

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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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REPLY TO OPPOSITIONS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION TO
PETITIONS FOR RECONSIDERATION AND CLARIFICATION

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The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Reply to Oppositions on Petitions for Reconsideration and Clarification in the above-captioned proceeding.²

I. INTRODUCTION AND SUMMARY

The comments filed in response to CTIA's Petition for Reconsideration and Clarification ("Petition") and BellSouth's Petition for Reconsideration demonstrate that the Commission has left unresolved several important issues in its E911 Memorandum

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*, 12 FCC Rcd 22665 (1997) ("E911 Memorandum Opinion and Order").

Opinion and Order. The timely resolution of these issues does not necessitate the abandonment of the current E911 deadlines. CTIA's Petition was not intended to halt or postpone the Commission's implementation deadlines for Phase I and Phase II.³ Rather, the Petition was aimed at fostering uniform, nationwide availability of emergency dialing arrangements along with the promotion of wireless facilities siting on Federal properties in connection with the Commission's mandate that carriers complete all 911 calls. The realization of these goals would reduce the likelihood that a caller would be unable to access assistance in an emergency situation. As a result of the self-evident merits of a universally available 911 emergency number, along with the benefits of improved coverage through antenna siting on Federal properties, no commenter took exception to these ideals.⁴

³ In its discussion concerning handset-based solutions, CTIA expressly stated that it was not requesting modification of the Phase II implementation schedule, but rather was seeking clarification as to how the Commission would consider technological neutrality in its Phase II requirements. See Petition at 23-24.

⁴ The purpose of a universally available 911 number is to ensure that callers nationwide will have access to emergency services through a single telephone number. Achieving this worthy objective, however, should not be confused with an unnecessary and unduly restrictive mandate to alter network operations that are transparent to the user. See Washington State Enhanced 911 Program Comments at 1-2 ("[T]he Petitioner makes a valid argument that the Commission has authority to and should designate 9-1-1 as a number to be made universally available. . . . Carriers should be precluded from translating 9-1-1 to 7-digit or 10-digit emergency numbers in lieu of providing direct connections to 911 networks where such networks exist.") Since cellular and PCS systems typically encompass more than one PSAP, carriers and PSAPs should maintain all possible means to translate and route 911 calls to the appropriate location.

The Petition was also intended to clarify certain unresolved issues which need to be addressed prior to E911 implementation. CTIA is seeking confirmation that when the Commission "made implementation of E911 services contingent upon the adoption of a cost recovery mechanism"⁵ it placed an affirmative obligation on the State or local community to adopt a specific cost recovery mechanism. Moreover, CTIA's Petition requests the same protections from liability for CMRS providers that wireline carriers already receive when providing 911 services. In those instances where there is no limitation on a carrier's liability, CTIA requests that the Commission reconsider its decision mandating that carriers complete calls from consumers with whom there is no contractual relationship, and thus no ability by the carrier to reasonably protect itself from lawsuits seeking to recover consequential damages by exploiting the natural propagation characteristics of radio frequencies.

Finally, CTIA requests clarification from the Commission that in the event a PSAP and a carrier, after consultation and negotiation, are unable to agree on the means by which the caller's ANI and location information is transmitted to the appropriate PSAP, it must be the carrier's obligation to select the technology used to meet the Commission's requirements because the Commission's mandate falls solely on CMRS providers. While

⁵ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676 at ¶ 89 (1996) ("Report and Order").

several State agencies and their representative associations oppose CTIA's position, and ask the Commission to grant PSAPs the right to dictate the technology a carrier must deploy, their arguments contradict their previous support for technology neutral industry standards.

