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ATTACHMENT 4

**DECLARATION OF
RICHARD P. BUCCI**

DECLARATION OF RICHARD P. BUCCI

I, Richard P. Bucci, declare that:

1. I am Director of Corporate Communications at Comdial Corporation. I have been employed with Comdial since 1986, and have been employed in the telecommunications industry since 1974. I have a Master's Degree in Business Administration from Case-Western Reserve University. Among my responsibilities at Comdial is preparing the Company's formal business plan. This requires that I develop and maintain a good working knowledge of significant technology trends and the size and complexion of the marketplace for small to medium-sized business telephone systems. In addition, I serve as a Board Member for the MultiMedia Telecommunications Association (MMTA), a national trade organization representing the interests of telecommunications equipment providers.

2. Comdial Corporation designs and manufactures small to medium-sized business telecommunications systems (hereafter referred to as "telephone systems" or "systems"). All engineering, manufacturing, and administration is conducted from the Company's headquarters facility in Charlottesville, Virginia. The Company's products are used by businesses, governments, and nonprofit organizations. Comdial's systems serve applications requiring from four to 400 telephones, with the typical installation requiring 40 or fewer telephones. Comdial is a publicly traded company, with 1995 sales of \$94.8 million. As of year-end, 1995, the Company had 849 full-time employees.

3. Comdial manufactures both analog and digital telephone systems. In 1995, analog systems comprised 23.4 percent of the Company's revenues and digital systems comprised 54.5 percent. Certain digital systems, the DXP and DXP Plus, which serve primarily applications requiring from 40 to 400 telephones, are designed with an Open Application Interface (OAI). This OAI is used for creating a logical communications link between the DXP's operating system and external computers, computer networks, or software controlled external devices. None of Comdial's other systems (either analog or digital) have such capability.

4. We are aware of various state efforts to mandate additional functional capabilities for telephone systems to help assure a consistent pass-through of profile data from callers placing enhanced emergency (E 9-1-1) calls. "Enhanced" 9-1-1 calls can deliver valuable information such as the calling number and the address from which the call originated.

5. At this time, there is no economically viable technical solution for passing the calling party's telephone number and extension number through an analog system, or most digital systems, to an E 9-1-1 Public Safety Answering Point (PSAP). There are certain adjunct devices which can transmit this information to the network, but they can currently function only with selected digital systems which provide a special data link between the telephone system's operating software and the adjunct device. Comdial's DXP and DXP Plus offer OAI capability, and could be configured to pass extension information, provided that third party software were available to maintain a relevant data base on extension users and pass along selected data with the call.

6. MMTA, in their publication 1996 MultiMedia Telecommunications Market Review and Forecast estimates that there are approximately 2.7 million small to medium-sized business telephone systems currently installed in the U.S. Based on the information available to Comdial, only a small proportion of these systems could accommodate the few readily available adjunct devices capable of passing the extension number of the individual caller to the PSAP. The estimated end user cost for the additional hardware, software, installation, and first year maintenance would be about \$15,000 for each installation, assuming the business already had a digital system with an OAI. For the typical small business (5 - 20 employees), which currently has an analog system, the combined cost for a new OAI-equipped digital system from Comdial, the adjunct device, and the software link between the system and the device, could easily reach \$25,000. This is far beyond the reach of many small businesses, and would no doubt force some to go out of business. If Comdial could only manufacture DXP and DXP Plus switches, over half of its revenues could be lost.

I declare under penalty of perjury under the laws of the United States that to the best of my knowledge the foregoing is true and correct.

Executed on April 10, 1996


Richard P. Bucci

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ILLINOIS
STATE OF ILLINOIS
DEPARTMENT OF REVENUE

ATTACHMENT 5

**ESTIMATED COST TO A SMALL CPE
SYSTEM OWNER OF COMPLIANCE
WITH ILLINOIS 911 CPE STATUTE**

ATTACHMENT 5

ESTIMATED COST TO A SMALL CPE
SYSTEM OWNER OF COMPLIANCE
WITH ILLINOIS 911 CPE STATUTE

1. ESTIMATED RETAIL PRICE OF 911 ADJUNCT EQUIPMENT

RETAIL PRICE -	\$15,000 - \$20,000 (if reduced by 1/3), <u>\$10,000 - \$20,000</u>
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2. ESTIMATED PRESENT VALUE OF CAMA TRUNK CHARGES

