

**Before the
Federal Communications Commission
Washington D.C. 20554**

In the Matter of the)	
)	
Public Comment on Intentional)	
Interruption of Wireless Services)	GN Docket No. 12-52
)	
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**Comment of New Media Rights on the
Intentional Interruption of Wireless Services**

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TABLE OF CONTENTS

I. Introduction.....4

II. Statement of Interest.....4

III. Problems that surround wireless service interruptions,
particularly for consumers5

IV. Past precedents and practices.....6

V. Bases and authority over wireless service interruption7

 a. BART’s authority over wireless service shutdowns8

 b. Provisions under the Communications Act, 19348

 i. Interruption of wireless service by common carriers8

 ii. Liability of common carriers for any acts or omissions by
 agents acting for or employed by a common carrier9

 iii. Prohibition against any person causing wilful or malicious
 interference9

 c. Ambiguities under the Telecommunications Act10

 d. Problems with BART’s cell phone service interruption policy11

 e. State efforts against intentional wireless service interruptions12

 f. Procedure for wireless service interruptions during an emergency13

VI. Scope of wireless interruption14

VII. Solutions to making sure that there is a good process and wireless service
interruptions don’t interrupt consumers or cause public safety issues.....14

a. Proper procedure for an effective wireless service interruption provided under the new bill in State of California	15
b. Improving communication capabilities	15
c. Well-equipped and effective law enforcement tactics	16
d. Public awareness	16
e. Improving emergency response	16
f. Role of first-responders	17
g. Proper policing and making arrests of actual offenders	17
h. Wireless network companies competing to provide better emergency communications	18
VIII.. Conclusion	18

I. Introduction

The Federal Communications Commission's (the FCC or the Commission) Public Safety and Homeland Security Bureau (PSHSB) and Wireless Telecommunications Bureau (WTB) by its public notice dated March 1, 2012 sought comments on concerns and issues of intentional interruptions of Commercial Mobile Radio Service (CMRS or "wireless service") by government authorities for ensuring public safety. The Commission must clarify that government agencies and other third parties in control of the facilities for wireless service are covered by the provisions of the Communications Act that cover wireless service shutdowns. The Commission must clarify that wireless service interruptions are limited to extreme situations where a prior court order or authorization from the Commission is obtained upon a probable cause showing showing that the wireless service itself is being held for unlawful purpose.

On August 11, 2011, the Bay Area Rapid Transit System ("BART") temporarily interrupted wireless service in its downtown San Francisco stations as a tactic to deal with a possible protest. Such an unauthorized temporary interruption of wireless service raises serious concerns on whether a public agency like BART can voluntarily decide to shutdown wireless services for millions of users and runs contrary to the efforts by the FCC towards maintaining and strengthening communication systems. This comment aims at identifying the various problems associated with interruption of wireless service particularly for the consumer, legal aspects that surround shutdown of wireless service, and less intrusive solutions based on learnings both from similar incidents in the past and the efforts of other transit systems to address this issue.

II. Statement of Interest

The Commenter has a well established history of representing consumers in regulatory proceedings at the state and federal level, including at the FCC. The Petitioner engages in one-on-one assistance and advocacy for consumers in the communications marketplace and are therefore uniquely positioned to offer insight into this issue.

New Media Rights provides expertise and advocacy on media, communications and internet law as it applies to independent creators, consumers, and internet users, and it provides pro bono legal resources to creators including consumers, artists, filmmakers, podcasters, citizen journalists, bloggers, open source software projects, as well as nonprofits.

III. Problems that surround interruption of wireless communication systems, particularly for

consumers

With advances in technology, our means of communication continue to change rapidly. In recent years, wireless has become the most basic form of communication for a vast number of individuals. A study by the National Center for Health Statistics came out with a report that stated that nationwide, more than one in every four American households had only wireless telephones in 2011, which is an eight fold increase in the past six years.¹ These figures went up further in the early release of estimates from the National Health Interview Survey conducted by CTIA² in June 2011, which found that 31.6% of households in the US are wireless-only.³ Any intentional interruption of wireless service causes a significant disruption in the lives of the many people who now rely on these wireless services for most or all of their business and personal communications.

