

# E-911 IMPLEMENTATION ACT OF 2003

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON TELECOMMUNICATIONS AND  
THE INTERNET  
OF THE  
COMMITTEE ON ENERGY AND  
COMMERCE  
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

**H.R. 2898**

SEPTEMBER 11, 2003

**Serial No. 108-47**

Printed for the use of the Committee on Energy and Commerce



Available via the World Wide Web: <http://www.access.gpo.gov/congress/house>

U.S. GOVERNMENT PRINTING OFFICE

89-469PDF

WASHINGTON : 2003

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## **E-911 IMPLEMENTATION ACT OF 2003**

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**THURSDAY, SEPTEMBER 11, 2003**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
SUBCOMMITTEE ON TELECOMMUNICATIONS  
AND THE INTERNET,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2123, Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Shimkus, Terry, Markey, Eshoo and Green.

Staff present: Howard Waltzman, majority counsel; Will Nordwind, majority counsel and policy coordinator; Will Carty, legislative clerk; and Peter Filon, minority counsel.

Mr. UPTON. Good morning. First I want to say that the House decided last night when we adjourned about 10, I guess it was, or 11, that we would not have votes today, so a number of members have gone back to their districts. We do expect a few other members to show, and we decided that we would go ahead with the hearing when they announced that there would be no votes.

I want to welcome everyone to today's hearing. Of course today marks the second anniversary of September 11, so it is a day for sober reflection, particularly as we look at the clock right now. But I thought that we would just start with a brief moment of silence for the victims of the tragedy and their families and so many that were impacted.

God bless them all.

As we get started today, I think of where I was 2 years ago when the events of that fateful day began to unfold. Some of you were with me that day. I was at a press conference on the Senate side discussing the importance of E-911 phase II deployment to the safety of the American people. The rest, as they say, is history.

It is very fitting that today, precisely 2 years later, we are holding a legislative hearing on a very important bipartisan piece of legislation, the E-911 Implementation Act of 2003, which was introduced by our able colleagues, Mr. Shimkus from Illinois and Ms. Eshoo from California. I want to commend them for their outstanding leadership on this issue, and I am very proud to be an original cosponsor of this measure along with numerous other members of the subcommittee.

To be sure, throughout the past couple of years, much progress has been made on E-911 phase II deployment. By and large, our

Nation's largest wireless carriers have held up their end of the bargain.

But, as we learned from our June hearing on this matter, there are some significant hurdles which cry out for our attention, and H.R. 2898 answers that call. First and foremost, we need to help our Nation's PSAPs cope with the financial demands of becoming phase-II-ready. This bill answers that call by providing a significant grant program to States and municipalities to help them procure their phase II equipment and training.

Second, we need to ensure coordination and information sharing at all levels of government and with other stakeholders as they continue to sort through the maze of challenges that lay ahead. This bill answers that call by not only incentivizing States to have statewide E-911 coordinators, but also establishing a new Federal E-911 coordination office.

Third, we learned that some of our Nation's rural carriers faced unique challenges in complying with the FCC's accuracy requirements. This bill answers that call, too, by directing the FCC to address those challenges.

Fourth, we heard that some States have raided E-911 surcharge moneys collected from wireless customers for things completely unrelated to E-911. This is nothing more than picking the pockets of the consumers and stealing the funds which should be going toward deployment of this lifesaving technology. This bill answers that call by creating stiff disincentives to States who raid their E-911 funds.

Finally, I want to say a word about which Federal agency will house the Federal E-911 coordination office and distribute the grant dollars. This bill would place these responsibilities within the NTIA.

As many of the members of the subcommittee may know, we are still awaiting a decision from the Bush Administration as to which agency should control the activities required by the legislation. We are told, we are led to believe, that that decision may be made as early as next week. I would, therefore, ask unanimous consent that any written communication from the administration on this matter be included in the record of today's hearing. And without objection, so ordered.

In closing, I want to mention that it is my strong desire to mark up this legislation in the subcommittee in the not too distant future, perhaps as early as next week. I look forward to working with Mr. Markey, the authors of this legislation, my colleagues on both side of the aisle as we seek to make a good bill even better.

I look forward to hearing from today's panelists. I particularly want to welcome Mr. Muleta back to the subcommittee, and thank the other witnesses who have traveled great lengths to be with us today. Your input will be of great assistance to us as we prepare to move this bill through the legislative process.

At this point I will recognize Mr. Terry from Nebraska for an opening statement.

Mr. TERRY. I will yield back my time. I want to hear from the panelists before my plane.

Mr. UPTON. All right. The gentleman defers. You get extra minutes for questions.

I now recognize the gentleman from Illinois, soon to be a Cub fan for the National League when the Cardinals fold, Mr. Shimkus, original sponsor of the bill.

Mr. SHIMKUS. Never. I used to always say wait until September. But I can't do that anymore. So there is always hope.

Thank you, Chairman Upton, for calling this hearing this morning. And I did talk to my colleague, Ann Eshoo. I think she was planning on being here, so I think that we should expect her to pop up. You know, a lot of members decided to go home, go to memorial services, but I can't think of a better thing to do than to be here in Washington and talk about this issue, because as we have heard through the tapes and transcripts, and know what we know about emergency responding, this is really an appropriate hearing to have this day, Mr. Chairman. So I am glad you decided to stay the course and be here.

While public safety answering points are able to know the location of 95 percent of wireline 911 calls, we are here today because only about 15 percent of the Nation's PSAPs are capable of processing wireless 911 calls. Meanwhile, 50 percent of the calls made to PSAPs each day come from wireless phones, and that percentage is growing.

Our Nation's communication technology has changed, but our emergency response infrastructure has not been updated. This leads to many people needlessly at risk.

The most significant remaining hurdle to ubiquitous E-911 services is PSAP readiness; however, most of the remaining PSAPs lack the funding necessary to upgrade their systems. And many States have aggravated the situation by using the subscriber fees collected on phone bills for E-911 services to help cover budget shortfalls.

To address this growing problem, I join my colleague in the House of Representatives, Ann Eshoo, and Senator Burns and Senator Clinton to form the Congressional E-911 Caucus. Together we have pushed legislation that will enhance coordination of E-911 implementation in each State, discourage the raiding of E-911 funds, and give local PSAPs additional funding to help them finally achieve enhanced 911 capability.

H.R. 2898, the E-911 Implementation Act of 2003, will do four major things to advance E-911 development: One, it authorizes \$100 million for 5 years to provide PSAPs with matching grants to help them with much-needed upgrades.

Two, it penalizes States for diverting E-911 funds. Under this legislation PSAPs will not be eligible for matching grants until their States certify that they have stopped using their E-911 monies for other purposes.

Three, it creates an E-911 office at the National Telecommunications Information Administration that will serve as a clearinghouse for best practices in the deployment of the E-911 and to administer the grant program.

And, four, it directs the FCC to review its E-911 accuracy requirements for rural areas to determine if they adequately address the complexities associated with providing E-911 services.

I would like to thank the distinguished panel for being here this morning to give us perspective and guidance on this legislation. I am especially proud to welcome my constituent Terry Addington,

who has traveled here from Mt. Vernon, Illinois. You have heard me mention that community and his company numerous times in this debate, where he is CEO and president of First Cellular of Southern Illinois, a small rural carrier. Offering service in rural areas presents unique challenges, and Terry will be telling his story about how he is working to provide E-911 service to all of his customers and roamers who use his network.

And with my remaining time, Mr. Chairman, I also want to—and I mentioned to my staffer Courtney Anderson that every time I have minutes to speak, I am also going to take the time to talk about kids.us which on September 4, 2003, Newsstar began taking registrations for this child-friendly space on the Internet.

The Smithsonian was the first to put up the kids site. Disney is not far behind; after having called them, there are positive signals. And I encourage all of you on this subcommittee to join me in setting up child-oriented congressional home pages. We are working with Bob Ney and House Administration Services.

And I want to challenge anybody out there who is a corporate entity, nonprofit, parent that I think this kids.us site is one of the exciting things that we have done here in the last Congress. But the whole supply and demand equation, it will only work if there is supply out there, which means people on the service, and demand, parents demanding a safe site for kids to surf on the Internet.

And I am going to talk to my good friend Mr. Largent, who is going to be involved with the CTIA, and encourage him to be involved with kids.us.

With that I yield back my time.

Mr. UPTON. We thank you for your leadership on that, and virtually every member of this subcommittee, as we pushed that legislation through last year. I am going to have an upton.kids.us site. I have got two kids. You have got a couple of kids. I know Lee Terry has got three kids. I think it is a wonderful opportunity.

I would note that we have C-SPAN covering this hearing today, so hopefully millions of listeners will see that as well.

At this point I would like to recognize my colleague, Mr. Green from Texas, for an opening statement, and one that I was standing next to 2 years ago on this fateful day over on the Senate side on this same issue.

Mr. GREEN. Thank you, Mr. Chairman. And thank you for calling this hearing, particularly on this day. Like you said, 2 years ago you and I were at a 911 event with Senator Burns on the Senate side, E-911, talking about how important it is to have an expanded 911 system. And we learned that day here in Washington, as well as New York, like we learned pretty often, about how we have holes in our system still.

And I again, I think it is fitting that our committee today is taking care of the public safety business before we gather on the Capitol steps in an hour or so. E-911 is saving lives right now in my hometown in Houston. We are blessed with a great local 911 organization, the Greater Harris County 911 Emergency Network, led by John Melcher, who has testified before our committee before, who is also president of the National Emergency Number Association.

I congratulate the authors of 2898, both my colleague and friend Ann Eshoo, and my basketball partner sometimes, John Shimkus, for working hard to get this legislation together and moving so we can get this going across America and save more lives from accidents, crime and terrorism. And I am proud to be an original co-sponsor.

All of our major carriers, AT&T Wireless, Cingular, Verizon, Nextel, Sprint, and T-Mobile, deserve credit for moving forward with E-911 at a time of many competing regulatory demands. But that is not the whole story, which is why our legislation is going to help the smaller and rural carriers handle this responsibility through grants and encouraging regulatory flexibility.

Back in the 2001 hearing, we thought that we would get nationwide E-911 by 2005. Now we are hearing 2006. And it is vitally important that we do it earlier or are at least on time. And, Mr. Chairman, I look forward to moving this bill to the floor, both from our committee, but also to the Senate so the President can sign and we can get this on track.

I know in an urban area, we went through this problem earlier. When we created our 911 in the 1980's in an urban area in Houston, I had constituents, when we created the statewide one, say, why do I need to pay to the statewide system, because we are paying here locally? And I said, well, every once in a while in Texas you do go out to deer hunt in west Texas, and I think you would like to probably have—if you have an accident on that road, you would like to be able to have someone to respond to you by using 911. Even though you are paying twice—you are paying in an urban area and statewide—because we need to have that seamless network not only statewide, but we need to have it nationwide.

With that, Mr. Chairman, again, because of the day and the side benefit that we need 911 because of the terrorism response and its primary purpose in communication during accidents and crimes. So thank you again for holding this hearing.

Mr. UPTON. Thank you.

I would like to recognize now for an opening statement one of the two prime sponsors of the bill, Ms. Eshoo from California.

Ms. ESHOO. Thank you very much, Mr. Chairman. And good morning to you and to all of my colleagues that are here, certainly to the witnesses that are here as well. I want to thank you for holding this hearing.

Today is an important day in the life of our country as we commemorate American lives lost, and I think that one of the lasting memories of that day was the use of wireless phones, where people that were trapped in the buildings called their loved ones. And it was the last time that they heard their voices, and it was the last words that they expressed either to their husband, wives, their loved ones. So it is with mixed emotions that—not about the legislation, but about the sobering aspects of today that we have gathered.

I appreciate what you have done to help move this along. I want to salute my wonderful partner in this, John Shimkus. He really has been a longtime partner and terrific to work with.

I think that also that it takes time for issues to mature in the Congress. I started out on this journey in 1996. And E-911, I guess,

was related to ET at the time. I mean, people thought that, you know, what has this Member of Congress thought of? And yet steps have been taken, and now we are here with what I think is a very sound bill. Certainly it is a starting point, but it is more than a serious starting point, because the issue has grown in the Congress.

There is a huge appreciation on the part of the American people where over 140,000 wireless 911 calls are made every day in our country. That represents over half of all 911 calls that are made, and each one of those calls for so many is the single most important call that that individual will make.

So clearly the use of wireless helps to save lives, does save lives. But we have some holes in the system. And the work of the Congress, since our country was attacked, was to improve our public safety system. If, in fact, we are going to have homeland security, we have to have hometown security. So in the towns and cities all over our country, this system needs to be solidified.

Our bill, the E-911 Implementation Act of 2003, creates an E-911 implementation and coordination office at the NTIA to facilitate coordination between the three levels of government, the Federal, State and local emergency communication entities.

It authorizes \$500 million in grants over 5 years to enhance emergency communications systems. This is going to take an investment. If, in fact, it is going to work, it is going to take an investment. The investment is going to pay off. If we can ask the private sector to make the investments that they have had to make, along with the regulatory system, then the Congress collectively has to see to it that we invest public dollars in this as well. These grants would be administered by NTIA and would require a 50 percent State match, and it would also prevent States from misusing the funds that are collected for E-911 services for other purposes.

