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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Request for an Emergency Declaratory)	CC Docket No. 94-102
Ruling Filed Regarding Wireless)	
Enhanced 911 Rulemaking Proceeding)	DA 98-1504

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to the July 30, 1998 Public Notice ("Public Notice") of the Federal Communications Commission ("Commission") in the above-referenced proceeding, Nextel Communications, Inc. ("Nextel") respectfully submits these comments.

On July 20, 1998, the State of California 911 Program Manager ("California") requested that the Commission clarify the following issues:

- (1) whether wireless carriers have an obligation to deploy Enhanced 911 ("E911") services where the carrier has been provided no immunity from liability for the provision of E911 service;
- (2) whether the Commission's E911 cost recovery rules encompass the cost of obtaining insurance policies covering the provision of wireless E911 services; and
- (3) a clarification of the Commission's definition of "appropriate PSAP" in the E911 First Report and Order.^{1/}

The confusion over these issues is not unique to California. As Nextel, a nationwide carrier, works to introduce E911 service in numerous states, these and other questions are constantly arising

^{1/} Public Notice at p. 2.

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to slow the E911 implementation process. For example, the following E911 implementation issues are outstanding in various states: carrier cost recovery and what costs are recoverable; the requisite technological standards and requirements for delivering E911 Phase I service, and whether a Public Safety Answering Point ("PSAP") can dictate the technological arrangement irregardless of carrier technologies and cost impact; whether a Public Service Commission has the authority to review a wireless carrier's E911 costs and approve or disapprove them; and, as in California, who is the "appropriate" PSAP for E911 calls.

Like the rest of the wireless industry, Nextel is working diligently to implement E911 services in those markets where the E911 preconditions, *i.e.*, a formal request from an authorized PSAP, a cost recovery mechanism, and a PSAP that has the technical capability of receiving the E911 information, have been satisfied. Thus, Nextel respectfully requests that the Commission act expeditiously in responding to California's request.

II. DISCUSSION

A. **Protection from Liability**

In the First Report and Order in this proceeding,^{2/} the Commission chose to leave the issue of indemnity for offering E911 service to the states -- whether the state courts or state legislatures -- concluding that a federal standard on liability

^{2/} First Report and Order and Further Notice Of Proposed Rule Making, 11 FCC Rcd 18676 (1996) ("First R&O").

protection was "unnecessary."^{3/} Following the Commission's direction in the First R&O, carriers have attempted, among other things, to negotiate with PSAPs to hold harmless the wireless carrier or to obtain statutory liability limitation (typically on a state-wide basis) from state legislatures, with inconsistent results.^{4/} As the California situation demonstrates, Commission guidance on liability issues is, in fact, necessary for the rapid deployment of wireless E911 services.

It is nonsensical that state law typically grants wireline carriers liability protections in the provision of landline E911 services, but wireless carriers are being forced to lobby, state-by-state, county-by-county or PSAP-by-PSAP, to acquire similar protections for providing a service that, by its nature, is more likely to experience call completion failure due to factors outside the carrier's control. Wireless carriers cannot assure that every portion of their licensed geographic area is covered by a cell site all of the time and under all conditions, particular given the increasing difficulties carriers have in obtaining local zoning authority for such cell sites. Weather conditions, seasonal factors and even sunspots can momentarily degrade services such that, at a particular moment, a call may not be completed.

^{3/} *Id.* at para. 99. Wireless carriers, moreover, are not seeking any broader protection than that currently provided landline service providers, i.e., protection from liability for incomplete calls where the call was not completed for reasons beyond the carrier's control. Carriers are not seeking liability protection for intentional acts or gross negligence on their part.

^{4/} *Id.* In California, for example, the state legislature has failed to provide wireless carriers protection from liability.

Finally, even with an E911 system, the mobile nature of wireless communications makes it impossible to "guarantee" that the emergency services personnel can pinpoint the caller's exact location with the accuracy of a landline E911 system serving customers at fixed locations.

Despite the landline system's greater assurance of completing a 911 call and the limited number of variables that can interfere with call completion, Nextel is not aware that the public interest benefits of offering them protection from liability has ever been seriously questioned. The Commission, in its First R&O and MO&O, provided no public policy justification for denying wireless carriers' immunity under these circumstances, stating only that wireline is different because local exchange carriers' immunity generally arises from tariff provisions. Contrary to the Commission's conclusions in the First R&O and MO&O, protecting wireless carriers from liability is essential to achieving the goals of the Communications Act since, without such protections, the provision of wireless E911 services are being delayed.^{5/} The Commission should exercise its jurisdiction over wireless services and provide, at a minimum, guidelines for the states to follow in providing limited liability for the provision of wireless E911 services.

