Moreover, any provider that fails to provide any of these services in a long-term outage or emergency situation should be subject to the maximum penalty allowable by statute.

C. PETITIONERS' PROPOSAL PROMOTES TIMELY MITIGATION OF THE EFFECTS OF CATASTROPHES

The suffering of displaced family members, friends, and colleagues desperately seeking each other in the aftermath of Hurricane Katrina need never be repeated. Emergency relief workers need not waste time searching homes where residents have already safely evacuated. Shelter operators and volunteers can be freed from much of the task of locating missing family members so that they can concentrate on other vital aspects of relief. Finally, fear of being unreachable need not deter people from evacuating during an emergency.

After a disaster, people with mobile phones have typically not been out of touch for long periods. Those seeking them can either reach them directly or, in most cases, leave a voicemail message, which can usually be accessed by the called party even if their actual wireless service is inoperable. Many displaced persons in these situations change the announcement on their outgoing voicemail message indicating that they are safe and specifying their new evacuated location. Those with Internet (IP-based) communications devices and applications are also able to reestablish communication maintaining their own contact number or other identifier as soon as they obtain an operational Internet connection and, in most cases, can access their voicemail and leave an informative outgoing announcement from any phone.

Establishment of a telecommunications disaster recovery and/or long-term outage plan is equally as urgent as providing E911 access from interconnected VoIP services

considering the tens of thousands of people who rely solely on wireline phone connections for their communications service and who, without those connections, are left isolated and unreachable by loved ones.

Consumer Reports recommends that consumers avoid relying solely on a single type of communications by considering subscribing to more than one type of phone service.⁷ Moreover, “[t]he lesson for consumers is that while a single telephone account could suffice for individual emergencies, no one service can currently be counted on to work in a widespread calamity.⁸ As the Katrina aftermath bore out, many people in lower income areas did not have alternate means of communication and thus were unreachable once their wireline numbers ceased to operate. The Commission should take this to heart in encouraging the deployment of multiple communications networks and technologies to operate in an emergency. In the wake of Katrina damage, many communications links were re-established between public officials and rescue personnel in the affected area via IP-based, wireless, and satellite networks.

Our experience with man-made catastrophes provides similarly compelling reasons to implement the steps for preserving post-disaster communications that are proposed in this petition. President George W. Bush has acknowledged the need to be vigilant and ready in case of another 9/11. In his state of the Union Address, President Bush stated: "Our country must also remain on the offensive against terrorism here at home. The enemy has not lost the desire or capability to attack us."⁹ Implementation of the simple rules proposed in this petition could have been helpful post 9/11 for reconnecting businesses and citizens after the World Trade

⁷ *Making Sure 911 Emergency Help Is There If You Need It*, Consumer Reports (January 2006).

⁸ *Id.*

⁹ <http://www.whitehouse.gov/stateoftheunion/2006/>

Center towers fell. Although we can hope there will not be another 9/11, we need to use the technologies at our disposal to ensure we can communicate immediately following an attack.

III. THE COMMISSION HAS BROAD REGULATORY AUTHORITY TO IMPLEMENT THE RECOMMENDATIONS OF THIS PETITION, REGARDLESS OF WHETHER VOIP OR IP-ENABLED MESSAGING IS OFFERED ON A REGULATED OR UNREGULATED BASIS

A. THE FCC HAS BROAD AUTHORITY UNDER TITLE II COMMON CARRIER REGULATION

1. 201(b) allows the Commission to adopt rules to promote the public interest

Under Section 201 of the Communications Act, “[t]he Commissioner may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the Communications] Act.”¹⁰ “Congress has delegated to the Commission the authority to ‘execute and enforce’ the Communications Act [through] § 151, and to ‘prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions’ of the Act [through] § 201(b),” and the Supreme Court has recognized that “these provisions give the Commission the authority to promulgate binding legal rules.”¹¹ Thus, Section 201 authorizes the Commission to adopt binding rules such as those proposed in this petition to ensure that customers facing a long-term outage can maintain reliable communications service.

