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November 15, 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re: XYPOINT Corporation.
CC Docket No. 94-102
Ex Parte Presentation

Dear Mr. Caton:

Pursuant to the provisions of Section 1.1206 of the Commission's rules, please be advised that on November 14, 1996, XYPOINT Corporation met with Jackie Chorney of the Chairman's Office. The purpose of the meeting was to discuss matters relative to XYPOINT's Petition for Reconsideration of the *Report and Order* in the above-referenced proceeding as well as Phase I implementation issues in general. Also, attached are materials which were distributed during the meeting.

An original and one copy of this letter are being submitted to the Commission for inclusion in the record of this proceeding. A copy of this letter is being delivered on this date to Jackie Chorney.

Should you have any questions regarding this matter, kindly communicate directly with the undersigned.

Very truly yours,

David C. Jatlow
Counsel for XYPOINT Corporation

cc: Jackie Chorney

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Chart of State 911 Laws

STATE*	LAND LINE FUNDING**	WIRELESS FUNDING**	INDEMNITY
Alabama - **E** Code of Ala. §§ 11-98-1 *et seq.*	**Local** surcharge: NTE 5% maximum tariff rate; NTE $2.00 if population < 25,000.	Not specified in statute.	Not specified in statute.
Alaska - **E** Alaska Stat. § 29.35.131	**Local** surcharge: NTE $.50/access line if population > 100,000 and NTE $.75/access line if population < 100,000.	Not specified in statute.	Service supplier immunity except for intentional acts of misconduct or gross negligence.
Arizona ARS § 42-1472, § 12-713	**State** tax: NTE 1.50% of provider's gross sales or income derived from providing exchange access services.	Not specified in statute.	Exemption for any person that supplies 911 reporting equipment or services except for willful and wanton conduct.
Arkansas - **E** Ark. Stat. Ann. §§ 12-10-302 *et seq.*	**Local** surcharge: NTE 5% or NTE 12% If population < 15,000 of tariff rate.	Not specified in statute.	No service provider or political subdivision liable for release of required information or failure of equipment or procedure.
California - **E** Cal Rev & Tax Code §§ 41001 *et seq.*; Cal Gov Code §§ 53100 *et seq.*,	**State** surcharge: Minimum .50% Maximum .75%	Surcharge amount not specified in statute.	Not specified in statute.
Colorado CRS §§ 29-11-101 *et seq.*	**Local** surcharge: NTE $.70.	Not specified in statute.	Not specified in statute.
Connecticut - **E**[1] Conn. Gen. Stat. §§ 28-24 *et seq.*	**State** E-911 Telecom Fund NTE $.50.	Not specified in statute.	Telephone Co. or agents not liable for release of required information or any failure of equipment or procedure.
Delaware - **E** 16 Del. C. §§ 10001-10005, §§ 10101 *et seq.* .	**Local** surcharge: NTE $.50/access line.	Not specified in statute.	Supplier liable NTE $1,000,000 for each occurrence of an interruption, fault, failure or other deficiency.

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* "E" indicates state has mandated enhanced emergency number service.

** Charges are per month unless otherwise specified.

[1] Note significant 1996 amendment to statute to provide E911 services throughout the state by July 1, 1997 pursuant to SB 483, enacted May 31, 1996.

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STATE*	LAND LINE FUNDING**	WIRELESS FUNDING**	INDEMNITY
Florida - E[2] Fla. Stat. § 365.171	**Local** surcharge: NTE $.50/access line.	Not specified in statute.	No liability for 911 service absent malicious purpose or wanton and willful disregard of human rights, safety or property.
Georgia - E O.C.G.A. §§ 46-5-122 *et seq.*	**Local** surcharge: NTE $1.50/access line.	Surcharge allowed but amount not specified in statute.	No waiver of defense of sovereign and official immunity.[3]
Hawaii - E HRS § 269-16-95, § 321-224[4]	**Local** surcharge: amount not specified.	Not specified in statute.	Not specified in statute.[5]
Idaho Idaho Code §§ 31-4802 *et seq.*	**Local** surcharge: NTE $1.00/access line.	Not specified in statute.	Telephone company not liable except for malice, criminal intent, or reckless, willful and wanton conduct.
Illinois 50 ILCS §§ 750/0.01 *et seq.*	**Local** surcharge: NTE $1.25/access line if population > 500,000.	For the purposes of the Act, "telecommunication carrier" does not include a cellular or other mobile communication carrier.[6]	Public agencies not liable for damages except for willful or wanton misconduct; No person who gives emergency instructions to a person rendering services in an emergency at another location, nor any person following such instructions is liable except for willful or wanton misconduct.

[2] Statewide "goal" of E911; county expenditures authorized.

[3] Does not necessarily apply to the supplier.

[4] SB 2781; effective June 17, 1996: Department of Health to assist each county in developing 911 emergency telephone system.

[5] Legislation proposed January 23, 1995 to indemnify 911 telephone operators from liability. 1995 HI HB 766.

[6] Legislation proposed in 1995, 1995 IL HB 124, to impose a monthly surcharge on cellular telephones. See also SB 957 proposed in 1995 to provide monthly surcharge on in-service wireless phones.

