

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

In the Matter of)	
)	
Facilitating the Deployment of)	PS Docket No. 11-153
Text-to-911 and Other Next)	
Generation 911 Applications)	
)	
Framework for Next Generation)	PS Docket No. 10-255
911 Deployment)	
)	
Legal and Statutory Framework for)	PS Docket No. 12-333
Next Generation 9-1-1 Services Pursuant)	
To the Next Generation 9-1-1 Advancement)	
Act of 2012)	

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby file its Reply Comments regarding the public notice issued in this proceeding.¹

INTRODUCTION

In the Notice, the Commission sought comments on various issues concerning the optimal legal and regulatory framework for developing Next Generation 9-1-1 services (“NG9-1-1”), legal mechanisms for ensuring the efficient and accurate transmission of 9-1-1 caller information to Public Safety Answering Points, and recommendations for removing or preempting state laws and regulations that hinder the development of NG9-1-1 services and eliminating outdated federal laws. The Commission noted that the “[c]urrent funding mechanisms for the 9-1-1 system rely primarily on surcharges on telephone bills and may not adequately account for new services that offer emergency communications in a NG9-1-1

¹ Public Notice - Public Safety and Homeland Security Bureau Seeks Comment on the Legal and Statutory Framework for Next Generation 9-1-1 Services Pursuant to the Next Generation 9-1-1 Advancement Act of 2012, DA 12-1831, released November 13, 2012 (“Notice”).

environment.”² The Commission also recognized that funding mechanisms should be “technologically neutral so that the funding obligation does not disproportionately burden certain types of services over others.”³ TracFone’s comments focused on the need for federal standards to ensure that funding methods for both existing 9-1-1 and future NG9-1-1 systems are equitable, non-discriminatory, and competitively and technologically neutral. In particular, TracFone advocated for a competitively neutral and technologically neutral 9-1-1 funding mechanism for prepaid wireless services whereby retail vendors of prepaid wireless services would collect the 9-1-1 fees at the retail point of retail sale (“POS”), either as a flat fee per card or as a percentage of the retail purchase price.

**BASED ON THE RECORD IN THIS PROCEEDING, THE COMMISSION
SHOULD RECOMMEND TO CONGRESS THAT NG9-1-1 BE FUNDED
THROUGH GENERAL REVENUES AND THAT STATES BE REQUIRED
TO COLLECT 9-1-1 SURCHARGES ON PREPAID WIRELESS SERVICES
DIRECTLY FROM CONSUMERS AT THE POINT OF RETAIL SALE**

Other parties’ initial comments filed in this proceeding regarding the funding of NG9-1-1 recognize concurred with TracFone’s concern that there are significant problems with the existing 9-1-1 funding mechanisms because these mechanisms vary by state and often fail to require contributions from all customers of telecommunications service who are able to access 9-1-1 services. TracFone agrees with other commenters’ suggestions that general revenues should be considered as a source of funding for NG9-1-1 services because such services are essential government services, and since all residents -- not just those who purchase telecommunications service -- have access to 9-1-1 services. Verizon, one of the nation’s leading telecommunications companies and the majority owner of the nation’s largest wireless service

² Notice, at 4.

³ Id.

provider, notes that the current “patchwork of fees and taxes invariably imposes cost and administrative burdens on consumers and service providers” and recommends that “Congress and state legislatures therefore should affirm that 911 is an essential government service that should receive priority funding from a state’s general revenues.”⁴ The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) explains why Congress and the states should consider replacing the current service provider funding model with one that is general revenues-based. As stated by APCO, NG9-1-1 services “are not easily tied to service providers and recurring billing practices, “especially when a 9-1-1 communication is made from a non-cellular device over a Wi-Fi network.” APCO notes that while it is possible to assess a one-time point of sale fee when a non-cellular device or an “over the top” application that allows access to 9-1-1 services is purchased, such an assessment would not provide a sustainable revenue source.⁵

Some commenters also recommend that federal funds be used to finance the NG9-1-1 system. As stated by the Industry Council for Emergency Response Technologies (“iCERT”):

The implementation of NG9-1-1 requires that 9-1-1 funding mechanisms be reformed, including the availability of increased funds from the federal level. Many industry commenters and academic reviewers have concluded that the traditional “line item surcharge” approach to 9-1-1 funding (and NG9-1-1 funding in the future) is outdated. This approach does not take into account the evolving nature of telecommunications and the variety of ways in which the public may access 9-1-1 (e.g., through pre-paid wireless or “over the top” service providers).⁶

⁴ Verizon Comments, at 10. Boulder Regional Emergency Telephone Service Authority (“BRETSA”) points out that transitioning to NG9-1-1 services will require deployment of broadband facilities. Therefore, it advocates that the federal government use broadband funds to finance NG9-1-1 infrastructure and services. BRETSA Comments, at 25-26.

