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Ad Hoc Alliance for Public Access to 911

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March 24, 1998

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554-0001

re: CC Docket 94-102, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems

Dear Ms. Salas:

Enclosed is the response by the Ad Hoc Alliance to the two Petitions for Reconsideration filed by the Cellular Telecommunications Industry Association and BellSouth Corporation. Also enclosed is a Request for Acceptance of a Late-Filed Pleading. The Alliance earlier filed a Motion For an Extension of Time requesting that the Alliance be given several additional days for submission.

Sincerely,

Jonathan D. Linkous
Washington Representative

Cc: John Cimko, FCC Wireless Division
BellSouth Corporation
Cellular Telecommunications Industry Association

enclosure

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List A B C D E

Before the
Federal Communications Commission
Washington, D.C.

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

REQUEST FOR ACCEPTANCE OF LATE-FILED PLEADING

The Ad Hoc Alliance for Public Access to 911 (the "Alliance") hereby respectfully requests that the Commission accept the "Opposition to Petitions for Reconsideration" (the "Opposition") filed by the Alliance concurrently herewith.

On March 18, 1998, the Alliance filed a "Motion for Extension of Time" seeking a period of four (4) additional business days, up to and including March 24, 1998, within which to file its Opposition to the "Petition for Reconsideration" filed by BellSouth Corporation ("BellSouth") and the "Petition for Reconsideration and Clarification" filed by the Cellular Telecommunications Industry Association (the "CTIA") (collectively referred to hereinafter as the "Petitions") in connection with the Commission's *Memorandum Opinion and Order* issued with respect to the above-captioned proceeding, FCC 97-402 (Dec. 23, 1997), 63 Fed. Reg. 2631 (Jan. 16, 1998) (hereinafter referred to as the "*Reconsideration Order*").

As noted in the Alliance's Motion for Extension of Time, the issues addressed by the Commission in the *Reconsideration Order* are of tremendous importance to CMRS users, for whom safety and security is the most oft-cited reason for their purchase of and subscription to CMRS service, according to BellSouth's and the CTIA's own polling data. (For the Commission's convenience, attached to the Opposition filed concurrently herewith are copies

of the pages from BellSouth's and the CTIA's websites on the internet which contain such polling data.)

Reflecting how significant it is to the public to have the ability to reach 911 to summon help using their cellular telephones in the event of an emergency, the Commission noted once again in the context of the *Reconsideration Order* that, "In adopting the *E911 First Report and Order*, the Commission recognized the importance of improving the quality and reliability of 911 services available to 911 callers." *Id.* at para. 8.

Because of the detrimental impact to the public which would flow from grant of the Petitions, as the Alliance will demonstrate in its Opposition filed concurrently herewith, it is of vital importance and of benefit to the public interest for the Commission to have the opportunity to analyze that Opposition, especially in light of the fact that the Alliance is a non-profit consumer organization which -- unlike the commercial for-profit entities which filed the Petitions, BellSouth and the CMRS carriers represented by the CTIA -- has no pecuniary interest or financial stake whatsoever in the outcome of this proceeding. While the Alliance fully supports the existence of such commercial, for-profit entities, by not being one of those entities itself, the Alliance respectfully submits that it is of value to the Commission to consider the Alliance's Opposition precisely because the Alliance is able to discuss the issues under consideration from the dispassionate vantage point of an organization whose views and agenda are not influenced by and/or the reflection of concerns about the impact which the Commission's ultimate decision in this proceeding will have upon its revenues and earnings potential.

It must be emphasized in this regard that the Alliance does not have the virtually unlimited resources that BellSouth or the CTIA have with which to hire attorneys to draft and

file pleadings on their behalf. As the Commission is aware, BellSouth is a corporation with over $19 billion in assets and the CTIA represents many multi-billion dollar corporations, many of whom hold assets which approach or exceed the assets of BellSouth.

