

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
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Commission Seeks Comment on Certain) GN Docket No. 12-52
Wireless Interruptions)
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COMMENTS OF METROPCS COMMUNICATIONS, INC.

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	CLARIFICATION WILL SERVE THE PUBLIC INTEREST	2
III.	JUDICIAL PROCESS SHOULD BE INVOKED TO ORDER A WIRELESS SERVICE INTERRUPTION WHENEVER FEASIBLE.....	5
IV.	A MODIFICATION OF THE EXISTING PROTOCOL SHOULD BE USED WHEN JUDICIAL PROCESS IS NOT FEASIBLE	7
V.	WIRELESS INTERRUPTIONS AT THE REQUEST OF THE GOVERNMENT SHOULD ONLY BE PERMITTED IN EXTRAORDINARY CIRCUMSTANCES	8
VI.	THE FCC IS THE APPROPRIATE BODY TO REQUEST A SUSPENSION, INTERRUPTION, OR DISCONTINUANCE OF SERVICE.....	13
VII.	INDEMNIFICATION PROTECTIONS FOR WIRELESS PROVIDERS SHOULD ACCOMPANY ANY INTERRUPTION OF SERVICE POLICY	15
VIII.	CONCLUSION	16

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MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its comments in response to the *Public Notice* (the “*Notice*”) issued by the Federal Communications Commission (the “Commission” or “FCC”) on March 1, 2012, seeking comment on issues related to intentional interruptions of Commercial Mobile Radio Service (“CMRS” or “wireless service”) by governmental authorities for the purpose of ensuring public safety.² The following is respectfully shown:

I. INTRODUCTION AND SUMMARY

MetroPCS commends the Commission for (1) acknowledging the important, positive role that wireless services regularly play during crises which threaten public safety; (2) recognizing

¹ For purposes of these Comments, the term “MetroPCS” refers collectively to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² Public Notice, Federal Communications Commission, *Commission Seeks Comment on Certain Wireless Service Interruptions*, GN Docket No. 12-52, DA 12-311 (rel. Mar. 1, 2012) (the “*Notice*”).

that a purposeful interruption of wireless service by government “must clear a high substantive and procedural bar;”³ and (3) asking pertinent questions to gain a better understanding of the legal, safety and policy implications that may exist from a government-ordered interruption of wireless service. As is set forth in greater detail below, MetroPCS submits that wireless service should be intentionally interrupted by government only in extraordinary circumstances and that the processes for determining whether the requisite circumstances exist to interrupt service must contain specific safeguards. As a starting point, whenever time permits, a court of competent jurisdiction should be involved and issue an order requiring a carrier to interrupt service. If there are exigent circumstances which do not permit judicial process, then a well-crafted protocol must be in place for ascertaining whether the risks of allowing continued service outweigh the benefits of maintaining service. If the requisite conditions for shutdown are met, only an authorized official of the FCC should be authorized to communicate the decision to the wireless carrier. And, in these circumstance, the government must provide liability protection to any wireless carrier that abides by a request to suspend, restrict or interrupt wireless service which the carrier reasonably believed under the circumstances to have been made in accordance with the approved governmental procedure or a court order.

II. CLARIFICATION WILL SERVE THE PUBLIC INTEREST

MetroPCS commends the Commission for investigating the legal constraints and policy considerations arising from the intentional interruption of wireless service by government actors in the wake of the incident involving the Bay Area Rapid Transit (“BART”) system last

³ See Press Release, Federal Communications Commission, *FCC Chairman Julius Genachowski’s Statement on BART Policy Adoption*, (Dec. 1, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1201/DOC-311310A1.pdf (noting that “[f]or interruption of communications service to be permissible or advisable, it must clear a high substantive and procedural bar.”).

summer.⁴ MetroPCS concurs with Public Knowledge that interruptions of service by local governmental agencies present important issues that must be addressed.⁵ Like Public Knowledge, MetroPCS wants to ensure that service to the public is not interrupted without adequate justification. MetroPCS also is concerned that interruptions of service could be used for reasons other than to prevent serious imminent harm – for example, to prevent the exercise of first amendment rights. Accordingly, the Commission’s *Notice* raises critical public policy issues that merit careful deliberation and represents an important step to addressing this issue.