More importantly for this discussion, wireless communications have also come to play a critical role in ensuring public safety during times of emergencies. According to the FCC, crises put more strain on the communication systems, and it is at these times of emergencies that the critical importance of the country's communications systems becomes clear.⁴ When a disaster strikes, wireless networks enable personal communications between families and loved ones, as well as public emergency communications for disseminating safety alerts or ensuring fire, medical or police assistance to the injured. Therefore, it is particularly critical for wireless services to remain active during emergency situations. According to research conducted at Boston University, personal safety was actually the initial motivation for many people to pay for cell phone service.⁵ The research also reported that individuals rely on wireless communications because it psychologically makes us feel safer if we are able to be connected to our families and can contact them or seek emergency help whenever required.

According to the FCC, since domestic disasters like September 11, 2001, and Hurricane Katrina, the Commission has taken important steps to ensure that 911 services and other critical communications remain especially operational when disasters strike.⁶ More than 240 million 9-1-1 calls, or nearly two-thirds of all calls received by 9-1-1 centers nationwide, are made annually from mobile

¹ Wireless Substitution: State-level Estimates From the National Health Interview Survey, January 2007–June 2010, published in April 2011 by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics; Nadarajasundaram Ganesh, Ph.D., and Michael E. Davern, Ph.D., NORC at the University of Chicago; and Michel H. Boudreaux, M.S., and Karen Soderberg, M.S., State Health Access Data Assistance Center, University of Minnesota.

² CTIA-The Wireless Association® is an international nonprofit membership organization that has represented the wireless communications industry since 1984.(from www.ctia.org/aboutCTIA/)

³ <http://www.ctia.org/advocacy/research/index.cfm/aid/10323>

⁴ <http://www.fcc.gov/guides/emergency-communications>

⁵ <http://www.angelfire.com/ego2/lostboyrahul/work/cellphoneuse.pdf>

⁶ <http://www.fcc.gov/guides/emergency-communications>

handheld devices in the United States.⁷ With more and more Americans using mobile handheld devices, the FCC deemed it essential to ensure that wireless carriers are taking necessary steps to provide accurate 9-1-1 caller locations.⁸ The Commission also made efforts to ensure all cellular networks are compatible with Text Telephone Devices (TTY or TDDs) used by hearing or speech impaired persons. These efforts by the Commission towards enhancing emergency communication systems would be futile if agencies like BART were allowed to exercise broad discretion in shutting down wireless services on their premises, and would be contrary to the Commission's goal of being better able to locate wireless users in emergency situations and to maintain availability of wireless service.

In the BART wireless shutdown incident, BART officials stated that there was information that protesters were using cell phones to coordinate their disruptive activities and communicating with each other about the location of the police and therefore it was necessary to temporarily disrupt cellular service at its stations in order to ensure public safety.⁹ By using such a tactic to control protests, BART tried to cut off an entire mode of communication which meant restricting much more speech than could possibly be related to the protest. Today, wireless communications serve vital free expression interests, and in addition to speech concerns, any sort of interruption in wireless service communication systems threatens to cause greater chaos and confusion than it prevents.

IV. Past Practices and Precedents

There are a few international incidents in recent years that offer some insight regarding the use of cell phones to cause violence. There have been terrorist attacks in various cities around the world including Mumbai, London and Madrid, where modified cell phones were used in various ways to carry out the attacks. In August 2011, London witnessed what was termed as the "Blackberry riots" where several cities across England suffered widespread looting, rioting and arson. The riots were coordinated using the BlackBerry Messenger service.¹⁰ The government of United Kingdom sought to propose measures to shut down BlackBerry Messenger and potentially other such social media, in the event of future riots.¹¹ This proposal was heavily condemned by the public as unethical and unwarranted.¹² Some police officers have also expressed doubts that this measure would have anything more than a

⁷ http://fallfoss.fcc.gov/edocs_public/attachmatch/DOC-301653A1.pdf

⁸ http://fallfoss.fcc.gov/edocs_public/attachmatch/DOC-301653A1.pdf

⁹ Press Release, BAY AREA RAPID TRANSIT, A Letter from BART to our customers, (August 20, 2011), available at <http://www.bart.gov/news/articles/2011/news20110820.aspx>

