



**STATEMENT OF GREGORY L. ROHDE
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**BEFORE THE
SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

**FIELD HEARING
ON
S. 1063, THE "IP-ENABLED VOICE COMMUNICATIONS AND PUBLIC
SAFETY ACT OF 2005"**

September 1, 2005

Introduction

Senator Burns, thank you very much for inviting me to testify at this field hearing today on S. 1063, the "IP-Enabled Voice Communications and Public Safety Act of 2005." It is very fitting that this hearing is being held on the first day of "National Preparedness Month." The nation-wide emergency call number, 9-1-1, is the citizens' link to emergency response. In my judgment, access E9-1-1 (enhanced 9-1-1) services is a fundamental component of community preparedness. For our country to achieve a sufficient level of nation-wide preparedness, we need universal access to E9-1-1 services. Addressing the challenges in implementing E9-1-1 over IP-based communications systems is one of the many issues that require the attention of Congress and regulators at the federal and state levels to advance public safety.

My name is Gregory L. Rohde and I serve as the Executive Director of the E9-1-1 Institute. The Institute is a not-for-profit organization and, as you know, works closely with the Congressional E9-1-1 Caucus, which you co-chair with your colleagues, Senator Hillary Clinton (D-NY), Representative John Shimkus (R-IL), and Representative Anna Eshoo (D-CA). The Institute is not an advocacy organization and my work for the organization is completely voluntary, i.e., without compensation. My testimony today reflects my personal views and I am not advocating any particular position on behalf of the E9-1-1 Institute members.

The E9-1-1 Institute has approximately 600 members from around the country. Our membership includes individuals from the public safety community, first responders, academics, industry professionals, and government officials at the local, state, and federal levels. We conduct educational events for policy makers, including community forums done in conjunction with our affiliation with the Citizen Corps program in the U.S. Department of Homeland Security. Our funding comes entirely from donations from our members and organizations which share our mission to advance E9-1-1 through education and awareness efforts.

General Comments on S. 1063

As introduced, the IP-Enabled Voice Communications and Public Safety Act of 2005 would:

- ❖ Require the Federal Communications Commission (FCC) to “establish requirements or obligations on providers on IP-enabled voice service to ensure that 911 and E-911 services are available to customers of IP-enabled voice services;”
- ❖ Require IP-enabled voice providers to notify their customers if their service cannot provide 9-1-1 or E9-1-1 service;
- ❖ Require entities which own or control the “necessary emergency services infrastructure” to provide non-discriminatory access to IP-enabled voice service providers;
- ❖ Establish liability immunity related to IP-enabled voice service that is on par with liability protections afforded to 9-1-1 service over wireless or traditional land line telephone service; and
- ❖ Require the Joint Program Office established under the ENHANCE 911 Act to develop a plan for migrating from the existing 9-1-1 system to a national IP-enabled emergency network.

This legislation parallels the recent action by the FCC in June of this year requiring interconnected VoIP (Voice over Internet Protocol) service providers to provide E9-1-1 capabilities to their subscribers, but it also goes further. In particular, the legislation addresses two areas which the FCC asserted it lacked authority: (1) liability protection and (2) requiring access to emergency services infrastructure such as selective routers. In my judgment, both these areas are necessary to ensure a successful implementation of E9-1-1 over IP-enabled voice service systems. This makes your legislation necessary and would

complement the actions already taken by the FCC to require 9-1-1 and E9-1-1 over IP-enabled telecommunications systems.

National Migration Plan Requirement

One unique provision in your legislation which merits further discussion at this hearing is the provision requiring the establishment of a national migration plan for an IP-enabled emergency communications system. While the provision to require the Joint Program Office to establish a plan to migrate to an IP-enabled emergency communications system may be overshadowed by other provisions in S. 1063, it could become one of the most significant aspects of your legislation. Until recently, E9-1-1 issues have received little federal attention. The work of the Congressional E9-1-1 Caucus, including the successful passage and enactment of the ENHANCE 911 Act, has helped to elevate the discussion of E9-1-1 issues at the federal level. Requiring the Administration to begin establishing a migration plan for a citizen activated national IP-based emergency communications system is badly needed and the time to develop such a plan is now.

