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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

AUG 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")¹ respectfully submits its Comments in the above-captioned proceeding and in response to the Wireless Telecommunication Bureau's request for comment on a Request for an Emergency Declaratory Ruling ("the Request") filed by the State of California's 9-1-1 Program Manager.² The Request outlined three issues, related to the implementation of the Commission's E9-1-1 Phase 1 requirements, for declaratory ruling:

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, and includes forty-eight of the fifty largest cellular and broadband PCS carriers and more cellular carriers than any other trade association.

² Public Notice, July 30, 1998, CC Docket No. 94-102, DA 98-1504.

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- (1) Do carriers have an obligation to deploy wireless E9-1-1 service (Phase 1) in California despite the fact that State statutes do not provide immunity from liability for E9-1-1 service provided?
- (2) If carriers are obligated to deliver Phase I service without immunity from liability (either statutory or contractual), is the State required under the cost recovery rules to reimburse carriers for the cost of insurance policies covering their provision of wireless E9-1-1 service?
- (3) Regarding selective routing, what is meant in the Commission's E9-1-1 First Report and Order by the reference to "appropriate PSAP"?³

These are important issues that require immediate resolution to permit the roll-out of wireless E9-1-1 services. In fact, the first two issues regarding limitation of liability for wireless E9-1-1 and cost recovery were raised by CTIA in its Petition for Reconsideration and Clarification⁴ of the Commission's E9-1-1 Memorandum Opinion and Order.⁵ Currently, CTIA's Petition, along with others, is pending before the Commission, and a full record has been developed. Given

³ Id.

⁴ Petition for Reconsideration and Clarification of the Cellular Telecommunications Industry Association, filed February 17, 1998, CC Docket No. 94-102.

⁵ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 9-1-1 Emergency Calling Systems, CC Docket No. 94-102, Memorandum Opinion and Order, 12 FCC Rcd. 22665 (1997), ("E9-1-1 Memorandum Opinion and Order").

the importance of 9-1-1 service to the public, CTIA urges the Commission to decide these issues immediately.

I. LIMITATION OF CARRIER LIABILITY IS NECESSARY FOR THE PROVISION OF E9-1-1 SERVICES

There can be no doubt that limitation of carrier (and PSAP) liability is necessary for the provision of E9-1-1 service. How this risk is managed is just as critical to a carrier's operation as any other risk it must manage to provide a reliable and cost-effective service to its customers. As the record in this proceeding makes clear, when the Commission mandated that wireless carriers provide E9-1-1 services to subscribers and non-subscribers alike,⁶ the Commission eliminated the traditional means by which carriers can limit their liability. The tangible consequences of such liability can be measured by the insurance premiums carriers will incur to manage the risks imposed by the FCC's E9-1-1 Memorandum Opinion and Order.⁷

⁶ E9-1-1 Memorandum Opinion and Order at ¶¶ 14-15.

⁷ In California alone, current projections of costs to privately insure all California wireless carriers are reported to be at least \$50 million a year. See Letter Request at 2; Jon Healey, "911 Improvements Hung Up: Mobile -Phone Companies Fear Liability Suits," San Jose Mercury News, Aug. 5, 1998. Thus, the questions framed by California's 9-1-1 Program Manager are somewhat circular: carriers who have an obligation to deploy Phase 1 E9-1-1 service must be allowed to manage their liability risks -- and in the absence of state (or federal) immunity, the

By now, the Commission must recognize that it is no answer to advise wireless carriers that they can insulate themselves from liability through contracts, since subscribers and non-subscribers alike may expect to use wireless telephones for access to emergency personnel.⁸ Similarly, the instant Request belies the Commission's conclusion that "it is premature and speculative" to establish a national standard of liability protection in order to achieve the rapid deployment of wireless E9-1-1 services."⁹ California is one of seventeen states which have not limited wireless carriers' liability even though wireline carriers are afforded such protection. As CTIA and others have urged, the Commission should facilitate the provision of wireless E9-1-1 service by permitting carriers to file informational tariffs at the Commission for this federally-mandated service.¹⁰ As the Commission itself has recognized in this proceeding, it may preempt state

insurance costs can be so great as to exceed the state's cost-recovery mechanism, thereby relieving carriers of their obligation.

⁸ E9-1-1 Memorandum Opinion and Order at ¶ 132.

⁹ E9-1-1 Memorandum Opinion and Order at ¶ 137.