That is part of the problem. And this is not to play gotcha, but we have to be fair and recognize that people are paying into this, and that it benefits each and Every State in our Union if, in fact, the funds that are paid are directed to what their original purpose is for.

So I look forward to working with you, Mr. Chairman. I thank you again for holding this hearing; to John Shimkus, to the original cosponsors, to all of the sponsors of the legislation from the House Energy and Commerce Committee. I think we are going to have a very important and proud product to present to the full committee and to our colleagues on the floor of the House.

Again, E-911 does save lives, but in order to save more and to do more, we have to do more. And I think that is what this legislation represents. So thank you again, and I look forward to the hearing.

Mr. UPTON. Thank you very much.

Again, I just want to say that because the House will not be having recorded votes today, a number of members are leaving this morning to go back to their districts for the weekend. And at this point I would ask unanimous consent that their opening statements, those members not here, be made part of the record. Without objection, it is so ordered.

[Additional statements submitted for the record follows:]

PREPARED STATEMENT OF HON. PAUL E. GILLMOR, , A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF OHIO

I thank the Chairman for the opportunity to consider H.R. 2898, a measure that helps ensure cell phone users can be located during emergencies. As an original co-sponsor of the E-911 Implementation Act of 2003, I again applaud the work of Representatives Shimkus and Eshoo.

As we know, 911 calls from wireless telephone users have increased and delays in implementing E911 capabilities persist, emergency after accident across the country. Van Wert County in my rural Ohio district is currently implementing Phase I of E911, essentially providing a nearby dispatcher the caller's cell phone number and nearest cell tower, narrowing the person's location to a couple blocks in a city, or in my district, within a few square miles. Less than 3% of counties in Ohio have implemented Phase II deployments.

Furthermore, I support H.R. 2898's aim to improve the coordination, communication, and cost issues of implementing E911 to all parties affected. I look forward to debate and remain optimistic that we will soon produce a meaningful measure for the House floor.

Again, I thank the Chairman and yield back the remainder of my time.

PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF WYOMING

Thank you, Mr. Chairman.

I would like to thank you for holding this hearing to examine H.R. 2898, the E-911 Implementation Act of 2003, and build on the progress we made during our hearing on wireless E-911 implementation earlier this year. With over 140 million Americans owning wireless phones today, there is no question that the deployment of wireless E-911 is a pressing priority and part of the foundation of homeland security. Additionally, with an increasing number of folks disconnecting their landline telephones, and being fully untethered, the benefits of America's mature wireline E-911 are available to fewer and fewer households each day.

In our previous hearing on this topic, we outlined the hurdles that block the road to ubiquitous E-911 coverage. Since then, through the leadership of Representatives Shimkus and Eshoo, co-chairs of the E-911 caucus, a bill has been introduced that will help get all stakeholders on the same page and marching to the same drum beat. I also wish to thank Chairman Upton for playing an important role in moving the ball down the field and calling the Subcommittee together to tackle the problems facing E-911. I am looking forward to hearing testimony from our broad-based panel about whether this legislation will help the industry, the public safety answering points and emergency responders come together to clear the hurdles that have impeded the rollout of ubiquitous E-911 coverage.

I understand that the marketplace does not always meet a federal agency's expectations, especially when it involves technological innovation—or service to rural America. I also understand that some state bureaucracies have diverted funds earmarked for E-911 to other state spending programs, which is troubling. But despite these challenges, we must press forward with this urgent national security priority.

As a result of this hearing, I want to know what further steps, if any, are needed in this legislation to help stakeholders run the last mile of this marathon and give wireless consumers the safety and peace of mind that wireless E-911 promises. I also want to ensure that there is not an antagonistic relationship between wireless carriers and the FCC. Instead, there needs to be cooperation among all parties to ensure the proper final implementation of wireless E-911 while preserving the rich variety of competitors providing wireless services across the nation.

Thank you Mr. Chairman, I yield back the balance of my time.

PREPARED STATEMENT OF HON. CHARLES W. "CHIP" PICKERING, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MISSISSIPPI

First, I want to thank you, Mr. Chairman, for holding this hearing today on such an important safety and security issue affecting the wireless telecommunications industry and the general public. As we reflect on this second anniversary of one of the most devastating attacks ever on American soil, we should recognize the importance of wireless services on that fateful day and how such services aided in responding to the catastrophe. While Enhanced 911 ("E-911") service was important to our country before the terrorist attacks of September 11, 2001, the importance of this service is magnified exponentially in today's environment. According to the

National Emergency Number Association, at the end of the 20th century, nearly 93% of the population of the United States was covered by some type of 911 service, with 95% of that coverage constituting E-911 for wireline customers. While we have made substantial progress in implementing E-911 service for landline facilities, access to E-911 for wireless customers is still in its infancy. Therefore, I applaud the Chairman and this subcommittee for once again addressing wireless E-911 implementation and for considering the proposed legislation introduced by my colleagues here on the Subcommittee, Congressman John Shimkus and Congresswoman Anna Eshoo.

The E-911 Implementation Act of 2003, H.R. 2898, would address some of the major hurdles faced by wireless carriers in implementing E-911 service for its wireless customers. Because it is anticipated that by the year 2005 the majority of 911 calls will be from wireless callers, the implementation and feasibility of E-911 service for wireless callers is paramount. H.R. 2898 is a proper response to the hurdles that wireless carriers face, by establishing a national implementation and coordination office at the federal level; creating a grant program to assist state and local officials in implementation of Phase II of E-911 service; providing a punishment for states diverting E-911 funds from E-911; and requiring the FCC to study its E-911 accuracy requirements, specifically with regard to problems faced in rural areas. This bill is a necessary component of an overarching strategy to properly implement E-911 throughout the country.

My district is predominantly rural and served by small wireless carriers. These companies are very important to the wireless industry and to the rural customers which they serve, providing competitive pricing and technological innovation in an otherwise neglected segment of the country. It is imperative, both to the industry and to consumers, that we consider the needs of these small regional wireless providers and ensure they continue to be viable competitors in the marketplace. These small wireless carriers that choose to operate in rural areas, where costs are high and profit margins are thin, are struggling to implement E-911. Whether dealing with uncooperative vendors or attempting to meet almost impossible accuracy requirements, the problems faced by small, rural carriers are something which we must address legislatively before wireless E-911 can become a reality in the rural areas of the country. While there is currently a waiver process in place at the FCC, most small, rural carriers feel that the process is wholly inadequate, as it provides no specific guidance as to the criteria required to be granted a waiver and it contains no timeline in which the FCC is required to make a decision upon such an application. With such uncertainty faced by small, rural carriers—and all carriers for that matter—it is no wonder that most small, rural carriers find this regulatory process inadequate. Therefore, while this legislation does seem to address the accuracy problems faced by small, rural carriers, I feel that we should also confront other problems faced by wireless carriers and search for ways to ameliorate these obstacles so that small, rural wireless carriers can continue to provide quality service in these areas that otherwise would not be served, while also providing E-911 emergency service and all the safety benefits that that service entails to all Americans. While our goal in this hearing is to consider the benefits of wireless E-911, we must be careful to implement policies that are realistic and achievable. We must remember that wireless E-911 in rural areas is not possible without the existence of rural wireless carriers in the first place. Thank you again, Mr. Chairman, for holding today's hearing and I look forward to working with you and your staff on this issue.

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PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Mr. Chairman, thank you for calling this hearing today. September 11th is unfortunately an appropriate day to hold a hearing on this bill.

September 11th was an eye-opener on many fronts. One of them was the weakness of our public safety communications systems. One of the cornerstones of that system is E911 services, especially the ability to pinpoint the location of a caller using a mobile phone who is involved in or a witness to an emergency situation.

I commend Representatives Shimkus and Eshoo for introducing H.R. 2898 so that we can put E911 deployment on the fast track. This legislation will greatly improve the coordination of E911 activities within and among states. It will also facilitate greater communications among the various stakeholders.

There is one issue in particular that this bill addresses that is critical to speeding E911 deployment. Too many states have been raiding E911 funds for other governmental purposes. I can think of few things that are as irresponsible as diverting

funds designated for E911 deployment. Such an action is a fraud perpetuated on consumers, who pay fees purportedly for E911. And it may be costing lives by slowing E911 deployment. Local governments will never be ready for E911 deployment if states continue to divert funds designated for such deployment.

That is why I am delighted that this bill penalizes states that divert funds. Hopefully, this bill will demonstrate to states that are diverting funds that the federal government will hold them accountable for jeopardizing lives.

Mr. Chairman, thank you again for holding this hearing. I look forward to a speedy markup and to the enactment of this bill.

Mr. UPTON. At this point we will be hearing from our witnesses. We thank you all for submitting your testimony early so that we had a chance to look at it last night. Your statements will be made part of the complete record, and we would like you to limit your remarks, opening statement now, your oral presentation, to no more than 5 minutes.

We welcome the Honorable Tim Berry, the State Treasurer from the State of Indiana. All of us extend our prayers to your Governor, who is, we hope, recovering. Mr. John Muleta, the Bureau Chief, Wireless Telecommunications, from the FCC; Mr. Anthony Haynes, Executive Director of the Tennessee Emergency Communications Board; and Mr. Terry Addington, president and chief executive officer of First Cellular of Southern Illinois.

At this point, we are prepared to listen to your statement. We will start with you, Mr. Berry. Thank you for being here this morning.

#### **STATEMENT OF TIM BERRY, STATE TREASURER, STATE OF INDIANA**

Mr. BERRY. Thank you, Mr. Chairman and members of the committee. As Treasurer of the State of Indiana, the elected State Treasurer of Indiana, I also serve the role as chairman of Indiana's Wireless 911 Advisory Board, a board that is made up of both PSAP representatives as well as carrier representatives, and it is that board, it is my fellow members of NENA and APCO, that I am here with you as well, members of NENA and APCO both in Indiana and across the country.

Today is a day that, as you have all said, a day that we honor the courage and the selflessness of emergency responders, particularly those who represent 911. September 11, 9/11, 911 reminds us of the importance of the work of our first responders. And today, especially in this committee hearing, we talk about our first responders of—first responders, our 911 leaders.

As I said, as Treasurer I am the chairman of Indiana's Wireless 911 Advisory Board, a board that gives me oversight of Indiana's wireless 911 implementation, but also the opportunity to work with public safety officials, private sector leaders and others on a very, very important issue, for it was in a NENA/APCO member, Mr. Ken Lowden, who serves as communications director in Steuben County, Indiana, who, moments after my election back in 1988 as State Treasurer, brought me aside and said, I want to talk to you about wireless 911.

Now, as State Treasurer you also might be wondering about the issues that States face, and as you have mentioned, many of you have mentioned already this morning where States have been diverting funds meant for 911 implementation across their States, di-

verting those funds to use to balance their State budgets, and that is an issue that concerns me greatly as a fiscal officer. It is an issue that concerns me greatly as a member of the 911 community, and it is an issue that I think needs to be directed and approached.

In far too many cases our PSAPs are not ready to receive wireless 911 capable information because money that was intended to go to 911 services is being spent on over government needs that may or may not pertain to 911. Instead of paying to deploy 911, these funds are misappropriated, misallocated, or flat out diverted away there from their intended purpose long before a dime or even a nickel can be spent on helping a PSAP.

Several States have begun a disturbing trend as Governors and legislators balance their books with funds collected for 911 implementation. While I know the committee is keenly aware of these abuses and practices, allow me to illustrate a point of what happened recently in North Carolina, the home State of NENA president Richard Taylor. In the waning days of the General Assembly in North Carolina, they diverted or raided \$58 million of funds that were meant to deploy—assist PSAPs in deploying wireless 911. This is something that needs to stop. This is something that we need to make sure that we do not promote in the future.

But I think it is also important that we remember who is diverting these funds and not penalize those that are not responsible for that. And by saying that, I mean let's not penalize our PSAPs who have no role in what the State legislators, what the Governors are doing. They have no control. They cannot stop them from doing that. Let's not penalize the PSAPs with grant moneys that were meant for them in those States where those moneys have been raided, but rather let's work to foster a relationship that penalizes those States who have not utilized the funds appropriately, but also rewards those communities, those PSAPs who are wanting to deploy technology.

And in so doing we need to create innovative ways to foster relationships and to foster utilization of grant dollars. 911 is not a one-size-fits-all scenario. As a result, many small, poor rural communities have fixed costs that they need for the development and deployment of 911 technology. As a result, they may need a higher grant ratio than a 50/50, whereas in other communities a lower grant relationship, percentage relationship, might be more appropriate.

I thank you for the opportunity to testify before you today, and I look forward to your questions and moving forward on wireless 911 in the United States.

[The prepared statement of Hon. Tim Berry follows:]

PREPARED STATEMENT OF HON. TIM BERRY, INDIANA STATE TREASURER

Mr. Chairman, members of the Committee, Congressman Upton, thank you very much for providing me with this opportunity to appear before you today. My name is Tim Berry, and I serve as the Treasurer for the State of Indiana.

I'm honored to appear before the Subcommittee today. Especially today—a day that is set aside for reflection and remembrance of the tragedies and lives lost two years ago on this very date. It is a day to honor the courage and selflessness of all emergency responders, particularly those who represent 9-1-1. September 11, nine-eleven or simply nine-one-one, reminds us all of the importance of our work.