Thus, to ensure their customers the best possible E911 service, wireless carriers must be assured of protection from liability for circumstances beyond their control that impact the

^{5/} First R&O at para. 100.

timely completion of 911 and E911 mobile calls. The Commission should provide wireless carriers this protection on a nationwide uniform basis by encouraging states and localities to extend E911 liability protection to wireless carriers and by clarifying that, in those states where wireless carriers are provided no immunity, the cost of insurance policies is a recoverable E911 cost. This would eliminate continued confusion and free carriers to move forward with E911 deployment.

B. Appropriate PSAP

The Commission already has clarified California's question regarding the "appropriate PSAP." In its Memorandum Opinion and Order,^{6/} the Commission stated that the "appropriate PSAP" is the one designated by "the responsible local or state entity [that] has the authority and responsibility to designate the PSAPs. . . ." ^{7/} Moreover, the Commission recognized that determining who is the "responsible local or state entity" may require coordination where there are overlapping jurisdictions, e.g., state and county governments.^{8/} Recognizing that such "coordination" may not occur immediately, the Commission concluded that "until the relevant state or local governmental entities develop a routing plan for wireless 911 calls. . . covered carriers can comply with

^{6/} Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997) ("MO&O").

^{7/} MO&O at para. 98.

^{8/} *Id.* at para. 99.

[the Commission's] rules by continuing to route 911 calls to their incumbent wireless PSAPs."^{9/}

Despite following the Commission's order to continue routing to the incumbent wireless PSAP, Nextel has been subjected to defending itself in a lawsuit brought by Monroe County, New York regarding the "appropriate PSAP" for wireless E911 calls placed in Monroe County. The state and county governments in New York, the New York State Police and Monroe County, respectively, do not agree on where Nextel is required to send its customers' 911 calls pursuant to state law. For the past three years, Nextel has transmitted 911 calls from its customers outside of New York City and Long Island to the New York State Police pursuant to a contract with them that assures 911 service. As Nextel has expanded its service area in New York State, the state police have identified the appropriate state police PSAP needed to support 911 service to that area, and have assisted Nextel in implementing these arrangements. Nonetheless, despite Nextel's provision of wireless 911 services to its users in Monroe County, and despite the Commission's express requirement that Nextel continue routing 911 calls to the incumbent PSAP (in this case, the New York State Police), Monroe County recently sued Nextel for not re-routing 911 calls to its own county PSAP.

Given this apparent misunderstanding of the Commission's requirements, and to ensure that carriers are not drawn into disputes between competing state and local authorities regarding

^{9/} *Id.*

the "appropriate PSAP," the Commission should restate that carriers are required to continue routing calls to their incumbent wireless PSAPs where state and local authorities disagree over the requirements of state/local law. Until the state/local authorities' disagreement is properly resolved, the Commission concluded that a wireless carrier's federally-derived obligation to offer 911 and E911 support is met by continuing to send such calls to the existing PSAP (or the PSAP it is currently sending such calls to) without the risk of liability for not switching to the disputed PSAP.^{10/}

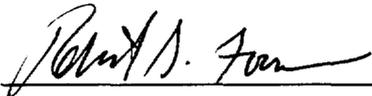
III. CONCLUSION

For the reasons stated herein, Nextel respectfully requests that the Commission act expeditiously in clarifying that (1) indemnity is necessary for the rapid deployment of wireless E911 services; and (2) carriers are entitled to recover the cost of insurance policies covering their E911 services in those states where there is no liability protection. Additionally, the Commission should restate its prior conclusion that carriers are protected from liability for sending calls to their incumbent PSAP

^{10/} This assurance from the Commission is critical because, without it, the carrier has no protection from its decision to send calls to a particular PSAP, i.e., where two parties are claiming to be the "appropriate" PSAP, either choice could make the carrier the target of a lawsuit.

when competing "responsible" authorities do not agree on the
"appropriate PSAP."

Respectfully submitted,

By,  _____

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Date: August 14, 1998

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 14th day of August 1998, I caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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A handwritten signature in black ink, reading "Rochelle L. Pearson". The signature is written in a cursive style with a horizontal line underneath.

Rochelle L. Pearson