In contrast to the CTIA and BellSouth, the Alliance -- which is comprised of non-profit organizations such as the World Institute on Disability, Crime Victims United, Consumers First, and The Office of Communication of the United Church of Christ -- has no assets whatsoever. The Alliance's "resources" consist of and are wholly dependent on the voluntary contributions of its members, who donate their time and their efforts to draft and file pleadings such as the Opposition filed concurrently herewith.

By mentioning this disparity in resources, the Alliance is in no way suggesting that in all matters before the Commission it should receive or be granted special treatment; however, in light of both the importance to the public of the issues under consideration by the Commission in this proceeding and the inconsequential nature of the four (4) day extension of time which the Alliance has requested, which neither prejudices BellSouth or the CTIA nor places an undue or additional burden upon the Commission, the Alliance respectfully requests that the Commission accept the Opposition pleading filed concurrently herewith which, as noted, is being filed only four (4) business days after the date upon which the Opposition was required to be filed.

Furthermore, it should be noted that the Alliance's Opposition pleading follows the prior filing by the Alliance of a Motion for Extension of Time which the Commission is empowered to consider under Section 1.46 of the Commission's Rules, 47 C.F.R. §1.46, which provides that: "In emergency situations, the Commission will consider a late-filed motion for a brief extension of time ...." The emergency circumstances in this case revolve

around, quite simply, the limitations of the Alliance's resources and hence, the Alliance's inability to timely file an Opposition pleading which would offer the maximum benefit to the Commission, as the Commission considers the vital issues of public importance presently under review in this proceeding.

Accordingly, the Alliance hereby respectfully requests that the Commission grant the Alliance the additional four (4) business days in order to enable the Alliance to provide the Commission with the concurrent filed Opposition pleading and that the Commission accept the Alliance's Opposition in order to afford the Commission – in its efforts to reach a decision which comports with and will serve the public interest, convenience and necessity – the worthwhile opportunity to assess the arguments proffered by the Alliance in its Opposition which establish (1) the Petitions should not be granted; (2) the Commission's *Reconsideration Order* should be permitted to stand; and (3) the obligation imposed by the Commission upon the CMRS carriers in the *Reconsideration Order* – the purpose of which are to serve the public interest – should be implemented without further delay.

Respectfully Submitted,

THE AD HOC ALLIANCE FOR
PUBLIC ACCESS TO 911

Jonathan D. Linkous for the Ad Hoc
Alliance for Public Access to 911

Before the
Federal Communications Commission
Washington, D.C.

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

OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Ad Hoc Alliance for Public Access to 911 (the "Alliance") hereby files its "Opposition to Petitions for Reconsideration" (the "Opposition") in response to the "Petition for Reconsideration" filed by BellSouth Corporation ("BellSouth") and the "Petition for Reconsideration and Clarification" filed by the Cellular Telecommunications Industry Association (the "CTIA") (collectively referred to hereinafter as the "Petitions") in connection with the Commission's *Memorandum Opinion and Order* issued with respect to the above-captioned proceeding[1]

The Commission's decision set forth in the *Reconsideration Order* "to modify [its] rules by requiring wireless carriers to transmit all 911 calls without regard to validation procedures and regardless of code identification..."[2] is a decision which, as the Commission acknowledged in the *Reconsideration Order*, involves only "limited revisions to our rules [which]...are intended to

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[1] *Memorandum Opinion and Order*, FCC 97-402 (Dec. 23, 1997), 63 Fed. Reg. 2631 (Jan. 16, 1998) (hereinafter referred to as the "*Reconsideration Order*").

[2] *Reconsideration Order* at & 5

remedy ***technical*** problems raised in the record while otherwise reaffirming our commitment to the rapid implementation of the technologies needed to bring emergency assistance to wireless callers throughout the United States."3 (emphasis added)

As Chairman Kennard eloquently and succinctly noted in the "Separate Statement of Chairman William E. Kennard" appended to the *Reconsideration Order*, "The order the Commission adopted today takes a common sense approach to public safety. Making 911 and enhanced 911 service available to wireless callers will help emergency service providers respond to people in emergency situations as quickly and effectively as possible. Under the Commission's Order, wireless carriers subject to the 911 rules will be required to transmit all wireless 911 calls (from both subscribers and non-subscribers) to emergency assistance providers or Public Safety Answering Points (PSAPs). When it comes to helping people in emergency situations, we have an obligation to do all that we can to make sure that there are no impediments to their receiving help. Assuring prompt delivery of emergency 911 calls from whatever source, without delay, best serves the public interest."4