Let us not dwell upon the infamy of the anniversary, but rather ever more dedicated to taking one of the many steps needed to improve our nation's ability to re-

spond to all emergencies, starting with the first responders among first responders, our 9-1-1 leaders.

As the state-elected Treasurer, I have the pleasure of serving as the Chair of Indiana's Wireless 9-1-1 Advisory Board, which gives me not only oversight of Indiana's wireless E9-1-1 implementation, but also the opportunity to work with public safety officials, private sector leaders and others on this very important issue.

I'm here in part, to represent my colleagues in public safety: most notably those who are members of the National Emergency Number Association (NENA) and the Association of Public Safety Officials International (APCO), the two groups that have guided much of these discussions to date.

[Attached to my testimony and of which I offer to the record with a full endorsement is NENA and APCO's joint position paper on E9-1-1 legislation before Congress].

I am a member of these organizations. NENA and APCO have been an invaluable resource and service to my efforts in Indiana, and they are why I'm here before you today. It was a NENA/APCO member, Mr. Ken Lowden of Steuben County, Indiana who emphatically pushed me to get involved, almost minutes after I was first elected in 1998.

Initially responding to a legislative duty and constituent request, E9-1-1 has become one of my top priorities as an elected official, politician and parent.

It is this priority that is guiding me in making Indiana a model state in E9-1-1 deployment, and nationally working for the needs of Ken Lowden and his many colleagues in Public Safety Answering Points (PSAPs) throughout our nation.

My testimony, which is that of a state-elected official, is equally the story of the thousands of 9-1-1 leaders in this nation and their needs to help make 9-1-1 work like it should.

In discussing the E9-1-1 Implementation Act of 2003, I will ask: how is this going to help Ken Lowden of Steuben County and his colleagues all across the nation—the thousands of PSAPs who are dedicated to one thing, saving lives.

*E9-1-1 Fiscal Responsibility: End Abuse of 9-1-1 Monies*

In far too many circumstances our nation's PSAPs are not ready to receive wireless E9-1-1 capable information because money that is intended to go to E9-1-1 services is being spent on other government needs that may or may not pertain to 9-1-1. Instead of paying to deploy E9-1-1, these funds are misappropriated, mis-allocated and flat out diverted away from their intended purpose, long before a dime or even a nickel can be spent on helping a PSAP.

Several states have begun a disturbing trend, as Governors and state legislatures, balance their books with funds collected for E9-1-1 implementation. While I know the Committee is keenly aware of these abuses and practices, allow me to illustrate a point by sharing a recent example that occurred this past summer, in North Carolina, a state that is home to NENA's President, Richard Taylor.

North Carolina, like many states during these lean economic years has found it difficult to balance the state's budget. Conversely, the state's Wireless 9-1-1 Fund has experienced a relative "boom economy" in the form of a steady stream of revenue from state 9-1-1 fees collected on phone bills for the deployment of E9-1-1. Given the number of wireless subscribers in North Carolina, the fund has accumulated a balance of nearly 58 million dollars. A somewhat anonymous program a few years back, this balance has not lasted long. Raiding the fund in previous years, the North Carolina state legislature became even more presumptuous during the last few days of this year's legislative session. Typical of most state legislatures at the end of a session the North Carolina Legislature was engaged in a heavy budget battle; striking a direct hit on 9-1-1.

Late in the evening of June 30th, 2003, all 58 million dollars of the state's Wireless 9-1-1 Fund was erased with a stroke of a pen, in passing the balanced budget for the new fiscal year. This was done without consultation of the state's Wireless 9-1-1 Board, which is comprised of wireless carriers and PSAPs, much less any of the 9-1-1 professionals in the state. The results of this action, were to discontinue funding to PSAPs for the next two years, virtually erasing the state's 9-1-1 program and the path to E9-1-1 progress.

My friend, colleague, and president of NENA, Richard Taylor could do very little to stop the legislature. A state appointed employee, Richard serves at the pleasure of the Governor, and his hands were tied. The only hope was an eleventh hour amendment, pushed by the state members of NENA and APCO to offer a technical correction giving authority back to the Wireless 9-1-1 Board.

The technical amendment was finally passed, but even today, the Board still must provide the requested money to the general fund.

H.R. 2898, the “E9-1-1 Implementation Act of 2003” is a positive first step to change the behavior of states like North Carolina. Like my colleagues in NENA and APCO, I support the withholding of federal grant monies from states and political subdivisions that divert or misappropriate 9-1-1 monies from their intended purpose.

As a state-elected official, former county official and particularly a fiscally conservative treasurer, I find the act of diverting E9-1-1 funds reprehensible and irresponsible. Not only is it careless accounting, its poor public policy, robbing public safety and our citizens from one of the most important functions of government; the ability to call for help.

While I equally encourage advising Congress and the publishing of information regarding states that divert these funds, I draw caution to the revision of FCC regulations that might hinder the ability of a PSAP to request E9-1-1 implementation or challenge our ability to deploy more rapidly throughout the nation.

Under the proposed legislation, Section 4 would inevitably penalize PSAPs, as it would relieve wireless carriers of their obligation to provide E9-1-1 if a state diverted 9-1-1 monies. Ultimately this would punish the wrong party, for something, as in the case of North Carolina, the PSAPs had no control over, the state legislature. The revision of the FCC regulation, doesn’t help Richard Taylor of North Carolina or Ken Lowden of Indiana get money to deploy E9-1-1, it gives the wireless carrier another opportunity for delay.

I respectfully request that Committee remove the section from consideration.

#### *Federal Grant Monies for 9-1-1*

Consistent with the policy goals of the Wireless Public Safety Act of 2003 and the work of NENA and APCO before this Committee, I support and encourage the availability of federal grant monies for 9-1-1.

The costs of maintaining and operating a 9-1-1 system are significant and necessary. Technical, operational and financial resources are required from both the public and private sector. Reliability, redundancy, innovations and challenges in modern communications are constantly re-defining 9-1-1 costs and economies of scale.

Just this past June, a blue-ribbon task force of Nobel laureates, U.S. military leaders, and other experts called for a \$10.4 billion dollar investment in 9-1-1 services over five years. The call for increased 9-1-1 funding was part of a homeland security budget analysis issued by the Independent Task Force on Emergency Responders, led by former Senator Warren Rudman and former White House terrorism and cyber-security chief Richard Clarke.

NENA’s Strategic Wireless Action Team (SWAT), in which I’m participating in, is producing similar large dollar amounts to improve our nation’s 9-1-1 system.

Unfortunately, it’s hard for local communities, and in some cases, states, to keep up. Sometimes a one shot infusion of capital is needed to get the community over the hump, other times a long term systemic plan is required to ensure the most basic of service. The key is not to limit a grant program to just giving money to those in need, but rather to implement an investment strategy to reward success, cooperation, integration and interoperability within our nation’s 9-1-1 system.

To illustrate this point further, allow me to revisit my friend Ken Lowden, back in my home state of Indiana. As I stated before, Ken runs the PSAP in Steuben County located in northeast corner of our state. To the north of Ken, is Michigan, to the east of Ken is Ohio, to the west and south of his border are several rural Indiana counties. Steuben has a moderate to small population, with a large summer tourist crowd and a consistent stream of travelers on two of our nation’s busiest Interstates: Interstate 69, going north and south and Interstate 80 going east and west. In regard to 9-1-1, Ken and Steuben County are bona fide leaders.

Under Ken’s leadership, the state NENA chapter helped pass legislation to create Indiana’s Wireless Enhanced 9-1-1 Advisory Board, on which Ken presently serves. This local leadership has given Ken the opportunity to lure carriers, vendors and emerging technologies to deploy in Steuben. A model community in APCO’s Project Locate, Ken and Steuben County are in the ninetieth percentile when it comes to our nation’s PSAPs. Yet a few miles down the road in Ohio, they have had difficulty in passing cost recovery legislation, up north in Michigan PSAPs have struggled with regulatory challenges, and some of Ken’s neighbors in Indiana have yet to request Phase II. However, the public, and specifically wireless subscribers, are unaware of these shortcomings in our emergency communications network as they travel in the tri-state area; they do not know which community is safer and which is not.

It's this region and Ken that come to mind when I think of federal grants for these purposes; not based strictly on need, but leadership and the willingness to work with all stakeholders to improve emergency communications.

Our nation's 9-1-1 system needs an inclusive planning process, rewarding success and cooperation in PSAP readiness. The Ken Lowdens of 9-1-1 should be encouraged and replicated. We need more planning, not just on the state level, but on the local level as well.

How do you implement a 9-1-1 grant program that fosters leadership, instead of a handout from the federal government? How do you drive 9-1-1 deployment and increase the awareness for integrated approaches? I believe the answer is twofold: support coordination and implement grants with match threshold that encourages diversity.

Whether or not this coordination occurs on a state, local or regional level, the need is clear, coordination breeds success. Recognizing that the legal authority over 9-1-1 varies from state to state, we as a nation would be well served to encourage grants that support national standards and integration and include actual leaders of emergency response for PSAPs, 9-1-1 and emergency communications. We also should support a lowering of non-federal matches to maximize E9-1-1 deployment and reward PSAP readiness, first adopters and pioneering technology. This should help us accelerate deployment in regions stymied by fiscal hardship, while simultaneously encouraging 21st century-technology thinking. Ultimately, this might require a 10/90 non-federal to federal match in some regions and an 80/20 in others, with the principle that we support larger federal matches in specific cases and lower matches in others. And in a state like Indiana, where we have a large number of E9-1-1 deployments, these matches could be varied to speed up the process of PSAP readiness in the last remaining hold out regions.

A grant program built around these fundamentals, coupled with a diverse set of match threshold requirements is likely yield more positive results. Done correctly, our nation is likely to have more Ken Lowdens when it comes to deploying modern emergency communications.

*National Coordination: The 9-1-1 Priority*

Enhanced 9-1-1 is a national imperative, and we need to think of 9-1-1 as part of our nation's frontline to emergency response and communications. Improving our nation's 9-1-1 system is long overdue. While some states and a few communities have had success in wireless E9-1-1 we are still a long way away from modern ubiquitous emergency communications that is needed in today's environment of mobile communications and national security.

While I'm a strong advocate of state rights and leadership, I recognize the different roles and leadership structures within government. To date, the greatest burden of E9-1-1 has fallen on the Federal Communications Commission (FCC). As the chief regulatory body, the FCC has demonstrated a commitment to implement E9-1-1 to best of their expertise and charter; commissioning the Hatfield report, organizing a coordination initiative, supporting consumer awareness, and now planning for the involvement of the National Reliability and Interoperability Council (NRIC). With all due respect to the Commission and the wonderful work they do in leading our nation's communications policies, we all know that the FCC can't do it alone.

The Administration recognized the challenges of the FCC and was able to engage the United States Department of Transportation (USDOT) through the Wireless Implementation Program, surveying state and county 9-1-1 coordinators and providing national information on readiness of states, counties and PSAPs for wireless E9-1-1. The program has evolved over time and has brought the bully pulpit of Secretary Mineta's office into the campaign.

As a state leader, I can attest firsthand to the need for federal guidance in coordination and planning. I can equally attest that despite the tireless efforts of the FCC and USDOT, more needs to be done.

Consistent with the policy objectives of the Wireless Public Safety Act of 1999, I believe it is absolutely necessary for the federal government to begin coordinating 9-1-1 planning and support for the deployment of modern technologies.

I support a national Coordination Office, to serve as a "project manager" for 9-1-1; to help set national expectations, standards and improved deployment timelines for E9-1-1 services. More than anything, as a project manager, the national office should help in the nationwide role out of services that have come to create national expectations for consumers. As a coordinating body within government, this office would help us better utilize our national resources in deploying 9-1-1 technologies.

Equally, I support the convening of an "Emergency Communications Task Force" as proposed by HR. 2898's counterpart in the Senate, S.1250. An Emergency Communications Task Force as outlined in the Senate bill recognizes the roles of various

federal agencies, Federal Communications Commission, Department of Transportation, Department of Commerce, Department of Justice, Department of Homeland Security, as well as national organizations. As a task force, our nation's PSAPs, telecommunications providers and technology services could help in the future planning for all 9-1-1 services. This task force would support the NENA mantra: 9-1-1 capabilities at anytime, any where from any device.

*Consumer Expectations: Educating the Public and Review of Accuracy Requirements*

When I first got involved in E9-1-1, I was amazed at the lack of public information available about this life-saving service. And I had been a politician long enough to know, that if we were going to make a difference in Indiana, we would have to start educating the public. We started with a few public service announcements on the radio for the fans of Indianapolis 500, and now have blossomed into a comprehensive website, that provides county by county, carrier by carrier information of all E9-1-1 deployments in our state. Known simply as "911COVERAGE.ORG", this website has generated consumer demand and knowledge on available E9-1-1 services in Indiana. Consumers now have the E9-1-1 choice and information in the purchasing wireless services. It's making a difference in our state deployments.

In supporting consumers, I feel it's equally important we provide the same access for all consumers. I can not consciously accept a lower standard for rural America, when it comes to E9-1-1.

