

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

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

**REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”) hereby replies to comments filed in response to the Public Notice seeking comment on the Petition of Telecommunication Systems, Inc. (“TCS”).<sup>1</sup> The Commission should consider the issues raised by the TCS Petition in the narrow context of 9-1-1. It should provide guidance relevant to the applicability of 28 U.S.C. § 1498 and clarify that 9-1-1 location-based services are in furtherance and fulfillment of a stated government policy. The record shows significant and growing concern from the public safety and wireless sectors that predatory lawsuits by patent assertion entities (“PAEs”) are threatening

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<sup>1</sup> *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling and/or Rulemaking Filed by Telecommunication Systems, Inc.*, Public Notice, GN Docket No. 11-117, WC Docket No. 05-196, PS Docket Nos. 11-153, 10-255, DA 13-273 (rel. Feb. 22, 2013); *Petition of Telecommunication Systems, Inc. for Declaratory Ruling and/or Rulemaking*, GN Docket No. 11-117, WC Docket No. 05-196, PS Docket Nos. 11-153, 10-255 (filed July. 24, 2012) (the “TCS Petition”).

efforts to improve emergency communications through wireless innovation.<sup>2</sup> Commission guidance will help ensure that these lawsuits do not put the provision of emergency communications services at risk, particularly as the wireless industry and public safety community work to develop and deploy text-to-911 and Next Generation 911 (“NG911”) solutions.

**I. THE RECORD REFLECTS GROWING CONCERN THAT PATENT ASSERTION ENTITIES’ PREDATORY LAWSUITS THREATEN INNOVATION IN THE 9-1-1 SPACE.**

It is widely acknowledged that the wireless industry is dedicated to ensuring access to emergency communications, and that innovation and technological advancement has played a key role in doing so.<sup>3</sup> APCO has explained, for example, that “the 9-1-1 services that TCS and similar entities provide are critical to the success of 9-1-1 operations throughout the nation.”<sup>4</sup> Yet the record shows significant concern regarding PAEs’ patent infringement claims against E911 vendors and service providers based solely on their efforts to comply with the Commission’s E911 rules and policies.<sup>5</sup> As Sprint Nextel notes, there is “a large volume of litigation as a result of [these] efforts to comply with the Commission’s E911 mandates.”<sup>6</sup>

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<sup>2</sup> See, e.g., CTIA Comments at 5-7; Texas 9-1-1 Entities Comments at 2; Sprint Nextel Comments at 2-3; MetroPCS Comments at 3-8; NTCA Comments at 2; NENA Comments at 2; Letter from Karen Kempert, 9-1-1 Systems Coordinator, to Marlene Dortch, FCC, PS Docket No. 10-255 *et al.*, at 1 (Mar. 25, 2013) (“Kempert Ex Parte”).

<sup>3</sup> See, e.g., CTIA Comment at 2-4; Sprint Nextel Comments at 2-3; Qualcomm Comments at 4; SAP AG Comments at 6-7.

<sup>4</sup> APCO Comments at 2.

<sup>5</sup> See, e.g., CTIA Comments at 5-7; Texas 9-1-1 Entities Comments at 2; Sprint Nextel Comments at 2-3; MetroPCS Comments at 3-8; NTCA Comments at 2; NENA Comments at 2; Kempert Ex Parte at 1.

<sup>6</sup> Sprint Nextel Comments at 2.

Rather than innovating and bringing new intellectual property to the market, these PAEs are in the business of attempting to extract settlements from E911 vendors and service providers by threatening them with the high cost of modern patent litigation.<sup>7</sup>

CTIA agrees with NENA that these PAEs “pose a real and growing threat to the modern innovation economy, particularly in more regulated industries.”<sup>8</sup> As MetroPCS observed, “[i]n the vast number of cases there is little doubt that the infringement claim lacks substantial merit based on E911 service, but the cost of defending against patent litigation is sufficiently high that wireless carriers often are forced to succumb to the economic reality and make the Hobbesian choice that it might be cheaper to settle a claim than to defend against it.”<sup>9</sup> Companies are thus faced with the untenable choice of violating the Commission’s rules, accepting the licensing terms of the patent holders, or litigating a prohibitively expensive patent infringement lawsuit.<sup>10</sup> Moreover, in certain instances a PAE “is able to hang the Sword of Damocles over the head of the wireless carrier by threatening injunctive relief that, if granted, would prevent the wireless carrier from meeting its E911 obligations.”<sup>11</sup>

