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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Revision of the Commission's	)	CC Docket No. 94-102
Rules to Ensure Compatibility	)	RM-8143
with Enhanced 911 Emergency	)	
Calling Systems	)	

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PETITION FOR RECONSIDERATION AND CLARIFICATION OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY.....1

II. THE COMMISSION SHOULD PURSUE SIMPLE BUT IMPORTANT MEANS OF ENHANCING THE EFFECTIVENESS OF WIRELESS PUBLIC SAFETY OPERATIONS PRIOR TO REQUIRING CMRS CARRIERS TO FORWARD NON-SUBSCRIBER CALLS.....3

A. Uniform Nationwide Use Of The 9-1-1 Dialing Code For Emergency Assistance Will Promote The Commission's Public Safety Goals.....4

B. The Commission Should Promote Ubiquitous Availability Of Wireless E911 By Encouraging Federal Agencies To Facilitate Use Of Federal Property For Wireless Facility Siting.....8

III. CMRS CARRIERS SHOULD RECEIVE THE SAME LIMITATIONS ON LIABILITY TRADITIONALLY AFFORDED TO COMMUNICATIONS COMMON CARRIERS, INCLUDING WIRELINE CARRIERS.....10

IV. THE COMMISSION SHOULD, ON RECONSIDERATION, REMOVE AMBIGUITIES SURROUNDING E911 IMPLEMENTATION.....16

A. The Commission Should Clarify That PSAPs May Not Limit CMRS Carriers To Recovering Their E911 Implementation Costs Solely From Their CMRS Customers.....17

B. The Commission Should Clarify That It Is The CMRS Carriers' Responsibility To Select The Means By Which The Caller's ANI And Cell Site Location Is Transmitted To The Appropriate PSAP Consistent With The Phase I Obligations....18

C. The Commission Should Clarify That A CMRS Carrier Is Obligated Under Its Rules To Comply With A PSAP's Phase I Request Within Six Months.....22

D. The Commission Should Address How Handset-Based Solutions May Fit Into Phase II Requirements....22

V. CONCLUSION.....25

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PETITION FOR RECONSIDERATION AND CLARIFICATION OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")[1] hereby submits its Petition for Reconsideration and Clarification ("Petition") in the above-captioned proceeding.[2]

I. INTRODUCTION AND SUMMARY

The Commission's E911 Memorandum Opinion and Order imposes a new requirement that covered CMRS carriers complete all 911 calls from subscribers and non-subscribers alike, regardless of a Public Safety Answering Point's

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1 CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

2 Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Memorandum Opinion and Order*, FCC 97-402 (rel. Dec. 23, 1997) ("E911 Memorandum Opinion and Order").

("PSAP") preference.[3] The Commission's decision to require the transfer of all 911 calls warrants reconsideration and clarification of its rules and policies.

- **ENHANCING THE EFFECTIVENESS OF WIRELESS E911**: As a condition precedent to enforcing CMRS carriers' obligations to forward all non-subscriber calls, the Commission should:

    - Exercise its authority to designate 9-1-1 as the compulsory, although non-exclusive, uniform dialing code to summon assistance nationwide in the event of an emergency.

    - Promote ubiquitous availability of wireless E911 by encouraging Federal agencies to facilitate use of Federal property for wireless facility siting.

- **LIMITED LIABILITY**: The Commission should recognize that CMRS carriers require the same limitations on liability traditionally afforded by common law to communications common carriers, including wireline carriers. The Commission should consider the following means to notify E911 callers:

        - permit covered CMRS carriers to file informational E911 tariffs, similar to those filed by 1+ dial-around long distance services;

        - permit covered CMRS carriers to file model E911 contracts which can be made available for inspection by the public; and/or

        - permit covered CMRS carriers to file special E911 service reports pursuant to Section 219 which would be made available for public inspection by the Commission.

- **E911 IMPLEMENTATION ISSUES**: The Commission should remove identified ambiguities surrounding E911 implementation.

