DOCKET FILE COPY ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

RECEIVED
JUL - 9 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	CC Docket No. 94-102
To Ensure Compatibility With Enhanced	)	RM-8143
911 Emergency Calling Systems	)	

COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS AND INTERNET ASSOCIATION

Michael F. Altschul
Senior Vice President, General Counsel

CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-0081

Its Attorney

July 9, 2001

No. of Copies rec'd 0+4
List A B C D E

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY 1

II. THE TECHNICAL OBSTACLES TO PROVIDING THE ENHANCED FEATURES OF E911 TO NON-SUBSCRIBED HANDSETS STILL PERSIST 4

III. BEFORE ADOPTING ADDITIONAL E911 REGULATIONS, THE COMMISSION MUST ASCERTAIN THE EXTENT THAT NON-SUBSCRIBED HANDSETS ARE UTILIZED TO DIAL 911 AND WHETHER THE COST OF MAKING CALL BACK AVAILABLE ARE COMMENSURATE WITH THE BENEFITS. 8

IV. ALTERNATIVE, NON-TECHNICAL SOLUTIONS, SHOULD NOT IMPOSE ADDITIONAL REGULATIONS ON CMRS PROVIDERS. 9

V. CONCLUSION 14

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	CC Docket No. 94-102
To Ensure Compatibility With Enhanced	)	RM-8143
911 Emergency Calling Systems	)	

COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS AND INTERNET ASSOCIATION

The Cellular Telecommunications & Internet Association ("CTIA")[1] hereby submits its Comments in response to the above captioned proceeding.[2]

I. INTRODUCTION AND SUMMARY

When the Commission first adopted the requirement that CMRS carriers complete emergency calls to 911 "without respect to their call validation process"[3] it took a significant step toward ensuring that wireless emergency access would be available to anyone who obtained a wireless handset. At the same time, the Commission acknowledged that because of technical limitations in CMRS networks, "covered carriers will not be required to provide reliable call

---

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 manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

2 Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102; RM-8143, *Further Notice of Proposed Rulemaking*, FCC 01-175 (rel. May 25, 2001) ("Further Notice").

3 47 C.F.R. § 20.18(b).

back numbers to PSAPs in the case of mobile units that are not associated with a dialable telephone number . . . because . . . they were never initialized or the subscription has lapsed."[4] Notwithstanding this limitation, the Commission determined that public safety would be enhanced by delivering all 911 calls to PSAPs, even if some calls would be delivered without the information necessary to allow for a PSAP call back.[5] In response to this policy, handsets specifically designed to dial 911, and only 911, without being activated by a carrier, have been developed and sold to the public.[6]

In this third inquiry into the provision of E911 services to users of unsubscribed wireless phones,[7] the Commission must once again consider 1) whether technical advancements have been realized to provide call back functionality; and, if so, 2) whether the cost of doing so is commensurate with the safety enhancements realized. CTIA submits that neither of these

---

4 Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, ¶ 108 (1997) ("Memorandum Opinion and Order").

5 Id. ¶ 34 ("We continue to believe that the public safety will be promoted more effectively if all potential calls are passed through to the PSAP regardless of whether they are made by subscribers.").

6 CTIA is aware of at least one such phone, the Magnavox Mobile911, which was advertised in The New York Times. See "*Why pay for cellular phone service if you need it only for emergencies?*", The New York Times Magazine, March 12, 2000, p. 70. Since this phone is not designed to be activated, it is not marketed through carriers' distribution channels. Instead, it is marketed through mass media advertisements, the Internet, and affiliate sales channels. Distributors claim that the Magnavox Mobile911 has been featured on "The Oprah Winfrey Show", "The Today Show", CNN, NPR's "All Things Considered", and "The New York Times."

7 The Further Notice refers to "non-service-initialized" or "noninitialized" handsets. Since the majority of these phones have been "initialized", i.e., the handset has been programmed to transmit a Mobile Identification Number (or "MIN"), the term "unsubscribed" more accurately describes these phones. As explained in these comments, previously initialized phones present a bigger problem than phones that have never been initialized.

propositions has been satisfied. Instead, CTIA respectfully requests that the Commission lead a public education campaign, advising the public of the safety benefits associated with the use of subscribed handsets to call 911. Such an effort would further public safety and the use of wireless services during emergencies.

