

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	
Revision of the Commission's Rules to)	CC Docket No. 94-102
Ensure Compatibility With Enhanced 911)	
Emergency Calling Systems)	
)	
Amendment of Part 2 and 25 to Implement the)	IB Docket No. 99-67
Global Mobile Personal Communications by)	
Satellite (GMPCS) Memorandum of)	
Understanding and Arrangements; Petition of the)	
National Telecommunications and Information)	
Administration to Amend Part 25 of the)	
Commission's Rules to Establish Emissions)	
Limits for Mobile and Portable Earth Stations)	
Operating in the 1610-1660.5 MHz Band)	

COMMENTS OF TRUEPOSITION, INC.

TruePosition, Inc. ("TruePosition")¹ hereby submits its comments in the above-captioned proceeding.²

I. INTRODUCTION

Among the many issues raised in the *Notice*, the Commission seeks comment on whether it should extend its wireless E911 rules to CMRS resellers.³ Specifically, the Commission asks

¹ TruePosition is a wireless location technology and systems vendor offering full service location solutions, core location technology and support, and professional design, installation, and integration services.

² Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems; et al., CC Docket No. 94-102; IB Docket No. 99-67, *Further Notice of Proposed Rulemaking*, 17 FCC Rcd 25576 (2002) ("*Notice*").

³ See *id.*, ¶¶ 92-97; 47 C.F.R. § 20.18(a).

whether it should impose the current wireless E911 requirements on “service providers that resell minutes of use on facilities-based wireless carriers’ networks.”⁴ Because of the critical role E911 plays to public safety, the Commission should make clear that resellers must provide the same life-saving E911 location services other CMRS carriers are required to provide. Wireless resellers offer real-time, two-way, interconnected voice services that compete with other CMRS carriers, customers have a reasonable expectation that wireless resellers provide E911 access, and it is technically and operationally feasible for resellers to support E911 deployment.

Although the Commission’s rules already hold underlying carriers responsible for providing resale customers’ E911 service, as CMRS licensees, the Commission should also hold resellers directly responsible for providing this service. Recent events that have occurred with mishandling of mobile calls to 911 should remind the Commission of the importance of ensuring that no CMRS subscriber is left without E911 service, regardless whether the subscriber is in an urban or rural setting, whether the subscriber selects a small or large carrier or whether the subscriber purchases service from a licensee or a reseller. The Commission, in fulfilling its public interest obligations, should clarify resellers’ responsibility to provide E911 service.

II. CMRS SUBSCRIBERS RELY ON RESELLERS TO PROVIDE E911 SERVICES

It is unlikely that CMRS subscribers are aware that the Commission’s rules hold wireless resellers and licensees to different regulatory standards with respect to E911. Thus, it is important that the Commission act pursuant to its public interest obligation to protect wireless resale subscribers.⁵ The Commission reported in the *Seventh Report on CMRS Competition* that

⁴ Notice, ¶ 92.

⁵ See 47 U.S.C. § 151 (the Federal Communications Commission is created “. . . for the purpose of promoting safety of life and property through the use of wire and radio communication . . .”).

“the resale sector accounts for approximately 5 percent of all mobile telephone subscribers.”⁶ At its height, WorldCom’s wireless resale venture had more than 2 million customers.⁷ Virgin Mobile USA, a recent entry to the U.S. market, recently announced it attracted more than 350,000 subscribers in its first six months of operations and is activating an average of 2,000 new accounts every day.⁸

Although the breadth of the wireless resale market has varied in the last few years, the evolution and nature of current wireless resale services provided by “mobile virtual network operators” (“MVNOs”), like Virgin Mobile USA, present a compelling argument for mandating that resellers comply with the E911 rules. MVNOs conduct their own marketing campaigns, provide their own customer support services, and essentially develop and sell their own branded product. The efforts of MVNOs are in fact an attempt to provide a competitive service to those services provided by other resellers and licensed CMRS providers. Significantly, subscribers are unlikely to know that wireless resellers and licensees are not held to the same regulatory standards. Thus subscribers to wireless resale services would have no reason to believe that their service is being provided on a resale basis or that the reseller does not provide the same E911 services other carriers provide.⁹ This disparity puts resale subscribers universally at risk.

⁶ Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Seventh Report, 17 FCC Rcd 12985, 13025 (2002).

⁷ See id. (citations omitted).

⁸ Virgin Mobile USA Reports Over 350,000 Subscribers, WALL ST. J. ONLINE (Feb. 5, 2003), at <http://www.online.wsj.com>. Virgin’s subscribership represented 6.4% of total net cellular subscriber additions for the last quarter in 2002. Id.

⁹ In the event the Commission were to determine resellers are not subject to the E911 rules, the Commission should consider requiring resellers to disclose to consumers that unlike other CMRS licensees, resellers are not required to provide E911 services to their customers.

To be sure, Virgin Mobile USA for one has expressed its intent to comply with the Commission's E911 rules.¹⁰ While laudable, it is unclear at this time what standards it should be held to. It is also unclear whether other resellers will follow the same course. In fact, absent clarification by the Commission, resellers' subscribership should be attributed to the underlying carriers' E911 obligations.