As the Commission repeatedly has recognized, wireless services often are the first services to which consumers turn in the event of an emergency. As such, an interruption of service may exacerbate an emergency by denying consumers the ability to call 911 or otherwise communicate during the emergency. Indeed, an entire section of the Commission’s rules – Part 4 – is devoted to “Disruption of Communications”⁶ and is premised on the well-founded Commission conclusion that the public interest is served when reliable communications services are maintained free of disruptive outages. Thus, it is no surprise that, while the *Notice* recognizes that certain risks to public safety may be associated with wireless services and devices,⁷ it also properly acknowledges that there are serious potential countervailing risks to both consumers and first responders if wireless services are rendered unavailable during

⁴ See Press Release, Bay Area Rapid Transit, *Statement on temporary wireless service interruption in select BART stations on Aug. 11*, (Aug. 12, 2011), <http://www.bart.gov/news/articles/2011/news20110812.aspx>

⁵ See *Petition of Public Knowledge et al. for Declaratory Ruling that Disconnection of Telecommunications Services Violates the Communications Act*, Emergency Petition for Declaratory Ruling, 8 -12 (filed Aug. 29, 2011) (“*Public Knowledge Petition*”).

⁶ 47 C.F.R. Pt. 4.

⁷ For example, the *Notice* cites the concern that wireless devices could be used to trigger the detonation of an explosive device, or to organize the activities of a violent flash mob. *Notice*, at 1.

emergency situations.⁸ This is, therefore, a serious debate in which both sides have valid points to raise. The proper solution is to have well-defined procedures and policies in place that are designed to allow government-directed interruptions of wireless service to be implemented only in narrowly-tailored circumstances in which the imminent risks clearly outweigh the known benefits of continued service.⁹

MetroPCS also recognizes, as does the *Notice*, that there may be instances in which “public officials could have physical control over cell sectors or sites, and could have an agreement with a carrier that permits direct interruption.”¹⁰ For example, a governmental entity may be a landlord or lessor when a wireless facility is located on government land, and the underlying lease agreement may give the government authority to shut down the facility in certain circumstances. The *Notice* includes these circumstances within the scope of the inquiry.

MetroPCS welcomes any action the Commission might take to discourage governmental entities from invoking the right to shutdown wireless facilities pursuant to such contractual provisions absent truly extraordinary circumstances that would warrant similar action in the absence of a contract right. In this regard, it is important to distinguish between situations in which the government is interrupting service in its role as a landlord following a breach of contract (*e.g.*, if the carrier fails after notice to remedy an interference problem) and situations where the government chooses to interrupt service because of a perceived threat to public safety.

⁸ The FCC recognizes that “[f]or many Americans, the ability to call 911 for help in an emergency is one of the main reasons they own a wireless phone. Other wireless 911 calls come from ‘Good Samaritans’ reporting traffic accidents, crimes or other emergencies.” FCC, Wireless 911 Services, <http://www.fcc.gov/guides/wireless-911-services>.

⁹ These procedures should only be directed to government-initiated interruptions of service. The carrier, as the Commission licensee, would always have the authority to temporarily interrupt service voluntarily.

¹⁰ *Notice*, n. 7.

The Commission should conclude that invoking a contractual provision that allows a governmental entity to shut down a facility based upon a public safety concern would be contrary to public policy absent a compelling showing of imminent harm. Or, the Commission could rule that it expressly disfavors contractual clauses that enable a landlord to shut down a facility based upon perceived public safety concerns that fall short of the exigent circumstances that otherwise would justify a government-imposed interruption. A ruling of this nature would give carriers increased bargaining leverage and, hopefully, enable them to avoid overreaching clauses that permit wireless facilities to be shut down, or communications to be interrupted, without adequate justification.

