

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

In the Matter of)	
)	
Wireless E911 Location Accuracy Requirements)	WT Docket No. 11-117
)	
IP-Enabled Services E911 Requirements for IP-Enabled Service Providers)	WC Docket No. 05-196
)	
Facilitating the deployment of Text-to-911 and other NG911 Applications)	PS Docket No. 11-153
)	
Framework for Next Generation 911 Deployment)	PS Docket No. 10-255

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”) hereby submits reply comments in response to the Petition for Declaratory Ruling and/or Rulemaking (the “Petition” or the “TCS Petition”) filed by Telecommunication Systems, Inc. (“TCS”) on July 24, 2012, in the above-captioned proceeding.¹

INTRODUCTION

CCA represents the interests of more than 100 competitive wireless carriers, many of whom provide critical E911 service to their customers. As such, CCA has a strong interest in promoting a resolution to any issue troubling the wireless industry, and has a special interest in protecting the ability of its carrier members to provide life-saving E911 services to their customers. Many of CCA’s members have experienced the pain of tortuous, yet meritless, E911

¹ *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling and/or Rulemaking filed by Telecommunication Systems, Inc.*, GN Docket No. 11-117, WC Docket No. 05-196, PS Docket No. 11-153, PS Docket No. 10-255, Public Notice, DA 13-273 (rel. Feb. 22, 2013).

patent infringement lawsuits and have endured the significant distractions and risks that these lawsuits create. Several CCA members, including MetroPCS Communications, Inc. (“MetroPCS”),² Sprint Nextel Corporation (“Sprint Nextel”)³ and TCS⁴ submitted initial comments in this proceeding to highlight these problems that continue to plague the wireless industry. Each of these three parties offered varying solutions for the Commission to consider, but all of them emphasized the need for prompt Commission action. CCA supports the goals of the TCS Petition⁵ and believes that the unique solutions presented by its members deserve prompt and serious consideration by the Commission. Left unchecked, these frivolous lawsuits will continue to create roadblocks for carriers, preventing or delaying their ability to deploy critical E911 services and future text-to-911 and NG911 services.

DISCUSSION

I. THE RECORD EMPHASIZES THE NEED FOR PROMPT COMMISSION ACTION

The comments filed in support of the TCS Petition offer a general consensus that prompt Commission action is needed to address the obstacles patent infringement lawsuits place in front of the provision of E911 services. These supporting parties emphasize that E911 service is of vital importance to the public, and urge the Commission to consider the TCS Petition in the near

² Comments of MetroPCS Communications, Inc. in WT Docket No. 11-117, WC Docket No. 05-196, PS Docket No. 11-153, PS Docket No. 10-255 (filed Mar. 25, 2013) (“MetroPCS Comments”)

³ Comments of Sprint Nextel Corporation in WT Docket No. 11-117, WC Docket No. 05-196, PS Docket No. 11-153, PS Docket No. 10-255 (filed Mar. 25, 2013) (“Sprint Nextel Comments”)

⁴ Comments of Telecommunication Systems, Inc. in WT Docket No. 11-117, WC Docket No. 05-196, PS Docket No. 11-153, PS Docket No. 10-255 (filed Mar. 25, 2013) (“TCS Comments”)

⁵ CCA does not address the jurisdictional questions associated with the TCS Petition at this time.

term so that E911 services are not further interrupted or hindered. TCS and other parties highlight the delicate predicament that many wireless providers and E911 service providers currently find themselves in – a circumstance that will continue if prompt action is not taken: choosing between complying with the Commission’s public safety rules and providing critical E911 service to their customers, or being routinely harassed for alleged patent infringement.⁶

Frivolous patent infringement prosecution is something that some of CCA’s members unfortunately know all too well. In their initial comments, CCA members lament their exposure to “large volume[s] of litigation as a result of their efforts to comply with the Commission’s E911 mandates” brought by patent assertion entities (“PAEs”) or “patent trolls”⁷. Competitive carriers operate on razor-thin margins and with limited resources, and the exorbitant expenses associated with defending against patent troll litigation for utilization of life-saving technologies threatens the viability of these carriers. As MetroPCS explains: when faced with the significant costs required to defend against patent infringement suits, it is left with little choice but to settle, despite the fact that “it ultimately [can] prevail[] on the merits.”⁸ And though settlement is often less expensive than protracted litigation, it still requires investment of time, capital and management resources. CCA is justifiably concerned that its members, who are generally smaller, rural or regional wireless providers, will soon also find themselves the subject of meritless, yet costly, E911 patent infringement lawsuits. Being forced to defend these suits might be devastating, even terminal, to CCA’s smallest members.⁹