What Chairman Kennard highlighted in his Separate Statement, i.e., the requirement that "wireless carriers...transmit all 911 calls (from both subscribers and non-subscribers) to emergency assistance providers or Public Safety Answering Points (PSAPs)," in response to the

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3 *Id.* at & 6.

4 *Reconsideration Order*, Separate Statement of Chairman William E. Kennard at 1.

wireless carriers' is the only substantive rule change annunciated in the context of the *Reconsideration Order*. In all other significant respects, the *Reconsideration Order* reaffirmed rules and deadlines that were previously established by the Commission in the Report and Order adopted on June 12, 1996 establishing rules requiring wireless carriers to implement 911 and Enhanced 911 ("E911") services [5]. Chairman Kennard also acknowledged this in his Separate Statement wherein he noted that, "The Commission today reaffirms the deadlines for the rules for enhanced 911 services that will move us closer to making this a reality for wireless callers as well.,[6]" and "Today, the FCC reaffirmed its commitment to the rapid implementation of technologies needed to bring emergency help to wireless callers.[7]" In conclusion, Chairman Kennard noted that, "Finally, the Order we adopt today finishes the task of putting into place the basic building blocks of 911 and enhanced 911 services for wireless calls.[8]"

Despite the limited purpose and effect of the Commission's *Reconsideration Order*, both BellSouth and the CTIA have chosen improperly to use the FCC's narrow technical revisions to its 911/E911 rules as a means of shoehorning further requests for reconsideration of issues which

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5 In the Matter of 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 (1996) (the "*E911 First Report and Order*" and "*E911 Second NPRM*").

6 *Id.*

7 *Id.*

8 *Id.* at 2.

both parties have had ample opportunities to air in the past, have availed themselves of such opportunities in numerous pleadings submitted to the Commission, including comments, reply comments, supplementary comments, Petitions for Reconsideration of the Commission's *E911 First Report and Order* , additional pleadings filed in connection with such Petitions for Reconsideration and *ex parte* presentations to the Commission, all of which have been carefully reviewed and repeatedly addressed by the Commission in the context of its prior orders in this proceeding.

Notwithstanding the impropriety of the requests set forth in the Petitions for reconsideration of issues that have previously been considered and reconsidered by the Commission, because of the vital importance to the public of implementation of the Commission's rules with respect to wireless 911 service which the Petitions both seek to delay, the Alliance is forced to respond to the most significant issues raised in the Petitions and the ill-conceived arguments made in support of the untenable positions taken by BellSouth and the CTIA.

The first issue raised in the Petitions which must be addressed is the request that the FCC take action to limit the liability of wireless carriers in connection with the transmission of 911 calls, which is the sole issue raised in BellSouth's Petition [9] and is raised in the CTIA's Petition as well. [10]

This issue was previously raised in comments filed in response to the initial Notice of

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9 *See, e.g.*, BellSouth Petition at 1.

10 *See, e.g.*, CTIA Petition at 10.

Proposed Rulemaking issued by the FCC in this proceeding, carefully considered by the

reconsideration of the *E911 First Report and Order*[11], subsequently painstakingly reviewed anew by the Commission and then addressed again in its *Reconsideration Order*[12] the Petitions both wrongfully request that the Commission review this same issue one more time and actually add to that improperly filed request the groundless and self-serving suggestion that, "The limitation of liability issues are...important and must...be a prerequisite to E-911 deployment.[13]" The CTIA also repeats its prior requests that the FCC immunize CMRS carriers against any liability arising out of their failure to deliver 911 calls to the PSAP and/or local exchange carriers "[i]n light of [the FCC's] decision to require all covered CMRS carriers to forward all 911 calls...[14]," and seeks the FCC's permission for CMRS carriers to file tariffs with the Commission for the express purpose of limiting the liability of CMRS carriers in the event of their failure to forward 911 calls or, alternatively, to "permit CMRS providers to voluntarily file model E911 contracts,[15]" which "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.[16]"

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11 E911 First Report and Order at 94-101.
12 *Reconsideration Order* at && 130-142.
13 BellSouth Petition at 7.