III. JUDICIAL PROCESS SHOULD BE INVOKED TO ORDER A WIRELESS SERVICE INTERRUPTION WHENEVER FEASIBLE

In circumstances where government officials have no contractual right to interrupt wireless services, other procedures are necessary to make sure that all relevant factors are taken into consideration and important competing factors are properly weighed. As a starting point, the Commission should make clear in addressing this serious topic that the preferred course is for governmental officials to utilize judicial process to effect a government-imposed wireless service shutdown whenever time permits. Situations may well occur in which law enforcement or Homeland Security personnel uncover evidence of the proposed use of wireless devices in a terrorist plot, or some other threatened national security or public safety incident, well in advance of the target date and time. The default procedure in all such instances should be for the government to seek a court order mandating the proposed shutdown by the wireless service provider or providers whose services are implicated in the plot. Unless time constraints merit *ex parte* relief, every effort should be made to provide advance notice to the carriers and to allow the carriers to actively participate in the judicial proceeding. Having the carriers participate will

increase the prospect that the necessary facts are developed in order to ensure that the interruption does not affect more of the carrier's network than is reasonable and necessary under the circumstances.

Notably, the wireless industry already has an excellent track record of working cooperatively with governmental officials to address legitimate law enforcement issues. For example, wireless carriers have established a good working relationship with law enforcement officials to implement the procedures of the Communications Assistance For Law Enforcement Act ("CALEA")¹¹ and routinely cooperate with lawful subpoenas with respect to carrier records legitimately needed by law enforcement agencies. Requiring a court order when there is sufficient time provides beneficial safeguards because judicial procedures are well-suited to sorting out the legal and factual issues that underlie a request of this nature. Also, carrier actions taken pursuant to a court order enjoy greater protection from complaints of customers or third parties who may claim to have been injured as a result of the action.

MetroPCS recognizes, however, that there may be exigent circumstances where time will not permit government officials to provide advance notice to, and allow the active participation of, wireless carriers in a formal judicial process. In that circumstance, the government should be permitted to obtain a court order on an *ex parte* basis. The important point is that *ex parte* relief from a judge still provides a number of safeguards that bring integrity to the process. It is not uncommon for the government to obtain search warrants and other forms of judicial orders on short notice on an *ex parte* basis when time is of the essence. Courts are used to and well-suited to handle requests of this nature. A court order is always preferred as it helps balance the rights of the carriers, the public and the government.

¹¹ 47 USC § 1001 *et seq.*

IV. A MODIFICATION OF THE EXISTING PROTOCOL SHOULD BE USED WHEN JUDICIAL PROCESS IS NOT FEASIBLE

MetroPCS accepts that there may be emergency situations in which invoking court procedures simply is not possible in order to deal with a threat to public safety. To handle those circumstances, MetroPCS proposes below a formal protocol to govern situations in which (1) government officials want to interrupt wireless communications; (2) there is insufficient time to invoke judicial process; and, (3) no contractual right exists to implement the interruption. The framework proposed by MetroPCS draws heavily upon the existing National Security Telecommunications Advisory Committee (“NSTAC”) protocol (the “NSTAC Protocol”) for authorities to initiate a request for service disruptions during an emergency.¹² The primary change MetroPCS proposes to the NSTAC Protocol is that communication to the wireless carrier of the determination that the standards have been met for a government imposed interruption should be made by a duly authorized official of the FCC, rather than by the National Coordinating Center (the “NCC”). Because the FCC is the primary agency responsible for regulating radio communications in the public interest “for the purpose of promoting safety of life and property,”¹³ the FCC, rather than the NCC, should be the agency responsible for authenticating interruption decisions and communicating them to affected carriers.