⁶ See, e.g., TCS Petition at 8; Sprint Comments at 3; MetroPCS Comments at 8-9.

⁷ Sprint Comments at 2; see also MetroPCS Comments at 6.

⁸ MetroPCS Comments at 6.

⁹ TCS Petition at 12.

As the Commission is well aware, the provision of E911 service to customers is critical to public safety and cannot be the subject of legal gamesmanship. Particularly in light of the impending new regulations involving text-to-911 and NG911 services, the Commission must help to resolve the serious problems that TCS highlights.

CCA believes that TCS's proposals merit consideration by the Commission, and may indeed provide a path to a solution. Sprint Nextel supports TCS's request as well and asks the Commission to "examine the intellectual property issues raised by the TCS Petition" and provide the guidance requested.¹⁰ The TCS Petition requests that the Commission issue a Declaratory Ruling that complying with E911 and NG911 regulations is 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. § 1498.¹¹ Alternatively, TCS asks the Commission to adopt rules that require the licensing of certain patents pursuant to reasonable and non-discriminatory (RAND) terms and conditions.¹² CCA agrees with its members MetroPCS and Sprint – TCS's recommendations deserve prompt Commission consideration to bring an end to the harmful practices that TCS and others have highlighted in this proceeding. E911 is a critical, life-saving service, and action must be taken before wireless providers and E911 service providers find themselves in the unfortunate position of having to choose between not complying with the law on one hand, and expensive lawsuits on the other. This unenviable position must be remedied.

MetroPCS's alternative proposals set forth in its comments are also meritorious. MetroPCS requests the Commission find that "the public interest is not served when injunctive

¹⁰ Sprint Nextel Comments at 5.

¹¹ TCS Petition at 18-21. TCS also reiterated its request in its initial comments. *See* TCS Comments at 7-11.

¹² TCS Petition at 19. TCS also reiterated its request in its initial comments. *See* TCS Comments at 11-14.

relief is granted to redress claims against Commission-mandated services like E911”¹³ and find that since “wireless carriers obtain no monetary benefit from the use of the patent for the provision of E911 services . . . no monetary damages should be owed for this particular Commission mandated use.”¹⁴ CCA supports MetroPCS’ recommendations and agrees that the critical nature of E911 services dictates that any interruption would not be in the public interest. CCA urges the Commission to take a hard look at MetroPCS’ proposed solutions and take prompt action before the problem grows worse.

Finally, as Sprint Nextel points out, existing E911 services are not the only services impacted by frivolous infringement suits. Indeed, the very development of future generations of 911 services is threatened as well. Sprint Nextel recognizes the grim truth that “[t]echnology innovation will be stifled if E911 solutions vendors are forced to dedicate time and resources to litigating patent claims instead of developing the advanced technologies that are needed to meet the Commission’s 911 requirements.”¹⁵ This further emphasizes the importance of prompt review and action by the Commission.

¹³ MetroPCS Comments at 11.

¹⁴ MetroPCS Comments at 3.

¹⁵ Sprint Nextel Comments at 4.

CONCLUSION

The record in this proceeding reflects how carriers have directly felt the sting of predatory patent infringement lawsuits. The suggested actions proposed in the initial comments filed by CCA members deserve prompt Commission attention to ensure that E911 services are not interrupted. CCA urges the Commission to seize the moment and give this important issue the immediate attention it deserves, and to do so before current and future emergency services – and the lives that they save every day – are further compromised.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

Steven K. Berry
Rebecca Murphy Thompson
C. Sean Spivey
COMPETITIVE CARRIERS ASSOCIATION
805 15th Street NW, Suite 401
Washington, DC 20005

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