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STATE*	LAND LINE FUNDING**	WIRELESS FUNDING**	INDEMNITY
Indiana - **E** Ind. Code Ann. §§ 36-8-16-1 *et seq.*	**Local** surcharge: NTE 3% of average monthly access line charge in a county that has a consolidated city or at least one 2nd-class city. NTE 10%/access line in a county that does not have a consolidated city or a 2nd-class city.	Not specified in statute.	Supplier not liable for damages except for willful and wanton conduct.
Iowa - **E** Iowa Code § 34A.1	**Local** surcharge: NTE $1.00. **Local** alternative surcharge: NTE $2.50/access line for 24 months, if approved by voters.	Not specified in statute.	No cause of action unless willful and wanton negligence.
Kansas KSA §§ 12-5301 *et seq.*	**Local** surcharge: NTE $.75/access line.	Wireless service users shall be exempt from the emergency telephone tax.	Public agencies and wireless carriers not liable for damages from transmission failure.
Kentucky KRS §§ 65.750 *et seq.*	**Local** surcharge: amount not specified in statute.	Not specified in statute.	Not specified in statute.
Louisiana - **E**[7] La. R.S.§§ 33:9104 *et seq.*; La. R.S. §§ 45:791, *et seq.*	**Local** surcharge: NTE $1.00/wireless access line for residential and NTE $2.00/access line for business.[8] **Local** surcharge: NTE 5%/access line if served by more than one supplier.	**Local** surcharge: NTE $1.00/wireless access line for residential and NTE $2.00/wireless access line for business.[9] **Local** surcharge: NTE 5%/wireless access line if served by more than one supplier.[10]	Until such time as cellular and other wireless communication service suppliers are capable of providing and do provide automatic number identification (ANI) and automatic location identification (ALI), suppliers of such service shall not be liable for any claim, damages, costs, and expenses, including reasonable attorney fees, with respect to and as a result of any claim or action relating to delivery of or reliance by enhanced 911 or 911 on such infomation.

[7] E911 service in parishes of Assumption, Caddo and Jefferson only.

[8] Caddo Parish only, pursuant to Louisiana HB 224, approved May 7, 1996.

STATE*	LAND LINE FUNDING**	WIRELESS FUNDING**	INDEMNITY
Maine - **E** 25 M.R.S. §§ 2921 *et seq.*	**Statewide** surcharge: $.02/access line.	**Statewide** surcharge: $.02/trunks serving cellular providers.	Not specified in statute.
Maryland - **E** Md. Ann. Code art. 41 §§ 18-101 *et seq.*	**State** surcharge: $.10/access line. **Local** surcharge: NTE $.50/access line.	**State** surcharge: $.10/wireless access line. **Local** surcharge in addition: $.50/wireless access line.	Nothing in this subtitle shall be interpreted to extend any liability to a 911 carrier. Cellular companies and personal communication companies that pay or collect 911 fees have the same immunity from liability for transmission failures as that approved by the Public Service Commission for local exchange telephone companies, 1996 MD HB 365, signed by governor May 14, 1996.
Massachusetts - **E** Mass. Ann. Laws ch. 6A § 18A	**State** surcharge on directory assistance.	Not specified in statute.	Not specified in statute.
Michigan MSA §§ 22.1467(101)	**Local** surcharge: NTE 4% highest monthly flat rate for one-party access line; county may assess up to 16% by ballot.	Not specified in statute.	Supplier not liable for civil damages except for gross negligence or willful and wanton misconduct.

[9] Caddo Parish only, pursuant to Louisiana HB 224, approved May 7, 1996.

[10] Assumption and Jefferson parishes only pursuant to La. R.S. 33:9126 and 33.9131.

STATE*	LAND LINE FUNDING**	WIRELESS FUNDING**	INDEMNITY
Minnesota - **E** Minn. Stat. §§ 403.01 *et seq.*	**State** surcharge: $.08-$.30/access line plus for E911 funding: $.08-$.30/access line.	**State** surcharge: $.08-$.30/wireless access line for E911 funding. No surcharge on wireless service for E911 pursuant to Minn. Stat. § 403.113 Subd. 1(a).	Not specified in statute.
Mississippi - **E**[11] Miss. Code Ann. §§ 19-5-301 *et seq.*	**Local** surcharges: $1.00/residential wireless access line; $2.00/commercial wireless access line or if current charge is 5% of the tariff rate, the new collection shall be $.80/residential wireless access and $1.60/commercial wireless access line.	**Local** surcharges: "Cellular to be treated the same as land line.	Not specified in statute.
Missouri R.S.Mo. §§ 190.300 *et seq.*	**Local** tax NTE 15% of tariff local service rate or $.75/access line whichever is greater or counties may, if approved by voters, impose a 1% sales tax.	Not specified in statute.	Public agencies or agents thereof not liable for damages except for willful and wanton misconduct or gross negligence; no person who gives emergency instructions through 911 system is liable for damages except for willful and wanton misconduct or gross negligence.
Montana Mont. Code Ann. §§ 10-4-101 *et seq.*	**State** surcharge: $.25/access line.	Not specified in statute.	Not specified in statute.
Nebraska - **E** R.R.S. Neb. §§ 86-1001 *et seq.*	**Local** surcharge: NTE $.50/access line[12]; increase by $.50/access line if metropolitan city in county.	Not specified in statute.	Supplier not liable for damages except for failure to use reasonable care or for intentional acts.
Nevada Nev. Rev. Stat. Ann. §§ 244A.771 *et seq.*	**Local** surcharge: County property tax.	Not specified in statute.	Not specified in statute.

[11] County > 15,000 shall deploy E911 if approved by voters.

[12] Pending legislation would eliminate restrictions on additional amount of surcharge, 1995 NE LB 1118.