    - The Commission should clarify that it is unacceptable for a PSAP to avoid its funding obligations by directing covered CMRS carriers to recover their E911 implementation costs directly

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[3] Id. at ¶ 32.

from their CMRS customers without involving the PSAP or a State or local funding mechanism.

- The Commission should clarify that carriers -- not PSAPs -- may choose the technology for transmitting callers' ANI and cell site location to the appropriate PSAP.

- The Commission should clarify its E911 rules to ensure that a covered CMRS carrier must comply with Phase I obligations within six months of the request.

- The Commission should address how handset-based solutions may fit into Phase II requirements.

II. THE COMMISSION SHOULD PURSUE SIMPLE BUT IMPORTANT MEANS OF ENHANCING THE EFFECTIVENESS OF WIRELESS PUBLIC SAFETY OPERATIONS PRIOR TO REQUIRING CMRS CARRIERS TO FORWARD NON-SUBSCRIBER CALLS.

The Commission required carriers to forward all 911 calls, including non-validated calls, because it believes that validation procedures threaten to "delay or defeat the dispatch of help in emergencies."[4] The Commission fails, however, to take other actions which promise similar enhancements to the achievement of its public safety goals. The Commission should stay application of the obligation to forward non-validated calls until all reasonable measures are taken to promote the effectiveness of wireless E911. Specifically, the Commission can reduce end user confusion and increase the likelihood of access to emergency services by designating 9-1-1 as the uniform dialing code nationwide to summon emergency assistance from a wireless phone. Moreover, the Commission can promote ubiquitous wireless

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[4] Id. at ¶¶ 33-34.

E911 coverage by encouraging Federal agencies to make Federal property available for wireless facility siting.

A. Uniform Nationwide Use Of The 9-1-1 Dialing Code For Emergency Assistance Will Promote The Commission's Public Safety Goals.

The Commission should designate 9-1-1 as the national number to dial for wireless access to emergency assistance. Different numbers in different jurisdictions create confusion and impair the ability of mobile customers to summon emergency assistance quickly and easily. The California Highway Patrol Cellular 9-1-1 Telephone Indicia Survey illustrates the wide variety of indicia and numbers for access to emergency assistance currently in use by different States.[5] Even within a short distance along an interstate highway within one State, a mobile customer may be required to know and dial several different numbers to reach emergency assistance. Frequent highway signs fail to eliminate the danger that a traveler will not know or remember the correct number to dial in the event of an emergency.[6] Moreover, it is entirely possible that the

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[5] "California Highway Patrol Cellular 9-1-1 Telephone Indicia Survey," prepared by The Office of Special Projects, California Highway Patrol at 5 (1995).

[6] The 9-1-1 dialing code is widely known as the means to access emergency assistance. The Commission has explained that "[d]ialing 911 is the most effective and familiar way the American public has of finding help in an emergency." Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, at ¶ 3 (1996)("E911 Report and Order").

requisite emergency numbers may remain unknown to persons driving on less-traveled rural roads (where signs may be less frequent or non-existent). An unfortunate story underscoring the need for a national wireless emergency number recently appeared in the St. Louis Dispatch:

> When a Kansas couple noticed a van bobbing and weaving in traffic south of Carthage, Mo., . . . they tried repeatedly to alert authorities by cellular phone. But by the time they got through it was too late -- the van had crashed into another vehicle in an accident that claimed three lives. . . . [S]he dialed 911 [and]. . . was connected to the Joplin Police Department. . . . 'Nobody was picking up.' . . . Had they known about it, they could have dialed 55, a direct, toll-free line to the Missouri Highway Patrol in Jefferson City.[7]

A uniform emergency assistance number will promote public safety goals. As the Commission observed,

> use of a national uniform N11 code for [reaching emergency services] clearly serves the public interest because end users know that they can dial this code from virtually any exchange in the country in order to obtain emergency assistance. Moreover, 911's virtual ubiquity and long-standing nationwide status as the phone number for quick and easy access to emergency services . . . supports its continuing use.[8]

Because a uniform dialing code is easily recalled by wireless callers, it will promote access to emergency assistance. By contrast, the absence of a uniform emergency

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7 Travelers With Cellular Phone Unable To Prevent Collision That Killed Three, St. Louis Dispatch, Nov. 30, 1997.