In September 2005, the Commission found that the public interest would be best served by temporarily waiving local number portability and number assignment rules to allow

¹⁰ 47 U.S.C. § 201(b).

¹¹ *National Cable & Telecommunications Association v. Brand X Internet Services*, 125 S. Ct. 2688; 162 L. Ed. 2d 820; 2005 U.S. LEXIS 5018; at 26 (2005) (citing *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 377-378, 142 L. Ed. 2d 834, 119 S. Ct. 721 (1999)).

action very similar to that Petitioners propose herein.¹² As described above, Hurricane Katrina badly damaged the telecommunications systems in the affected states, severely limiting communications between the Katrina victims and their friends and families, as well as rescue teams, searching for them. The Commission determined that the catastrophic damage to the telecommunications systems caused by Hurricane Katrina warranted suspension of its numbering rules to allow telecommunications service to be restored to the hurricane victims as quickly as possible.¹³ Recognizing that Section 1.3 of the Commission's rules authorizes suspension, revocation, amendment, or waiver of a Commission rule for good cause, the Commission on its own motion granted a waiver authorizing carriers to port numbers to destinations outside the affected rate centers.¹⁴ The Commission found that "waiver of the Commission's local number portability and number assignment rules is a reasonable and practical means" of quickly restoring communications to the victims.¹⁵ Clearly, the public interest would be even better served if the Commission implemented standard procedures for providers to handle long-term outages in advance of such a need. As the Commission has already established that it is an unreasonable practice for a regulated telecom carrier to refuse to carry IP-based traffic,¹⁶ the Commission should take this one step further to ensure expedited number porting between telecommunications technologies in an emergency.

¹² Katrina Waiver ¶ 2.

¹³ *Id.* ¶ 2.

¹⁴ 47 C.F.R. § 1.3. This rule 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." *Id.*

¹⁵ Katrina Waiver ¶ 2.

¹⁶ See Consent Decree, *In the Matter of Madison River Communications, LLC and affiliated companies*, File No. EB-05-IH-0110 and Acct. No. FRN: 0004334082 (February 11, 2005).

With the increasing use of nomadic services, such as wireless and IP-based services, consumer expectations regarding ongoing and continuous communications will continue to grow. In other words, consumers will increasingly expect to be reachable wherever they go, whether voluntarily or through involuntary displacement, and especially in an emergency. The Commission placed great emphasis on the fact that consumers expect that VoIP services that are interconnected with the PSTN will function similarly to traditional phone service.¹⁷ As consumers are utilizing alternative communications networks and becoming more technology savvy, their expectations have evolved beyond the boundaries of the traditional PSTN. Therefore, Petitioners argue that similar importance should be placed on consumer expectations that extend beyond basic wireline services, namely that customers expect to remain connected. Petitioners' proposal would not only ensure that consumers and rescue personnel are able to efficiently facilitate evacuation and rescue efforts during an emergency, but would assist in incorporating some of the inherent benefits of nomadic services into the traditional wireline network to ensure that consumer and provider expectations are on par. Moreover, more people will be willing to evacuate when ordered if they do not fear losing touch with their friends and families and becoming unreachable. Greater participation in evacuations will, itself, reduce the harm from future disasters.

2. Sections 706 and 230 require the Commission to promote the deployment of advanced services and capabilities

The Commission can also find authority in Sections 706 and 230 of the 1996 Act to support adoption Petitioners' proposal. Under Section 706, the Commission is charged with "encourag[ing] the deployment on a *reasonable* and *timely* basis of advanced

¹⁷ First Report and Order and Notice Of Proposed Rulemaking, *In the Matters of IP-Enabled Services E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, ¶ 23 (rel. June 3, 2005) ("VoIP E911 Order").

telecommunications capability to all Americans . . . *by utilizing . . . regulating methods* that remove barriers to infrastructure investment.”¹⁸ Furthermore, Section 203 states that it is United States’ policy to promote the continued development of the Internet.¹⁹ The provision of competitive VoIP services is closely linked to the provision of advanced services and the development of the Internet, as many VoIP providers utilize underlying advanced services in the provision of their services. Moreover, Commission endorsement of the inherent benefits of IP-based networks and technologies would help promote continued development of the Internet and VoIP services. Thus, in these circumstances, Section 706 of the 1996 Act compels the Commission to act by “utilizing . . . regulating methods” to promote the development of advanced telecommunications capabilities by adopting Petitioners’ proposal.