Importantly, the *Notice* wisely inquires whether there are any liability issues for wireless carriers that are raised by the prospect of government-initiated wireless shutdowns. The answer is “yes.” Carriers are naturally concerned about liability when third parties, such as the

¹² See NATIONAL SECURITY TELECOMMUNICATIONS ADVISORY COMMITTEE, 2009-2010 NSTAC ISSUE REVIEW 155 (2010), available at [http://www.ncs.gov/nstac/reports/2009%20-%202010%20Issue%20Review%20\(FINAL\).pdf](http://www.ncs.gov/nstac/reports/2009%20-%202010%20Issue%20Review%20(FINAL).pdf) (“NSTAC Report”).

¹³ See Communications Act of 1934, as amended, 47 U.S.C. § 151.

governmental agencies, require them to undertake action. As discussed in greater detail below, Congress has been receptive to such concerns in the past and offered protections and the Commission should afford wireless carriers that comply with either court orders or Commission orders to interrupt service, protection from liability for any consequences of such interruptions.¹⁴ Accordingly, the Commission should do what it can to ensure that wireless carriers are protected from any liability that might occur as a result of the requested interruption.

V. WIRELESS INTERRUPTIONS AT THE REQUEST OF THE GOVERNMENT SHOULD ONLY BE PERMITTED IN EXTRAORDINARY CIRCUMSTANCES

Americans increasingly rely on their mobile phones in their everyday lives. Wireless devices are used to place calls, to make purchases, to surf the web, to provide directions, to listen to music and to watch full motion video, among diverse other uses. And, an ever increasing number of users have now “cut the cord” and rely on wireless devices as their sole or primary communications medium. This means that there is an increased reliance on wireless for emergency communication.¹⁵ Indeed, the Public Safety and Homeland Security Bureau of the Commission, in cooperation with the Federal Emergency Management Agency (“FEMA”), has devoted substantial attention and resources to implementing a Commercial Mobile Alert System – known as “CMAS”¹⁶ – pursuant to the authority contained in the WARN Act.¹⁷ The stated

¹⁴ See e.g., Warning, Alert and Response Network (“WARN”) ACT, Title VI of the Security and Accountability For Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884, §602(e) (2006) (the “WARN Act”). The WARN Act provides liability protection for wireless carriers that take action pursuant to the WARN Act.

¹⁵ Indeed, the Commission has recognized the impact CMRS has on emergency communication in other dockets. See *In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153, 10-255, Notice of Proposed Rulemaking (rel. Sept. 22, 2011).

¹⁶ CMAS also is known as the Personal Localized Alerting Network (“PLAN”) and the Wireless Emergency Alerts (“WEA”) system.

purpose of the CMAS is “facilitating the ability of consumers to receive emergency alerts through their wireless phones.”¹⁸ It would be an unfortunate irony indeed if the substantial efforts of carriers and the Commission to establish a reliable CMAS to protect the safety of consumers were nullified by an ill-considered governmental decision to shut down a local wireless facility in the midst of an emergency. Chairman Genachowski also has previously observed that, out of the 650,000 emergency calls that are placed every day, 450,000 of those calls are made using a mobile phone.¹⁹ Depriving an individual of his or her wireless service during an emergency thus creates a very real risk that the individual will be deprived of the means of calling 911 or of informing another person of the need for assistance. In addition, unless service interruptions are narrowly tailored to only address the specific threat – which may be a single section of a cell site – others who are unaffected by the situation may be impacted. Accordingly, any interruption of service must be narrowly tailored to meet the specific threat.

Furthermore, even in the area which may be affected by the particular threat, the increasingly critical constructive role that mobile wireless services and devices play during an emergency situation demonstrates that safeguards must be put in place so as not to deprive a customer in the affected area of wireless service except in extraordinary circumstances. Generally, MetroPCS considers such circumstances to exist only when the risk of harm to individuals or facilities by unlawful activity is substantial, imminent and demonstrably greater than the harm that may result from an interference to wireless service. Only at that point should

¹⁷ See WARN Act; see also 47 C.F.R. Pt. 10 (Commercial Mobile Alert System rules and regulations).