14 CTIA Petition at 10.
15 *Id.* at 12-14.
16 Id at 15.

Both BellSouth and the CTIA proffer arguments in support of their requests for limited liability which disingenously attempt to obtain preferential treatment from the Commission compared to the regulatory treatment accorded local exchange carriers under the guise of seeking to obtain [17] "the same limitations on liability traditionally afforded to communications common carriers" or to "avail themselves of the traditional common carrier devices affording limited immunities from liability [18]."

While the CTIA euphemistically refers to "traditional common carrier devices" or "communications common carriers," it is curious that the CTIA never once uses the words "local exchange carrier(s)" in the body of its Petition (relegating the one mention of the term to a footnote which quotes from the Commission's *E911 First Report and Order*), when it is evident that it is the local exchange carriers to which the CTIA is referring and not telegraph providers or any other "communications common carrier," traditional or otherwise, when the CTIA claims that CMRS carriers should be furnished with the same liability limitations which the "traditional

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17 CTIA Petition 10.

18 *Id.* The wireless industry has apparently been enormously aided in this effort by XYPOINT Corp., a company whose location technology may be used in connection with the implementation of E-911 service by CMRS carriers in accordance with the FCC's mandate therefor, and who stands to benefit from the liability limitations that would be placed on its liability as well if the state legislation which it has drafted on behalf of wireless carriers, public safety officials and location technology providers like itself succeeds in being passed by the various state legislatures. XYPOINT appears to be working quite feverishly on the state level to push for the introduction and ultimate passage of model legislation which XYPOINT has drafted, accordingly to its press releases which appear on and are accessible through the CTIA's website.

common carriers" have enjoyed [19].

There is a simple explanation for the CTIA's coquettish avoidance of the words "local exchange carriers" in the text of its Petition, i.e., if the Commission or the state legislatures were presented with a true and complete picture comparing the regulatory burdens imposed upon the local exchange carriers versus those imposed upon CMRS carriers -- in exchange for which the local exchange carriers have indeed generally been granted the right to place limitations in their tariffs regarding the dollar amount which they may be required to pay out in damages under certain circumstances and/or state public utilities laws have been enacted which provide for such limitations on the local exchange carriers' liability (also only under certain circumstances)-- it would be readily apparent that it is wholly invalid for the CTIA to suggest that both types of carriers are subject to equal or even comparable burdens and, therefore, should also be entitled to emjoy equal benefits [20]. Not surprisingly, nowhere in the littany of inapplicable cases, Commission orders, sections of the Communications Act of 1934 (as amended) and even a memorandum from the Department of Justice, which the CTIA attempts to use in support of its contention that CMRS carriers should be granted the same limited liability which "traditional

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19 CTIA Petition at 12, fn. 28.

20 It should be noted that the local exchange carriers do not, in any event, enjoy blanket immunity against liability no matter what circumstances are alleged to have engendered such liability. Rather, the local exchange carriers are only entitled to enjoy limited liability in cases involving ordinary negligence on their parts, as opposed to liability resulting from gross negligence or intentional actions committed by the companies and/or their employees, notwithstanding any provisions that may be contained in their tariffs which attempt to limit all liability to which the carriers may be subject to a fixed dollar amount, no matter what the cause. *See, e.g., Waters v. Pacific Tel. Co.*, 12 Cal. 3d 1 (1974). Also, in many jurisdictions, liability on the part of local exchange carriers may involve "interruptions in service."

common carriers" have enjoyed, does the CTIA manage to cite to one case involving a CMRS carrier or a class of communications common carriers which has a similar level of *de minimus* regulatory obligations imposed upon them -- at both the state and the Federal levels -- as the CMRS carriers enjoy [21].

