

would have relatively nominal costs of data maintenance, the total cost of maintaining the data base is estimated to range from \$10 to \$100 per month. The present value of these costs based on five years at 7.5% interest would be \$500 - \$5,000 per month, for total costs of \$1,000 to \$6,000 per system.

Based on the foregoing discussion, total estimated costs of compliance range from roughly \$15,000 to \$30,000, including equipment costs of \$10,000 to \$20,000. Retail prices for small CPE systems are in the range of \$500 to \$600 per station. MMTA, 1996 Multimedia Telecommunications Market Review and Forecast 94, 106. Thus, the CPE-related cost of compliance with the Illinois statute effectively increases the cost of a 200-station PBX by 8% to 20%. The cost of a 50-station key/hybrid system would increase by some 33% to 80%, the cost of a 20-station system would increase by 83% to 200%, and the cost of smaller systems would increase by even greater percentages. At these levels, costs of compliance with the Illinois 911 CPE statute will dramatically reduce the competitiveness of larger key/hybrid systems and small PBXs, while making it prohibitive to market smaller key systems, except to users that have no other alternatives.

Given the large number of small CPE systems that are sold annually, the aggregate costs of compliance would be in the millions of dollars. MMTA estimates that, nationwide, in 1995, 54,000 key/hybrid systems in the 25-48 station size range were sold, and 22,000 key/hybrid systems in the 49+ station size range were sold. North American Telecommunications Association, 1995 Telecommunications Market Review and Forecast 99. In addition, about 15,000 PBXs of less than 100 stations were sold in 1995. Id. at 106. Taking into account that there were also several thousand PBX systems sold

in the 100-199 station size range (id.), the total number of systems of 25 to 200 stations sold in 1995 is in the neighborhood of 95,000. It is conservative to estimate that about 2.5% - 3% of these systems, or roughly 2,500, were sold in Illinois.<sup>9</sup> Total compliance costs for these systems, based on a cost range of \$15,000 to \$30,000 per system, appear to be in the range of \$37 - \$75 million per year.

In addition, MMTA estimates that some 190,000 key/hybrid systems of less than 25 stations were sold in 1995. Of this total, we estimate that in the neighborhood of 5,000 were sold in Illinois. If these systems were all connected to adjunct equipment, total costs for the below-25 class would be \$75 - \$150 million, bringing total compliance costs for all below-200 station CPE systems to approximately \$112 - \$225 million.

Note that all these numbers assume that CPE systems can be configured to work with adjuncts. As discussed above, not all CPE systems are even capable of being brought into compliance, and some CPE systems can be brought into compliance only after extensive modification. Although MMTA was not able to quantify the costs imposed by the premature forced obsolescence of some key systems, the costs are undoubtedly considerable.<sup>10</sup>

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<sup>9</sup> **Illinois accounts for about 3% of the analog multiline business access lines in the United States. Statistics of Common Carriers, 1993, table 25. Illinois accounted for about 2.8% of U.S. population growth between 1990 and 1994. Statistical Abstract of the United States, 1995, table No. 27.**

<sup>10</sup> The cost estimates also do not take account of the indirect nationwide impact of Illinois' statute. As discussed above, users with nationwide operations frequently standardize their operations around a particular model. If the model is eliminated from the Illinois market because of incompatibility or excessive compliance costs, additional costs will be imposed as some customers change out their equipment nationwide.

On the other hand, alternatives to adjuncts may eventually be found, including approaches that are less costly for systems in the under-25 station category.

Considering all these factors, \$100 million appears to be a conservative estimate of aggregate annual costs of compliance with Illinois' CPE statute.

In summary, the cost estimates obtained by MMTA show that the cost of compliance with the Illinois 911 CPE statute will be extremely burdensome to business users, both in the aggregate and in proportion to equipment costs.

## II. THE ILLINOIS 911 CPE STATUTE IS PREEMPTED

Under the Communications Act, otherwise valid state regulation may be preempted, notwithstanding Section 2(b) of the Communications Act (47 U.S.C. § 152(b)), if it is not possible "to separate the interstate and intrastate aspects of the asserted FCC regulation." Louisiana Public Service Commission v. FCC, 476 U.S. 355, 375 n.4 (1986); California v. FCC, 76 RR 2d 549, 557-58 (D.C. Cir. 1994).