¹⁸ See Public Safety and Homeland Security Bureau, Commercial Mobile Wireless Alerts (CMAS), <http://transition.fcc.gov/pshs/services/emas.html>

¹⁹ Julius Genachowski, Chairman, Fed. Comm’n Comm’n, Next-Generation 9-1-1, Prepared remarks at Arlington County Emergency Center (Nov. 23, 2010) http://transition.fcc.gov/Daily_Releases/Daily_Business/2010/db1123/DOC-302989A1.pdf.

the government decide to interrupt a wireless communication service in the interest of public safety.²⁰ While MetroPCS does not support a process in which the necessary decision-making is delegated to local law enforcement agencies or non-governmental third parties, MetroPCS does believe that BART's recently issued Cell Phone Interruption Policy contains some elements worth considering in the Commission's policy on this issue.²¹ BART's policy finds "extraordinary circumstances" to include situations where there is *strong* evidence of *imminent unlawful* activity that will: (1) *threaten the safety of individuals* in an designated area; (2) threaten the destruction of property; and (3) in the context of mass transit, activity that will result in the substantial disruption of public transit service.²² Furthermore, the interruption must be "*narrowly tailored* to those areas and time periods necessary to protect against the unlawful activity"²³ and must be determined to *substantially reduce* the likelihood of the unlawful activity and be an *essential component* in protecting the safety of individuals and prevent the destruction of property.²⁴

MetroPCS agrees that (1) interruption decisions should be based upon strong objective evidence of a real threat, (2) the threat must be imminent, (3) there must be a substantial risk of bodily harm or death to individuals or threats to the destruction of property, (4) any necessary interruption of service both in terms of time and geography should be narrowly tailored to

²⁰ MetroPCS also recommends that the Commission consider investigating whether it would be possible to request a partial shutdown that would interrupt all wireless service except for communications made to or from emergency service points. If this type of partial interruption is possible, MetroPCS still maintains that extraordinary circumstances be present.

²¹ See BART Cell Service Interruption Policy (adopted Dec. 1, 2011) http://www.bart.gov/docs/final_CSIP.pdf. ("BART Cell Service Interruption Policy").

²² See *id.* (emphasis added).

²³ *Id.* (emphasis added).

²⁴ *Id.* (emphasis added).

address the specific threat, and (5) there should be a substantial likelihood that the proposed interruption will be an essential component in protecting the safety of individuals and preventing the destruction of property. However, MetroPCS does **not** agree that a perceived threat of a substantial disruption of public transit service should be deemed sufficient to take the extraordinary step of interrupting wireless communications. Indeed, the existence of the lesser threshold in the BART policy provides compelling evidence of why governmental interruption decision-making should be reserved to experienced homeland security personnel with meaningful input from FCC personnel who are fully cognizant of the risks associated with a loss of communications capabilities, and not delegated to local law enforcement or other local personnel.

The existing protocol – Standard Operating Procedure (“SOP”) 303 – governing the shutdown and restoration process for commercial and private wireless networks during national crises, as developed by the NSTAC and approved by the Department of Homeland Security (“DHS”) and National Communication System (“NCS”), provides an appropriate framework upon which to build a workable policy governing the interruption of wireless communications by governmental entities.²⁵ Under this approach, the decision to interrupt service is made by state Homeland Security Advisors, their designees, or representatives of the DHS Homeland Security Operations Center. Once this request is made, the process dictates that the National Coordinating Center (“NCC”) “function[s] as the focal point for coordinating any actions leading up to and following the termination of private wireless network connections.”²⁶ Importantly, NCC also acts as an “authenticating body” which asks the requestor a series of questions to

²⁵ NSTAC Report at 155.

²⁶ *Id.*

determine whether the proposed shutdown is a necessary action.²⁷ At that point, the NCC would notify the affected wireless carrier or carriers of the shutdown and affected areas.²⁸ The existing protocol also includes training and awareness programs established by the Government Emergency Telecommunications Service (“GETS”) and Wireless Priority Service (“WPS”) to make sure that local officials are aware of the procedures set forth in SOP 303.