INSTALLATION TO TWO CAMA TRUNK	\$ 1,000
MONTHLY CHARGES FOR TWO CAMA TRUNKS	\$ 70 - \$ 100
PRESENT VALUE OF 5 YEARS' PAYMENTS BASED ON 7.5% INTEREST	<u>\$ 3,500 - \$ 5,000</u>
TOTAL	<u>\$ 4,500 - \$ 6,000</u>

3. ESTIMATED PRESENT VALUE OF DATA BASE MAINTENANCE COSTS

START-UP COSTS	\$ 500 - \$ 1,000
MONTHLY COSTS	\$ 10 - \$ 100
PRESENT VALUE OF 5 YEARS MONTHLY PAYMENT BASED ON 7.5% INTEREST	\$ 500 - \$ 5,000
TOTAL	<u>\$ 1,000 - \$ 6,000</u>
<u>GRAND TOTAL</u>	<u>\$15,000 - \$30,000</u>

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAY 22 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Emergency Petition of the MultiMedia
Telecommunications Association for a
Declaratory Ruling that Illinois'
Regulation of Premises Equipment
Used for 911 Dialing is Preempted
by Federal Law

REPLY OF

MULTI-MEDIA TELECOMMUNICATIONS ASSOCIATION

TO COMMENTS ON ITS

EMERGENCY PETITION FOR DECLARATORY RULING

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN, SHAPIRO & MORIN, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2236

Attorneys for MultiMedia
Telecommunications Association

May 22, 1996

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Emergency Petition of the MultiMedia
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Declaratory Ruling that Illinois'
Regulation of Premises Equipment
Used for 911 Dialing is Preempted
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REPLY OF

THE MULTI-MEDIA TELECOMMUNICATIONS ASSOCIATION
TO COMMENTS ON ITS
EMERGENCY PETITION FOR DECLARATORY RULING

The MultiMedia Telecommunications Association ("MMTA") hereby replies to comments and oppositions filed in response to MMTA's petition for a declaratory ruling that Section 750/15.6 of Chapter 50 of Illinois Consolidated Statutes ("Illinois' 911 CPE statute"), which requires all multiline¹ customer premises equipment ("CPE") to transmit the calling station number on emergency 911 calls, is preempted by the Communications Act of 1934 and the FCC's rules promulgated thereunder.

I. **THE RECENT AMENDMENT TO ILLINOIS' 911 CPE STATUTE
DOES NOT ELIMINATE THE NEED FOR FCC PREEMPTION**

The Illinois Attorney General and others argue that the Commission need not act because MMTA's concerns are addressed by recent legislative actions. Specifically,

¹ "Multiline" CPE systems are systems that serve more than one network access line and more than one station set.

on May 15, 1996 the Illinois legislature voted to amend Illinois' 911 CPE statute's definition of "private business switch service" to exempt "key telephone systems or equivalent telephone systems" from the scope of the statute. The provision as amended reads as follows:

"Private business switch service" means a telecommunications service including centrex type service and private branch exchange service (PBX), even though and key telephone systems or equivalent telephone systems registered with the FCC under 47 CFR Part 68 are directly connected to centrex type and PBX systems providing 9-1-1 services equipped for switched local network connections or 9-1-1 system access to business end users through a private telephone switch. The term "private business switch service" does not include key telephone systems or equivalent telephone systems registered with the FCC under 47 C.F.R. Part 68 when not used in conjunction with centrex type and PBX systems. "Private business switch service" typically includes, but is not limited to, private businesses, corporations, and industries where the telecommunications service is primarily for conducting business.

50 ILCS 750/2.16 (new language is underlined). The same change is made to the definition of "private residential switch service." In addition, a provision is added to the statute to exempt "any PBX telephone extension that uses radio transmissions to convey electrical signals directly between the telephone extensions and the serving PBX."

A. No Additional Comment Cycle Is Necessary

The Commission should not request additional comments on the effect of the amendment to Illinois' 911 CPE statute on this proceeding. Several of the parties opposing the petition attached copies of the pending amendment to their oppositions, and most parties included some discussion of the amendment in their comments or oppositions. The parties that did not discuss the amendment have the opportunity to do so in the reply round. Thus, all parties will have had a reasonable opportunity to comment on how the pending amendment should affect the disposition of MMTA's

petition. MMTA's position, discussed below, is that the amendment does not remove the need to preempt Illinois' 911 CPE statute.

