

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

In the Matter of)	
)	
Petition for a Notice of Inquiry Regarding 911)	PS Docket No. 08-51
Call-Forwarding Requirements and Carriers’)	
Blocking Options for Non-Initialized Phones)	

COMMENTS OF YMAX CORPORATION

YMax Corporation (“YMax”), through its attorneys, hereby respectfully submits its Comments in response to the Federal Communications Commission’s Notice of Inquiry in the above-captioned proceeding.¹ In response to a petition filed by nine public safety organizations and a development firm, the Commission launched this proceeding to develop a record regarding “the extent of the problem concerning non-emergency 911 calls made from [non-service initialized (“NSI”)] phones and to explore potential solutions.”² The Commission defines NSI handsets as “phones donated by carriers that are not currently service initialized, as well as handsets manufactured and sold as ‘911-only’ phones.”³ The Commission seeks comment on three specific issues: “(1) the nature and extent of fraudulent 911 calls made from NSI devices; (2) concerns with blocking NSI phones used to make fraudulent 911 calls, and suggestions for

¹ See *In re Petition for a Notice of Inquiry Regarding 911 Call-Forwarding Requirements and Carriers’ Blocking Options for Non-Initialized Phones*, Notice of Inquiry, 23 FCC Rcd. 6097 (2008) (the “Notice”).

² *Id.* ¶ 1.

³ *Id.* n.1; see also 47 C.F.R. § 20.18(l)(3)(i) (defining NSI handsets under the rules governing licensees that donate a handset for purposes of providing access to 911 services as “[a] handset for which there is no valid service contract with a [CMRS] provider”).

making this a more viable option for carriers; and (3) other possible solutions to the problem of fraudulent 911 calls from NSI handsets.”⁴

While public safety officials are likely to submit evidence regarding the nature and the extent of the problem of fraudulent 911 calls using NSI devices, YMax’s comments focus on the ongoing public interest benefits of ensuring that legitimate emergency calls, including a new emergency calling solution developed by YMax, continue to be passed through by CMRS providers, even when the CMRS provider does not have a relationship with the caller. Emergency calls that provide a valid call back number, location information and have a subscriber relationship with a provider, such as a VoIP service provider, that can work with the affected Public Safety Answering Point (“PSAP”) experiencing harassing calls are clearly distinguishable from the NSI-device calls that are the subject of this proceeding. The Commission should narrowly seek a solution to eradicate fraudulent and abusive 911 calls made on NSI handsets for which call back and location information is not available and for which the users do not subscribe to a provider’s service, while ensuring that CMRS providers continue to serve the public interest by passing through all other 911 calls to PSAPs.

About YMax, Its magicJack™ Device and Its 911 Technology

YMax began to offer commercial VoIP services to customers in July 2007. Through its subsidiary magicJack LP, customers purchase a magicJack™ device which they plug into the USB port of their desktop or laptop computer.⁵ Any standard telephone will then plug into the telephone jack on the magicJack™ device and within moments customers can sign-up for services that will, so long as they have a broadband connection (whether cable modem, DSL, wi-

⁴ Notice ¶ 10.

⁵ Purchase of the magicJack™ device includes the applicable software license.

fi or other system), allow them to call any other broadband-connected magicJack™ device wherever located, any PSTN-connected telephone and customers of other VoIP services. The magicJack™ device also allows customers to receive calls from any magicJack™ device, PSTN-connected telephone and other VoIP services. Many other features, such as voicemail, three-way calling and call forwarding, plus portable contact lists and call logs, are included.

In 2007, the Commission began to develop a record on the current technology for providing automatic location information (“ALI”) to PSAPs for 911 calls from nomadic VoIP subscribers.⁶ In that proceeding, YMax has presented information regarding its new 911 capabilities for VoIP subscribers, which will be available later this year, that the Commission – and the public and public safety officials – have hoped for.⁷

As described in these filings, the next-generation magicJack™ device will incorporate a cellular transceiver within the device. The cellular transceiver will not be involved in any of the VoIP calls made over the customer’s broadband connection, unless the customer dials “911.” For all those normal calls, the second generation device will operate in all respects just like the first generation magicJack™ device. If the customer dials 911, however, if there is a cellular signal, the call will be routed to the cellular transceiver rather than to the broadband connection.

The 911 call will be sent directly from the radio transceiver in the magicJack™ device and will be perceived by a local CMRS system as any other 911 call from a device not registered to one of its customers. Since CMRS providers are required to transmit all wireless 911 calls to

⁶ See *In re Wireless E911 Location Accuracy Requirements, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling, Requirements for IP-Enabled Service Providers*, Notice of Proposed Rulemaking, 22 FCC Rcd. 10609 (2007).