It has long been recognized that, in the area of deregulation of CPE and interconnection of CPE, state and federal regulation cannot be effectively separated and state regulation must give way where it conflicts with federal policy. North Carolina Utilities Commission v. FCC, 537 F.2d 787 (1976), cert. denied 429 U.S. 1027 (1976) (D.C. Cir.), (1977) ("NCUC I"); North Carolina Utilities Commission v. FCC, 552 F.2d 1036 (D.C. Cir. 1977) cert. denied 434 U.S. 874 ("NCUC II"); Computer and Communications Industry Association v. FCC, 693 F.2d 198 (1982) cert. denied 461 U.S. 938 (1983) (D.C. Cir.) ("CCIA").

A. The Illinois Statute Conflicts With Federal Policy  
Deregulating CPE

The Illinois 911 CPE statute purports to regulate owners of business CPE as "private business switch service" providers. Specifically, the Illinois statute seeks to impose public utility obligations on CPE owners, requiring them to provide a certain grade of "9-1-1 service" to their "end users" (i.e., employees of the business owning the CPE). Such regulation of private business CPE is directly contrary to the Commission's Computer II decision.<sup>11</sup> In Computer II, the Commission determined that CPE is not part of a common carrier service and must not be regulated as a common carrier service. The Illinois statute's attempt to reregulate CPE by characterizing it as a "private business switch service" is fundamentally contrary to Computer II.<sup>12</sup>

B. The Illinois Statute Impermissibly Burdens Interconnection  
Of CPE

The Illinois statute also imposes burdensome conditions on the interconnection of CPE, in violation of customers' equipment interconnection rights under longstanding federal regulations and policies. Since 1968, the Commission has recognized the right of an owner of CPE to use the equipment in "ways that are privately beneficial without being publicly detrimental." Carterfone, 13 FCC 2d 420, recon.

<sup>11</sup> Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II), 77 FCC 2d 384 (1980) (Final Decision), modified on recon., 84 FCC 2d 50 (1981) (Reconsideration Order), modified on further recon., 88 FCC 2d 517 (1981), (Further Reconsideration Order), aff'd, CCIA.

<sup>12</sup> By contrast, the Commission has not preempted state regulation of the use of CPE to resell intrastate services such as shared telecommunications services. International Business Machines Corp., Memorandum Opinion and Order, File No. ENF 85-45, FCC 86-25 (released January 27, 1986). As discussed above, Illinois' 911 CPE statute – unlike other state 911 statutes – is much broader in scope than regulation of shared services.

denied, 14 FCC 2d 571 (1968). The Commission has unequivocally "occupied the field" with respect to regulation of the interconnection of CPE. Interstate and Foreign Message Toll Telephone Service, First Report and Order, 56 FCC 2d 593 (1975), Second Report and Order, 58 FCC 2d 716 (1976), aff'd, NCUC II. Under longstanding FCC decisions, state regulations that attempt to impose stricter conditions on the interconnection of equipment than those imposed by the FCC are preempted. Telerent Leasing Corp., 45 FCC 2d 204 (1974), aff'd, NCUC I; Atlantic Richfield Co., 3 FCC Rcd 3089 (1988)("ARCO"), aff'd, Public Utility Commission of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989) ("PUCT"). Further, regulation of CPE is preempted even though the FCC has not adopted the same type of regulations. CCIA, 693 F.2d at 217.

