

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling and/or Rulemaking Filed by Telecommunication Systems, Inc.</b>	)	<b>PS Docket No. 11-117</b>
	)	
<b>E911 Requirements for IP-Enabled Service Providers</b>	)	<b>WC Docket No. 05-196</b>
	)	
<b>Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications</b>	)	<b>PS Docket No. 11-153</b>
	)	
<b>Framework for Next Generation 911 Deployment</b>	)	<b>PS Docket No. 10-255</b>

**INITIAL COMMENTS OF THE TEXAS 9-1-1 ENTITIES  
TO THE PUBLIC NOTICE**

The Texas 9-1-1 Alliance,<sup>1</sup> the Texas Commission on State Emergency Communications,<sup>2</sup> and the Municipal Emergency Communication Districts Association<sup>3</sup> (collectively, “the Texas 9-1-1 Entities”) respectfully submit the following initial comments to the Federal Communications Commission (the “Commission”) Public Notice seeking comment

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<sup>1</sup> The Texas 9-1-1 Alliance is an interlocal cooperation entity composed of 24 Texas Emergency Communication Districts with E9-1-1 service and public safety responsibility for approximately 53% of the population of Texas. These emergency communication districts were created pursuant to Texas Health and Safety Code Chapter 772 and are defined under Texas Health and Safety Code § 771.001(3)(B).

<sup>2</sup> The Texas Commission on State Emergency Communications (“CSEC”) is a state agency created pursuant to Texas Health and Safety Code Chapter 771, and is the State of Texas’ authority on emergency communications. CSEC administers the Texas state 9-1-1 program under which 9-1-1 service is provided through the state’s 24 regional planning commissions to approximately two-thirds of the geography and one-third of the population of Texas.

<sup>3</sup> The Municipal Emergency Communication Districts Association is an association of 26 municipal emergency communication districts, as defined under Texas Health and Safety Code § 771.001(3)(A), that are located primarily in the Dallas-Fort Worth area.

on a petition for declaratory ruling and/or rulemaking filed by Telecommunication Systems, Inc. (“TCS”) regarding intellectual property rights (“IPR”) in technologies used to provide 9-1-1 emergency communications.<sup>4</sup>

**A. Growing Concern on Intellectual Property Rights Lawsuits Associated with Provisioning 9-1-1, Location, and Emergency Service**

There are an increasing number of recent intellectual property rights (“IPR”) lawsuits associated with provisioning 9-1-1, location, and emergency service.<sup>5</sup> Accordingly, the Texas 9-1-1 Entities agree that the TCS Petition raises IPR matters of growing concern related to provisioning 9-1-1, location, and emergency service.

**B. Waiver of Federal Government Sovereign Immunity and Consent to Liability under Section 1498(a)**

As its primary request, the TCS Petition seeks a Commission declaratory ruling on the applicability of 28 U.S.C. Section 1498(a) regarding waiver of federal government sovereign

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<sup>4</sup> *In the Matter of Petition of Telecommunication Systems Inc. for Declaratory Ruling and/or Rulemaking*, GN Docket No. 11-117, WC Docket No. 05-196, PS Docket No. 11-153; PS Docket No. 10-255 (rel. Feb. 22, 2013) (“TCS Petition”).

<sup>5</sup> See, for example, the following 14 cases involving 911 Notify: *911 Notify LLC v. Telecommunications Systems, Inc.* (filed Feb. 19, 2013), *911 Notify LLC v. REACT Systems, Inc.* (filed Feb. 19, 2013), *911 Notify LLC v. OnStar LLC* (filed Feb. 19, 2013), *911 Notify LLC v. Lifeline Systems Company* (filed Feb. 19, 2013), *911 Notify LLC v. Intrado Inc.* (filed Feb. 19, 2013), *911 Notify LLC v. Hyundai Motor America Inc.* (filed Feb. 19, 2013), *911 Notify LLC v. Greatcall Inc.* (filed Feb. 19, 2013), *911 Notify LLC v. Ford Motor Company* (filed Feb. 19, 2013), *911 Notify LLC v. Everbridge Inc.* (filed Feb. 19, 2013), *911 Notify LLC v. Cassidian Communications Inc.* (filed Feb. 19, 2013), *911 Notify LLC v. BMW of North America LLC* (filed Feb. 19, 2013), *911 Notify LLC v. Agero Inc.* (filed Feb. 19, 2013), *911 Notify LLC v. ADT LLC* (filed Feb. 19, 2013) (available at <http://www.rfcexpress.com/lawsuits/patent-lawsuits/delaware-district-court/434928/911-notify-llc-v-lifewatch-inc/related-cases/>). See also, for example, the following 6 cases involving Cassidian Communications, Inc.: *Cassidian Communications, Inc. v. microDATA GIS, Inc* (filed March 26, 2012), *Solacom Technologies, Inc. et al. v. Cassidian Communications, Inc.* (filed Dec. 6, 2012), *Cassidian Communications, Inc. v. NG-911 Inc.* (filed Feb. 8, 2013), *Cassidian Communications, Inc. v. Bandwidth* (filed Feb. 8, 2013), *Cassidian Communications, Inc. v. Communications Venture Corporation* (filed Feb. 8, 2013), *Cassidian Communications, Inc. v. Synergem Emergency Communications, LLC et al.* (filed Feb. 8, 2013) (available at <http://www.rfcexpress.com/lawsuits/patent-lawsuits/florida-middle-district-court/435074/cassidian-communications-inc-v-synergem-emergency-communications-llc-et-al/related-cases/>).