STATE*	LAND LINE FUNDING**	WIRELESS FUNDING**	INDEMNITY
New Hampshire - **E** RSA § § 106-H:1 *et seq.*	**State** surcharge: amount not specified in statute.	Not specified in statute.	Not specified in statute.
New Jersey - **E** N.J. Stat. §§ 52:17C-1 *et seq.*	**State**: General Fund	Not specified in statute.	No liability for providing user information or for failure of any equipment or procedure.
New Mexico - **E** N.M. Stat. Ann. §§ 63-9D-1 *et seq.*	**State** Enhanced 911 Fund. Funds collected by local exchange phone companies at $.25 for 911 emergency surcharge plus $.26 for network and database surcharge/access line. **Local** additional surcharge may be imposed.	Not specified in statute.	Suppliers immune from litigation or the payment of damages (specifically includes cellular companies).
New York - **E** NY CLS County §§ 300 *et seq.*	**Local** surcharge NTE $.35/access line.[13]	**Statewide** $.70/access line[14] surcharge collected by local service suppliers to fund special revenue for state police 911-related costs.	Not specified in statute.
North Carolina - **E** N.C. Gen. Stat. §§ 62A-1 *et seq.*	**Local** surcharge: amount not specified in statute.	Not specified in statute.	Suppliers not liable for any damages except for willful or wanton conduct.
North Dakota - **E** N.D. Cent. Code §§ 57-40.6-01 *et seq.*	**Local** surcharge NTE $1.00/access line; E911 database charges authorized but amount not specified.	Not specified in statute.	Suppliers not liable for any damages except for willful and wanton misconduct.

[13] Legislation proposed in 1995, 1995 NY SB 5206, to authorize municipalities in a county with a population of 100,000 or less to impose a surcharge of $1.00 per cess line.

[14] Legislation proposed in 1995, 1995 NY SB 836, to make the monthly 70 cents surcharge on cellular phones payable to a county that operates a cellular 911 ıergency system to which the state police do not respond to defray the county's expense of operating such system and exempts such a county form such surcharge, 1995 NY 3 836, Recommitted to Senate Committee on Local Governments, 1995 and 1995 NY AB 1325, recommitted to Assembly Committee on Local Governments.

STATE*	LAND LINE FUNDING**	WIRELESS FUNDING**	INDEMNITY
Ohio ORC Ann. §§ 4931.40 *et seq.*	**Local** surcharge NTE $.50/access line.	Not specified in statute.	Suppliers not liable for damages.
Oklahoma 63 Okl. St. §§ 2801 *et seq.*	**Local** surcharge NTE 15% of tariff rate/ access line.	Not specified in statute.[15]	Only for "public agency."
Oregon - **E** ORS §§ 401.710 *et seq.*	**State** Emergency Communications Account Fund tax of $.75/access line.	**State** Emergency Communications Account Fund tax of $.75/wireless access line.	Exemption for any person that supplies 911 reporting, equipment or services except for willful and wanton conduct.
Pennsylvania - 35 P.S. §§ 7011 *et seq.*	**Local** fee NTE $1.00-$1.50/access line depending on county classification.	Not specified in statute.	No telephone company, agent or employee liable except for willful or wanton misconduct.
Rhode Island R.I. Gen. Laws §§ 39-21-1 *et seq.*	**State** surcharge: $.47/exchange line.	Not specified in statute.	911 authority and telephone carrier not liable for damages except for gross negligence or wanton and willful misconduct.
South Carolina - **E** S.C. Code Ann. §§ 23-47-10	**Local** surcharge: : $.75-$1.50/subscriber for start-up costs; $.50-$1.00/subscriber for on-going costs.[16]	Not specified in statute.[17]	Public safety agency and agents not liable; service suppliers governed by tariffs.
South Dakota - **E** S.D. Codified Laws §§ 34-45-1 *et seq.*	**State** Coordination Fund: $.01/access line.	Cellular contained in definition of exchange access line.	Service supplier not liable except for willful or wanton negligence or intentional acts; however immunity does not extend to installation or maintenance of system.

[15] 1995 OK SB 1270 enacted May 20, 1996: "The Statewide Emergency 911 Advisory Committee shall, indeveloping its recommendations pursuant to Section 2818.3 of Title 63 of the Oklahoma Statutes, consider the presumption that all providers of dial tone [including wireless] are obligated to participate in the provision of 911 service and its funding."

[16] Legislation proposed in 1995 to authorize the county to charge subscribers with a maximum of ten local exchange lines a charge which is less than other subscribers, 1995 SC HB 3545, to House Committee on Ways and Means, February 8, 1995.

[17] Legislation proposed in 1995 to require that both wire and nonwire telephone subscribers would be equally subject to 911 surcharges, 1995 SC HB 4286, To House Committee on Labor, Commerce and Industry, May 31, 1995.