Section 5 of HR. 2898 would ask the FCC to review rural accuracy requirements for rural carriers and I believe this to be a mistake. While I'm sympathetic to the challenges of rural E9-1-1 deployments, I'm troubled by the initial requests and excuses by rural carriers to repeal progress. We have had success in Indiana with our rural carriers and that success has been built on the premises of partnership, with us emphasizing what you can do, and the opportunity to do it, not what, can not be achieved.

*Closing Comments*

As the state-elected treasurer of Indiana, I am tasked with being the fiscal officer for the state's monies, which include 9-1-1. At the same time, I've dedicated my professional life to serve the people. For me, fiscal responsibility and the opportunity to serve the public, at perhaps the most desperate hour, is an honor I take quite seriously.

While I don't have the same tenure and background in 9-1-1 as many of my colleagues in public safety, I do have the same passion. I know what's at stake, I know the sacrifices that must be made, I know the outcomes if we don't succeed.

Unfortunately, far too often I share a different perspective than my fellow state elected officials on this issue. This needs to change.

I ask the committee to review my comments on 9-1-1, with an eye on improving the proposed legislation, but equally on improving the relationship with all state-elected officials. For this, I ask the Members of the Committee to meet with your respective state colleagues next time you're home and encourage responsible fiscal guidance when it comes to 9-1-1 and emergency communications.

9-1-1 saves lives. It's an essential part of our nation's homeland defense, our safety and security, our neighborhoods and towns, our families and our future.

Again, I thank the Committee for the opportunity to testify today and look forward to the work before us.

Mr. UPTON. Thank you very much.

Mr. Muleta, welcome back.

**STATEMENT OF JOHN B. MULETA, BUREAU CHIEF, WIRELESS TELECOMMUNICATIONS, FEDERAL COMMUNICATIONS COMMISSION**

Mr. MULETA. Thank you, Mr. Chairman. Good morning, Mr. Chairman and members of the subcommittee. I do welcome this opportunity to appear before you on behalf of FCC to testify on the deployment of E-911 wireless services on this second anniversary of the tragic day that imprinted 911 in the Nation's consciousness and changed its meaning forever.

On that day there was no congressional hearing about the rollout of E-911, but there was testimony of a different sort about the importance of wireless telecommunications to our Nation.

Aboard Flight 93, the passengers chose to die a heroes' death, fighting to protect their fellow Americans after hearing on their cell phones about what was going to happen. Civilians trapped inside the World Trade Center spoke their last words to their loved ones on cell phones that were their only connection to the outside world. Since that day, since that attack on our homeland, there has been a wakeup to many to look more deeply at the vital roll that telecommunications plays in our Nation's response to emergencies.

But E-911 wireless services are inseparably linked to the FCC's work on other public safety issues, including wireline infrastructure, first responder and public safety access to spectrum interoperability and network security.

Our work is part of a larger picture that involves many Federal agencies, State governments, and every local jurisdiction in the country. There is an urgent need to recognize this interlocking of interests to foster cooperation and communication from top down as well as from bottom up, across agencies, between individuals and among public and private interests and the greater interests of the American people.

Providing telecommunications service to meet our Nation's public safety emergency response and homeland security needs is not the job of the FCC alone, and/or of any one Federal agency. Moreover, it will require public and private partnerships to do the job right. Only when all of us work together will we be able to bring about the full deployment of enhanced wireless services such as E-911.

As this subcommittee has recognized, the full deployment of enhanced 911 wireless services will require leadership and vision of Congress. Indeed this subcommittee, through this and past hearings and its legislative initiatives, has been indispensable in advancing E-911. I especially commend you as well as Representatives Shimkus and Eshoo and other members of the Congressional E-911 Caucus for their leadership and vision in this crucial area.

The leadership of this Congress will be critical to meeting the E-911 challenges facing us to complete this vital link between the first responders and the civilian population which is an essential part of our homeland security efforts.

Since I last spoke to the subcommittee, the pace of E-911 has quickened to bring wireless location technology to the Americans where they live and travel. According to our August 1, 2003, reports, phase II deployment has increased by 50 percent over the prior quarter. The six nationwide carriers have brought online over 65 percent of their enabled markets in the last 6 months.

Every nationwide carrier using handset-based location technology is offering customers a location-capable handset. Both Sprint and Verizon offer their customers 10 or more locational-capable handsets. Sprint alone has sold over 11.6 million such phones. But this is just the beginning. We will not rest until all consumers of wireless services are assured that 911 has been deployed and the technology is available, and that this technology reaches every PSAP and every urban and suburban community across the Nation.

As an institutional matter, we have learned that progress sometimes requires the use of an enforcement stick. The Commission has not hesitated to use its enforcement when stakeholders are de-

laying deployment in violation of law. Each major carrier is now subject to binding deployment schedules with automatic penalties if they fail to comply again. Since I last testified, both Cingular Wireless and T-Mobile have entered into consent decrees that include firm timeliness for implementation.

At the last hearing we discussed extensively Dale Hatfield's report to the Commission. One of the key issues that Dale's report identified was the lack of coordination and information flow between and among relevant stakeholders. In response to this, we have started the FCC's E-911 Coordination Initiative.

FCC's second meeting is targeted to take place on October 29 and 30. At that session we will sound the call to action to our colleagues at the State level. There, for the first time, we will convene E-911 designees for the State governments. We also plan to provide them with resources to provide leadership and coordination in the E-911 deployment efforts in their States.

The second coordination initiative will also look at accuracy challenges and about additional public education efforts. That Hatfield reports discussion of special and technical and economic challenges facing rural carriers and the issues raised with respect to rural carriers.

In the rural session of our first initiative, we have continued to focus on E-911 deployment in the rural settings, particularly among smaller wireless carriers, such as the one represented by Mr. Addington.

These issues are being addressed in the context of a broader Commissionwide effort to examine the multiple wireless issues affecting rural carriers, consumers and other rural stakeholders.

With regard to rural E-911 deployment issues, we have worked with all of the stakeholders to ensure that information is shared between and among the various interests involved. As you know, we have before us various petitions for relief from certain implementation benchmarks in rural areas. The Commission will decide these issues as quickly as possible consistent with determining an equitable balance. That is very important, an equitable balance between the public safety community's needs and the technical and commercial hurdles that rural carriers face in deploying location technologies that comply with the Commission's time and accuracy requirements. We are encouraging all stakeholders to work with us and with each other to find the best path to full compliance with the Commission's rules.

In addition to the coordination initiative the Chairman has recently announced that, as Mr. Hatfield recommended, a set of technical activities to figure out more information about how we can improve these standards that we have set. Measuring and improving the accuracy of E-911 location information will be a key priority, but we will do that in the context of the broader framework that we are facing, such as—and we will do it in the context of the Network Reliability and Interoperability Council, NRIC, which will continue to focus on homeland security issues under a new charter. We will begin laying the foundation of these inquiries at the second coordination initiative in October. In January we will also devote the FCC's Technical Advisory Committee meeting to 911 technical

issues. We are pleased to announce that Dale will again help us with these issues.

We have identified accuracy measurement as an issue that must be effectively resolved in all environments, whether rural, urban, or some other unusual environment, so that all of our consumers are equitably treated, and all consumers are assured of effective location technology in their service area and when they travel outside of it.

One area of investigation is the method by which the Commission will measure carrier compliance with our accuracy rules. The Emergency Services Interconnection Forum has established a working group to examine methods for testing location accuracy. The working group's goal is to develop a set of minimum and practical requirements that will ensure that individual test methodologies will provide consistent, valid and reproducible results in the variety of environments that wireless carriers face.

Now, in addition to all of these technical issues, we are also focusing, under the direction of the Chairman, to make sure that the public has a central role in making sure that E-911 is rolled out to their individual communities. Consumers need to ask carriers, do you provide E-911 phase II capability? How accurate is E-911 capability in my handset, and what is your deployment schedule in my area?

Consumers also need to ask whether their State and local government public safety answering points are phase-II-capable. Again, if the answer is no, we all need to ask why not. This is a national priority, one that deserves a national dialog at all levels about the responsibilities of each stakeholder in making it work.

We are, at the Commission, very committed to the nationwide deployment of E-911, both through outreach, education and implementation. The Chairman and the fellow Commissioners will be leading this effort to ensure that consumers have reasonable expectations about E-911 and can make informed choices about their cell phone service.

I would like to also just close by saying that any effort at a national level, on a coordinated basis, especially at the congressional level, that addresses all of these issues that I have specified in my testimony would be of a great boon to the public and also to the FCC in accomplishing its mission.

With that I would like to close and again thank you for your leadership and the leadership of the other members in helping roll out E-911 services to the public. Thank you, sir, for the time.

[The prepared statement of John B. Muleta follows:]

PREPARED STATEMENT OF JOHN B. MULETA, CHIEF, WIRELESS TELECOMMUNICATIONS BUREAU, FEDERAL COMMUNICATIONS COMMISSION

Good morning, Mr. Chairman and Members of the Subcommittee. I welcome this opportunity to appear before you on behalf of the Federal Communications Commission (FCC) to testify on the deployment of Enhanced 911 (E911) wireless services, on this, the second anniversary of that tragic day that imprinted 9-11 in the nation's consciousness and changed its meaning forever.

It was exactly two years ago today that Tom Sugrue, then Chief of the Wireless Bureau, was scheduled to testify before this very subcommittee on the state of E911 deployment. FCC staff, preparing for the hearing, saw the smoke rise from the Pentagon from the window of the FCC building as they listened to news reports about the attacks on the twin towers. There was no Congressional hearing on that day

about the roll out of wireless E911. But there was testimony of a different kind about the importance of wireless telecommunications to our nation.

Aboard Flight 93, passengers, communicating by cell phone, learned what the hijackers had in store for them and chose to die a hero's death fighting to protect their fellow Americans. Civilians trapped inside the World Trade Center spoke their last words to loved ones on cell phones that were their only connection to the outside world.

#### I. INTRODUCTION

The September 11, 2001 attacks on our homeland were a wake-up call to many to look more searchingly at issues of homeland security, and, in particular, at the vital role that telecommunications plays in our nation's response to emergencies. Implementation of Enhanced 911 for wireless communications devices is central to that response. But E911 wireless services are inseparably linked to the FCC's work on other public safety issues, including wireline infrastructure, first responder and public safety access to spectrum, interoperability and network security.

Before and since September 11th, the Commission has developed policies to secure our nation's telecommunications infrastructure and network reliability, to create analogous emergency location capabilities for wireline and wireless telecommunication services, to balance the needs of the public safety community and the private sector for access to spectrum. These are all part of our mission to serve the public interest by developing and implementing communications policies to meet the needs of first responders and of our civilian population. Our work is part of a larger picture that involves many Federal agencies, State governments, and every local jurisdiction. Enhanced 911 wireless services are an essential part of the larger, interconnected telecommunications infrastructure that supports homeland security, public safety, and citizen activated emergency response capabilities.

There is an urgent need to recognize this interlocking of interests, to foster cooperation and coordination from the top down and the bottom up, across agencies, between individuals, and among public and private interests, in the greater interest of the public good. Providing telecommunications services to meet our nation's public safety, emergency response, and homeland security needs is not the job of the FCC alone or of any one Federal agency. It involves cooperation and coordination among many Federal, State and local authorities. Moreover, many public and private partnerships will be needed. Only when all of us work together will we be able to bring about the full deployment of enhanced wireless services in the service of the nation's homeland security. Chairman Powell called for a new "Era of Cooperation" on E911 at the FCC's first E911 Coordination Initiative meeting in April. If all stakeholders heed the Chairman's call to action, together we can build this era of cooperation into a "New Era of Accomplishment" for enhanced wireless telecommunications services in every region of the United States.

As this Subcommittee has recognized, the era of accomplishment in which we will achieve the full deployment of enhanced 911 wireless services will require the leadership and vision of the Congress. Indeed, this Subcommittee, through this and its past hearings and exploration of legislative initiatives, has been indispensable in advancing E911. I especially commend Representatives Shimkus and Eshoo and the other members of the Congressional E911 Caucus for their leadership and vision in this crucial area. This hearing is an important opportunity to work on furthering the era of cooperation with regard to one of the most critical public safety matters of today and tomorrow. The leadership of this Congress will be critical to meeting the E911 challenges facing us, to complete this vital link between first responders and the civilian population, which is an essential part of our homeland security efforts.

#### II. NEW DEVELOPMENTS AND CHALLENGES

The substantial progress that we have made since I spoke to this subcommittee in June is the best demonstration of how the pace of E911 deployment has quickened since the Chairman called for cooperation between stakeholders in April. The data support our belief that our efforts are starting to produce tangible results. In partnership with all the stakeholders—we are making substantial progress in bringing wireless location technology to the American people in the regions in which they live and to which they travel.

##### **Deployment Statistics**

- According to the August 1, 2003 Reports, Phase II information is now being provided by at least one wireless carrier in approximately 480 markets to more than 1200 PSAPs, an increase of 50% over the prior quarter.

