

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

In the Matter of)	
)	
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

**OPPOSITION OF APCO INTERNATIONAL
TO PETITION FOR RECONSIDERATION**

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following Opposition to the “Petition for Reconsideration, or in the alternative, for Clarification” (“Petition”) filed by CTIA-The Wireless Association (“CTIA”) on June 28, 2013,¹ in the above-captioned proceedings.

Founded in 1935, APCO is the nation’s oldest and largest public safety communications organization. Most APCO members are state or local government employees who manage and operate communications systems -- including Public Safety Answering Points (PSAPs), dispatch centers, radio networks, and information technology -- for law enforcement, fire, emergency medical, forestry conservation, highway maintenance, disaster relief, and other public safety agencies. APCO participated in the above-captioned proceedings and has long been involved in Commission matters regarding 9-1-1 capability and other aspects of public safety communications. APCO was also a party to the Carrier-NENA-APCO Agreement referenced in

¹ 78 Fed.Reg. 46310 (July 31, 2013).

the *Order*,² and continues to seek opportunities to work with the industry to implement the Commission's new rules in a reasonable manner that will promote the public interest.

The Commission adopted new rules in the *Order* to allow wireless telephone subscribers to seek emergency help by sending a text to 9-1-1. This will be especially important in situations where a subscriber has a hearing or speech disability, where making a voice call poses unusual dangers (*e.g.*, a hostage situation), or where voice communication is blocked by network congestion or outages. Equally important, however, is that subscribers will receive a "bounce-back" message telling them to make a voice call if text-to-9-1-1 capability is not yet available in the relevant area. The bounce-back function must exist whether or not a subscriber is roaming; and if there is text-to-9-1-1-capability in the relevant area, a text from a roaming subscriber should be delivered to the proper PSAP (at least once the text-to-9-1-1 rule is effective).

CTIA claims that providing bounce-back messages when a subscriber is roaming is not "technically feasible" and that the FCC did not follow proper administrative procedures when adopting the requirement. However, CTIA's arguments are wrong both as a matter of policy and as a matter of law.

CTIA's "technical infeasibility" arguments are based on little more than references to various parties' statements that providing bounce-back messages in a roaming context faces certain challenges and will require further steps. However, that falls far short of demonstrating that the Commission's rule is not technically feasible. Rather, it simply suggests that compliance may be difficult and impose some expense. But that alone does not invalidate a Commission rule adopted to promote a clear public interest result. Indeed, CTIA itself acknowledges that "even though home carriers may be technically capable of generating an automatic bounce-back

² *Order*, FCC 13-64 (rel. May 17, 2013).

message for roaming subscribers, technical limitations hinder the effectiveness of such messages.”³ However, those limitations are not insurmountable.

The SMS text solution will include implementation of a Text Control Center (TCC) that will receive and route SMS text-to-9-1-1 messages, and provide the interface between the home and serving carriers and the PSAPs. The TCC will make the determination as to routing of the call to the correct PSAP, and will retain databases regarding which PSAPs accept texts, and which do not. Therefore, the TCC will know coarse location information for the consumer, and based on that information, will be able to route the text to the correct PSAP. Since the TCC also knows which PSAPs are text-enabled and which are not, the TCC should be able to pass this information back to the carrier, which can either send a bounce back message or not based upon service availability. Thus, carriers should be able to obtain the minimum amount of information needed to route the call and determine if the relevant PSAP is text enabled. It would not appear that compliance with the FCC’s rule is “technically infeasible.”⁴

CTIA suggests that it is sufficient for home network carriers to send a bounce-back message in every case when a roaming subscriber attempts to text a message to 9-1-1. Put another way, CTIA is saying that even if a subscriber cannot make a voice call to 9-1-1 and text to 9-1-1 is available in the area (and presumably made known within the community following consumer education efforts), the subscriber must be left without recourse. Providing a bounce-back message in such instances defeats the overall purpose of the text-to-9-1-1 requirement to facilitate the use of text-to-9-1-1 wherever it is available. As discussed above, and contrary to

³ CTIA Petition at 5.

⁴*See also* Comments of Proximiti Technologies, Inc. (“Proximiti operates as a single cellular licensee ... outside El Paso, TX serving only customers roaming through its cellular license area. . . . While Proximiti may be uniquely positioned due to our ‘software heritage’, implementing the Text-to-911 ‘bounce back’ response should not be unduly burdensome for Proximiti even as a single-cell-site carrier.”)

CTIA's claims, it appears to be technically feasible in a roaming context to deliver *either* a text-to-9-1-1 message, *or* a bounce-back message, depending upon whether the relevant PSAP is able to receive texts. Sending only bounce-back messages is not an acceptable fall back if a better approach is in fact technically feasible.

CTIA also argues that the FCC's bounce-back requirement for roaming somehow violates established principles of administrative law. CTIA goes so far as to claim that the wireless industry did not have adequate notice that the Commission might impose the bounce-back requirement for roaming, and that the result was not a "logical outgrowth" of the proposed rule. To support this assertion, CTIA points to Section III. A. of the Commission's Further Notice of Proposed Rulemaking, FCC 12-149, released December 13, 2012 ("FNPRM"), which was limited to issues related to bounce-back messages. While it is true that the Commission did not specifically call out the bounce-back roaming question in Section III.A., that was obviously an issue that would have to be addressed, one way or another. The Commission, public safety organizations and certainly wireless carriers are well aware that a very large number of wireless calls (including those to 9-1-1) are made while subscribers are roaming on another network. Indeed, how could the Commission not address roaming in the context of a final rule concerning text-to-9-1-1 bounce-back messages?

Courts have held that a "rule is deemed a logical outgrowth if interested parties 'should have anticipated' that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period." *Ne. Maryland Waste Disposal Auth. v. EPA*, 358 F.3d 936, 952 (D.C. Cir. 2004). In this case, not only should interested parties have anticipated the roaming issue, several addressed it in their comments and reply

comments.⁵ As referenced the Commission's *Order*, APCO also addressed the issue of roaming, stating that "the bounce-back messaging should be transparent to subscribers, regardless whether they are on the home network or roaming."⁶

CTIA even goes so far as to claim that "the FNPRM expressly instructed commenting parties not to address roaming in the bounce-back portion of the bifurcated comment cycle."⁷ However, that is simply not true. Paragraph 20 of the FNPRM splits Section III.A from the rest of the document, creating a separate comment cycle. The paragraph directs potential commenters to focus on issues posed in this particular section, but certainly does not "expressly instruct" commenting parties not to address roaming in the bounce-back portion of the comment cycle, or limit comments (or subsequent reply comments) to "targeted questions" as suggested in the CTIA Petition.⁸ Rather, as discussed above, the "logical outgrowth" of Commission's proposal in Section III.A. was that the issue of roaming would have to be addressed in the Commission's bounce-back rule.

⁵ See Comments of MobileTEC (Jan. 29, 2013); Reply Comments of Texas 9-1-1 Entities (Feb. 8, 2013).

⁶ Reply Comments of APCO (Feb. 8, 2013), at 2. Contrary to CTIA's assertion in its Petition, at page 10, APCO's statement quoted in the Commission's *Order* had nothing to do with the content of the bounce-back message.

⁷ CTIA Petition at 8.

⁸ *Id.* at n. 19.

CONCLUSION

CTIA has not made the necessary showings to challenge the adopted rule, and instead argues for a sub-optimal solution that is contrary to the public interest. Therefore, APCO urges the Commission to reject CTIA's Petition and to proceed with the text-to-9-1-1 "bounce-back" rules as adopted in the *Order*.

Respectfully submitted,

/s/

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