STATE*	LAND LINE FUNDING**	WIRELESS FUNDING**	INDEMNITY
Tennessee - **E** Tenn. Code Ann. §§ 7-86-101	**Local** emergency communications districts collect levy NTE $.65/residential user and $2.00/business user.	Not specified in statute.	Not specified in statute.
Texas Tex. Health & Safety Code §§ 771-001 *et seq.*	**State** Advisory commission fee NTE $.50/access line for regional planning district and .013% surcharge per intrastate long-distance customer. **Local** communications districts fees according to population: Over 2,000,000 NTE 3% Over 860,000 NTE 3%/user Over 20,000 NTE 6%/user.	Not specified in statute.	Service providers not liable for any claim, damage or loss except for gross negligence, recklessness or intentional misconduct.
Utah Utah Code Ann. §§ 69-2-1 *et seq.*	**Local** surcharge: NTE $.50/access line.	.$50/wireless access line.	Providers not liable for damages except for intent or gross negligence.
Vermont - **E** 30 V.S.A. §§ 7051 *et seq.*	**State** enhanced 911 fund.	**State** enhanced 911 fund.	No person liable for damages except for gross negligence or intentional tort.
Virginia - **E** Va. Code Ann. §§ 58.1-3813; Va. Code Ann. §§ 44-146-23	**Local** tax.	**Local** tax.	Public or private emergency services not liable for damages except for willful misconduct.
Washington - **E** RCW 38.52.500 *et seq.* RCW 82.14B.020 *et seq.*	**Local** tax NTE $.50/access line.	County tax NTE $.25/wireless access line.	Telecom. companies not liable for damages except for gross negligence or wanton or willful misconduct.[18]
West Virginia - **E** W. Va. Code §§ 7-1-3cc; W. Va. Code §§ 24-6-1 *et seq.*	**Local** fee (amount not specified).	Not specified by statute.[19]	Public agencies and agents thereof not liable for damages except for willful or wanton misconduct.

[18] Legislation proposed in 1996 Session to insure long-term funding of the E911 systems and grants immunity from civil liability to emergency communication systems and their employees except for acts or omissions constituting gross negligence or wanton or willful misconduct, 1996 WA HB 2139, to House Committee on Finance, January 8, 1996 and 1995 WA SB 6111, from House Committee on Finance, February 26, 1996. No action taken.

[19] Legislation proposed in 1996 to create a wireless enhanced 911 fee, 1996 WV HB 4383, to House Committee on Judiciary, February 1, 1996 and 1996 WV SB 79, to Senate Committee on Finance. No action taken.

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STATE*	LAND LINE FUNDING**	WIRELESS FUNDING**	INDEMNITY
Wisconsin - **E** Wis. Stat. §§ 146.70	**Local** levy of $.25-$1.00/access line depending on size of population.	Not specified in statute.	Telecommunications utilities not liable to any person who uses emergency number system.
Wyoming Wyo. Stat. §§ 16-9-102 *et seq.*	**Local** charge NTE $.50/access line.	Not specified in statute.	Not specified in statute.

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THE NEED FOR STATE INDEMNITY LEGISLATION TO ENSURE THE BROADEST POSSIBLE IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S REPORT AND ORDER ON ENHANCED 911 EMERGENCY CALLING SYSTEMS

On July 26, 1996, the Federal Communications Commission (FCC) released its Report and Order on Enhanced 911 Emergency Calling Systems, which mandated the implementation of widespread emergency 911 service for wireless communications within five years. *See In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94-102.

The proceedings raised significant questions concerning the potential liability of E911 service providers, equipment manufacturers and installers, system operators, and vendors of E911 services to telephony companies. [hereinafter "E911 service providers"] The FCC determined that, for at least three reasons, it was not necessary to hold E911 service providers harmless for potentially negligent acts such as misrouting emergency calls or dropping calls altogether, stating:

> We conclude that it is unnecessary to exempt providers of E911 service from liability for certain negligent acts, as PCIA and US West request. If the E911 wireless carriers wish to protect themselves from liability for negligence, they may attempt to bind customers to contractual language, require public safety organizations to hold them harmless for liability, as suggested by US West, or, if the liability is caused by the rulings of the Commission, argue that the actions complained of were caused by acts of public authority. We are not persuaded by the argument advanced by some parties that the Commission should provide wireless carriers the same broad immunity from liability that is a product of provisions contained in local exchange carrier tariffs. We conclude that covered carriers can afford themselves similar protection by including similar provisions in their contracts with their customers.

Report and Order, ¶ 99.

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The FCC did not consider whether existing State emergency services statutes could afford E911 service providers the indemnity they need to implement fully the Report and Order and nationwide emergency services. XYPOINT has reviewed State indemnity statutes and the results are as follows:

Only one State - Delaware - makes E911 service providers expressly amenable to claims arising out of the provision of emergency services, although damages are limited to $1 million and comparative fault principles apply.

Fifteen States have no indemnity provisions at all for E911 service providers so presumably a cause of action could arise for negligence associated with emergency services:[1]

Alabama	Maine	Nevada
California	Massachusetts	New Hampshire
Colorado	Minnesota	New York
Hawaii	Mississippi	Tennessee
Kentucky	Montana	Wyoming

Nineteen States provide limited indemnity, either to public entities only or to telephone companies delivering emergency services. Arguments could be made that these statutes should cover the full range of E911 service providers, but there is significant risk that, through litigation, manufactures, installers, maintenance providers, and vendors of E911 services to telephony companies would be held liable for negligent acts notwithstanding the hold harmless provisions applicable to other entities. Thus, these statutes are candidates for clarification concerning the scope of the indemnity.