Structurally, this approach makes sense.²⁹ The involvement of state Homeland Security Advisors, in consultation with the NCC, provides appropriate input from both local officials – who will be most familiar with the situation in a localized area (i.e. a local tunnel or bridge, or a particular metropolitan area) – and national DHS personnel who have particular expertise in dealing with public safety concerns and can act as an appropriate check and balance to assure that interruption decisions meet the requisite “extraordinary circumstances” requirement. However, a few additions/modifications are in order. For example, any such request should be followed up with an order in writing confirming the request. Further, each carrier should be required to designate a chain of individuals who could be contacted at the carrier to effectuate the order. Most importantly, MetroPCS is concerned about the lack of FCC integration into the process since it is the primary governmental agency charged with the responsibility for regulating and controlling radio communications.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Of course, nothing in the policy should suggest that carriers cannot voluntarily decide to interrupt service of the carrier. Carriers as licensees always have the right to decide how and when to provide service as part of their obligations as a public trustee. Accordingly, the protocol procedures would only need to be invoked if the carrier declined voluntarily to interrupt service at a government bodies’ request.

VI. THE FCC IS THE APPROPRIATE BODY TO REQUEST A SUSPENSION, INTERRUPTION, OR DISCONTINUANCE OF SERVICE

The FCC is the appropriate government agency to request that wireless carriers interrupt their services due to extraordinary circumstances. The Commission is not only the licensing body of these wireless carriers, but various provisions of the Communications Act clearly dictate that the Commission has been delegated the appropriate authority to make these requests. As a result, the FCC is acutely aware of the role that wireless communications facilities play in the public safety landscape and is in the best position to make the balance of interest judgment that is a prerequisite to any decisions that must be made. Therefore, local governments should not be permitted to order an interruption of wireless service, nor should other federal agencies be responsible for these requests.

The Commission may look to its authority in the Communications Act of 1934, as amended (the “Act”), starting with Title I. Section 1 of the Act grants the Commission the authority to “regulat[e] interstate and foreign commerce in communication . . . for the purpose of the national defense [and] for the purpose of promoting safety of life and property . . .”³⁰ The Communications Act also was explicitly intended to promote the public interest by “centralizing authority” over the public’s airwaves.³¹ Clearly, in the extraordinary circumstances that would provoke a wireless interruption, the Commission would be acting to regulate radio facilities in a manner that would promote the safety of life and possibly the national defense. This falls squarely within the core mission of the FCC.

³⁰ 47 U.S.C. § 1.

³¹ *Id.*

Titles II and III of the Communications Act provide further support for the Commission to be the designated government entity to request an interruption in wireless service. Section 332(c)(1) of the Act provides that “[a] person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier.”³² As regulated common carriers, CMRS carriers have a duty to provide communication service “upon reasonable request therefore . . . in accordance with orders of the Commission.”³³ Given these explicit requirements, the FCC is the appropriate body to order a CMRS carrier to discontinue service to the public in extraordinary emergency circumstances.³⁴

Finally, the Commission may also look to Section 333 for additional authority to conclude that other government bodies, whether local or national, not be permitted to implement interruption of service these requests. Section 333 dictates that “[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this Act . . .”³⁵ Thus, local government agencies, such as BART, or other federal government agencies other than the FCC, are not permitted to make this

³² 47 U.S.C. § 332(c)(1).

³³ 47 U.S.C. § 201(a).

³⁴ Section 214 of the Act also accords the FCC further authority over discontinuances of service. It provides: “No carrier shall discontinue, reduce or impair service to a community, or part of a community, unless and until they shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby. . . . except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction or impairment of service, or partial discontinuance, reduction, or impairment of service . . .” 47 U.S.C. § 214. While the Commission has chosen to forbear from subjecting CMRS carriers to Section 214 at this time, this statutory section supports the view that Congress intended for the FCC to be the regulatory agency primarily responsible for regulating emergency discontinuance, reduction or impairment of service. *See also Public Knowledge Petition*, 6 – 7 (arguing that under this framework, BART’s discontinuation of service should be ruled as a violation of Section 214).

