



PUBLIC NOTICE

Federal Communications Commission
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DA 13-430

Released: March 14, 2013

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS TO REFRESH THE
RECORD REGARDING OPTIONS FOR ADDRESSING NON-EMERGENCY CALLS TO 911
FROM NON-SERVICE INITIALIZED HANDSETS**

PS Docket No. 08-51

Comment Date: [45 Days after Publication in the Federal Register]

Reply Comment Date: [60 Days after Publication in the Federal Register]

The Commission's rules require commercial mobile radio service (CMRS) providers subject to the Commission's 911 rules to forward all wireless 911 calls, including those originated from "non-service-initialized" (NSI) handsets, to Public Safety Answering Points (PSAPs).¹ In 2008, nine public safety organizations and a software development firm (Petitioners) filed a petition for notice of inquiry to address the problem of fraudulent non-emergency 911 calls² placed to PSAPs from NSI handsets.³ The Commission granted this petition and issued a *Notice of Inquiry* in April 2008 to enhance its understanding of the extent of the problem and to explore potential solutions.⁴ Specifically, the Commission requested comment in three areas: (1) the nature and extent of fraudulent 911 calls made from NSI devices; (2) concerns with blocking NSI devices used to make fraudulent 911 calls, and suggestions for making this a more viable option for carriers; and (3) other possible solutions to the problem of fraudulent 911 calls from NSI devices.⁵

¹ See 47 C.F.R. § 20.18(b) (identifying the CMRS providers that are subject to the relevant 911 rules). A NSI handset is a mobile handset for which there is no valid service contract with a CMRS provider. See *id.*, § 20.18(l)(3)(i).

² Fraudulent non-emergency 911 calls may include hang ups, false reports of emergencies, and harassing calls to 911 operators.

³ See Petition for Notice of Inquiry Regarding 911 Call-Forwarding Requirements and Carriers' Blocking Options for Non-Initialized Phones, CC Docket No. 94-102 (filed Feb. 14, 2008) (Petition). The Petitioners are the Tennessee Emergency Communications Board, the National Association of State 9-1-1 Administrators (NASNA), the Michigan State 9-1-1 Office, the New Jersey State 9-1-1 Commission, the Snohomish County Enhanced 9-1-1 Office, the National Emergency Number Association (NENA), the Association of Public-Safety Communications Officials International (APCO), the State of Montana 911 Program, the Washington State E911 Program, and Openwave Systems, Inc. (collectively, Petitioners).

⁴ Petition for Notice of Inquiry Regarding 911 Call-Forwarding Requirements and Carriers' Blocking Options for Non-Initialized Phones, PS Docket No.08-51, *Notice of Inquiry*, 23 FCC Rcd 6097 (2008) (*Notice of Inquiry*).

⁵ *Id.* at 6101 ¶ 10.

In light of the concerns raised by Petitioners regarding fraudulent non-emergency 911 calls, one of the options on which the *Notice of Inquiry* sought comment was whether the Commission should eliminate the 911 call-forwarding requirement for NSI devices.⁶ In response, a number of public safety commenters advocated for the Commission to eliminate the requirement.⁷ However, other commenters, including Petitioners, other public safety entities, and commercial carriers, took the opposite view, arguing that the public had come to rely on the fact that NSI devices are 911-capable and that eliminating the call-forwarding requirement could lead to tragic results given this public reliance.⁸

In a recently filed *ex parte*, however, NENA: The 9-1-1 Association (NENA), one of the original Petitioners, has revised its earlier-stated position on this issue. NENA states that based on its “members’ experience since 2008 ... we now *can* support the reversal of the ‘all calls’ rule.”⁹ According to NENA, “PSAPs face an ever-growing onslaught of non-emergency calls to 9-1-1 from NSI devices.”¹⁰ Moreover, in recently filed comments in another docket, NENA states that there is now a “consensus view that the promotion of NSI devices does more harm than good.”¹¹ NENA further asserts that “most charities and domestic violence advocates [have] abandoned the practice of distributing NSI devices.”¹² NENA states that “NSI phone donation programs have since been supplanted by outright donations of devices *and* service by CMRS providers, and by state and federal programs (such as the Universal Service Fund-supported Lifeline program) that provide free or reduced-cost mobile service to low-income or at-risk

⁶ *Id.* at 6104-05 ¶¶ 19-20.

⁷ See Comments of Clinton County Emergency Telephone Systems Board, PS Docket No. 08-51 (filed June 29, 2008), at 3; Comments of Connecticut Enhanced 9-1-1 Commission, PS Docket No. 08-51 (filed June 27, 2008), at 2; Comments of King County E911 Program, PS Docket No. 08-51 (filed June 30, 2008), at 1; Comments of Livingston County Sheriff, PS Docket No. 08-51 (filed April 29, 2008), at 3; Comments of Michael Mahn, PS Docket No. 08-51 (filed May 16, 2008), at 1; Comments of Washington State E911 Administrator (Washington State), PS Docket No. 08-51 (filed June 30, 2008), at 1; Washington State Reply Comments, PS Docket No. 08-51 (filed July 29, 2008) at 3.

⁸ Comments of American Roaming Network (ARN), PS Docket No. 08-51 (filed June 30, 2008), at 6-7; Comments of AT&T, PS Docket No. 08-51 (filed June 30, 2008), at 4; Comments of California 9-1-1 Emergency Communications Office, PS Docket No. 08-51 (filed June 27, 2008), at 2; Comments of CTIA, PS Docket No. 08-51 (filed June 30, 2008), at 1, 4, 7; CTIA Reply Comments, PS Docket No. 08-51 (filed July 29, 2008), at 1; Comments of Hamilton County, Department of Communications, PS Docket No. 08-51 (filed June 27, 2008), at 2; Comments of the National Association of Telecommunications Officers and Advisors, PS Docket No. 08-51 (filed June 2, 2008), at 2; Comments of T-Mobile USA, Inc., PS Docket No. 08-51 (filed June 30, 2008), at 6-7; Comments of Stephen Weinstein, PS Docket No. 08-51 (filed April 14, 2008), at 1; ARN Reply Comments, PS Docket No. 08-51 (filed July 28, 2008), at 2; Petitioners Reply Comments, PS Docket No. 08-51 (filed July 29, 2008), at 3; Reply Comments of Verizon Wireless, PS Docket No. 08-51 (filed July 29, 2008), at 2.