Illinois' 911 CPE statute imposes interconnection requirements that go far beyond the reach of federal Part 68 requirements.<sup>13</sup> Accordingly, since Part 68 occupies the field with respect to conditions for the interconnection of equipment, the Illinois 911 statute conflicts with Part 68 and is preempted by it. Illinois' 911 CPE statute also impermissibly burdens the interconnection of CPE. Business users wishing to interconnect multiline CPE are required to undergo great cost in order to add complex additional transmission capabilities that are not usable for any purpose other than identifying calling station numbers for 911 calls. In some instances, CPE purchased by users cannot be brought into compliance with these requirements at all, or can only be brought into compliance after extensive modification of the equipment itself. Even where it is feasible to comply with the Illinois statute through the use of "adjunct" equipment, the costs of compliance are extremely burdensome. The Illinois statute

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<sup>13</sup> The harm at which Illinois' 911 CPE statute is directed is not a "harm" that is recognized by the current Part 68 rules. 47 C.F.R. § 68.3.

therefore runs directly counter to the Commission's Carterfone and Telerent policies allowing users to freely interconnect equipment that is "privately beneficial without being publicly detrimental" and is preempted by those rulings.

The need for preemption of Illinois' 911 CPE statute is particularly compelling because, while CPE restrictions impose a quantifiably great burden on owners of small CPE systems, the FCC's Docket No. 94-102 proceeding has produced no substantial evidence that CPE restrictions such as Illinois' are necessary to prevent a significant "public detriment." Indeed, the case for preemption is for stronger than in ARCO. In ARCO, the petitioner rated public network traffic over private microwave facilities in order to interconnect with a different telephone company because it was "unhappy with the quality and reliability" of the interconnection provided by General Telephone of the Southwest. ARCO, 3 FCC Rcd at 3089. The FCC preempted a Texas commission order restricting such interconnection even though ARCO provided no quantitative evidence of the burden imposed by the Texas order. In upholding the FCC's preemption, the court of appeals found that it was entirely appropriate for the FCC, in applying its long-established, liberal interconnection policy, on the one hand, to require "rigorous, quantitative evidence" of the "public detriment" justifying state restrictions on interconnection, and on the other hand, to assume, without quantitative evidence, that a private business' interconnection of CPE or facilities is "privately beneficial." PUCT, 886 F.2d at 1337.

Here, the evidence of "public detriment" is equally sparse, and the evidence of private benefit is far more compelling than in ARCO. It is clearly "privately beneficial" for business users to be free from Illinois' restrictions on their interconnection of CPE,

because the cost to users of adapting their CPE to comply with the Illinois statute is demonstrably very high.

C. The FCC Is Considering Uniform Nationwide Regulations To Address The Concerns Underlying The Illinois Statute

Preemption of the Illinois statute is clearly in the public interest, because any legitimate concerns underlying the Illinois statute can be effectively addressed by adopting rules pursuant to the ongoing FCC rulemaking proceeding on the very subject that the Illinois statute seeks to address. As the Commission appears to recognize in its NPRM, ¶ 59, regulation of CPE capabilities for handling 911 calls should be done at the federal level because federal rules will provide comprehensive protection of any legitimate public safety interests while enabling manufacturers to design equipment to a single nationwide standard.

III. RELIEF

The Commission should immediately declare that the Illinois 911 CPE statute is preempted. At a minimum, the Commission should declare that the Illinois 911 CPE statute is preempted with respect to its application to CPE systems of 200 stations or less. As in other instances where states have sought to regulate the interconnection of CPE, it is not possible "to separate the interstate and intrastate aspects of the asserted

FCC regulation." (Louisiana, 476 U.S. at 375, n. 4), and the state law effectively negates the federal policy recognizing the user's right to interconnect privately beneficial CPE. Cf. California, 76 RR 2d at 551-58.

April 12, 1996

Respectfully submitted,



Albert H. Kramer

Robert F. Aldrich

David B. Jeppsen

DICKSTEIN, SHAPIRO & MORIN, L.L.P.

2101 L Street, N.W.

Washington, D.C. 20037-1526

(202) 828-2236

Attorneys for MultiMedia

Telecommunications Association

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

**ATTACHMENT 1**

**ILLINOIS' EMERGENCY TELEPHONE  
SYSTEM ACT**

**50 ILCS 750/0.01 - 750/16 (1996)**

LEVEL 1 - 1 OF 48 SECTIONS

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CHAPTER 50. LOCAL GOVERNMENT  
POLICE, FIRE, AND EMERGENCY SERVICES  
EMERGENCY TELEPHONE SYSTEM ACT

50 ILCS 750/0.01 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
30.01]

§ 50 ILCS 750/0.01. [Short title]

Sec. 0.01. This Act shall be known and may be cited as the "Emergency  
Telephone System Act".