Cutting through all of the CTIA's inapplicable citations to various irrelevant sections of the Communications Act of 1934, etc., the Alliance has a proposal, however, that will solve the dilemma raised by both the CTIA on behalf of CMRS carriers and by BellSouth (which, as a corporation with both wireless and local exchange carrier subsidiaries, is amply famililar with the vast differences in the regulatory schemes applicable to these two categories of "commmunications common carrier"): If the CMRS carriers will agree to be subject to -- and indeed become subject to -- all of the same categories of regulations which govern the activities of their local exchange carrier brethren, then the Alliance would have no objection whatsoever to the CMRS carriers receipt of "the same limitations on liability traditionally afforded to communications common carriers, including wireline carriers" in accordance with the CTIA's request [22].

As an example, pursuant to the Alliance's proposal, the CMRS carriers would be subject to the regulatory requirements set forth below, which represent a broad outline of the regulatory requirements to which local exchange carriers are obligated to adhere:

(1) An incentive-based regulatory program under which the CMRS carriers, like

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21 *See* CTIA Petition at 12-16.

22 CTIA Petition at 10.

many local exchange carriers throughout the United States, would be free to manage their businesses and to maximize their profits, subject: first, to a rate cap; second, to a benchmark rate of return beyond which profits must be shared with ratepayers; and third, to an absolute earnings cap beyond which all profits must be returned to ratepayers. This kind of an incentive-based plan is currently applicable to GTE in California, for example [23].

(2) Alternatively, the CMRS carriers could be subject to the traditional rate base/rate of return regulatory scheme, in lieu of incentive-based regulatory programs such as the program outlined in (1) hereinabove. Such rate base/rate of return regulatory scheme would involve the establishment in the context of rate-making proceedings of, *inter alia*, the CMRS carriers' authorized rate of return. The authorized rate of return for each CMRS carrier regulated in this manner would be arrived at by first determining the carrier's rate base, which is calculated by adding up the original cost of all of its physical assets and then substracting the accumulated depreciation and deferred income tax. Under this regulatory method: depreciation accounts for the loss of value year by year of plant and equipment which the CMRS carrier can deduct each year from its rate base; the equipment included in a CMRS carrier's rate base is privately financed by shareholders and lending institutions; and the CMRS carrier's opportunity to earn a fair return is based on that investment. Further, the CMRS carrier recovers the depreciation through an allowance for depreciation expense. The CMRS carrier's rate of

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23 *See* The Decision of the California Public Utilities Commission, Decision 94-06-011 (1994).

return, which is expressed as a percentage, reflects the carrier's weighted cost of capital and is found by multiplying capital structure components by the costs associated with the various forms of financing. It includes interest on borrowed funds, plus dividends on preferred stock and a reasonable allowance for a return on equity (i.e., common stock). The CMRS carrier's rate of return established pursuant to the rate-making proceeding is not a guarantee of profit, but only indicates that the CMRS carrier is entitled, through prudent management and efficiency, to recover the approved revenues from its subscribers and to try to earn the authorized rate of return.

(3) CMRS carriers would be required to adhere to a grade of service standard of no less than P.01 for all portable (0.6 watt) cellular phones (which comprise greater than 90% of the cellular phones in use) as well as "mobile" (3 watt) cellular phones throughout a CMRS carrier's licensed service area. This P.01 grade of service standard is applicable to local exchange carriers throughout the United States.

(4) CMRS carriers would be required to provide service (P.01 grade) to the entire market in which the carrier is licensed (i.e., the FCC's "90% rule" for CMRS carriers would no longer apply).

(5) The CMRS carrier in a given market would be required to provide "universal

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24 The aforementioned definitions and descriptions are paraphrased from a publication issued by the California Public Utilities Commission entitled the *CPUC Handbook on the Regulation of California's Public Utilities and Transportation Companies,* (August, 1994) at 4.

service," i.e., service to low-income subscribers who cannot afford service [24].

