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 T-MOBILE USA, INC.

T-Mobile USA, Inc. (T-Mobile) comments in response to the Commission's Notice of Inquiry regarding E911 service for non-service initialized wireless handsets.[1] While T-Mobile does not minimize the operational problems created for PSAPs by fraudulent, harassing or mistaken 911 calls, the solution here is not to cut off avenues for public access to 911 via non-service initialized calls. It is by no means clear that the harm caused by abusive calls from phones that are treated as non-service initialized outweighs the benefits of allowing consumers to make emergency calls from any cell phone at any time. Nor is it clear that the harm caused by abusive calls cannot be reduced in any other feasible and reasonable way that will not shut off consumers' ability to place 911 calls in an emergency. In particular, the Commission should focus its attention on facilitating PSAP blocking, rather than mandating carrier blocking.

I. Introduction and Summary.

Although the NOI treats non-service initialized calls as if they are calls that originate only from phones that subscribe to no carrier, that assumption is far too narrow. Non-service initialized calls are not just from discarded phones that do not subscribe to any carrier's service, but can result from a number of different circumstances including:

[1] *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) ("NOI").

- phones that have not completed registration at the time the 911 call is placed,
- calls placed from areas of weak or no signal for one carrier that receive a signal from another carrier,
- calls when the handset selects the strongest signal, which may not be the subscriber's carrier,
- calls from consumers roaming in areas with or without automatic roaming agreements,
- calls from foreign phones, and
- calls by non-subscribers.

For GSM carriers, non-service initialized 911 calls include both calls from phones with SIMs and from those without a SIM.

The NOI retraces a road that has already been well-traveled by the Commission. From its first wireless 911 orders, the Commission has consistently sought to ensure that all legitimate 911 calls go through, and at the same time to provide PSAPs the means to address fraudulent 911 calls. In its 1996 *First Report and Order*, the Commission required wireless carriers to transmit all 911 calls without call validation.[2] On reconsideration in 1997, the Commission specifically rejected requests, including from many wireless carriers, to be able to block calls from non-service initialized phones.[3] At that time, public safety organizations, including NENA, APCO and NASNA, supported the Commission's rule requiring transmission of all calls without validation.[4] The Commission noted, "While there may be some benefit to requiring that wireless carriers screen and block calls on behalf of the PSAPs, in order to deter and prevent hoax 911

[2] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18692 (¶29) (1996) ("*First Report and Order*").
[3] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, 22682 (¶¶ 33-36) (1997) ("*First Memorandum Opinion and Order*").
[4] *Id.* at 22675-76 (¶ 19).

calls, the extent of the benefits and the costs that would be incurred are uncertain."[5] In 2002 – recognizing the value of programs by both carriers and non-carriers to distribute phones to at-need individuals "such as victims of domestic violence and other crimes, the elderly and infirm"[6] – the Commission directed carriers to transmit an identifier that would identify the phone as non-service initialized and thus one for which callback would not be possible.[7] Ultimately, after further work under the Emergency Services Interconnection Forum, comprised of both carriers and public safety organizations, this requirement was modified to the current requirement. Carriers must transmit the digits "911 plus the seven least significant digits of the decimal representation of a wireless handset's Electronic Serial Number (ESN) or International Mobile station Equipment Identity (IMEI)."[8]

If the Commission were now to reverse course and mandate call blocking – either of all non-service initialized calls or of such calls upon PSAP request – it must recognize that there will be some instances in which a caller will not able to reach 911 in time either because of blocking or because of the time required for handset initialization and validation prior to 911 call processing. In these instances, the caller would have been able to reach 911 had the current rules remained in place – such as when traveling outside his or her carrier's service or roaming area.