¹⁰ Josh Halliday (8 August 2011) London riots: How BlackBerry Messenger played a key role, available at, <http://www.guardian.co.uk/media/2011/aug/08/london-riots-facebook-twitter-blackberry>

¹¹ http://www.huffingtonpost.co.uk/2011/08/11/uk-riots-lead-to-rethink-_n_924117.html?1313062858

¹² <http://www.mobileindustryreview.com/2011/08/london-riots-its-not-about-bbm-its-about-proper-policing.html>

marginal effect on preventing disorder.¹³ The reason why rioters were using the messenger service was not because it is secret or more secure as claimed by some experts¹⁴ but rather simply because it was just cheaper. There are alternatives to communicate and bypass a shutdown for those who wish to incite violence or advance their efforts. Instead of disabling communication services for everyone, a review of incidents around the world suggests governments should be putting resources towards other methods of preventing violence.¹⁵ An important lesson from these incidents is that we need robust local communication channels¹⁶ amongst emergency response officials and less intrusive measures that target the wrongdoers preventatively rather than reactively as is often the case with wireless service shutdowns.

V. Bases and authority for interruption of wireless service

The Commission is dedicated to preserving the availability and openness of communication networks, ensuring that communication technologies are harnessed to protect the public, and making sure first responders and other public safety officers have the tools they need for their important work. According to the Commission, for interruption of communication services to be permissible or advisable, it must clear a high substantive and procedural bar.¹⁷ The provisions regarding the Commission's authority over wireless shutdowns are provided for under the Communications Act ("the Act"). This section of the comment aims at understanding these provisions and thereby assessing whether BART had any authority under the Act to carry out the wireless shutdowns. Furthermore, this section will highlight certain ambiguities in the Act which entities such as BART might try to exploit to avoid liability and which draw attention to the need for immediately clarifying that local government authorities may not deliberately interfere with the wireless network systems without due authorization obtained through an established process.

a. BART's authority over wireless service shutdowns

BART is a government agency formed by the State of California.¹⁸ In order to provide wireless

¹³ <http://www.independent.co.uk/news/uk/crime/camerons-law-pm-planning-crackdown-on-rioters-2336308.html>

¹⁴ <http://www.pocket-lint.com/news/41444/blackberry-assisting-polive-over-riots>

¹⁵ <http://www.mobileindustryreview.com/2011/08/london-riots-its-not-about-bbm-its-about-proper-policing.html>

¹⁶ <http://www.hsgac.senate.gov/download/012809norton>

¹⁷ See Press Release, FEDERAL COMMUNICATIONS COMMISSION, FCC Chairman Julius Genachowski's Statement on BART Policy Adoption, (Dec 1, 2011), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1201/DOC-311310A1.pdf

¹⁸ California Public Utilities Code § 28600 which creates the San Francisco Bay Area Rapid Transit District, comprising the territory lying within the boundaries of the Counties of Alameda, Contra Costa, Marin, San Francisco,

network at its stations, BART contracts with wireless communication companies licensed by the Commission like the formerly existing Nextel Communications. The wireless companies seek to construct, install, operate and maintain radio transmitting and receiving antennas, apparently incurring all if not most of the expenses for these installations.¹⁹ BART executes contracts with the wireless carrier companies for providing wireless services in exchange for an annual fee.²⁰ Although BART may not directly be a carrier of wireless service, it privately owns the transmitters or receivers on its premises for reception and operation of the network.²¹ The Act provides for the Commission to allow parties like common carriers²², their agents, officers or employees of the carriers²³, receivers and operating trustees²⁴ to interrupt communication services subject to prior authorization from the Commission. Since it is not clear under what authority BART shut down the wireless network in its premises, the following sections cover the relevant sections of the Act and highlight the ambiguities in the current law.

b. Provisions under the Communications Act of 1934

The FCC's takes its authority to govern wireless shutdowns from the provisions of the Communications Act ("the Act"). The Act has provisions requiring carriers of wireless service to obtain authorization from the Commission before being allowed to disrupt wireless service. It also prohibits any private person from interfering with communication services without seeking prior authorization of the Commissions. Although these provisions clearly make the FCC the authority for allowing temporary or emergency discontinuance or impairment of wireless service by carriers and their agents, it is not entirely clear what authority governs a non-carrier third party disrupting wireless service it provides to the users on its premises.

i. Interruption of wireless service by common carriers

The Communications Act provides that,

“no carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance,

and San Mateo.