⁹ See Letter, Telford Forgety, III, NENA Director of Governmental Affairs & Regulatory Counsel, to Marlene Dortch, Secretary, Federal Communications Commission, PS Docket No. 08-51 (Feb. 11, 2013) (*NENA Ex Parte*) (emphasis in original). See also Comments of National Emergency Number Association in PS Docket Nos. 10-255, 11-153, 12-333 (filed Dec. 13, 2012) at 20 (“The Commission should eliminate the rules requiring Non-Service Initialized phones to be capable of completing a call to 9-1-1.”). NENA notes that it cannot speak for its co-Petitioners. *NENA Ex Parte* at 1.

¹⁰ *NENA Ex Parte* at 1.

¹¹ See Comments of the National Emergency Number Association in PS Docket Nos. 10-255, 11-153, 12-333 (filed Dec. 13, 2012) at 21.

¹² *Id.*

individuals.”¹³ However, NENA does not support “overnight” elimination of the 911 call-forwarding requirement, proposing instead that the Commission should phase out the requirement “for devices and networks that no longer support legacy circuit-switched calling.”¹⁴ NENA claims that this would “minimize stranded investments by carriers and consumers as carriers transition to fully IP-based architectures such as LTE and consumers transition to IP-only devices that no longer support circuit-switched voice services.”¹⁵

In light of NENA’s revised view on the 911 call-forwarding requirement, as well as the passage of time since the filing of comments in response to the *Notice of Inquiry*, we seek to refresh the record in this proceeding. In particular, we seek comment on whether other interested parties agree or disagree with NENA’s view that the Commission should consider phasing out the call-forwarding requirement as it applies to NSI devices. More generally, we seek comment on relevant changes in industry, technology, regulation, public practice, or otherwise that may have occurred since the earlier filing of comments. We also ask commenters to point out any earlier-submitted facts or analyses in the record that they now regard as outdated, and to provide any new information that they consider relevant.

This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Parties may file comments on the Petition on or before the dates indicated on the first page of this document. Please place the docket number **PS DOCKET NO. 08-51** on all filings. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).¹⁷

¹³ *NENA Ex Parte* at 2 (emphasis in original).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 47 C.F.R. §§ 1.1200 *et seq.*

¹⁷ See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (tty).

Copies of the Petition and any subsequently filed documents in this matter are also available for inspection in the Commission's Reference Information Center:

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For further information, contact: Eric Ehrenreich, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-1726 or Eric.Ehrenreich@fcc.gov.

Action by the Chief, Public Safety and Homeland Security Bureau.

– FCC –

NENA

The 9-1-1 Association

1700 Diagonal Road | Suite 500 | Alexandria, VA 22314

Ms. Marlene H. Dortch, *Secretary*
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

February 11th, 2013

In re Petition for a Notice of Inquiry Regarding Call Forwarding Requirements and Carrier Blocking Options for Non-Initialized Phones, PS Docket No. 08-51.

Dear Mr. Furth:

On behalf of the NENA: The 9-1-1 Association, I submit the following clarification in response to questions from the Public Safety and Homeland Security Bureau concerning an apparent change in position by NENA with respect to the desirability of eliminating the Commission's current rules requiring CMRS providers to deliver 9-1-1 calls from Non-Service Initialized (NSI) phones to PSAPs.

In 2008, NENA, along with several other public safety entities,¹ submitted comments and reply comments in the above-captioned proceeding in which we stated that "...the experience of the past decade demonstrate[s] that legitimate calls from NSI phones to 9-1-1 can be made....," and that "[w]hile we are sympathetic to those comments that call for an outright reversal of the "forward all calls" rule, we cannot support such a request at this time...."² Although NENA cannot speak for our co-petitioners, our members' experience since 2008 has convinced NENA that we now *can* support the reversal of the "all calls" rule.

As we recently commented in the NG9-1-1 Legal Framework proceeding,

In addition to proving ineffective as tools for enhancing the safety and security of vulnerable populations, NSI devices have proven themselves enormously detrimental to PSAP operations. Today, PSAPs face an ever-growing onslaught of non-emergency calls to 9-1-1 from NSI devices. Some of these calls are accidental, such as those triggered by children given an obsolete telephone as a toy. Others are deliberate, but not intended to cause harm, such as those initiated by lonely individuals simply seeking a friendly ear. Still others, however, are malicious, often initiated by serial callers who exploit the lack of location capability in NSI devices to evade capture as they initiate

¹ The other petitioners in this matter, who jointly submitted the 2008 comments, were the Tennessee Emergency Communications Board, the National Association of State 9-1-1 Administrators, the Michigan State 9-1-1 Office, the New Jersey State 9-1-1 Commission, the Snohomish County Enhanced 9-1-1 Office, the Association of Public Safety Communications Officials International, the State of Montana 9-1-1 Program, the Washington state E9-1-1 Program, and Openwave Systems, Inc.

² Petitioners, *Reply Comments* at 3.

NENA

The 9-1-1 Association

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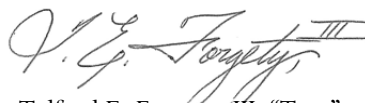
hundreds or even thousands of calls simply to harass telecommunicators or waste government resources.

Whatever the source, however, every type of nonemergency NSI call results in significant burdens to telecommunicators and 9-1-1 authorities. Telecommunicators are required to deal with each of these non-emergency calls, taking them away from legitimate emergencies. Likewise, expensive 9-1-1 trunk time or link bandwidth are made unavailable to serve callers with a legitimate need. This increases the cost of providing 9-1-1 service and reduces its effectiveness.

Additionally, I note that NSI phone donation programs have since been supplanted by outright donations of devices *and* service by CMRS providers, and by state and federal programs (such as the Universal Service Fund-supported LifeLine program) that provide free or reduced-cost mobile service to low-income or at-risk individuals. Consequently, NENA has changed positions in light of these new experiences, and now supports the rescission of the “all calls” rule.