HISTORY:

Source: P.A. 85-978.

NOTES:

DERIVATION.

Title: An Act in relation to the designation of an emergency telephone number  
for use throughout the State.

Cite: 50 ILCS 750/0.01 et seq.

Source: P.A. 79-1092.

Date: Approved September 25, 1975.

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 30.01.



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50 ILCS 750/1 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
31]

§ 50 ILCS 750/1. [Legislative findings]

Sec. 1. The General Assembly finds and declares that it is in the public interest to shorten the time required for a citizen to request and receive emergency aid. There currently exist thousands of different emergency phone numbers throughout the state, and present telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries. Provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public service efforts by making it less difficult to quickly notify public safety personnel. Such a simplified means of procuring emergency services will result in the saving of life, a reduction in the destruction of property, quicker apprehension of criminals, and ultimately the saving of money. The General Assembly further finds and declares that the establishment of a uniform, statewide emergency number is a matter of statewide concern and interest to all inhabitants and citizens of this State. It is the purpose of this Act to establish the number "9-1-1" as the primary emergency telephone number for use in this State and to encourage units of local government and combinations of such units to develop and improve emergency communication procedures and facilities in such a manner as to be able to quickly respond to any person calling the telephone number "9-1-1" seeking police, fire, medical, rescue, and other emergency services.

HISTORY:

Source: P.A. 85-978.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 31.



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50 ILCS 750/2 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32]

§ 50 ILCS 750/2. [Definitions]

Sec. 2. As used in this Act, the terms defined in Sections following this Section and preceding Section 3 [50 ILCS 750/3] have the meanings ascribed to them in those Sections.

HISTORY:

Source: P.A. 79-1092; 88-497, § 5.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.

EFFECT OF AMENDMENTS.

The 1993 amendment by P.A. 88-497, effective September 13, 1993, substituted "following this Section and preceding Section 3" for "2.01 through 2.09".



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50 ILCS 750/2.01 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.01]

§ 50 ILCS 750/2.01. [Public agency defined]

Sec. 2.01. "Public agency" means the State, and any unit of local government or special purpose district located in whole or in part within this State which provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services.

HISTORY:

Source: P.A. 79-1092.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.01.



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50 ILCS 750/2.02 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.02]

§ 50 ILCS 750/2.02. [Public safety agency defined]

Sec. 2.02. "Public safety agency" means a functional division of a public  
agency which provides firefighting, police, medical, or other emergency  
services.

HISTORY:

Source: P.A. 79-1092.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.02.



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50 ILCS 750/2.03 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.03]

§ 50 ILCS 750/2.03. [Direct dispatch method defined]

Sec. 2.03. "Direct dispatch method" means a telephone service providing for the dispatch of an appropriate emergency service unit upon receipt of a telephone request for such services and a decision as to the proper action to be taken.

HISTORY:

Source: P.A. 79-1092.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.03.



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50 ILCS 750/2.04 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.04]

§ 50 ILCS 750/2.04. [Relay method defined]

Sec. 2.04. "Relay method" means a telephone service whereby pertinent information is noted by the recipient of a telephone request for emergency services, and is relayed to appropriate public safety agencies or other providers of emergency services for dispatch of an emergency service unit.

HISTORY:

Source: P.A. 79-1092.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.04.



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50 ILCS 750/2.05 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.05]

§ 50 ILCS 750/2.05. [Transfer method defined]

Sec. 2.05. "Transfer method" means a telephone service which receives  
telephone requests for emergency services and directly transfers such requests  
to an appropriate public safety agency or other provider of emergency services.

HISTORY:

Source: P.A. 79-1092.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.05.



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50 ILCS 750/2.06 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.06]

§ 50 ILCS 750/2.06. [Referral method defined]

Sec. 2.06. "Referral method" means a telephone service which, upon the receipt of a telephone request for emergency services, provides the requesting party with the telephone number of the appropriate public safety agency or other provider of emergency services.

HISTORY:

Source: P.A. 79-1092.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.06.



