

**Before the
Federal Communications Commission
Washington, DC 20554**

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

COMMENTS OF AT&T INC.

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively "AT&T") hereby submits comments on the Commission's *Notice of Inquiry* ("NOI") in the above-referenced proceeding.¹ As the Commission considers how to address the problem of fraudulent non-emergency calls placed by non-service initialized ("NSI") phones to Public Safety Answering Points ("PSAPs"), AT&T urges it to refrain from adopting any solutions that are technically infeasible or expose wireless carriers to liability. As the *NOI* indicates, the Commission and PSAPs appear particularly interested in blocking solutions. But blocking solutions raise technical and legal problems that the Commission should evaluate fully before adoption. To the extent the Commission pursues improved PSAP call-back capabilities as a potential solution for the NSI phone problem, the Commission should establish a working group of interested stakeholders to explore this option. Finally, changes to E911 Phase II

¹ See *Petition for a Notice of Inquiry Regarding 911 Call-Forwarding Requirements and Carriers' Blocking Options for Non-Initialized Phones*, Notice of Inquiry, PS Docket No. 08-51, FCC 08-95 (2008) ("NOI"); see also *Petition for a Notice of Inquiry Regarding 911 Call-Forwarding Requirements and Carriers' Blocking Options for Non-Initialized Phones*, CC Docket No. 94-102, PS Docket No. 08-51 (filed Feb. 14, 2008) ("Petition").

location accuracy requirements will not have any effect on the ability of wireless providers to locate individuals making fraudulent calls.

I. THE COMMISSION SHOULD FULLY EVALUATE THE TECHNICAL FEASIBILITY OF PROPOSED BLOCKING SOLUTIONS TO THE PROBLEM OF FRAUDULENT AND HARASSING 911 CALLS FROM NSI PHONES BEFORE IMPOSING NEW RULES OR POLICIES.

The Commission should carefully consider the technical feasibility of proposed blocking solutions before adopting any final rules or policies.² The NOI suggests that two main blocking options exist – blocking can occur at the individual handset level or carriers can block all NSI phones. As described below, each option has advantages and drawbacks that require careful study. Blocking individual handsets may offer long-term promise, but this solution would require major development work and an undetermined amount of time to implement. AT&T, for example, does not possess the network capabilities to block NSI handsets on an individual basis at this time. Blocking all NSI handsets from making 911 calls also might be possible but, again, would require sufficient time for design, development, and implementation. However, this blunt instrument may be an inadequate long-term solution because it might prevent completion of legitimate emergency calls from both service-initialized and NSI phones.

Although individual NSI call blocking may offer promise as a solution in the future, AT&T currently does not have the capability to block 911 calls from particular NSI phones and therefore requests that the Commission refrain from mandating this option.³ GSM and UMTS networks use two different numbers to identify devices and subscribers on their networks. The

² See NOI, ¶¶ 13-14.

³ These comments focus exclusively on blocking solutions oriented to circuit-switched networks. As carriers migrate to IP-based networks, it will be necessary to revisit the technical challenges raised by the proposed solutions.

International Mobile Equipment Identity (“IMEI”) is used as a unique number on all GSM and UMTS devices. However, the IMEI is not used to identify the individual subscriber – only the device itself. The International Mobile Subscriber Identity (“IMSI”) which is stored on the subscriber’s Subscriber Identity Module (“SIM”) is used to identify the particular subscriber. Given this configuration, AT&T potentially could implement an IMEI, or device, based blocking solution. However, because an NSI phone does not provide an IMSI to the network, AT&T is not able to determine the identity of the party making a fraudulent or harassing 911 call. Blocking a particular IMEI could ensure that a particular device was not the source of a 911 call, but the block would remain in force even if the device reached the hands of a legitimate user. This approach is device-centric, and agnostic as to who is using the phone. Moreover, even if the Commission were to conclude that a device-based blocking approach, with all its limitations, were acceptable, AT&T would require significant time to design, test, and implement this potential solution, in particular to ensure that IMEI blocking is scaleable and technically feasible on a network-wide basis.

