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Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 31, 1999

EC Docket no. 94-102

Mr. Thomas Sugrue
Chief, Wireless Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Bureau Chief Sugrue:

Pursuant to the Federal Administrative Procedure Act, 5 U.S.C. § 554 and 47 C.F.R. § 1.2, the Washington State military Department (hereinafter Department) hereby petitions the Federal Communications Commission (hereinafter FCC) for a declaratory ruling. The procedural rule states in relevant part as follows:

§ 1.2 Declaratory rulings.

The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

See 5 U.S.C. § 554.

Request for Declaratory Rulings

1. The Department asks for a declaratory ruling clarifying the meaning of the following language in 47 C.F.R. § 20.18(f), entitled conditions for enhanced 911 services:

The requirements set forth in paragraphs (d) and (e) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point [PSAP] has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a cost recovery mechanism is in place for the local jurisdiction or state

47 C.F.R. § 20.18 (emphasis added).

The issue with respect to this language is whether wireless carriers can demand payment for PSAP services prior to their being made available to local jurisdictions.

2. The Department also asks for a declaratory ruling on whether Revised Code of Washington (RCW) 38.52.560 falls outside the preemption of 47 U.S.C. § 332(c)(2)(A). The relevant portion of RCW 38.52.560 states as follows:

Any person ... owning, operating, or managing any facilities used to provide wireless two-way telecommunications services for hire, sale, or resale which



ATTORNEY GENERAL OF WASHINGTON

Petition for Declaratory Ruling

August 31, 1999

Page 2

allow access to 911 emergency services shall provide a system of automatic number identification which allows the 911 [PSAP] operator to automatically identify the number of the caller

RCW 38.52.560 [1995 c96 §5](emphasis added).

Background

The Department, commercial mobile services (hereinafter wireless carriers) doing business in the State of Washington, and other agencies, state and local, have been working to resolve these issues for more than a year, through a task force mandated by our Governor. During this same time period, the local jurisdictions have met their December 31, 1998, deadline to be enhanced 911 compliant and capable. See RCW 38.52.510. Wireless carriers, however, have refused to provide the required service without first receiving payment from the local jurisdictions. The task force has met with very little success in finding a solution to the diverging points of view between its members.

Argument

It is the position of the Department that the wireless carriers, doing business in the State of Washington, must comply with RCW 38.52.560; that the 1998 deadline for compliance has long since passed; and that compliance must take place immediately. The Department contends, the funding provision of 47 C.F.R. § 20.18(f) does not place the burden of creation of a cost recovery mechanism on the state, but upon the wireless carriers. The Department further contends that the only barrier to ANI service is the wireless carriers' failure to provide the service.

The ANI can be provided by inclusion of design elements created as industry standards. Manufacturers and system designers can include these elements in the technology when requested by the wireless carriers. Some wireless carriers have openly refused to provide the ANI service during task force discussions. They argue that the FCC requires that such services be provided only when funded by the local government. 47 C.F.R. § 20.18 [CC Docket 94-102].

FCC Rulings and recent case law affirming the rulings support the Department's position. See 12 FCCR 8776 (1997); 13 FCCR 1735 (1997); *Cellular Telecommunications Industry Association, et al., v. FCC*, 335 U.S. App. D.C. 32, 168 F.3d 1332 (1999). A review of the controlling statutes demonstrates that the Department's position is the correct position. The relevant portion of 47 U.S.C. § 152 states as follows:

§ 152. Application of chapter

(b) Exceptions to Federal Communications Commission jurisdiction

Except as provided in sections 223 through 227 of this title, inclusive, and section 332 of this title, and subject to the provisions of section 301 of this title and subchapter V-A of this chapter, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate

ATTORNEY GENERAL OF WASHINGTON

Petition for Declaratory Ruling
August 31, 1999
Page 3

communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) of this subsection would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 to 205 of this title shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4) of this subsection.

The relevant portion of 47 U.S.C. § 221 states as follows:

§ 221. Consolidations and mergers of telephone companies

(b) State jurisdiction over services

Subject to the provisions of sections 225 and 301 of this title, nothing in this chapter shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

The relevant portion of 47 U.S.C. § 332(c) states as follows:

(3) State preemption

(A) Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, **except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.**

(emphasis added). The relevant portion of 47 U.S.C. § 254(f) states as follows:

§ 254. Universal service

(f) State authority

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute ... in a

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Petition for Declaratory Ruling

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Page 4

manner determined by the State to the preservation and advancement of universal service in that State. **A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State ...**

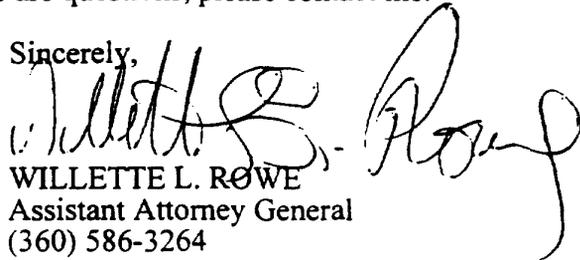
(emphasis added).

Conclusion

To accomplish its goal of universal service, state-wide enhanced 911 services; the State of Washington has enacted a statute which regulates the terms and conditions of the services provided by wireless carriers to all customers. Based on this authority the Department believes it is clear that wireless carriers cannot refuse to comply with a state law mandating access to enhanced 911 services. Wireless carriers must provide the service and recover the cost therefore through their own cost recovery mechanism.

The Department asks for a final determination on its request for declaratory rulings as soon as practicable. Access to enhanced 911 emergency calls by wireless customers has now been delayed for eight months past the statutory deadline of December 31, 1998. Prompt action is essential to public health and safety. If there are questions, please contact me.

Sincerely,


WILLETTE L. ROWE
Assistant Attorney General
(360) 586-3264

WLR:sj
Enclosures

cc: Chief, Mass Media Bureau
Chief, Compliance and Information Bureau
Wireless Carriers
Glen Woodbury
Bob Oenning



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Petition for Declaratory Ruling
August 31, 1999
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Petition for Declaratory Ruling
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Page 3

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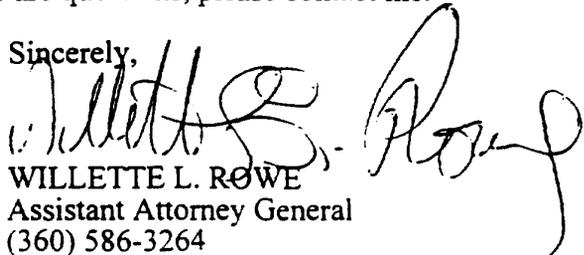
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cc: Chief, Mass Media Bureau
Chief, Compliance and Information Bureau
Wireless Carriers
Glen Woodbury
Bob Oenning