3. 251(e) provides authority to ensure availability of numbering resources

Section 251(e) of the Act charges the Commission with ensuring that phone numbers are available on an equitable basis.²⁰ The Commission exercised its authority under section 251(e) in adopting E911 requirements for VoIP providers based on the rationale that interconnected VoIP providers use NANP numbers to provide their services.²¹ The Commission can similarly exercise this authority in adopting Petitioners’ proposal. During a long-term outage, customer telephone numbers are essentially unavailable because there is no service available for customers to access those numbers. Those numbering resources are essentially worthless if customers have no means of accessing them either to make outgoing or to receive incoming calls. By requiring providers to provide emergency voicemail, call-forwarding, or

¹⁸ 47 U.S.C. § 157 note (emphasis added).

¹⁹ *Id.* § 230(b)(1).

²⁰ *Id.* § 251(e).

²¹ VoIP E911 Order ¶ 33.

number porting, the Commission would ensure that those numbers continue to remain available to consumers in some way, even if their original underlying communications service is disrupted.

B. THE SUPREME COURT'S *BRAND X* DECISION CLARIFIES THAT THE COMMISSION HAS BROAD AUTHORITY TO EFFECT SOUND PUBLIC POLICY UNDER ITS SECTION 4(i) ANCILLARY AUTHORITY

Section 4(i) of the Communications Act grants the Commission authority to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”²² The Commission has consistently invoked its authority under Section 4(i) in ordering clauses when it has adopted regulations interpreting the Communications Act in various contexts. As the Supreme Court affirmed in the recent *Brand X* decision, “Congress has delegated to the Commission the authority to ‘execute and enforce’ the Communications Act [through] § 151,” “provisions which give the Commission the authority to promulgate binding legal rules.” Furthermore, Section 4(i) has been found to bestow broad authority to the Commission, “empower[ing] the Commission to deal with the unforeseen — even if it that means straying a little way beyond the apparent boundaries of the Act — to the extent necessary to regulate effectively those matters already within the boundaries.”²³ Given that the Commission has already exercised Section 4(i) to ensure that customers of unregulated VoIP service have access to E-911 services, it should be no stretch for the Commission to exercise that same authority to adopt Petitioners’ proposal.

The Commission concluded that it has authority under Title I and through its plenary numbering authority pursuant to section 251(e) to impose E911 requirements on

²² 47 U.S.C. § 154(i).

²³ *North American Telecommunications Association v. Federal Communications Commission*, 772 F.2d 1282, 1292 (7th Cir. 1985), cert. denied, 109 S.Ct. 1942 (1989).

interconnected VoIP providers.²⁴ Specifically, the Commission utilized its ancillary jurisdiction to promote public safety in adopting E911 rules for interconnected VoIP services.²⁵ As the Commission noted, “ancillary jurisdiction may be employed, in the Commission’s discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is ‘reasonably ancillary to the effective performance of [its] various responsibilities.’²⁶ Interconnected VoIP services come within the scope of the Commission’s subject matter jurisdiction granted in section 2(a) of the Act.²⁷ The Commission found that imposing an E911 requirement is reasonably ancillary to the effective performance of the Commission’s various responsibilities such that it could utilize its ancillary jurisdiction.²⁸

Similarly, granting this petition would satisfy these requirements. The Commission is charged with “regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, . . . a *rapid, efficient, Nationwide, and world-wide* wire and radio communication service with *adequate* facilities at reasonable charges, for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communication”²⁹ As discussed above, the telecommunications industry has been and continues to be vulnerable to natural disasters and catastrophes, which can jeopardize our national defense and the safety of citizens. The impact of such disasters can be catastrophic not

²⁴ 47 U.S.C. § 251(e).

