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of Consumer Reports



A Project of
Consumers Union

June 8, 2004

The Honorable Michael Powell
The Honorable Kathleen Abernathy
The Honorable Jonathan Adelstein
The Honorable Michael Copps
The Honorable Kevin Martin
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20544

Dear Commissioners:

Consumers Union¹, the independent nonprofit publisher of *Consumer Reports*, urges the Commission to reaffirm that its Second Report and Order² regarding the performance of certain handsets and wireless carriers is intended to ensure emergency calls to 911 are successfully delivered to a local landline operator. Specifically, the United States District Court for the Northern District of Illinois (“the Court”) has issued an order asking the Commission to clarify the Second Report and Order’s definition of “call completion” when a caller makes an emergency 911 call on a wireless phone in analog mode. Clearly, in an emergency situation the Commission could only have intended for call completion to mean establishing a usable voice connection between the caller and the 911 operator through the local landline telephone company.

The Commission’s clear direction on this matter is crucial to public safety. As we reported in the February 2003 issue of *Consumer Reports*, one-third of wireless subscribers surveyed said they bought their wireless phone mainly for emergency use—specifically, to be able to reach a 911 operator when away from home. It is also conservatively estimated that one-third of all calls to 911 centers are now made from wireless phones. But as our own survey of subscribers found, 15 percent of the 1,880

¹ *Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education, and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with approximately 4 million paid circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial, and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.*

² *Second Report and Order in Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, 14 F.C.C.R. 10954 (1999)

respondents who had dialed 911 from a wireless phone had trouble connecting, and 4 percent never got through at all.

The location capabilities of the emerging wireless E911 system should enhance the ability of first responders to locate wireless callers to 911. But their deployment is far from complete, and may never work as well as landline 911 location capabilities. As of now, consumers do not have adequate assurance that they can rely on their wireless phone in emergencies.

The clear intent of the Second Report and Order is to ensure that callers can rely on their wireless phones to connect to a 911 operator. The Order states: “We are responding to an important public safety concern: the need for confidence that wireless calls to 911 will in fact go through.” To fulfill the Commission’s clear intent, an emergency call to 911 could only be complete when the caller has established a voice connection to a 911 operator. The defendants in *Aggarwal et al. v. Nokia Corp. et al.* argue that call completion should be defined as the assignment of a voice channel only, which does not ensure the caller has reached an emergency operator.

This definition is critically important to ensuring callers connect to 911 operators. The Commission may recall that during hearings prior to the adoption of the Second Report and Order, evidence was presented to the Commission of a phenomenon called “lock-in”. “Lock-in” occurs if a carrier provides a weak or inadequate signal. The handset may be given a voice channel with insufficient power to complete a call. Moreover, if the assigned voice channel is from a preferred carrier, the phone may be prevented from reaching a carrier with a stronger signal is present that could complete the call.

If the defendants’ arguments in the court case prevail, it may guarantee that lock-in will happen in some instances if call completion is defined as access to a voice channel only. Thus, defining connection as assignment of a voice channel violates the intent of the Second Report and Order to ensure access to 911. We therefore urge the commission to reaffirm its ruling and advise the Court that an emergency call to 911 is complete when it is delivered to the facilities of the local landline telephone company.

Consumers Union urges the Commission to quickly reaffirm its Second Report and Order to protect public safety. Prompt action on this question will allow the Commission to shift its attention to ensuring that callers using digital mode wireless phones also have reliable access to 911. The Commission must direct handset manufacturers and wireless service providers to ensure that emergency calls to 911 made from wireless phones operating in a digital mode can also be quickly be completed.

Unique research that *Consumer Reports* conducted in the fall of 2002 very clearly illustrates the shortcomings of the existing rules. Our research found that the wireless system often handles a call to 911 like an ordinary nonemergency call. In our field tests, conducted in northeastern Indiana and upstate New York, we made numerous real-time calls to 911 on phones with accounts from AT&T Wireless, Cingular, Sprint, and Verizon

Wireless. Of the 18 phone-and-service combinations tested, 9 calls failed to connect to 911. But in every instance, there was a strong signal present from another carrier that the phones could have used.

The Commission's decision to phase out the requirement that some carriers provide analog backup to their digital signals was ill-advised, we believe. It significantly erodes the effectiveness of the Second Report and Order by accelerating the demise of analog service—without also requiring handset manufacturers and service providers to make their digital technologies communicate with one another.

We appreciate your consideration of this issue. The Commission was correct in requiring call completion to mean establishing a usable voice connection between the caller and the 911 operator through the landline operator. Consumers Union requests the Commission reaffirm that ruling to the Court.

Respectfully submitted,

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