Testimony Of Jeremy Ferkin
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Senator Burns and members of the Committee, thank you very much for providing me with this opportunity to appear before you today. My name is Jeremy Ferkin, and I am General Manager for CenturyTel operations in Kalispell, Montana. I am pleased to have this opportunity to discuss Voice Over Internet Protocol (VoIP), its implications for Emergency 911 (E-911) and, more specifically, the Senate E-911 bill entitled "IP-Enabled Voice Communications and Public Safety Act of 2005" (S. 1063).

CenturyTel serves more than 63,000 customers in the Flathead Valley of Montana and was recently selected to be the 911 provider for the state. In addition to our Montana operations, CenturyTel is also a national telecommunications company and a leading provider of broadband services in rural America. We are a leading provider of telecommunications services in 26 states that include many of the states represented by members of this Committee including Montana, Texas, Mississippi, Nevada, Oregon, Louisiana, Washington, Arizona and Arkansas. We specialize in providing high quality telephone, long distance, Internet, broadband, satellite and advanced services in rural and small urban markets. Today, CenturyTel is the eighth largest telephone company in the United States with 2.3 million access lines. Much of CenturyTel's recent growth has come from the acquisition of telephone lines from the larger Bell Operating Companies in multiple states. The majority of our 3 million customers and 7,000 employees live and work in the very areas that have the most critical stake in the issue we will discuss today.

Voice Over Internet Protocol

CenturyTel is excited about the introduction of IP-enabled services in the marketplace and about deploying new technologies and creating new services for our customers and communities. CenturyTel already offers IP-based services to many of our business customers across the country. That said, CenturyTel believes an appropriate transition period will be required for full-scale delivery of IP-enabled services to all Americans. Related, but critical, features such as law enforcement capabilities and access to emergency services must be readily available and tested because of the technical aspects and dynamics of IP technology.

VoIP is an example of even better things to come, as our industry increasingly integrates with the computer hardware, software, and entertainment sectors. Internet Protocol is blowing the voice market wide open, allowing a variety of providers to serve "some" business and residential customers. I say "some customers" because, that VoIP service will not work unless a facilities-based provider like CenturyTel or the local cable company has made the network investment required to enable a broadband connection that VoIP needs to work properly.

CenturyTel and companies like it are building rural America's broadband network. Building robust rural networks requires expertise, commitment, access to capital and substantial investment—all without the assurance of a high density customer base to make a business case. While CenturyTel only averages 14 access lines per square mile and seventy-five percent of our customers are residential, more than seventy percent of our customers nationwide have access to CenturyTel DSL. In the State of Montana alone, almost ninety-six percent of CenturyTel's sixty-three thousand access lines are DSL-enabled, and a significant portion of our one hundred fifty-six million dollar total investment went towards deployment of broadband to enable advanced services. Advanced communications networks like ours are the foundation for realizing the promise of IP-enabled services like switched digital video and other new services yet to emerge. Quite simply, you can't deliver the promise of IP without a high capacity network.

Without question, the further integration of IP-enabled services as a telecommunications alternative offers both challenges and opportunities for local telecommunications companies. We have adapted to a new world of rapid-paced innovation and intense competition from a wide variety of players. Equally true, this new reality is forcing fundamental shifts in our industry – from proposed mega-mergers to the new services and choices our companies are rolling out. Now, the nation's communications policy must adapt as well. Since we have barely scratched the surface of broadband's potential to produce a whole new generation of innovative applications, I appreciate knowing that this Committee has proposed to write policies that broadly encourage network investment and product innovation far beyond first-generation VoIP.

Importance of E-911 Capabilities for IP-Enabled Services

AT&T first made "9-1-1" available nationally for wireline access to emergency services in 1965, and since that time, the American public's dependence on 911 service has continued to increase. The National Emergency Number Association (NENA) estimates that some form of 911 service is available to 99 percent of the population in 96 percent of the counties in the United States, and roughly **200 million calls** are made to 911 in the United States each year. CenturyTel supports the concept advanced by the Federal Communications Commission (FCC) that a service or device should be subject to 911/E-911 regulation if the customers using such service or device have a "reasonable expectation of access to 911 and E-911 services." Indeed, providing reliable and secure 911 and E-911 services has become a necessary cost of doing business for all voice providers, regardless of platform used.