- For the six nationwide carriers, over 65% of their enabled markets have come on line in the past six months.
- Every nationwide carrier using a handset-based approach is offering at least one compliant handset. Both Sprint and Verizon offer their customers at least 10 location-capable handset models. Sprint alone has sold over 11.6 million such phones.
- According to the NENA's statistics, 10% of PSAPs—643 of 6,121 PSAPs—already have Phase II service, a jump from 299 between February and May of this year, with the numbers steadily growing as carriers and PSAPs gain expertise.
- And right here in our own neighborhood, in Alexandria, Virginia, E911 Phase II service has become a reality. Chairman Powell saw this technology working first hand at an E911 Public Safety Answering Point (PSAP) call center in Alexandria, Virginia. The Chairman spoke with great enthusiasm about the tremendous job Deputy Chief of Police Baker, Lt. Pellegrino, and the center supervisor, Marietta Robinson, did demonstrating how the E911 capabilities functioned to locate callers.

So the bottom line is, E911 is working right here in the Washington area. But this is just the beginning. We will not rest until all consumers of wireless services are assured that their carrier has deployed E911 location technology and that this technology reaches every PSAP, not just in the Washington, D.C. area, but in every urban, suburban and rural community across the Nation.

#### **Remaining Challenges: FCC Actions and Initiatives to Meet Them**

It is clear today that E911 technology works—and can save lives. It is, unfortunately, also clear that when funds earmarked for the deployment of E911 are diverted to other uses because of budgetary pressures or other causes—lives can be lost. Thus, much more remains to be accomplished.

#### *Experience is the Best Teacher*

I have learned first-hand that when location technology is not available in an emergency, rescue is delayed. I spent several hours stranded in a gondola in Colorado last month, waiting for help to arrive, unable to tell the PSAP that responded to my 911 wireless call my location on the mountainside as strong winds gusted around me. I am happy to say that the competence of the local public safety responders brought help quickly. Luckily, in this instance, I was only inconvenienced.

#### *Enforcement Actions as Consequences of Non-Compliance*

As an institutional matter, we have learned that our progress requires the use of an occasional stick. The Commission has not hesitated to use its enforcement power when wireless carriers are not justified in delayed deployment. Within the past fifteen months, we have taken a number of actions where carriers have failed to comply, including entering into consent decrees with multiple national carriers who did not adhere to their deployment schedules. In addition to substantial fines, each carrier is now subject to binding deployment schedules with automatic penalties if they fail to comply again.

To recap enforcement actions described in my previous testimony:

- The Commission entered into consent decrees with AT&T Wireless (June 2002) and Cingular Wireless (May 2002) regarding deployment of E911 over their Time-Division Multiple Access (TDMA) Networks, notwithstanding the fact that both carriers plan to phase out much of their TDMA networks as they transition to the Global System for Mobile Communications (GSM) standard. These consent decrees require AT&T Wireless and Cingular Wireless each to make a \$100,000 voluntary contribution to the U.S. Treasury, to deploy E911 Phase II technology at their TDMA cell sites, and to provide Phase II service in response to PSAP requests by specified benchmark dates. The consent decrees also require the carriers to make automatic penalty payments for failure to comply with deployment benchmarks and to submit periodic reports on the status of their compliance efforts. Both carriers have met their benchmarks to date: AT&T Wireless has deployed Phase II technology to over 2,000 cell sites, with nearly 1,200 of those sites currently providing Phase II service, and Cingular has deployed Phase II technology at over 2,400 cell sites, with Phase II operational in nearly 1,700 of those sites.
- After issuing a Notice of Apparent Liability against AT&T Wireless for apparent E911 violations concerning its GSM network, the Commission and AT&T Wireless entered into a consent decree in October 2002 to address these apparent violations. This decree requires AT&T Wireless to make a \$2 million voluntary contribution to the U.S. Treasury, to deploy E911 Phase II technology at its GSM cell sites and provide Phase II service in response to PSAP requests by

specified benchmark dates. The consent decree also requires AT&T to make automatic penalty payments for failure to comply with deployment benchmarks and to submit periodic reports on the status of its compliance efforts. AT&T Wireless has met its benchmarks to date, reporting that it has deployed Phase II technology to 2,000 cell sites on its GSM network.

*Enforcement Actions Since June Testimony*

- On June 12th, the Commission adopted an Order approving a consent decree resolving possible violations of the enhanced 911 (E911) Phase II rules by Cingular Wireless LLC (Cingular Wireless). As part of the consent decree, Cingular Wireless has agreed to make a voluntary contribution in the amount of 675,000 to the U.S. Treasury.
- Cingular Wireless has also committed to a timeline for deployment of its network-based location technology within its Global System for Mobile Communications network (GSM network) and to make automatic payments to the U.S. Treasury should it fail to meet the deployment benchmarks set forth in the consent decree. Cingular Wireless has also agreed to submit Quarterly Reports to the Commission on its progress and compliance with the terms and conditions of the consent decree and the E911 Phase II rules.
- In July, the Commission adopted an Order approving a consent decree resolving possible violations of the enhanced 911 (E911) Phase II rules by T-Mobile USA, Inc. (T-Mobile). As part of the consent decree, T-Mobile has agreed to make a voluntary contribution in the amount of \$1.1 million to the U.S. Treasury.
- In addition, T-Mobile has committed to a timeline for deployment of its network-based location technology within its Global System for Mobile Communications network and to make automatic payments to the U.S. Treasury should it fail to meet the deployment benchmarks set forth in the consent decree. T-Mobile has also agreed to submit Quarterly Reports to the Commission on its progress and compliance with the terms and conditions of the consent decree and the E911 Phase II rules.

*The Hatfield Report: FCC Implementation of Recommendations*

We have taken further steps to implement the recommendations made by Dale Hatfield<sup>1</sup> with regard to the technical implementation issues and challenges associated with E911. In many ways, the “Hatfield Report” has become our guidebook in working through many of these issues. Some of the major issues identified in the Hatfield Report include:

- Wireless carrier implementation issues, such as particular technical and economic challenges in rural areas.
- ILEC cost recovery and technical issues.
- Cost recovery and PSAP funding issues.
- Ongoing need for PSAP education, assistance, and outreach.
- Lack of comprehensive stakeholder coordination.

*Commission Implementation of Hatfield Recommendations through Rulemaking and other Regulatory Action*

- In reviewing the Hatfield Report, we identified some regulatory ambiguities and barriers on the FCC’s side of the ledger. To address these issues, the Commission recently:
- Clarified PSAP readiness issues and established a certification process.
- Provided guidance on cost recovery demarcation issues.
- Instituted a rulemaking on how the 911 rules should apply to technologies such as Mobile Satellite Service, telematics services, and emerging voice services and devices.
- Bureau staff also worked on methods to reduce the number of unintentional or harassing wireless 911 calls, a problem that had been of growing concern to public safety organizations because such calls divert scarce PSAP resources. Even without the pressures of such calls, a PSAP’s resources may be challenged by the cuts in funds from hard-pressed state and local budgets, an ever increasing number of wireless calls, the demands of mastering the new technologies required to implement enhanced 911 wireless services, and the need to find funding and technical know-how in order to upgrade equipment so that the

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<sup>1</sup>Mr. Hatfield is currently an independent consultant and Adjunct Professor in the Department of Interdisciplinary Telecommunications at the University of Colorado at Boulder. Between December 2000 and April 2002, Mr. Hatfield served as Chair of the Department. Previously, Mr. Hatfield was the Chief of the Office of Engineering and Technology at the Commission, and immediately prior to that, he served as the Chief Technologist at the Agency.

PSAP is ready to handle location information from multiple carriers using different location technologies.

*Implementation of Hatfield Recommendation for Greater Stakeholder Coordination*

One of the key issues that the Hatfield Report identified was the lack of coordination and information flow between and among relevant stakeholders. In response to this problem, in April, the Chairman launched the FCC's E911 Coordination Initiative.

*The First Meeting of the E911 Coordination Initiative*

The first meeting of the Initiative brought together representatives from the federal government, the public safety community, wireless carriers, Local Exchange Carriers (LECs) and other interested stakeholders to address ongoing implementation issues such as Public Safety Answering Point (PSAP) funding, wireless carrier implementation and prioritization, issues relating to LECs, and the challenges faced by rural carriers.

*The Second Meeting of the E911 Coordination Initiative*

The FCC's second meeting of the E911 Coordination Initiative will take place on October 29 and 30.

At that session, we will sound the call to action to our colleagues at the state level. There—for the first time—we will convene the E911 designees of each of the State Governors and U.S. territories. These leaders will provide a key interface for E911 deployment issues in the states and important points of contact for the vital public education efforts that are essential to successful E911 deployment. We plan to provide resources to Governors' State 911 designees to help them provide leadership and coordinate E911 deployment efforts in their states. We appreciate the work of our partners at the National Governors' Association who have been so integral to this unprecedented effort and to the staff of the Consumer and Intergovernmental Affairs Bureau of the Commission who have worked hard with them on this effort.

Central to this task will be building support for the idea that state funds earmarked for E911 deployment should be used for E911 deployment. Consumers have an expectation that fees appearing on their bills for E911 will be used to further the deployment of these life-saving technologies, and we must ensure that those expectations are honored.

The Second Coordination Initiative will also look at current deployment issues, accuracy challenges, and additional public education efforts.

*Rural Deployment Challenges Identified in the Hatfield Report*

Following up on the Hatfield Report's discussion of special technical and economic challenges facing rural carriers, and the issues raised with respect to rural carriers in the rural session of the First Coordination Initiative, we have continued to focus on wireless E911 deployment issues in rural settings, particularly among smaller wireless carriers. These issues are being addressed in the context of a broader bureau-wide effort to examine the multiple wireless issues affecting rural carriers, consumers, and other rural stakeholders. With regard to the rural E911 deployment issues, we have worked with all stakeholders to ensure that information is shared between and among the various interests involved. As you know, we have before us various petitions for relief from certain implementation benchmarks in rural areas. The Commission will decide these issues as quickly as possible, consistent with determining an equitable balance between the public safety community's needs and the technical and commercial hurdles that rural carriers face in deploying location technologies that comply with the Commission's time and accuracy requirements.

We are also taking appropriate steps to ease these burdens wherever possible. The recent memorandum of understanding between the Wireless Telecommunications Bureau and the Rural Utilities Services of the Department of Agriculture should help rural carriers with one of their biggest challenges—funding for necessary infrastructure upgrades necessary for Phase II deployment.

*Addressing the Infrastructure and Standards Issues Identified in the Hatfield Report E911 Subcommittee to the NRIC*

In addition to the Coordination Initiative, the Chairman has recently announced that, as Dale Hatfield recommended in his report, the Commission is going to establish a technical group to focus on 911 network architecture and technical standards issues. Measuring and improving the accuracy of E911 location information will be a key priority. This group will be a subcommittee of the Network Reliability and Interoperability Council (NRIC), which will continue to focus on homeland security issues under a new charter. We will begin laying the foundation for these inquiries at the Second Coordination Initiative in October. In January, we will devote the

FCC's Technical Advisory Committee meeting to 911 technical issues. I am also pleased to announce that Dale Hatfield has agreed to assist us in all of these efforts.

#### *Accuracy Issues*

We have identified accuracy measurement as an issue that must be effectively resolved in all environments—rural, urban, or some special situation such as a coastal environment, so that all are equitably treated and all consumers are assured of effective location technology in their service area or when they travel outside it. One area of investigation is the method by which the Commission will measure carrier compliance with our accuracy rules. The Emergency Services Interconnection Forum (ESIF) has established a Working Group to examine methods for testing location accuracy. The working group's goal is to develop a set of minimum, practical requirements, that will ensure that individual test methodologies provide consistent, valid, and reproducible results in a variety of environments. The Working Group plans to send its recommendations to the ESIF for review by the full body by the end of November. The Commission intends to monitor ESIF's progress as this effort goes forward and to assess their efforts in our future compliance work. This issue will also be a focus of discussion at the upcoming Coordination Initiative.

#### *Chairman Powell's Consumer Outreach Initiative*

Finally the public has a central role to play in making sure that E911 is rolled out in their communities. It is the job of all of us who care deeply about E911 deployment to make sure that when consumers are at the kiosk at the mall, they don't just ask about price, and how to download the latest tune from Fifty Cent as a ring tone. They also need to ask carriers:

- “Do you provide E911 Phase II capability?”
- “How accurate is the E911 capability in this handset?”
- “What is your deployment schedule in my area?”
- Wireless is a highly competitive market, and that enables every consumer including you and me to vote with our respective checkbooks. Moreover carriers that have invested substantial resources in deployment schedules that are faster than their rivals should receive the benefits of that investment. Consumers should understand that not all carriers are created E911 equal—and we have a right to know. Our Consumer and Government Affairs Bureau recently issued a consumer advisory to highlight for consumers what questions they should ask when considering wireless service.

Consumers also need to ask whether their state and local government public safety answering points are Phase II capable. Again, if the answer is “no” we all need to ask “why not?” I urge the Congress, the public safety community, and government agencies to enlist consumers as an ally in ensuring that E911 deployment is properly funded and tended to in the political process at all levels. This is a national priority—that deserves a national dialogue about the responsibilities of each stakeholder in making this work.

The Commission will remain committed to nationwide Wireless E911 outreach and education. The FCC will work closely with the Governors' 911 designees, our Intergovernmental Advisory Committee, public safety organizations, and to enhance our role as an information clearinghouse. The Chairman and his fellow Commissioners will be leading this effort to ensure that consumers have reasonable expectations about E911 and can make informed choices about their cell phone service.

