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

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems	)	**CC Docket No. 94-102**
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PETITION FOR RECONSIDERATION AND CLARIFICATION OF TOYOTA MOTOR NORTH AMERICA

Toyota Motor North America, Inc. ("Toyota") hereby files this Petition for Reconsideration and Clarification of the Commission's *Order* released in the above-referenced docket on October 21, 2003, responding to the Petition of OnStar Corporation (the "OnStar Order"). Specifically, Toyota seeks the clarification described in Toyota's letter, previously filed with the Secretary on November 3, 2003, and attached as an Exhibit hereto. Generally (and as described more particularly the Exhibit), Toyota seeks clarification of which telematics units and services may be subject to the Commission's E911 mandate (and partial waiver), and Toyota further wishes to clarify that any such mandate will not apply retroactively to telematics units already in existence on January 1, 2006, when the waiver expires.

Toyota understands that the Commission may have made the clarification sought by this Petition (and as described in the Exhibit) in the course of its Order in this Docket adopted November 13, 2003, but not yet released to the public (the "Scope Order"). Toyota is filing this Petition in an abundance of caution, however, in order to preserve its legal rights prior to the

expiration of the time in which it may do so.[1] However, to the extent that the Commission makes the clarification sought in this Petition in the course of its Scope Order, Toyota will voluntarily withdraw this Petition, or in the alternative the Commission may (after consultation with Counsel) dismiss this Petition as moot.

Respectfully submitted,

TOYOTA MOTOR NORTH AMERICA, INC.

By: _____

Gary M. Epstein
James H. Barker
William S. Carnell
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
202-637-2200

November 20, 2003

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[1] *See* 47 C.F.R. § 1.429(d) (30-day filing period for petitions for reconsideration).

EXHIBIT
to Petition for Reconsideration

James H. Barker
Direct Dial: 202-637-2231
jim.barker@lw.com

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: (202) 637-2200 Fax: (202) 637-2201
www.lw.com

LATHAM&WATKINS LLP

FIRM / AFFILIATE OFFICES
Boston, Brussels, Chicago, Frankfurt, Hamburg, Hong Kong, London, Los Angeles, Milan, Moscow, New Jersey, New York, Northern Virginia, Orange County, Paris, San Diego, San Francisco, Silicon Valley, Singapore, Tokyo, Washington, D.C.

File No. 035352-0001

November 3, 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: CC Dkt. No. 94-102: Request for Clarification

Dear Ms. Dortch:

We write on behalf of Toyota Motor North America, Inc., to seek clarification of certain aspects of the Commission's *Order* released October 21, 2003 responding to the Petition of OnStar Corporation in the above-referenced docket (the "*OnStar Order*").[1] As you probably know, Toyota is one of the largest manufacturers and sellers of automobiles in North America and in the world, and its products are enjoyed, and relied upon, by millions of Americans every day. Toyota offers a telematics service under the brand name "Lexus Link" in several of its Lexus vehicles, bundling Toyota hardware with an underlying telematics service provided by OnStar. While Toyota currently does not offer a "personal calling" feature in its telematics package, it is seriously considering whether to offer such a feature in the future. Toyota is therefore interested in this proceeding, and in the subject of OnStar's Petition.

Toyota seeks clarification of two general points that arise out of the *OnStar Order*. First, Toyota wishes to clarify the scope of those units and services to which the mandate (and partial waiver) of the *OnStar Order* apply. Second, Toyota wishes to clarify the terms of that waiver, and in particular to establish that the mandate of the *OnStar Order* will not apply retroactively upon its expiration to telematics units that are then already in existence.

I. APPLICABILITY

The *OnStar Order* states first that "telematics units installed in vehicles function as mobile stations, *i.e.* mobile phones or handsets,"[2] and that as such they presumably may be subject to various regulations applicable to "mobile phones" or "handsets."[3] The Order goes on,

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1 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order, FCC 03-242, CC Dkt No. 94-102 (rel. Oct. 21 2003).

2 *OnStar Order* ¶ 12.

3 *Id.* ¶¶ 12-16.

however, to except from any such general requirements of compliance those "telematics units provided by OnStar that are not capable of providing wireless calling service,"[4] or in an alternative formulation, those units that do not "offer real-time two way switched voice service that is interconnected with the public switched network."[5]

These formulations may be problematic for Toyota. As an initial matter, Toyota does not use telematics units "provided by OnStar." Rather, Toyota provides its own telematics units, the hardware for which is manufactured to Toyota specifications by a third-party manufacturer. OnStar does provide specifications for hardware functionality, but is primarily responsible for the *service* that powers those units.

