

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

Ad Hoc Alliance for Public Access to 911

Alliance for Technology Access•Arizona Consumers League•National Consumers League•World Institute on Disability•Crime Victims United•Justice for Murder Victims•California Cellular Phone Owners Association•Florida Consumer Fraud Watch•Center for Public Interest Law•Consumer Action•Consumer Coalition of California•Consumers First•California Alliance for Consumer Protection•Californians Against Regulatory Excess•The Office of Communication of the United Church of Christ•Utility Consumer Action Network•Children's Advocacy Institute

June 9, 1998

RECEIVED

JUN - 9 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Re: Ex Parte Communication
CC Docket 94-102

Dear Mr. Kennard:

Enclosed is written testimony submitted to the House Commerce Committee regarding legislation proposed by Rep. Tauzin. The legislation would affect wireless cellular tower placement and liability for cellular companies.

Sincerely,



Jim Conrad
Chairman

CC: Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Secretary Magalie Salas

Attachment

No. of Copies rec'd _____
List A B C D E

2

STATEMENT OF THE
AD HOC ALLIANCE FOR PUBLIC ACCESS TO 911
BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE AND CONSUMER PROTECTION OF
THE HOUSE COMMITTEE ON COMMERCE
CONCERNING H.R. 3844, THE WIRELESS COMMUNICATIONS
AND PUBLIC SAFETY ACT OF 1998

JUNE 9, 1998

STATEMENT OF CARL B. HILLIARD, JR.,
GENERAL COUNSEL TO THE
AD HOC ALLIANCE FOR PUBLIC ACCESS TO 911,
BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION OF
THE HOUSE COMMITTEE ON COMMERCE

CONCERNING H.R. 3844
THE WIRELESS COMMUNICATIONS AND PUBLIC SAFETY ACT OF 1998

JUNE 9, 1998

Chairman Tauzin and Members of the Subcommittee:

Thank you for the opportunity to make this statement on behalf of the Ad Hoc Alliance for Public Access to 911 (the "Alliance") concerning the proposed Wireless Communications and Public Safety Act of 1998 ("H.R. 3844"). The Alliance is a collective of diverse public safety, public interest, non-profit, disability and consumer concerns who are vitally interested in seeing that commercial mobile radio services ("CMRS") develop and operate reliable 911 services. The Alliance has participated in proceedings before the Federal Communications Commission ("FCC") involving wireless 911 service (Docket 94-102) and has been selected by the FCC, along with representatives of the CMRS industry and the Public Safety Community, to regularly report back to the Commission concerning certain aspects of its orders relative to wireless 911 service.

SUMMARY

The Alliance supports the objectives of H.R. 3844 and respectfully submits the proposed changes to that bill. These changes would accomplish the following:

1. Provide for participation by consumer organizations in the Wireless Emergency Services Advisory Group and in the development of State plans to implement the objectives of H.R. 3844.
2. Provide that seventy-five percent (75%) of any income received by CMRS providers from the direct or indirect use of location equipment shall be first applied as a credit against any charges to public safety organizations and then credited against charges to subscribers for 911 service. The balance, if any, to be returned to the WICAPS fund.
3. Require a CMRS provider seeking access to Federal property to:
 - a. Disclose all alternatives to the proposed facility which will provide the public with access to 911, and,
 - b. Have the burden to show that the proposed facility is necessary to access 911 and is designed to have the least possible impact on the subject property.
4. Allow limited liability only if CMRS providers are subject to the same level of State and Federal regulatory oversight as local exchange telephone companies.

1. Participation by Consumer Organizations

The role of consumer organizations is to be advocates for the public interest. They are free from any entanglements and dependencies that arise out of day to day relationships and often mute disagreement. The symbiotic liaisons between the CMRS providers and the Public Safety

Community is a case in point.

It is not in the nature of the various groups listed as advisors in H.R. 3844 to raise questions or challenge statements made by the CMRS industry. Consumer groups are not so constrained. "Sunshine is the best disinfectant" and sunshine is what consumer groups have brought, and will bring, to the discussion concerning the wireless 911 system. The real constraint is that a consumer group is not able to match the blitzkrieg that can be, and is now being, mounted by the CMRS industry. To help balance this situation, the Alliance proposes that consumer groups be included and reimbursed for their costs if it is deemed that their contributions have been in the public interest.