II. THE COMMISSION SHOULD RECONSIDER ITS POSITION DENYING CMRS PROVIDERS LIMITED LIABILITY.

In the Petition, CTIA requested that the Commission afford CMRS providers the same opportunity to limit their liability as wireline carriers receive. CTIA suggested three alternatives, pursuant to the Communications Act of 1934 (as amended), which have historically protected the interests of consumers and carriers alike.⁶ Similarly, BellSouth's Petition for Reconsideration requests that wireless carriers should have the opportunity to insulate themselves from liability given the fact that the Commission is mandating the provision of E911 service to anyone with a wireless phone.⁷

⁶ Petition at 13 ("[T]here are several possible ways to notify E911 wireless callers of a providers' traditional common carrier limited liability: [p]ermit CMRS carriers to file informational E911 tariffs, similar to those filed by 1+ dial-around long distance services; [p]ermit 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 [p]ermit 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.")

⁷ BellSouth Petition for Reconsideration at 3-5.

Many commenters support CTIA's and BellSouth's request.⁸ As one commenter correctly noted

"[h]aving found that it was 'reasonable' for CMRS carriers to obtain limits on liability, the [Commission] then refused to take the very action that would enable carriers to obtain such limits. Having found that contractual limits were unavailable for non-subscribers, the [Commission] provided no alternative way to limit liability. The [E911 Memorandum Opinion and Order] is . . . arbitrary because it places the obligation to serve non-subscribers on CMRS carriers alone.

CTIA concurs with this assessment. In a non-regulated, market driven context, carriers would consider the risks of providing a particular service in determining whether to offer it. That assessment would naturally include their exposure to liability as a result of providing the service. Carriers operating freely would also have the opportunity to take reasonable steps to limit their risks through contracts with their subscribers.

Because the Commission's regulations require the provision of E911 services without validation, carriers are proscribed from limiting any risks associated with E911 by declining service. Nor can they reasonably shield themselves from liability through reliance upon traditional tariff filings or contractual agreements. As a direct result of the Commission's actions, carriers will necessarily be exposed to greater risk than they would willingly take in the normal course. Given the Commission's mandate, and the public interest benefits associated

⁸ See, e.g., AT&T Wireless Services Comments; Rural Telecommunications Group Comments; TruePosition Comments at 4-5.

⁹ Bell Atlantic Mobile Comments at 2.

with universal E911 service, it is incumbent upon the Commission to afford carriers traditional protections from liability concomitant with the extension of E911 carriage regulations to non-subscribers.

Several commenters argue that CMRS carriers should not be entitled to the limited liability normally associated with telecommunications common carriage unless they first consent to rate of return regulation, price cap regulation, or other monopoly-based regulatory regimes. To illustrate, the Ad Hoc Alliance believes that limitations on liability are only warranted "[i]f the CMRS carriers will agree to be subject to . . . all of the same categories of regulations which govern the activities of their local exchange carrier brethren."¹⁰

These commenters are mistaken. The debate regarding the proper level of rate regulation for CMRS carriers has long been settled in favor of competitive outcomes, not regulatory checks.¹¹ Moreover, a position coupling limitations on liability to rate regulation is bad policy and bad history. The protections from liability afforded to common carriers are not derived from the regulation of a monopoly carrier's rates. Rather, limited liability is warranted here for reasons unrelated to rate levels. Limited liability is inextricably related to the inherent characteristics of radio transmissions as well as to the

¹⁰ Ad Hoc Alliance Comments at 8.

¹¹ 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) (forbearing from unnecessary Title II obligations).

nature of a common carrier's duty to serve all comers indiscriminately.

There is a historical relationship between a common carrier's duty to provide transmission services and corresponding limitations on liability. The public benefits from a communications common carrier's obligation to serve (i.e., to provide transmission services to) all comers on an indiscriminate basis.¹² The obligation to serve all comers, though, necessitates a societal recognition that a carrier cannot reasonably attach the proper level of importance to each and every transmission; nor can it be held strictly liable for consequential damages for messages which fail to go through.¹³

¹² Notwithstanding the assertions made by some, common carrier obligations and limitations on liability existed long before the passage of the Communications Act or State utilities regulations. 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").