Connecticut[2]	Missouri[9]	South Carolina[16]
Florida[3]	Nebraska[10]	Utah[17]
Georgia[4]	North Carolina[11]	Washington[18]
Illinois[5]	North Dakota[12]	West Virginia[19]
Indiana[6]	Oklahoma[13]	Wisconsin[20]
Kansas[7]	Pennsylvania[14]	
Louisiana[8]	Rhode Island[15]	

Fifteen States expressly provide for indemnity of E911 service providers by statute:

Alaska	Maryland	Oregon
Arizona	Michigan	South Dakota
Arkansas	New Jersey	Texas
Idaho	New Mexico	Vermont
Iowa	Ohio	Virginia

Each of the States providing indemnity to E911 service providers use a different formulation to achieve the desired result. Idaho, for example, ensures that E911 service providers are not liable in tort for damages alleged to have been caused "by the design, development, installation, maintenance or provision" of emergency services. Idaho Code § 31-4812. Idaho's formulation encourages the broadest possible innovation in the provision of emergency services and encourages private enterprise to enter the emergency services market place to deliver products ranging from the design and implementation of equipment to the maintenance and operation of the system.

Oregon holds harmless anyone that provides reporting equipment or services from claims arising from the "installation, performance, provision, or maintenance of" a emergency services system. ORS § 401.715. Like Idaho, Oregon's statute provides broad protection and encourages the development and implementation of emergency services.

Model indemnity provisions should be developed to ensure that the FCC's mandate for nationwide implementation of enhanced 911 services takes hold sooner rather than later. Existing State legislation provides an excellent starting point for consideration.

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[1] These States may have generic "Good Samaritan" statutes or case authority that could apply to E911 service providers; however, this review was limited to express statutory authority to protect the service provider.

[2] Statute limited to telephone company or agents thereof. Arguably, an E911 service provider could be an agent, but there is a significant risk of a contrary decision.

[3] Statute limited to indemnity of "telephone company" in accordance with its filed tariffs.

[4] Case authority maintained defense of immunity for governmental agency, but such immunity may not extend to private E911 service providers.

[5] Statute only specifies public agencies and "persons giving emergency instructions," which likely pertains to dispatchers, etc.

[6] While the statute covers a telephone company or a "service supplier," the later term is not defined by statute.

[7] Statute covers both a public agency and a wireless carrier, but that term does not by definition cover E911 service providers.

[8] Only several parishes have E911 services and the indemnity appears limited to cellular and wireless communications providers.

[9] Statute covers public agencies and person who give emergency instructions.

[10] The definition of "service provider" is too narrow to cover all E911 service providers.

[11] Statute defines "service provider" too narrowly.

[12] Statute covers public agencies and telecommunications companies.

[13] Statute covers only public agencies.

[14] Statute covers telephone company and agents thereof.

[15] Statute covers "telephone common carrier" only.

[16] Statute covers public agencies and agents thereof.

[17] Statute covers communications providers and local exchange services.

[18] Statute covers a "telecommunications company."

[19] Statute covers public agencies only.

[20] Statute covers telecommunications utilities, which is not defined.

CHECKLIST OF POLICY ISSUES TO ASSIST IN THE DRAFTING OF STATE LEGISLATION TO IMPLEMENT THE FCC WIRELESS E9-1-1 REPORT

This checklist is intended to assist states, wireless carriers and public safety officials in implementing the Federal Communications Commission (FCC) mandate to provide enhanced 9-1-1 service to customers of wireless telecommunications service providers by April 1, 1998. It is based on a 50-state review of existing state 9-1-1 statutes, whether applicable to wireless or wireline, and an assessment of the trends and best practices apparent in those state statutes.

Under the FCC Report & Order on Enhanced 9-1-1 Emergency Calling Systems (94-102), two critical issues emerge for state resolution: reimbursement to and indemnity of E9-1-1 service providers. This checklist is NOT intended to suggest that any particular reimbursement mechanism for E9-1-1 services should be adopted or to specify the appropriate degree of indemnification for service providers. It merely identifies policy considerations for all issues and provides background information to assist states in the development of legislation to meet their needs.

In addition, this checklist identifies the need for standard definitions to accommodate wireless E9-1-1 services and miscellaneous other provisions that require some consideration in any model statute.

☐ **A Common Terminology and Set of Definitions** - The following essential terms should be included in any wireless E9-1-1 statute:

☐ "Automatic Number Identification" or "ANI" means the phone number of the person calling. For wireless communications, ANI is a ten-digit number and a seven-digit number for wireline . State statutes that define ANI only for wireline should most likely be amended to include the wireless definition.

☐ "Automatic Location Identification" or "ALI" for wireline may include the name, address, nearest cross street and special pre-existing conditions such as hazardous materials on-site. Under the FCC Report & Order, for wireless telephony, ALI will include the base station or cell site receiving the 9-1-1 call. State statutes that define ANI only for wireline should most likely be amended.

□ "Enhanced 9-1-1 Service" means a service that automatically provides the Automatic Number Identification and Automatic Location Identification at the Public Safety Answering Point and includes the capability to selectively route incoming 9-1-1 calls to the appropriate Public Safety Answering Point.

□ "Public Safety Answering Point" means a 24-hour communication facility established as an answering location for 9-1-1 calls originating within a certain service area.

□ "E9-1-1 Service Provider" means telecommunications service providers, including local exchange carriers and wireless service providers; and any person that provides equipment or services for the establishment, maintenance, or operation of enhanced 9-1-1 services.

□ Each state will have different terminology to describe a local exchange carrier or telephone company. Expanding the definition to include "wireless" carriers generally will be necessary;

□ The E9-1-1 Service Provider definition should be broad enough to cover 9-1-1 equipment or service vendors, including those engaged in the development, design, installation, operation, maintenance, performance or provision of E9-1-1 equipment or services.