8 The Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, *First Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 5572 at ¶ 23 (1997) ("N11 Order").

dialing code increases the chance that a wireless caller will be unable to summon emergency assistance, thereby reducing the effectiveness of the Commission's E911 goals.[9]

Facilitating wireless access to emergency services is reasonably deemed a component of the Commission's statutory obligation to promote public safety.[10] To fulfill its public safety goals and the goals of the Act, the Commission should require that carriers and PSAPs allow for seamless connection to emergency services nationwide when a CMRS customer dials 9-1-1. Although alternative dialing codes need not be eliminated, the 9-1-1 dialing code must become the ubiquitous means for obtaining emergency assistance.

The Commission has jurisdiction to require nationwide compulsory but non-exclusive use of 9-1-1 for access to emergency services. The Commission previously has recognized its authority to preempt State and local regulations inconsistent with its legitimate interest in "averting . . . confusion by end users . . . who are attempting to contact emergency service providers."[11] The authority to order nationwide use of the 9-1-1 dialing code

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9 See E911 Report and Order at ¶ 9 (stating as one of the Commission's E911 goals the improvement of "consumer education so that users of wireless services will be able to determine rationally and accurately the scope of their options in accessing 911 services from mobile handsets").

10 See 47 U.S.C. §§ 151 and 332(a); see also E911 Report and Order at ¶ 8 (recognizing the role of E911 in fulfilling the Commission's public safety obligations).

11 E911 Report and Order at ¶ 104.

is consistent with the Commission's prior recognition of its authority.

The Commission's authority to prescribe 9-1-1 as the nationwide emergency number is derived from its exclusive statutory authority over numbering administration.[12] Included in this jurisdiction is the authority to regulate N11 codes such as 9-1-1.[13] As the N11 Order held,

> [b]ecause the Commission's jurisdiction is exclusive, the states have no authority to permit the use of N11 codes in a manner inconsistent with the conclusions reached in [the N11 Order] . . . . Despite the fact that most individual N911 calls are likely to be intrastate, N11 numbers, like 911, have significance that go beyond state boundaries. . . . In order to achieve the maximum public benefit from the allocation of particular codes to certain services, those codes must be allocated in a consistent manner on a nationwide basis.[14]

Moreover, the Commission's jurisdiction encompasses not only the designation of the 9-1-1 code for wireless national emergency response, but also the proper use of the 9-1-1 code by PSAPs. This authority emanates from the Commission's exclusive numbering administration jurisdiction,[15] its statutory obligation to manage spectrum in a manner that will "promote the safety of life and

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12 47 U.S.C. § 251(e)(1).

13 N11 codes are 3-digit telephone numbers used for a variety of applications, including access to emergency services. The N11 code 9-1-1 has been designated as a national code for emergency services. See N11 Order at ¶ 23.

14 Id. at ¶¶ 57-58.

15 47 U.S.C. § 251(e).

property,"[16] and its general authority to enhance public safety through telecommunications.[17] The Commission retains full authority to maximize the effective implementation of wireless access to emergency assistance through the use of uniform dialing codes nationwide. Designation of 9-1-1 as the uniform dialing code is consistent with the Commission's ongoing commitment to "improving the quality and reliability of 911 services available to wireless callers."[18]

B. The Commission Should Promote Ubiquitous Availability Of Wireless E911 By Encouraging Federal Agencies To Facilitate Use Of Federal Property For Wireless Facility Siting.

Nationwide availability of wireless access to emergency services is also impaired when wireless service itself is unavailable. Gaps in CMRS coverage may result from inadequate tower siting opportunities.[19] The Commission can promote greater ubiquity in CMRS coverage by encouraging Federal agencies to make sites available for CMRS towers.

Indeed, these efforts would conform with legislative and executive goals. Congress recognized the importance of promoting wireless ubiquity when it enacted Section 704 of

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16 47 U.S.C. § 332(a)(1).

17 47 U.S.C. § 151.