¹³ See Primrose v. Western Union Telegraph Co., 154 U.S. 1 (1894) (as cited in 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, 531 (1981)) ("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 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.") Thus, the State of Hawaii's claim that "GTE Hawaiian is accorded limited liability because its conduct and rates are regulated under traditional rate base, rate of return regulation" is contrary to the historical understanding of common carrier limited liability and is

The combination of strict liability and consequential damages threatens the imposition of costs so great as to preclude a self-evidently socially desirable service. As a result, an overall social judgment evolved over the centuries against making carriers liable for consequential damages. For the good of society, injured persons would have to bear their own consequential damages. The historical basis for limited liability for telecommunications carriers, including wireline carriers, has equal force for CMRS carriers providing E911 services.

Throughout this proceeding the Commission has consistently acknowledged that one hundred percent accuracy in the provision of E911 services is unattainable. In the Report and Order, the Commission concluded that a carrier need only meet the degree of accuracy required under Phase II in 67 percent of the cases.¹⁴ This is based largely upon the recognition that the technical properties of radio-based telecommunications render transmission of information through wireless communications fallible. Indeed, the Commission has specifically recognized as much in this proceeding when it noted that call completion depends "on the vagaries of radio transmission."¹⁵ The provision of telecommunications through radio based technologies exposes

unrelated to price or service regulation. See Opposition of the State of Hawaii at 9.

¹⁴ Report and Order at ¶ 71.

¹⁵ E911 Memorandum Opinion and Order at ¶ 32; see also TruePosition Comments at 4.

carriers to inherent risks which will either result in a decision not to provide the service, or will require limitations on liability through private contract or other means supported by the Commission.

One final note: while the common carrier duty to serve everyone is not recent for CMRS providers, the obligation to provide E911 services without the benefit of a contractual or other formalized (statutory) relationship with a system user is new. This fact alone dramatically alters the regulatory landscape for CMRS services and warrants the recognition that carriers are entitled to limitations on liability as a matter of course.

III. THE COMMISSION SHOULD CLARIFY THAT IT IS ULTIMATELY THE CARRIER'S OBLIGATION TO TRANSMIT THE APPROPRIATE INFORMATION TO THE PSAP AND TO SELECT THE TECHNOLOGY TO DO SO.

In response to PSAP efforts to narrow the options available to carriers in meeting their E911 obligations, CTIA requested that the Commission clarify that carriers have the final right to select the means by which they satisfy the Commission's rules. The Petition noted that the Commission has already recognized that there is more than one method of transmitting the voice call along with the enhanced features such as Automatic Number Identification (ANI) and the caller's location information.¹⁶ Furthermore, CTIA presented extensive analysis supporting a market-based approach where carriers can efficiently implement

¹⁶ Petition at 18-19 (citing E911 Memorandum Opinion and Order at ¶ 104, 107).

E911 solutions on a system-wide basis in a timely fashion.¹⁷ Based on the good faith efforts of PSAPs and carriers alike, CTIA expects that in the overwhelming majority of cases, agreement can be reached on the choice of technology utilized. While CTIA supports a continuing dialogue between carriers and PSAPs in selecting the transmission formats, in the rare event that they are unable to reach agreement, the comments support Commission action which would place ultimate decision-making responsibility with the carrier.

Both the industry and PSAPs have agreed upon a standardized means of presenting the ANI and the location information to the PSAP under J-STD-034.¹⁸ Under this standard there are two acceptable means for delivery of data to the PSAP, call associated signaling (CAS) and non-call associated signaling (NCAS). Both options fall squarely within the parameters of the standard and provide carriers with two acceptable alternative methods of delivering ANI and location information to the PSAP.

PSAPs, however, have sought to require carriers to conform to the call-delivery option they select. The Commission should, on reconsideration, clarify that the existing industry standard still controls and that any call delivery method that supports J-STD-034 is acceptable. Because cellular and PCS serving areas will generally encompass multiple PSAP jurisdictions, permitting each PSAP to control the decision-making process could easily

¹⁷ CTIA Petition at 19-21.

¹⁸ See Attachment.

result in carriers being required to deploy multiple and redundant call delivery methods within the same system area. For example, a carrier providing service in Maryland, Virginia, and the District of Columbia would be subject to various PSAP jurisdictions which could impose differing call delivery requirements.¹⁹ Requiring a carrier to implement redundant call delivery methods within a single system is not only inefficient but also imposes additional and unnecessary burdens on cost recovery mechanisms. Although the Commission declined to set these standards, it certainly did not delegate such unilateral authority to the PSAPs. PSAP efforts to the contrary operate as impediments to efficient E911 systems.

