

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

**COMMENTS OF APCO IN RESPONSE TO
STATE OF CALIFORNIA REQUEST FOR DECLARATORY RULING**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following comments in response to the Commission's Public Notice, DA 98-1504, released July 30, 1998, seeking public comments regarding a request from the State of California 9-1-1 Program Manager (hereinafter "California") for a declaratory ruling in the above-captioned proceeding.¹

California seeks an immediate ruling on three questions, each of which are listed below along with APCO's relevant comments:

1. "Do carriers have an obligation to deploy wireless E911 service (Phase I) in California despite the fact that State statutes do not provide immunity from liability for E911 service provided?"

APCO has no objections to state or federal legislative efforts by the wireless industry to ensure that they have the same liability protection as wireline carriers in the

¹ In proceedings such as this, APCO usually attempts to file joint comments with the National Emergency Number Association ("NENA"). However, due to summer travel schedules and activities related to the recent APCO Annual Conference, counsel for APCO and NENA were unable to coordinate a joint response in this instance.

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provision of 9-1-1 service. However, the absence of such legislation must not stall the implementation of the Commission's wireless E9-1-1 rules. In the Memorandum Opinion and Order (MO&O) in this proceeding, FCC 97-402, released December 23, 1997, the Commission reiterated that it would be "premature and speculative for the Commission to establish a national standard of liability protection in order to achieve rapid deployment of wireless E911 systems." MO&O at ¶ 137. The Commission also refused to adopt a suggestion that it should "make the 911 service deployment obligation contingent upon public safety organizations indemnifying carriers for negligence and other intended errors." MO&O at ¶133. Therefore, in response to the Request for Declaratory Ruling, the Commission should reaffirm that a carrier's obligation to deploy Phase I is not contingent upon there being a State statute to provide the carrier with liability immunity.

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 E911 service?"

While the Commission's rules do require that a cost-recovery mechanism be in place for a carrier to be subject to Phase I obligations, there is no basis for the Commission to specify that the cost of liability insurance must be recoverable under such a mechanism. In the MO&O, the Commission reiterated that the cost-recovery mechanism was properly a matter to be determined at the state and local levels. Furthermore, even if the Commission were to delve into the cost recovery issue, liability insurance is not an essential element of providing enhanced 9-1-1 service and should not be a required item in cost-recovery. Carriers are already providing basic 9-1-1 without liability insurance. While enhanced 9-1-1 might create some additional, incremental liability exposure, it is

highly unlikely to be so severe an increase in potential liability as to render the service impossible without liability insurance. Furthermore, even assuming a significant increase in liability exposure, some carriers may choose to forego insurance and “self-insure.”

APCO acknowledges that liability poses a serious issue for carriers, and we recognize that some states may choose to allow the cost of liability insurance to be recovered. That, however, must be an option, not a requirement or condition of compliance with Phase I or Phase II of the wireless 9-1-1 rules.

3. “Regarding selective routing, what is meant in the Commission’s E911 First Report and Order by the reference to “appropriate PSAP.”

The Commission has already clarified in the MO&O, at ¶98, that “the responsible state or local entity has the authority and the responsibility to designate the PSAPs that are appropriate to receive wireless 911 calls.” The FCC quite properly has not become involved in the inherently local issue of 911 call routing. APCO sees no reason to depart from that policy.

CONCLUSION

The Commission should issue a declaratory ruling consistent with its prior policies as set forth above.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
COMMUNICATIONS OFFICIALS-
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August 14, 1998

CERTIFICATE OF SERVICE

I, Jane Nauman, hereby certify that copies of the foregoing Comments of APCO in Response to State of California Request for Declaratory Ruling were sent on this 14th day of August, 1998, via U.S. Mail, postage prepaid, to the following individuals at the addresses listed below:

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