For clarity, I wish to emphasize that NENA believes moving to a post-NSI regime cannot be an overnight proposition. Instead, we propose that the Commission phase out the “all calls” rule for devices and networks that no longer support legacy circuit-switched voice calling. NENA believes that this rule will minimize stranded investments by carriers and consumers as carriers transition to fully IP-based architectures such as LTE and as consumers transition to IP-only devices that no longer support circuit-switched voice services. In addition, this rule will provide an incentive for carriers and handset manufacturers to speed the transition to advanced networks and devices. Finally, this change will ultimately provide PSAPs with relief from the barrage of false or harassing calls from NSI devices while affording consumers who currently rely on NSI devices

Sincerely,



Telford E. Forgety, III; “Trey”
*Director of Government Affairs
& Regulatory Counsel*

CC: David Furth, PSHSB



NEWS

Federal Communications Commission
445 12th Street, S.W.
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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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FOR IMMEDIATE RELEASE
April 29, 2002

NEWS MEDIA CONTACT:
Meribeth McCarrick at (202) 418-0654

FCC TAKES STEPS TO IMPROVE THE ABILITY OF PUBLIC SAFETY AGENCIES TO ASSIST WIRELESS CALLERS USING NON-SERVICE-INITIALIZED PHONES

Washington, D.C. – The Federal Communications Commission (FCC) has adopted a *Report and Order* that takes further steps to improve the ability of public safety answering points (PSAPs) to respond quickly and efficiently to calls for emergency assistance made from a wireless mobile telephone. Specifically, the Commission addressed issues associated with the inability of a PSAP to call back a 911 caller who is disconnected when that caller is using a non-service-initialized (or non-initialized) wireless telephone.

Non-initialized wireless telephones are phones that are not registered for service with any Commercial Mobile Radio Service (CMRS) carrier. Because carriers generally assign a dialable number to a handset only when a customer enters into a service contract, a non-initialized phone lacks a dialable telephone number. Examples of these types of phones include “911-only” phones as well as unsubscribed cellular phones distributed by donation programs to at-need individuals, such as victims of domestic violence.

Specifics of Today’s Action:

The Commission took the following actions in the adopted *Report and Order*:

- determined that at this time it is still technically infeasible to require carriers, and manufacturers of 911-only phones, to develop and implement technical solutions that would provide PSAPs with a call-back number for calls from non-initialized phones;
- required that non-initialized handsets donated through carrier-sponsored programs and newly manufactured “911-only” phones be programmed with the code 123-456-7890 as the “telephone number,” to alert a PSAP that the 911 call is being made from a wireless phone that lacks call-back capability;
- required that non-initialized phones be labeled to alert the user to the lack of call-back capability. Carriers and manufacturers must design a prominently displayed and clearly worded label and affix it to each donated or manufactured non-initialized handset. The label should be designed and affixed to withstand the length of service expected for a non-initialized phone. The label should effectively alert the caller that the phone can only be used to dial 911, that the 911 operator will not be able to call the user back, and that the user should convey the exact location of the emergency as soon as possible;
- required that public education programs be instituted by carriers and manufacturers to more fully inform users of the limitations of non-initialized phones. Part of their programs must include a notice, in addition to the label affixed to the phone, which is provided at the time the phone is transferred to the user. The notice should give a more detailed explanation than the label affixed to the phone of the limitations of non-initialized handsets, including distinctions between service-initialized phones and non-initialized phones. Education programs may also

include training for carrier employees to also orally advise users of donated non-initialized phones of their limitations. Manufacturers of 911-only phones may set up consumer information “hotlines,” where trained employees can respond to any consumer questions. Information regarding non-initialized phones can also be posted on corporate websites.

The Commission noted that these important steps will alert the parties involved in a wireless 911 call of the need for quick information as to the caller’s exact location. This will help increase the likelihood that emergency services can be dispatched quickly to save lives.

Background on the Issue:

The FCC’s *E911 First Memorandum Opinion and Order* issued in 1997 required CMRS carriers to forward all 911 calls to PSAPs regardless of their service-subscription status. At that time, the Commission acknowledged that call-back capability may not be available for handsets not presently serviced by a wireless carrier, such as those that have never been service-initialized, or those for which the subscription to wireless service has lapsed. Therefore, the Commission limited the carriers’ obligation in such cases to delivering 911 calls to PSAPs, but stated that it would revisit the issue at a later stage.

Two new developments have occurred since the Commission adopted its original Enhanced 911 rules. The first is the institution of several laudable donation programs, where older, unused, and unsubscribed cellular phones are collected by various groups (both carrier and non-carrier) and distributed to at-need individuals, such as victims of domestic violence and other crimes, the elderly, and the infirm. The second is the development and sale of a new type of mobile phone, “911-only” phones, which are manufactured with only the capability of dialing 911, and which cannot receive calls.

In April 2000, several public safety entities asked the Commission to revisit the call-back number issue to determine if additional FCC action is needed. The public safety agencies wanted to seek solutions for situations where non-service-initialized wireless telephones may not provide PSAPs with valid call-back number information, even when wireless Enhanced 911 Phase I service has been implemented in an area. In May 2000 the Commission initiated a proceeding to revisit the call-back issue and this adopted Report and Order represents the FCC’s determination on the additional actions to be taken.

Action by the Commission April 17, 2002, by Report and Order (FCC 02-120). Chairman Powell, Commissioners Abernathy, Copps and Martin with Commissioner Copps issuing a separate statement.

