

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)
)
Improving the Resiliency of Mobile Wireless) PS Docket No. 13-239
Communication Networks)
)
Reliability and Continuity of Communications) PS Docket No. 11-60
Networks, Including Broadband Technologies)

To: The Federal Communications Commission, *en banc*

Attn: Public Safety & Homeland Security Bureau

COMMENTS OF THE CRITICAL MESSAGING ASSOCIATION

THE CRITICAL MESSAGING ASSOCIATION (CMA) (formerly the American Association of Paging Carriers), by its attorney, respectfully submits its comments to the Federal Communications Commission (FCC) in response to its Notice of Proposed Rulemaking (NPRM) in the captioned proceedings, FCC 13-125, released September 27, 2013, and published at 78 Fed. Reg. 69018 (November 18, 2013). In summary, CMA respectfully submits that the alleged problems identified in the NPRM are not applicable to the critical messaging industry, and the proposed rules would not in any event accomplish their intended purpose even if applied to the critical messaging industry. Accordingly, CMA submits that no new rules to require disaster reporting should be applied to the critical messaging industry.

In support thereof, CMA respectfully states:

In these proceedings, the Commission has proposed new rules applicable to CMRS providers that are intended to improve wireless network reliability during disasters by requiring CMRS providers to publicly disclose the percentage of cell sites within their networks that are

operational during and immediately after disasters. The NPRM claims that by providing consumers with a yardstick for comparing wireless performance in emergencies, the proposed rules could encourage competition in the wireless industry to improve network performance. The NPRM claims, for example, that during Superstorm Sandy, approximately 25 percent of cell sites in the affected area were disabled, with more than 50 percent disabled in the hardest-hit counties. Observing that not all wireless networks were equally impaired, the NPRM inquires whether holding CMRS providers publicly accountable could spur improvements to network resiliency while allowing CMRS providers flexibility in implementing such improvements.

The NPRM therefore proposes that CMRS providers be required to submit to the Commission, for public disclosure on a daily basis during and immediately after disasters, the percentage of operational cell sites for each county within a designated disaster area. The NPRM attempts to justify its proposal in substantial part by noting the public's increasing reliance on wireless networks to get help during emergencies by calling 911, and by pointing to a growing number of U.S. households that rely solely on wireless phones for their communications service.

The NPRM also attempts to downplay the burden on CMRS providers arising from the proposed rules by asserting that the information necessary to calculate reported percentages is already included in voluntary DIRS reports submitted to the Commission during disasters. Nonetheless, the NPRM does acknowledge in passing that such information now is submitted on a presumptively confidential basis and as part of a larger data set.

CMA is the national trade association representing the interests of the critical messaging industry (historically known as the paging industry) throughout the United States. As wireless services have evolved over approximately the last 15 years, the critical messaging industry has increasingly concentrated on serving the specialized, emergency alerting needs of health care

providers, first and second responders, and other customers employing critical, time-sensitive messages using a point-to-point protocol that cannot be duplicated by broadband wireless networks. CMA members include a representative cross-section of carriers operating messaging networks licensed by the Commission under Parts 22, 24 and 90 of its rules, as well as equipment suppliers and other vendors to the carrier industry.

CMA's carrier members are classified as "Commercial Mobile Radio Service" providers under the Commission's rules,¹ the same official regulatory classification as "wireless telephony" providers, *i.e.*, cellular, broadband personal communications services (PCS) and specialized mobile radio (SMR) telephony carriers. Accordingly, unless appropriately limited, rules adopted in this proceeding for CMRS providers would also apply to CMA's carrier members as well as to carriers providing wireless telephony.

As in the case of the "bill shock"² and "cramming"³ rules previously proposed by the Commission, CMA points out that whatever the Commission decides to do about imposing cell site reporting during disasters on the mobile telephony segment of wireless service providers, such decision does not in any event justify imposing such rules on critical messaging service providers. First, as the Commission is well aware, during the past 15 years the consumer market has abandoned the historical paging industry in favor of mobile telephony. As a result, customers of the critical messaging industry today are large, sophisticated commercial entities that negotiate complex service contracts with network operators, which commonly include detailed performance standards. Such customers do not need or benefit from "consumer" protection.

¹ See 47 C.F.R. §20.9(1), (6), (11).

² *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure (Notice of Proposed Rulemaking)*, FCC 10-180, released October 14, 2010, 75 Fed. Reg. 72773 (November 26, 2010).

³ *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming") (Notice of Proposed Rulemaking)*, FCC 11-106, released July 12, 2011, 76 Fed. Reg. 52625 (August 23, 2011).

Stated differently, the critical messaging industry does not serve the consumer market, and consumers thus would not benefit from being able to compare the percentage of operable critical messaging base stations with other wireless service providers. This is true both because critical messaging networks do not originate 911 calls (such calls from wireless networks constituting a substantial part of the NPRM's justification for the new rules), and because consumers generally do not utilize critical messaging networks during disasters. The principal rationale for the proposed regulations as set forth in the NPRM thus is wholly inapplicable to the critical messaging industry.

At least equally importantly, the proposed reporting regimen also would be inaccurate and misleading if applied to critical messaging networks. As the Commission knows, critical messaging network operators "simulcast" their transmissions, i.e., they transmit identical messages from multiple base stations at the same time. That enables redundant coverage by multiple base stations within any given service area.

Accordingly, the mere fact that one or more base stations of a critical messaging network operator may be temporarily out of service in a given county during a disaster does not in fact mean that critical messaging service is unavailable or unreliable in that county during the disaster. To the contrary, one of the inherent reliability features of critical messaging is that simulcasting assures that service can be reliably maintained in the network operator's service area even when some of the base stations in that area temporarily go out of service. To the extent the NPRM's theory is that percentages of base stations out of service correlates to lack of service or to unreliable service in an area, the logic is misplaced and unfounded in the case of critical messaging networks.

Finally, CMA points out that the NPRM's estimate of burden and additional carriers affected by the proposed rules obviously did not consider the impact on critical messaging carriers. The entire discussion of this issue by the NPRM obviously is directed exclusively at the mobile telephony industry, and the NPRM offers no rational basis for extrapolating the discussion of that industry to the critical messaging industry.

In summary, the rules proposed in the NPRM are directed to a market the critical messaging industry does not service, and would result in misleading and otherwise inaccurate information being disseminated to the public during disasters. Accordingly, in the event the Commission decides to adopt additional reporting requirements for CMRS providers during an emergency, the Commission should employ the term "covered CMRS" to describe which, if any, CMRS providers are subject to the new reporting regulations. The term is defined at Section 52.21(d) of the rules, 47 C.F.R. §52.21(d), and it operates to exclude critical messaging service providers from local number portability requirements. *See* 47 C.F.R. §52.31 (applying long-term database method for number portability to "covered CMRS providers"). It would equally exclude critical messaging service providers from any disaster reporting requirements adopted in this proceeding.

Respectfully submitted,

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