immunity and consent to liability. The Texas 9-1-1 Entities take no position on the Section 1498(a) issue, given that it is unclear at this time whether the federal government or the federal agency that may have to pay such damages pursuant to Section 1498(a) is supportive of waiving sovereign immunity and consenting to liability for damages.

**C. RAND Obligations Where No Technically Feasible, Non-infringing Alternative Exists**

In the alternative, the TCS Petition requests that the Commission adopt rules requiring the licensing of IPR for mandatory 9-1-1 service capabilities on reasonable and non-discriminatory (“RAND”) term obligations. There appears to be much debate among academics, industry representatives, and litigants relating to the scope and contours of RAND term obligations.<sup>6</sup> Nevertheless, given the importance of standards and interoperability in the context

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<sup>6</sup> See, Contreras, Jorge L., *Rethinking RAND: SDO-Based Approaches to Patent Licensing Commitments*, at pp. 4-5 (Oct. 10, 2012). ITU Patent Roundtable, Geneva, Oct. 10, 2012. (available at [http://digitalcommons.wcl.american.edu/fac\\_works\\_papers/30/](http://digitalcommons.wcl.american.edu/fac_works_papers/30/)) (footnotes in original omitted):

But whether or not one is content with the theoretical merits of unspecified RAND requirements, one thing is certain: in the past few years, litigation over the meaning of RAND has dramatically increased both in quantity and potential market impact. Most significant among these recent suits are the so-called “smart phone wars”, in which the largest global manufacturers of mobile computing and telecommunications devices and software – Apple, Motorola, Samsung, Microsoft and others – have been engaged in a high-stakes battle over the infringement of dozens of patents, including several SEPs subject to RAND commitments. These cases involve product markets measured in the tens of billions of dollars, and royalty demands that also extend into the billions.

Disputes regarding RAND commitments have generally arisen when a patent holder and a vendor cannot agree on the terms of a license for standards-essential patents, typically after the standard is adopted in the market. These disputes often revolve around the patent holder’s proposed royalty rate and whether it is “reasonable”. However, RAND disputes can also involve the reasonableness of non-royalty terms such as requirements that the vendor license its own patents to the patent holder (“reciprocity”), or that the license be “suspended” if the vendor threatens the patent holder with litigation (“defensive suspension”). When parties cannot agree on license terms, no license is granted. When no license is granted, a vendor that complies with a standard is likely to infringe patents that are essential to that standard. The parties are thus left in a difficult and ambiguous situation. Can the patent holder sue the vendor for infringing the patent? If so, what remedies are available? Can the vendor defend itself on the basis that the patent holder violated its RAND commitment by offering terms that were unreasonable?

of provisioning 9-1-1, location, and emergency service, where no technically feasible, non-infringing alternative exists, the alternative request in the TCS Petition for RAND term obligations may merit serious consideration.

The Texas 9-1-1 Entities appreciate the opportunity to provide these initial comments and respectfully request that the Commission take action consistent with these initial comments.

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How long must the parties negotiate before one or the other of them is deemed to be “unreasonable”? And how does “fairness” figure in this picture?

The prevalence of these questions has led to a vigorous debate among academics, regulators and industry representatives relating to the scope and contours of RAND obligations. Much of the recent commentary has focused on three general issues: (1) whether and to what extent breaches of RAND commitments are actionable under antitrust and competition laws, (2) how royalty levels should be calculated/negotiated in the face of RAND commitments, and (3) whether it is appropriate to grant a patent holder an injunction preventing the use of standardized technology after the parties have failed to agree on RAND licensing terms.

*See also, Microsoft, Motorola submit final arguments to Washington court on relevance and effects of Google-MPEG LA AVC/H.264 agreement to a Microsoft-Motorola RAND license (Mar 3, 2013) (available at <http://essentialpatentblog.com/2013/03/microsoft-motorola-submit-final-arguments-to-washington-court-on-the-relevance-and-effects-of-google-mpeg-la-avch-264-agreement-to-a-microsoft-motorola-rand-license/>).*

Respectfully submitted,



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