A cursory review of just the regulatory programs and/or requirements applicable to local exchange carriers which are not appicable to CMRS carriers demonstrates the vast difference in the manner in which they are each regulated. An average authorized rate of return for a local exchange carrier is approximately 12 1/2%, whereas L.A. Cellular, a CMRS carrier in the Los Angeles market, earned an average after-tax accounting rate of return of 56.2% over the five (5) year period from 1989 to 1993, according to the California Public Utilities Commission, while its competitors earned an average return of 37.9% during the same period [25]. Although CMRS carriers' earnings are being diminished somewhat as a result of the entry of PCS into the marketplace, the decrease in revenues and earnings is not at all substantial. Attached hereto are statistics also found on the CTIA's website which indicate that the annualized total service revenues derived by all U.S. commercially-operational cellular, ESMR and PCS providers in 1997 came to over $25 billion. (It should be noted in connection with the CMRS carriers' purported fear that their liability will be tremendously enhanced by roamers or other non-subscribers to their systems, thereby justifying a limitation of the amount of that liability, according to the same CTIA statistical compilation, Annualized Roamer Revenue accounted for only approximately 11% of the Annualized Total Service Revenues. In any event, with after-tax returns such as those which cellular carriers are accustomed to earning (which average in the 30-40% range across the United States), it is difficult to see why, as the Commission earlier noted, ordinary state tort law is not an appropriate safeguard to ensure that CMRS carriers "do not go

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25 *See* FCC Order denying the Petition filed by the State of California and the CPUC for Authority to Regulate the Rates of cellular carriers

broke" as a result of any liability which they may have in connection with the failure to transmit 911 calls and/or properly provide their portion of E911 service.

As the Commission is aware, the CMRS industry is seeking to have legislation passed on the state level which would serve to limit the liability which CMRS carriers may face as a result of their failure to transmit 911 calls. Apparently, the main argument used by the CMRS carriers to persuade the state legislatures that it is only fair that wireless carriers be immunized against such liability revolves around the notion that because the local exchange carriers have been afforded such limited liability under state law and/or through provisions contained in their tariffs, it is only fair that "the other side of the switch" (i.e., the wireless carrier side) be afforded the same liability protection enjoyed by the local exchange carriers. limitations on their liability.

As discussed hereinabove, even the CTIA, by burying the term "local exchange carrier" in a footnote demonstrates that it does not have the gumption to state forthrightly that it is seeking treatment for CMRS carriers that only grants them the benefits which local exchange carriers derive from regulation while eschewing all of the "detriments" associated with the regulation of local exchange carriers, and that its Petition (and that of BellSouth's as well) under review herein is asking for treatment that is tantamount to allowing the CMRS carriers to "have their cake and eat it too."

As noted here and above the other issues raised by the Petitioners have been exhaustively reviewed and reconsidered by the Commission and no basis exists for further reconsideration.

CTIA is incorrect in its contention that the Commission has imposed a new requirement

on CMRS carriers in its *Reconsideration Order* [26]. In the *E911 First Report and Order*[13] the Commission stated:

> "We further conclude that, . . ., covered carriers must transmit calls from wireless mobile handsets which do not transmit a code identification to any appropriate PSAP which has formally requested transmission of such calls."[27]

The CMRS industry objected to this requirement on the grounds that it was not technically feasible and advised the Commission that the "most practical options are to forward either *all* 911 calls, or *only* those that have been validated. [28]" Faced with this option, the Commission wisely and correctly determined that all calls should be transmitted to the PSAP. Thus, it is the Public Safety industry, not the CMRS carriers, that has cause, if any, to complain – which has not occurred. The obligation of CMRS carriers to deliver all 911 calls is unchanged except that the Commission, not the PSAP, has made the determination that such calls will be delivered.

The Petitioners' request for a stay [29] is completely unwarranted. None of the elements of

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26 CTIA petition at 1;
27 A. 1. b. at paragraph 26.
28 Reconsideration Order, at para, p. 18.
29 CTIA petition at 3; BellSouth petition at 1.

the four prong test for a stay have been satisfied [30]. The Petitioners' contention that the delivery of all 911 calls should be deferred until other "enhancements" are considered is preposterous. Such effort to further delay the implementation of E911 service merely underscores the fact that the true purpose behind the actions of the wireless industry is and has been to hinder and delay these proceedings without any regard for the public's safety.