Multiple commenters described how these types of lawsuits threaten to suppress innovation and advancement for E911 and NG911 solutions.<sup>12</sup> Sprint Nextel observed that

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<sup>7</sup> See, e.g., CTIA Comments at 5-6; NENA Comments at 1-2; Sprint Nextel Comments at 3; MetroPCS Comments at 3-8; NTCA Comments at 2; SAP AG Comments at 8.

<sup>8</sup> NENA Comments at 2.

<sup>9</sup> MetroPCS Comments at 5.

<sup>10</sup> NTCA Comments at 2.

<sup>11</sup> MetroPCS Comments at 4-5.

<sup>12</sup> See, e.g., CTIA Comments at 5-6; NENA Comments at 2; Sprint Nextel Comments at 4; Kempert Ex Parte at 1.

“[t]echnology innovation will be stifled” if E911 solution vendors are forced to continue to defend such lawsuits. As one 9-1-1 Systems Coordinator emphasized, it is important to “keep[] the field open for new and innovative technologies to assist us as we try to carry out the life-saving mission of answering and dispatching 9-1-1, whether they are voice, text or anything else that comes in the future.”<sup>13</sup> CTIA shares the view that “[a] prompt resolution of these issues may provide a roadmap that will help the Commission avoid similar problems relating to other existing and future Commission mandates, such as Text-to-911, NG911, and CMAS.”<sup>14</sup>

**II. THE FCC SHOULD TAKE ACTION ON THE TCS PETITION AND CLARIFY THAT USE OF TECHNOLOGY, EVEN IF PATENTED, TO MEET THE FCC’S 9-1-1 REQUIREMENTS FULFILLS A STATED GOVERNMENT POLICY.**

The record reflects strong support for Commission consideration of the issues raised by the TCS Petition, and specifically the threat that lawsuits brought by PAEs pose to the Commission’s 9-1-1 policies and ongoing innovation in the emergency communications sector.<sup>15</sup> Location-based 9-1-1 services are vital to the public, emergency personnel, and the government’s responsibility to protect those in need. As NTCA explained, “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.”<sup>16</sup>

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<sup>13</sup> Kempert Ex Parte at 1.

<sup>14</sup> MetroPCS Comments at 2.

<sup>15</sup> *See, e.g.*, CTIA Comments at 5-7; Sprint Nextel Comments at 3-4; MetroPCS Comments at 2-3; NTCA Comments at 2; APCO Comments at 2; SAP AG Comments at 9; Kempert Ex Parte at 1.

<sup>16</sup> NTCA Comments at 2.

The Commission should provide guidance that would be relevant to the applicability of 28 U.S.C. § 1498 to patents that are needed to provide E911 and NG911 services. Specifically, CTIA urges the Commission to clarify that 9-1-1 services are in furtherance and fulfillment of a stated government policy, and confirm that it is aware that this policy may make use of patented technologies to comply with its 9-1-1 regulations. Commenters agree that compliance with the Commission’s 9-1-1 requirements, which help ensure the nation’s welfare and safety, furthers and fulfills a government policy and therefore is “by and for” the government under Section 1498.<sup>17</sup>

Providing this requested limited guidance in the 9-1-1 context will help reduce the vexing lawsuits brought by PAEs that threaten to hamper the provision of 9-1-1 services, the ongoing development of NG911, and innovation in the emergency communications sector generally.

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<sup>17</sup> See, e.g., CTIA Comments at 6-7; Sprint Nextel Comments at 3-4; MetroPCS Comments at 10; NTCA Comments at 3.

### III. CONCLUSION

The Commission should address these growing concerns brought about by PAE lawsuits based upon compliance with the Commission's 9-1-1 rules in order to advance continued innovation in emergency communications services.

Respectfully submitted,

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