Many of the commenters opposing CTIA's Petition believe that further negotiation is warranted.²⁰ While CTIA not only supports, but fosters such an environment, the Commission cannot leave unchecked the operation of these negotiations. If a dispute arises between the PSAP and the carrier, the carrier could eventually be in violation of the Commission's rules because of its obligation, and not the PSAP's, to provide service within a specified period of time.²¹ Under the pressure of the

¹⁹ This dilemma is not only limited to carriers whose service areas cross State boundaries. Within each State, there are often multiple, independent PSAP jurisdictions each of which could impose whatever call delivery method it prefers.

²⁰ See, e.g., Texas Advisory Commission on State Emergency Communications at 3.

²¹ A similar situation presently exists in the difficulties between law enforcement officials and the telecommunications industry over the implementation of CALEA. Here too, if the parties were to fail to reach agreement, only one side seems to suffer any consequences.

prescribed deadlines, there is no incentive for the PSAP to negotiate in good faith while carriers may be forced to capitulate as a result of the Commission's regulations.²² The carrier, on the other hand, is motivated to provide optimal service to its subscribers, including the full complement of emergency services, in an economically efficient manner. Commission action in support of CTIA's Petition would balance the parties' incentives and would be in furtherance of the public interest.

Commenters opposing CTIA's Petition have expressed that they are no longer interested in abiding by the terms of the industry standard "[b]ecause they are operationally and financially accountable for the effective functioning of the total E9-1-1 system . . . Public Authorities have every right to advocate enhanced signaling and compatible equipment in preference to CAMA-tolerant NCAS methods."²³ Some in the public safety

²² Often, disagreements between carriers and PSAPs center around the deployment of new technology which will allow the carrier to deliver to the PSAP important information in addition to what the Commission's regulations presently require. It is not only unreasonable, but poor public policy, to limit carriers to antiquated technologies which thwart the development of enhanced public safety features. See, e.g., Emergency and Wireless Communities Promote Joint Agenda for E-911 and Tower Siting to Congress, Mobile Phone News, March 30, 1998 (citing testimony before the U.S. House of Representatives which supports using wireless technology "to . . . 'connect the dots' of present emergency systems to create an Automatic Crash Notification (ACN) capability. In an emergency, the car itself would call for help, and could give rescuers data about the crash itself that would make it much easier [for public safety officials] to respond.") These and other important modifications can only be implemented with advanced connections to the PSAPs.

²³ NENA, APCO, and NASNA Comments at 5.

community appear to have taken the position that there is no longer any choice under J-STD-034 -- either the carrier capitulates or it will violate the Commission's rules. It has long been understood, however, that the selection of technology, even in the realm of regulated services, is a managerial decision which should be left to the private carrier and not administered by customers or by government entities. Thus, the Commission should not assign to PSAPs the authority to select the call delivery method implemented by the carrier.²⁴

IV. THE COMMISSION SHOULD CLARIFY THAT THERE MUST BE A COST RECOVERY MECHANISM IN PLACE PRIOR TO THE DEPLOYMENT OF WIRELESS E911.

In the Report and Order the Commission concluded that "we have made implementation of E911 services contingent upon the adoption of a cost recovery mechanism . . . carriers and government officials uniformly recognize . . . that resolving cost recovery issues is a prerequisite to E911 deployment. . . ."²⁵ As noted in the Petition, many State and local authorities are choosing to selectively ignore the Commission's requirement that they must adopt specific cost recovery provisions prior to E911 implementation. While CTIA agrees that the Commission did not impose a Federal cost recovery mechanism, it did impose a duty upon State or local governments to adopt specific plans.

²⁴ A delegation of authority to the PSAP to select the call delivery mechanism would also overstep the Commission's jurisdiction, which, in this instance, is limited to the carriers and is unenforceable as to PSAP decisions.