¹⁰ The U.S. Supreme Court recently has reaffirmed the viability of the "filed rate doctrine." See American Telephone & Telegraph Co. v. Central Office Telephone, Inc., No. 97-679 (June 15, 1998), slip op. at 8.

regulation when preemption is necessary to protect a valid regulatory objective.¹¹ The significant number of states which have not provided liability protection to wireless carriers for E9-1-1 service demonstrates the need for a national standard. Furthermore, FCC action is appropriate to implement a Commission-mandated service which imposes nationwide obligations on the wireless industry.

II. COST RECOVERY INCLUDES INSURANCE PREMIUMS

The cost of insurance coverage required to provide E-911 service must be included in a state's cost recovery mechanism. The liability risk of providing 9-1-1 service imposes direct costs on a carrier that would not be incurred but for the Commission's E9-1-1 mandate. These costs necessarily include the insurance premiums at issue, since in the absence of Commission action on the pending CTIA and BellSouth petitions seeking federal tariff authority, CMRS carriers cannot limit their liability from non-subscribers' use of their systems.

The Commission recently reaffirmed that costs incurred by a carrier specifically to implement a service required

¹¹ Id. In this instance, there is no state law or regulation to preempt; rather, the Commission would be acting to fill a vacuum.

by the Commission fall outside of a carrier's control and are recoverable.¹²

The Commission has required the industry to implement E9-1-1 service and has dictated the terms, conditions and schedule for offering it.¹³ As a matter of general principle, a carrier's rates "do not exist in isolation." In its recent reaffirmation of the "filed rate doctrine," the United States Supreme Court found that rates only have meaning when linked to services.¹⁴

Just as a carrier's rates do not exist in isolation, neither do its costs. Although E9-1-1 service is free to the public, it imposes direct costs on carriers that also do not exist in isolation. The FCC has directed that the costs for mandated E9-1-1 service not be charged directly to the user, but rather the Commission has required that "a mechanism for the recovery of costs relating to the

¹² See 800 Data Base Access Tariffs, CC Docket No. 93-129, 11 FCC Rcd. 15227, 15250-51, ¶ 48 (1996), recon granted in part on other grounds, 12 FCC Rcd. 5188 (1997).

¹³ See 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, 18682-84, ¶¶ 10-12 (1996), Recon. 12 FCC Rcd. 22665 (1997), ("E9-1-1 Report and Order").

¹⁴ See American Telephone & Telegraph Co. v. Central Office Telephone, Inc., No. 97-679 (June 15, 1998), slip op. at 8.

provision of [E-911] services be in place" before a wireless carrier is obligated to provide E9-1-1 service.¹⁵

The cost of providing E9-1-1 services includes the insurance premiums at issue because carriers in California and elsewhere incur real costs managing their liability risks in the absence of a state or federal limitation of liability. It is appropriate that the states - who the FCC has made responsible for covering wireless carriers' costs of providing E9-1-1 service - should be responsible for carriers' insurance costs if the state has declined to limit a carrier's liability through state law.

III. THE DESIGNATED OR APPROPRIATE PSAP SHOULD BE DETERMINED BY THE STATES

The Commission' wireless E9-1-1 mandate requires carriers to route wireless 9-1-1 calls to the "designated" or "appropriate" PSAP if certain conditions are met.¹⁶ The Commission also has determined that, "[t]o the extent that the terms 'appropriate' and 'designated' PSAPs . . . may be unclear, we wish to clarify that the responsible local or state entity has the authority and responsibility to

¹⁵ E9-1-1 Report and Order at ¶ 11.

¹⁶ Id. at ¶¶ 10-11.

designate the PSAPs that are appropriate to receive wireless 9-1-1 calls.¹⁷

There is broad agreement that state and local public safety authorities are best equipped to determine, in consultation with wireless carriers, how wireless 9-1-1 calls should be routed. The instant Request demonstrates the wisdom of this approach. Officials in California should be the ones who resolve what appears to be a sticky conflict between the legislative actions of the California State government and the discretion of local officials in determining the most effective way of protecting the citizens of the State of California.

CONCLUSION

To enable wireless carriers to implement E9-1-1 service without further delay, CTIA respectfully requests that the Commission use the instant Request, as well as the record established in connection with the pending Petitions seeking reconsideration of the Commission's Reconsideration Order, to resolve the cost recovery and liability issues that are of critical importance to the national implementation of wireless E9-1-1 service.

¹⁷ Id.

Respectfully submitted,



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August 14, 1998