FCC Contact: Patrick Webre (202) 418-7953 or pwebre@fcc.gov

WT Docket No. 94-102



PUBLIC NOTICE

Federal Communications Commission
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DA 08-1159

Released: May 15, 2008

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES COMMENT
FILING DATES FOR THE NOTICE OF INQUIRY REGARDING 911 CALL-FORWARDING
REQUIREMENTS AND CARRIERS' BLOCKING OPTIONS FOR NON-INITIALIZED PHONES**

PS Docket No. 08-51

On April 11, 2008, the Federal Communications Commission released a *Notice of Inquiry* seeking comment, analysis, and information on three specific areas: (1) the nature and extent of fraudulent 911 calls made from non-service initialized (NSI) devices; (2) concerns with blocking NSI phones used to make fraudulent 911 calls, and suggestions for making this a more viable option for carriers; and (3) other possible solutions to the problem of fraudulent 911 calls from NSI handsets.¹ The *Notice of Inquiry* was published in the Federal Register on May 15, 2008. Accordingly, interested parties may file comments on the *Notice of Inquiry* on or before **June 30, 2008**.² Parties interested in submitting reply comments must do so on or before **July 29, 2008**.³

All comment and reply comment filings should reference **PS Docket No. 08-51**. Comments and reply comments may be filed by using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments and reply comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the rulemaking number, **PS Docket No. 08-51**. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following

¹ Petition for Notice of Inquiry Regarding 911 Call-Forwarding Requirements and Carriers' Blocking Options for Non-Initialized Phones, PS Docket No. 08-51, *Notice of Inquiry*, 23 FCC Rcd 6097 10 (2008).

² Use of Non-service Initialized Phones to Make Fraudulent 911 Calls, 73 Fed. Reg. 28116 (May 15, 2008).

³ *Id.*

words in the body of the message: "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to: Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, M.D. 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. Parties must also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Documents in PS Docket No. 08-51 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

Because of the policy implications and potential impact of this proceeding on persons not party to the waiver request, we believe that it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a), 1.1206 of the Commission's rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b) and must reference PS Docket No. 08-51.

For further information regarding this proceeding, contact Eric Ehrenreich, Attorney Advisor,
Public Safety and Homeland Security Bureau, (202) 418-1726.

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

In the Matter of)	
)	
Petition for a Notice of Inquiry Regarding 911)	PS Docket No. 08-51
Call-Forwarding Requirements and Carriers')	
Blocking Options for Non-Initialized Phones)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association®
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Michael F. Altschul
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Director, Regulatory Affairs

Its Attorneys

Dated: June 30, 2008

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

In the Matter of)	
)	
Petition for a Notice of Inquiry Regarding 911)	PS Docket No. 08-51
Call-Forwarding Requirements and Carriers')	
Blocking Options for Non-Initialized Phones)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association (“CTIA”) respectfully submits these comments in response to the Notice of Inquiry in the above-captioned proceeding.¹ As stated below, CTIA supports retention of the existing rule requiring carriers to forward all 911 calls to a Public Safety Answering Point (“PSAP”), and it opposes any regulation that would require Commercial Mobile Radio Service (“CMRS”) providers to enable blocking of 911 calls from non-service initialized (“NSI”) phones. Such regulations would confuse and endanger consumers who have been informed they can call 911 from NSI phones; could delay 911 call transmissions from all phones; and would risk exposing carriers to civil liability in numerous states. Further, it would be difficult to implement such rules in a way that would not block legitimate calls or allow fraudulent calls, or lead to other unintended consequences. To the extent the Federal Communications Commission (“FCC” or “Commission”) feels it must mandate call blocking at some level, CTIA submits that blocking by PSAPs is more appropriate.

¹ *Petition for a Notice of Inquiry Regarding 911 Call-Forwarding Requirements and Carriers’ Blocking Options for Non-Initialized Phones*, Notice of Inquiry, FCC 08-95 (April 11, 2008) (“*Notice of Inquiry*”).

I. Introduction and Summary

On February 14, 2008, the instant Petitioners filed a Petition for a Notice of Inquiry in which they asserted that “[h]arassing and fraudulent 911 calls from NSI devices continue to be a serious problem for public safety answering points” and asked the Commission to provide “clarification and guidance” concerning the legal and technical aspects of NSI device call forwarding and call blocking.² The Commission sought comment on the concerns and issues raised by the Petitioners in this proceeding regarding the Commission’s current rule requiring CMRS providers to transmit all wireless 911 calls. In particular, the Commission requested information on how blocking of NSI phones used to make fraudulent 911 calls could become a more viable option for wireless carriers, and whether it should eliminate the call-forwarding requirements for NSI devices.³

When the Commission initially proposed its 911 call forwarding requirement, the wireless industry identified many of the concerns raised by the Petition, and in particular warned that the rule could lead to an increase in fraudulent or non-emergency 911 calls.⁴ Notwithstanding these concerns, the Commission determined that the public interest in availability of 911 service outweighed the identified implementation and pragmatic

² Petition for a Notice of Inquiry Regarding 911 Call-Forwarding Requirements and Carriers’ Blocking Options for Non-Initialized Phones, CC Docket No. 94-102 (filed Feb. 14, 2008) (“Petition”).

³ *Notice of Inquiry* at ¶¶ 10, 19.

⁴ *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, at ¶¶ 16-17 (1997) (“[s]ome carriers support the original proposal to require transmission only of calls from service initialized phones. . . . [s]ome petitioners also reason that the rule would permit fraudulent and prank 911 calls that may endanger public safety personnel and promote errors and mistakes in rendering emergency services.”) (“*First E911 Memorandum Opinion and Order*”).

considerations. The Commission found that because the validation process would “unnecessarily delay or defeat the dispatch of help in emergencies,” the public interest would be best served by requiring covered carriers to forward all 911 calls.⁵ As a result, carriers have taken significant steps to enable their networks to transmit all wireless calls to 911, including those originating from NSI handsets, resulting in the public’s reasonable expectation that all wireless 911 calls will terminate at a PSAP. Petitioners, however, have not provided a basis for revising the Commission’s prior conclusions or the public’s expectations.

There are numerous reasons why the Commission should not establish rules requiring wireless carriers to block 911 calls from NSI handsets, many of which were addressed in the initial FCC order. Such a requirement will greatly confuse and endanger the public, who the Commission and others have led to expect that all wireless handsets are, at a minimum, capable of connecting to 911 in the event of an emergency. As the Commission acknowledged in the *First E911 Memorandum Opinion and Order*, call blocking also could lead to undesirable and unintended consequences, such as blocking legitimate calls involving a lifesaving emergency, and connection delays for all 911 calls. Petitioners’ proposal also fails to consider a number of complicated issues that must be considered in enacting such rules, such as how to establish triggering criteria that block all fraudulent calls without inadvertently capturing legitimate calls. Recent announcements by several carriers that they will begin accepting compatible handsets for attachment to their networks, along with limited “open access” requirements,⁶ is sure to

⁵ *Id.* at ¶¶ 33-34.