²⁵ VoIP E911 Order ¶ 26.

²⁶ *Id.* (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*)).

²⁷ VoIP E911 Order ¶ 28.

²⁸ *Id.* ¶ 29.

²⁹ 47 U.S.C. § 151.

only to the victims who are unable to maintain contact with friends and family, but to rescue teams who may spend countless hours or days searching for victims within a disaster area, only to later find those victims were safely elsewhere. If Petitioners' proposal were adopted, then rescue attempts could be coordinated more effectively. The Commission is dedicated to ensuring a rapid and efficient nationwide communications network with adequate facilities to promote national defense and the safety of life and property through the use of that network. Moreover, adoption of Petitioners' proposal would ensure that numbers are available on an equitable basis as required by Section 251(e). The availability of a telephone number is meaningless if a customer has no way to access that designated phone number. In short, that number is essentially unavailable to any customer experiencing a long-term outage. The Commission must implement policies to ensure customers have access to those numbers even when the underlying original phone service is disrupted or customers are displaced during an emergency evacuation.

IV. CONCLUSION

For the foregoing reasons, Petitioners urge the Commission to take speedy action to consider and adopt the proposal set forth herein.

Respectfully submitted,

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EXHIBIT B

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

In the Matter of)
Preserving Post-Disaster Communications) RM-11327
)

**REPLY COMMENTS ON
PETITION FOR RULEMAKING
TO PRESERVE POST-DISASTER COMMUNICATIONS**

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Dated: May 12, 2006

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I. THE COMMISSION MUST ACT QUICKLY TO ENSURE THAT PROVIDERS ARE ADEQUATELY PREPARED IN ADVANCE FOR FUTURE EMERGENCIES

A. THE COMMISSION SHOULD NOT RELY ON AD HOC PROCEDURES FOR HANDLING DISASTER-RECOVERY PLANS

Despite the Commission's and carriers' most valiant efforts after Hurricane Katrina, hundreds of thousands of customers still do not have access to their landline phone numbers in the affected area, either because the lines remain out of service or because the customers have been displaced to other locations.¹ As the Petition for Rulemaking highlighted, more than three million customers lost service, and almost 10% of those lines, or 250,000 customers, were still out of service one month after the storm.² This is hardly compelling evidence that the current disaster recovery procedures are sufficient, as the ILEC Commenters imply.³ While Petitioners applaud the Commission's speedy action to suspend certain regulations during the Katrina aftermath, Petitioners do not believe that relying on similar ad hoc solutions in future emergencies is wise or sufficient. Moreover, the Commission has obviously already determined that such ad hoc treatment is inadequate, as evidenced by its establishment of the independent expert panel reviewing Katrina disaster relief and the creation of the FCC Public Safety/Homeland Security Bureau. While supporting the work of these groups, Petitioners believe that time is of the essence in preparing for the upcoming hurricane season, just a month away.

¹ See Bill Quigley, *Eight Months After Katrina*, Common Dreams News Center (April 2006) (<http://www.commondreams.org/views06/0426-23.htm>).

² Evslin Consulting and pulver.com, Petition for Rulemaking to Preserve Post-Disaster Communications, at 2 (March 13, 2006) ("Petition").

³ AT&T Comments at 4; BellSouth Comments at 2-3; Sprint/Nextel Comments at 2.

Petitioners also disagree with the ILEC Commenters' conclusion that the desire for flexibility during emergency circumstances precludes adoption of Petitioners' proposal.⁴ While each emergency may have individual nuances to address, this does not mean that the Commission should wait until another emergency occurs to consider how best to restore communications capabilities to customers. In other words, the time to assess the proper strategy to employ during an emergency is *not* in the middle of that emergency. Rather, the right time is now to decide how to handle those emergencies so that personnel and resources are properly prepared and focused during the emergency. With a well-developed plan established beforehand, communications capabilities can be readily restored to customers, wherever they may be located.