³⁵ 47 U.S.C. § 333.

decision. As the Commission is the licensing body of the wireless carriers, it therefore is the best entity to have control over the exercise of these licenses.

VII. INDEMNIFICATION PROTECTIONS FOR WIRELESS PROVIDERS SHOULD ACCOMPANY ANY INTERRUPTION OF SERVICE POLICY

If the Commission adopts a policy which enables governmental entities to request or require an interruption of wireless services, MetroPCS strongly urges the Commission to take steps, including recommending legislative action if necessary, to provide necessary and appropriate indemnification and limitation of liability protection for carriers who honor such a request and interrupt their service. Such protection is essential because the emergency circumstances that would give rise to an interruption request naturally present a risk of injury or harm to subscribers, and could foreseeably give rise to a claim for damages if the carrier purposefully shut down an otherwise functioning system. An indemnification of this nature not only would protect the carrier, but also would increase the prospect of a carrier complying with a non-mandatory interruption order which would be desirable if the requisite extraordinary conditions are met.

MetroPCS acknowledges that, in connection with its E-911 rules, the Commission declined to unilaterally impose a national standard of liability protection.³⁶ Telecommunications carriers had suggested that the Commission require state public safety organizations to indemnify carriers for negligence and other unintended errors in order to trigger a carrier's E911 obligations in that state.³⁷ Instead, the Commission encouraged wireless carriers, the public safety

³⁶ *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM-8143, Memorandum Opinion and Order, 12 FCC Rcd, 22665, ¶ 137 (1997) (“*E911 First Report and Order*”).

³⁷ *Id.* at ¶ 133.

community and state governments to develop mutually acceptable indemnification agreements, which they did.³⁸ The Commission took this approach because it was concerned that the requested indemnification raised complex federal/state preemption issues. However, the same preemption concerns do not exist in this current proceeding. Since liability for an interruption of wireless service could conceivably arise under Section 201 of the Communications Act, the Commission would be granting indemnification protection that is well within its federal jurisdiction.

If for any reason the Commission decides that it lacks the authority to provide the subject indemnification, it should recommend such protection to Congress. There is precedent for protecting telecommunications companies from liability when they comply with governmental requests relating to national security. For example, the Protect America Act³⁹ expanded the National Security Agency's power to eavesdrop on phone calls, e-mail messages and other Internet traffic with limited court oversight. The WARN Act also provided liability protection to providers in connection with the obligations and responsibilities fulfilled pursuant to the WARN Act.⁴⁰ Telecommunications companies can be required to comply with government demands, and if they do so they should be immune from all lawsuits.

VIII. CONCLUSION

MetroPCS recognizes that the issue before the Commission is a difficult one. Interrupting an individual's wireless service during an emergency can, depending upon the circumstances, either promote or endanger public safety. MetroPCS recommends appropriate

³⁸ *Id.* at ¶ 140.

³⁹ *See* The Protect America Act of 2007 (Pub. L. 110-55, S. 1927). This was signed into law by George W. Bush in 2007.

⁴⁰ WARN Act, § 601(e).

safeguards to ensure that any interruption is absolutely necessary and clearly will promote public safety. Therefore, only in extraordinary circumstances, which include a threat to life and property, should government officials follow a lawful process to request a wireless service shutdown. This process should closely resemble the NSTAC Protocol, with the FCC being the focal point for government officials and wireless carriers. Ultimately, it should be up to the FCC, not the NCC, to make the final decision and actual request of service interruption to the affected wireless carriers. As a result of this request, wireless carriers should also be granted protection from liability during the requested interruption of service. By adopting these proposals, MetroPCS believes the Commission will find a proper balance and ultimately protect, not harm, the public during emergency situations.

Respectfully submitted,

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