It is also likely that civil lawsuits would follow. If the Commission were to mandate selective blocking of particular handsets in response to a PSAP request, it is probable that some plaintiffs' counsel would attempt to argue that such blocking would be considered "intentional conduct" not subject to civil liability protection under some state laws or that this blocking

[5] *Id*. at 22683-85 (¶ 36).
[6] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order, 17 FCC Rcd 8481, 8482-83 (¶ 4) (2002) ("*Second Report and Order*").
[7] *Id*. at 8489-91 (¶ 26).
[8] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 18 FCC Rcd 23383, 23389 (2003) ("*Second Memorandum Opinion and Order*").

action might otherwise expose carriers to civil tort liability. While T-Mobile believes that such suits would be without merit, the costs and distractions of defending against this type of litigation could be substantial; and given the vagaries of the trial system, there is always the chance for an adverse verdict with substantial damages, especially in the case of 911 calls not going through. Accordingly, if the Commission were now to mandate call blocking for some 911 calls, it should make clear that carriers are in no way acting negligently or otherwise improperly in blocking non-service initialized calls, honoring specific blocking requests by PSAPs, or in configuring their networks to perform call validation in connection with 911 calls. If the Commission concludes that it cannot provide such liability protections, then it should not require blocking unless and until Congress acts to do so.

Furthermore, the Commission must recognize, as it has in the past,[9] that there is a substantial embedded base of non-service initialized handsets – many in the hands of people who do not otherwise subscribe to wireless service. Although T-Mobile distributes only service initialized handsets as part of its carrier-sponsored donation program, many non-service initialized handsets are distributed through private national and local charitable organizations wholly unaffiliated with and independent from wireless carriers. Also, old handsets are sold at garage sales and in other private transactions.

There are no silver bullets to enable callback to non-service initialized phones. E911-M, on which Lucent claims a patent, is not practical or feasible; that proposal ultimately did not gain broad support because it requires equipment changes in the PSAP and the wireless networks as well as substantial additional numbering resources.

PSAPs remain the entities best situated to conduct blocking. PSAP blocking would allow calls from handsets that are non-service initialized for any reason to continue to be processed

[9] *Second Report and Order*, 17 FCC Rcd at 8482-83 (¶ 4).

without delay. When a PSAP seeks to block calls from a specific non-service initialized handset, PSAPs can determine which calls they want to block and the duration of blocking, and block calls from a particular handset if delivered by any provider, rather than having all providers seek to block 911 calls from that handset. The Commission's approach to date remains the best – transmit all 911 calls to the PSAP, but provide PSAPs with the information they need to be able to address fraudulent or harassing calls.

II. PSAP Blocking Is a More Effective and Simpler Solution than Carrier Blocking.

The NOI wholly fails to consider an important alternative to carrier blocking of non-service initialized E911 calls – PSAP blocking. Carrier blocking of all non-service initialized calls is the sledgehammer approach and runs the greatest risk of preventing callers facing a true emergency from completing a potentially life-saving 911 call. PSAP blocking, by contrast, is a much more tailored solution, and is the most effective means of addressing fraud. A PSAP can block all calls that come from the same handset, irrespective of the carrier. PSAPs can then determine which calls they want to block, when they want to block, where they want to block, and for how long.

PSAPs can block 911 calls selectively by screening the 911+ESN/IMEI information sent in lieu of a callback number. Under existing FCC rules, carriers will send "911 plus the seven least significant digits of the decimal representation of a wireless handset's Electronic Serial Number (ESN) or International Mobile station Equipment Identity (IMEI)."[10] As the Commission made clear when it adopted the 911+ESN/IMEI solution, a principal purpose of the rule was to enable PSAP blocking of harassing 911 calls:

> The Annex C network solution, because it appends the seven least significant digits of the unique ESN or IMEI to the 911 prefix, generates a phone number that is likely to be duplicative in only one in ten million cases. It therefore is

[10] *Second Memorandum Opinion and Order*, 18 FCC Rcd at 23391 (¶ 19).

> highly probable that a PSAP receiving harassing calls will be able to recognize that these calls are coming from a phone that cannot be called back, to identify that phone, and to work with the appropriate carrier and law enforcement personnel to trace it and block further harassing calls from the device. Moreover, the PSAP can identify calls that are being repeatedly made by a legitimate caller who is experiencing problems staying connected in an emergency.[11]

PSAPs receive the 911+ESN/IMEI either at the time the call is set up (for Non-Call Associated Signaling or NCAS calls) or at the time of the ALI database dip (for Call Associated Signaling or CAS calls).[12] While this means that some PSAPs do not receive the 911+ESN/IMEI in time to block the call at initial set-up and must wait for the ALI dip, the choice of which signaling method to use (NCAS or CAS) is up to the PSAPs. Like other carriers, T-Mobile supports both signaling methods. PSAPs can thus determine the extent to which they wish to be able to perform blocking at call set-up, and can configure their networks accordingly. There are also some cases in which a PSAP may not be able to receive 911+ESN/IMEI, but this is not a limitation created by the wireless carrier, but of the selective router service provided by the 911 system service provider (usually the LEC) serving the PSAP. In this situation, the focus should be on removing the impediment within the selective router service and not on placing greater burdens on wireless carriers.