²⁵ Report and Order at ¶ 89 (citing comments filed by Texas, New Jersey, and the Consensus Agreement).

The Commission reasoned "that local and state governments have pursued innovative and diverse means for the funding of wireline E911 services, and that it is reasonable to anticipate that these governments will follow a similar course with regard to wireless E911."²⁶ Events occurring after the release of the Report and Order have demonstrated that the Commission generally was correct. However, in a few instances, communities have sought to abandon their role, suggesting instead that cost recovery can be accomplished by asking each carrier to recover its costs directly from its own customers.

Comments filed in opposition to the Petition demonstrate the need for Commission action. The State of Hawaii confuses the Commission's decision not to adopt a Federal cost recovery mechanism with the State's obligation to do so. Specifically, it argues that "[t]here is, of course, nothing preventing wireless providers from collecting E911 costs directly from their customers through rate surcharges."²⁷ The Washington State Enhanced 911 Program goes one step further, contending that the PSAP is providing a service to carriers' subscribers and it is the PSAP whose costs are not fully recovered.²⁸ These arguments not only ignore the Commission's Orders requiring affirmative action on the part of State or local communities, but they also

²⁶ Id. at ¶ 89; see also E911 Memorandum Opinion and Order at ¶ 145, ¶ 35 ("[T]he costs of wireless E911 may be recovered in various ways, subject to state and local programs.") (emphasis added)

²⁷ Opposition of the State of Hawaii at 6.

²⁸ The Washington State Enhanced 911 Program at 5.

deviate from the wireline funding model which permits LECs to fully recover their costs for providing E911 services.

Some commenters mistakenly presume that CTIA expects that all carrier costs will be recovered from PSAPs.²⁹ CTIA does not oppose the implementation of a cost recovery mechanism which imposes a competitively neutral 911 tax or fee on all subscribers. The Petition was not intended, nor did it request, PSAPs to pay for implementing all aspects of E911. Rather, the Petition sought Commission confirmation that implementation of a competitively neutral cost recovery mechanism by a State or local government was a prerequisite to mandating carrier provision of E911. The comments filed demonstrate the need for Commission clarification. Toward that end, the Commission should not allow State and local communities to avoid their obligations to implement cost recovery by simply telling carriers to go directly to their subscribers.³⁰

²⁹ See Opposition of the State of Hawaii at 3-5 (incorrectly arguing that CTIA advocates a Federal cost recovery mechanism where all costs are recovered from PSAPs).

³⁰ Relatedly, it is poor public policy to implement cost recovery mechanisms that ignore the societal benefits of E911 and instead impose all costs on CMRS subscribers alone. Clearly, the Commission recognized as much when it required carriers to transmit non-validated calls and noted that "[m]any wireless 911 calls are from "Good Samaritans" reporting traffic accidents and similar emergencies." E911 Memorandum Opinion and Order at ¶ 34. Cost recovery mechanisms that distribute costs efficiently, among all members of the community, should be favored.

V. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission reconsider its E911 rules and regulations consistent with this Reply and with the proposals raised in CTIA's Petition.

