

May 8, 2014

Via electronic mail

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Discussion on Senator Leahy Patent Bill, touching upon items discussed in GN Docket No. 11-117, WC Docket No. 05-196, PS Docket No. 11-153, and PS Docket No. 10-255

Dear Ms. Dortch:

On May 6, 2014, Tim Lorello, Senior Vice President Telecommunication Systems, Inc. ("TCS"), Shannon Scott, Partner at O'Brien, Gentry & Scott and Bruce Lehman, Former USPTO Director met in person with the RADM (ret.) David Simpson, Chief of the Public Safety and Homeland Security Bureau and Eric Schmidt, Advising Attorney of the Public Safety and Homeland Security Bureau of the Federal Communications Commission.

TCS' representatives discussed S.1720, the Patent Transparency and Improvements Act of 2013, sponsored by Senator Leahy in the Senate Judiciary Committee. In particular, TCS has been promoting the inclusion of an Amendment which would address patent infringement cases levied against wireless and Voice-over-IP carriers because of technologies which these entities use to provide 9-1-1 services which they are mandated to provide pursuant to FCC regulation. This topic is also addressed in a TCS petition to the FCC as recorded in the aforementioned dockets.

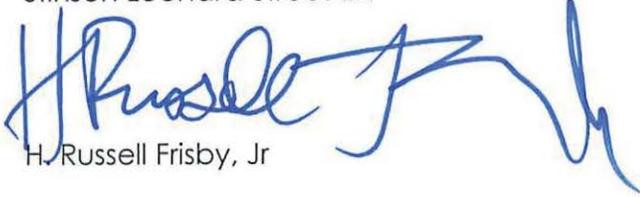
TCS representatives shared a list of pending patent litigation against wireless carriers, a breakdown of the language used in the patent amendment, and three letters from industry organizations and wireless carriers showing support for the proposed amendment. TCS solicited FCC questions concerning these materials.

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this letter and a copy of materials presented during this meeting are being electronically filed via ECFs with your office and a copy of this submission is being provided to the meeting attendees. Please direct any questions to the undersigned.

Marlene H. Dortch
May 8, 2014
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Sincerely,

Stinson Leonard Street LLP



H. Russell Frisby, Jr

HF:SLS

Enclosure

cc: David Simpson
Eric Schmidt

Draft Amendment (S. 1478)

Section 1498 of title 28, United States Code, is amended by adding at the end the following:

“(f) **Jurisdiction for Claims Regarding 9-1-1, Enhanced 9-1-1, or Other Emergency Communication Service.**—Beginning after the date of enactment of this subsection, any action under section 271 of title 35 against a wireless carrier subject to section 20.18 of title 47, Code of Federal Regulations, or any successor thereto, or an IP-enable voice service provider subject to section 6(a) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(a)), regarding the provision of 9-1-1, enhanced 9-1-1, or other emergency communications service (as defined in section 7 of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615b)), shall be filed in accordance with this section.”.

U.S. Code Definitions:

Wireless 9-1-1 service, 47 USC 615b:

The term “wireless 9–1–1 service” means any 9–1–1 service provided by a wireless carrier, including enhanced wireless 9–1–1 service.

IP-enable(d) (sic) voice service, 47 USC 615a:

The term “IP-enabled voice service” has the meaning given the term “interconnected VoIP service” by section 9.3 of the Federal Communications Commission’s regulations (47 CFR 9.3).

Duties of an IP-enabled voice service provider, 47 USC 615a:

It shall be the duty of each IP-enabled voice service provider to provide 9–1–1 service and enhanced 9–1–1 service to its subscribers in accordance with the requirements of the Federal Communications Commission, as in effect on the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008 and as such requirements may be modified by the Commission from time to time.

Enhanced 9-1-1 service, 47 USC 615b:

The term “enhanced 9–1–1 service” means the delivery of 9–1–1 calls with automatic number identification and automatic location identification, or successor or equivalent information features over the wireline E911 network (as defined in section 9.3 of the Federal Communications Commission’s regulations (47 C.F.R. 9.3) as of July 23, 2008) and equivalent or successor networks and technologies. The term also includes any enhanced 9–1–1 service so designated by the Commission in its Report and Order in WC Docket Nos. 04–36 and 05–196, or any successor proceeding.