⁶ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 at ¶¶ 195-230 (2007). More recently, the Commission

make this lack of accountability for NSI handsets more serious. Finally, as has been noted by Petitioners, engaging in call blocking could expose carriers to civil liability in multiple states – a concern the Commission has recognized it is powerless to address.⁷

For these reasons, CTIA opposes any rule that would require wireless carriers to block 911 calls from NSI handsets. To the extent that the Commission feels it must initiate call blocking procedures, blocking by PSAPs is the best method of accomplishing this goal.

II. Requiring Wireless Providers to Block Certain 911 Calls Will Lead to Confusion and Risk to the Public.

Wireless consumers today regularly make 911 calls from all types of wireless handsets. Indeed, as a result of the Commission’s previous ruling, the public reasonably expects all wireless handsets, including NSI handsets, to be capable of making 911 calls at all times in the event of an emergency.⁸ Should the Commission modify its rules to allow for 911 call blocking, it will confuse the public and put lives and property at significant risk.

It would be impossible for the Commission to ensure that no wireless user improperly relies on a handset that would be blocked from calling 911. As stated above, the public generally assumes that any handset, service-initialized or not, is capable of

proposed open device requirements for Advanced Wireless Services spectrum in the 1915-1920 MHz, 1995-2000 MHz, and 2155-2180 MHz bands. *Services Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, Further Notice of Proposed Rulemaking, FCC 08-158, ¶ 3 (2008).

⁷ See *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order, 11 FCC Rcd 18676, ¶ 100 (1996).

⁸ The FCC itself advises consumers that its rules require wireless carriers to “transmit all 911 calls to a Public Safety Answering Point (PSAP), regardless of whether the caller subscribes to the provider’s service or not.” See *FCC Consumer Facts – Wireless E911 Services*, <http://www.fcc.gov/cgb/consumerfacts/wireless911srv.html>.

connecting to 911.⁹ This expectation is a logical outcome of the Commission's decision to require that all wireless calls to 911 be connected and will be extremely difficult to reverse. Should the Commission determine that 911 call blocking is necessary, CTIA believes that an aggressive public education program managed by the Commission must be a critical part of any such policy change.¹⁰

Further, given the variety of NSI handsets, it is not always possible for a carrier to track a handset to alert the owner that it has been blocked. Indeed, the very fact that NSI handsets have not been initialized may mean that they have never entered a carrier's inventory and become associated with a particular customer account. Even those handsets that were at one time associated with a customer account may no longer be in the hands of that customer, or even anyone that the customer knows.¹¹ Moreover, announcements by several carriers that they will begin accepting any compatible handset for attachment to their networks,¹² coupled with "open access" requirements,¹³ will make

⁹ See, e.g., Roy Furchgott, *Old Cell Phones Can Still Call 911*, N.Y. TIMES, March 16, 2000 ("Any old, decommissioned cell phone can be used to make 911 calls, as long as the battery is good.").

¹⁰ The Commission and Public Safety would have to take the lead in any consumer education effort since carrier bill stuffers and other communications with their customers would not be likely to reach persons who rely on NSI handsets for emergency calls to 911.

¹¹ At any given time, tens of thousands of NSI handsets are being marketed on EBay and other sites. See, e.g., http://cell-phones.listings.ebay.com/Cell-Phones-Smartphones_W0QQfromZR4QQsacatZ3312QQsocmdZListingItemListQQssPageNameZdcpCellPhonesTextFeat

¹² See Press Release, T-Mobile USA, Industry Leaders Announce Open Platform for Mobile Devices (Nov. 5, 2007) available at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20071105&title=Industry%20Leaders%20Announce%20Open%20Platform%20for%20Mobile%20Devices (last accessed June 29, 2008); see also Press Release, Sprint Nextel Corporation, Sprint Joins Open Handset Alliance (Nov. 5, 2007) available at http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1072575&highlight=handset (last accessed June 29, 2008);

this lack of accountability for NSI handsets more acute. It appears increasingly likely that consumers' ability to purchase various devices and attach them to wireless networks will greatly undermine the ability for wireless providers to have knowledge about devices and whether they should or should not be allowed to connect with 911.

Even if carriers were able to track the NSI handsets they block and notify owners of said handsets, the owner is not the only person with access to the handset. As stated by the Petitioners, "the inherent portability of NSI devices prevents carriers and PSAPs from ascertaining whether the person placing the unwarranted calls from a particular device is the only person with access to, and reliance on, the device in case of emergency."¹⁴ For this reason, there is significant risk that in the event of an emergency, a person seeking to use a blocked NSI handset to dial 911 will be unaware that the call will not be forwarded to a PSAP, possibly putting lives and/or property at risk.

III. 911 Call Blocking Could Lead to Unintended and Unwanted Consequences.

Instituting rules requiring carriers to block certain 911 calls would create a host of problems that have not previously been contemplated. Changing the public's reliance on NSI handsets is not the only risk created by modifying the existing call forwarding rule; use of such blocking by wireless carriers could result in connection delays for all 911 calls. As the Commission observed in its *First E911 Memorandum Opinion and Order*,

Press Release, Open Handset Alliance, Industry Leaders Announce Open Platform for Mobile Devices (Nov. 5, 2007) *available at* http://www.openhandsetalliance.com/press_110507.html (last accessed June 29, 2008); Press Release, Verizon Wireless, Verizon Wireless To Introduce "Any Apps, Any Device" Option For Customers In 2008 (Nov. 27, 2007) *available at* <http://news.vzw.com/news/2007/11/pr2007-11-27.html> (last accessed June 29, 2008).

¹³ *Supra* n. 6.

¹⁴ *Notice of Inquiry* at ¶ 16.