18 E911 Memorandum Opinion and Order at ¶ 8.

19 For example, wireless callers traveling on Washington, D.C.'s Rock Creek Parkway -- just blocks from the Commission -- may at times be unable to summon emergency assistance with their wireless telephones due to spotty tower coverage through the National Park surrounding the Parkway.

the Telecommunications Act of 1996.[20] Section 704(c) directs the establishment of Federal agency procedures to facilitate wireless tower siting on Federal property (including Federal easements and rights-of-way). The President too has directed Federal agencies, as a matter of policy, to encourage the "efficient and timely implementation of such new technologies and the concomitant infrastructure buildout."[21] Hence, Commission encouragement of wireless facility siting on Federal property corresponds with legislative and executive goals, and promotes important public safety interests by increasing the availability of wireless E911.

Under the current rules, the Commission risks misleading the public when it informs wireless callers that if they have a wireless phone and dial 9-1-1, they will receive assistance. Until the Commission addresses the universal availability of the number 9-1-1 and facilitates siting on Federal lands, it should stay the application of its rules.

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20 See Section 704(c) of the Telecommunications Act of 1996, Pub L. No. 104-104, 110 Stat. 56 (1996) (requiring the adoption of procedures to facilitate access to Federal lands); see also 47 U.S.C. § 332(c)(7)(B)(i)(II) (State and local governments, in their exercise of zoning authority, may not prohibit or have the effect of prohibiting CMRS and other personal wireless services).

21 Executive Memorandum of August 10, 1995, Facilitating Access to Federal Property for the Siting of Mobile Services Antennas, 60 Fed. Reg. 42023 (Aug. 14, 1995).

III. CMRS CARRIERS SHOULD RECEIVE THE SAME LIMITATIONS ON LIABILITY TRADITIONALLY AFFORDED TO COMMUNICATIONS COMMON CARRIERS, INCLUDING WIRELINE CARRIERS.

In light of its decision to require all covered CMRS carriers to forward all 911 calls, the Commission must reconsider its refusal to afford CMRS carriers uniform limitations on liability. The Commission has concluded that carriers "cannot contractually insulate themselves from liability when non-subscribers use their systems."[22] This conclusion has important ramifications for CMRS firms. Given the technical properties of radio transmissions, there is no certainty that each wireless 911 call will go through. In light of these circumstances, and given that States have not taken uniform action to limit CMRS carrier liability,[23] the Commission should permit carriers to avail themselves of the traditional common carrier devices affording limited immunities from liability.[24]

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22 E911 Memorandum Opinion and Order at ¶ 140.

23 Currently, only 15 States provide indemnification for 911 services; 19 States have limited indemnification (for wireline only); 15 States have no indemnity provision; and one State, Delaware, specifically holds carriers liable, but limits their liability to one million dollars. "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," XYPOINT Survey, as found in <www.wow-com.com/professional/reference>.

24 Such action is consistent with the Commission's acknowledgment that it is "reasonable for a carrier to attempt to make the use of its network by a non-subscriber subject to the carrier's terms and conditions for liability." E911 Memorandum Opinion and Order at ¶ 140.

Title II, specifically Sections 201 and 202,[25] act as the cornerstones of telecommunications common carrier regulation. They establish a set of complex relationships between carriers, consumers, and government which reflect core common law common carrier principles. Section 201 imposes upon carriers the duty to deal, to interconnect, and to provide just and reasonable charges for common carriage.[26] Similarly, Section 202 prohibits unjust or unreasonable discrimination in common carrier charges or services. In exchange for public service obligations, and because unlimited tort liability would inhibit investment and could preclude operations altogether, communications common carriers have historically operated with limited liability for transmission services.[27] In essence, this

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25 47 U.S.C. §§ 201, 202.

26 Similar requirements have been imposed upon carriers since the inception of common carriage. See Michael K. Kellogg et al., Federal Telecommunications Law § 1.3.1, at 12 (1992); See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, *Further Notice of Proposed Rulemaking*, 84 FCC 2d 445, Appendix B at ¶ 2 (1981)("Competitive Carrier").