In addition, the presentation of 911-xxx-xxxx only occurs in certain subsets of all NSI 911 calls. To the extent an incoming 911 call manifests this presentation, PSAPs may be able to implement a blocking solution which avoids the need to modify carrier networks. Common off-the-shelf call center equipment allows for blocking of specific in-bound numbers based on Caller Identification (“Caller ID”) information. The Commission should explore PSAP use of such off-the-shelf equipment to block – or send to announcement or other treatment – calls with the presentation 911-xxx-xxxx (or other numbers identified with fraudulent or harassing calls) in the Automatic Location Identification data field. However, not all NSI phones utilize the 911-xxx-xxxx presentation. In some cases, the call-back number presented to the PSAP is the last valid

number assigned to the handset. If the Commission ultimately decides that individual NSI handset blocking would best address the fraudulent call problem even in light of the limitations of such an approach, the Commission's solution must account for the fact that testing and deployment of new network and handset technologies will require substantial time and investment on the part of wireless carriers.⁴

To the extent the Commission believes that a temporary solution is necessary while it evaluates other options, the Commission could require that wireless carriers block all NSI handsets from placing calls to PSAPs. But this blocking option may be too blunt an instrument to serve as a long-term solution. This option would prevent NSI handset owners from ever placing emergency calls, even legitimate ones. It also would prevent service-initialized phones from placing emergency calls in certain circumstances. For example, in a roaming situation, the roamed-on carrier might be unable to distinguish NSI handsets from handsets subscribed to carriers with whom the roamed-on carrier does not have an automatic roaming agreement. Likewise, billing errors and unresolved billing disputes may lead to termination of a subscriber-relationship and, along with it, service initialization of a handset. The network would treat the devices of consumers in this situation the same as other NSI phones, creating the potential for inadvertent blocking of legitimate 911 calls. Additionally, phones occasionally appear non-

⁴ Even if wireless carriers develop technology that blocks individual wireless handsets, harassing calls will continue. Without coordination among carriers, suspected NSI handsets will roam to another compatible network. Moreover, bad actors will find ways to work around blocking practices, and will find additional NSI handsets at yard sales, thrift stores, and other outlets. Perhaps even more problematic, bad actors may donate or sell blocked handsets, and future owners may have no indication that the phone is incapable of making 911 calls.

initialized because of normal network events, system reboots, and other common circumstances,⁵ and emergency calls might be inappropriately blocked if made during such events. Because of these limitations, the Commission must carefully weigh the benefits associated with blocking of 911 calls from all NSI phones, including eliminating fraudulent and harassing 911 calls to PSAPs, against the cost of potentially blocking legitimate 911 calls.

Finally, if the Commission adopts a blocking solution, it should also decide upfront “how blocked calls should be handled”, *i.e.*, should blocked calls be re-directed to answering centers, pre-recorded messages, or simply fail to complete.⁶ AT&T requests that the Commission establish clear directions for wireless carriers in the event a call needs to be blocked.

II. TO THE EXTENT THE COMMISSION REQUIRES NSI 911 CALL BLOCKING, IT MUST INSULATE CARRIERS FROM LIABILITY.

Under no circumstances should the Commission adopt any blocking solution that exposes wireless carriers to liability. As the *NOI* illustrates, blocking solutions raise potential legal problems that the Commission needs to evaluate and address before adopting any rules.⁷ As an initial matter, to successfully implement any blocking regime, the Commission must clearly establish the specific responsibilities of carriers and government actors authorized to impose blocks at each step in the blocking process.⁸ In addition, a blocking solution would need to place

⁵ For example, phones occasionally appear non-initialized during MSC to MSC handoffs, for several seconds after the phone is powered on, and as the phone recovers from loss of service in a tunnel.

⁶ *NOI*, ¶ 6.

⁷ *See id.*, ¶¶ 15-16.