AT&T argues that a "one-size fits all" approach requires single rigid response,⁵ however, Petitioners' proposal does not recommend a single solution, but provides for a choice of two, either of which may quickly restore communications capabilities to customers. The ILECs provide no specific data detailing why they could not provide either voicemail or number porting, but instead argue that it *might* not be technically feasible and that they certainly would incur additional costs. Such vague, resistant responses serve only to undermine the immediate and broader public good.

Furthermore, while Petitioners do not mean to imply that there could be no other possible means for carriers to restore service to customers, the two options proposed *are* possible within the ILEC networks and can be implemented right now before the next hurricane season. Petitioners encourage providers to continue investigating other disaster-recovery procedures within their companies and in conjunction with other carriers. In the meantime, however, the

⁴ *Id.*

⁵ AT&T Comments at 4.

Commission should not wait while conducting a lengthy review, knowing that in all likelihood there will be other significant hurricane-related outages in just a few short months.

B. ADVANCED PREPARATION IS NECESSARY TO IMPLEMENT AN APPROPRIATE EMERGENCY PLAN

The Commission must adopt a disaster-recovery plan that clearly defines provider responsibilities and allows them to prepare in advance to foster the success of that plan. The ILEC Commenters argue that the Commission has sufficient authority to allow number porting across rate centers and LATA boundaries and can do so in a future emergency;⁶ however, the results of number porting during Katrina show that advanced preparation, coordination, and customer education would allow this solution to provide the greatest benefit to consumers and to eliminate or reduce some of the downsides identified by the NANC LNPA Working Group. Petitioners strongly disagree with the ILECs' conclusion that those unintended downsides prevent using a similar strategy in future emergencies. Furthermore, even the NANC LNPA Working Group does not agree with the ILEC Commenters' conclusion. Despite those unintended consequences, the report still notes that "[t]he use of porting and pooling to move numbers to working switches is a viable means of temporary service restoration even if the numbers are moved out of LATA."⁷

AT&T argues that the Commission should not require carriers to port numbers outside of rate centers for all customers because it may not be feasible.⁸ Petitioners, however, do not propose that providers be required to port all affected numbers either within a rate center or beyond. The proposal would merely require providers to provide expedited number porting to

⁶ AT&T Comments at 4; BellSouth Comments at 2-3; Sprint/Nextel Comments at 2.

⁷ North American Numbering Council Local Number Portability Administration Working Group, *Final Report on Out of LATA Porting & Pooling For Disaster Relief After Hurricane Katrina*, at 14 (April 12, 2006).

⁸ AT&T Comments at 3.

customers who request this service, and then only if the provider did not provide emergency voicemail services. The tendency seems to be for carriers to heavily focus, as indicated in the comments, on restoring damaged facilities, and while this is necessary, the goal of the Petition is to require carriers to focus on the needs of customers in maintaining their communications capabilities. Moreover, the proposal does not require a provider to automatically port any phone numbers, but does require providers to give those customers who request porting a high priority and expedited service.

Additionally, Petitioner's proposal regarding emergency voicemail services requires preparation in advance of an emergency and cannot be implemented merely through a Commission waiver order during an emergency. In order for a provider to provide appropriate emergency voicemail services, it must educate its customers and prepare its networks and processes beforehand. In this way, Petitioners fully support a flexible approach to implementing the emergency proposal. For example, after Katrina, numerous companies offered to provide emergency services, including voicemail, to affected customers.⁹ Now is the time for the ILECs to contact those companies and ask for their commitment to assist in the future, either gratis or fee-based. In that way, the ILECs are not locked into providing services on their own network, but can leverage the abilities of other providers located throughout the country in a systematic, planned manner. Additionally, the ILECs could decide to work together to establish a disaster recovery plan in which the other ILECs assist an ILEC whose territory is affected by an emergency. For example, Verizon provided banks of telephones for use by Katrina victims in BellSouth's territory.¹⁰ While these offers of assistance are commendable and not to be downplayed, Petitioners believe that providing emergency voicemail service to customers would

⁹ Verizon Comments at 3; VON Comments at 7-9.