27 See Michael K. Kellogg, et al., Federal Telecommunications Law § 1.3.1 at 12-13 (1992)(carriers who charged only "'reasonable and nondiscriminatory' rates, provide[d] adequate service, and accept[ed] all customers on the same terms, without discrimination," were granted "important legal privileges, most particularly limits on their liabilities"); see also Primrose v. Western Union Telegraph Co., 154 U.S. 1 (1894)(as cited in Competitive Carrier Appendix B at ¶ 38 ("The Court went on to discuss the common law policy of insurer's [or strict] liability . . . and concluded that such [strict] liability should not apply to telegraphs. Telegraph messages were peculiarly susceptible to mistakes. . . . Thus, telegraph

reflects a policy decision that individuals bear their own losses because the carriers cannot both serve as a vehicle for risk spreading and simultaneously perform their socially critical public service functions.

Tariffs traditionally have provided consumers with notice of a carrier's limited liability as well as the key provisions of its service offering.[28] Because the Commission has forborne from enforcing unnecessary Title II common carrier obligations on CMRS providers, including Section 203,[29] CMRS providers do not file tariffs with the Commission.[30] Yet, it is important to ensure that consumers have notice of important terms of CMRS E911 services especially considering that carriers must forward E911 calls from subscribers and non-subscribers alike. Limited reconsideration of this previous forbearance action for the purpose of posting E911 data, including carrier limits on liability, is warranted.

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companies were not common carriers for purposes of [strict] liability, but were analogous to common carriers in having the same duties to serve all upon reasonable terms.")

28 The Commission has noted that "local exchange carrier immunity generally is a product of provisions contained in local exchange carrier tariffs." E911 Report and Order at ¶ 99.

29 47 U.S.C. § 203.

30 See Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, GN Docket 93-252, *Second Report and Order*, 9 FCC Rcd 1411 (1994). In this order, the Commission also forbore from applying the contract filing requirements in Section 211, 47 U.S.C. § 211.

In the E911 environment, there are several possible ways to notify E911 wireless callers of a providers' traditional common carrier limited liability:

- Permit CMRS carriers to file informational E911 tariffs, similar to those filed by 1+ dial-around long distance services;

- Permit covered CMRS carriers to file model informational contracts pursuant to Section 211 which would be made available by the Commission to the public; and/or

- Permit covered CMRS carriers to file special E911 service reports pursuant to Section 219 which would be made available by the Commission to the public for inspection.[31]

An informational tariff filing under Section 203 for E911 services which contains carrier limitations on liability presents benefits which should outweigh the significant costs generally associated with tariffs. Similar to tariff filings of non-dominant interexchange carriers, including 1+ dial-around services, E911 tariffs should not be subject to prior Commission approval or review, should be presumed to be lawful, and should not require the filing of cost support data.[32] Indeed, 911

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[31] CTIA has requested that the Commission adopt similar notification mechanisms for CMRS provision of Calling Party Pays ("CPP") service. E911 presents circumstances analogous to CPP, in that callers may not have a pre-existing relationship with the CMRS carrier handling their calls. For this reason, carriers need the ability to notify the public of key terms of the carriers' service offering, including relevant limitations on liability. See Comments of the Cellular Telecommunications Industry Association in WT Docket No. 97-207, at 24-31 (filed Dec. 16, 1997).

[32] See Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section

calls are not revenue-producing, i.e., they are free to the caller. Therefore, there is no legitimate need to require carriers to file cost support data for 911 services.

In the context of interstate, interexchange 1+ dial-around services, carriers were faced with directly analogous circumstances to E911 in that the non-subscriber did not necessarily have a pre-existing relationship with the billing carrier. In that case, the Commission allowed permissive tariffing by dial-around carriers.[33]

As an alternative to tariff filings, the Commission may reconsider in part its decision to forbear from applying

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254(g) of the Communications Act of 1934, as amended, *Second Report and Order*, CC Docket No. 96-61, 11 FCC Rcd 20730, n.29 (1996). CTIA does not support any E911 tariff filing obligations which would require cost justification by CMRS carriers, or would burden the Commission with prior approval requirements.