⁸ If the Commission elects to explore blocking solutions, it should consider seeking recommendations on effective blocking processes from an industry working group including carrier and PSAP representatives, as discussed *infra* at Section III.

any discretionary powers in the hands of these “trusted source” government agencies, and limit the role of wireless carriers to the straight-forward execution of blocking requests. This structure offers the only feasible way to limit liability associated with call blocking.

In order to minimize carrier liability exposure, the Commission must ensure that the discretionary components of any blocking scheme rest solely with government actors – including PSAPs – that are vetted in advance and identified as “trusted sources” authorized to initiate 911 call blocking. The Commission should clarify that these trusted sources alone possess the authority to initiate blocks. Further, the Commission should establish a process by which trusted source government actors issue clear and unambiguous blocking instructions to wireless carriers. Carriers’ reluctance to block 911 calls under the current regime stems, in large part, from the ambiguity of the policy, which provides that carriers are “not preclud[ed]” from blocking fraudulent calls from NSI phones, so long as “applicable state and local law enforcement procedures” are followed.⁹ This policy exposes wireless carriers to unacceptable liability, not only because it requires carriers to parse multiple and conflicting state and local laws, but also because the policy’s vagueness opens the door to potential blocking requests from unknown parties. To minimize carrier exposure, the Commission must design a blocking system that identifies trusted source government actors – including PSAPs – in advance and places no obligation on carriers to assess the authority of parties making requests.

The Commission also should clarify the precise actions a wireless carrier must take when it receives the direction to block. The current definition of “blocking” is ambiguous regarding the actions a carrier must undertake. In the *Public Notice* that clarified that call blocking is

⁹ “FCC Clarifies that 911 Call-Forwarding Rule Does Not Preclude Wireless Carriers from Blocking Fraudulent 911 Calls from Non-Service Initialized Phones Pursuant to State and Local Law,” *Public Notice*, CC Docket No. 94-102 (2002).

permitted, the Commission did not specifically define how carriers should block calls, the appropriate duration of call blocks, or the process to remove a block.¹⁰ Moreover, the Commission did not provide guidance on whether, and how, wireless carriers should cooperate with one another when implementing blocking requests. To ensure that blocking is effective, AT&T recommends that the Commission clarify that a directive to block 911 calls from a NSI phone is a directive not to forward calls. Moreover, the Commission should establish clear directions for how long a block should occur, the process for lifting a block, and the amount of intercarrier cooperation required.

Even with these formal processes, AT&T remains concerned about possible civil liability in the event a NSI phone user needs to make an emergency call but is unable to do so because the device has been blocked pursuant to a PSAP's instruction. Any regime that requires carriers to act upon blocking requests must also shield carriers from liability for executing a block. AT&T urges the Commission to ensure that any final rules or policies do not impair existing liability protection under federal and state law.¹¹

¹⁰ *Id.*

¹¹ *See, e.g.,* Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286, § 4(a) (1999) (providing that a “wireless carrier, and its officers, directors, employees, vendors, and agents, shall have immunity or other protection from liability in a State of a scope and extent that is not less than the scope and extent of immunity or other protection from liability that any local exchange company, and its officers, directors, employees, vendors, or agents, have under Federal and State law (whether through statute, judicial decision, tariffs filed by such local exchange company, or otherwise) applicable in such State, including in connection with an act or omission involving the release to a PSAP, emergency medical service provider or emergency dispatch provider, public safety, fire service or law enforcement official, or hospital emergency or trauma care facility of subscriber information related to emergency calls or emergency services”).

III. IMPROVING CALL BACK CAPABILITY FOR NSI PHONES RAISES COMPLEX ISSUES BEST ADDRESSED BY AN INDUSTRY WORKING GROUP.

To the extent the Commission considers improving call-back capabilities to address the fraudulent 911 call problem from NSI phones,¹² it should follow the Rural Cellular Association's recommendation and form an advisory committee similar to the committee formed under provisions of the Warning, Alert, and Response Network ("WARN") Act.¹³ A working group consisting of a diverse collection of interested stakeholders is best-positioned to determine the feasibility of addressing fraudulent and harassing 911 calls through improved call-back and the technical hurdles that must be overcome to develop and implement such capabilities.