¹⁹ <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/11/19/MNGF2FR6C11.DTL>

²⁰ *Id.*

²¹ <http://www.nytimes.com/2012/03/03/technology/fcc-reviews-need-for-rules-to-interrupt-wireless-service.html>

²² 47 U.S.C. Section 214

²³ 47 U.S.C. Section 217

²⁴ 47 U.S.C. Section 216

reduction, or impairment of service, without regard to the provisions of this section.”²⁵

This means that a common carrier, who is defined under the Act as, “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy²⁶,” may only act upon a specific authorization from the Commission as far as impairing or discontinuing wireless service is concerned.

ii. Liability of common carrier for any acts or omissions by agents acting for or employed by a common carrier

In addition to the restriction on allowing carriers to disrupt wireless services at their own discretion, the Act also holds the carrier liable for any act, omission or failure of any officer, agent or other person for or employed by any common carrier or user, acting within the scope of his employment.²⁷ Again, it is not clear that BART falls under either category of a common carrier or an officer, agent or person employed by a common carrier or user.

iii. Prohibition against any person causing wilful or malicious interference

The Act further provides under its section governing radio communications, that no person shall willfully or maliciously, interfere with or cause interference to any radio communications licensed or authorized by or under this Act or operated by the United States Government.²⁸ The legislative history for Section 333 of the Act identified willful and malicious interference as “intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noise making devices to interfere with the communications or radio signals of other stations.”²⁹ Although the FCC’s Enforcement Bureau has issued numerous cease-and-desist letters consistently interpreting Section 333 of the Act as making unlawful the use or sale of jamming equipment designed to block wireless calls³⁰, the plain language of the Section by itself does not restrict

²⁵ 47 U.S.C. Section 214 (a).

²⁶ 47 U.S.C. Section 153(11).

²⁷ 47 U.S.C. Section 217

²⁸ 47 U.S.C. Section 333.

²⁹ <http://www.marcus-spectrum.com/resources/SpectrumTalk-Blog/333hist.pdf>

³⁰ See, *Monty Henry*, DA 08-1202, 23 FCC Rcd 8293, 8294 (May 27, 2008) (“[t]he main purpose of cell phone, GPS, and other wireless jammers is to block or interfere with radio communications. Such use is clearly prohibited under Section 333 of the Act...”). See, citation available at <http://transition.fcc.gov/eb/Orders/2008/DA-08-1202A1.html>. See also, Letter from James D. Schlichting, Acting Chief Wireless Telecommunications Bureau, Federal Communications Commission to Devon Brown, Director, District of Columbia Department of Corrections, DA 09-354, Feb. 18, 2009, available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-09-354A1.pdf

prohibition of wireless interference only to jamming devices.

As far as prohibition on use of cell phone jamming devices is concerned, Section 333 applies to state and local government officials as well, and therefore, BART would be governed by this Section.³¹ However, the Commission must make clear that Section 333 of the Act would apply in cases of wireless interruption by a variety of third parties, including BART, which may have the ability, or attempt to interrupt wireless services other than by using jamming devices. In response to multiple inquiries concerning the sale and use of transmitters designed to prevent, jam or interfere with the operation of cellular and personal communications service, the Commission has stepped out before and provided clarification to the public that Section 333 along with Sections 301 and 302, prohibits use of signal jamming equipment.³² It should exercise similar authority to do so in the present case.

c. Ambiguities under the Telecommunications Act

Mobile service providers are under a legal obligation under their federal license to provide uninterrupted services to consumers. However, when a third party not authorized under the Act disrupts wireless service, it raises serious questions as to with whom the liability for such action will lie. In light of the provisions above, it is clear that the Act prohibits common carriers, their agents, officers or any other person employed by or for the carrier and acting within the scope of their employment, from wilfully disrupting temporary or emergency communication systems. However, it creates an ambiguity for third parties like BART which do not directly provide the wireless service but operate transmitters for reception of networks on their premises.

