



# PUBLIC NOTICE

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## COMMISSION SEEKS COMMENT ON CERTAIN WIRELESS SERVICE INTERRUPTIONS

GN Docket No. 12-52

COMMENT DATE: April 30, 2012  
REPLY DATE: May 30, 2012

By this Public Notice, the Federal Communications Commission's (FCC or Commission) Public Safety and Homeland Security Bureau (PSHSB) and Wireless Telecommunications Bureau (WTB) seek comment on concerns and issues related to intentional interruptions of Commercial Mobile Radio Service (CMRS or "wireless service")<sup>1</sup> by government authorities for the purpose of ensuring public safety.

### **Background**

The Commission is dedicated to preserving the availability and openness of communications networks. Wireless communications serve vital free expression interests and are critical to our nation's economy. Wireless service has also come to play a central role in ensuring public safety. For example, about 70% of all 911 calls now originate from wireless phones.<sup>2</sup>

While the important function that wireless service plays in protecting public safety is undisputed, some commentators, including some law enforcement personnel, have raised concerns that wireless networks can be used in ways that put the public's safety at risk. Concerns, for example, that wireless service could be used to trigger the detonation of an explosive device or to organize the activities of a violent flash mob have led public authorities in the United States and abroad to consider interrupting wireless service.<sup>3</sup> Last summer, a public agency temporarily interrupted wireless service on parts of a

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<sup>1</sup> Though we use the general term "wireless service" throughout this Public Notice, we limit our inquiry to *licensed* wireless services. Unlicensed wireless services are not entitled to the same interference protections as licensed wireless services, and therefore the interruption of unlicensed wireless services implicates a different set of laws and policies.

<sup>2</sup> Wireless 911 Services, FEDERAL COMMUNICATIONS COMMISSION, *available at* <http://www.fcc.gov/guides/wireless-911-services>.

<sup>3</sup> See e.g., Josh Smith, *Protests, Flash Mobs Spark Controversy Over Communications Crackdowns*, NATIONAL JOURNAL (Aug. 17 2011, 3:22 pm), *available at* <http://www.nationaljournal.com/tech/protests-flash-mobs-spark-controversy-over-communications-crackdowns-20110817>; *Lessons from the Mumbai Terrorist Attacks—Parts I and II: Hearings Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 111th Cong. 20–21 (2009) (statement

mass transit system based on stated concerns about public safety.<sup>4</sup>

Any intentional interruption of wireless service, no matter how brief or localized, raises significant concerns and implicates substantial legal and policy questions.<sup>5</sup> The service interruption last summer drew sharp criticism, and state and local governments have recently grappled with how to address possible future events.<sup>6</sup> We are concerned that there has been insufficient discussion, analysis, and consideration of the questions raised by intentional interruptions of wireless service by government authorities. In this Public Notice, we seek comment on the legal constraints and policy considerations that bear on an intentional interruption of wireless service by government actors for the purpose of ensuring public safety.

Service interruption could be accomplished in many different ways. For the purposes of this Public Notice, we are focused on situations where one or more wireless carriers, or their authorized agents, interrupt their own services in an area for a limited time period at the request of a government actor, or have their services interrupted by a government actor that exercises lawful control over network facilities.<sup>7</sup> We do not invite comment on practices expressly prohibited by statute or regulation, such as signal jamming.<sup>8</sup>

Comments on this Public Notice will help inform Commission deliberations regarding whether—

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of Raymond W. Kelly, Police Comm’r, N.Y.C.); *FBI: Cell phones rigged to set off bombs*, USA TODAY (June 11, 2003, 8:32 pm), available at [http://www.usatoday.com/news/nation/2003-06-11-cell-phone-terrorism\\_x.htm](http://www.usatoday.com/news/nation/2003-06-11-cell-phone-terrorism_x.htm).