“[u]ser validation procedures can be long and cumbersome . . . [t]he resulting delay in completing a call can be lengthy and errors can occur. Applying these procedures in emergencies could thus cause a dangerous deferral or interruption of the 911 assistance process and, effectively, the denial of assistance in some cases.”¹⁵ In particular, the imposition of new rules would likely create a surge of blocking requests that would tie up PSAP and carrier resources and potentially lead to inadvertent denial of 911 service to other users with devices that share the same Mobile Identification Number (“MIN”) or Mobile Directory Number (“MDN”), or additional delays for consumers. Such unintended consequences would undermine the usefulness of call blocking procedures and negatively impact all consumers, including those using service-initialized handsets or NSI handsets not marked for blocking.

Even if the Commission were to establish relatively strict triggering criteria for call blocking, it is likely that legitimate 911 calls may be blocked as well as fraudulent calls. For example, if a handset is blocked from dialing 911 after it makes a relatively low number of “fraudulent calls” or based on the fact that it makes a certain number of fraudulent calls within a relatively short period, a child playing with a parent’s phone without the parent’s knowledge or permission could trigger blocking that the parent would not be aware of until an emergency arose. If a person has to make numerous legitimate calls to 911 due to problems getting or staying connected, would that instance fall into a “fraudulent call” category? Alternatively, fraudulent 911 calls will still be made regardless of the triggering criteria. No method of restricting blocks will guarantee that 100 percent of unblocked 911 calls will capture illegitimate calls. Moreover, the

¹⁵ *First E911 Memorandum Opinion and Order* at ¶ 25.

portability of wireless handsets and roaming rules would allow a handset blocked by one carrier to make a fraudulent 911 call over another carrier's network, *i.e.*, a 911 call coming from a CDMA handset that is blocked on one CDMA carrier's network could nevertheless connect and complete the call over another CDMA carrier's network in the same area that has not blocked the device. For these reasons, the Commission should instead retain the rule that wireless carriers must forward all 911 calls to PSAPs.

IV. Call Blocking Implementation Would Give Rise to a Number of Complicated Issues That Would Need to Be Resolved.

Should the Commission establish rules to require wireless carriers to block 911 calls from certain NSI handsets, there will remain numerous unresolved questions that will be very difficult to answer, but which must be determined prior to the implementation of such a regime. In particular, the Commission will need to establish precise triggering criteria for call blocking – a significant challenge, as noted above – as well as consider future technologies that, when implemented, would complicate any regime currently in place.

As an initial matter, there are inherent difficulties in establishing triggering criteria for call blocking, and there is a high risk that blocking policies will be dangerously overbroad and over-inclusive. Petitioners have not stated what criteria should trigger call blocking by a wireless carrier. Specific criteria, such as a clear definition of “fraudulent” and what number or frequency of calls should trigger a block must be established for any call blocking rule to be effective. There are inherent difficulties involved in deciding these issues. Additionally, Petitioners have not suggested how long a block should remain in place once it is initiated and whether all handsets should be subject to the same criteria.

There are many categories of NSI handsets, which add to the challenge of establishing triggering criteria. For example, stolen handsets, handsets that are never delivered to a carrier, handsets whose service has been terminated due to non-payment, “open access” devices, handsets whose service has been cancelled, and GSM phones with the SIM card removed would all fall under the definition of “non-service initialized.” Petitioners have not addressed whether all these types of handsets should be treated the same way under the rules, nor how rules could be tailored in the event that these types of NSI handsets are regulated differently by the Commission. Further complicating this issue is the proliferation of pre-paid phones, which also would obtain NSI status once consumers stop using them pursuant to the pre-payment terms.

Further, the Commission and public safety need to be aware of future developments that would complicate any call blocking regime. As wireless technology advances from a circuit-switched to a packet-switched environment, the mechanism used to block calls would necessarily change. The standards for next generation wireless technologies remain quite fluid, and these technologies will raise a number of questions going forward that will need to be addressed if the Commission elects to require call blocking in connection with NSIs. Even today, there are numerous dual mode wireless devices that permit users to communicate using either CMRS or unlicensed spectrum, *e.g.*, WiFi-enabled devices. In an emergency, consumers cannot be expected to sort through the complexity of determining the appropriate set of rules and expectations for their device when dialing 911.

V. Call Blocking Could Expose Carriers to Significant Legal Liability.

In its Notice of Inquiry, the Commission correctly highlighted the concern that the implementation of call blocking would expose carriers to liability at the state level.¹⁶ Indeed, enacting rules that would require a wireless carrier to block certain 911 calls could expose that carrier to civil liability in multiple states or create a conflict between state and federal law. The majority of states have enacted statutes that immunize carriers from liability resulting from an act or omission in connection with the provision of 911 services. These statutes, however, contain exceptions under which a carrier will be liable, such as where a carrier engages in willful misconduct. Several states exempt from immunity any “intentional act” on the part of a wireless carrier.¹⁷ While it would not be reasonable to construe call blocking undertaken as a result of federal regulatory compulsion as “willful” or “intentional,” variations in the phrasing of state laws create the possibility of just such a result. Should the Commission pursue compulsory blocking, insulation of carriers from liability – which the Commission previously has indicated

¹⁶ *Notice of Inquiry* at ¶ 15.

¹⁷ *See, e.g.*, KAN. STAT. ANN. § 12-5333 (2008) (“Except . . . for intentional acts, the secretary, local collection point administrator, each governing body, each public agency, each wireless carrier and their employees and agents shall not be liable for the payment of damages resulting from the performance of installing, maintaining or providing wireless enhanced 911 service.”); NEB. REV. STAT. § 86-441 (2008) (“In contracting for such 911 service and in providing such 911 service, except for failure to use reasonable care or for intentional acts, each governing body, public safety agency, and service supplier and their employees and agents shall be immune from liability or the payment for any damages in the performance of installing, maintaining, or providing 911 service.”); N.M. STAT. ANN. § 63-9D-10 (2008) (“except for willful or wanton negligence or intentional acts, the local governing body, public agency, equipment supplier, telecommunications company, commercial mobile radio service provider and their employees and agents are not liable for damages resulting from installing, maintaining or providing enhanced 911 systems or transmitting 911 calls.”). Other states whose laws contain similar language include South Dakota and Utah.

should be pursued through legislation¹⁸ – should precede any new regulatory requirements.