2. Distribution of Any Revenue Resulting from the Use of Location Equipment Paid for With Public Funds.

It is appropriate that the public pay for the facilities required to locate wireless users who are calling 911. However, it is apparent that these same facilities can be, and will be, used to provide other commercial services. Obviously, the public should receive some of the revenues from the provision of commercial services over facilities paid for by the public. The Alliance has proposed that seventy-five percent (75%) of such revenues be given back to the public. Even this provision may not be sufficient if the current forecasts of revenue streams from various commercial location services are realized. In this event, the CMRS provider, who used facilities purchased with public funds to develop this market, may find it expedient to junk these facilities and purchase a new system to avoid sharing revenue with the public. Accordingly, the Subcommittee may wish to consider a provision which would require a CMRS provider who

elected to purchase location equipment with public funds to share any and all location services revenue with the public, without regard to the facilities used, for a reasonable period of time after the publically purchased equipment was installed.

3. Showing Required to Use Federal Lands.

The Alliance supports the use of federal lands to extend the reach of wireless coverage to the degree necessary to provide access to 911. This need must be balanced with the public's use of the parks and other such areas that would be diminished by the unnecessary installation of unsightly towers by the soon to be up to twelve (12) CMRS providers in each area. The availability of a single facility from one CMRS provider may be sufficient to meet the need for public access to 911 through such measures as the selection of the strongest compatible signal. Furthermore, there are a multitude of less intrusive alternatives to towers such as micro cells, superconductors, use of fiber optics, etc., which can ameliorate what would otherwise be unsightly intrusions to our nation's park lands. These alternatives should be disclosed to the administrator of the federal land during the application process. The amendment proposed by the Alliance would place the burden on the CMRS applicant to show that the proposed facility to be place on Federal lands is necessary for access to 911 and is the least intrusive of the possible alternatives.

4. Limitation of Liability.

The Alliance is opposed to granting limited liability to CMRS providers for three reasons. First, limiting a CMRS providers liability for negligence would likely remove, or at least diminish the provider's incentive to develop and operate reliable 911 services. Second, limiting liability would encourage a CMRS provider to misrepresent, or at least avoid educating the

public concerning, the questionable accuracy and reliability of wireless 911 service. Third, the analogy to local telephone exchange carriers, public safety organizations or good Samaritans is inappropriate.

Extensive advertising by CMRS providers and others heavily promotes safety as a prime consideration in the purchase of wireless phones. The success resulting from this sales strategy is evidenced by recent studies which indicate that up to sixty-eight percent (68%) of wireless phones were purchased for safety and security reasons. What is not said, or understood by the public, is that the advertised coverage from CMRS systems has little relevance to the ability of a wireless phone user to reach 911. This is especially true in the instance of lower power hand held wireless phones which are used by approximately ninety percent (90%) of CMRS users. Two tragic events demonstrate the problem. In 1994, Marcia Spielholz was chased by carjackers in Los Angeles for up to ten (10) minutes before she was cornered and shot in the face. During this chase, she frantically dialed 911 on her portable wireless phone but was not connected to the emergency operator. The Alliance conducted a test of the wireless system along her route of travel and found that no voice communication was possible over the CMRS system she was using. In 1998, Joseph Lechuga and his family were traveling along Angeles Crest Highway when their car hit a patch of ice and went over the side of the road. Six calls for help from the Lechuga's portable wireless phone should have been, but were not, connected. That family perished. In both the Spielholtz and Lechuga situations, coverage was advertised by, but in fact not available from their CMRS providers.

These incidents continue to attract heavy media attention because reliable access to 911 is a vital public concern. Adoption of a statute limiting liability would continue to mask the

unresolved issues of CMRS accountability and consumer education concerning these system deficiencies.

The CMRS providers, when convenient to their positions, draw an analogy to local exchange telephone carriers. These carriers have traditionally been monopoly providers of basic residential and business exchange telephone service and limit their liability through tariffs filed with State public utilities commissions ("PUCs"). Local exchange carriers are accorded limited liability because they are closely regulated and have universal service obligations. As a result, the PUCs are directly responsible for ensuring that the planning, construction and operation of the landline 911 service is prudent. The prudence review of the regulatory process does not apply to the CMRS industry. Without responsibility or regulatory review, there is little incentive for a negligent CMRS provider to improve its 911 services. The only protection available to the public is the state consumer protection and tort laws. The adoption of the limitation of liability provisions of H.R. 3844 would strip victims of CMRS negligence of their right to just compensation.

5. Conclusion.

The Alliance appreciates the opportunity to provide this statement concerning the proposal to improve wireless 9-1-1 service to the public. The Alliance would be pleased to provide any further assistance to the Subcommittee in its efforts to enhance the law in this area.