Much of the focus on E9-1-1 issues with respect to IP-enabled communications systems is centered on the challenges that IP-enabled systems impose on the current 9-1-1 emergency call number system. Indeed, there are significant issues that must be addressed and the “near term” issues of ensuring E9-1-1 access over the current generation of VoIP systems is a top priority. Consumers expect that any service which is sold to them as a “telephone service” will be able to connect to 9-1-1 and federal and state regulators should not allow a voice communications service to be sold to the public without such capability.

However, the story of how E9-1-1 relates to IP-enabled communications system is not limited only to the challenges VoIP E9-1-1 imposes on the existing system. As we address these immediate challenges, we cannot lose sight of the potential benefits and enhancements that IP-enabled communications systems can mean for emergency communications. Significant research and development efforts are underway which explore the next generation 9-1-1 systems that could be created on an IP-based system. Such a system, if developed and deployed effectively, could provide citizens, call centers, and first responders with greatly enhanced tools to address calls for help via 9-1-1.

I applaud your insightfulness to be forward looking and to appreciate the fact that IP-enabled communications systems can, in the long-term, greatly enhance public safety communications. Pushing the Joint Program Office to explore these capabilities and develop a national plan is the right step to take at this point in time. We do have an opportunity to get ahead of the game. Our emergency communications systems should not remain in a perpetual state of

“catch up.” The proliferation of broadband access and the emergence of new IP-enabled applications such as VoIP are creating an opportunity to build a better, more capable system that enhances public safety. Thoughtful planning, at the federal level working in cooperation with local, state, and Tribal officials is a necessary first mover towards this objective.

In addition to pressing the Joint Program Office, as provided in S. 1063, to develop a migration plan for the next generation E9-1-1 system, I would suggest, in addition, that you consider ways to commit more federal resources for research and development of IP-enabled emergency communications systems through appropriating funds to the Joint Program Office and/or to the Institute for Telecommunications Sciences (ITS), the research laboratory of the National Telecommunications and Information Administration (NTIA). Either ITS or the Joint Program Office can work cooperatively with public safety, industry, and academia to develop the next generation 9-1-1 system that is IP-based and provides greatly enhanced capabilities than the present system today.

E9-1-1 Access Requirements for IP-Enabled Services

Section 2 of S. 1063 requires the FCC to establish requirements and obligations on IP-enabled voice service providers to ensure that their customers have access to 9-1-1 and E9-1-1 services. While the FCC has already taken this action under their authority, making this a statutory requirement is very important. The current FCC displayed admirable leadership in taking this action, but it is still only a regulation that could be changed at a later point in time. A mandate to provide access to E9-1-1 over IP-enabled voice communications systems is important enough that it should be a requirement in the statute. Going forward, the FCC’s role should be to manage the implementation of this requirement and not to entertain considerations and appeals to reverse course.

I suspect that the deadline set by the FCC for compliance is going to be less a finish line and more the beginning of the end. As we have learned from the FCC’s attempt to implement wireless E9-1-1, achieving the goal is more complicated than simply setting deadlines. There are technological limitations and the ability of providers to meet the requirements changes as technology develops.

The FCC needs to manage compliance, not simply assert it. The Commission should be clear in the objectives it desires from providers, but allow the industry flexibility in meeting those objectives. The FCC needs to be a strong enforcer, but more importantly, the Commission needs to play the role of pushing providers under its jurisdiction to optimize the performance of the best available technology and not reduce their role into a “gotcha game.” The IP-enabled services area is a highly innovative sector characterized by rapid change. It is

important to use this opportunity for innovation to the advantage of public safety. Therefore, enforcement of FCC requirements should be flexible and always mindful of technology evolution and the advantages that innovation can provide.

As Congress considers directives to the FCC to require access to 9-1-1 and E9-1-1 service on IP-enabled voice service providers, assume that the FCC will have to engage in some complex implementation activity. The Congress should contemplate significant oversight and require the FCC to continuously report on progress.

