



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket Nos. 11-153 and 10-255; FCC 13-127]

Next Generation 911; Text-to-911; Next Generation 911 Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends the text-to-911 “bounce-back” requirement as it applies to Commercial Mobile Radio Service (CMRS) providers when consumers are roaming. In the May 2013 Bounce-Back Order, FCC 13-64, the Commission required all CMRS providers and providers of interconnected text messaging services to provide an automatic “bounce-back” text message in situations where a consumer attempts to send a text message to 911 in a location where text-to-911 is not available. This document amends the rule to specify that when a consumer attempts to send a text to 911 while roaming on a CMRS network, the CMRS provider offering roaming service (host provider) satisfies its bounce-back obligation provided that it does not impede the consumer’s text to the consumer’s home network provider (home provider) or impede any bounce-back message generated by the home provider back to the consumer.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Order on Reconsideration, PS Docket Nos. 11-153, 10-255; FCC 13-127, adopted September 27, 2013 and

released September 30, 2013. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (<http://fjallfoss.fcc.gov/ecfs/>) or on the Commission's website at <http://www.fcc.gov/document/text-911-bounce-back-message-order>. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via the company's Web site, <http://www.bcpweb.com>.

I. BACKGROUND

1. Bounce-Back Order. In the Bounce-Back Order, the Commission required “all CMRS providers to provide an automatic bounce-back message when a consumer roaming on a network initiates a text-to-911 in an area where text-to-911 service is not available.” Given the important public safety implications of the bounce-back requirement, the Commission stated that “carriers should make automatic bounce-back messages available to consumers roaming on their network to the same extent they provide such messages to their own subscribers.” Accordingly, the bounce-back rule in § 20.18(n) of the Commission's rules contains a specific subsection relating to roaming. Section 20.18(n)(7) currently provides that: “A CMRS provider subject to § 20.12 shall provide an automatic bounce-back message to any consumer roaming on its network who sends a text message to 911 when (i) the consumer is located in an area where text-to-911 service is unavailable, or (ii) the CMRS provider does not support text-to-911 service at the time.”
2. CTIA Petition. On June 28, 2013, CTIA filed a petition for reconsideration, or in the alternative, for clarification, of the roaming provision of the Bounce-Back Order. CTIA's core concern is that in a situation where a wireless consumer attempts to send a text to 911 while roaming on a CMRS provider's network, § 20.18(n)(7) could be read to impose an obligation on

the host provider to originate a bounce-back message, which CTIA contends is technically infeasible for the host provider. CTIA claims that in current network architecture for Short Message Service (SMS) texting, only the consumer's home provider has the technical ability to initiate a bounce-back message when the consumer is roaming on another network. CTIA also contends that § 20.18(n)(7) was adopted "with minimal discussion of the rule's practicality or technical feasibility." CTIA therefore requests that the Commission either eliminate § 20.18(n)(7) or, in the alternative, clarify that § 20.18(n)(7) "applies only to home network operators." CTIA further suggests that the clarification could be accomplished by deleting § 20.18(n)(7) and adding language to § 20.18(n)(3), which specifies the circumstances under which a covered text provider must provide an automatic bounce-back message, to state that the bounce-back requirement applies where the consumer is roaming on the network of another CMRS provider. CTIA states that "the relief it requests will not prevent wireless subscribers who are roaming from receiving a bounce-back message" but merely seeks to "allocate carrier responsibilities in a way that aligns with technical realities."