If the Commission elects to explore improving PSAP call-back capability for NSI phones, the Commission should bring together representatives of industry and the public safety community to evaluate potential solutions and, if feasible, initiate development work.¹⁴ If the working group ultimately concludes that this option holds promise, the group will be well-positioned to develop recommendations regarding design, development, and implementation. Given the complexity of the issues involved, a collaboration between industry and public safety is a more efficient vehicle for reviewing potential improvements to E911 call-back than a Commission rulemaking.

The Commission should refrain from addressing 911 call-back issues in isolation, with a focus only on reducing or eliminating fraudulent 911 calls from NSI phones. As the NENA

¹² See *NOI*, ¶ 18.

¹³ See *Ex Parte* Letter of David L. Nace, on behalf of the Rural Cellular Association, to Marlene Dortch, Secretary, FCC, at 3 (filed Feb. 20, 2008); Warning, Alert, and Response Network Act, 47 U.S.C. §§ 1201-1205.

¹⁴ AT&T suggests that the Enhanced 911 Technical Advisory Group may be an appropriate forum for these discussions.

document referenced in the NOI makes clear, possible improvements in 911 call-back capabilities might address a number of concerns.¹⁵ Given that call-back concerns are broader than fraudulent and harassing calls from 911 phones, the Commission, if it elects to address these issues, should take a holistic approach and avoid the possibility of rigid rules and technical requirements directed to solving a discrete problem that may unintentionally prevent, or make more difficult, addressing other call-back concerns. A collaborative industry and public safety working group would be particularly well-positioned to conduct such a holistic review.

IV. E911 PHASE II LOCATION ACCURACY REQUIREMENTS AT THE PSAP SERVICE-AREA LEVEL WILL NOT MAKE IT EASIER TO LOCATE INDIVIDUALS MAKING FRAUDULENT CALLS.

Regardless of whether a wireless carrier employs handset-based or network-based location technologies, stringent E911 Phase II location accuracy requirements at the PSAP service-area level will not make it easier to locate persons making fraudulent 911 calls from NSI phones.¹⁶ Already, wireless carriers – relying on both types of location technologies – frequently calculate per-call E911 location accuracy at a sub-300 meter level. But even these location calculations are not precise enough to locate fraudulent NSI phone users in all instances.

¹⁵ “PSAP Call Back to All 9-1-1 Callers, Combating Wireless E911 Fraud and Mobile Emergency Service (E911M) Technical Information Document (TID),” National Emergency Number Association (NENA) Mobile Emergency Service (E911M) Joint Working Group of the Wireless Technical Committee and Network Technical Committee, at 7 (Oct. 20, 2005) (noting callback issues arising from, *inter alia*, NSI phones, international and domestic roaming, telematics units, VoIP, user activated service controls (*e.g.*, call forwarding and do not disturb), and ported numbers). It is important to note that while the NENA document serves a useful issue spotting function, it is a “Technical Information Document.” In addition to being dated – the document was prepared in 2005 – the document was never intended to, and does not, roadmap solutions to the problem of fraudulent and harassing 911 calls from NSI phones or any of the other problems identified.

¹⁶ See NOI, ¶ 23.

Further, many wireless carriers use handset-based location technologies frequently not found in older NSI phones. Fraudulent calls placed from these phones cannot be traced to a physical location. Given these limitations, PSAP-level accuracy requirements will not increase the ability of law enforcement or PSAPs to track down fraudulent or harassing 911 callers.

V. CONCLUSION

For the foregoing reasons, AT&T urges the Commission to develop a full record regarding potential solutions to the problem of fraudulent and harassing 911 calls from NSI phones. In reviewing this record, the Commission should avoid those proposed solutions that are technically infeasible or increase wireless carriers' exposure to liability. If the Commission determines that improving E911 call-back offers promise for resolving the problem of harassing and fraudulent 911 calls from NSI phones, it should charter a working group including carrier and public safety representatives to explore the issue further.

Respectfully submitted,

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