Telecommunications vs. Information Services

I would also encourage you to address the fundamental regulatory cause of failure with respect to the availability of VoIP service to provide access to 9-1-1 and E9-1-1 services. The core of this problem lies in the FCC's agenda to engage in definitional hairsplitting with respect to telecommunications and information services definitions. While the statute does not distinguish between voice and data services, the FCC, nevertheless, has created this artificial distinction in order to pursue a service classification game designed to undermine the statute. In the process, the FCC has made it possible for voice communications services to be sold to the public which lack access to 9-1-1 and E9-1-1.

VoIP service that is sold to the public as an alternative to traditional telephone service should have never been allowed to hide under the shroud of being an "information service" and avoid the obligations imposed on traditional voice service. One of those obligations is to provide access to E9-1-1. In my judgment, the VoIP services that look, act, and function like traditional voice service should have never been allowed to be sold to the public unless 9-1-1 and E9-1-1 was a standard feature of the service. The current FCC deserves credit for their leadership, but the previous FCC deserves an equal share of responsibility for allowing this circumstance to emerge in the first place.

This is 2005, not 1905. We live in an era of advanced telecommunications services and there is no reason why services being sold and marketed to the public would be absent the basic emergency communications feature most Americans expect today – access to the 9-1-1 system. While I have very high praise for the leadership of Chairman Kevin Martin and his fellow Commissions who acted with speed and clarity on this matter, I am deeply disturbed by the fact that the FCC had to act after the fact.

But, we are where we are and it would not be in the best interest of the approximately 2 million consumers with VoIP service to have their service terminated. In fact, the Commission acted wisely last week, in my judgment, in demonstrating some flexibility with respect to enforcing the June 3rd order by

extending the deadline for positive affirmation from consumers that they are aware of the service limitations of their VoIP service. While the FCC rule is a good one – customers should be made aware of the service limitations of their service – the FCC did the right thing in not using the ultimate hammer by terminating service at this time. Termination of service should be done only in extreme cases of non-cooperation by providers and imposed by the Commission only with respect to actions that are in the control of the provider. We need to move forward from this point and I am confident that the Commission, with Congressional oversight, will manage compliance with their requirements reasonably.

I suggest that the Congress clarify to the Commission that IP-enabled voice services, including VoIP services, are telecommunications services and should be treated like other voices service. The clear meaning and intent of the Telecommunications Act of 1996 was to have similar services treated in similar ways. The Congress needs to reign in the Commission's efforts to find escape hatches out of the statute. The problem of VoIP service being provided without access to E9-1-1 is a necessary outgrowth of the definitional gamesmanship environment that has been fostered by the Commission since the enactment of the Telecommunications Act of 1996.

Furthermore, it was the unwillingness of the Commission to classify VoIP as a telecommunications service that became the grounds for assertion that the Commission was unable to ensure that VoIP providers could access the selective routers and emergency communications systems they need to access to provide 9-1-1 and E9-1-1 service. The Commission left this important step up to voluntary negotiations among industry segments. S. 1063, however, does address this specific issue of requiring access to the selective routers and emergency communications systems controlled by incumbent companies. As I alluded to earlier, this is one of the provisions of this legislation which makes the enactment of this measure necessary to ensure 9-1-1 and E9-1-1 access over IP-enabled systems.

I would suggest that either in S. 1063 or other telecommunications legislation considered by this Committee, that you address this classification problem that is undermining key social covenants that many Americans have come to expect in modern day life – such as access to 9-1-1 and E9-1-1 service. I am by no means suggesting that IP-enabled services be subjected to the whole range of regulatory obligations of traditional telephone service. Many of these requirements may not be necessary. The FCC has the tools under the forbearance authority contained in the statute to ensure the new, innovative services such as VoIP are not smothered in unnecessary regulations. But, there are some necessary regulations and in my judgment, access to emergency communications services such as E9-1-1 is one of these necessities. New services such as VoIP will fare much better in the marketplace if the regulatory requirements are clear from the start. The current circumstance is an

environment of uncertainty. This is far more constraining on innovation than a clear regulatory environment where providers can have a clear sense of their obligations and requirements.

Conclusion

Thank you again, Senator Burns for inviting me to testify. More importantly, thank you for your leadership. You have truly been the leading voice in the U.S. Senate in advancing E9-1-1. A great deal of progress has been made, in part directly from your efforts, and the public safety community and the industry have share praise of your efforts.

I would be happy to respond to any questions.