### III. CONCLUSION

To summarize, the Commission is working formally and informally on the three “C's that we believe are essential to solve E911 deployment: coordination, cooperation, and communication:

- **Coordination:** We have learned that states that have the strongest coordination of E911 issues, have the greatest deployment success. To foster coordination between the Commission and the States, we have identified each Governor's E911 representative and will be working with them on a number of leadership initiatives.
- **Cooperation:** We have learned that where interests find ways to work cooperatively, even in a competitive environment, problems can be minimized. We are therefore trying to develop cooperation between carriers, vendors, and LECs to spur deployment, minimize time delays and maximize economic efficiency.
- **Communication:** We have learned that when rural carriers communicate early and often with their local PSAPs, they have fewer problems with coordination and communication. We are therefore requiring that any carrier seeking a waiver communicate with the local PSAPs which are affected by the waiver, and dis-

cuss not only what the problems are, but their solutions, so that together they can work on a sure path to full compliance.

- There are several other important “c” concepts, such as **consumer awareness** and **cost recovery**. We believe that the consumer can be a strong advocate for deployment, both with carriers and with state and local government. Strong State E911 coordinators and strong consumer interest have been highly successful in improving the cost recovery picture for carriers and ensuring that state funds are not diverted to other purposes.

The full deployment of E911 is the work of many hands. The Commission is only one of many organizations entrusted with a leadership role. The collective progress has been driven by the leadership of many individuals and organizations doing their part to advance E911. First the Congressional E911 Caucus under its superb leadership has done an extraordinary job heading this effort on Capitol Hill. Public Safety leadership organizations have also played an important and creative leadership role. Members of APCO’s Project Locate have worked tirelessly to offer PSAPs assistance with filing requests for Phase II service and to open the lines of communication between PSAPs and wireless carriers. Similarly, NENA’s SWAT effort has helped immeasurably in removing roadblocks to deployment. The tireless efforts of these two public safety organizations are models of dedicated service in the public interest. I must also mention ESIF’s E911 work, and the Department of Transportation’s Wireless E911 Steering Council, which have also brought national leadership and attention to help accelerate deployment. The ESIF and the DOT-NENA partnership are examples of how imaginative partnerships can provide the impetus to progress and innovation.

Working together we can make E911 deployment a reality across this nation. We will not stop until we have rolled out location capability in every corner of our nation. Together, we will keep the roll-out moving towards that goal.

I would like to again thank the Subcommittee for this opportunity to provide information on wireless E911. I look forward to hearing your views and answering any questions you may have.

Mr. UPTON. Mr. Haynes.

**STATEMENT OF ANTHONY C. HAYNES, EXECUTIVE DIRECTOR,  
TENNESSEE EMERGENCY COMMUNICATIONS BOARD, DE-  
PARTMENT OF COMMERCE AND INSURANCE**

Mr. HAYNES. Good morning, Mr. Chairman and members of the committee. I am appearing here today on behalf of the Tennessee Emergency Communications Board. I am also a member of the National Emergency Number Association, the ComCARE Alliance, and the National Association of State 911 Administrators. But, again, my testimony this morning is on behalf of the Tennessee State Board.

I applaud your leadership, Mr. Chairman, as well as your colleagues’ and that of staff in crafting H.R. 2898. I also wish to extend a sincere thanks to Members and the cochairs of the Congressional E-911 Caucus for your fine and tireless work here. I also want to thank our own Congressman, Bart Gordon, for his request to not only have the views of our Board represented in the record here today, but also for his continued interest in our State’s E-911 deployment progress.

On behalf of the Board, I strongly support the overall intent of H.R. 2898. If enacted with some minor modifications, our communities will be more secure, our streets safer, our property losses lowered, and most importantly lives will be saved. I am pleased to report that in the State of Tennessee, we have made substantial progresses in phase II implementation.

And in my written statement today submitted for the record, I made four points regarding the deployment of phase II 911. First, it can be done. Whether it is PSAP readiness or career deployment, it does take a commitment. Second, many approaches and re-

sources that enabled the successes that we enjoy in the State of Tennessee are found in H.R. 2898.

Third, in spite of the appearance of adequate revenues and near completion of phase II implementation in our State and others, we still face a challenge, particularly in supporting the financial stability of rural 911 districts and operations.

And, fourth, the regulations are working. Blanket waivers to relax deployment schedules are unnecessary. The FCC can and should address the challenges of deployment on a case-by-case basis.

With regard to the bill, we strongly endorse its passage with the following refinements: State 911 boards and entities should be eligible to receive and distribute Federal funds as well as coordinate those disbursements with local 911 operations.

And, second, provisions in section 4 and 5 of the bill potentially create an escape hatch for compliance, and it should be eliminated. Our Board recognizes the challenges facing PSAPs and carriers, especially in rural areas, in providing phase II service. Our Board has provided multiple extensions to our own requests for phase I and II service when requested by the carriers, but then only provided when the carrier has acted in good faith.

As a result of its commitment, fiscal discipline, coordination role and cost recovery, Tennessee has established itself as one of the Nation's leaders in E-911 deployment, with 90 percent of our State's 911 districts being Phase II ready, and many of those, if not most of those, receive phase II live data from at least one wireless carrier.

This success, however, would not be possible without the regulatory backstop and support of the FCC. The bill creates a National Office of Coordination that will be very helpful in providing a one-stop shop for technical assistance, troubleshooting, driving new products and technologies, and needed dialog on all issues arising from 911 implementation.

This would be a great asset to State organizations and local organizations alike. As we have seen with location technology solutions, data base management and other services required to conduct 911 operations, the high demand for product combined with an oligopoly setting can sometimes suppress the rise of better products, applications and protocols. It also results in higher solution prices to the carriers, PSAPs and ultimately the wireless consumer.

With regard to this office, I would encourage other Federal agencies, such as the FCC, USDA Rural Utility Service, Department of Transportation and the Interior's Bureau of Indian Affairs should also be consulted in Federal coordination.

Although I commend the bill's sponsors' and cosponsors' intent for ensuring fairness and cost recovery for rural wireless carriers, I strongly recommend the elimination of section 4 and 5 of the bill. If there is one thing that we all leave here today in agreement, it should be that consumers living in rural areas deserve the same level of E-911 service as those living in urban and suburban areas.

Some argue that the FCC standards on accuracy should be relaxed in rural areas. I am here to tell you today that the need for accurate location data in rural emergencies is equally, if not more, important than the more populated locations.

Current actions and orders of the FCC to encourage E-911 deployment are working. Much of the extent of phase II deployment in the past 12 months has been due to the possible threat of enforcement. It is important to note, however, that despite the best efforts of carriers, PSAPs and State organizations, there will be some areas in this country where you cannot attain the accuracy standard, but to simply ignore the FCC's requirements without attempting to deploy, while banking on Washington lawyers to obtain regulatory relief in good faith is not in good faith, nor is it in the spirit of using the public's spectrum.

I recommend that the FCC and carriers be left alone to explore and exhaust all avenues to address this situation before Congress sends a signal which can be interpreted as encouraging a blanket waiver.

In conclusion, Mr. Chairman, H.R. 2898 takes one of the greatest steps toward helping ensure that E-911 service is enjoyed by all Americans, both rural and urban. Most of the approaches taken in this bill that the authors have crafted has had a proven track record somewhere in this Nation in making phase II 911 service available.

Congress should recognize the valuable role that State boards and organizations can play in meeting the goals and objectives of the bill. The FCC should be permitted to continue working with rural carriers without the intervention of Congress, and the authors and cosponsors of 2898 can be very proud of this measure, for with those minor modifications, it will make great contributions toward public safety and security, as well as saving countless lives.

Mr. Chairman, thank you for your support on E-911. I appreciate the opportunity to be here today, and I look forward to any questions that you or your colleagues may have later in the hearing.

[The prepared statement of Anthony C. Haynes follows:]

PREPARED STATEMENT OF ANTHONY C. HAYNES ON BEHALF OF THE TENNESSEE  
EMERGENCY COMMUNICATIONS BOARD

Good morning, Mr. Chairman and Members of the Committee. My name is Anthony Haynes, and I serve as the Executive Director of the Tennessee Emergency Communications Board (The Board). The Board serves as the state's authority for all wireless E-911 implementation, advancement and financial support. The Board also has financial oversight for the state's 100 local Emergency Communications Districts (ECDs), which are statutorily defined municipalities in our state. I am appearing today on behalf of the Board. I am also a member of National Emergency Number Association, the ComCARE Alliance and the National Association of State 9-1-1 Administrators.

(For further submission to my testimony, I've attached a joint public safety position paper of both the National Emergency Number Association and the Association of Public Safety Officials International, regarding E9-1-1 legislation before Congress.)

I applaud your leadership, Mr. Chairman, as well as that of your colleagues and staff in the crafting of H.R. 2898. When enacted, this measure will help facilitate major advancements in the much needed areas of training, coordination and financial assistance for the nation's Public Safety Answering Points (PSAPs) and thus, improve the delivery of E-911 services. I also wish to extend a sincere thanks to members of the Congressional E-911 Caucus. Their voice in the Congress on E-911 issues is helping ensure that all Americans have access to this essential life-saving service. I also wish to thank Congressman Bart Gordon for his request to include the views of the Board for consideration today. The Board appreciates his continued leadership and interest in the progress of E-911 deployment in our state.

On behalf of the Board, I strongly support the overall intent of H.R. 2898. Many of its components will put this nation on course to establish and improve the quality

of E-911 service. If enacted with minor modification, our communities and homeland will be more secure, our streets safer, property losses lowered and most importantly, lives will be saved.

Since its inception, the 911 system has been the first responder in times of individual and mass emergencies. Every day, Americans call 911 at the time of their greatest need. In Tennessee alone, we average over 11 million 911 calls per year. For the caller, the successful completion of a 911 call can mean the difference between danger and security, injury and recovery or life and death.

Until recently, calls for help from wireless phones could not deliver similar location information to that of landline systems. The Federal Communications Commission (FCC) so well understood the value of E-911; it required wireless carriers to develop a similar capability in two phases to provide emergency responders with a 911 caller's precise location. Under the original FCC mandate, wireless carriers were to be well on their way of the second phase of the deployment of location capabilities.

I am pleased to report that in the State of Tennessee, we have made substantial and meaningful progress in Phase 2 wireless location capability. In my statement today, I will respectfully make recommendations to improve the legislation before the Committee and emphasize these four points related to the deployment of Phase 2 E-911:

**First**, it can be done. Whether it's PSAP readiness or carrier deployment, it takes commitment.

**Second**, many approaches and resources that enabled the successes that we enjoy in Tennessee are found in the E-911 Implementation Act of 2003.

**Third**, in spite of the appearance of adequate revenues and near completion of Phase 2 implementation in Tennessee, our state faces increasing challenges, especially in helping maintain the financial stability of rural 911 districts.

**Fourth**, the regulations are working. Blanket waivers to relax an already relaxed deployment schedule are unnecessary. The FCC can and should address the challenges of deployment in specific communities on a case-by-case basis, taking into account the level of effort by carriers and communities.

With regard to the E-911 Implementation Act of 2003, we strongly endorse its passage with the following refinements:

- States and State Emergency Communications Boards should be eligible to receive and distribute federal funds and coordinate their disbursement to local PSAPs;
- Auditing and accountability requirements should be reasonable and coordinated on a statewide level; and
- Provisions in Sections 4 and 5 of the bill, which potentially create an escape hatch to compliance, should be eliminated or substantially modified.

#### TENNESSEE'S E-911 EXPERIENCE

In the State of Tennessee, 100 local Emergency Communications Districts (ECDs) deliver 911 services. These municipal districts were created by state law in the mid-1980s and are governed by a locally appointed board. Historically, ECDs' primary source of operational revenue was fees assessed on local wired phone lines. Until recent years, this revenue mechanism was largely sufficient to meet the local ECD financial needs. The delivery of 911 service varies by ECD. In most cases, the local ECD supports its own dispatch operations. A significant number of ECDs deliver all 911 calls to local law enforcement or public safety agencies for separate dispatch and response. Nonetheless, the success of the 911 daily operations in our state is due primarily to the hard work and dedication of local 911 and public safety officials.

#### MEETING THE WIRELESS CHALLENGE

In 1998, the state legislature established the Tennessee Emergency Communications Board to serve as the state's authority for the implementation and advancement of wireless and wireline E-911 service. The Board was also charged with financial oversight of the state's ECDs, and administering cost recovery for wireless E-911 from the state's E-911 Fund. This fund, created as a separate entity from the state's "General Fund", was to be used only for providing cost recovery to PSAPs and wireless carriers for Phase 1 and 2 costs, as well as grants to PSAPs for enhancing E-911 readiness and operations.

To date, the Board has provided more than \$10 million to telecommunications carriers and PSAPs primarily for Phase 1 E-911 cost recovery, and approximately \$50 million which is pending primarily in Phase 2 requests. The Board provides 100 percent cost recovery to PSAPs and carriers for costs incurred associated with providing

E-911 service. A one-dollar monthly fee assessed to all cell phone users supports the board and all its activities, including consumers of “pre-paid” wireless phones.