Enhanced wireless 9-1-1 service, 47 USC 615b:

The term “enhanced wireless 9–1–1 service” means any enhanced 9–1–1 service so designated by the Federal Communications Commission in the proceeding entitled “Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 9–1–1 Emergency Calling Systems” (CC Docket No. 94–102; RM–8143), or any successor proceeding.

Other emergency communications service, 47 USC 615b:

The term “other emergency communications service” means the provision of emergency information to a public safety answering point via wire or radio communications, and may include 9–1–1 and enhanced 9–1–1 service.



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February 28, 2014

The Honorable Amy Klobuchar
Co-Chair Senate NextGen 9-1-1 Caucus
United States Senate
302 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Klobuchar:

On behalf of the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), I write to you today with concern regarding the growing trend of Patent Assertion Entities (PAEs) that are targeting wireless enhanced 9-1-1 (E9-1-1) services provided in accordance with Federal Communications Commission (FCC) requirements.

APCO International is the world's oldest and largest organization of public safety communications professionals, at over 20,000 members. Our members are mainly state and local government employees who manage and operate communications systems for law enforcement, fire, EMS and other public safety agencies. Effectively, our members are the individuals that are responsible for fielding emergency 9-1-1 calls and dispatching critical information to first responders across the country.

For many years, APCO has served a leading role in advancing policies to improve public safety communications, including wireless 9-1-1 services and related location accuracy issues. On January 16, 2014, I testified before the U.S. Senate Committee on Commerce, Science and Transportation, Subcommittee on Communications, Technology, and the Internet during a hearing addressing "Locating 911 Callers in a Wireless World." In this hearing, I urged the FCC, wireless carriers, and location technology vendors to improve wireless location accuracy for 9-1-1 calls, including calls from indoor locations.

It is in this regard that APCO has grown increasingly concerned not only about the harmful impact PAEs are having on the provision of current E9-1-1 services, but also about the threat PAEs pose to the implementation of new, advanced wireless 9-1-1 location-based technologies and capabilities. Unfortunately, the mandated nature of 9-1-1 services

continue to attract PAEs seeking to exploit the FCC's standard by asserting a wireless carrier's mere provision of E9-1-1 technologies, systems, or methodologies to comply with the FCC mandate as proof of infringement.

With over 300 million active wireless users in the U.S. and a large majority of 9-1-1 calls now originating from mobile devices, there is growing need to ensure the provision of wireless 9-1-1 solutions are protected from abusive patent assertion practices. As Co-Chair of the Senate NextGen 9-1-1 Caucus and as a member of both the Senate Committee on Judiciary and the Senate Committee on Commerce, Science & Technology, we are grateful to have you as an advocate and voice for the public safety community. We know you have a keen appreciation for the incredible harm to our citizens and our economy that would result from a significant disruption to or the loss of wireless E9-1-1 services.

As you work with the Senate Judiciary Committee to address abusive PAE practices, we hope that you will consider championing a provision that can ensure specific protections are put in place to safeguard the provision of E9-1-1 services critical to U.S. citizens and the public safety officials that serve us all.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gigi Smith", with a stylized flourish extending to the right.

Gigi Smith, President

Date Filed	Case #	Plaintiff(s)	Defendant(s)	Court	Infringing Action	Patents
3/30/2001	5:01cv20291	Zoltar Satellite	Snaptrack Inc. et al.	Disctriect CT Northern District of California	E911 services	U.S. Patent Nos. 5,650,770; 5,963,130; 6,198,390
01/06/2006	5:06-cv-00044	Zoltar Satellite Alarm Systems Inc.	Motorola Inc. LG Electronics Mobile Communications Company LG Electronics Inc Audiovox Communications Corporation UTSTARCOM, INC Utstarcom Personal Communications Sanyo North America Corporation Sanyo Electric Co., Ltd. Palm, Inc. Wherify Wireless, Inc. Sprint Corporation Nokia Inc., Samsung Electronics America, Inc., Samsung Electronics Co., Ltd Samsung Telecommunicatons America LLC	District CT Northern District of California (Transferred from ED Tex)	E911 services	U.S. Patent Nos. 5,650,770; 5,963,130; 6,198,390