B. The Amendment Does Not Remove The Need To Preempt Illinois' 911 CPE Statute

In passing this amendment, the Illinois legislature has recognized that compliance with the Illinois 911 statute is indeed extremely burdensome for owners of small CPE systems, and that the burden outweighs any gains in public safety. However, assuming that this amendment is signed by the governor, the amendment is not sufficient to remove the need for the Commission to preempt the Illinois 911 statute. As Lucent Technologies points out, the amendment "could partially cure the overbreadth and unnecessary cost burden the Illinois statute imposes on small businesses." Lucent at 3. Thus, the amendment clearly removes the burden on owners of CPE that is registered as a "key telephone system" under Part 68 and configured as a key system on the user's premises. However, the amendment does not alleviate the statute's burden on small system customers – whose CPE systems do not qualify as "key telephone systems or equivalent systems."

Moreover, there are significant ambiguities in the provision as amended. For example, it is not clear what is meant by the term "equivalent telephone systems." Depending on the interpretation, the bill could (1) exempt only key systems while continuing to cover hybrid and PBX systems, (2) exempt only key and hybrid systems while continuing to cover small PBX systems, (3) exempt some hybrid systems while covering others, or (4) exempt all key, and hybrid, and PBX systems that are small enough to qualify under some appropriate size standard of what is considered

"equivalent" to key systems. It is also arguable whether systems are to be identified as "key," "equivalent," or "PBX" (1) based on their FCC registration documents or (2) based on the actual configuration of the system on the customer's premises. If the latter, it is not clear where the line is to be drawn between "key" and "equivalent," on the one hand, and "PBX" on the other.²

Because of these ambiguities, Illinois' 911 statute is likely to continue to interfere with the marketing of small CPE systems in Illinois, and to generate exposure to liability in the event of personal injury litigation involving late responses to 911 calls.

As discussed below, the parties opposing MMTA's petition have not rebutted the petition's demonstration that Illinois' 911 CPE statute burdens the interconnection of CPE, that most small CPE systems have not been shown to pose a significant 911 safety problem, and that, under applicable FCC and court precedent, the Commission is legally compelled to preempt Illinois' 911 CPE statute. Even with the recent amendment to the statute, owners of small CPE systems that do not or may not qualify as "key telephone systems or equivalent telephone systems" will be burdened with unreasonably high compliance costs. Owners of the other small systems will continue to suffer uncertainty about whether the statute requires them to incur the extreme cost burden described in MMTA's petition. Moreover, the amendment has not altered the fact that,

² With a PBX, the user can obtain pooled access to a group of network access lines, typically by dialing "9" from the station set. A key telephone system, by contrast, is designed to provide shared access to several outside lines through buttons, or keys, on the station set. To make a call over the public network, the user selects an available "line appearance" button on the set. There is usually more than one "line appearance" on each set, and line appearances are usually shared by more than one user. A hybrid is a CPE system that shares the line-access characteristics of both key and PBX systems.

as a legal matter, the Commission has occupied the field with respect to CPE interconnection and must preempt any state law that is more restrictive of CPE interconnection than are the Commission's own Part 68 rules.

For all these reasons, Illinois' 911 CPE statute should be preempted notwithstanding the recent amendment.

II. THE ARGUMENTS OF PARTIES OPPOSING PREEMPTION ARE WITHOUT MERIT

Parties opposing preemption have failed to make any persuasive showing why Illinois' 911 CPE statute should not be preempted.

A. Legal Arguments

Several of the opponents argue that the Illinois 911 statute does not regulate CPE interconnection, but merely "provides a public safety standard for the transmission of 911 calls." Chicago at 3; Illinois at 2. This semantic distinction disregards the actual intent and impact of the statute. While the statute uses the fiction that a business equipment owner "provide telecommunications facilities or services" (50 ILCS 750/15.6(a)),³ the reality is that the statute is regulating equipment. It is the use of

³ The Ad Hoc Telecommunications Users Committee ("Ad Hoc"), in its comments supporting MMTA's petition, cites this language and suggests that the Illinois 911 statute may only apply to businesses that own or lease multi-line CPE systems and provide telecommunications facilities or services to other businesses. Ad Hoc at 3-4. While this is a possible interpretation of the statute, it is not espoused in the comments of the Illinois Attorney General, or of other opponents of MMTA's petition. At a minimum, this ambiguity in the Illinois statute invites litigation over whether 911 station identification requirements apply to all businesses, or just those that provide or resell telecommunications services. If the Illinois statute does in fact only apply to telecommunications service providers or resellers, then no harm will be done if the Commission preempts any application of the statute to CPE owners who are not service providers or resellers.

multiline premises equipment that triggers the station identification requirement, and the premises equipment must be modified in order to comply.