While BART's authority over disruption of wireless service at its stations may be uncertain, it is clear that the Commission has been strictly prohibiting wireless service interruptions. BART, or similar entities involved in provision of wireless service, might attempt to take advantage of this ambiguity, and lack of a specific provision in the Act regarding third parties not directly under an obligation of a federal license. The Commission may clarify that BART and similar entities are receivers of wireless service and hence be subject to Section 216, or that they are covered under the broad provisions of Section 333 of the Act. This ambiguity needs immediate rectification so that the lack of guidance to local jurisdictions regarding their policies on shutdown of wireless service does not cause other such agencies to disrupt communication services without proper process in the future. Therefore, the Commission must immediately clarify this ambiguity.

³¹ <http://transition.fcc.gov/eb/jammerenforcement/jamfaq.pdf>

³² See Sale or Use of Transmitters Designed to Prevent, Jam or Interfere with Cell Phone Communications is Prohibited in the United States, Public Notice, 20 FCC Rcd 11134 (2005), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-05-1776A1.pdf.

As stated in the previous section, there have been instances in the past where the FCC was required to make clarifications to some sections of the Act and it did so either through a public notice as in the case of cell phone jamming, or by enacting rules to supplement the provisions of the Act. The FCC must take similar action in this situation and thereby declare that BART and other similar entities are not permitted to interrupt wireless service without proper process.

d. Problems with BART's cell phone service interruption policy

After BART's shutdown of wireless service, when serious concerns were raised regarding the authority and legality of those shutdowns, BART adopted a cell phone interruption policy outlining situations and circumstances when it may shut down wireless service at its stations in the future. According to this policy, the temporary interruption of cellular services would be restricted to situations where there is strong evidence of imminent unlawful activity that threatens the safety of passengers, employees and other members of the public, the destruction of property or the substantial disruption of public transit services.³³ The FCC also suggested that the policy must state in specific terms that BART recognizes that any interruption of cell phone service poses serious risks to public safety and that any future shutdown will be done only after a determination that the public safety benefits outweigh the public safety risks of an interruption.³⁴ The main concern with this policy is that it is broadly worded and vague to some extent. It does recognize the importance of mobile service to passengers, stating that interruption of wireless service would be restricted to only the most extraordinary circumstances that threaten public safety. Yet it remains vague in not specifying clearly enough what constitutes attempts to "substantially disrupt public transit services." While BART's examples of potential shutdown situations seem reasonable, its policy is broadly worded.³⁵ The language seems to carve out a space for justification for shutdowns such as the August 2011 incident.³⁶ Therefore, the cell phone interruption policy adopted by BART must be amended to make it stricter with specific provisions requiring a court order, or prior authorization from the state public utilities commission or the FCC before making the decision to shutdown wireless service similar to the provisions under the California bill discussed below.

e. State efforts against intentional wireless service interruptions

Under the California Public Utilities Code ("the CPUC"), there is a provision which requires a court order to be obtained before shutting down land-based telephone service.³⁷ Earlier this year

³³ http://www.bart.gov/docs/final_CSIP.pdf

³⁴ <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/12/01/BA1C1M74UB.DTL>

³⁵ <http://www.theverge.com/2011/12/3/2608315/fcc-bart-cell-phone-shutdown-policy-investigation>

³⁶ <http://www.mttlrblog.org/2011/11/03/the-bart-cell-phone-shutdown-are-mobile-phones-a-necessary-part-of-free-speech/>

³⁷ <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=07001-08000&file=7901-7912>

California State Senator Alex Padilla introduced a new Bill³⁸ to extend this provision to wireless services. The Bill proposed a procedure whereby a magistrate order would be necessary in order to effectuate a wireless service interruption for a particular user or in a geographic area. It amends the earlier provision regarding service shutdowns, which applicable only to telephone offices, and extends it to restrict any person who owns, operates or controls facilities for providing telecommunications services from intentionally interrupting, suspending or disrupting service except pursuant a court order. The amendment also provides that the court order must be granted only upon a probable cause showing that the service is being held for unlawful purpose and that absent immediate interruption of service, serious danger to public safety will result. Unlike the federal Act discussed above, the Bill is broader in its reach, and results in a wider interpretation as a result of which third parties like BART can be brought within its purview. The FCC must similarly clarify how the Act covers third parties who interrupt wireless service.