<sup>4</sup> Press Release, BAY AREA RAPID TRANSIT, *Statement on temporary wireless service interruption in select BART stations on Aug. 11*, (Aug. 12, 2011), available at <http://www.bart.gov/news/articles/2011/news20110812.aspx>; Press Release, BAY AREA RAPID TRANSIT, *A letter from BART to our customers*, (Aug. 20, 2011), available at <http://www.bart.gov/news/articles/2011/news20110820.aspx>.

<sup>5</sup> 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](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1201/DOC-311310A1.pdf) (noting that “[f]or interruption of communications service to be permissible or advisable, it must clear a high substantive and procedural bar”).

<sup>6</sup> This past month, a California state senator introduced a bill that would require a magistrate order to effectuate a wireless service interruption, and a Chicago alderman proposed an ordinance that would restrict the ability of law enforcement officers to interrupt wireless service. See S.B. 1160, 2011-2012 Reg. Sess. (Ca. 2012) (“Telecommunications: intentional service disruption”), available at [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_1151-1200/sb\\_1160\\_bill\\_20120222\\_introduced.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1151-1200/sb_1160_bill_20120222_introduced.pdf); Don Babwin, *Chicago asked not to stifle wireless at summits*, THE ASSOCIATED PRESS (Feb. 15, 2012), available at <http://www.businessweek.com/ap/financialnews/D9SU230O0.htm>. In December, BART adopted a policy to address wireless service interruptions. See Press Release, BAY AREA RAPID TRANSIT, *Extraordinary circumstances only for cell phone interruptions*, (Dec. 1, 2011), available at <http://www.bart.gov/news/articles/2011/news20111201.aspx>.

<sup>7</sup> Licensees, or their authorized agents, ultimately control licensed spectrum. We recognize, however, that under certain circumstances public officials could have physical control over cell sectors or sites, and could have an agreement with a carrier that permits direct interruption. We include such circumstances in the scope of this Public Notice.

<sup>8</sup> 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) (“The [Act] and the FCC rules prohibit the manufacture, importation, marketing, sale or operation of [jammers] within the United States.”). Because it implicates a distinct set of legal and policy issues, we also do not invite comment on any lawful signal jamming undertaken by the federal government. See 47 U.S.C. § 302a(c); 47 C.F.R. § 2.807(d).

and if so, specifically what—legal or policy guidance may be appropriate to provide regarding the type of wireless service interruption discussed here. In order to inform our analysis, comments should be submitted within **60 days** of the date of this Public Notice, and replies should be submitted within **30 days** of the close of the comment period.

## **Questions**

We pose each of the questions below with the understanding that the answers could depend upon the particular circumstances surrounding an interruption of wireless service. For purposes of this discussion, we limit our focus to interruptions of wireless service that are conducted or initiated by government authorities. In raising these questions, we note that there is an existing protocol for authorities to initiate a request for service interruption during emergencies.<sup>9</sup> We raise the questions below generally, and do not seek comment on the specifics of that protocol in this proceeding.

- 1. Past practices and precedents.** As noted above, last summer a public agency cited public safety concerns as a reason for temporarily interrupting wireless service on certain portions of a mass transit system. What are examples of previous intentional interruptions of wireless service for public safety reasons, and what policies or rationales have public agencies developed that support or provide guidance on such interruptions?
  - a. Under what circumstances have public agencies in the United States considered or effectuated interruptions of wireless service for public safety reasons?
  - b. What are relevant examples of foreign governments considering or effectuating interruptions of wireless service for public safety reasons? What laws or policies do foreign states have regarding interruption of wireless service for purposes of protecting public safety?
  - c. What are examples of wireless networks actually being used to put the public's safety at risk? Could interruption of wireless service have mitigated these harms? How would such interruptions have mitigated these harms?
  - d. What existing policies do public agencies in the United States have for determining whether a service interruption is proper? What existing policies or agreements do public agencies in the United States have for effectuating an interruption of wireless service?
  