The National Emergency Number Association and its Illinois Chapter ("NENA/IC") contend that the Illinois 911 Statute may not be preempted because 9-1-1 calls are inherently local. NENA/IC at 4. However, MMTA has not asked the Commission to preempt Illinois' regulation of 911 service provided by common carriers. Rather, MMTA has requested preemption of those aspects of the Illinois law that burden the interconnection of equipment. Equipment owners are required to pay for the additional equipment required for compliance with the 911 statute regardless of how many 911 calls are made from their premises, or whether any 911 calls are made at all. The equipment used for calling 911 cannot be separated from the customer's business telephone system, which is used for both intrastate and interstate calling, and which is preemptively regulated by the FCC pursuant to Part 68.

Opponents also contend that preemption is improper because the FCC has not yet adopted 9-1-1 CPE regulations of its own. APCO at 3; Chicago at 3; Illinois at 2-3. These arguments turn the FCC's CPE decisions on their head. The Commission has repeatedly ruled that customers have a right to interconnect equipment of their choosing unless the equipment is shown to cause "harm." See, e.g., Implications of the Telephone Industry's Primary Instrument Concept, 68 FCC2d 1157 (1978). The showing of harm must be made to the FCC, not at the state level. The Commission's interconnection rules were intended to comprehensively and preemptively address the types of "harms" that could justify burdening the right to interconnect CPE.

NENA/IC also argues that MMTA's Petition is inconsistent because it does not request preemption of residential private switch requirements in other states, or the residential private switch requirements of the Illinois law.⁴ As the Petition explains, previous Commission decisions have drawn a distinction between state regulation of CPE, which is preempted, and state regulation of intrastate common carrier services provided on a resale basis using CPE. Petition at 18, n. 12. Since multiline CPE is typically used in residential settings only where service is provided on a shared service basis to many individual living quarters (i.e., an apartment building or a university dormitory), the legal authority for preemption of state regulation of residential settings is not as clear.⁵

B. Policy Arguments

Opponents also take issue with MMTA's assessment of the cost burden of applying Illinois' 911 CPE statute to small systems. The short answer to these arguments is that, where CPE interconnection is concerned, detailed evidence of the

⁴ NENA/IC claims that MMTA's prayer for relief requests preemption of the Illinois residential private switch requirements. NENA/IC at 4, n.7. MMTA requested preemption of "Illinois' 911 CPE statute," defined on the first page of MMTA's petition as Section 750/15.6 of Chapter 50 of Illinois Consolidated Statutes. Petition at 1.

⁵ Moreover, as the Petition points out, the disproportion between the benefits and costs of the Illinois 911 statute is not as obvious for shared residential systems as for individually owned business systems. MMTA believes that the number of small multiline residential systems is much smaller than the number of small multiline business systems. In addition, due to the relative isolation of individual residents within apartment units, it can be more easily argued that the benefits of station identification in the residential setting justifies the high costs of providing that capability within residential PBXs.

burden imposed by inconsistent state regulations is not required. Public Utility Commission of Texas v. FCC, 886 F.2d 1325, 1337 (D.C. Cir. 1989).

However, opponents arguments are fallacious even on their own terms. Thus, Telident contends that the petition should not be granted because many small CPE systems can be brought into compliance at little or no cost. According to Telident:

Only those "small" systems, for example, that serve a large building, more than one building, or multiple floors of an office building may need to implement a technological solution similar to that described in MMTA's Petition.