⁵ APCO Comments, at 5.

⁶ iCERT Comments, at 2-3; see Rehabilitation Engineering Research Center for Wireless Technologies Comments, at 9 (an equitable funding mechanism is needed to ensure that consumers with devices that are not voice enabled or are utilizing a commercial wireless networks contribute to 9-1-1 funds).

TracFone agrees with iCERT and other commenters that Congress should consider use of federal funds to finance NG-9-1-1 given that NG9-1-1 will provide an essential infrastructure that will benefit all members of the public.

To the extent it is not feasible or sufficient to use state or federal funds for NG9-1-1 services, then an additional funding mechanism, such as states' collection of 9-1-1 fees, is necessary to ensure that there are adequate funds available for an effective and efficient NG9-1-1 system. Commenters that addressed 9-1-1 funding issues agree with TracFone that funding mechanisms should be competitively neutral and paid for by end users, rather than by the service providers. For example, Verizon states that "such fees should be ... imposed on end users, not service providers (including for prepaid services via point-of-sale collection)."⁷ Commenters also agree that funding should be technologically neutral and non-discriminatory.⁸

The comments filed in this proceeding disclose a consensus that all people who are able to access 9-1-1 services are obligated to support those services by contributing to a 9-1-1 fund to the extent that funding is not covered by other governmental sources. Individuals who use a prepaid wireless service, such as TracFone's service, have the ability to access 9-1-1 services. However, as TracFone detailed in its initial comments, funding 9-1-1 services through monthly billed customer surcharges has worked well for postpaid wireless and wireline services, but is not workable for non-billed prepaid services that are purchased by customers not on a monthly basis, but rather on an "as needed" basis, mainly at retail locations. Moreover, there are significant inconsistencies among the states regarding whether prepaid wireless service is subject

⁷ Verizon Comments, at 10-11; see T-Mobile Comments, at 10 (noting the inconsistency among states regarding which types of service providers must contribute to 911 funds and the amount of the contribution).

⁸ iCERT Comments, at 3; National Emergency Number Association Comments, at 18.

to 9-1-1 fees and whether providers of prepaid services or end users of such services should be responsible for payment of such fees. TracFone urges the Commission to recommend that Congress establish a federal standard regarding assessment of 9-1-1 fees on prepaid wireless services, namely, that Congress require all states that finance NG9-1-1 through end user surcharges to enact POS legislation for the collection of 9-1-1 fees from prepaid service end users. POS legislation already has been enacted in 28 states and has helped ensure a reliable and sufficient source of funding for 9-1-1 in states where existing 9-1-1 fee statutes either did not apply to prepaid services or where the statutory prepaid methods were unworkable or in dispute.

Unfortunately, other states have failed to enact such legislation, opting instead to attempt to clumsily extend to prepaid services statutory collection mechanisms designed for post-paid or billed services collections. Those efforts have resulted in time-consuming and costly litigation and have failed to ensure that all users of telecommunications services, including users of prepaid services, contribute to the support of 9-1-1 service. Requiring all states to adopt a POS 9-1-1 funding mechanism for prepaid wireless services is a competitively and technologically neutral solution to the existing inconsistent state funding mechanisms that will help ensure that essential NG9-1-1 services are adequately funded.

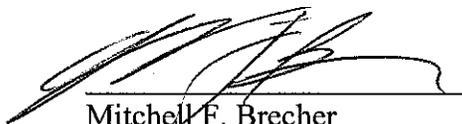
CONCLUSION

TracFone respectfully requests that the Commission consider TracFone's views and recommendations set forth in these reply comments and in TracFone's initial comments, filed December 13, 2012. Specifically, TracFone urges the Commission to advise Congress that it will preempt any state 9-1-1 funding laws that are inconsistent with the policy objectives of the Communications Act that require that 9-1-1 services be supported through fee collection methods which are non-discriminatory and which are competitively and technologically neutral,

and to recommend to Congress any changes in the Communications Act that would further this objective.

Respectfully submitted,

TRACFONE WIRELESS, INC.



Mitchell F. Brecher
Debra McGuire Mercer
GREENBERG TRAURIG, LLP
2101 L Street, NW, Suite 1000
Washington, DC 20037
(202) 331-3100

Its Attorneys

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