3. Responsive Pleadings. On July 11, 2013, the Commission released a Public Notice seeking comment on the Petition. Several parties filed in support of the CTIA petition. AT&T supports the Commission "clarifying that, while covered text providers must send a bounce-back message alerting end users that text-to-911 is unavailable, it is the Home Carrier (and not the Host Carrier) that is responsible for sending that bounce-back message when the end user is texting while roaming on another carrier's network." T-Mobile similarly contends that, in a roaming scenario, the host provider will automatically pass an attempted text to 911 to the consumer's home provider, which will then generate a bounce-back message that will be delivered, via the roaming network, to the consumer. Changes to this architecture, T-Mobile argues, are "simply not feasible." T-Mobile opines that "the Commission did not intend to create

a mandate for serving carriers in § 20.18(n)(7) but rather intended to ensure that serving carriers do not prevent home carriers from generating bounce-back messages for their roaming subscribers.” Therefore, T-Mobile urges the Commission to “either issue an erratum correcting the rule or clarify that § 20.18(n)(7) does not apply to serving [i.e., roaming] carriers.”

4. Two other commenting parties, Blooston Rural Carriers (Blooston) and NCTA, support not requiring host providers to provide a bounce-back message to a roaming consumer at this time, based on current technical considerations. Blooston agrees with CTIA that origination of a bounce-back message by a roaming provider is technically infeasible. Blooston further argues that the Commission should not require home providers to originate a bounce-back message in this scenario because the home provider cannot determine the location of the consumer on the host provider’s network, and therefore cannot determine whether the PSAP serving the consumer’s location supports text-to-911. Thus, Blooston argues that the bounce-back rule should not apply to consumers while roaming until a technological solution can be worked out by industry standard-setting bodies that would enable the home provider to determine the consumer’s location on the host provider’s network. NCTA similarly argues that implementation of the roaming portion of the bounce-back rule should be delayed until a technical solution is developed by standards-setting bodies and implemented.

5. APCO filed an opposition to the Petition, arguing that CTIA has failed to demonstrate that complying with the Commission’s rule is not technically feasible. APCO objects that CTIA’s proposal would result in all roaming customers receiving a bounce-back message even in situations where the roaming consumer is located in an area where the local PSAP accepts text-to-911. APCO contends that if a roaming consumer is in an area where the PSAP supports text-to-911, the home and host providers should be required to deliver the consumer’s text to the PSAP rather than sending a bounce-back message. APCO argues that delivery of a text-to-911

from a roaming customer to the PSAP serving the customer's area is technically feasible under existing standards. In reply, CTIA disputes APCO's contention that a technical solution exists to support routing of 911 texts from roaming customers to PSAPs. CTIA also argues that the issues APCO raises regarding the feasibility of text-to-9-1-1 while roaming "are directed at the second part of the NPRM, which is still pending before the Commission."

6. In an ex parte filing, NENA states that it does not oppose CTIA's petition. While NENA supports implementation of a "ubiquitous" text-to-911 solution that works "regardless of whether the subscriber is attached to a home or a roaming network," it agrees that CTIA's position with respect to the "limited question of which party should be responsible for delivering a bounce-back message" in a roaming scenario is consistent with current technology and the understanding reached by NENA, APCO, and the four major wireless carriers in their December 2012 voluntary text-to-911 agreement. CTIA also provides further clarification in an ex parte filing, noting the technical infeasibility of a host network provider to "'transmit' the text-to-911 of a consumer roaming on the host network to the covered text provider home network and the home network's responding 'bounce[-]back' message due to the store-and-forward nature of CMRS provided SMS services." CTIA also notes that "a covered home network text provider's obligation to provide any bounce back message should account for whether the home network operates 'in the area' that a consumer initiates the text-to-911, and not only whether the covered home network text provider supports text-to-911 services at that time."

II. DISCUSSION

7. In the Bounce-Back Order, the Commission sought to ensure that the carrier with direct control of a consumer's attempted text message to 911 would be responsible for delivering the bounce-back message in circumstances where text-to-911 is unavailable. The Commission is persuaded by the technical representations made in the record that under the current technical

standard developed for SMS-based texting to 911, the home provider alone has control over sending a consumer a required bounce-back message. Current network architecture is such that, when a roaming consumer sends an SMS message, that message is routed first to the home provider, which has control over the further routing of that SMS message to its intended recipient. It is therefore the home provider that has direct control over the delivery of the SMS message to its intended recipient. Thus, the Commission agrees with CTIA that based on current network architecture, it would be technically challenging for a host provider to originate a bounce-back message to a roaming consumer.