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50 ILCS 750/2.06a (1996)

§ 50 ILCS 750/2.06a. System

Sec. 2.06a. System. "System" means the communications equipment required to produce a response by the appropriate emergency public safety agency as a result of an emergency call being placed to 9-1-1.

**HISTORY:**

Source: P.A. 87-1244, § 10; 88-604, § 3.

**NOTES:**

**EFFECTIVE DATE.**

Section 15 of P.A. 87-1244 made this section effective December 31, 1992.

**EFFECT OF AMENDMENTS.**

The 1994 amendment by P.A. 88-604, effective September 1, 1994, substituted "safety" for "service".



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50 ILCS 750/2.07 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.07]

§ 50 ILCS 750/2.07. [Basic system defined]

Sec. 2.07. "Basic system" means a telephone service which automatically connects a person dialing the digits "911" to an established public safety answering point through normal telephone service facilities.

HISTORY:

Source: P.A. 79-1092.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.07.



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50 ILCS 750/2.08 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.08]

§ 50 ILCS 750/2.08. [Sophisticated system defined]

Sec. 2.08. "Sophisticated system" means a basic system with the additional capability of automatic identification of the caller's number, holding the incoming call, reconnection on the same telephone line, clearing a telephone line, or automatic call routing or any other capability or features then available or combinations of such capabilities.

HISTORY:

Source: P.A. 85-978.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.08.



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50 ILCS 750/2.09 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.09]

§ 50 ILCS 750/2.09. [Commission defined]

Sec. 2.09. "Commission" means the Illinois Commerce Commission.

HISTORY:

Source: P.A. 79-1092.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.09.



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50 ILCS 750/2.10 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.10]

§ 50 ILCS 750/2.10. [Implementation date defined]

Sec. 2.10. "Implementation date" means the effective date of a public act,  
other than this amendatory Act of 1987, providing all local public agencies  
affected by this Act with a specific source or sources of revenue for payment of  
the total costs of establishing or upgrading, operating and maintaining the  
emergency telephone systems required by this Act.

HISTORY:

Source: P.A. 85-978.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.10.



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50 ILCS 750/2.11 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.11]

§ 50 ILCS 750/2.11. [Board defined]

Sec. 2.11. "Board" means an Emergency Telephone System Board or a Joint  
Emergency Telephone System Board created pursuant to Section 15.4 [50 ILCS  
750/15.4].

HISTORY:

Source: P.A. 85-978.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.11.



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\*\*\* THIS SECTION IS CURRENT THROUGH PUBLIC ACT 89-444 (APPROVED  
1-25-96) \*\*\*  
\*\*\* (1996 REGULAR SESSION) \*\*\*

CHAPTER 50. LOCAL GOVERNMENT  
POLICE, FIRE, AND EMERGENCY SERVICES  
EMERGENCY TELEPHONE SYSTEM ACT

50 ILCS 750/2.12 (1996)

OLD-CITE: [Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 134, para.  
32.12]

§ 50 ILCS 750/2.12. [Network connections defined; sophisticated features;  
telecommunications carrier defined]

Sec. 2.12. (a) For the purposes of this Act, "network connections" means the number of voice grade communications channels directly between a subscriber and a telecommunications carrier's public switched network without the intervention of any other telecommunications carrier's switched network which would be required to carry the subscriber's inter-premises traffic, which connection either (1) is capable of providing access through the public switched network to a 9-1-1 Emergency Telephone System if one exists, or, (2) if no system exists at the time a surcharge is imposed under Section 15.3 [50 ILCS 750/15.3] which would be capable of providing access through the public switched network to the local 9-1-1 Emergency Telephone System if one existed.

(b) For the purposes of this Act, no telecommunications carrier providing facilities-based local exchange telecommunications service prior to January 1, 1986 shall be required to offer or provide sophisticated 9-1-1 system features such as selective call routing in any area where that carrier's local switching facility does not have the capability to do so.

(c) For the purposes of this Act, "telecommunication carrier" does not include a cellular or other mobile communication carrier.

HISTORY:

Source: P.A. 86-101; 87-167.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 134, para. 32.12.