The record in this proceeding is replete with information that demonstrates that a technical solution to provide the enhancements of wireless E911 is not feasible for non-subscribed handsets.[8] The fact of the matter is that call validation, authentication, and registration are the keys to the Intelligent Network features of wireless networks, i.e. the features which permit a PSAP to call back a wireless subscriber during a 911 call. As the Commission has recognized, in order to process 911 calls from non-subscribed phones, wireless carriers must bypass these functions. Moreover, while PSAPs receive 911 calls on dedicated network facilities, calls from a PSAP (i.e., call back) are routed over the public switched network. Since a non-subscribed handset is not associated with any carrier, calls to such handsets cannot be delivered. The introduction of wireless number portability will further complicate call-back to such handsets.

There is no indication that a practical technical solution is available and, a fortiori, there has been no demonstration that the cost of a solution would be commensurate with the public safety benefits that may be realized. Based on the facts in the record, the Commission should refrain from imposing further E911 requirements on CMRS carriers.

---

8 See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, WT Docket No. 00-80, Comments of AT&T Wireless Services, Inc. at 2 (filed June 19, 2000); Comments of SCC Communication Corp. at 2 (filed June 19, 2000); Verizon Wireless Comments at 3-4 (filed June 19, 2000); Comments of BellSouth Corporation at 3 (filed June 19, 2000).

II. THE TECHNICAL OBSTACLES TO PROVIDING THE ENHANCED FEATURES OF E911 TO NON-SUBSCRIBED HANDSETS STILL PERSIST.

As the Commission makes clear in the Further Notice, the concerns raised by the Public Safety Entities in their request filed last year for further comments on this matter have long been understood.[9] Since then, the record has been supplemented and the difficulty of devising a technical solution to this problem fully developed. Although the Commission believes that it received "[c]onflicting assertions . . . regarding technological constraints on call back capability for noninitialized phones,"[10] every commenter but one explained the significant effort and cost that would be required to attempt merely to deploy a workable solution.[11] Furthermore, despite the claim by the Wireless Consumers Alliance that the Wireless E 911 Implementation Ad Hoc ("WEIAD") group "agreed that the call back solution proposed by the Alliance was feasible,"[12] there was no such agreement, and no agreement is recorded in the Callback Working Group Report to the WEIAD cited by the Alliance in its comments.[13] Indeed, one year after the report cited by the Alliance, the WEIAD informed the Commission that with respect to efforts to solve

---

9 Further Notice at ¶¶ 1-4. The "Public Safety Entities" are those bodies that, in April 2000, requested the Commission further investigate whether new technologies could offer a solution or whether additional requirements were necessary to provide call back features to non-service initialized handsets.

10 Id. ¶ 4.

11 See Comments of AT&T Wireless Services, Inc. at 2; Comments of SCC Communications Corp. at 2.

12 See Further Notice at ¶ 5; Comments of the Wireless Consumers Alliance, Inc., at 2 (filed June 19, 2000) to the Request for Further Consideration of Call Back Number Issues, CC Docket No. 94-102, WT Docket No. 00-80.

13 See Callback Working Group Report to the WEIAD, attached as Appendix B of the Report of CTIA, PCIA, APCO, NENA, NASNA, ALLIANCE, CC Docket 94-102 (filed Jan. 30, 1998).

the problems of call back to non-subscribed handsets, "[t]he technical impediments that forced the policy choice of forwarding all calls ... have not yet been overcome."[14] This remains true today.

A separate solution, utilizing a variation on the use of Temporary Local Directory Numbers ("TLDNs"), has also been proposed as a possible means of offering call back to non-subscribed phones.[15] This proposal was considered and rejected by the Telecommunications Industry Association ("TIA") for several reasons.[16] First, unlike TLDNs used for call delivery during a roaming call, a significant number of TLDNs would have to be made available to accommodate the maximum number of 911 calls that can realistically be made by non-subscribed handsets within an arbitrary time frame during which callback is allowed. This is significantly different from TLDNs used for call delivery, where each TLDN is assigned to a roamer only for the time it takes to set up a call -- typically 20 seconds. In other words, a limited number of TLDNs can be reused every 20 seconds. For the TLDN solution to work in this instance, even theoretically, the Commission would first have to determine how long a number should be assigned to a user for call back, and then consider how many numbers might be necessary at any given time in any given market. Because it is virtually impossible to know how many non-subscribed phones are being used for emergency services, such a determination is inherently arbitrary and creates the possibility that a caller expecting call back capability may be left without it. Thus, if TLDNs were used for the purpose of calling back non-subscribed