The Board recognizes the challenges facing PSAPs and carriers, especially in rural areas, in providing Phase 2 service. In adopting Phase 2 cost recovery policies, the Board gave first priority to PSAPs and telecommunications cooperatives providing wireless service. The Board has provided multiple extensions to “Requests for Phase 1 and 2 Service” when requested by carriers, provided the carrier has acted in good faith. The Board works hard to maintain an open dialogue with wireless and Local Exchange Carriers (LECs), deployment and technology vendors, and PSAPs. Finally, in addition to annual grants to help establish and maintain a GIS mapping system in each ECD, the Board established an annual Rural Dispatcher Assistance Grant intended to benefit the state’s most rural ECDs. This grant would support the full time equivalent (FTE) costs of hiring one full-time or two part-time dispatchers annually.

As a result of its commitment, fiscal discipline, coordination with local PSAPs and cost recovery toward Phase 1 and 2 implementation, Tennessee has established itself as one of the nation’s leaders in E-911 deployment. To date, 90 of the state’s 100 ECDs are Phase 2 ready, with most receiving live Phase 2 data from at least one wireless carrier. We will not be satisfied until all ECDs and all carriers meet Phase 2 requirements; however we are very proud of our progress to date. This success would not be possible without the regulatory backstop and support of the FCC.

#### 911’S ROLE IN HOMELAND SECURITY

The Board also understands the critical role 911 serves in homeland security. To respond to our nation’s preparedness against terrorism, the Board established a homeland security advisory council charged with identifying the shortcomings and weaknesses of the current 911 infrastructure. The group is comprised of 911 leaders and engineers, current and former BellSouth employees who helped design the state’s current 911 network 25 years ago, wireless carriers, GIS mapping experts, and the director of security for the Tennessee Valley Authority (TVA). Tennessee’s rural areas host a significant presence of the nation’s critical infrastructure in terms of electric power reliability. We believe it is imperative that an open dialogue and joint preparedness planning occur between 911 and the TVA.

#### TRAINING

The accomplishments of the Board and local ECDs have increased the confidence of the state legislature in our organization resulting in the addition of responsibilities. Beginning this year, the Board will serve as the state’s authority for setting all emergency dispatcher certification and training standards. It was the intent of the sponsors that the Board create a national model for dispatcher standards and training, in much the same way it has for E-911 deployment.

Our experience in Tennessee, offers a model of public and private as well as state, local and federal cooperation. It is an experience that suggests that enhanced federal involvement will further advance our efforts in Tennessee and similar efforts throughout the nation.

#### H.R. 2898—A MEASURE WELL OVERDUE

Government provides many services, some of which are critically important. Arguably, none is more important than helping people when they need help the most—when they call 9-1-1. H.R. 2898 recognizes key issue areas needed to ensure reliable, efficient and comprehensive 911 service for all Americans.

#### NATIONAL OFFICE OF COORDINATION

Section 158 of the bill creating an “Office of Coordination” would be very helpful in providing a one-stop-shop for technical assistance, troubleshooting, and fostering needed dialogue on all issues arising from E-911 implementation. This would be a great asset to state local 911 organizations alike. Phase 2 technology is dynamic. Almost every day something new is learned about its performance, applications, and shortcomings. Having such a clearinghouse in the federal government will help ensure objectivity and that no one company or technology can use such a clearinghouse as an opportunity to unfairly position itself in the marketplace. As we have seen with location technology solutions, data base management and other services required of 911 operations, the high demand for product combined with an oligopoly setting can sometimes suppress the rise of better products, applications and protocols. It also results in higher solution prices to carriers, PSAPs and ultimately the

wireless consumer. I also commend the provision of reporting annually to Congress the activities of such an office.

#### PHASE 2 GRANTS

If there were one core component of this legislation that would produce quick, substantive results, it would be the creation of E-911 grants. In the end, one would have to have the necessary financial resources to bring E-911 technology into the PSAP. The technology and equipment needed for such is expensive. It is difficult for some rural areas with limited tax base, bonding opportunities or other revenue sources to acquire such equipment without outside help. Given this, I recommend that the maximum contribution of the federal match be increased to at least 80%. This would not only help rural PSAPs and governments, but also be more consistent with matching requirements of many federal homeland security grants. Federal agencies such as the FCC, USDA-Rural Utilities Service, Department of Transportation and the Interior's Bureau of Indian Affairs should also be consulted in federal coordination and grant determination.

Current landline 911 technologies have been around for 25 or more years. Most PSAP managers and dispatchers are quite proficient at trouble shooting the older technology when necessary. E-911 technology is new, extremely complex and dynamic. Training for dispatchers is always an item of needed support, especially with new Phase 2 technology. The PSAP dispatcher is most often the first to know if E-911 technology is not performing properly. The dispatcher is where the "Trouble Ticket" begins if equipment or technology is failing, or is not within the accuracy standard. Therefore, the need for training supported through grants is required now more than ever.

#### FINANCIAL CRISIS FACING STATE AND RURAL 911 OPERATIONS

A great misconception exists that if a state has a cost recovery mechanism and is coordinating E-911 implementation that all is well. Nothing could be further from the truth. Although state 911 boards and cost recovery mechanisms enable the potential for greater success, each state and locality faces its own unique financial challenges in implementing and maintaining E-911 service.

Rural areas are already financially challenged due to smaller populations, and fewer businesses and industries—all of which are added an already small tax base. Adding to these challenges is the fact that many rural areas receive less favorable bond ratings and loan rates. This has recently complicated 911 financial support historically provided by towns and counties. The national trend of decreasing landlines, another key and traditional sources of local 911 funding, has made matters even worse. In Tennessee, state law requires that 25 cents of each dollar collected by the state for E-911 be redistributed among the state's 100 ECDs based on population. The greater the population of an ECD, the greater the amount of disbursement of funds it receives. As a result, the more rural a 911 operation is, the poorer it is likely to be. Although the state Board has increased local 911 fees in some rural areas to the maximum rate permitted by state law, and provided 100 percent cost recovery for E-911 PSAP costs, an increasing number of rural 911 operations face a potential financial crisis in the near future. Based on a review of ECD annual audits, our staff estimates that over \$130 million is spent annually to provide 911 operations in Tennessee. This does not include an additional estimated \$20-30 million annually in non-cash resources provided by local police, fire and government organizations.

State 911 Boards like Tennessee's could use federal resources to target support to where it is needed most and produce a coordinated and integrated emergency communications investment strategy. Therefore, I would strongly urge the Congress to consider the needs of, as well as the outcomes that can be attained in providing equal consideration to state 911 boards and coordinators in grant selection.

I would recommend that in states where wireless or 911 boards exist, these organizations be used as state-based vehicles for grant disbursement. This can result in better targeting, matching and leveraging of federal monies with state and local resources if the state board is committed to such.

#### CERTIFICATIONS

The effort to ensure that 911 funds collected from consumers are used for their intended purposes is important and laudable. We are concerned that sincere attempts by this legislation to discourage diversion of dedicated 911 funds may ultimately worsen the financial fate, not help PSAPs. In states where diversions have been a threat or a problem, including Tennessee, governors and legislators have been forced to eliminate state jobs, contracts, divert state highway monies and other

dedicated funds in order to keep states solvent. The “raiding” of such political sacred cows indicates that federal 911 matching requirements would be of little deterrence. Further, I believe the certification language that disqualifies a state’s 911 organizations from all grant funding punishes those with little or no control over the system. I appreciate the need for the bill’s authors to “close the back door” that may arise with some states accepting grants, while diverting dedicated 911 monies. Federal highway and pollution control and abatement monies may offer a stronger disincentive for diverting dedicated 911 funds.

#### ASSESSMENT AND AUDIT

I commend the authors in crafting the provision for the FCC to monitor taxes, fees and other charges imposed by states on wireless carriers. However, there needs to be a realization of the real world implementation challenges of the requirements on the FCC and state and local governments. A more practicable solution would be to work closely with state 911 Boards to coordinate the audit and certification process so that the cost of reporting does not diminish the value of the federal funds.

Another important element of 911 collections merits review. As wireless service rates continue to decrease, it is important to monitor the E-911 fees imposed and collected by individual carriers to recover their E-911 costs. An increasing number of wireless carriers are not only collecting their own E-911 recovery fees, but collecting and remitting the individual state’s as well. Although I am not opposed to such practices if justified to cover the carrier’s costs, they should not be permitted to “double-dip” from consumers and PSAP cost recovery for the same costs and these cost recovery mechanisms should not be “profit centers” for carriers. At the same time, just and reasonable administrative costs related to carrier and government collection and remittance of 911 fees to state and local agencies should clearly be a permitted use of 911 funds. The FCC should work closely with states and local PSAPs to ensure that state and carrier practices are properly coordinated.

#### REGULATORY REQUIREMENTS

Although I commend the bill’s sponsors and co-sponsors intent on ensuring fairness and cost recovery for rural wireless carriers, I strongly recommend the elimination of Sections 4 and 5 of the bill.

The provision in Section 4 directs the FCC to ignore the fact that a PSAP may be able to receive and use live Phase 2 data. Rather, it is to use the presence of a cost recovery mechanism as a measure of PSAP readiness. If a state diverts 911 funds, the state is deemed not to have a sufficient cost recovery mechanism in place. The PSAP most likely will have no control over the decision to divert dedicated 911 monies in a state. Thus, such a requirement only impairs and aggravates the advancement of E-911 deployment. The Congress should ensure that Section 4 does not create an escape hatch for carrier compliance with E-911 rules when states divert funds.

#### FAIRNESS FOR RURAL CONSUMERS AND CARRIERS

With regards to Section 5, we are concerned that it could be used to create a blanket E-911 deployment waiver for classes of carriers, regardless of their level of effort. Consumers living in rural areas deserve the same level E-911 service as those in urban and suburban areas. Some argue that the FCC E-911 accuracy standards should be relaxed in rural areas. The need for accurate location data in rural emergencies is equally, if not more important in rural areas than in more populated locations.

Current actions and Orders of the FCC to encourage E-911 deployment are working. Much of the extent of Phase 2 deployment in the past 12-15 months has been due to the threat of enforcement. In spite of this threat, multiple avenues continue to exist at the FCC for carriers to present unique circumstances impeding their deployment efforts. Those incurring such difficulties should be separated from those carriers that simply refuse to even try. From my perspective, the FCC has been firm, but fair in enforcing its E-911 requirements. It’s important to remember that all carriers, regardless of size, have known for years the E-911 accuracy standard and of its ultimate enforcement.

It is important to note, however, that despite the best efforts of carriers, PSAPs and states, there are some areas in where the standard cannot be attained. The unique characteristics of the terrain, distance from towers or technology limitations will prevent attainment of the FCC’s accuracy standards. In some cases, the cost of attaining the accuracy standard may be prohibitive. But to simply ignore the FCC’s requirements without attempting deployment while banking on Washington

lawyers to obtain regulatory relief is not acting in good faith, nor is it in the spirit of using the public's spectrum.

In late 2001, our Board entered into an agreement with Advantage Cellular, a small coop, for the purpose of conducting a Phase 2 trial. Advantage Cellular provides wireless service in some of the most challenging terrain east of the Mississippi River. Advantage is considered a Tier 3 carrier by the FCC. The significance of the Advantage trial was meeting, and in some cases exceeding the FCC standard in very difficult terrain and a limited number of towers with which to work. In the end, the trial was successful. Their success did not happen without months of technological challenges and frustrations. The bottom line is that it took the commitment of all involved, especially the carrier, to overcome the challenges and make Phase 2 service a reality for their area.

In cases where carriers have acted in good faith and the standard is not attainable, the FCC has the ability to verify, extend and ultimately forebear its requirements imposed on a carrier. I recommend that the FCC and carriers explore and exhaust all avenues to address this situation before Congress sends a signal, which could be interpreted as encouraging a blanket waiver.

The cost incurred by small and rural carriers serving rural areas is a valid consideration. We are pleased that four out of five rural (Tier 3) carriers in Tennessee are underway, or have completed their Phase 2 deployment. Two of these four are currently receiving Phase 2 cost recovery. In states and localities where cost recovery is absent, there are financial opportunities available to the carrier in meeting deployment costs. The USDA Rural Utilities Service, Rural Telephone Bank, CoBank and the National Rural Telecommunication Finance Corporation are examples of a few rural lenders whose mission is to bring essential services to rural America. Carriers can also recover part, if not all, of their costs by directly placing a line item on the consumer's monthly bill and prepaid cellular service.

#### CONGRESS AND THE FCC

Congress can provide appropriations through the USDA Rural Utilities Service and other rural development programs to assist rural carriers and PSAPs. Such authorizations already exist in the Farm Bill, Rural Electrification Act and other legislation. The FCC can help as well. As more and more wireless carriers apply for "Eligible Telecommunications Carrier" (ETC) status in order to receive "Universal Service" support, the FCC could condition that support on deploying E-911.

#### CONCLUSION

H.R. 2898 takes one of the greatest steps toward helping ensure that E-911 service is enjoyed by, and available to all Americans—rural and urban. Most of the approaches taken in the bill have a proven track record of facilitating positive outcomes in E-911 deployment, maintenance and advancement in both urban and rural areas. The grant opportunities created in the bill are desperately needed by state and local 911 authorities alike. However, the resulting action from the proposed certification requirements could hurt PSAPs that need help the most. State wireless or 911 boards, where they exist, should serve as the administering or authorizing agency for 911 grants in order to promote targeting based on need, matching opportunities and leveraging with other sources. State 911 boards should also be eligible to receive grants for regional E-911 initiatives, dispatcher training, securing technical support and other needs unforeseen at the current time. The FCC should be permitted to continue working with rural carriers without intervention from the Congress. Congress should also support other opportunities to assist rural carriers and PSAPs through rural telecommunications financing and grants.

