

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS OF PETITIONERS¹

Petitioners are pleased to reply to the comments of others in the captioned Notice of Inquiry (“NOI”). Of the nearly 70 comments received thus far, a substantial number are from public safety entities augmenting the record of difficulties presented by Petitioners concerning the sometimes overwhelming incidents of illegitimate prank or harassing calls to 9-1-1. Such calls present a danger to legitimate emergency callers and waste valuable public safety resources when they tie up lines and resources meant for help to those truly in need.

Introduction. Petitioners appreciate the FCC’s willingness to open the NOI so that recent developments in technology and emergency

¹ The Petitioners are the Tennessee Emergency Communications Board, the National Association of State 9-1-1 Administrators (NASNA), the Michigan State 9-1-1 Office, the New Jersey State 9-1-1 Commission, the Snohomish County Enhanced 9-1-1 Office, the National Emergency Number Association (NENA), the Association of Public-Safety Communications Officials International (APCO), the State of Montana 911 Program, the Washington State E911 Program, and Openwave Systems, Inc. We cannot include Openwave in this reply because we have been unable to reach its representative.

call operations could be added to past records created by the Commission.² Current Section 20.18(l) requires carriers and manufacturers to provide each donated non-subscriber-initialized (“NSI”) phone with a unique set of digits identifying the handset and alerting the Public Safety Answering Point (“PSAP”) to its inability to call back the NSI phone in the event of disconnection. The Commission has clarified that its rule requiring the forwarding of all wireless calls to 9-1-1 does not preclude wireless carriers from blocking “fraudulent 911 calls from [NSI] phones pursuant to state and local law.”³

Petitioners believe that it should be the goal of all parties, regardless of the type of service involved, to ensure that all 9-1-1 calls carry an associated caller location and callback number. We appreciate the efforts of those carriers and donee agencies that have provided subscriptions for donated phones so that emergency calls from these handsets can be returned if broken off. Unfortunately, many phone donation programs do not ensure that donated phones are service-initialized and therefore these devices do not provide a location or call back capability. In reality, donated phones appear to be only a small portion of the problem, with the bulk of troublesome devices being old equipment no longer in use, often given to children to play with.

Nonetheless, efforts should be made to reduce the number of NSI

² Report and Order, FCC 02-120, released April 29, 2002; Memorandum Opinion and Order, FCC 03-262, released November 3, 2003, on reconsideration of FCC 02-120.

³ Public Notice, 02-296, released October 31, 2002.

phones that are not subscribed. We therefore agree with the Texas 9-1-1 Alliance that phones sold for commercial purposes should be subscribed, and that the requirement to forward NSI calls to 9-1-1 must not be exploited by businesses seeking a free ride on the regulation.⁴ Even in non-commercial or charitable settings, the better choice for reliable access to 9-1-1 would be a subscribed phone rather than an NSI handset.⁵

We cannot repeal the experience of the past decade demonstrating that legitimate calls from NSI phones to 9-1-1 can be made, and these calls should of course be answered with an appropriate response. While we are sympathetic to those comments that call for an outright FCC reversal of the “forward all calls” rule, we cannot support such a request at this time because there remain a significant number of legitimate 9-1-1 calls from NSI devices (even if they represent a low percentage of all NSI 9-1-1 calls) and because handsets can be rendered NSI by more than mere lapses in subscription. According to several comments, devices can also become NSI in the following situations: (1) when a phone has not completed registration at the time a 9-1-1 call is placed; (2) when calls are placed from areas of weak or no signal for one carrier that receive a signal from another carrier; (3) when calls are made from a handset that selects the strongest signal, which may not be the subscriber’s carrier; (4) for calls placed by consumers roaming in areas with or without automatic roaming agreements; (5) for calls placed on foreign

⁴ Comments, June 30, 2008, at 4-5.

⁵ Comments, King County 9-1-1 Program, June 30, 2008, 6.

phones; or (6) because of normal network events, system reboots, and other circumstances that can occur during mobile switching center (“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

The circumstances that generate NSI call handling under the current rules must be thoroughly investigated with direction to maximize the opportunity for full 9-1-1 capabilities with all calls, including caller location and call-back number. Such analysis should emphasize that carriers have an obligation to collaborate toward assuring that subscriber phones will provide full 9-1-1 service in all instances of network connectivity, including when it is necessary for calls to be made on the network of other carriers. We must therefore continue to search for the best way to receive and respond to these calls despite the technical and operational difficulties demonstrated on this and prior docket records.

Need for an advisory working group. The NOI has served its intended purpose of eliciting several meritorious suggestions for dealing with prank, harassing or other forms of fraudulent calls. Petitioners believe the critical task now is to have these and perhaps other proposals vetted promptly by persons and organizations knowledgeable in the technical and operational aspects of the problem.⁷ Working groups have been convened recently, at Congressional direction or by the Commission’s own choice, to

⁶ Comments of T-Mobile and AT&T, among others.

⁷ Comments of Rural Cellular Association, AT&T and TCS, among others.

advise on significant problems of emergency communications.⁸ The groups' reports became the foundations for regulations aimed at solving or ameliorating these problems.⁹

Given the head start provided by this NOI, we would recommend that any working group appointed to study the problem of harassing NSI calls complete its work in 90 to 120 days. One mechanism for expediting the process would be "negotiated rulemaking," in which the participants are charged with proposing a consensus set of regulations to put out for broader public comment.¹⁰ The more frequently used federal advisory committee mechanism also could be employed here, as it was in the CMAS and Katrina proceedings.