8. Accordingly, the Commission amends § 20.18(n)(7) to reflect that the host provider must not impede the consumer's text message to 911 to the consumer's home provider and/or any bounce-back message generated by the home provider back to the consumer. The host provider is not under any obligation to originate a bounce-back message to the consumer or otherwise ensure that the home provider generates a bounce-back message in response to the consumer's text to 911.

9. As revised, § 20.18(n)(7) specifies that a host provider shall not impede the text message to 911 of a consumer roaming on its network and/or impede any bounce-back message originated by the home provider to that roaming consumer. It is the home provider's responsibility to generate the bounce-back message. This apportionment of responsibility between the roaming and home providers assures that consumers receive potentially lifesaving bounce-back messages, while taking into account the technical realities of current network architecture. The revised language also accounts for whether the home provider is supporting text-to-911 in the area where the consumer initiates a text message to 911.

10. The Commission denies CTIA's petition to the extent it seeks elimination of § 20.18(n)(7) of the bounce-back rule. In light of its amendment of the rule, the Commission finds

that compliance with the rule is technically feasible and does not raise the concerns referenced in CTIA's petition. The Commission finds that there was adequate notice to adopt the rule and that, as amended, the rule is consistent with the record in the underlying proceeding. The Commission does not agree with Blooston that it should eliminate the roaming portion of the bounce-back rule in its entirety or otherwise defer implementation of the rule. The bounce-back requirement addresses an important public safety interest in providing consumers immediate notification of non-delivery of their text to the PSAP. To eliminate bounce-back messaging in roaming situations would risk leaving roaming consumers without information as to whether their text reached the appropriate PSAP, potentially endangering them by preventing or delaying their attempt to reach 911 through another means. The Commission's amendment of the rule provides for a technically and economically feasible apportionment of responsibilities for roaming and home providers, while preserving the important public safety interests of the original rule.

11. With respect to APCO's argument that host providers should be able to route consumer texts to 911 to the appropriate PSAP, the Commission notes that the questions APCO raises about the technical feasibility of requiring host providers to route texts to 911 are part of the broader and still-pending portion of the Commission's rulemaking proceeding. Therefore, the Commission does not address these issues in this order, but reserves them for consideration in the next phase of the proceeding. Today's order is limited in scope to the limited issue of how responsibility is apportioned for delivering bounce-back messages to consumers when those consumers are roaming.

12. Finally, in order to effectuate the modifications described herein, the Commission waives § 20.18(n)(7) on its own motion, pending the effective date of the amended rule. In light of the potential technical difficulties associated with complying with § 20.18(n)(7) as originally

drafted, the Commission concludes there is good cause to waive application of this portion of the bounce-back rule until the effective date of the amendments adopted in this order. The remainder of § 20.18(n), which was published in the Federal Register and took effect on June 28, 2013, remains in full force and effect. Accordingly, except as provided in this order, covered text providers must begin providing bounce-back messages in accordance with the rule no later than September 30, 2013. In addition, as discussed below, the Commission determines that amended version of § 20.18(n)(7) will take effect on publication in the Federal Register. Therefore, covered text providers must begin complying with § 20.18(n)(7) as of that date.