As the Commission previously recognized, by focusing on identifying the particular device generating abusive traffic regardless of the wireless carrier that carries the 911 call, the PSAP can address particular harassing callers without shutting down the ability for legitimate 911 callers using handsets that lack initialization to place 911 calls in a true emergency.[13] Eliminating the requirement for all carriers to handle all compatible 911 calls means that a customer standing on the wrong side of the building may no longer be able to get her 911 call

[11] *Id.* at 23388 (¶ 13).
[12] J-STD-036, Enhanced Wireless PN 3-3890-RV2-AD1 9-1-1 Phase II, Annex D.
[13] *Second Report and Order*, 17 FCC Rcd at 8489 (¶24).

through. The same is true when driving down the highway. The Commission cannot possibly think it desirable to return to a world in which some 911 callers have to enter credit card numbers in order to place 911 calls, especially since this was one example that supported the original rule requiring carriers to transmit all 911 calls to a PSAP.[14] PSAP blocking will continue to permit 911 calls from roamers, from foreign phones, from lapsed subscribers, calls from incompletely initialized handsets and from donated or privately resold handsets. In contrast, mandatory blocking of all non-service initialized calls will mean that these 911 calls will not go through.

Moreover, selective carrier blocking, rather than blocking all non-service initialized calls, will not work. If a fraudulent 911 call is blocked by one carrier, but not others with the same air interface, the call could simply move to another carrier. Blocking would have to occur on each and every carrier network with a compatible air interface, requiring a high degree of coordination to implement and multiplying the potential for erroneous blocking. PSAP blocking simplifies these logistical issues because if a PSAP conducts the blocking, either by deciding to block all non-service initialized calls or by blocking calls from specific handsets, it does not matter which carrier delivers the 911 call. This approach would squarely address the PSAPs concern about the amount of time they need to spend on coordinating blocking requests.

Furthermore, PSAP blocking reduces the potential liability issues carriers may face. The PSAP can decide when and where it will block. There will be no need for the Commission to delineate the procedural rules surrounding the process necessary for a PSAP to deliver a blocking request to a carrier, or for the carrier to honor such requests. The carriers will face fewer lawsuits as a result of blocking because they will not be implementing the 911 call blocking. PSAPs are generally protected from liability exposure if they act to protect the 911 system from

[14] *See First Report and Order*, 11 FCC Rcd at 18693 (¶ 34).

overload or abuse, particularly if their actions protect the availability of emergency calling for the general public.

The Commission therefore should focus on educating and enabling PSAPs to block, rather than requiring carriers to wholly or selectively block non-service initialized calls, or eliminating the requirement to attempt to complete all 911 calls.

III. Carrier Blocking Should Not Be Mandated Without Adequate Civil Liability Protections for Carriers and Adoption of Clear Procedures for Making and Fulfilling a Blocking Request.

Paragraphs 15 and 16 of the NOI seek comment on the nature of liability concerns with call blocking. While there could be issues with respect to the liability under the FCC's rules if the rules are inartfully drafted, the principal concern is one of civil liability, particularly tort liability. Blocking of non-service initialized calls, either wholly or selectively, places carriers in the position of intentionally not delivering a 911 call to emergency responders.

As discussed above, if a carrier were to block 911 calls, it would do so without knowing whether the calls it was blocking were legitimate 911 calls or fraudulent pranks. There is an inherent risk that the legitimate 911 call summoning help would be the one blocked – a risk that would be magnified if all non-service initialized calls were blocked. No amount of prior disclosure and warning will eliminate the risk. Furthermore, given the embedded base of non-service initialized handsets, even with a significant public education campaign by all participants, including industry, state and local governments and the federal government, it would be difficult to re-educate consumers that the non-service initialized wireless handsets that now can place 911 calls will no longer be able to do so.