The American public's expectations for access to emergency services have not diminished, but admittedly have become more challenging to meet, as new technologies for delivering voice communications have arisen and as consumers have become more mobile. The wireless industry can attest to the challenges in implementing emergency services in an increasingly mobile environment. No doubt, IP-enabled voice communications is another technology that will present challenges in implementing emergency services because it can be delivered using so many different platforms.

However, the time is NOW to address the unique challenges VoIP presents for having access to emergency services. Intrado, a national provider of 911 database management services, projects a nearly tenfold increase in expected VoIP 911 calls from 2004 to 2006, to a total of 3.5 million residential VoIP 911 calls in 2006, as this new communication technology becomes more widespread.

Unfortunately, recent incidents in Texas, Florida and Connecticut have brought to the forefront the need to address public safety issues related to IP-enabled voice communications. By now everyone has probably heard about the family in Houston, Texas who was in need of emergency assistance when an intruder entered their home and attempted to burglarize the family at gunpoint. During the incident, a 911 call using an interconnected VoIP service was unable to be completed, thus delaying dispatch of an ambulance for the wounded homeowners. The incidents in Florida and Connecticut were just as traumatic and harrowing.

We applaud Congress for introducing S. 1063 (and likewise H.R. 2418 in the House) and holding this field hearing in light of the reasons listed above. While the FCC has issued an Order and Notice of Proposed Rulemaking on E-911 requirements for IP-enabled service providers, we are glad Congress has stepped in to address those issues where the FCC believes it lacks jurisdiction – namely, requiring incumbent local exchange carriers (ILECs) to give VoIP providers access to emergency services infrastructure and immunity from liability for providing 911 services. We also believe S. 1063 provides more clarity than the FCC's Order on some issues crucial to owners of emergency services infrastructure and can hopefully move more swiftly towards resolution of these critical issues. I will discuss S. 1063 and those other crucial issues more fully in the remarks that follow.

Appropriate Compensation for Access to Emergency Infrastructure

S. 1063 contains a provision that requires entities with ownership or control of emergency services infrastructure to "provide any requesting IP-enabled voice service provider with nondiscriminatory access to their equipment, network, databases, interfaces and any other related capabilities necessary for the delivery and completion of 911 and E-911 calls and information related to such 911 or E-911 calls." The owner "shall provide access to the infrastructure at just and reasonable, nondiscriminatory rates, terms and conditions." CenturyTel is pleased S. 1063 addresses this issue and believes the FCC's June 3, 2005 Order does not fully address the issue of requiring VoIP providers to compensate owners of emergency services infrastructure. CenturyTel, like other local telephone companies, has invested in networks capable of connecting our customers to life-saving services such as 911, and we believe that providing 911 access is a legitimate cost of doing business for all voice providers.

CenturyTel believes that creating a seamless public safety and reliability standard for all voice service providers is the best public policy and VoIP providers should be held to the same public safety and reliability standards as other voice providers. To require less of a provider merely because a different technology is used to facilitate the voice call

is not in the public's best interest. In addition, VoIP providers should properly compensate incumbent carriers for access to their 911 infrastructure. ILECs should not have mandates to provide 911 and related services to VoIP providers for free.

Today, CenturyTel either owns the emergency services infrastructure in a particular area or properly compensates other owners of emergency services infrastructure in areas where CenturyTel is not itself the owner. Generally, a telecommunications carrier can either access emergency services infrastructure under a tariff arrangement or through an interconnection agreement, depending on the requirements in each specific state. Under the current sections 251 and 271 requirements in the Telecommunications Act of 1996, the VoIP provider either has to declare itself a "certificated" telecommunications carrier or negotiate access to emergency services infrastructure through a third party competitive LEC. Facilities-based providers must have assurances that VoIP providers have a requirement to adequately compensate those who make the necessary investment for access to emergency services infrastructure. Such compensation should be made at a level that adequately covers the actual costs of ownership of emergency services infrastructure. The tariff process provides sufficient protection for all providers involved in such an arrangement.