Further, there remain states where no immunity is afforded to service providers in connection with 911 service. Should the FCC require 911 call blocking, it will expose service providers to even greater liability in these states than they face today. For example, Maine law provides that “[a] telecommunications provider assisting in the implementation and operation of the statewide E-9-1-1 system, including, but not limited to . . . the process of calls, is subject to tort liability . . . [f]or property damages, bodily injury or death resulting from any defect in the E-9-1-1 system or inadequacy in the provision of E-9-1-1 service caused by the telecommunications provider’s intentional, willful, or reckless acts or omissions.”¹⁹ Other states are silent on the issue of immunity for wireless carriers, exposing them to a risk of liability that would increase significantly if they were required to block particular handsets from calling 911.²⁰

VI. PSAPs Are Best Positioned To Minimize Fraudulent Calls Through Call Blocking.

While CTIA acknowledges the very real problems created by fraudulent 911 calls, it submits that PSAPs are better-positioned to engage in call blocking than wireless carriers, and blocking efforts initiated at the PSAP level would likely be more effective.

¹⁸ See *supra* note 7.

¹⁹ ME. REV. STAT. ANN. tit. 25, § 2930 (2008).

²⁰ New Hampshire, for example, requires that “[e]ach telephone service provider shall assure that all requests for police, fire, medical, or other emergency services received by the provider or the provider’s operator services shall be transferred to the public safety answering point,” but has passed no statute immunizing carriers from liability in the event such calls are not connected. N.H. REV. STAT. ANN. § 106-H:8 (2008).

To the extent fraudulent calls are a significant problem for PSAPs, they should undertake efforts to reduce such calls. As the Commission has observed, “[w]e are also not convinced that requiring wireless carriers to forward all 911 calls precludes PSAP efforts to implement call back and guard against fraudulent 911 calls. Our rules apply to wireless carriers, not PSAPs, which can administer their own operations and decide how to manage incoming calls.”²¹ Thus, the Commission made clear that the current call forwarding rule does not preclude PSAP efforts to administer their own operations and make decisions about how to manage fraudulent calls.²² In fact, the Commission has acknowledged that PSAPs have “an important role in monitoring incoming calls and initiating efforts to guard against fraudulent use of the 911 systems.”²³

PSAPs have provided no justification for why they cannot be in charge of monitoring fraudulent calls and blocking handsets as needed. Indeed, wireless carriers have been successfully working with PSAPs for years to identify NSI handsets that make fraudulent calls and identify, to the extent possible, the source and location of the calls and notify the callers. Through these efforts, for example, carriers and PSAPs were able to identify handset refurbishing centers that tested newly-refurbished phones by dialing 911 with the handset. Wireless carriers also have worked with law enforcement officials when possible to stop these calls and have demonstrated a commitment to public

²¹ *First E911 Memorandum Opinion and Order* at ¶ 37 (“We are also not convinced that requiring wireless carriers to forward all 911 calls precludes PSAP efforts to implement call back and guard against fraudulent 911 calls. Our rules apply to wireless carriers, not PSAPs, which can administer their own operations and decide how to manage incoming calls.”).

²² *See id.*

²³ FCC Clarifies that 911 Call-Forwarding Rule does not Preclude Wireless Carriers from Blocking Fraudulent 911 Calls from Non-Service Initialized Phones Pursuant to State and Local Law, Public Notice, 17 FCC Rcd 21877, 21878 (2002).

education regarding fraudulent calls and the dangers associated with them.²⁴

PSAPs, however, are better-positioned than carriers to implement call blocking, as they actually receive the fraudulent calls and are better able to keep track of data such as how many calls are made from particular handsets, the nature of the calls made, and the frequency of the calls made. Indeed, the Commission has previously stated that it is “highly probable” that a PSAP receiving fraudulent calls from a NSI handset would be able to identify the phone, and that PSAPs would similarly be able to identify legitimate calls that are repeatedly made because the caller is experiencing problems staying connected.²⁵ In addition, managing NSI call blocking at the PSAP level would be more effective than having carriers block calls. As noted above, wireless callers increasingly will be able to use a single device to dial 911 from both licensed and unlicensed spectrum. Requiring CMRS carriers to block fraudulent calls to 911 using licensed spectrum will have the unintended effect of driving these calls to unlicensed services where they can be harder to track. Moreover, only the PSAP will be able to monitor both types of calls and take the necessary steps to protect against fraudulent calls originating from a single device and user.

²⁴ See, e.g., “Accidental 9-1-1 Calls Are Tying Up Phone Lines Needed for Urgent Care or Help,” available at <http://www.t-mobile.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/0000BDF20016F5DD0107515C4970E11C/file/Accidental%20911.pdf> (last accessed June 30, 2008)); Sprint Nextel Consumer Facts: Drive responsibly & report emergencies, available at <http://www2.sprint.com/mr/consumertopic.do?topicId=441> (last accessed June 30, 2008) (“Sprint urges its customers to avoid placing non-emergency or accidental calls to 911. While certain phones have an automatic one-touch 911 feature (either the 1 or the 9 button) we urge you to either disable this feature or activate the keyguard function when phone is not in use to help reduce accidental or unintentional calls to 911.”).

²⁵ *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 18 FCC Rcd 23383, ¶ 13 (2003).

The wide availability of intercarrier roaming agreements is another reason PSAPs are better situated than individual carriers to block fraudulent calls to 911. Indeed, the Commission sought information on how a universal blocking mechanism could be achieved in light of roaming agreements and varied carrier technologies.²⁶ The increased availability of “open” devices will further complicate these inter-carrier issues. Blocking by the PSAP would eliminate this problem, as the connection could be more effectively blocked over all possible networks.

VII. Conclusion

Although CTIA recognizes Petitioners’ concerns regarding the problem of fraudulent 911 calls, it maintains that the public policy concerns supporting mandatory forwarding of all 911 calls are even stronger today than they were when the Commission first established the requirement. Consumers have come to expect that wireless handsets will always be able to reach 911 in case of an emergency, and therefore establishing any rule undermining this expectation would be extremely dangerous. Moreover, the evolving world of “open” devices and converged services defeats the well-intentioned purpose of the Petition by providing alternate call paths that are not within the control of the CMRS carrier for any user who wants to make a fraudulent 911 call. For the

²⁶ *Notice of Inquiry* at ¶ 13.

above-mentioned reasons, CTIA opposes relaxing or eliminating the 911 call-forwarding requirement.