- 2. Bases for interrupting wireless service.** Under what circumstances, if any, is it appropriate for a public agency to interrupt wireless service? How effective is an interruption likely to be in achieving the purpose of the interruption?
  - a. What types of government authorities are most likely to seek intentionally to interrupt wireless service?
  - b. In what kinds of situations would a government authority potentially seek intentionally to interrupt wireless service? How frequently do these situations arise? For how long would service be interrupted in these situations? How rapidly after the threat to public safety has passed can service be restored?
  - c. Under what circumstances would an interruption of wireless service likely be effective in protecting public safety? Under what circumstances might interrupting wireless service be ineffective?

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<sup>9</sup> See NATIONAL SECURITY TELECOMMUNICATIONS ADVISORY COMMITTEE, 2009-2010 NSTAC ISSUE REVIEW 155 (2010), available at [http://www.ncs.gov/nstac/reports/2009%20-%202010%20Issue%20Review%20\(FINAL\).pdf](http://www.ncs.gov/nstac/reports/2009%20-%202010%20Issue%20Review%20(FINAL).pdf) (summarizing the protocol).

**3. Risks in interrupting wireless service.** What are the risks of an interruption of wireless service? What factors affect those risks?

- a. What public safety risks arise from intentionally interrupting wireless service? How are the activities of first responders and other emergency personnel and government authorities affected by an intentional interruption of wireless service? How are the activities of consumers affected by an intentional interruption of wireless service?
- b. What are the potential economic consequences of intentionally interrupting wireless service?
- c. How do particular circumstances affect the risks that arise from an interruption of wireless service? Are there particular kinds of locations where interruption is especially risky? Are there areas where first responders and other emergency personnel are especially dependent upon commercial wireless service to perform their duties or where consumers are particularly dependent on wireless service? How does the availability of alternative means of communication affect the risks that arise from an interruption of wireless service? Does the interruption of wireless service pose particular risks to persons with disabilities?
- d. What steps could be taken to minimize the risks that arise from an interruption of wireless service? What steps could be taken to narrow the scope of a service interruption?
- e. What institutions or officials should be notified of an intentional interruption of wireless service? How and when should they be notified? How and when should the public be notified? Should notifications include the reason for the service interruption?
- f. Are there less intrusive ways of protecting public safety than interrupting wireless service? If so, what are they? Under what circumstances are these alternative means likely to be as effective as interrupting wireless service? Should government officials be required to consider alternative means before interrupting wireless service?
- g. Are there situations where the risk of interrupting wireless service will always outweigh the benefits?
- h. What kinds of liability issues for wireless service providers might be raised by wireless service interruptions?

**4. Scope of interruption.** We seek comment regarding the scope of service interruptions.

- a. Can wireless carriers implement a general service interruption, but still ensure that the public can make wireless 911 calls? Would a service disruption that permits wireless 911 calls, but otherwise prohibits voice, text, and data communications, achieve the same purpose as a blanket interruption? Would it pose any unique risks to persons with disabilities?
- b. Can wireless carriers implement a service interruption while ensuring that authorized parties would have uninterrupted access to wireless priority service (WPS)?<sup>10</sup>
- c. Can wireless carriers implement a service interruption and still provide targeted alerts via the Personal Localized Alerting Network (PLAN) to the public in the affected area?<sup>11</sup>

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<sup>10</sup> WPS enables prioritization of wireless calls originated by authorized government officials during major emergencies. WPS calls do not preempt wireless calls in progress. For more information regarding the WPS program, see <http://wps.ncs.gov/faq.html>.

<sup>11</sup> PLAN (technically, the Commercial Mobile Alert System) is a new public safety system that allows users of an enabled mobile device to receive geographically-targeted messages alerting them of imminent threats to safety in their area. For more information regarding PLAN, see <http://transition.fcc.gov/pshs/services/plan.html>. See also 47 C.F.R. Part 10 (Commercial Mobile Alert System).