[33] The Commission "modified its rules to give carriers the option of filing tariffs for dial-around 1+ services. . . because long distance carriers cannot reasonably establish enforceable contracts with casual callers in these circumstances." See Federal Communications News Release, "Commission Affirms With Minor Modifications Decision to Eliminate Tariff Filing Requirements for Long Distance Carriers," Report No. CC 97-46 (rel. Aug. 20, 1997); see also Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended, *Order on Reconsideration*, CC Docket No. 96-61, FCC 97-293, 9 CR 145, at ¶ 21 (rel. Aug. 20, 1997)("Dial-Around Reconsideration Order"). As noted in the Dial-Around Reconsideration Order, the Commission's rules promulgated in this proceeding to de-tariff long distance services have been stayed. See Dial-Around Reconsideration Order, at ¶ 4. Similar concerns regarding detariffing are not present in the CMRS context as the Commission has a separate, express basis to forbear from CMRS carriers filing tariffs. 47 U.S.C. § 332(c)(1)(A).

Section 211 and permit CMRS providers to voluntarily file model E911 contracts. These contracts would be made available for public inspection, and should provide effective notice to all potential E911 callers of a providers' limited liability in accordance with traditional common carrier arrangements.

Section 211(b) can be interpreted by the Commission to offer CMRS providers an alternative to tariff filings by allowing the Commission to require the submission of "any other contracts of any carrier."[34] The FCC has interpreted this statutory provision broadly, stating that "carriers and non-carrier customers can enter into contracts, agreements and arrangements, and under Section 211 of the Act, 47 U.S.C. § 211, the Commission can require these documents to be filed when it deems necessary."[35] This reading of Section 211(b) allows CMRS providers the opportunity to file informational contracts to be made available for public inspection.[36]

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[34] 47 U.S.C. § 211(b).

[35] See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, *Sixth Report and Order*, 99 FCC 2d 1020 at ¶ 12 (1985).

[36] Just as the Department of Justice ("DOJ") concluded that 911 callers waived their privacy rights when calling 9-1-1, see Memorandum Opinion for John C. Keeney, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice, at 1 (Sept. 10, 1996) ("the caller, by dialing 911, has impliedly consented to such disclosure") ("DOJ Memorandum"); see also 911 Memorandum Opinion and Order at ¶ 142 (citing DOJ Memorandum), the Commission should conclude that 911 callers impliedly consent to be bound by the

Finally, the Commission's express authority under Section 219 to permit carriers to file special and other reports may provide an additional basis to provide notification of important provisions attending E911 services. Specifically, Section 219(a) grants the Commission significant discretion to have carriers file reports containing "information in relation to charges or regulations concerning charges, or agreements, arrangements, or contracts affecting the same, as the Commission may require."[37] Moreover, Section 219(b) grants the Commission authority by general or special order to have CMRS carriers providing E911 to file "periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act."[38] These congressional grants of authority can be interpreted broadly by the Commission to permit the filing of annual (or periodical) E911 service reports. Once publicly available, these reports can disclose to potential E911 callers the relevant liability limitations.

IV. THE COMMISSION SHOULD, ON RECONSIDERATION, REMOVE AMBIGUITIES SURROUNDING E911 IMPLEMENTATION.

The implementation phase involving any new or complex requirement inevitably raises ambiguities which deserve

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liability limitations contained in informational contracts filed by carriers.

[37] 47 U.S.C. § 219(a).

[38] 47 U.S.C. § 219(b).

further clarity. CTIA has identified the following four issues which the Commission should specifically address on reconsideration.

A. The Commission Should Clarify That PSAPs May Not Limit CMRS Carriers To Recovering Their E911 Implementation Costs Solely From Their CMRS Customers.

