

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

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

**COMMENTS OF SAP IN REPLY TO  
COMMENTS ON TCS’ PETITION FOR  
DECLARATORY RULING AND/OR RULEMAKING**

SAP AG (“SAP”) hereby submits the following brief reply to the comments filed on the Petition for Declaratory Ruling and/or Rulemaking filed by TeleCommunication Systems, Inc. (“TCS”).<sup>1</sup>

SAP shares the Commission’s goal of rapid deployment of E911 and NG911 services and supports TCS’s Petition in so far as it seeks to curtail the ability of Patent Assertion Entities (“PAEs”) to undermine deployment of those services by filing predatory patent infringement lawsuits. Reigning in the abilities of PAEs to engage in patent hold-up is good policy, not only here, but also more generally throughout our economy. SAP itself is a frequent target of PAE lawsuits.

In pursuit of these laudable goals, however, we should take care not to undermine the intellectual property we are trying to protect by limiting the patent rights of non-PAEs. Failure to do so risks stifling innovation and disincentivizing legitimate companies and institutions from

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<sup>1</sup> GN Docket No. 11-117, WC Docket No. 05-196, PS Docket No. 11-153, PS Docket No. 10-255 (filed July 24, 2012) (“TCS Petition”).

engaging in the very activities that resulted in the life-saving E911 and NG911 technology that exists today. Thus, failing to tailor any limitations on E911 and NG911 patent rights to PAEs would be bad policy and harm the society that these technologies were created to protect.

Importantly, both TCS's Petition and the comments filed in support of it make clear that the sole problem to be addressed is the abusive and predatory practices of PAEs. Neither TCS nor any commentator has suggested any harm from, or that the Commission should place any limitations on, the patent rights of non-PAEs. Thus, it seems TCS's Petition is a victim of the law of unintended consequences. The Commission should address that problem and expressly tailor any limitations on E911 or NG911 patent rights to PAEs.

For the reasons stated in SAP's Comments<sup>2</sup> filed in response to the Bureau's Request for Comment,<sup>3</sup> SAP does not agree that 28 U.S.C. § 1498 is the appropriate mechanism to address the concerns raised by PAE predatory behavior. The legal basis for applying § 1498 is dubious at best,<sup>4</sup> both in terms of the Commission's authority to do so and how any Commission action would be construed and applied by Courts. This would increase litigation and uncertainty, not curtail it. Moreover, it is not clear how the Commission or the courts could craft an application of § 1498 that would apply only to PAEs.

For these reasons, SAP proposed in its Comments that adopting TCS's alternative proposal of imposing a reasonable and non-discriminatory ("RAND") commitment on PAEs

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<sup>2</sup> Comments of SAP in Response to TCS's Petition for Declaratory Ruling and/or Rulemaking (March 25, 2013) ("Comments").

<sup>3</sup> DA 13-273, released February 22, 2103.

<sup>4</sup> *See, e.g.*, Comments of Cassidian Communications (March 22, 2013); Opposition of Qualcomm Incorporated to Telecommunication Systems Inc. Petition for Declaratory Ruling and/or Rulemaking (March 25, 2013).

would be a superior mechanism to address the problems identified in the TCS Petition. As noted by TCS and commentators that support TCS's Petition, imposing a RAND commitment on PAEs would curtail their ability to engage in predatory patent infringement lawsuits. Additionally, a RAND obligation can be selectively applied to specific actors, where a particular actor engages in conduct that improperly threatens the policy goals of the Commission in connection with E911 and NG911 services and capabilities. As TCS noted in its Petition, the Commission has successfully imposed RAND obligations on particular actors in the past on a case-by-case basis where the facts warranted such action. Such a plan addresses the problem and avoids the significant risks and uncertainty involved with 28 U.S.C § 1498.

Finally, some commentators recognize that there are alternatives that should be considered,<sup>5</sup> and SAP supports the Commission conducting proceedings to consider means to deal with the PAE problem without limiting legitimate intellectual property rights.

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<sup>5</sup> See, e.g., Initial Comments of the Texas 9-1-1 Entities to the Public Notice (March 25, 2013); Comments of MetroPCS Communications, Inc. (March 25, 2013).