¹⁰ Verizon Comments at 3.

provide a even higher level of ongoing connectivity. So, again, now is the time for the ILECs to develop a plan for how each of them could support the others in providing number porting or voicemail during a time of crisis.

Sadly, recent disasters have shown that our nation's communications systems are not disaster-proof and have underscored the significant role of communications in the lives of people everywhere. While it may have been acceptable to stick our heads in the sand in the past and wait to deal with each emergency as it arises, this is simply not an option now. The telecommunications industry does not have the luxury of ignoring the possibility of disaster or wading through lengthy regulatory procedures searching for the "perfect" foolproof solution. While in a perfect world we would hope that providers would not need to spend the time and money to prepare in advance for natural disasters and terrorist attacks that cripple communications networks, recent history bears witness to the imprudence of that approach.

II. THE ADDITIONAL COSTS OF IMPLEMENTING THE PROPOSED EMERGENCY PROTOCOLS ARE MINIMAL AND SHOULD NOT HINDER ADOPTION OF PETITIONERS' PROPOSAL

Petitioners strongly urge the Commission to recognize the ILEC Commenters' cost protests for what they are – red herrings to discourage the Commission from imposing any requirements on them. The additional storage requirements for preparing for and providing emergency voicemail services, even to thousands or millions of affected customers, are quite minimal. There are many providers of everyday free email services (*e.g.*, Yahoo, Google, MSN/Hotmail), and numerous providers offered to provide free voicemail services to affected Katrina victims.¹¹ How or why would these providers do so unless the costs were minimal? And

¹¹ See *Community Voice Mail to Launch "Disaster Relief System" providing 80,000 Free Voice Mail Numbers to Displaced Hurricane Katrina Victims* (available at <http://www.cvm.org/media/inthenews.htm>); *Twin Cities Community Voice Mail: Free*

why are all these organizations offering to provide free voicemail service when the customers' own communications providers will not?

Rather than focusing merely at anecdotal indications of the minimal costs, though, Petitioners have attempted to quantify the costs of additional storage necessary to provide emergency voicemail services. Although the exact configuration for storing voicemail and customer account information would be up to the individual carriers, some bounds can be put on the costs involved by looking at the retail price of disk storage (although individual carriers would likely be able to obtain much lower prices due to volume discounts). For example, a 250 gigabyte Seagate hard-drive is currently available through Tiger Direct for \$120,¹² resulting in a price per megabyte of additional storage of \$.00048. Although providers may already have free space in their customer information record to store voicemail access information, such as passwords, let us assume for this illustration that 1000 bytes (.001 megabytes) of additional storage capacity is needed to capture this information. This would result in an incremental capital cost of \$.00000048 per customer for extra storage to become prepared to offer emergency voicemail.

Voicemail Available to People Displaced by Hurricane Katrina (available at <http://www.tccvm.org/TCCVM-KatrinaFactSheet.pdf>); *Air America Radio's Public Voicemail: available for disconnected people in the wake of Katrina* (available at <http://www.airamericaradio.com/katrina/voicemailinfo.html>); *Goodwill Industries International, Inc.: Free Voicemail Service For Gulf Coast Residents Displaced By Hurricanes, 100,000 Personal Voicemail Boxes Ready for Distribution* (available at <http://www.goodwill.org/page/guest/about/newsroom/newsreleases/archivednewsreleases/nr102505001>); *VON reporter's notebook: Contactlovedones.org helps displaced Katrina victims* (available at <http://www.networkworld.com/news/2005/092105-von-notebook.html?prl>).

¹² See <http://www.tigerdirect.com/applications/SearchTools/item-details.asp?EdpNo=2143105>. This is the retail price for the hard-drive before the \$70 rebate currently being offered..