The Commission should clarify that it is unacceptable for a PSAP to refuse to enter into a cost recovery agreement with a covered carrier and then seek to satisfy the Commission's cost recovery rules by asking the carrier to recover E911 implementations costs directly through charges to its CMRS customers. To the extent that certain PSAPs are engaging in this activity, the Commission should prohibit it outright. To otherwise permit such action seemingly contradicts the Commission's belief that:

> No party disputes the fundamental notion that carriers must be able to recover their costs of providing E911 services. Nor is there any evidence of state or local officials attempting to prevent a carrier from so doing. To the contrary, carriers and government officials uniformly recognize . . . that resolving cost recovery issues is a prerequisite to E911 deployment. . . .[39]

A Commission determination that carriers are not limited in recovering their costs solely from their customers should be sufficiently tailored to provide the necessary relief without compromising previous Commission attempts to resist imposing a nationwide, uniform, cost recovery mechanism.

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[39] E911 Report and Order at ¶ 89.

The Commission should ensure the development of uniform State or local cost recovery mechanisms that are competitively neutral. Different CMRS systems will confront different E911 compliance costs based, among other things, upon the technology chosen and the number of customers served who are non-subscribers (for example, cellular licensees will forward a greater number of non-subscriber calls, but will be able to recover their costs over a larger customer base). In order to preserve competitive neutrality, cost recovery mechanisms should avoid favoring one carrier's E911 compliance cost structure over another carrier's cost structure.

B. The Commission Should Clarify That It Is The CMRS Carriers' Responsibility To Select The Means By Which The Caller's ANI And Cell Site Location Is Transmitted To The Appropriate PSAP Consistent With The Phase I Obligations.

Under the Commission's Phase I rules, all covered carriers must transmit certain enhanced features along with the caller's voice call. These features include the transmission of the caller's Automatic Number Identification (ANI) and the location of the base station or cell site receiving the 911 call.[40] The ANI and location information is not routinely transmitted with the voice call, thus the Commission's rules require all wireless carriers to invest in technical modifications for their networks. The Commission noted in the E911 Memorandum Opinion and Order

[40] E911 Report and Order at ¶ 63-66; E911 Memorandum Opinion and Order at ¶¶ 90-107.

that several different technologies have been developed that can be used to transmit the ANI and location information to the appropriate PSAP.[41]

Despite the varied network architecture options available, the industry has agreed upon a standardized means of presenting the ANI and location information to the PSAP. Therefore, regardless of the technology, the PSAP will receive a standardized message identifying the emergency call. Even so, some PSAPs seek to limit the technology carriers may use to satisfy the Commission's rules. Therefore, CTIA requests that the Commission clarify that it is the carrier, and not the PSAP or any other designated entity, that ultimately must select the transmission technology to adequately deliver the required information to the PSAP. The Commission's mandate falls uniquely on the wireless carrier; thus, the carrier must be responsible for ensuring compliance with the Commission's rules.

Since the release of the Report and Order, many wireless carriers either have signed or have entered into negotiations with companies to provide the technical upgrades necessary to comply with the Phase I requirements.[42] For example, AT&T Wireless has reached an

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41 See, e.g., E911 Memorandum Opinion and Order at ¶¶ 104, 107 ("[W]e expect covered carriers to explore all available options, including non-LEC-based solutions, before filing a waiver application [for the Phase I requirements].")

42 See Jason Meyers, *Emergency Response, Wireless Industry Answers E911 Call*, Telephony, May 26, 1997; Communications Daily, Sep. 19, 1997 (describing

agreement with a Phase I provider to equip its facilities nationwide with technology that will transmit both ANI and cell site location.[43] A dynamic and competitive market has developed to provide carriers with a variety of technological compliance options. Because this market exists, carriers and their customers benefit from the competition among suppliers which, among other things, allows carriers to negotiate market driven prices with E911 suppliers. The market driven approach reduces considerably the cost to wireless carriers of implementing an emergency system which the Commission acknowledges benefits all Americans, both subscribers and non-subscribers.[44] Indeed, a system-wide solution will best ensure timely availability of emergency information at the lowest cost.

The Commission should clarify that PSAPs may not destroy the market benefits through second-guessing

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XYPOINT's wireless 911 system developed for Cellular One in Allentown, Pennsylvania.) Some of the wireless companies who have already entered into agreements for the provision of Phase I services include AT&T, Vanguard Cellular Systems, and Centennial Cellular.