⁷ For further information, see YMax’s comments, reply comments and ex parte filings in FCC Docket Nos. 07-114, 05-196, and 94-102.

a PSAP without respect to their call validation process, the CMRS provider would then route the call, along with the location information it routinely acquires as for all other 911 calls, to the appropriate PSAP. The magicJack™ device, via the cellular transceiver, is also capable of transmitting the VoIP phone number to the PSAP, enabling the PSAP to return the emergency call through the customer's VoIP broadband connection if interrupted or if follow-up is required. This 911 calling capability will be available in the marketplace soon in the next-generation magicJack™ device, and the same technology will be made available to other VoIP service providers as well.

Developing Solutions Regarding NSI Phones

In the *Notice*, the Commission focuses on calls from NSI devices that present particular challenges for public safety officials attempting to stop fraudulent calling. “NSI devices by their nature have no associated name and address, and do not provide Automatic Number Identification (ANI) and call back features. Accordingly, in the event that a non-emergency 911 call is placed using a NSI phone, particularly for fraudulent purposes, it is very difficult for public safety authorities to determine who is responsible for placing such a 911 calls.”⁸ Based on these considerations, the Commission has identified potential solutions to address the problem of fraudulent 911 calls from NSI devices, including “eliminating call-forwarding requirements for NSI devices.”⁹ The Commission also asks whether requirements adopted in the Commission’s location accuracy proceeding might “make it easier to locate persons making fraudulent 911 calls over NSI devices.”¹⁰

⁸ *Notice* ¶ 2.

⁹ *Id.* ¶ 17.

¹⁰ *Id.* ¶ 23.

The Commission has long recognized that requiring CMRS providers to forward all 911 calls serves the public and the public interest by making it easier for individuals to report emergencies.¹¹ While the Commission may decide to take limited steps to guard against fraudulent calls from limited-capability NSI devices, it should ensure that call-forwarding requirements still apply for all other wireless calls. As YMax's 911 solution demonstrates, not every wireless 911 call from a caller that is not registered to a CMRS provider raises the issues posed by some callers using the narrowly-defined kinds of NSI handsets described in the *Notice*. For instance, each magicJack 911 caller will transmit information to enable the PSAP to reach the caller if they are disconnected, as well as to allow any CMRS provider to reach the caller. Both the PSAP and the CMRS providers also will have location information about the caller. Any affected PSAP also can work with YMax – or another VoIP carrier that licenses YMax's technology – to prevent the future transmission of fraudulent calls from a particular number, just as they would with respect to any traditional wireless caller. While these features will help to prevent abusive 911 calls by YMax subscribers, YMax's technology also serves as a viable ALI solution for 911 calls made by nomadic VoIP subscribers – a solution that the industry has been working on for years.

Thus, as the Commission moves forward with this inquiry, the Commission should be mindful that there are public interest benefits to ensuring the continued ability of legitimate 911 callers to reach PSAPs in emergency situations. These public interest benefits include those identified in the Commission's proceeding adopting the rule to require CMRS providers to pass

¹¹ *In re Revision of the Comm'n's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Sys.*, Memorandum Opinion and Order, 12 FCC Rcd. 22,665, ¶¶ 33-34 (1997) (“Many wireless calls are from ‘Good Samaritans’ reporting traffic accidents and similar emergencies. Making it easier for individuals to report such emergencies thus primarily benefits the public and serves the public interest, not simply the interests of the caller.”).

through all calls *and* new and evolving public interest benefits as parties develop creative solutions to improve 911 service and capabilities based on the existing regulatory framework. The Commission should ensure that the focus of this proceeding remains limited to preventing fraudulent and abusive 911 calls sent from NSI devices that do not have valid call back or location information capabilities and are not used in connection with a valid service provider. Failing to narrowly define the types of devices that are the source of the identified problem would significantly undercut the public interest benefits of the Commission's requirement that all 911 calls be passed through to PSAPs – and would do so for no good reason.

Conclusion

As YMax's 911 solution for nomadic VoIP callers demonstrates, not every wireless 911 call from a caller that is not registered to a CMRS provider has the characteristics that have been identified as problematic here and that the Commission has used to define NSI handsets for these purposes. YMax has developed a technology that enables nomadic VoIP callers to place 911 calls using a cellular transceiver. This technology is clearly distinguishable from the essential characteristics of the troublesome NSI phones described in the *Notice*. YMax's 911 solution for nomadic VoIP customers also serves the public interest by offering an ALI solution that can improve the location information that is available to public safety officials when they receive a call from a nomadic VoIP subscriber, a long sought-after goal. Accordingly, YMax urges the Commission to maintain the focus of this proceeding on concerns with respect to 911 calls made

by specific problematic types of NSI devices and to preserve the ability of other wireless 911 callers to reach a public safety official in an emergency situation.

Respectfully submitted,

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