Respectfully submitted,

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Dated: June 30, 2008

Its Attorneys



VIA ECFS

June 27, 2008

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

Dear Ms. Dortch:

***Re: 911 Call-Forwarding Requirements and Carriers' Blocking Options for
Non-Initialized Phones (PS Docket No. 08-51)***

On behalf of the State of California, the Telecommunications Division, California 9-1-1 Emergency Communications Office (9-1-1 Office) hereby submits comments with regard to the Federal Communications Commission's (FCC) Notice of Inquiry (NOI) on whether to modify its policies on non-initialized telephones to eliminate repetitive and harassing calls to 9-1-1.

Established by statute, the 9-1-1 Office is responsible for the central administration of 9-1-1 for all of California. This includes providing funding for the 475 public safety answering points (PSAPs), establishing minimum 9-1-1 standards, and facilitating the efficient and effective delivery of 9-1-1 calls through a robust and reliable 9-1-1 network infrastructure.

The FCC currently requires commercial mobile radio service (CMRS) providers to transmit wireless 9-1-1 calls, including calls from non-initialized phones, to PSAPs. As a result anyone, at anytime, can pick up any cellular phone, dial 9-1-1 and be connected to a PSAP. This requirement, while providing essential public access to 9-1-1 services, also provides malicious callers with an unimpeded ability to disrupt 9-1-1 call centers and interfere with a PSAP's ability to deliver 9-1-1 services to the public.

For example, one such caller referred to as "Winton" from the San Francisco Bay Area, placed over 30,000 9-1-1 calls during a one-year period using a donated non-initialized wireless phone. At Winton's peak, he was placing 250 calls a day to the Hayward Police Department, tripling their normal daily 9-1-1 call volume. Winton's use of an untraceable non-initialized phone required an extensive joint law enforcement effort by the California Highway Patrol (CHP), Hayward Police Department, Solano County Sheriff, Federal Bureau of Investigation, FCC, T-Mobile, and 9-1-1 Office to locate and stop the caller in February 2008. When Winton was

arrested and asked why he placed so many calls he stated simply, "Because they were free."

Another example of an abusive 9-1-1 caller using a non-initialized phone is also from the San Francisco Bay Area and is currently being tracked by the 9-1-1 Office. Known as "Nomar," this caller has placed over 8,500 calls in the past year to the CHP's Golden Gate Dispatch Center and still remains at large. As a final example, in March 2008 the 9-1-1 Office, in conjunction with the San Jose Police Department, was able to locate and stop a caller known as "Sierra" who had placed 1,000 calls during a 10-day period using a non-initialized phone.

In 2007, California received 23.3 million 9-1-1 calls statewide, and wireless calls accounted for half, or 11.6 million, of those calls. Each month California processes an average of 1 million wireless 9-1-1 calls, with 72 percent of these calls routing to the CHP and 28 percent routing to local PSAPs.

An analysis of California call data records (CDR) revealed there are 266 active repetitive callers, mainly using non-initialized cell phones, who have placed 77,062 calls to 9-1-1. For purposes of this analysis, a repetitive caller is defined as a caller who placed 100 or more 9-1-1 calls from October 1, 2007 through May 15, 2008. Of the 266 callers identified, 85 had placed 200 or more calls, and eight callers had made more than 1,000 calls to 9-1-1.

Historically, non-initialized calls were easily identified by the area code, also known as the numbering plan area (NPA), "911". However, tracking non-initialized phones has become more difficult due to the availability of off-the-shelf, prepaid cell phones and reluctance by wireless service providers (WSPs) to reassign previously-assigned numbers. A prepaid wireless phone will retain its original assigned number long after the phone has run out of talk time. When a 9-1-1 call is placed from one of these phones, the original number is displayed but cannot be called back. If a wireless phone customer fails to pay their bill, the WSP will remove the customer's ability to receive or place calls, but the phone will still be able to call 9-1-1 displaying its original number.

In the case of "Nomar", the calls always show up at the PSAPs with the NPA of "911" and the same last seven digits. If the calls could be blocked at the mobile switching center (MSC), "Nomar" would no longer be able to disrupt the dispatch centers.

Not all calls from non-initialized phones are nuisance calls. Calls from non-initialized phones have saved many lives. For instance, during July 2007 a non-initialized phone played a significant role in saving several lives in the city of Signal Hill, California. A disgruntled employee at a publishing company entered the building with a gun and started shooting. The first call to 9-1-1 reporting the shooting was placed on a non-initialized phone.

Alternatives exist that would allow callers to continue to benefit from the appropriate use of non-initialized phones, while minimizing PSAP exposure to those who would

abuse this service. One possible answer might be to require the WSPs to give PSAPs the ability to individually block harassing calls. The optimal solution would be for the WSP to block these calls from non-initialized phones at the MSC prior to the call entering the 9-1-1 network. The MSC-blocking solution would continue to allow emergency calls from non-initialized phones to reach a PSAP while removing nuisance calls. A phone number could be temporarily deactivated for a set period of time (e.g., 30 days or 60 days). After the established number of days has passed, the phone number could be reactivated, so that the WSP can reassign it to a new customer, if desired. The process should clearly define the conditions under which the PSAP can request the WSP deactivate a number, as well as when the WSP can reactivate it.

Given the volume of 9-1-1 calls in California, it is imperative that effective ways to minimize non-emergency calls are found, thereby improving the speed at which emergency calls can be answered and resulting in more lives saved. The 9-1-1 Office applauds the FCC for opening the NOI on this important subject and stands ready to answer any questions or provide input as needed. Please do not hesitate to contact me at (916) 657-9911 or daphne.rhoe@dgs.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Daphne Rhoe". The signature is fluid and cursive, with the first name "Daphne" being more prominent than the last name "Rhoe".

Daphne Rhoe, ENP
Chief, California 9-1-1 Emergency Communications Office

DR/JT/ja

cc: Michael Aguilar, California Public Utilities Commission