To actually provide the service, additional capacity must also be obtained and allocated for customers to record outgoing announcements and receive voice mail messages stored during an emergency. Petitioners contend that ten megabytes of storage per customer is more than adequate for this emergency voicemail service, resulting in a cost (with retail prices) of approximately \$.0048 per customer. Although a provider may allocate more than ten megabytes for customer subscribers, ten megabytes should be sufficient to store a reasonable amount of messages before the mailbox becomes “full” if it is not accessed and cleared. Even if we assume a doubling of these costs to allow for additional cabling, controllers, and other equipment, the total cost does not reach even one cent per customer.

The ILEC systems currently have the ability to detect a system overload and re-route or block traffic early during a call, as shown by AT&T’s call blocking in New York on 9/11.¹³ Using this technology, a carrier can provide the emergency voicemail service proposed by Petitioners. When an emergency or disaster-related system outage (or overload) is detected, instead of “call-gapping” (or blocking), the network would forward the call to a designated location where voicemail services would be stored. The ILECs could designate, say, 2-3 specific network locations within each of their regions (but geographically distant so as to not be likely to go down at the same time during a physical disaster) where they would invest in spare capacity in order to provide emergency voicemail. This would alleviate the need to obtain excess capacity in every facility throughout the country. Only those facilities designated as ones for disaster recovery would need to be upgraded, thereby dramatically reducing the already minimal storage costs. Furthermore, a carrier could provide voicemail services to customers in this way even if the facilities actually serving those customers were down. There is no technical

¹³ See Lisa Guernsey, *Keeping The Lifelines Open*, New York Times (Sep 20, 2001).

requirement that the voicemail service reside on the facilities closest to and serving the customer. In fact, voicemail services may be provided to customers from their own provider or a totally separate provider with facilities located nearby or somewhere across the country. Thus, if an ILEC does not wish to host the emergency voicemail services anywhere on their own network or believes their own personnel would be better utilized in a disaster to repair their own networks rather than manage the voicemail service, then the carrier could contract with a third party now to provide the service when needed.

Regardless, the Commission need not work out all the details for implementing the solution within each carrier's network. This is where Petitioners strongly encourage flexibility, recognizing that each carrier's network is unique and that collaborative efforts might best suit carriers in providing these services. The Commission need only understand that the ILEC protests are baseless because their networks are capable of providing these services now with minimal additional upgrade costs. As the illustration above shows, the costs of obtaining additional capacity is so minimal that it is almost absurd for the ILEC Commenters to submit the cost argument as a credible barrier to providing this service.

This also reveals that the ILEC Commenters are the ones that have not given any true "consideration of costs of creating and maintaining spare capacity"¹⁴ or they would have realized that they were *de minimus*. Instead, the ILEC Commenters only provided a logically unsupportable argument (and in contravention of good public policy) that this will cost money so they do not want to do it. It is enlightening to contrast the free voicemail offerings of other providers and relief organizations after Katrina with the resistant attitude of the ILECs. Many organizations saw the clear benefit of providing this service to Katrina victims who were not

¹⁴ AT&T Comments at 6.

even their customers, while the ILEC Commenters have summarily rejected Petitioners' proposal, resisting expending any additional capital to prepare their own customers for an emergency. There is an unmistakable benefit in educating customers and preparing in advance to provide this service for their customers, but the ILECs instead remain committed to raising frivolous and unquantified cost arguments in defense of their current bureaucratic processes.

III. DISASTER-RECOVERY SOLUTIONS NEED NOT BE 100% FOOLPROOF TO BE EFFECTIVE AND SHOULD BE FOCUSED ON RESTORING COMMUNICATIONS BETWEEN PEOPLE, NOT JUST BETWEEN PLACES

As evidenced by the multitude of public comments filed in this docket in support of Petitioners' proposal, people value their ability to remain connected to their friends and families in an emergency. On the other hand, the ILEC Commenters have dissected Petitioners' proposal, implying that any proposal that would not provide restored service to 100% of customers should be rejected. A solution, however, need not be foolproof to be effective in meeting its goal. And the primary communications goal in emergency circumstances should be to reconnect as many people as possible with the shortest time lapse. As both the Petitioners and Commenters note, a combination of communications methods is optimal to ensuring continued connectivity.¹⁵ However, many customers cannot afford multiple communications services and, regardless of suggestions to diversify, are left essentially stranded without their landline communications. Short of having a wireless phone or portable IP-based service, Petitioners believe providing voicemail or number porting provide the next best ways for customers to maintain access to their phone numbers so they can remain connected to the outside world.

