

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
911 Call-Forwarding Requirements for Non- ) PS Docket No. 08-51  
Service-Initialized Phones )

**COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION**

Competitive Carriers Association (“CCA”) submits these comments in response to the *Notice of Proposed Rulemaking (“NPRM”)*<sup>1</sup> adopted by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding, which proposes to sunset certain 911 call-forwarding requirements after a transition period. Despite well-intended goals, limiting or repealing this established requirement will result in consequences that may affect consumers and important sectors of the wireless industry, and the Commission should therefore refrain from adopting its proposal.

**INTRODUCTION**

CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes more than 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents approximately 200 associate members consisting of small businesses, vendors, and suppliers that

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<sup>1</sup> *In the Matter of 911 Call-Forwarding Requirements for Non-Service-Initialized Phones*, PS Docket No. 08-51, Notice of Proposed Rulemaking, 30 FCC Rcd 3449 (2015) (“NPRM”).

serve carriers of all sizes. CCA's members are essential providers within the broader 911 ecosystem.

“[P]romoting safety of life and property through the use of wire and radio communications” is a seminal FCC mission specified by Congress in the FCC’s enabling statute.<sup>2</sup> In helping to fulfill this mission, CCA’s members share the Commission’s “commitment to ensuring access to 911 for the American public.”<sup>3</sup> As Commissioner Rosenworcel has stated, “[y]ou may only make one 911 call in your life, but as the old saw goes, it will be the most important call you ever make.”<sup>4</sup> Based on current technology trends, more and more 911 calls will be made using a wireless device, as many consumers have cut the cord and are wireless-only.<sup>5</sup> CCA has consistently urged the Commission to adopt pro-competitive rules governing critical resources such as spectrum, devices, roaming agreements and universal service funding, to help ensure that all wireless carriers can have networks capable of meeting consumers’ needs, particularly in times of emergency. Because “[n]o matter the time and no matter the technology, [consumers] need to know that [their] call[s] will be answered.”<sup>6</sup> It is the Commission’s “most fundamental responsibility”<sup>7</sup> to ensure that this expectation is met.

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<sup>2</sup> Communications Act of 1934, 47 U.S.C. § 151 (2006).

<sup>3</sup> *NPRM* ¶ 1.

<sup>4</sup> *In re 911 Governance & Accountability Improving 911 Reliability*, PS Docket No. 14-193, Policy Statement and Notice of Proposed Rulemaking, 29 FCC Rcd 14208, 14266 (2014) (Statement of Commissioner Jessica Rosenworcel) (“*Commissioner Rosenworcel 911 Accountability Statement*”).

<sup>5</sup> *See In re Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Fourth Report and Order, 30 FCC Rcd 1259, 1369 (2015) (Statement of Commissioner Jessica Rosenworcel).

<sup>6</sup> *Commissioner Rosenworcel 911 Accountability Statement*.

<sup>7</sup> *In re April 2014 Washington State 911 Outage*, PS Docket No. 14-72, Presentation of April 2014 Multistate 911 Outage Report and Recommendations (Oct. 17, 2014) (Statement of

The Commission's existing requirement that covered commercial mobile radio service (CMRS) providers transmit all wireless 911 calls to public safety answering points (PSAPs), regardless of the existence of a service contract (the "NSI Rule"),<sup>8</sup> plays an important role in protecting consumers, and therefore CCA has reservations about the Commission's proposal to sunset this rule. CCA commends the FCC for attempting to reduce burdensome requirements and recognizes concerns in the record regarding the impact on PSAP resources caused by fraudulent, accidental or harassing 911 NSI calls. Unfortunately, the proposed solution – to sunset the NSI Rule – may negatively impact public safety and the wireless industry, which outweighs any of the aforementioned inconveniences. In addition, the Commission will most likely not achieve the goal it seeks to promote through a sunset of the requirement for several reasons. For example, carriers may nonetheless continue to forward NSI calls to 911 under state regulations or out of an abundance of caution, or bad actors may place harassing calls to 911 utilizing other resources (such as nearly 500,000 payphones left in the U.S.). Therefore, for the following reasons, the rule remains necessary to protect consumers' ability to contact 911 and prevent perverse competitive impacts that will result from a sunset of the rule.

First, adoption of this proposal may prevent completion of legitimate 911 calls from NSI devices and from service-initialized devices that may appear to be NSI. Put another way, a sunset of the rule will likely result in some legitimate calls to 911 failing. While some commenters suggest that the use of NSI devices is low, the Commission continues to adopt 911 policies reflective of the reality that, overall, more calls to 911 are originating from wireless devices. The record in this proceeding in fact demonstrates that thousands of legitimate calls to

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Chairman Tom Wheeler) (stating that "[p]romoting public safety is the Commission's most fundamental responsibility.").