- d. What are the costs and benefits of a service interruption where one or more of wireless 911, WPS, or PLAN are also disrupted?
  - e. What are the different methods for interrupting wireless service? How do circumstances affect the availability of these methods?
  - f. How do the effects differ among methods of interruption? Do some methods target a narrower geographic area?
  - g. What methods of interrupting service would lead to the most rapid restoration of service?
- 5. Authority to interrupt service.** Which public institutions, agencies, or officials have or should have the authority to request an of interruption wireless service? What process should officials with such authority use to effectuate an interruption?
- a. What processes could ensure that only an appropriate official makes the decision to request an interruption of wireless service? How would such an official be contacted in an emergency situation where time is of the essence?
  - b. What institutions or officials should be able to review the decision to interrupt wireless service? What process considerations or safeguards should be implemented? How can timeliness of such review be ensured?
  - c. What obligations do or should wireless carriers have to comply with a request by a government official to interrupt wireless service?
  - d. What steps should be taken to ensure a timely return to full wireless service in the affected area? What institutions or officials should have authority to request a return to full wireless service in the affected area?
  - e. What procedures should there be to review an interruption after it has occurred?
- 6. Legal constraints on interrupting wireless service.** Many laws—local, state, federal, constitutional—could prohibit or constrain the ability to interrupt wireless service. The legality of an interruption could depend upon particular circumstances, such as the reason for the interruption, its duration, its geographic scope, or how the interruption is accomplished. What are the laws or regulations that affect the legality of an interruption, and what are the circumstances that are likely to render an interruption permissible or impermissible?
- a. What sources of legal authority does the Commission have regarding shutdowns of wireless service? What discretion does the Commission have to approve or disapprove shutdowns?
  - b. Are there circumstances under which a government entity could be construed to have common carrier obligations under the Communications Act due to its relationship with or control over wireless service?
  - c. What authority does the Commission have to preempt laws and regulations permitting or prohibiting interruption of wireless service? How should the Commission exercise any such authority?
  - d. What protections do the First Amendment or due process rights provide for users of wireless service? Under what circumstances could an interruption of wireless service violate the First Amendment or due process rights of wireless users? Are there other constitutional protections that should be considered?
  - e. What protections do the First Amendment, due process, or other constitutional rights afford wireless carriers? Under what circumstances could a forced interruption of wireless service violate the First Amendment, due process, or other constitutional rights of wireless carriers?
  - f. What provisions of Title II of the Communications Act prohibit or circumscribe an interruption of wireless service, and under what circumstances? To what extent do sections 202, 214, 302a, 333, or other sections of the Communications Act circumscribe the ability of government actors to interrupt wireless service?

- g. What state laws prohibit or circumscribe an interruption of wireless service? What authorities do state public utility commissions have to prohibit or circumscribe an interruption of wireless service? Are there circumstances in which approval of a state public utilities commission is necessary before ordering a shutdown?
- h. To what extent does a public agency's contractual or practical control over wireless service equipment affect the analysis of whether a public agency has the legal authority to interrupt wireless service?
- i. What is the scope of the Commission's discretion to set policies that affect a public agency's legal authority to interrupt wireless service? To the extent the Commission has not exercised this discretion, should it do so, and in what ways?

## **Procedural Matters**

### **A. Comment Filing Procedures**

Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121-01 (1998). **In order to facilitate staff review of the record, commenting parties should organize their comments, where applicable, using the above 6 headings and related subheadings.**

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- 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 12<sup>th</sup> 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 12<sup>th</sup> Street, SW, Washington DC 20554.

### **B. Ex Parte Status.**

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>12</sup> Persons making *ex parte* presentations file a copy of

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<sup>12</sup> See 47 C.F.R. §§ 1.1200(a), 1.1206. *et seq.*

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.

### **C. Accessible Formats**

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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

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