43 Jason Meyers, *Emergency Aid, AT&T Wireless Taps SCC for E911*, Telephony, Aug. 11, 1997.

44 E911 Memorandum Opinion and Order at ¶ 34 ("We continue to believe that the public safety will be promoted more effectively if all potential 911 calls are passed through to the PSAP regardless of whether they are made by subscribers. Many wireless 911 calls are from 'Good Samaritans' reporting traffic accidents and similar emergencies. Making it easier for individuals to report such emergencies thus primarily benefits the public and serves the public interest, not simply the interests of the caller.")(emphasis added).

carriers' choice of transmission technologies. The clarification that technology decisions remain with the carrier is consistent with the Commission's conclusion that its "rules apply to wireless carriers, not PSAPs . . . ."[45] Moreover, allowing carriers to select the ANI and location transmission technology enhances market forces, promotes technological innovation, and reduces the burdens on wireless carriers.

The E911 obligations increase wireless carriers' cost of providing services. However, the Commission has determined these costs to be justified by the critical societal benefits provided by wireless E911 services. PSAP technology selection threatens to delay availability of wireless E911 and risks economically suboptimal results. Carriers must be permitted to minimize the E911 implementation costs (insofar as Federal regulatory obligations are otherwise fulfilled) through their own selection of ANI and location transmission technology.

In the E911 Memorandum Opinion and Order, the Commission concluded that "[t]he costs, delays, and administrative burdens of requiring wireless carriers to implement the 'PSAP choice'" of receiving or not non-customer calls "might also be substantial."[46] Similarly, the Commission should reject a PSAP choice in selecting the

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[45] Id. at ¶ 37.

[46] Id. at ¶ 30.

information transmission technology. So long as the carrier adheres to the Commission's rules and provides the PSAP with the requisite information in usable form, the PSAP should be precluded from requiring the carrier to implement another, and perhaps more costly, solution.

C. The Commission Should Clarify That A CMRS Carrier Is Obligated Under Its Rules To Comply With A PSAP's Phase I Request Within Six Months.

The Commission should clarify its E911 rules to ensure that a covered CMRS carrier must comply with Phase I obligations within six months of the request. While the Commission's E911 Orders clearly permit this result,[47] the E911 rules are silent.[48] Clarification in this area is necessary to prevent potential disputes regarding when a covered CMRS provider's obligation to provide Phase I services arises.

D. The Commission Should Address How Handset-Based Solutions May Fit Into Phase II Requirements.

Consistent with its wireless policies generally, the Commission's Memorandum Opinion and Order adopts a technologically neutral approach to Phase II automatic location identification ("ALI"). Specifically, the Memorandum Opinion and Order states that the Commission does "not intend that the implementation deadline, the accuracy standard, or other rules should hamper the development and

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[47] Id. at n.222 (citing E911 First Report and Order at 11 FCC Rcd ¶ 64).

[48] 47 C.F.R. § 20.3 (Definitions), § 20.18 (911 Service).

deployment of the best and most efficient ALI technologies and systems."[49] Recognizing that differences may exist in the time required to implement different location solutions, the Memorandum Opinion and Order also indicates that parties may always file requests for waivers of the deadlines or other rules, as well as stating that the Commission might "consider proposals to phase in implementation."[50]

CTIA does not seek reconsideration of the Commission's Phase II requirements. In the two years since the original Consensus Agreement was filed with the Commission, there have been dramatic developments -- in large part triggered by the Commission's E911 Report and Order -- in both network- and handset-based location technologies. However, even though handset-based technologies may offer great promise, any ALI solution that involves modifications to handsets (even minor software upgrades), cannot be implemented consistent with a "flash-cut" transition. In the absence of more specific regulatory guidance governing the transition to Phase II, handset-based technology could be unnecessarily discouraged.

The Commission should use this proceeding to clarify how it intends to measure handset-based solutions to Phase II requirements. One commenter, for example, suggested applying the Phase II ALI requirements only to new handsets,

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49 Memorandum Opinion and Order at ¶ 124.

50 Id.