

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

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In the Matter of )	
)	
Implementation of the NET 911 Improvement )	WC Docket No. 08-171
Act of 2008 )	
_____ )	

**REPLY COMMENTS OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”) hereby submits its reply comments in the above-captioned proceeding.<sup>1</sup>

**Introduction and Summary**

Public safety entities, wireless carriers and VoIP providers agree that this 90-day NPRM – with fewer than five weeks remaining until the statutory deadline – is not the time for the Commission to consider issues related to 911 and E911 requirements for dual-mode traditional licensed wireless and IP services. As the Washington State E911 Program – one of the public safety entities that has the greatest experience with dual-mode CMRS services – cautions, “The single most important aspect to rules adopted in support of the NET 911 Act must be to ‘do no harm.’ Progress has been made in interfaces to 911 by both CMS and VoIP providers and care must be taken to not prescribe solutions that will be restrictive on that progress.”<sup>2</sup> NENA and APCO also note, “With regard to mobile VOIP services, such as dual-mode CMRS/Wi-Fi

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<sup>1</sup> *Implementation of the NET 911 Improvement Act of 2008*, Notice of Proposed Rulemaking, FCC 08-195, WC Docket No. 08-171 (2008)(“NPRM”).

<sup>2</sup> Comments of the Washington State E911 Program, WC Docket No. 08-171, at 1 (filed September 9, 2008)(“Washington State E911 Comments”).

offerings . . . separate or follow-up proceedings may be warranted.”<sup>3</sup> And no commenter suggests that out-of-area roaming with dual-mode handsets is an urgent problem needing immediate resolution. The NPRM’s proposals on dual-mode CMRS services remain solutions in search of a problem.

Instead, the Commission should focus on the core issue Congress intended the Commission to address – assuring that interconnected VoIP providers, including both those with nomadic service offerings and with fixed service offerings, can have access to all the capabilities they need to meet the Commission’s E911 requirements, on the same rates, terms and conditions as CMRS providers. To ensure transparency and minimize disputes, the Commission should include non-exhaustive categories of such capabilities – including all needed numbering resources, access to the ALI database, master street address guides, shell records, trunking and interconnection – and make clear that all providers of such capabilities, whether public or private, are subject to the Act’s requirements. T-Mobile agrees with several commenters that any disputes must be subject to rapid resolution, or access to 911 and E911 capabilities could become a way for some entities to block market entry and the introduction of new, innovative services to consumers.

**I. Diverse Parties, Including Public Safety Groups, Agree that Dual Mode CMRS and Mobile VoIP Should Not Be Addressed in this 90-Day Rulemaking.**

A broad range of commenters, including public safety entities, agree that the Commission should not address dual-mode CMRS and mobile VoIP issues as part of this proceeding, but should defer that inquiry to another proceeding. No commenter argues that the Commission is legally required to address these issues now – to the contrary, several state exactly the opposite –

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<sup>3</sup> Comments of NENA and APCO, WC Docket No. 08-171, at 15 (filed September 9, 2008)(“NENA/APCO Comments”).

and there is no evidence at all that there is a problem that urgently needs to be addressed. The Commission should await issuance of the E911 Implementation Office's statutorily-mandated report to Congress, so that it can make more educated decisions, and ensure that it "does no harm." As the Washington State E911 Program points out, "Experience indicates that service suppliers are attempting to improve their capabilities for working with 911 and giving their customers adequate 911 services."<sup>4</sup>

NENA and APCO likewise support addressing dual-mode and mobile VoIP issues in a subsequent proceeding. And, while the Texas 911 Alliance and Texas Commission on State Emergency Communications urge the Commission to explore the minimum requirements applicable to "mixed converged services," they also call for doing so "separate from this NPRM."<sup>5</sup>

Among service providers, AT&T notes that although dual mode issues are important, "resolving the questions posed in the Notice on this topic is not central to completing the core rulemaking task for 911/E911 access within 90 days as directed by Congress."<sup>6</sup> Indeed, AT&T warns that "attempting to answer [these questions] now may significantly hinder the Commission's ability to meet Congress's deadline," and that the "topic of dual-mode CMRS/Wi-Fi services raises many complex technical questions, as the Commission itself appears to recognize based on the questions it has posed in the Notice."<sup>7</sup> Both Sprint and VON similarly

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<sup>4</sup> Washington State E911 Comments at 1.