---

14 Report of CTIA, PCIA, APCO, NENA, NASNA, ALLIANCE, CC Docket 94-102 (filed Feb. 1, 1999), at 7.

15 See Further Notice at ¶ 8.

16 See Cellular Networking Perspectives, Vol. 10, June 2001 at 2.

phones, there is a risk that a caller may lose the call back functionality in mid-call if the TLDN is reassigned (i.e., the call lasts longer than the amount of time allocated by the Commission). This outcome could be more dangerous than if the caller knows from the outset the limitations on the services' capabilities. Moreover, as the Commission notes, use of TLDNs for this purpose may have an adverse impact on the FCC's number conservation programs. Assigning a TLDN pool of numbers to be used for emergency call back will result in a significant amount of numbers being assigned simply for this purpose (i.e. one for every possible, simultaneous, non-service initialized call made in every market). Finally, TLDN callback is not possible if the non-subscribed phone moves outside the coverage area of the system where the emergency call was made.

In fact, throughout all of the Commission's inquiries into this matter, no party has offered a viable technical solution that would permit carriers to provide call back functionality to users of non-subscribed handsets. Without specific technical support in the record, the Commission should refrain from imposing additional regulations governing this matter.

As the Commission is aware, call back functionality requires a handset with a unique identifying number. The 911 only Magnavox Mobile 911 phone and handsets that have never been service-initialized (i.e., a subscriber's number has never been programmed into the phone's memory) are programmed with a common non-dialable number. The public switched network is unable to route such calls to the serving carrier.[17] Moreover, if the handset is able to receive as well as place calls, it will recognize only the number programmed into its memory. Since this is

---

[17] The Commission's rules for completing 911 calls originated on an analog cellular network further complicate call completion, since the PSAP will have no indication whether an analog cellular caller is on the "A" or "B" band carrier.

not a unique number, call back may be completed to any phone with the same number.[18] As challenging as this is today, implementation of wireless local number portability will make this even more difficult.

To implement wireless number portability, CMRS carriers will separate a subscriber's MIN from the Mobile Directory Number ("MDN"). Once the MIN and MDN are separated, the MIN will identify the mobile station's home wireless network and the MDN will be used both to identify the customer for ANI and to route a call back to the proper CMRS carrier for call completion. Once wireless number portability has been implemented, the PSAP will call back the MDN associated with a CMRS phone. To be routed through the Public Switched Telephone Network, the MDN will have to be loaded in the LNP database so it can be delivered to the appropriate carrier, and that carrier will have to translate the MDN to the MIN to deliver the call. Call back to non-subscribed phones will either fail translation, or be directed to the subscribed phone associated with the MDN.

The only solution to the shortcomings of TLDN's and the complexity associated with wireless number portability is to provide unique identifiers to non-subscribed phones. But this would be extremely complicated. First, there is no mechanism for assigning and programming such numbers into wireless handsets, since neither carriers nor their distribution channels would be involved. Second, these unique identifiers would have to be included in the LNP databases, but there is no mechanism for how the expense associated with loading and maintaining these numbers would be charged to the non-subscribers. Third, once assigned, these numbers could not be reassigned, since there is no way to track whether the handsets associated with these

---

18 Even if the non-subscribed phone has a dialable phone number programmed into its memory, if the number is not unique, i.e., the number is now assigned to a subscribed phone, call back may be directed to the subscriber.

numbers have been reprogrammed or retired. The result would be a policy completely at odds with the Commission's efforts to conserve numbering resources.

III. BEFORE ADOPTING ADDITIONAL E911 REGULATIONS, THE COMMISSION MUST ASCERTAIN THE EXTENT THAT NON-SUBSCRIBED HANDSETS ARE UTILIZED TO DIAL 911 AND WHETHER THE COST OF MAKING CALL BACK AVAILABLE ARE COMMENSURATE WITH THE BENEFITS.