In addition to extending the provisions for obtaining a court order to wireless phones, the Bill also repeals Section 7907 of the California Public Utilities Code which provided that upon a showing of probable cause for a hostage situation, the law enforcement official may order to disrupt telephone lines. The bill repeals this provision completely and instead provides for a total restriction on intentionally interrupting telecommunications service except pursuant to a court order, and is not specific to any particular circumstances. It appears that the bill acknowledges the various circumstances in which law enforcement could resort to disruption of communication services and therefore, instead of restricting the requirement of prior court order for interfering with communication services to hostage situations only, it makes it a general requirement for any kind of situation. The FCC also aims at prohibiting wireless service disruptions and similarly in its provisions regarding wireless interruptions it provides for a requirement to seek its authorization. However, the FCC needs to consider and account for situations where third parties like BART may be able to shut down the wireless networks on their premises, making clear which provisions cover such third parties.

f. Procedure for wireless service interruptions during an emergency

After the 2005 London Bombings, U.S. authorities initiated the shutdown of cellular network services in the Lincoln, Holland, Queens, and Brooklyn Battery Tunnels in New York City as a precautionary measure on the suspicion that similar attacks might also be perpetrated in the tunnels leading to and from New York City. Though the decision was rooted in vital security concerns, the resulting situation, undertaken without prior notice to wireless carriers or the public, created disorder for both Government and the private sector at a time when use of the communications infrastructure was most needed. It was as a result of these activities that the National Coordinating Center for

³⁸ http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1151-1200/sb_1160_bill_20120222_introduced.html

Telecommunications (NCC) emphasized the need to develop a process for determining if and when cellular shutdown activities should be undertaken in the future in light of the serious impact these efforts could have had, not only on access by the public to emergency communications services during these situations, but also on public trust in the communications infrastructure in general.³⁹

As stated in the sections above, the FCC has clearly identified its authority in deciding when a temporary shutdown or disruption in the wireless networks may be allowed. For situations involving national emergencies, there is an existing protocol⁴⁰ for shutdown of commercial and private wireless networks. As per this protocol, the NCC will function as the focal point for coordinating any actions leading up to and following the termination of private wireless network connections. The Homeland Security Department has been given the authority to make the decision on which circumstances would demand for a shutdown of cellular service. Once that decision is made, it will be conveyed to the NCC which will then inform the affected carriers. NCC will also make the determination that the shutdown is no longer required and initiate a similar process to re-establish service. This protocol provides the appropriate procedure that should be followed in order to shut down wireless services. The deciding authority must either be the FCC under the Act or the DHS under this protocol. As far as shutting down wireless services by agencies like BART is concerned, the Act and related regulations need more clarity on whether a local government agency which merely contracts with wireless carrier companies and allows its premises to be used for providing wireless services and is not directly obligated under a federal license can interfere with the wireless systems. It is important that the Commission recognizes that there are certain loopholes in the Act which must be immediately rectified so that similar shutdowns do not take place in the future.

VI. Scope of interruption on wireless service

We have already seen in the discussion above the importance of having better communication systems during emergencies. The FCC has taken important steps to ensure that 911 services and other critical communications remain operational when disasters strike, for example, streamlining collection of outage information during times of crisis through the Disaster Information Reporting System⁴¹, working with other federal agencies to improve interoperability among first responders, and promoting use of enhanced 911 best practices.⁴² This clearly shows that emergency communication services are completely outside the scope of interruption of wireless service and should not be interfered with at any

³⁹ <http://www.ncs.gov/nstac/reports/2009%20-%202010%20Issue%20Review%20%28FINAL%29.pdf>

⁴⁰ Standard Operating Procedure (SOP) 303, "Emergency Wireless Protocols (EWP)," on March 9, 2006 available at <http://www.ncs.gov/nstac/reports/2009%20-%202010%20Issue%20Review%20%28FINAL%29.pdf>

⁴¹ http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3871A1.pdf

⁴² <http://www.fcc.gov/guides/emergency-communications>

cost. As far as other cellular communications are concerned, it is clear based on emergencies that have taken place in cities around the world that many times disrupting communication during times of emergencies caused more panic and chaos among the public than it mitigated. A service disruption that prohibits voice, text or data communications but provides wireless emergency calls might seem plausible given the emergency situations, but we need to keep in mind the importance of communication between the injured victims, their families and the emergency personnel, which if disrupted may cause more harm to public safety than it may protect.

