

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

In the Matter of)	
)	
Petition of TeleCommunication)	GN Docket 11-117
Systems Inc. for Declaratory Ruling)	WC Docket 05-196
and/or Rulemaking)	PS Docket 11-153
)	PS Docket 10-255
)	

COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association¹ (NTCA) hereby submits these comments in response to the Public Safety and Homeland Security Bureau’s Public Notice seeking comment on a petition for declaratory ruling and/or rulemaking filed by TeleCommunications Systems, Inc. (TCS) regarding intellectual property rights in technologies used to provide 911 communications services. NTCA supports TCS in this effort. A formal rulemaking to address the licensing of patents covering E911 services and capabilities is necessary to protect telecommunications providers from an onslaught of predatory patent litigation and the resultant disruption of E911 and NG911 services to consumers.

NTCA’s members are all small businesses operating within thin margins in rural areas. They provide wired and wireless voice service, as well as broadband and video to rural

¹ NTCA is an industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite, and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

communities. Increasingly, these small businesses have been the targets of patent infringement lawsuits filed primarily by patent assertion entities (PAEs). Typically, these PAEs merely purchase already existing patents for the express purpose of enforcing them for financial gain. It is the experience of NTCA's members that the PAEs target the users or purchasers of the telecommunications equipment and not the manufacturers from whom the equipment is purchased. It is also the experience of NTCA's members that PAEs seek to settle for a sum of money, knowing that most small businesses lack the significant resources required to fully investigate and defend infringement claims – even when the claims are known to be specious. Given that each piece of equipment used by telecommunications providers may be covered by hundreds of patents, the potential for lawsuits is monumental. Any action the Commission can take to protect telecommunications providers from unnecessary and harmful litigation, especially when the litigation is triggered by compliance with Commission rules and regulation, should be thoughtfully and seriously considered.

The Commission's rules require wireless carriers to offer E911 service.² Through the years, the obligation has extended to providers of new technologies. In 2008, legislation extended the duty to provide 911 and E911 services to IP-enabled voice services. Neither telecommunications providers, nor the manufacturers of equipment, have any negotiation leverage with the patent enforcers. Mere compliance with the rules can trigger patent infringement, or at least the claim of infringement. Companies are faced with the choice of violating the FCC's rules, accepting the licensing terms of the patent holders or litigating a prohibitively expensive patent lawsuit. None of these choices is a financially viable option for a rural telecommunications provider.

² 47 C.F.R. § 20.18

The Commission must act to ensure that ongoing litigation does not threaten the 911 marketplace. It should institute a formal rulemaking proceeding to provide guidance as to the applicability of 28 U.S.C. § 1498 in those circumstances where a carrier in the offering of services, is alleged to have infringed upon a patent and the allegation involves a claim that the infringement is based on compliance with a FCC Order, standard, or regulation. The Commission should seek comment on a proposal that in all such circumstances compliance is in furtherance and fulfillment of a paramount Government policy and is therefore equivalent to an action that is “by or for” the government and with the Government’s permission consistent with the language of 28 U.S.C. § 1498.

As described more fully in the TCS petition, case law supports this viewpoint. The 911 regulations are in furtherance and fulfillment of a stated Government policy and the statute may be implicated where the government has impliedly consented to the infringement by demonstrating an awareness of the evidence of the patent that will be necessarily infringed. The integration of 28 U.S.C. § 1498 into existing E911 regulations and future NG911 regulations would preserve reasonable royalties for intellectual property rights holders and simplify negotiations. Patent holders would have one forum instead of many separate and expensive causes of action. Furthermore, the governmental interest would be furthered as entities are relieved with the unanticipated financial burden created by the PEAs.

In the alternative, NTCA agrees with TCS that the Commission should establish rules that provide for licensing of patents pursuant to reasonable and non-discriminatory terms.

NTCA urges the Commission to take all steps necessary to protect telecommunications providers and manufacturers from predatory practices of entities who offer no service and create no idea or product, but exist for the sole purpose of buying and enforcing patents. The patent

assertion entities are using gaps in the current law to extort money out of small companies they know lack the financial means to pursue a defense against infringement allegations.

For the reasons set for the above, NTCA supports the TCS request that the Commission issue a public notice seeking comment on the TCS petition.

Respectfully submitted,



By: /s/ Jill Canfield
Jill Canfield
Director – Legal & Industry
Assistant General Counsel

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
jcanfield@ntca.org
703-351-2000 (Tel)
703-351-2036 (Fax)

March 25, 2013