The CTIA contends that "[g]aps in CMRS coverage may result from inadequate tower siting opportunities [31]". As the Alliance has conclusively established in engineering studies filed with this Commission, such gaps are pervasive throughout areas where there are no antenna site

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30 The elements necessary for issuance of a stay are: (1) petitioners are likely to prevail on the merits; (2) petitioners will suffer irreparable harm absent a stay; (3) interested parties will not be harmed if the stay is granted; and (4) the public interest would favor a grant of the sty. *In the Matter of Auction of Teractive Video and Data Service Licenses Scheduled to Begin February 18, 1997,* 12 FCC Red 18; 6 Com. Reg. (P & F) 134 (1997) ; citing *Virginia Petroleum Jobbers Association v. FPC,* 259 F. 2d 921 (D.C. Cir. 1958).

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31. CTIA petition at 8.

restrictions. The Alliance has also established in its filings with the Commission that most of these gaps are filled in when the strongest available cellular signal is selected when 911 is dialed. It is disingenuous for the CTIA to use gaps in CMRS coverage as a basis for stating that "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. [32]" In fact, it is the wireless industry that has been shamelessly misleading the public with advertising and service area maps that show a solid area of service, despite full knowledge that the users of portable wireless phones will not be able to reach help in an emergency because the service area advertised is, in fact, filled with weak signal "holes" where communication is simply not possible, especially with the use of portable hand-held (0.6 watt) cell phones which are used by the overwhelming majority of cell phone subscribers [33].

The Alliance has always taken the position that CMRS carriers should recover the actual costs of providing E911 service to the public. The Alliance has previously stated however, that the potentially significant revenues to be realized by selling non-emergency location services, which use the same ALI equipment, should be applied against these costs. As CTIA states, a "dynamic and competitive [ALI equipment] market has developed" which offers "a variety of technological . . . options"[34]. There is no reason why this market should be a windfall for 14

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32. Id at 9.
33. Attached hereto, for the Commission's information, is an advertisement that appeared recently in Global Wireless.
34 CTIA petition at 20.

CMRS carriers who will select one ALI system to the exclusion of others. It is in the public interest to allow PSAPs, or any other entrepreneur, to provide the variety of "technological options available to consumers and the Public Safety industry. The installation of such ALI equipment in a small fourteen-inch rack at the cell site will hardly be an imposition on the CMRS carrier. Thus, the Alliance asks that the Commission clarify its Phase I rules to require CMRS carriers to negotiate, in good faith, the interconnection of ALI equipment to their systems by one or more providers of such equipment on the condition that such providers agree to deliver such location information to any PSAP requesting such information.

In conclusion, the implementation of the decisions reached by the Commission in the *Reconsideration Order* are of tremendous importance to CMRS users, for whom safety and security/emergency access to 911 are the most oft-cited reasons for their subscription to CMRS service, according to BellSouth's and the CTIA's own polling data. (For the Commission's convenience, attached hereto are copies of the pages from BellSouth's and the CTIA's websites on the internet which contain such polling data.)

The Commission should simply not allow the public to suffer the detrimental impact which will flow from further delay in the implementation of its rules, which grant of the Petitions would, at a minimum, engender. Rather, it is of vital importance to the public interest that the Commission reject the arguments proffered by BellSouth and the CTIA and deny their Petitions in their entirety, for all of the reasons set forth herein, thereby enabling the obligations imposed

by the Commission upon the CMRS carriers in the *Reconsideration Order* -- the purpose of which are to serve the public interest -- to be implemented without further delay.