Although perhaps obscured by extensive discussion of the technical considerations which may support adoption of a call back requirement for non-subscribed handsets, there is a fundamental administrative law requirement that must initially be met: the Commission must satisfy itself that a demonstrable need for the proposed regulation exists. Though the Commission has expansive authority to implement comprehensive regulations that promote public safety, such as the E911 mandates in this docket, "regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist."[19] In this instance, parties have requested comment on the technical feasibility of adopting a solution, but no party has demonstrated that there is a problem sufficiently extensive to warrant further regulation. Moreover, more than 118 million Americans have adopted a simple and cost-effective solution to the call-back problem – they subscribe to wireless service.

While it is indisputable that the call back capability, if technically feasible, is better than the current situation, the Commission's inquiry must also include a determination as to whether the cost of deploying such a solution would be commensurate with the benefit. Efforts to mandate call back for non-subscribed phones, without any consideration as to cost, especially on the basis of the record presently before the Commission in this proceeding, would be irresponsible. Justice Breyer refers to this type of perfectionist aspiration as "'the last 10

---

[19] Home Box Office, Inc. v. F.C.C., 567 F.2d 9, 36 (D.C. Cir. 1977) (citation omitted).

percent,' or 'going the last mile.' The regulating agency considers a substance that poses serious risks. . . . It then promulgates standards so stringent . . . that the regulatory action ultimately imposes high costs without achieving significant additional safety benefits. . . . Removing that last little bit [of risk] can involve limited technological choice, high cost, devotion of considerable agency resources, large legal fees, and endless argument."[20] The Commission achieved significant public safety improvements when it ordered carriers to deliver all 911 calls to PSAPs. There is no evidence that going this last step, "the last 10 percent" would achieve significant improvements in public safety without imposing unreasonable costs on wireless carriers and diverting resources from other socially useful services, such as E911 Phase II.[21]

IV. ALTERNATIVE, NON-TECHNICAL SOLUTIONS, SHOULD NOT IMPOSE ADDITIONAL REGULATIONS ON CMRS PROVIDERS.

Recognizing "the inadequacy of the present record and [its] uncertainty as to whether a general technical solution exists and whether its development and implementation would divert resources from Phase I and II implementation," the Commission has sought further comment on several proposals aimed at improving the call back problem.[22] Specifically, the Commission seeks comment on the following: 1) whether carrier-donated handsets should be subscribed on a

---

20 Stephen Breyer, Breaking the Vicious Circle: Toward Effective Risk Regulation 11 (1993) (citations oitted).

21 The Commission has analogized the public interest in using non-subscribed phones to complete 911 calls with the public's ability to place a 911 call without charge on a public phone. See Memorandum Opinion and Order ¶ 34. As a matter of policy, PSAPs and policy makers have long accepted the safety benefits associated with receiving 911 calls from a public phone, or an emergency call box, even though they cannot call back the person who initiated the call.

22 Further Notice ¶¶ 8-19.

limited basis to enable call back;[23] 2) whether donors of non-subscribed phones should be required to label handsets and explain their limitations;[24] 3) whether 911-only phones should be labeled to provide notice to the PSAP that the 911 caller lacks call back capability; and 4) whether manufacturers of 911-only phones should be required to label these phones and educate consumers concerning the product's limitations. CTIA respectfully submits that further regulation will provide only marginal benefits to the public, given the nuanced differences between carrier-donated phones and phones donated by others, and the different capabilities associated with some "911-only" phones, full feature phones purchased from an authorized distribution channel but never initialized, ("non-initialized"), and full feature phones that have been service-initialized at one time but because the handset was lost or retired now contain a MIN that duplicates a number assigned to a subscriber. The Commission itself has struggled with these distinctions, and the policy implications of the technical capabilities associated therein, necessitating this third round of comments. Rather than expect the public to understand these nuances, the Commission will further the public interest by leading an effort to improve consumer awareness of the limitations of using any non-subscribed phone.