The ILEC Commenters point to the recent report issued by the NANC LNPA working group to support their protests against providing number porting per Petitioners'

¹⁵ Petition for Rulemaking at 9; BellSouth Comments at 6.

proposal.¹⁶ Although there were some unintended results from the widespread porting that occurred after Katrina, Petitioners believe that these may be mitigated through advanced preparation, coordination, and customer education. The ILEC Commenters acknowledge that wireless carriers voluntarily provide number porting in two and a half hours, rather than the four-day interval imposed by wireline carriers. Although wireline carriers have not volunteered to reduce the four-day interval to match the wireless interval, there is little reason why they should not be able to do so, other than their own bureaucratic internal processes. Moreover, Petitioners' proposal would only require providers to expeditiously port numbers upon request if they declined to provide emergency voicemail services. The Petitioners considered the voicemail portion of the proposal to be the most effective means of providing emergency communications to customers with out-of-service landlines, with the porting portion of the proposal as a backstop or a alternative should providers decline to comply with the voicemail requirement. Thus, the Commission should consider Petitioners' proposals as separable, if it decides not to mandate expedited emergency number porting.

Several ILECs additionally argue that voicemail should not be provided because customers may not have outgoing phone service to either access their voicemail or leave an outgoing voicemail message.¹⁷ However, the mere fact that some customers may still be left without communications capabilities does not undermine the proposal. The ILEC Commenters seem to imply if a solution is not 100% foolproof, then it is not worth implementing, even if it would provide connectivity to a vast majority of those impacted. Yet, the ILECs conversely contend that emergency resources would be better spent restoring landline services to locations that might have been destroyed or condemned, making the repair of these facilities almost

¹⁶ AT&T Comments at 5; BellSouth at 8; Verizon Comments at 5.

¹⁷ AT&T Comments at 6 n.12; Verizon Comments at 3.

worthless since customers could not access them. So, using similar logic, should the ILECs also neglect that effort since it will not guarantee restored service to *all* affected customers? After all, what good is that service if the customers are not there to utilize it? The Commission can certainly see through this specious reasoning.

Furthermore, as a practical matter, customers can easily use other means of accessing their voicemail than having their own outgoing landline phone service. Those customers may borrow a mobile phone or use a landline phone from a friend, or, as in the case with Katrina victims, they could use one of the donated outgoing phone banks established by volunteer providers. In any case, these customers will want to have access to their original phone number so that they can maintain contact with callers who may not know other ways to reach them. While it may not afford real-time communication in all cases, having access to voicemail would allow people to stay in contact, even in some small way, with their life prior to the disaster. There are still hundreds of thousands of people displaced from the Katrina area some nine months later, many of whom have no access to their telephone *number* because they cannot access their landline service. Thus, voicemail service is infinitely more meaningful to those customers than a landline service connected to a home or business that may have been destroyed or condemned. Furthermore, voicemail service can essentially travel with a customer whether he is in a shelter or moves temporarily outside of the disaster area.

Instead of recognizing the value in providing these alternate services, the ILEC Commenters argue that their resources and personnel are better spent working to restore damaged facilities, rather than establishing services that would restore actual communications between customers and their families outside the disaster area. Certainly no single solution will provide ideal communications services to all affected persons during an emergency, but

Petitioners' proposal would dramatically increase communications possibilities to affected customers, even when communication links between certain geographic locations remain blocked. Restoring service to a physical location has no value if the customer cannot access that location. It is much more important to ensure connections between people than just between places.

IV. CONCLUSION

For the foregoing reasons, Petitioners urge the Commission to take speedy action to consider and adopt the proposal.

Respectfully submitted,

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