

# THE DAILY RECORD

LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## Hello? Is Anybody Out There?

BY MARTHA BUYER  
DAILY RECORD COLUMNIST

Generally, Americans believe that we are invulnerable. The events of Sept. 11, 2001 weakened that perception and the intensity of the disaster surrounding Hurricane Katrina and its associated storm surge have further chipped away at our heretofore rock-solid sense of immunity from large scale catastrophe.

One of the most basic, and most critical failings was in the area of telecommunications. Here, systems designed to be redundant and secure failed. When network designers and engineers talk about system shut down, the goal is "graceful failure," where one component fades to brown and then black followed by another. Unfortunately, that's the opposite of what happened when Katrina rolled through, bringing almost every system to its knees within a relatively short span of time.

In the first days following the hurricane and subsequent storm surge, the inability of first responders to communicate left them (police, fire, ambulance) yelling to each other in an effort to communicate in any way possible as they sought to save frightened, injured, and terrorized people in the affected areas of Louisiana, Mississippi and Alabama.

While the gaps in emergency services have been well documented, the first problem was that emergency workers, for whom time is of the essence, didn't have viable tools with which to communicate. Even if they had radios or wireless phones, the failure of these devices rendered them useful only as paperweights.

As of Sept. 8, according to *The Wall Street Journal*, only eight of the 17 public safety systems tracked by Motorola were running. Not included in this list was the system which supports the Louisiana State Police which had been classified as "marginal." This is nothing short of frightening.

### TELECOM LAW



MARTHA BUYER

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up to these switches or central offices were located below flood level. When the water rose, the equipment got wet and the power went out.

In other cases, the towers which supported radio antennas

While our own weather challenges are likely to melt long before we sustain infrastructure damage that could rival what's happened in the south, some of the physical problems bear repeating here, not because of their legal implications, but because if we can learn from the lessons of Katrina, we will all be better off should any major event of this nature strike much closer to home. Recall the Thanksgiving snowstorm of 2003, where thousands of people were trapped in their vehicles, schoolchildren were stuck on their buses and cell phones couldn't handle the call volume.

Telecommunications systems generally require either telephone lines which are hardwired and strung on poles, wireless antennas which may be placed on towers, or electric lines which can be used to deliver broadband services. The plain old telephone system (affectionately known as "POTS") does not require electricity, but generally has lines strung on poles. This is why you'll have dialtone in many cases (provided a non-electric phone) in the event of a power failure. In the Southeast, both telephone poles and electricity were lost, thus restricting communications with those who had battery operated phones.

Successful communications requires not only people at both ends of the phone line to have battery power, but the internal equipment (the switches that actually "make" the connections) requires power too. While there were generators to support such systems, in an unfortunate number of cases, the generators that provide battery back-

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that are used to transmit wireless signals were blown over, thus rendering not only the towers, but the critical antennas located on them useless. In one other case, a generator which was not flooded was damaged by flying shards of glass.

As we have all come to rely more heavily on wireless communications, issues of this nature, which simply may not have been considered before, will need to be addressed. Cost will always remain a factor, but new innovative ways of protecting both antennas and generators will be developed as a direct result of the communications failures. Enough about hardware.

From a legal perspective, the Federal Communications Commission and the affected state public utility commissions and some service providers have also taken some steps to enable and encourage speedy service restoration.

As a start, on a temporary basis, the FCC has relaxed some of its prior rulings designed to protect consumers (including anti-slamming provisions) so that new phone service can be established (or re-established) with the minimum of hoop-jumping. This action means that the third party verification that has been a staple of phone service activation, will, for the time being in the affected areas, be waived.

Additionally, next week, the Mississippi PSC staff will also be meeting to determine whether it will, for the sake of expediency, allow service providers to make timely repairs and installations without meeting the state's otherwise mandatory quality standards.

As is always the case, in order to fund the massive repairs required, other provisions which were in place to provide service to high-cost service areas have been put on hold

while the larger issues are addressed. While this is unfortunate, I don't believe that anyone can quibble with the fact that the most acute concern is to restore basic service first.

The cable companies have also jumped in and have offered to stop billing customers for services that they can't provide and which customers can't receive. While this hardly seems magnanimous, contractually such providers (as well as wireless providers) may have been entitled to payment under all circumstances. While certainly Hurricane Katrina qualifies as force majeure, many of the cable customers who have lost everything might not be in a position to make this argument, thus incurring debts for services not rendered.

Finally, the FCC and Congress have urged the wireless industry to maintain service (not indefinitely) for customers who are unable to pay their bills. FCC licensed wireless carrier were given until September 8th to submit a report to the FCC verifying that they have agreed to such terms.

Things will improve and service(s) will be restored, and ultimately bills will be paid. Referring to Katrina's communications failures, former FCC Chairman Reed Hundt, in an article in Thursday's *Wall Street Journal*, said "After every single calamity we see the exact same thing."

And this, to me, is what's of greatest concern.

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*Martha Buyer is an attorney concentrating in the practice of telecommunications law. Her clients range from Fortune 500 companies to small family-owned businesses where she has provided a range of telecommunications consulting and legal services, primarily geared to support corporate end-users working with carriers and equipment providers. Buyer can be contacted at [martha@marthabuyer.com](mailto:martha@marthabuyer.com).*