Respectfully submitted,

THE AD HOC ALLIANCE FOR
PUBLIC ACCESS TO 911

Jonathan D. Linkous for the Ad Hoc
Alliance for Public Access to 911

WIRELESS STATISTICS

United States Wireless Demographics:

Subscribers

Cellular, PCS and ESMR Subscribers - Nationwide

44,042,992

Source: CTIA, Year-End 1996 Data Survey

Gender

	Cellular Subscribers	PCS Subscribers
Male	50%	66%
Female	50%	34%

Source: Peter D. Hart Research Associates, March 1997

Age

	Cellular Subscribers	PCS Subscribers
18 - 34	31%	36%
35 - 49	34%	45%
50 and over	35%	19%

Source: Peter D. Hart Research Associates, March 1997

'Age' Detail:

Teenagers are a growing market for cellular phones. Who pays the cell phone bill for teens ages 14 - 19?:

	Male	Female
Self	73%	59%
Parents	23%	38%
Grandparents	2%	0%
Other	2%	3%

Source: Cellular One Group, *USA Today*, March 31, 1997, Section D1

Type of Use

	Cellular Subscribers	PCS Subscribers
Business	25%	30%
Personal	58%	49%

Source: Peter D. Hart Research Associates, March 1997

Business Usage by Age Group

	Total	18-29 years	30-44 years	44-54 years	55+ years
Business Use	32%	25%	58%	42%	36%
Monthly Bill	$52	$64	$58	$41	$37
% of All Users	100%	15%	47%	21%	17%

Source: The Strategis Group, *Cellular and PCS Consumer Trends*, Year-End 1996

Most Important Reason To Purchase A Phone

	Reasons To Own
Be able to communicate in an emergency	46%
Be more available away from home or office	28%
Protect your personal safety	12%
Be able to make calls when you're in a rush	4%
Other	6%

Source: Consumer Eletronics Manufacturers Association, 1996

'Reasons To Own' Detail:

Multiple wireless phones are becoming more common: 44% of PCS and 39% of cellular subscribers have more than one wireless phone in their households. One in six wireless phone households have more than three phones.

Source: Peter D. Hart Research Associates, March 1997

Income

	Cellular Subscribers	PCS Subscribers
Less than $30,000	16%	14%
$30,000 - $50,000	27%	24%
$50,000 - $75,000	22%	24%
More than $75,000	25%	29%

Source: Peter D. Hart Research Associates, March 1997

Occupation

	Cellular Subscribers	PCS Subscribers
Professionals/Managers	36%	42%
White Collar	25%	28%
Blue Collar	20%	20%

Source: Peter D. Hart Research Associates, March 1997

'Occupation' Detail:

563 of 1,600 professionals with large corporations have cellular phones (35%). Of those 563, 68% pay their wireless bills as individuals and expense business calls.

Source: The Yankee Group, 1995

Make vs. Receive Calls

	Cellular Subscribers	PCS Subscribers
Make	56%	43%
Make and Receive evenly	35%	46%
Receive	9%	11%

Source: Peter D. Hart Research Associates, March 1997

How Often Phones Are Used

	Cellular Subscribers
Use nearly everyday	54%
Use a few times a week	25%
Use a few times a month	17%

Source: Consumer Eletronics Manufacturers Association, 1996

Type of Calls

	Cellular Subscribers	PCS Subscribers
Local	70%	84%
Long Distance/Mixed	29%	15%

Source: Peter D. Hart Research Associates, March 1997

Technological Understanding

Wireless subscribers were asked if they knew what kind of wireless

technology their phone uses:

	Cellular Subscribers	PCS Subscribers
Not Sure	51%	19%
Digital	22%	76%
Analog	27%	5%

Source: Peter D. Hart Research Associates, March 1997

'Technological Understanding' Details:

The Consumer Electronics Manufacturers Association survey of attendees at the 1996 Consumer Electronics Show (CES) Mobile Electronics Show, indicates 27% of consumers are aware of PCS phones. And, given what they know about PCS phones, 36 percent of the respondents think they might purchase a PCS phone in the future.

Source: Consumer Electronics Manufacturers Association, 1996

61% of PCS subscribers rate themselves as very or fairly confident and knowledgeable when shopping for wireless technology, compared to 42% of cellular subscribers.

Source: Peter D. Hart Research Associates, March 1997