□ **Indemnity** - Under local exchange tariffs, wireline carriers currently enjoy broad indemnity from liability for negligence in providing emergency services. Wireless carriers, of course, are not tariffed. They must rely on statutory exemptions from liability yet only 15 states have indemnity by statute for wireless carriers, while another 19 states have embraced the concept of indemnity for emergency services providers but have not expressly extended the provision to wireless service providers. In the lone state where emergency service providers have potential liability by statute, damages are capped. Thus, the clear trend across the states is to provide emergency services providers with some degree of immunity from liability for negligence. The following are relevant considerations:

□ Indemnity for Private Parties - To encourage innovation and the development and deployment of new E9-1-1 technologies, indemnity should extend to not only telecommunications service providers such as local exchange carriers and wireless service providers, but also to any person that provides E9-1-1 service, vendors of E9-1-1 equipment or service, or those engaged in the development, design, installation, operation, maintenance, performance or provision of E9-1-1 equipment or services.

□ Indemnity for Public Agencies - States have no uniform approach to indemnifying PSAPs and their agents or employees. Each state would have to review its own laws relating to sovereign immunity to reach a decision on extending indemnity to public agents.

□ Scope of Indemnity - Most states hold E9-1-1 service providers harmless for negligent acts or omissions. At least one state indemnifies E9-1-1 service providers completely. Most states that provide indemnity by statute exclude from coverage the willful or wanton misconduct of an E9-1-1 service provider, its employees or agents.

□ **Reimbursement for E9-1-1 Services** - The implementation of E9-1-1 services under the FCC Report and Order is contingent upon the adoption of a cost recovery mechanism for wireless E9-1-1 service providers. The FCC declined to impose a nation-wide funding mechanism, leaving it to service providers and the states to design a cost recovery system for wireless E9-1-1. Service providers will need to recover costs associated with capital investment to modify equipment and software, operation and maintenance of the system and administration of any collection and payment to PSAPs system.

Currently, most state statutes that address 9-1-1 services use general tax revenues to provide PSAP infrastructure and satisfy ongoing PSAP operations and maintenance through a per line subscriber surcharge. Many states require carriers to collect the surcharges as part of the normal billing cycle and to remit funds on a periodic basis to a designated state or local agency or to a state-wide fund. At least twelve states have included wireless service providers in the funding base. Maximum surcharges generally are set by statute. Moreover, statutes generally specify the terms and conditions for disbursement of funds, identifying what equipment and services can be acquired by the PSAP. This traditional model can be amended to permit PSAPs to reimburse wireless E9-1-1 service providers. The amount of reimbursement would be subject to negotiation and contractual agreement between the PSAP and the E9-1-1 service provider or its agent.

Alternatively, carriers could impose a subscriber surcharge to recover the costs of providing emergency services once a PSAP has requested E9-1-1 information. Because carriers are not regulated utilities, the amount of the carrier-imposed surcharge would not be subject to ratemaking. The cost recovery mechanism here would occur completely outside of, or parallel with, the traditional funding process for PSAPs and emergency services. No statutory authorization would be required for this approach.

Checklist requirements and considerations for using existing statutory mechanisms for reimbursement are as follows:

- ☐ Statutory authorization for per line surcharge for both wireline and wireless subscribers;

- ☐ Cap the number of lines surcharged per single subscriber;

- ☐ Provide clear authority for PSAP to reimburse E9-1-1 service provider as many state statutes limit the purpose for which funds can be expended;

- ☐ Surcharge amount must be sufficient to reimburse the E9-1-1 service provider and to provide for authorized PSAP uses such as funding equipment purchases, training emergency services personnel or ongoing operations and maintenance. Many states now have statutory limits on the amount of surcharge that can be collected;

- ☐ Reimbursement of the E9-1-1 service provider may be upon submission of an invoice to the PSAP. Appropriate oversight and audit procedures should be required by statute. Alternatively, E9-1-1 service providers might be authorized to retain their portion of collected surcharges and to remit the balance to the designated state agency or fund;

- ☐ Determine what will be the disposition of excess collected funds. Many states require credits or refunds be paid to subscribers; others allow the excess funds to go to the general revenue fund.

XYPOINT

STATE SOLUTIONS FOR IMPLEMENTING THE FEDERAL COMMUNICATIONS COMMISSION MANDATE TO PROVIDE ENHANCED 911 SERVICE TO CUSTOMERS OF WIRELESS TELECOMMUNICATIONS SERVICE PROVIDERS

I. THE MANDATE FOR E911 SERVICES

On July 26, 1996, the Federal Communications Commission (FCC) released its Report and Order on Enhanced 911 Emergency Calling Systems,[i] taking several important steps to improve the quality and reliability of 911 services available to customers of wireless[ii] telecommunications service providers. In essence, the FCC adopted performance standards for wireless carriers to meet in the delivery of 911 services.[iii] However, actual implementation of the FCC mandate requires resolution of a number of important issues, including funding mechanisms to compensate for 911 services and the appropriate degree of indemnification for service providers.[iv]

In mandating the improvement and availability of enhanced 911 services, the FCC fully recognized the important role States would play in implementation. Indeed, the FCC acknowledged that the implementation of E911 services will require a separate decisional process by many State and local authorities and public safety organizations. Moreover, the FCC stressed that proper incentives would need to be developed to encourage wireless service providers to transition to improved and more extensive network technology and infrastructure to make E911 services robust. These decisions at the State and local level, once taken, will save lives and property and help emergency services personnel to do their jobs more quickly and efficiently.