III. PROCEDURAL MATTERS

A. Effective Date

13. The Commission concludes that good cause exists to make the effective date of the modifications adopted in this Order on Reconsideration effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, pursuant to section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3). Agencies determining whether there is good cause to make a rule revision take effect less than 30 days after Federal Register publication must balance the necessity for immediate implementation against principles of fundamental fairness that require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule. Given the public safety need for bounce-back messaging and the relative lack of any additional burden imposed by this Order on Reconsideration, there is good cause to make these amendments effective immediately upon Federal Register publication. Indeed, given that covered text providers must begin generating automatic bounce-back messages outside of the roaming context beginning no later than September 30, 2013, and given that no party has argued that the modifications to the § 20.18(n)(7) requirement raised by the CTIA Petition would require additional time to comply with, the Commission finds that good cause exists to make the

modifications to § 20.18(n)(7) effective immediately upon their publication in the Federal Register.

B. Paperwork Reduction Act

14. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). Therefore the Order on Reconsideration does not contain any new or modified information collection burdens for small businesses with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

C. Final Regulatory Flexibility Analysis

15. The Regulatory Flexibility Act (RFA) requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.” The RFA defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. The Commission hereby certifies that this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Order on Reconsideration, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Order on Reconsideration (or a summary thereof) and certification will be published in the Federal Register.

D. Congressional Review Act

17. The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

E. Accessible Formats

18. Accessible formats of this Order on Reconsideration (Braille, large print, electronic files, audio format) are available to persons with disabilities by sending an email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) 202-418-0432 (TTY). This Order on Reconsideration can also be downloaded at <http://www.fcc.gov>.

IV. ORDERING CLAUSE

19. Accordingly, IT IS ORDERED pursuant to sections 1, 4(i), 301, 303(b), 303(f), 303(g), 303(r), 307, 316, 319, 324, 332, 333, 405, 615a, 615a-1, and 615b of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303(b), 303(f), 303(g), 303(r), 307, 316, 319, 324, 332, 333, 405(a), 615a, 615a-1, and 615b, and §§ 1.2 and 1.429(a) of the Commission's rules, 47 CFR 1.2, 1.429(a), that Petition for Reconsideration, or in the Alternative, for Clarification filed by CTIA – the Wireless Association, PS Docket Nos. 11-153 and 10-255 on June 28, 2013 IS GRANTED to the extent provided herein and otherwise DENIED.

20. IT IS FURTHER ORDERED that the modifications to 47 CFR 20.18(n)(7) specified in this Order on Reconsideration SHALL BE EFFECTIVE immediately upon publication in the Federal Register.

21. IT IS FURTHER ORDERED that, pursuant to §§ 1.3, 1.4, 1.103, and 1.427 of the Commission's rules, 47 CFR 1.3, 1.4, 1.103, and 1.427, the requirements of 47 CFR 20.18(n)(7) are WAIVED to the extent and for the time period specified herein.

22. IT IS FURTHER ORDERED that, pursuant to §§ 1.3, 1.4, 1.103, and 1.427 of the Commission's rules, 47 CFR 1.3, 1.4, 1.103, and 1.427, the waiver of 47 CFR 20.18(n)(7)

specified herein is EFFECTIVE IMMEDIATELY UPON RELEASE of this Order on Reconsideration.

23. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of the Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

24. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Radio.

FEDERAL COMMUNICATIONS COMMISSION

Sheryl D Todd,
Deputy Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20 – COMMERCIAL MOBILE SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. Sections 151, 154, 160, 201, 251-254, 301, 303, 303(b), 303(r), 307, 309, 316, 319, 324, 332, 333, 615a, 615a-1, 615b, and 615c unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302.

2. Section 20.18 is amended by revising paragraph (n)(7) to read as follows:

§ 20.18 911 Service.

* * * * *

(n) * * *

(7) Notwithstanding any other provisions in this section, when a consumer is roaming on a covered text provider's host network pursuant to § 20.12, the covered text provider operating the consumer's home network shall have the obligation to originate an automatic bounce-back message to such consumer when the consumer is located in an area where text-to-911 service is unavailable, or the home provider does not support text-to-911 service in that area at the time. The host provider shall not impede the consumer's 911 text message to the home provider and/or any automatic bounce-back message originated by the home provider to the consumer roaming on the host network.

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