Date Filed	Case #	Plaintiff(s)	Defendant(s)	Court	Infringing Action	Patents
2/6/07	5:07-CV-00023	800 Adept	AT&T Mobility Verizon Sprint Nextel T-Mobile	District CT Eastern District of Texas	E911 Services E911 Services	U.S. Patent Nos: 111 Patent – Issued 2/23/99 – Assignee, 689 Patent - Issued 9/8/98 Filed 9/5/96 - Assignee
3/31/08	4-08CV-822	Emsat	AT&T Mobility/Cingular	District CT Northern District of Ohio	E911 Services E911 Services E911 Services E911 Services	U.S. Patent Nos: 763 Patent – Issued 10/30/07 Filed 11/22/04 – Assignee, 611 Patent – Issued 8/31/99 Filed 1/21/96 – Assignee, 822 Patent – Issued 1/25/05 Filed 9/15/2000 – Assignee, 404 Patent – Issued 11/27/01 Filed 3/21/96 - Assignee
3/31/08	4:08-cv-821	Emsat	Alltel	District CT Northern District of Ohio		U.S. Patent Nos: 611, 404, 822, 763
3/31/08	4:08-cv-816	Emsat	Verizon	District CT Northern District of Ohio		U.S. Patent Nos: 611, 404, 822, 763
3/31/08	4:08-cv-818	Emsat	Sprint Nextel Boost Mobile Nextel	District CT Northern District of Ohio		U.S. Patent Nos: 611, 404, 822, 763 Jeffrey L. Waters from Jones Day (Atlanta Office) who is one of the listed counsel for Sprint in the ND Ohio case 4:08-cv-818.

Date Filed	Case #	Plaintiff(s)	Defendant(s)	Court	Infringing Action	Patents
3/31/08	4:08-cv817	Emsat	T-Mobile	District CT Northern District of Ohio		U.S. Patent Nos: 611, 404, 822, 763
10/7/08	2:08CV381	Emsat	MetroPCS Centennial Leap Cricket	District CT Eastern District of Texas	E911 Services E911 Services E911 Services E911 Services	U.S. Patent Nos: 763 Patent – Issued 10/30/07 Filed 11/22/04 – Assignee, 611 Patent – Issued 8/31/99 Filed 1/21/96 – Assignee, 822 Patent – Issued 1/25/05 Filed 9/15/2000 - Assignee, 965 Patent – Published 1/17/08
1/26/09	3:09-cv-00007	Emsat	US Cellular	District CT Northern District of West Virginia	E911 Services E911 Services E911 Services E911 Services	U.S. Patent Nos: 763 Patent – Issued 10/30/07 Filed 11/22/04 – Assignee, 404 Patent – Issued 11/27/01 Filed 3/21/96 – Assignee, 822 Patent – Issued 1/25/05 Filed 9/15/2000 – Assignee, 965 Patent – Published 1/17/08
3/12/09	6:09cv115	Tendler Cellular of TX	AT&T Mobility Verizon Wireless Sprint Nextel US Cellular T-Mobile	District CT Eastern District of Texas	E911 Services	U.S. Patent No: 508 Patent – Issued 11/4/08 Filed 7/11/07 -Assignee
4/1/09	2:09-cv- 00091	EMSAT	Virgin Mobile and Ace Cash Express, Inc., Ztar	District CT Eastern	E911 Services	

Date Filed	Case #	Plaintiff(s)	Defendant(s)	Court	Infringing Action	Patents
			Mobile, Inc., 7-Eleven, Inc., MGA Entertainment, Inc., Circle K Stores, Inc., GreatCall, Inc., kajeet, Inc., Tracfone Wireless, Inc.	District of Texas		