<sup>8</sup> See 47 C.F.R. § 20.18(b).

911 are placed using NSI devices. Moreover, as the *NPRM* recognizes, there are several instances where emergency calls from service-initialized devices may appear to be calls originating from NSI devices, including calls made while roaming or during a system reboot. Under the Commission's proposal, these legitimate 911 calls will never even reach a PSAP, potentially leading to unfortunate – and likely, tragic – consequences.

Second, elimination of the NSI Rule would have the unintended consequence of giving the two largest carriers a competitive advantage. Competitive carriers' network footprints are non-nationwide, and their subscribers roam more than the nationwide carriers' subscribers. As CCA continues to point out, competitive carriers face challenges in reaching economic roaming arrangements with the largest wireless carriers. In instances where roaming agreements are not in place, wireless 911 calls appear as though they are from NSI devices. The confluence of these factors puts competitive carriers and their subscribers at a severe disadvantage.

## **DISCUSSION**

### **I. THE PUBLIC INTEREST IN FORWARDING LEGITIMATE 911 CALLS OUTWEIGHS THE INCONVENIENCES CAUSED BY BAD ACTORS**

The Commission's statutory mandate to protect life and property spurred the Commission to adopt the NSI Rule in 1997.<sup>9</sup> The NSI Rule helps to ensure that all 911 calls are transmitted from wireless mobile handsets to PSAPs, regardless of whether user or call validation information is available. Therefore, all types of wireless callers have been able to reach 911 services, including rural subscribers that are roaming and low-income or elderly callers using donated phones that have been wiped of such identifying information. For almost 20 years, the public has relied on this fact, and has adopted the reasonable assumption that if a

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<sup>9</sup> *Revision of the Commission's Rule to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Memorandum Opinion and Order, 12 FCC Rcd 22665, 22683, ¶ 33 (1997).

call is made from a wireless handset, regardless of whether that handset is activated through a valid service contract, the call will be successfully routed to a PSAP. The FCC's proposal to eliminate the NSI Rule will fail the public.<sup>10</sup> If adopted, not only will legitimate emergency calls from NSI devices potentially not be transferred to PSAPs, additional calls made by valid service-initialized devices also may not be completed.

As the previous record on this topic demonstrates, there are times in which calls made from service-initialized devices may appear as NSI-device calls for purposes of call-forwarding requirements. These situations include instances when: devices have not been registered; calls are made in areas of weak or no signal; calls are made while roaming or using foreign phones; or even when a phone system is rebooting, or has just been powered on.<sup>11</sup> When one of these situations occurs, most of the time a carrier will not be able to determine that the NSI-appearing call is in fact coming from a service-initialized device. If the Commission adopts its proposal to sunset the NSI Rule, service-initialized phones will be prevented from making emergency calls

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<sup>10</sup> The record has demonstrated that significant amounts of legitimate emergency calls are made using NSI devices. For instance, in a one-month period during 2008, approximately 15,000 legitimate emergency calls were made by NSI devices in the state of North Carolina; 1900 legitimate emergency calls were made by NSI devices in Indiana. *See* North Carolina 911 Board Comments, PS Docket No. 08-51 at 3 (filed June 27, 2008); Indiana Wireless 911 Advisory Board Comments, PS Docket No. 08-51 at 2 (filed June 27, 2008). More recently, TeleCommunication Systems estimates that well over 18 million legitimate calls are placed to 911 annually from NSI devices. *See* Initial Comments of TeleCommunication Systems, Inc. concerning FCC Consideration of 911 for Non-Service-Initialized Phones, PS Docket No. 08-51 at 8 (filed June 5, 2015).

<sup>11</sup> *See NPRM* ¶ 34 (listing examples set forth in a Petition submitted by Public Safety organizations, including NENA and APCO); *see also* Comments of AT&T Inc., PS Docket No. 08-51, 4-5 (filed June 30, 2008) (recognizing that roaming, billing errors and disputes may contribute to a service-initialized device being rendered NSI); Comments of T-Mobile USA, Inc., PS Docket No. 08-51 (filed June 30, 2008) (noting that the Commission “treats non-service initialized calls as if they are calls that originate only from phones that subscribe to no carrier, [but] that assumption is far too narrow.”).