Respectfully submitted,

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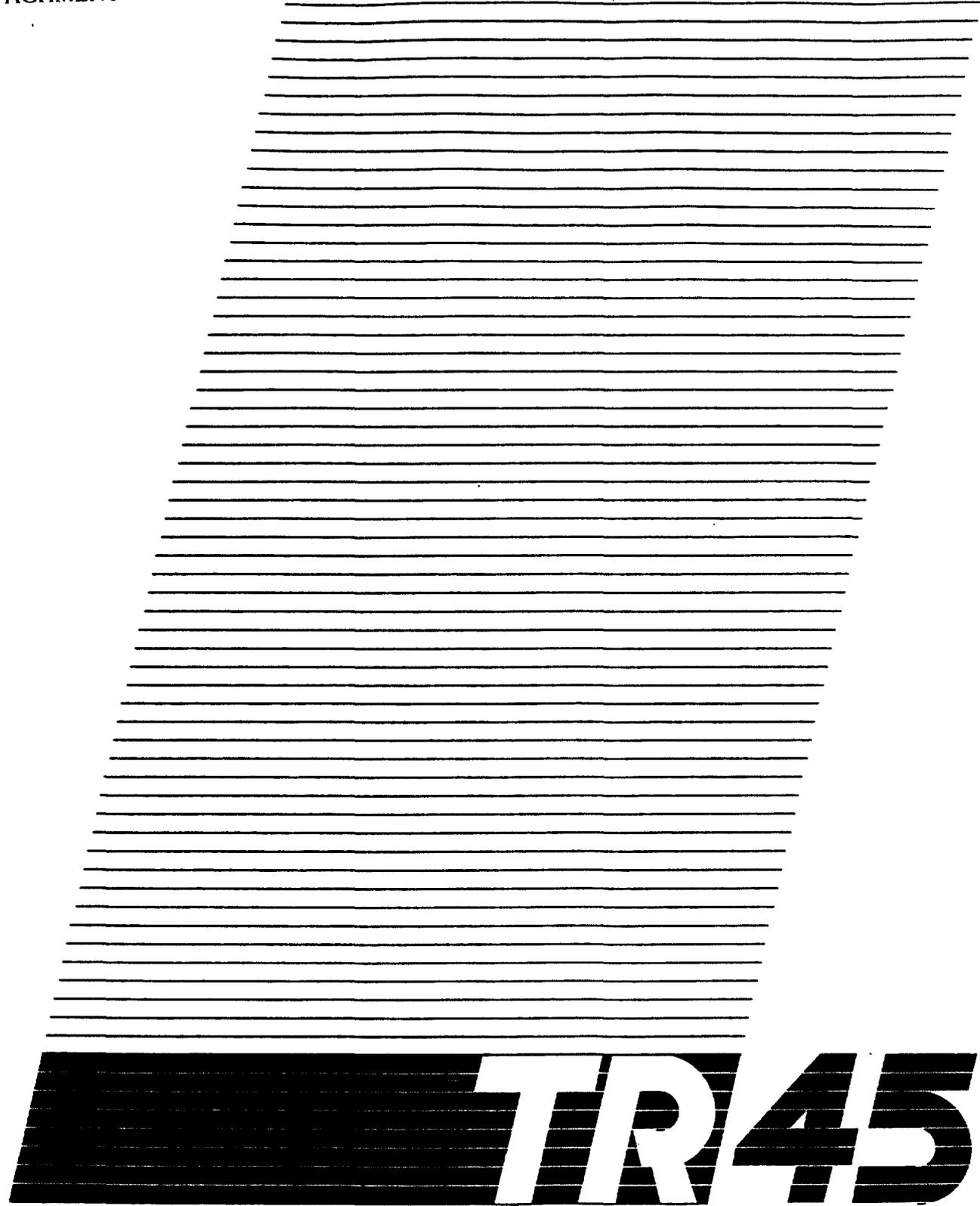


Michael F. Altschul

Dated: April 1, 1998

* By Hand Delivery

ATTACHMENT



**Wireless Enhanced
Emergency Services**

J-STD-034

Pre-Publication Version

WIRELESS ENHANCED EMERGENCY SERVICES:
FUNCTIONAL OVERVIEW

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FOREWORD

This Foreword is not part of this Interim Standard.

This is one of a series of recommendations titled

“WIRELESS ENHANCED EMERGENCY SERVICES”

which provides a solution for the limited capabilities of Wireless Enhanced Emergency Services. These capabilities include:

- provision of base station, cell site or sector identification information
- subscriber identification
- callback
- reconnect

The recommendations included in this series are:

- J-STD-034.1, Wireless Enhanced Emergency Services: Functional Overview
- J-STD-034.2, Wireless Enhanced Emergency Services: PSAP Perspective
- J-STD-034.3, Wireless Enhanced Emergency Services: Emergency Services Stage 2
- J-STD-034.4, Wireless Enhanced Emergency Services: *TIA/EIA-41* Intersystem Handoff Modifications
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