VII. Solutions for making sure that there is a process with proper safeguards, and that wireless service interruptions don't unnecessarily harm consumers or cause public safety problems

The most important solution in the current situation is to make clarifications in some provisions in the current law on prohibition of wireless service shutdowns. The Act prohibits wireless service interruptions by wireless carriers, agents of carriers, or private persons without proper prior authorization of the Commission, but it is not entirely clear how the rules apply to a situation where a third party non-carrier entity may disrupt wireless communication on their own premises like the wireless shutdown by BART. As discussed in the previous section, the FCC needs to take steps to clarify this ambiguity in the Act regarding obligations of third parties with regard to wireless service interruptions.

Additionally, it is necessary that we seek alternative, less intrusive ways to maintain public safety. Along with a proper process to authorize wireless service interruptions, we also need to find ways to strengthen communications and improve law and order services to better tackle future threats to public safety. With a great deal of advancement in wireless communication technology over the recent years, there are abundant ways in which we can use of this technology as an important tool in the law and order system, rather than shutting down the service and preventing the public from communicating altogether. Some such solutions which do not interrupt consumers' use or threaten public safety are discussed below.

a. Proper procedure for an effective wireless service interruption provided under the California bill

The California State Senator's bill⁴³ extending the provisions on interruption of landline telephone services to mobile phones provides the best way to tackle the problems associated with wireless service interruptions. It provides for a procedure where it is upon the court to make the decision whether or not a wireless service shutdown is required in a particular situation. Even when the

⁴³ <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=07001-08000&file=7901-7912>

court determines that there is a need to restrict communication, then the local or private agencies must work under the direct authority of the Commission or under the recognized process for cases of national emergencies.

b. Improving communication capabilities

An key lesson learned from 9/11 was the need for robust local communication channels between emergency response officials. One of the Senate Committees set up to evaluate the security systems after the Mumbai terror attacks categorized the lessons on future initiative and practices into six categories, namely communications, training programs, emergency response, target hardening techniques, information sharing, and coordination initiatives.⁴⁴ We need to invest in radio and wireless technology to coordinate communication systems so that various law enforcement agencies and emergency response teams can speak with one another in times of crisis. There is a need for ever-improved communications capabilities, both in-house and with local law enforcement and emergency response agencies.⁴⁵

c. Well-equipped and effective law enforcement tactics

The primary responsibility for protecting public safety is with law enforcement.⁴⁶ With more advanced technology available today, we can find better ways to tackle situations which put our safety at risk when this technology is coupled with better training. Since 9/11 the security industry has worked towards improving the training of its employees in key areas such as surveillance techniques and observation skills.⁴⁷ Security and preparedness are important keys to protecting public safety.⁴⁸ A layered security which is well integrated between various law enforcement and transit agencies is the most promising approach to be adopted.⁴⁹ The continued training and readiness of security personnel is critical to keeping the transit systems safe.⁵⁰

d. Public awareness

Public awareness also plays an important role in improving the security systems. Along with security personnel, the public needs to be vigilant and alert. There are millions of riders that use the

⁴⁴ www.hsgac.senate.gov/download/012809orlob

⁴⁵ http://www.fas.org/irp/congress/2009_hr/mumbai.pdf

⁴⁶ http://www.fas.org/irp/congress/2009_hr/mumbai.pdf

⁴⁷ www.hsgac.senate.gov/download/012809orlob

⁴⁸ www.rer.org/Homeland_Security_RER_2012_Policy_Agenda.aspx

⁴⁹ www.manhattan-institute.org/pdf/scr_05.pdf

⁵⁰ www.manhattan-institute.org/pdf/scr_05.pdf

transit systems every day, and for the safety of these riders it is necessary that we make sure that they understand the need to be aware of their surrounding circumstances, and are aware of emergency procedures. The New York Metropolitan Transit Authority, for instance, uses a “If you see something - say something” campaign⁵¹ which urges riders to activity that may threaten public safety.