in these circumstances. These incidents may occur in a variety of contexts.<sup>12</sup> Under the current rules, carriers must process calls to 911 received from roaming callers regardless of whether the carrier has a roaming agreement with the caller's home network provider. But in these cases, the subscriber's device validation information is not transferred when the call is processed to the appropriate PSAP. At this point, the service-initialized device will appear to be a NSI device to the roaming carrier and therefore, under the Commission's proposal, there would no longer be a requirement to complete the call to the PSAP (whereas it would be forwarded under the current rule). In addition to the examples already cited by the Commission in the NPRM, devices that are push-to-talk only, and otherwise incapable of making voice calls over the public switched telephone network, are enabled to make calls dialed to 911 by means of NSI-device protocols. These devices could also be prevented from reaching a PSAP under the Commission's proposal. Wireless subscribers have a reasonable expectation that their emergency calls will reach a PSAP. They should not be harmed because the Commission no longer requires the completion of NSI 911 calls.

## **II. A SUNSET OF THE NSI RULE WILL DISADVANTAGE COMPETITIVE CARRIERS**

In particular, CCA is concerned about the precarious position in which roaming subscribers will be placed as a result of the NSI Rule sunset. In instances where roaming agreements are not in place, all 911 calls appear as though they are from NSI devices. If the NSI Rule is eliminated, serving providers will not be obligated to complete legitimate emergency

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<sup>12</sup> The FCC also asks "whether the increasing ubiquity and decreasing cost of service-initialized devices obviates the need for the NSI Rule." *NPRM* ¶ 19. CCA submits that such industry trends demonstrate quite the opposite. Because there is still a significant underlying issue of being able to properly distinguish NSI devices from service-initialized devices, arguably, the fact that there is an increase in service-initialized devices demonstrates that the NSI Rule is still necessary as there is more of an opportunity for these service-initialized devices to be mislabeled and prevented from reaching 911.

calls to a PSAP simply because two carriers have not entered into a roaming agreement.

Moreover, while a home carrier can sometimes identify the Automatic Number Identification and other contact information for calls placed on its network from a service-initialized device mistakenly identified as NSI due to other circumstances (e.g., registration timing), this is not the case for calls to 911 placed from service-initialized devices by callers while roaming.

CCA's membership includes many small, rural and mid-tier carriers that often have smaller footprints and limited roaming agreements. As CCA has explained to the Commission in several proceedings, despite the FCC's policies to promote commercially reasonable roaming, many of its members continue to struggle to obtain voice and data roaming agreements due to the anti-competitive practices of the two largest wireless service providers, resulting in an uneven playing field in the roaming sector.<sup>13</sup> As the Commission has recognized, roaming is "particularly important for customers in rural areas."<sup>14</sup> At the same time, the Commission has acknowledged the dominant presence of AT&T and Verizon in the roaming sector and the potential harm to competition resulting from this dynamic.<sup>15</sup> These challenges put competitive

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<sup>13</sup> See e.g., Letter from Rebecca Murphy Thompson, General Counsel, CCA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 at 2 (filed Nov. 21, 2014) (highlighting that "both AT&T and Verizon have been notorious for withholding the sale of roaming at commercially reasonable rates to other carriers . . ."); Comments of Competitive Carriers Association, GN Docket No. 14-126 (filed Sept. 4, 2015) (realizing "without increased access to roaming, rural carriers who build and deploy wireless networks in unserved and underserved areas may be forced to exit the market due to the inability to provide nationwide roaming."); Letter from Steven K. Berry, President and CEO, CCA to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 12-269 at 2 (filed Apr. 9, 2014) (recognizing that due (in part) to the roaming challenges that CCA's "members face, the FCC has been unable to declare that the wireless industry is 'effectively competitive' for the past three years.").

<sup>14</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, ¶ 15 (2011).

<sup>15</sup> See, e.g., *id.* ¶ 27 (citing concerns about the incentives of the two largest providers to offer reasonable roaming rates).

carriers at a competitive disadvantage—and in the context of NSI devices, consumers face a great safety risk.

Eliminating the NSI Rule could put subscribers of competitive carriers at a greater risk that their 911 calls may not connect to PSAPs, exponentially exacerbating the business imperative for competitive carriers to secure roaming agreements with dominant providers and further increasing the bargaining leverage held by the largest carriers. AT&T and Verizon also could use the absence of necessary roaming agreements as a marketing tool to syphon subscribers away from non-dominant carriers. The Commission's rules should not have this perverse—even if unintended—effect.

### CONCLUSION

For the foregoing reasons, CCA requests that the Commission refrain from adopting its proposal to sunset the NSI Rule and continue to require CMRS providers to forward all emergency calls.

Respectfully submitted,

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June 5, 2015