



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON
PETITION FOR DECLARATORY RULING AND/OR RULEMAKING FILED BY
TELECOMMUNICATION SYSTEMS, INC.**

GN DOCKET 11-117, WC DOCKET 05-196, PS DOCKET 11-153, PS DOCKET 10-255

COMMENTS DUE: March 25, 2013

REPLY COMMENTS DUE: April 8, 2013

By this Public Notice, the Public Safety and Homeland Security Bureau (PSHSB) seeks comment on a petition for declaratory ruling and/or rulemaking filed by TeleCommunication Systems, Inc. (TCS) regarding intellectual property rights in technologies used to provide 911 communications services.¹

TCS states that it provides Enhanced 911 (E911) and Next Generation 911 (NG911) services including call routing and location information to customers such as wireless carriers and interconnected VoIP service providers.² It claims that it has become a target of “predatory patent infringement suits” based on its role as a provider of E911 services and capabilities that are required under Commission rules.³ These lawsuits, TCS asserts, “typically allege infringement based on the mere fact that the defendant is in compliance with the Commission’s E911 regulations,”⁴ including E911 Phase II location accuracy requirements.⁵ More broadly, TCS alleges that it and its customers have become the targets of patent assertion entities (PAEs)⁶ that “use the Commission’s mandatory E911 regulations against compliant carriers and their vendors in an attempt to extract licensing agreements,” leaving such companies with a choice between violating Commission rules, defending costly patent infringement lawsuits, and accepting unreasonable terms of licensing.⁷

¹ Petition of Telecommunication Systems Inc. for Declaratory Ruling and/or Rulemaking, GN Docket No. 11-117, WC Docket No. 05-196, PS Docket No. 11-153, PS Docket No. 10-255 (filed July 24, 2012) (TCS Petition).

² *Id.* at 2.

³ *Id.* at 3.

⁴ *Id.*

⁵ See 47 C.F.R. § 20.18(h).

⁶ The term “patent assertion entity” refers to firms whose business model primarily focuses on purchasing and asserting existing patents rather than developing new technologies. See Federal Trade Commission, *The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition* (March 2011) available at <http://www.ftc.gov/os/2011/03/110307patentreport.pdf> (last accessed on Feb. 22, 2013).

⁷ TCS Petition at 12.

TCS requests that the Commission issue a declaratory ruling that service providers' compliance with E911 and NG911 regulations amounts to a use of intellectual property "by or for the United States" within the meaning of 28 U.S.C. § 1498(a). Section 1498(a) applies when the use or manufacture of a patented invention occurs "for the Government and with the authorization or consent of the Government."⁸ In such cases, the statute "relieves a third party from patent infringement liability, and it acts as a waiver of sovereign immunity and consent to liability by the United States."⁹ TCS seeks a formal declaration by the Commission that any patent rights required to provide E911 and NG911 services are used "with the authorization and consent of the Government" in furtherance of a stated Government policy, and therefore are subject to the limitations on recovery set forth in section 1498(a).

Alternatively, TCS asks the Commission to adopt rules requiring intellectual property rights for mandatory 911 service capabilities to be licensed on reasonable and non-discriminatory (RAND) terms.¹⁰ Specifically, TCS proposes additions to 47 C.F.R. § 9.7(d) and 47 C.F.R. § 20.18(n) providing that:

All intellectual property rights required by entities subject to the provisions of this Section in order to comply with the requirements herein shall be licensed on reasonable terms and conditions that are demonstrably free of any unfair discrimination so long as the rights are used for the purpose of providing 911 or E911 services in accordance with the Commission's rules.¹¹

TCS asserts that the Commission has ancillary authority under Title I of the Communications Act to require RAND licensing as part of its statutory obligation to "promot[e] safety of life and property"¹² through effective 911 service.¹³ It also asserts that the New and Emerging Technologies 911 Improvement Act of 2008¹⁴ provides the Commission with broad authority to adopt regulations ensuring that interconnected VoIP customers have access to E911 capabilities.¹⁵

By this Public Notice, we seek comment on TCS's petition and announce the pleading cycle during which comments and replies may be filed.

This proceeding will be treated as "permit but disclose" for purposes of the Commission's *ex parte* rules.¹⁶ As a result of the permit-but-disclose status of this proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules applicable to non-restricted proceedings.¹⁷ 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

⁸ 28 U.S.C. § 1498(a).

⁹ *Madey v. Duke University*, 307 F.3d 1351, 1359 (Fed. Cir. 2002).

¹⁰ TCS Petition at 23-24.

¹¹ *Id.*, Annex A.

¹² *See* 47 U.S.C. § 151.

¹³ *See* TCS Petition at 21-22.

¹⁴ New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-823, 122 Stat. 2620.

¹⁵ *See* TCS Petition at 22.

¹⁶ *See generally* 47 C.F.R. §§ 1.1200-1.1216.

¹⁷ 47 C.F.R. § 1.1206.

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). 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 **March 25, 2013**, and may file reply comments on or before **April 8, 2013**. Please place the docket numbers, **GN DOCKET 11-117, WC DOCKET 05-196, PS DOCKET 11-153**, and **PS DOCKET 10-255**, on all filings. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹⁸

- 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 Street 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:

445 12th Street SW, CY-Level
Washington, DC 20554
(202) 418-0270

¹⁸ See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

For further information, contact: Eric Schmidt, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-1214 or eric.schmidt@fcc.gov.

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

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