As the Commission is aware, CTIA sponsors programs that address some of these proposals.[25] While CTIA's Wireless Foundation can serve as a model for other organizations that donate wireless telephones, such requirements should not be mandated by the Commission. The Wireless Foundation, with the support of the wireless industry, has provided more than 44,000 handsets through the Foundation's "CALL to PROTECT," ClassLink", and

---

23 Id. ¶¶ 9, 12.

24 Id. ¶ 11.

25 Id. ¶ 12.

"Communities on Phone Patrol" ("COPP") programs. Each of the wireless carriers participating in these programs has received a detailed description of The Wireless Foundation's guidelines, including a call for each phone to be activated on a wireless network with a unique telephone number.[26] As a result, there are no technical impediments to calling back a phone used in accord with any of The Wireless Foundation programs. The Commission and Public Safety groups should work with charitable groups outside The Wireless Foundation to educate them on the benefits of donating only subscribed phones.

Imposing additional requirements only on carrier donated phones as opposed to phones donated by other organizations, however, could serve as a disincentive to carriers to participate in such programs since the air-time provided by carriers adds to the cost of the program. A rule that singles out carriers would thus have the unintended consequence of increasing the number of non-subscribed phones in relation to carrier-provided subscribed handsets. Alternatively, if the Commission concludes that including service should be a prerequisite to distributing donated handsets, the Commission should apply the requirement to all organizations. Non-carriers could satisfy such requirements by presubscribing handsets with a certain amount of minutes provided each month. In this fashion, the Commission can be sure that all handsets are equally capable of providing call back, not merely those provided by carriers.

Furthermore, a labeling requirement should not be implemented for CMRS handsets, including donated handsets or 911-only handsets. Given that the handsets used in these programs often are donated following their initial use, there can be no assurance that an original

---

[26] The Wireless Foundation's Guidelines for both the "CALL to PROTECT" and the "COPP" programs instruct carriers to set up a subscriber account for each donated phone, and to program the phones for both 911 and one non-emergency number. Phones used in the "ClassLink" program are specifically intended to provide both inbound and outbound calls and are programmed like other subscribed phones.

label would still be on the handset, or that information in the manufacturer's packaging or owners manual would accompany a donated phone to its new user. The nature of mobile handsets makes regulating a uniform label highly impracticable. Typically, Commission efforts to design uniform labels are highly contentious processes, and the variety of available CMRS handsets will only add to the difficulty of accomplishing such a goal.[27] Not only would the Commission have to address such matters as the language on the label and the placement of it, a CMRS label for non-initialized phones would also have to consider that handsets come in all sizes.[28] And to the extent a donated handset subsequently is subscribed to a carrier's service, there is a very real risk that consumers will be more confused than informed about their level of 911 service, since call back capability has nothing to do with the handset itself (with the notable exception of some 911-only phones), but rather whether the handset is subscribed.

Rather than pursue these alternative regulatory solutions,[29] CTIA urges the Commission to take the lead in working with the public safety community and the wireless industry to address this issue through education and training. In this regard, CTIA respectfully submits that the

---

27 See, e.g., Compatibility Between Cable Systems And Consumer Electronics Equipment, PP Docket No. 00-67, *Report and Order*, 15 FCC Rcd. 17568 (2001).

28 For example, certain PDAs, such as the Handspring VISOR, have expansion slots that convert the PDA into a full featured handset when a small module is inserted. The Commission would have to determine whether a labeling requirement would apply to the PDA or the module. CMRS phones integrated into automobiles provide an entirely different set of labeling issues.

29 These comments do not address the Commission's jurisdiction to assert its regulatory authority over groups, such as the Boy Scouts of America, that are neither carriers nor manufacturers, but nonetheless are involved in phone donation programs. While CTIA is certain the FCC would not seek to subject such groups or individuals to penalties for donating a non-subscribed phone without a label, it is unclear how the FCC could enforce such a requirement on non-carriers. And, as noted above, the more burdensome a regulation is to carriers, the more likely it is that these programs will be conducted by others.

Commission, having mandated 911 call completion for all phones, has a duty to advise the public of the safety benefits associated with the use of service-activated handsets to call 911.

V. CONCLUSION

CTIA respectfully requests that the Commission refrain from imposing additional E911 rules and take the lead in working with public safety entities and the wireless industry to address this issue through education and training, in accordance with the recommendations made herein.

Respectfully submitted,

CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

Michael F. Altschul
Senior Vice President, General Counsel

CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-0081

Its Attorney

July 9, 2001