This White Paper will address the E911 implementation challenges and identify the constructive role States have played and can continue to play in making E911 services broadly available.[v]

II. FUNDING WIRELESS E911 SERVICES

No one during the FCC rulemaking disputed the fundamental notion that carriers must be able to recover the costs of providing E911 services. Thus, the FCC made implementation of E911 services contingent upon the adoption of a cost recovery mechanism. It did not, however, prescribe a particular E911 cost recovery methodology. Rather, the FCC recognized that State and local governments have pursued innovative and diverse means for the funding of wireline E911 services,[vi] and opined that the same would be true for wireless 911 services.

Currently, 33 States do not provide funding expressly by statute for wireless E911 services while providing coverage for wireline 911 services.[vii] Absent some change in these States, State-wide deployment of wireless E911 services will be in doubt.

Twelve States provide funding for wireless carriers through a subscriber surcharge per access line, defined to include a wireless handset.[viii] Several States have employed an emergency services fund to collect, hold, and disburse funds to provide for emergency services.[ix]

It is not the purpose of this White Paper to suggest any specific funding mechanism should be adopted uniformly by States. Indeed, a uniform approach might prove inflexible and disrupt existing funding mechanisms that are working well. Rather, the intent here is to encourage States to act quickly to ensure that wireless E911 service providers can recover the costs of implementing emergency E911 services.

In its simplest form, it may take nothing more that amending a statute that currently applies to landline funding, extending it to wireline.[x] However, States may wish to consider authorizing per line surcharges for wireless customers.[xi] This approach has the benefit of allowing wireless carriers to act as collecting agents through monthly billing procedures, paying over a specified percentage for ongoing operation and maintenance of the PSAP and retaining some percentage for service and administrative compensation.[xii]

If there is any consensus in the FCC Report & Order and from the survey of State statutes, it appears to be generally accepted that taxpayers fund the infrastructure emergency services while ratepayers fund the ongoing operation and maintenance costs. Local taxes or bond issues, at least in the wireline 911 community, have been the main funding vehicle for building our PSAPs.

State-wide emergency services "Funds" have been established by some States to hold and dispense moneys for capital improvements and for payment of costs incurred for providing emergency services. The Funds are often authorized to receive federal funds when available and to disburse funds for a range of activities including the education of the public,[xiii] training PSAP personnel, and equipment purchase and maintenance. When subscriber surcharges form the basis of some component of such a Fund, the authorizing legislation often includes a provision for handling "excess" funds, i.e., those moneys collected in excess of that which is necessary to effect the purpose of the Fund. Some States with such Funds authorize a rebate to subscribers.

In sum, there is no paucity of creative, State-based funding mechanisms available to achieve wide-spread implementation of E911 services. Cost-recovery for wireless carriers easily can be achieved through a subscriber line charge and this would be consistent with how many States have opted to fund the ongoing operation of emergency services.

III. INDEMNIFICATION FOR WIRELESS CARRIERS AND PROVIDERS OF E911 SERVICES AND EQUIPMENT

Equally as important as the funding issue, how States decide to treat wireless carriers for purposes of indemnification will determine how quickly and broadly wireless E911 services become available. Wireless carriers and E911 service and support providers face challenges to providing reliable and timely emergency call-related information, which is inherent in the design of the wireless network and which cannot be eliminated completely. The information to be provided by E911 - call back and eventually location data - will ameliorate much of the wireless limitations as a platform for emergency services. Because new wireless service continues to grow dramatically with personal safety being an important reason for such growth, the FCC and all interested parties to the rulemaking acknowledged the importance of expanding the reach and reliability of E911 wireless service.

The FCC concluded that it was unnecessary to exempt providers of E911 services from liability for certain negligent acts by *federal* rule. The FCC opined that if wireless carriers wished to protect themselves from liability for negligence, they may attempt to bind customers to contractual language or require public safety organizations to hold them harmless for liability. The FCC acknowledged, however, that wireline local exchange carriers enjoyed broad immunity from liability under local exchange carrier tariffs and that it would be appropriate for States to determine the extent of such immunity to be provided to wireless carriers. To ensure that there is no discriminatory treatment of wireless providers in the cost of providing emergency services, it is necessary for States to address the immunity issue expressly.

Currently, 15 States expressly provide immunity for wireless carriers and other enhanced 911 services providers.[xiv] Another 19 States have statutes that embrace the immunity concept for emergency services providers, but the express terms or statutory language needs clarification or updating to cover wireless and other emergency services.[xv] Only one State - Delaware - makes enhanced 911 services providers liable to claims, but even there damages are capped or limited. There is a minority of 15 States without any enhanced 911 services immunity statute at all.[xvi]

States that have enacted indemnity statutes have provided broad coverage not only for the wireless carrier itself, but for any service supplier, including any person

that manufactures or provides the equipment or services necessary for the establishment, maintenance, transmission, routing or operations of emergency services.[xvii] Such broad coverage recognizes that enhanced 911 services in the wireless environment may not always be provided solely by a wireless carrier. Rather, indemnity and other incentives lead to the development of new technologies and services that may be acquired or purchased by wireless carriers from emergency services equipment manufacturers, service providers, or other such vendors to meet the FCC mandate for implementation of ubiquitous emergency services.