III. LICENSEES MUST ENSURE ALL NETWORK SUBSCRIBERS RECEIVE E911 SERVICE

Although the Commission seeks comment on extending the rules to resellers, the Commission's rules as they exist today offer consumers some measure of protection by holding the underlying carrier responsible for ensuring that its networks and handsets utilizing its networks meet the Commission requirements for E911. As a practical matter, subscribers who receive service from a CMRS licensee employing a network-based E911 solution will receive E911 services based on the underlying carrier's deployment of the network technology, regardless of whether the subscriber purchases service from the underlying carrier or a wireless reseller. The issue takes another turn, however, in the instance where a licensee has selected a handset-based solution for its E911 location technology. In that situation, the distribution of E911-capable handsets is made by the underlying carrier and the reseller, to their respective subscribers.

The Commission's rules currently mandate that mobile stations (handsets) operating on a licensee's network are considered to be operating under that licensee's authorization to provide

¹⁰ See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Dkt No. 94-102, Virgin Mobile USA Informational Filing Report (filed Feb. 22, 2002); Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Dkt No. 94-102, Virgin Mobile USA Informational Filing Report (filed Dec. 30, 2002).

service.¹¹ Furthermore, when a subscriber is operating on any carrier's system, the licensee is responsible for exercising effective operational control over the mobile stations as if they were subscribers to it.¹² Thus, any licensee who is subject to the Commission's E911 rules is responsible for ensuring that all mobile stations operating on its networks are operating in compliance with the same rules.

At minimum, carriers holding licenses to provide CMRS are required to ensure handsets are activated and operating in compliance with E911 requirements. In order to meet the prescribed Commission handset implementation benchmarks, licensees must ensure that the relevant percentage of all new handsets activated on its network are location-capable by the relevant deadlines, including handsets which are activated on its network but which subscribe to a reseller's services. If the Commission does not hold resellers to specific benchmarks, the entirety of the licensee's subscriber activations should be included in the carriers' quarterly reports.

¹¹ 47 C.F.R. § 22.927 (“Mobile stations that are subscribers in good standing to a cellular system, when receiving service from that cellular system, are considered to be operating under the authorization of that cellular system. . . . mobile stations . . . receiving service from a different cellular system, are considered to be operating under the authorization of such different system.”). Although this rule only applies to licensees holding cellular authorizations, and is apparently without regulatory counterpart applicable to PCS authorizations, the Commission must apply the rule uniformly across all carriers. See Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, GN Dkt No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411, ¶ 123 (1994) (“*Second Report and Order*”) (noting the Congressional mandate that the FCC ensure PCS and “rival services” are assured competitive conditions “by establishing regulatory symmetry among mobile service providers”).

¹² 47 C.F.R. § 22.927.

IV. RESALE SERVICES ARE GENERALLY REGULATED AS CMRS AND SHOULD BE SUBJECT TO THE COMMISSION'S E911 RULES

Although the Commission's rules provide that the underlying carriers must ensure users receive E911 services, wireless resale service providers should also be required to comply with the Commission's E911 rules. Not only do wireless resale services meet the criteria outlined in the *E911 First Report and Order*¹³ but the Commission itself has previously determined that resellers and carriers should be regulated similarly.

In adopting regulatory policies affecting common carrier resale services generally, the Commission has made clear that, ". . . there is no reason to regulate a resale common carrier any differently than any other common carrier."¹⁴ Furthermore, in reviewing the definition of mobile services, the Commission stated that

mobile resale service is included within the general category of mobile services as defined by Section 3(n) and for purposes of regulation under Section 332 . . . [t]here is no indication in the statute or the legislative history that resellers are not 'mobile service' providers or exempt from the section 332 regulatory classification, and we see no reason to establish such an exemption.¹⁵

Consequently, resellers should be treated the same as other CMRS providers under the Commission's E911 rules.

¹³ Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Dkt No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, ¶¶ 80-84 (1996) ("*E911 First Report and Order*").

¹⁴ Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, Dkt No. 20097, *Report and Order*, 60 FCC2d 261, ¶ 9 (1976) (noting that there was one exception to this general rule: "The exception is that we find the public interest will be served by allowing open entry into the market for resale services, and thus we do not require a special showing of public need for the particular service being proposed as a condition of certification.").

¹⁵ *Second Report and Order*, ¶ 37.

Furthermore, resale services fall squarely within the criteria previously used by the Commission in the *E911 First Report and Order* for determining which services and devices should be subject to the Commission's E911 requirements.¹⁶ Specifically: (1) the resellers offer real-time, two-way, interconnected voice service; (2) customers have a reasonable expectation of E911 access; (3) resellers offer service that competes with other CMRS carriers; and (4) it is technically and operationally feasible for resellers to support E911.¹⁷ These criteria, while clearly outlining the qualities which should enable the Commission to require resellers' compliance, are not an overextension of Commission authority in determining carriers responsible for the provision of E911 service.

¹⁶ See *E911 First Report and Order*, ¶¶ 80-84.

¹⁷ *Notice*, ¶ 13 (citing *E911 First Report and Order*, ¶ 81).

V. CONCLUSION

For the foregoing reasons, the Commission should require resellers to comply with the Commission's E911 rules. The Commission clearly has authority over resellers, has historically treated them the same as other common carriers, and consumers depend on these service providers for critical E911 location services.

Respectfully submitted,

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