Date Filed	Case #	Plaintiff(s)	Defendant(s)	Court	Infringing Action	Patents
02/25/2011	6:11-cv-00096-LED	TracBeam, L.L.C.	AT&T Inc. AT&T Mobility L.L.C. MetroPCS Communications, Inc. MetroPCS Wireless, Inc. Texas RSA 7B3, L.P. D/B/A/ Peoples Wireless Services Sprint Nextel Corporation Sprint Spectrum L.P. Nextel of California, Inc. Nextel Communications of the Mid-Atlantic, Inc. Nextel of New York, Inc. Nextel South Corp. Nextel of Texas, Inc. Nextel West Corp. Cellco Partnership d/b/a Verizon Wireless Google, Inc. Skyhook Wireless, Inc. Telecommunication Systems, Inc.	U.S. District Court Eastern District of TEXAS		U.S. Patent Nos. 7,764,231; 7,525,484

Date Filed	Case #	Plaintiff(s)	Defendant(s)	Court	Infringing Action	Patents
07/07/2011	1:11-cv-00598	Mosaid Technologies Inc.	Sony Ericsson Mobile Communications (USA) Inc. HTC America Inc.	U.S. District Court District of Delaware	E911 services	U.S. Patent Nos. 5,650,770; 5,963,130; 6,198,390

NEWS RELEASE

FOR IMMEDIATE RELEASE

Media Contact:

The Industry Council for Emergency Response Technologies

George Rice

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Industry Council Issues Position Statement on Exploitative Patent Litigation in Emergency Communications

WASHINGTON, D.C. – August 13, 2013 – In response to the many Congressional proposals in this arena, the Industry Council for Emergency Response Technologies (iCERT) today announced the association's recently developed policy position on exploitative patent litigation in the field of emergency communications.

911 and NextGen911 products and services supplied by iCERT members to commercial wireline and wireless carriers, and government are fundamental to their missions of public safety, law enforcement, and homeland security. In fact, some iCERT members are required by law to provide these critical products and services. The providers of these life-saving tools are under increasing attack via patent litigation brought by patent assertion and non-practicing entities. These exploitative lawsuits are often frivolous - seeking a quick settlement - and in all instances they significantly endanger the public's safety and security.

"Our nation's citizens, residents, and visitors place over 300 million calls to 911 each year, and through the innovative efforts of iCERT's members will soon be able to send real-time text, video, and data to public safety as well," said iCERT Executive Director George Rice. "These advanced life-saving and homeland security services should not be held hostage by organizations seeking merely to leverage questionable patents for the sake of settlement proceeds from a lawsuit."

Patent litigation is a uniquely protracted and expensive process. For an extended period of time, the process diverts the resources of public safety industry experts toward numerous unproductive activities such as voluminous discovery requests, and preparing for and attending multiple depositions. Such litigation causes precious economic resources to be diverted away from, and risks delaying, the introduction of cutting edge and badly needed NextGen911 technologies. Since 911 is paid for out of public funds, litigation works to the detriment of taxpayers as well. Thus, it not only burdens efforts to bring new technologies to market, it can also foster legal ambiguity that leaves the emergency response system in an unclear state regarding patent liability and obligations.

While iCERT strongly defends the rights of its members to monetize and, if necessary, exercise their patent rights through vendor-to-vendor litigation, iCERT supports federal agency and legislative efforts to reform the patent litigation environment by:

- 1) reducing or eliminating litigation brought by non-practicing entities in the public safety arena;
- 2) preventing patent assertion entities from using undue leverage to force technology users into business-disruptive and resource intensive-litigation, and;
- 3) increasing innovation and employment opportunities through the production and promotion of high quality patents.

iCERT's policy position statements on this and other matters can be found at:

<http://www.theindustrycouncil.org/policystatements/index.cfm>.

About the Industry Council for Emergency Response Technologies (iCERT)

The Industry Council for Emergency Response Technologies (iCERT) represents the voice of the commercial sector in the emergency communications field. Established by a group of prominent leaders in December 2005 originally as the 9-1-1 Industry Alliance, iCERT - the Industry Council - plays an important role as the voice of companies on public policy issues impacting 9-1-1 and the emergency response system. Industry Council members believe that business leaders' expertise can assist public policymakers and government emergency communications professionals as they address complex choices regarding advanced communications technology alternatives in the years ahead. Through advocacy, research and in coordination with the public sector, the Industry Council plays a vital role in the development and deployment of emergency response technologies.