Although the Wireless Communications and Public Safety Act of 1999 gives wireless carriers the same level of liability protection as wireline carriers,[15] in some cases plaintiffs' counsel may argue that carriers are not subject to liability protection when implementing blocking. For example, in some cases liability protection under state law does not extend to "intentional conduct," and while blocking is surely not the type of intentional conduct meant to be excluded from liability protection, some plaintiffs' counsel may argue that blocking is "intentional" and thus not subject to liability protection. Moreover, a carrier still faces the costs of defending itself in subsequent litigation, and damage to its reputation and goodwill that comes from having a 911 service that "didn't work" when called upon – even if the reason it did not work was because the PSAP requested blocking or the Commission mandated it. As the Commission has repeatedly observed, callers expect 911 calls to go through.

Finally, there is no clear convention on what constitutes a valid blocking request. In law enforcement, for example, there are clear processes and procedures that must be followed before a wiretap or pen register may be instituted. The same types of procedures would be needed here, so that carriers know when they are getting a duly authorized blocking request. At a minimum, the blocking request would have to specify the numbers sought to be blocked, the area within which such blocking should occur, the fixed duration of such a request, and would have to have some kind of recognized official authorization (for example, from a judge). The carrier must be permitted to rely upon a facially-valid request without fear of liability.

Accordingly, if the Commission adopts rules requiring blocking of some or all non-service initialized calls, it should first ensure that clear procedures for blocking requests are instituted, and issue rules that protect carriers against civil liability for blocking in accordance with a facially-valid request. And, if the Commission concludes that it lacks the statutory

[15] P.L. 106-81, *codified in relevant part at* 47 U.S.C. §§ 615a-615b.

authority to provide liability protection – as it did when addressing the E911 mandate for interconnected VoIP[16] – then it should make any blocking requirement contingent upon Congress enacting such liability protection. Otherwise, the Commission puts the carrier in an untenable legal position, risking violating the Commission rules and incurring potential civil liability if it does not block, and risking other potential civil liability if it does block.

IV. E911-M Is Not a Practical or Feasible Solution.

Paragraph 18 of the NOI seeks comment on whether E911-M, which was outlined in a NENA technical document in 2005, provides a method for providing callback on all calls, including non-service initialized calls. E911-M is not a silver bullet solution, and has been dropped by both public safety and wireless carriers.

Although NENA issued Technical Information Document 03-504 in 2005, setting forth a callback solution called E911-M, that solution has never gained widespread support. E911-M had been proposed by Lucent, which held patents on the technologies, but it turned out to be too difficult to implement.[17] To be usable for E911 fraud prevention, both the wireless carrier and the PSAP would have to install new equipment, called an Emergency Call Register, and this equipment would also have to be networked.[18] The carrier and PSAP equipment and software needed to be matched in order for the solution to work.

E911-M also would significantly exacerbate number exhaust problems. To work, carriers would have had to obtain additional numbers to use as the unique Local Public Safety Number

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[16] *IP Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36 and 05-196 (2005).
[17] Patent Nos. 7,302,350, 7,174,149, and 7,058,389.
[18] *See* NENA Technical Information Document 03-504 § 2.3 *available at* http://www.nena.org/media/files/03-504_20051020.pdf (last visited June 23, 2008).

(uLPN) to assign to each handset.[19] These uLPNs were then the numbers used to call back the handset.

When E911-M was considered in 2006 by the Emergency Services Interconnection Forum, which includes both carriers and public safety/PSAP organizations as members, ESIF resolved that it should "continue to promote resolution of the callback number problem through voluntary industry standards in lieu of a government mandate."[20] That approach should be retained, especially because E911-M has not garnered any substantial support.

V. Conclusion

The Commission should not repeal the requirement that carriers route all calls to the appropriate PSAP, nor should it mandate the blocking of non-service initialized calls either wholesale or on an individualized basis. There remains too great a possibility for denying the consumer facing a legitimate emergency access to 911, especially if blocking of all non-service initialized calls were mandated. Moreover, the Commission should not mandate even selective blocking of non-service initialized calls without defining specific procedures to be used to implement such blocking and providing carriers with protection against the civil lawsuits that

[19] *See Id.* at § 2.2.
[20] Emergency Services Interconnection Forum Issue Identification Form, ESIF Issue Number ESIF-027, Final Closure date February 28, 2006.

will result. If the Commission concludes that it lacks authority to provide protection against liability, then it should decline to mandate carrier blocking until Congress enacts the appropriate liability provisions.

Respectfully submitted,

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