e. Improving emergency response

As already stated at the beginning of this comment, communication systems become even more critical during emergency situations. We need to invest in technologies and training which improves emergency responses⁵² and allow the public to use systems wherein they are able to make emergency calls even when the wireless service is otherwise disrupted. A similar system is used in prisons and is called the Managed Access System. Under this mechanism, the system design allows facility representatives to effectively control contraband cell phones without impacting legitimate wireless communications in the area of the prison.⁵³ This system does not interfere with wireless 911 calls. It is important to note that even in prisons the officials have only limited authority to regulate usage of cell phones.⁵⁴ The Tokyo Metropolitan Civil Protection Plan, which lays out rapid and precise implementation of measures to protect public safety, also talks about using wireless services for issuing emergency alert messages to the public. It is at least as important then, while we consider rare circumstances where wireless service may need to be shutdown, that we commit to fully utilizing rapidly advancing wireless technology to our best advantage, and incorporate better techniques and devices in our security systems to help us protect public safety.

f. Role of first-responders

Another important aspect of improving emergency communications is the improvement of the role of first responders.⁵⁵ The Department of Homeland Security has stated it is committed to helping first responders nationwide by ensuring that emergency response professionals are prepared, equipped and trained for any situation, and by bringing together information and resources to prepare for and respond to a terrorist attack, natural disaster or other large-scale emergency.⁵⁶ Additionally, improving training of security personnel and transit officials on emergency procedures and first aid and the means to effectively evacuate or close off sections of any affected property plays a crucial role and helps assist

⁵¹ <http://www.mta.info/mta/security/>

⁵² <http://www.wset.com/story/17517841/upgrading-radio-systems-improving-emergency-response>

⁵³ http://www.cdcr.ca.gov/FPCM/conference2011/NPSTC2011_managed_access.html

⁵⁴ http://www.cdcr.ca.gov/FPCM/conference2011/NPSTC2011_fact_sheet.html

⁵⁵ http://www.fas.org/irp/congress/2009_hr/mumbai.pdf

⁵⁶ <http://www.dhs.gov/xfirstresp/>

other first responders like firemen and policemen.⁵⁷

g. Proper policing and making arrests of actual offenders

When there is any kind of imminent threat to public safety, the first step should be to step up the security at the affected area by increasing the number of patrolling stations and checkpoints and then targeting those who are actually offending public safety. The important question that arises here regarding a related shutdown of wireless service is how and when do people know that someone is planning a riot. Who would be given the authority to make the judgment that wireless service should be shutdown and by what standards? Such power should be vested in the courts or the Commission, because otherwise we would quickly see abuses by private companies and police.⁵⁸ As much as possible, police must permit legal speech and focus on protecting public safety. Well trained, reasonable policing can be far less intrusive than total disruption of communication and wireless networks for the entire public.

h. Wireless network companies competing to provide better emergency communications

According to a White Paper by Motorola on public safety communications, Motorola reported how 4G networks could be better used by public safety organizations for ensuring public safety⁵⁹. With more competition in the market there are better and faster networks being developed. In such a growing telecommunication world we cannot allow government and local agencies to turn off wireless systems and cellular networks in defense of maintaining public safety, when communication has been understood to be such an important part of the efforts to maintain public safety.

VIII. Conclusion

This Comment establishes the importance of wireless communications today, and that wireless networks dramatically increase the safety and security of passengers, first responders, and transit personnel alike.⁶⁰ The Commission has always aimed at providing uninterrupted, high-quality and affordable communication services to the consumers and continuously working towards improving these services. However, certain loopholes in the Act may run afoul of the Commission's intentions. Therefore, it is crucial that the Commission makes a clarification that government agencies and other

⁵⁷ www.hsgac.senate.gov/download/012809orlob

⁵⁸ http://www.huffingtonpost.co.uk/2011/08/11/did-blackberry-cause-a-ri_n_924427.html

⁵⁹ http://www.motorola.com/web/Business/_Documents/White%20Paper/_Static%20files/4G%20LTE%20Public%20Safety%20Communications%20Systems_White%20Paper2.pdf

⁶⁰ <http://www.firetide.com/innercontent.aspx?taxid=6&id=744>

third parties in control of the facilities for wireless service are covered by the provisions of the Communications Act regarding wireless service shutdowns. Furthermore, the Commission can should support and encourage the efforts of public safety agencies to pursue additional means of improving public safety preparation and response that do not involve complete suspension of wireless service.

Respectfully Submitted

_____/s/_____

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