Find out more at www.TheIndustryCouncil.org.

Protecting Wireless / VoIP 9-1-1 Public Safety Services
from Abusive Patent Litigation Practices

Request:

Offer an Amendment to S. 1720 to address the growing trend of harmful patent litigation practices by Patent Assertion Entities (PAE's) targeting wireless and IP voice companies providing 9-1-1 emergency services to homeland security, public safety, and law enforcement personnel.

SUPPORTED BY:

**AT&T, Cricket, CTIA– The Wireless Association®,
INdigital, Industry Council for Emergency Response Technologies (iCERT),
NTCA-The Rural Broadband Association®, Sprint, TeleCommunication Systems Inc., T-Mobile**

Background:

- Under FCC regulations wireless carriers (via 47 C.F.R. 20.18) and IP-enabled voice service providers (via 47 U.S.C. 615a-1) are mandated to provide emergency 9-1-1 as a condition to their spectrum licensing.
- The FCC's 9-1-1 mandate directly benefits U.S. government's public safety services, and all U.S. citizens by ensuring first responders, homeland security, and other public safety officials have the ability to accurately locate wireless 9-1-1 callers.
 - There are over 302 million active wireless users in the U.S., with an estimated 51 million Americans living in households relying solely on wireless devices (21 million are children).
 - A majority of 9-1-1 calls now originate from mobile devices.
- The mandatory nature of this service has attracted abusive litigation practices by PAE's seeking to exploit the FCC's standard by asserting a wireless carrier's mere provision of E911 technologies, systems, or methodologies to comply with FCC mandate is proof of infringement.
- Wireless carriers have the right to dispute these claims, but litigation costs to defend themselves far outweigh settlement costs which often fall on smaller vendors and result in a greenmail environment threatening current access to 9-1-1 and planned implementation of NextGen 9-1-1.
- Existing federal statute was designed to protect those required by the Government to provide a service by or for the United States.
 - 28 U.S.C. §1498 provides that when patents (and copyrights) are used "... by or for the United States... the owners remedy shall be by action against the United States ...for the recovery of his reasonable and entire compensation..."
- We are seeking to clarify that patented technologies that are required in order to provide mandated 9-1-1 services as defined in 47 U.S.C. 615b are provided "by or for the United States" for the purposes of 28 U.S.C. §1498.

Intent of Amendment:

- This clarification will improve the government's access to location-based emergency 9-1-1 services for the benefit of U.S. citizens, public safety, and homeland security by protecting providers from frivolous claims and burdensome litigation, while justly compensating deserving patent holders.

- This amendment does NOT change any patent statute — it only clarifies existing law.
- This amendment does NOT modify or invalidate any patent, and preserves all patent claims
- This amendment does NOT prevent other types of patent litigation — for example, direct public safety vendor-to-vendor cases, litigation that does not involve 9-1-1 services, and litigation against entities other than wireless or IP voice carriers.
- Its only purpose is to specify when a particular type of infringement case should be brought to the U.S. Court of Claims instead of the U.S. District Court, and then only in very limited situations pertaining specifically to the provision of mandated wireless 9-1-1 services.
- **Court of Claims costs are PAYGO exempt.**

Legislative Request: Amendment to S. 1720

Amend Section 1498 of title 28, United States Code, by adding at the end the following:

“(f) Jurisdiction for Claims Regarding 9-1-1, Enhanced 9-1-1, or Other Emergency Communication Service.—Beginning after the date of enactment of this subsection, any action under section 271 of title 35 against a wireless carrier subject to section 20.18 of title 47, Code of Federal Regulations, or any successor thereto, or an IP-enabled voice service provider subject to section 6(a) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(a)), regarding the provision of 9-1-1, enhanced 9-1-1, or other emergency communications service (as defined in section 7 of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615b)), shall be filed in accordance with this section.”.