<sup>5</sup> Comments of the Texas 9-1-1 Alliance and the Texas Commission on State Emergency Communications, WC Docket No. 08-171, at 9 (filed September 9, 2008)("Texas 911 Alliance Comments").

<sup>6</sup> Comments of AT&T Inc., WC Docket No. 08-171, at 7-8 (filed September 9, 2008).

<sup>7</sup> *Id.*; see also Comments of the Voice on the Net Coalition, WC Docket No. 08-171, at 16 (filed September 9, 2008)("VON Comments").

point out that the portions of the NPRM addressing potential new autolocation duties for mobile providers are not required to be part of the 90-day rulemaking.<sup>8</sup>

As VON also explains, Congress made clear that the Commission must consider technical feasibility as it implements the NET 911 Improvement Act, particularly with respect to nascent services such as mobile VoIP.<sup>9</sup> The Commission has already acknowledged that autolocation for mobile VoIP services presents “significant obstacles” and “implementation challenges.”<sup>10</sup> Requiring wireless providers to provide last-known cell site information to their roaming partners, as proposed in the NPRM, is not a technically feasible solution, and has implementation costs that far outweigh any benefits.<sup>11</sup> To meet such a mandate, the entire wireless industry would have to create a wholly new infrastructure to collect, update, maintain and distribute competitively sensitive cell site location information that changes daily – to address a hypothetical need with heavy costs that ultimately will be borne by consumers.<sup>12</sup> It would be arbitrary and capricious for the Commission to ignore the achievability of its rules and

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<sup>8</sup> See Comments of Sprint Nextel Corporation, WC Docket No. 08-171, at 11 (filed September 9, 2008) (“Sprint Comments”); VON Comments at 17-18. See also NPRM, Statement of Commissioner Michael J. Copps (“this issue may not be exactly what Congress had in mind when it drafted the NET E911 Act (and that is certainly my reading of the statute and associated legislative history)”); Statement of Commissioner Robert McDowell (“This question, however, is in no way compelled by the plain language or intent of the NET 911 Act.”); Statement of Commissioner Jonathan S. Adelstein (“I note that while there are a number of E911 compliance and policy questions raised by dual-mode mobile commercial mobile radio service/VoIP handsets that use Wi-Fi technology, these issues are more appropriately addressed in a separate proceeding.”).

<sup>9</sup> VON Comments at 16.

<sup>10</sup> Sprint Comments at 12, citing *VoIP 911 Order*, 20 FCC Rcd 10245, 10252 ¶ 17 and 10259 ¶ 25 (2005).

<sup>11</sup> See Comments of T-Mobile USA, Inc., WC Docket No. 08-171, at 12-13 (filed September 9, 2008).

<sup>12</sup> *Id.*

the relative costs and benefits,<sup>13</sup> in addition to disregarding Congress' clear intent that the E911 Implementation Office have the opportunity to evaluate autolocation technologies before any regulatory obligations are adopted.<sup>14</sup>

In any event, T-Mobile agrees with the Washington State E911 Program that "if the carrier can process the 911 call via WiFi into their network and onward to 911 let them make that decision, including supplying the address of the hotspot if that is more accurate than the calculated location. If the carrier determines that for them the best tool is to use their network for all calls to 911 the functional definition of 'capability' should let them make that choice."<sup>15</sup>

Nor is there any need for the Commission to address in this 90-day proceeding a second new and innovative T-Mobile product – T-Mobile @Home – which was launched earlier this year.<sup>16</sup> T-Mobile @Home allows a subscriber to a T-Mobile mobile service plan to obtain an additional SIM card that can be placed into a special router with an RJ-11 jack to which an ordinary telephone can be connected. As the Texas 9-1-1 Alliance points out, this is *not* the

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<sup>13</sup> *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) ("an agency rule would be arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem, offered an explanation . . . that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise"); *CBS Corp v. FCC*, 535 F.3d 167174 (3d Cir. 2008); *Advocates for Highway & Auto Safety v. Fed. Motor Carriers Safety Admin.*, 429 F.3d 1136, 1145-1147 (D.C. Cir. 2005). In addition, the courts have made clear that "the FCC's 'conclusory statements cannot substitute for reasoning that is wanting in [the] decision.'" *AT&T Corp. v. FCC*, 236 F.3d 729, 737 (D.C. Cir. 2001), *quoting Arco Oil & Gas Co. v. FERC*, 932 F.2d 1501, 1504 (D.C. Cir. 1991).