Liability Concerns

This past June, CenturyTel and the State of Montana entered into a contract under which CenturyTel will provide 911 services throughout the entire State of Montana. During the negotiations for this contract, it became apparent that a major concern for all stakeholders throughout the emergency services industry is liability in the event something goes wrong in the process. While S. 1063 does contain a provision that gives providers of IP-enabled voice service immunity or other protection from liability of a scope and extent that is not less than that given to any local exchange company under applicable Federal and State law (whether through statute, judicial decision, tariffs filed by such local exchange company, or otherwise), CenturyTel feels more inquiry and work needs to be done to develop this issue further.

Statutes providing immunity and limitations of liability for 911 service providers vary widely from state to state and in many cases do not really provide the liability protections that may be appropriate for telecommunications companies, Public Safety Answering Points (PSAPs), emergency services personnel, and local governments. CenturyTel believes Congress should develop a federal statute that provides meaningful limitation of liability provisions for all parties to add some consistency to the process and supplant the patchwork of state statutes currently addressing liability issues. To be clear, CenturyTel proposes a federal statute that provides immunity from liability for all parties who act without willful or wanton conduct in the execution and provision of a 911 call, similar to that codified in Oregon Revised Statutes § 401.715 (2003), as follows:

"No provider…or any other person that supplies 9-1-1 emergency reporting system equipment…or the 9-1-1 jurisdiction…shall be held civilly liable for the installation, performance, provision or maintenance of a 9-1-1 emergency reporting system or

enhanced 9-1-1 telephone service if the provider...supplier…or the 9-1-1 jurisdiction …act without willful or wanton conduct."

Key Policy Decisions Facing Congress and the FCC

Congress should affirm that those using the network must pay for their use. "Phantom traffic" and other payment avoidance schemes really are just theft, plain and simple. Advanced communications networks are the foundation for realizing the promise of IP-enabled services and without investments by companies like CenturyTel, there would be no broadband connection, no VoIP and ultimately no services like switched digital video or telemedicine.

Congress should support the 21st century network through maintaining the Nation's commitment to Universal Service. Congress should support stability in universal service by broadening the base of support to include all providers of voice service, including VoIP, and setting high standards in order to receive universal service. Also, because of broadband's importance to the future of advanced services deployment, consideration should be given to providing explicit support for broadband deployment.

Congress should continue to address social and public safety concerns in an ever changing technological and mobile environment. The tragic events of 9/11 and in Texas, Connecticut and Florida have highlighted the sense of urgency in this area. Congress can simply make clear that public safety responsibilities apply to all, and must be fulfilled as a necessary requirement for all providers.

Congress should make clear that VoIP providers who are given nondiscriminatory access to emergency services infrastructure must pay adequate compensation to local telephone companies and other owners of such infrastructure in an amount that adequately covers the actual costs of ownership of the infrastructure. 911 is a legitimate cost of doing business for all voice providers and need not be borne entirely by customers. Without such assurances, no one will voluntarily want to be an owner of this emergency services infrastructure. Therefore, those companies that "step up to the plate" should be protected for their commitment to public safety.

Congress should develop a federal standard that addresses limitation of liability issues in the provision of E-911 services. Today's patchwork of state statutes presents significant difficulties for stakeholders who seek to understand their rights, responsibilities and potential liabilities with regard to implementation and provision of 911 services. A national program like 911 that requires so much cooperation between all stakeholders across the country should not be subject to the politics and whims and desires of each state if it is to work as seamlessly as the American public desires.

Conclusion

Senator Burns, we thank you for holding this hearing. I think everyone understands the importance of VoIP and E-911 to the nation's economy and consumers

and can appreciate that your decisions in this area will help shape the future of telecommunications and consumer safety. CenturyTel is eager to work with you in the future and hopes that you will seriously consider the points we make here today. I thank you for the opportunity to join you today and look forward to your questions.