Telident goes on to say that the issue of private telephone system compliance "is indeed a complex issue" for systems below the 200 station size, explaining that among the "compliance" factors to be considered, in addition to size, are the application of the system and the "distance between detached work groups." According to Telident, depending on how these factors apply, multi-line system owners "may have some flexibility" in complying with the Illinois law.⁶

However, as Telident admits, the literal language of Illinois' 911 CPE statute appears to require the "extension number" of the originating telephone to be identified

⁶ In fact, MMTA's estimates did consider the possibility that alternative methods of compliance could be used in the case of very small systems. MMTA's petition noted that alternatives to adjuncts may become available for systems in the under-25 station category. This possibility is reflected in MMTA's estimate of \$100 million in total compliance costs. Our initial estimate of total compliance costs, of approximately \$112 - \$225 million, was adjusted to reflect the fact that the initial estimate includes neither the potential for such alternatives, which would lower costs, nor the costs of replacing or modifying CPE systems that cannot accommodate adjuncts without modification, which would increase total costs, nor the indirect nationwide impact, which also would increase total costs. The result was a conservative estimate of \$100 million in compliance costs.

on every 911 call. 50 ILCS 750/15.6. This requirement, if interpreted literally, may substantially limit the available alternatives for bringing even very small CPE systems into compliance with Illinois' 911 CPE statute. The strict literal language of the statute, and the absence of any standardized method of compliance other than the method described in MMTA's petition, combine to make it difficult for even very small CPE system owners to reduce their costs of compliance.

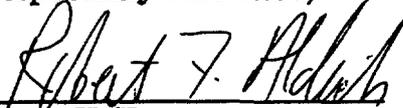
Telident and NENA/IC also contend that the petition is flawed because some small systems present major public safety issues. These arguments miss the point. MMTA does not dispute that some small systems are used in environments where, because of dispersion or other factors, it is important to find a way to provide 9-1-1 dispatchers with different, or more precise location information. However, there is no persuasive evidence that the vast majority of small CPE systems, the stations of which are not scattered in different locations, present any major public safety issue in terms of 911 calling. The fatal flaw of Illinois' approach to 911 CPE issues is that it assumes that all PBX owners must be subjected to costly regulations in order to address problems that appear significant only for a small minority of systems. This approach is not only costly but takes away equipment owners' freedom to decide for themselves whether to purchase additional emergency protection.

It is possible that the FCC may find that some regulation may be warranted to ensure adequate location identification for the small minority of small non-residential CPE systems that do pose a significant public safety issue. However, to regulate in this area requires two steps: (1) a filtering out of those small CPE systems where the benefits of station identification are worth the cost or installing the necessary equipment and

services; and (2) a policy decision that owners of such systems should not be relied upon to make their own choice as to the level of emergency protection they want to purchase for themselves and their employees. Illinois has not taken the first step, and under the Commission's longstanding CPE decisions is disqualified from taking the second step. Only the FCC can make the decision to burden interconnection of CPE.

May 22, 1996

Respectfully submitted,



Albert H. Kramer

Robert F. Aldrich

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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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 1996, a copy of the foregoing Reply of Multi-Media Telecommunications Association To Comments On Its Emergency Petition For Declaratory Ruling was sent by first-class mail, postage prepaid, to the following parties:

**Janice A. Dale
Assistant Attorney General
Public Utilities Bureau
100 W. Randolph Street
12th Floor
Chicago, IL 60601**

**Susan S Sher
Corporation Counsel
City of Chicago Law Department
30 North LaSalle Street
Suite 900
Chicago, IL 60602**

**Robert M. Gurss
Wilkes, Artis, Hedrick &
Lane, Chtd.
1666 K Street, N.W., #1100
Washington, D.C. 20006**

**James R. Hobson
Donelan, Clearly, Wood
& Maser, P.C.
1100 New York Avenue, NW, #750
Washington, D.C. 20005-3934**

**William E. Stanton
Executive Director, NENA
47849 Papermill Road
Coshocton, OH 43812**

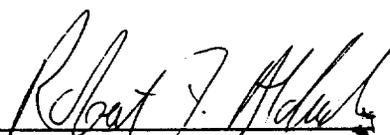
**Norman Forshee
President, Illinois-NENA
101 South High Street
Belleville, IL 62220**

**Michael J. Miller
President/CEO
Telident, Inc.
One Main Street SE, Suite 85
Minneapolis, MN 55414**

**Paul R. Schwedler
Deputy Regulatory Counsel
Carl Wayne Smith
Defense Information Systems
Agency
701 S. Courthouse Road
Arlington, VA 22204**

**Paul D. Diczok
Terry A. Thompson
Room 2F-226
219 Mt. Airy Rd.
Basking Ridge, NJ 07920**

**James S. Blaszak
Levine, Blaszak, Block
& Boothby
1300 Connecticut Ave., NW
Suite 500
Washington, DC 20036**


Robert F. Aldrich