<sup>14</sup> See VON Comments at 16-17.

<sup>15</sup> Washington State E911 Comments at 2.

<sup>16</sup> See Comments of the City of Oklahoma City, WC Docket No. 08-171, at 2 (filed September 5, 2008) ("Oklahoma City Comments"). "Talk Forever Home Phone" has been rebranded as "T-Mobile @Home." Confusingly, the initial launch name of T-Mobile's dual-mode traditional GSM/Wi-Fi service was T-Mobile HotSpot @Home– now re-branded as "Unlimited HotSpot Calling." These comments refer to each product by its current brand name, rather than its initial name.

same service as the dual-mode CMRS/Wi-Fi service addressed in paragraph 7 of the NPRM.<sup>17</sup> T-Mobile agrees with the Texas 9-1-1 Alliance and with NENA and APCO that these issues are beyond the scope of this NPRM, and thus are appropriately addressed in a separate proceeding.<sup>18</sup> In addition, no regulatory action is needed with respect to this service. T-Mobile has implemented E911 for T-Mobile @Home in accordance with the Commission's rules in 47 C.F.R. § 9.3. Further, as reflected in Oklahoma City's comments, as well as those of the Texas 9-1-1 Alliance and the Washington State 911 Program, T-Mobile has been actively discussing the implementation of its new services with public safety and is soliciting feedback.<sup>19</sup> One of the lessons reinforced by these various meetings is that PSAPs have very different views on how they want T-Mobile to deliver E911 for these new services. T-Mobile is continuing to develop its capabilities to address the wide range of PSAP technical configurations and preferences. It would be counterproductive to engage in a one-size-fits-all rulemaking when industry and public safety are already cooperating to address questions that may arise in the context of particularized PSAP deployments.

**II. The Commission Should Provide an Illustrative but Non-Exhaustive List of Capabilities to Which VoIP Providers Have Access.**

As Sprint, VON and Comcast suggest, the Commission should provide an illustrative, but non-exhaustive list of capabilities to which VoIP providers have access, backstopped by a general right of nondiscriminatory access at just and reasonable rates, terms and conditions on

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<sup>17</sup> Texas 9-1-1 Alliance Comments at 8.

<sup>18</sup> *Id.*; NENA/APCO Comments at 11.

<sup>19</sup> See Oklahoma City Comments at 2-3; Washington State E911 Office Comments at 2; Texas 9-1-1 Alliance Comments at 8.

the same basis as CMRS providers.<sup>20</sup> Providing a non-exhaustive list of capabilities that are clearly required will help avoid unnecessary complaints, and also makes the regulatory process more transparent. Transparency is important to avoiding disputes, and it will be all the more critical if the Commission delegates any enforcement to the states.

Such a capabilities list will also help ensure that a dual-mode provider is not denied use of a capability by a supplier simply because part of the service is IP and part of the service is, for example, CMRS. All too often, ILECs seeking to create barriers to entry and fearing competition will seize upon the fact that there may be some IP-enabled traffic to try to avoid allowing CMRS carriers to utilize existing infrastructure, thus potentially creating market entry delays. The rules should be structured so as to eliminate this type of gamesmanship. And when there are disputes, as Sprint points out, prompt resolution is essential.<sup>21</sup>

At a minimum, among these necessary elements are all needed numbering resources, access to the ALI database, master street address guides, shell records, trunking and interconnection. In addition, if MSAG validation is required or even desired, access to the information necessary to perform MSAG validations is also necessary.<sup>22</sup> Such access should be provided in a way that is open, and not proprietary.

## **Conclusion**

The Commission should defer all issues with respect to dual-mode CMRS and mobile VoIP services to a separate proceeding. The NET 911 Improvement Act does not compel the Commission to address these issues at this time, and there is no exigency demanding immediate

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<sup>20</sup> VON Comments at 8; Comments of Comcast Corporation, WC Docket No. 08-171, at 4 (filed September 9, 2008) (“Comcast Comments”); Sprint Nextel Comments at 4-5.

<sup>21</sup> Sprint Nextel Comments at 7.

<sup>22</sup> See e.g. VON Comments at 8-14; Comcast Comments at 4-5.

action. Instead, the Commission should focus on ensuring that fixed and nomadic interconnected VoIP providers have the tools they need to comply with the Commission's 911 and E911 rules.

Respectfully submitted,

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