No matter how chartered, the working group should include 9-1-1 authorities, wireless carrier representatives, 9-1-1 system service providers (including LECs and CLECs), VOIP providers, mobile positioning center ("MPC") operators; vendors of PSAP and other relevant equipment; private call centers; and any other persons or agencies able and willing to contribute to a successful outcome. Among the issues the working group should consider:

- details of proposals put forward by INdigital, TCS, Intrado, American Roaming Network and YMax and any other potential

⁸ Commercial Mobile Service Alert Advisory Committee ("CMSAAC"). Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks ("Katrina Panel").

⁹ First Report and Order, FCC 08-99, released April 9, 2008; Order, FCC 07-107, released June 8, 2007; Order on Reconsideration, FCC 07-177, released October 4, 2007, appeal pending *sub nom. CTIA v. FCC*, No. 07-1475, U.S. Court of Appeals for the District of Columbia Circuit.

¹⁰ 5 USC §561, *et seq.*

solutions;

- establishment of measurable criteria to determine what is a harassing or fraudulent call and thus triggers a call blocking request;
- availability and reliability of “off the shelf” call-blocking technologies (*see, e.g.*, comments of INdigital, Intrado, AT&T, and American Roaming Network);
- proposals of YMax and others for “registration” of NSI handsets short of subscription;
- creation of a process to enable carrier or third party to quickly recognize a request from a PSAP as a legitimate request;
- use of recorded messages or operators for NSI calls or simply call failure;
- appropriate “timeout periods” for blocked calls;
- process to turn 9-1-1 dialing capability back on after it has been blocked;
- funding/cost recovery issues;
- public and consumer education on the limited capabilities of NSI phones (*see, e.g.* comments of CTIA and Livingston County, NY); and
- viability of a reversal of the “forward all calls” rule pending a resolution to the technical and policy issues raised in this proceeding.

Emerging and future wireless technologies. As stated above, there are specific issues concerning already deployed wireless technologies that must be addressed by a limited duration working group within 90-120 days. However, the NSI concerns raised in this Notice certainly apply to numerous emerging and future technologies which the Commission should also address.

The scope of Section 20.18 “911 Service” presently is limited as follows:

(a) *Scope of section.* The following requirements are only applicable to CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they:

(1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and

(2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

These requirements are applicable to entities that offer voice service to consumers

by purchasing airtime or capacity at wholesale rates from CMRS licensees.

While the standards for NSI devices are limited based on the current rule, this does not change the fact that new services are being deployed which may not fit these two requirements. What then are providers of such new technologies to assume is the correct expectation of their service in an NSI situation and what are they to assume is their regulatory obligation? The Commission should address these issues as early as possible, perhaps as a second stage of the working group proposed above or as topics in a further Notice of Proposed Rulemaking. Some examples of issues that would need to be considered include the following:

- Consideration of dual-mode cellular/WiFi phones. Does every WiFi network have to support access for emergency calling? If not, does every WiFi network that could be used by active subscriber have to support NSI? If not, does every WiFi network that has a roaming agreement with a wireless carrier have to support access for emergency calling? If so, how do such WiFi networks know that some random device is NSI, and how does it limit access to just making emergency calls?

- Consideration of the practice of using WiFi to extend the range of a cell phone carrier's coverage area. Phones may prefer cell radio for emergency calls, but if they are beyond the range, do they need to support access by NSI?
- Consideration of the use of a network which charges for access. Does the network have to let you get access to make an emergency call?
- Next Generation 9-1-1 systems are being designed to support Instant Messaging to 9-1-1. Will every IM system have to allow NSI access to their servers to support emergency IM?

This list is not meant to be exhaustive, but merely to point out that as new technologies are deployed, service providers need to understand their regulatory requirements.

Liability concerns. It is plain from carrier comments and from the experience of at least one 9-1-1 authority¹¹ that the issue of liability continues to deter wireless service providers from shutting down harassing calls even if they have the technical means to do so. While Congress took a large step in 1999 by affording wireless carriers "parity" in liability protection to that afforded wireline carriers by their respective state laws,¹² these statutes are not often written to cover the issues raised by blocking of harassing calls from NSI phones.

If, as several carriers suggest, PSAPs are to take on the burden of blocking or diverting these calls, 9-1-1 authorities are in no less need of assurance that they will not be prosecuted or sued for doing so. If the working group discussed above can come up with measurable and justifiable

¹¹ Comments of King County, 4-5.

¹² Wireless Communications and Public Safety Act of 1999, P.L.106-81, Section 4.

criteria for instigating call-blocking, the risks of liability will be reduced but not eliminated. Further Congressional action may be required, and Petitioners are willing to work to that end with all appropriate parties.

Conclusion. For the reasons discussed above, the Commission should convene an advisory working group or negotiated rulemaking committee to propose technical and/or operational solutions for the difficulties created by emergency calls to 9-1-1 from NSI phones.

Respectfully submitted,

ON BEHALF OF PETITIONERS

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