Moreover, Toyota is concerned that its Lexus Link service, like all telematics services, could be deemed to offer "two-way switched voice service that is interconnected with the public switched network," even where there is no "personal calling" feature and the consumer cannot dial out other than to the call center. Although it does not appear that the *OnStar Order* intended this result, core, call-center-based, telematics services may be seen as "interconnected," because as a technical matter the outgoing signal from a telematics unit to the call center may be transmitted over the public switched network. Moreover, it may be technically possible for a call center operator to conference in and/or to connect the telematics user with a third party.

The definition of units to which the Commission's E911 rules apply should not depend on whether those units are manufactured or "provided" by OnStar, nor should it depend on whether the units are technically "interconnected."[6] Instead, the Commission should clarify that the Commission's E911 rules apply only to "personal calling" services. It should clarify that "personal calling" is defined to be when a telematics user may dial out directly to another number of her own choosing, without the further action of a human intermediary. The Commission should also clarify that the waiver granted in the *OnStar Order* with respect to OnStar equipment applies equally to all personal calling services to which (by the terms of the *OnStar Order*) the E911 rules would otherwise apply.

These clarifications are consistent with the intent of the Commission, as expressed in the *OnStar Order*, to require E911 compliance only of those units provide a "personal calling service," meaning that they "function as mobile phones."[7] They likewise are consistent with the mandate of the Communications Act that regulation should depend on "the service being offered to consumers," rather than "the type of facilities used."[8]

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4 *Id.* ¶ 18.

5 *Id.* ¶ 20.

6 *Id.* ¶¶ 16, 22.

7 *Id.* ¶ 1

8 *Federal-State Joint Board on Universal Service*, Report, 13 FCC Rcd 11501 ¶ 56 (1998).

II. RETROACTIVITY

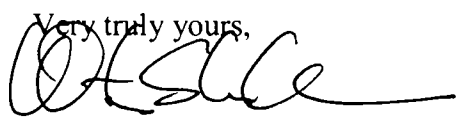
The *OnStar Order* provides a "waiver of the Commission's E911 Phase II rules, including the particular equipment activation requirements of Section 20.18(g) . . . until December 31, 2005."[9] Thus, the equipment activation requirements of Section 20.18(g) will by the terms of the *OnStar Order* begin on January 1, 2006 to apply to personal calling-equipped telematics units. Among those requirements, however, is a mandate that a carrier achieve "95 percent penetration of location capable handsets among its subscribers."[10] Thus, the *OnStar Order* and the rule could be read to require that as of January 1, 2006 wireless carriers must ensure that 95 percent of *all* handsets on their networks – a number including all TCUs then in operation – are E911 Phase II compliant. In other words, the *Order* could be read to require E911 compliance of all existing units in operation.

Toyota and various other parties have amply demonstrated in the administrative record that backwards-looking regulation is inappropriate in this context. Telematics units are deeply embedded in automobiles, and cannot practically be exchanged or retrofitted to accommodate a new standard. And the long life cycle of modern automobiles would ensure that many non-compliant telematics devices would remain on the road well past the 2006 deadline for 95 percent compliance. The result of such a retroactive mandate could be to force wireless carriers to refuse altogether to provide this beneficial and even life-saving service to older and non-compliant units.

The Commission should therefore "grandfather" existing units as of December 31, 2005. Again, while this appears to be the intent of the OnStar Order, the Commission should clarify that telematics units that are manufactured before January 1, 2006 will not count against wireless carriers' totals for purposes of achieving the 95 percent compliance mandate.

Please do not hesitate to call should you have any questions about this matter, or wish to discuss it further. I am filing copies of this letter with the Secretary as an ex parte presentation in CC Docket No. 94-102.

Very truly yours,



James H. Barker
William S. Carnell
of LATHAM & WATKINS LLP

Counsel for Toyota Motor North America, Inc.

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9 *OnStar Order* ¶ 22. *See also id.* ¶ 31 ("OnStar telematics units that provide CMRS do not have to be included in [wireless carriers'] count for the equipment activation requirements under section 20.18(g) prior to December 31, 2005").

10 47 C.F.R. § 20.18(g)(1)(v). *See also, e.g.*, Verizon Waiver.