Given the FCC mandate to wireless carriers and the desire to improve and extend wireless 911 services, States could take immediate action by statute or regulation where authorized to extend the same protection to wireless carriers that wireline providers enjoy through local tariffs. The appropriate indemnity provision would protect enhanced 911 services providers, including wireless service providers as well as any person that provides equipment or services for the establishment, maintenance, or operation of enhanced 911 services, from any claim of negligence arising from the development, design, installation, operation, maintenance, performance or provision of enhanced 911 equipment or services, including the transmission or routing of emergency calls.

While such an indemnity provision could protect against any liability, the clear trend in most States that provide indemnity to 911 service providers is to exclude from coverage the willful or wanton misconduct of an enhanced 911 services provider, its employees or agents.

Although less critical to the implementation of E911 services, it is worth noting that States that provide indemnity to carriers often provide indemnity to the PSAPs and their employees or agents, or to other public bodies that administer or make policy decisions for 911 services. Whether to include public agencies within the scope of any indemnity is a matter of each individual State's policy.

In sum, addressing the indemnity challenge for wireless carriers and E911 service or support providers is an important prerequisite for deployment of new technologies that will improve the availability and reliability of emergency information.

IV. CONCLUSION

States hold the keys to ensuring a rapid deployment of E911 services. If States did nothing more than address the funding mechanism for wireless E911 services and indemnity for E911 service providers through appropriate legislation or rulemaking,[xviii]

the vision of State-wide, nation-wide, E911 services for wireless phone users would be close at hand.

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[i] *See* Report and Order and Further Notice of Proposed Rulemaking In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, (June 12, 1996) [hereinafter "Report & Order"].

[ii] Wireless carriers include all cellular licensees, broadband PCS licensees and certain Specialize Mobile Radio licensees.

[iii] The FCC mandated, among other things, that the following requirements be met by wireless carriers:

- Not more than 12 months after the effective date of the adopted rules, wireless carriers must process and transmit to any appropriate Public Safety Answering Point (PSAP) all 911 calls made from a wireless phone that transmits a code identification, including calls initiated by "roamers" or subscribers of another carrier using a wireless phone outside of the home service area;

- Not more than 12 months after the effective date of the adopted rules, wireless carriers must have initiated actions necessary to enable them to relay a caller's Automatic Number Identification (ANI) and the location of the base station or cell site receiving a 911 call to the designated PSAP. Not later than 18 months after the effective date of the adopted rules, a wireless carrier must have completed these actions, which will allow the PSAP to call back if the 911 call is disconnected. [Phase I]

- Not later than 5 years after the effective date of the adopted rules, wireless carriers are required to achieve the capability to identify the latitude and longitude of a wireless handset making a 911 call, within a radius of no more than 125 meters in 67 percent of the all cases. [Phase II]

[iv] The FCC recognized that Phase I and II requirements would only be required if the PSAP is capable of receiving such data and if a mechanism for the recovery of costs relating to the provisions of such services is in place.

[v] The FCC preempted state actions that are incompatible with the policies and rules adopted in the Report & Order however, it did not preempt any existing state regulation as part of the rulemaking, reserving such decision for a case-by-case review. Nothing in the preemption decision suggests that it was intended to restrict state policies on the means or method funding 911 services or the scope of any indemnity that might be provided to E911 service providers.

[vi] For example, Massachusetts funds wireline 911 services through a state-wide surcharge on directory assistance. Mass. Ann. Laws ch. 6A, § 18A.

[vii] Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Missouri Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, West Virginia, Wisconsin, Wyoming. In addition, Illinois, specifically excludes wireless

communications from the definition of telecommunications carrier, which results in only funding land line services.

[viii] Connecticut, Georgia, Louisiana, Maine, Maryland, Minnesota, Mississippi, New York, Oregon, South Dakota, Utah, Washington. In addition, Vermont has a state enhanced 911 fund; Virginia utilizes local taxes.

[ix] Connecticut, New Mexico, Oregon and Vermont.

[x] For example, Mississippi recently provided that cellular service providers were to be treated the same way as landline operators. *See* Miss. Code Ann. §§ 19-5-301 *et seq.*

[xi] States that follow this approach also cap the number of phones owned or operated by a single subscriber, usually a business, that are amenable to the surcharge. Thus, entities that are dependent upon mobile communications for their business are not penalized.

[xii] Most statutes that follow this approach excuse the carrier from any obligation to take action to collect the surcharge other than through normal billing, leaving it to the state authority to take appropriate legal action.

[xiii] As the FCC noted, education of the public as to the limitations of 911 services in wireless communications is a necessity.

[xiv] Alaska, Arizona, Arkansas, Idaho, Iowa, Maryland, Michigan, New Jersey, New Mexico, Ohio, Oregon, South Dakota, Texas, Vermont, and Virginia.

[xv] Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Washington, West Virginia and Wisconsin.

[xvi] Alabama, California, Colorado, Hawaii, Kentucky, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New York, Tennessee and Wyoming.

[xvii] *See e.g.*, Alaska Stat. § 29.35.133 ("Except for intentional acts of misconduct or gross negligence, a service supplier, local exchange telephone company, or mobile telephone company, including a cellular service company, and their employees and agents, are also immune from tort liability that might otherwise be incurred in the course of installing, training, maintaining, or providing enhanced 911 systems or transmitting or receiving calls on the system.").

[xviii] Of course, other issues could be addressed in model legislation for implementing wireless E911 services as well such as the appropriate level of privacy protection for the information that forms the basis of any E911 database.