The authors and co-sponsors of H.R. 2898 can be proud of this measure. With minor modifications, it will make great contributions toward public safety and security, as well as saving countless lives. On behalf of the millions of 911 professionals and all involved in supporting their work, I thank you for your support and the opportunity to be here today.

Mr. UPTON. Thank you.

We would also like to acknowledge that Bart Gordon is a valuable member of this committee. He has probably gone back to Tennessee with no votes.

Mr. Addington, welcome.

**STATEMENT OF TERRY W. ADDINGTON, PRESIDENT AND  
CHIEF EXECUTIVE OFFICER, FIRST CELLULAR OF SOUTH-  
ERN ILLINOIS**

Mr. ADDINGTON. Good morning, Mr. Chairman, members of the Committee. I can't tell you how honored I am to be in front of you today. I am going to speak from the heart. I am going to depart from my text. I am going to speak from the heart very briefly. Phase II. I want it. I have been trying to get it since 2001. And I am so close that I can taste it.

First Cellular is a small rural wireless carrier serving the lower 24 counties of Illinois. We cover about 10,000 rural square miles and have a population density of approximately 50 people per square mile. Our largest city is Carbondale, Illinois, at about 30,000 people, when the university is in session. The rest of our coverage area is made up of small towns, farmland, freeways and very rural back roads. I employ 150 people. We are represented by Congressman John Shimkus, and are proud of him as our Congressman, and appreciate his efforts for the people of southern Illinois. It is my privilege to be able to publicly thank you, Congressman Shimkus. We appreciate your good work.

I support H.R. 2898, and I thank you for considering it. This legislation will help wireless carriers in a variety of ways. I support the review of accuracy requirements in rural areas, and the provision that requires States to certify that they are not diverting E-911 funds collected from the public. In my case, these two requirements are paramount and key to this legislation in their benefit to First Cellular and other rural wireless carriers.

I also believe there is value to the creation of an office for E-911 coordination, as many of the issues causing delays for my deployment are a result of communications coordination and compatibility issues with vendors. Coordination with public safety answering points is also essential. I would like to note in our area, our PSAPs have been an absolute joy to work with.

Of all of the government mandates we are trying to support at this time, E-911 is the one that saves lives. As such, this mandate deserves the special attention called for by H.R. 2898. This legislation calls for an amendment to the Communications Act of 1935 to include a provision that requires States to certify that they are not diverting E-911 funds. I support this wholeheartedly.

As of August 11, 2003, the Governor of the State of Illinois signed a law that provided for the recovery of costs for phase II of E-911. Unfortunately, rumors are already rampant that prior to its effective date of January 1, 2004, the E-911 fund will be raided by the State to provide money for the State general fund. This must not happen.

The funds were collected at a rate of 75 cents per month from every wireless subscriber in the State since August 2000. These funds were collected under the premise that they were destined to enhance the safety of the individual wireless user by funding the deployment of a wireless E-911 system. In my opinion, the use of those funds for anything other than for what it is intended would constitute a fraud upon the wireless customers of the State of Illinois.

H.R. 2898 is exactly on target in addressing the diversion issue. I would like to raise a real Catch-22 that I am facing. Passage of the Illinois cost recovery statute happened to coincide with our final vendor and technology decision. As we began the process of issuing a purchase order to move forward on deployment, we were told by the State Central Management Services Agency, the agency that administers the fund, since the law is not effective until January 1, 2004, any expenses incurred before 1/1/2004 were not recoverable.

So the Federal Government tells me on one side we must deploy soon, or we can be fined, while the State government tells us, if you want to recover your costs, you need to wait. This make no sense to me, and is a clear disincentive to a timely deployment of a system that could save lives.

Finally, for carriers who serve rural areas, flexibility in the application of accuracy requirements is a critical provision of this legislation. Next to cost recovery and nondiversion of funds, this is probably the most critical element of the legislation because it could be the difference between reasonable investment and an investment that is simply infeasible.

Rural networks are different from those in urban areas. Many rural carriers cover very remote areas with low population densities, and only one site covering them. This makes triangulation to meet accuracy standards extremely difficult. In urban areas the increased density of cell sites permits triangulation to work well. This fundamental difference could require the addition of several cell sites in a rural area situated not for customer service needs, but simply for more finite and possibly, possibly, unnecessary accuracy results.

Getting within a few hundred feet of someone in need on a rural back road may more than suffice to locate that individual. In other words, the need and ability to meet the required accuracy standards in these areas may not balance against the cost of building additional sites, especially without cost recovery.

Mr. Chairman, distinguished members of the committee, once again I offer my support of this legislation. Thank you so much for allowing me to air my views and to submit to you my story. Again, I would ask for your support. Thank you very much.

[The prepared statement of Terry W. Addington follows:]

PREPARED STATEMENT OF TERRY W. ADDINGTON, PRESIDENT AND CEO, FIRST  
CELLULAR OF SOUTHERN ILLINOIS

My name is Terry Addington and I serve as President and CEO of First Cellular of Southern Illinois. I have served in this capacity since 1994. I also hold positions on the Boards of Directors of RCA, The Rural Cellular Association, CTIA, The Cellular Telecommunications and Internet Association, and ITA, the Illinois Telecommunications Association. I am a past president of RCA and am currently sitting as Vice-Chairman of CTIA.

I am here today speaking only on behalf of my company, First Cellular of Southern Illinois. I am simply a small business owner and operator from Middle America. I am not a lobbyist nor am I an experienced "Washington insider". I have no Washington office nor do I have any regulatory staff. A lawyer or a consultant did not write my testimony and written statement. My "special agenda" is only that of a business trying to stay in business and deliver a fair return to my shareholders. The perspective I share with you is from one carrier and is one person's opinion based on my experiences in trying to implement phase II of the E-911 mandate.

First Cellular is a small rural wireless carrier servicing the lower 24 Counties of Illinois. We cover about 10,000 rural square miles and have a population density of approximately 50 people per square mile. We sit between St. Louis, Missouri and Evansville, Indiana. Our largest city is Carbondale, Illinois at about 30,000 people when the University is in session. The rest of our coverage area is made up of small towns, farmland, freeways and very rural back roads. I employ 150 people. We are represented by Congressman John Shimkus and are proud of him as our Congressman and appreciate his efforts for the people of Southern Illinois. It is my privilege to be able to publicly thank Congressman Shimkus. We appreciate him and his leadership.

I am here today to discuss the pending legislation on wireless E-911. I support this legislation and thank the committee for considering it. It will assist wireless carriers in a variety of areas. I especially support the review of the accuracy requirements in rural areas and the provision that requires states to certify that they are not diverting E-911 funds collected from the public. In my case, these two requirements are paramount and key to this legislation in their benefit to First Cellular of Southern Illinois and other rural wireless carriers.

I also believe there is value to the creation of "An Office for E-911 Coordination" as many of the issues causing delays for my deployment are a result of communications, coordination and compatibility issues with vendors. Unlike other carriers, vendors have been my biggest obstacle to a timely deployment, not the PSAP's. In my area the PSAP's have been a joy to work with.

Of all the government mandates we are trying to support at this time, this is the one that saves lives. I made the decision in 2001 that we would not only comply with this mandate; we would get behind it with all of our resources and even included it in our 2002 and 2003 marketing plans. We wanted to be first to market and tout the life saving commitment this technology provides to our customers. We were first to deploy phase I of E-911 by many months, being in full compliance for eleven out of thirteen PSAPs by June of 2002 with the other two not capable of accommodating our data at that time. Because phase II offers an incredible improvement to the safety of our customers, we felt an early deployment was best for First Cellular and for our customers. We budgeted almost 22% of our capital budget for a solution and were prepared to deploy it even without a State of Illinois law providing phase II cost recovery.

We began exploring solutions in 2001 and hoped to initiate a contract by mid to late 2002 for a 2Q 2003 in-service deployment. Things have not gone as we planned, or hoped, or wanted. We feel a network solution works best for our customers because of the choices the competitive marketplace has allowed them to make. A handset solution is a fine solution, and I'm sure will work wonderfully for many carriers and their customers. First Cellular made a commitment to ourselves, for our customers, to not only meet the letter of the mandate, but to meet the intent of the mandate. I believe the intent of the mandate is to provide enhanced safety and security to as many subscribers as possible. In our marketplace, over 15,000 subscribers have made the decision, over time, to continue their analog service. In fact, I recently received E-mail from a gentleman quite angry about rumors he has heard about the discontinuation of analog service. After several years of incentives and promotions designed to move people off analog and into digital, 15,000 of my customers and citizens of Southern Illinois have said, "no thank you", analog is fine. Also, I serve about 100,000 roamers a month. A network solution serves all my customers, digital, analog and roamers. A handset solution requires a handset swap-out and cannot serve all my roamers unless they just happen to have a compatible system. The marketplace has spoken. 20+ % of my customers want to keep their analog service; I think they deserve phase II service with E-911.

Additionally, to prop up declining roaming revenues, we have decided to deploy a GSM overlay on our current CDMA and analog system. I'm sure you are aware there is not a handset solution for GSM. By deploying a network solution we can offer one solution for our whole marketplace thereby avoiding the need to deploy a handset solution for our CDMA network and a network overlay for our GSM system. It makes sense operationally and it makes sense economically.

I mentioned earlier that my biggest issue with obtaining a deployable solution was because of vendors. As you are well aware, First Cellular is just a cellular service provider. In order to deliver a phase II solution, two things were needed, cooperative PSAPs and a phase II solution from a vendor. Our relationship with our PSAPs has been wonderful. Early on we established a relationship with the unofficial PSAP area coordinator. With regular and honest dialogue we kept them informed of our progress every step of the way. They have been patient, understanding and easy to work with. I applaud the efforts and attitude of our local PSAPs led by Mr. Ken Smith, PSAP administrator of Williamson County, Illinois.

We have letters of request for phase II service from 5 PSAPs of which only 3 are capable of accepting data at this time. Those PSAPs have worked with us and have been patient as we have searched for a solution that will work for all our customers.

*The Creation of an "E-911 Implementation Coordination Office"*

The creation of an "E-911 Implementation Coordination Office" has the potential to assist all stakeholders in early coordination of E-911 implementation and accountability. If carriers are to be held accountable for deploying a phase II solution, why are some suppliers of those services not held accountable for performance and follow through? If carriers are bound by a Federal mandate, why is the switch manufacturer not required to provide compatibility to the solutions that are generally available in the marketplace? It seems to me the onus is solely on the carriers, PSAPs, and, to a lesser degree, the LECs.

I began contacting location vendors in late 2001. Calls were placed to the two network location providers, Grayson Wireless (now Andrew) and TruePosition. Both were invited to make presentations on their products. Our first meeting was with Grayson Wireless on March 11, 2002. After many unsuccessful attempts to get TruePosition on site we decided to move forward with Grayson. Soon after this decision was made, it was discovered Motorola had certified interoperability with only 1 of the 2 network providers, TruePosition. We finally established dialogue with TruePosition and on August 26, 2002 were able to get the full presentation of their product.

Shortly after our meeting in August we initiated contract negotiations. To say this was an arduous undertaking would be a gross understatement. After months of difficult communications we finally received a contract for execution at the end of February 2003. First Cellular executed the agreement on February 24, 2003 and sent the document to TruePosition to do the same. For the next 60 days the contract was mired at TruePosition and communications virtually ceased unless we called or E-mailed repeatedly. During the middle of March 2003, First Cellular was assured, repeatedly, that a contract would be in our hands within "a few weeks". It was at the end of those "few weeks", on or about April 23 that we learned TruePosition had developed a new version of their product, and, the new equipment was now **not** compatible with our Motorola switch and they refused to sell us the version of their product that is compatible.

Our Motorola switch remains incompatible with both current versions of the TruePosition and Grayson solutions. In fact, in a letter from Motorola, dated August 4, 2003, they state, "In early June of 2003, Grayson and Motorola entered into discussions regarding the feasibility of offering a Network-Based Wireless E-911 Phase II compliant solution. A technical exchange meeting was conducted to discuss the inter-operability capabilities of both Vendors' platforms. After reviewing all documentation presented and information exchanged, it was concluded that, **with the current product offerings of both companies, a product that would meet the technical specifications of the Wireless E-911 Phase II standards could not be provided.**"

To rectify this situation, Motorola states that they will require enormous research and development resources and considerable time. In a presentation to First Cellular on September 5, 2003, they conclude that their portion of a solution, to deliver the proper messaging to one of the two location vendors, would cost between \$2.5M and \$3.3M dollars, **just to develop**, and would only be valid for one carrier, First Cellular. The Motorola estimated schedule for the earliest possible deployment was first quarter of 2005. Clearly this would not serve the intent of our initiative to enhance public safety with an early deployment. Motorola also states the cost from TruePosition to merge their narrow and wide band products on a common platform is estimated to be \$2.4M! This is in addition to the \$2.5 to \$3.3M cost from Motorola. So, for a network solution from TruePosition, First Cellular would have to pay between \$4.9M and \$5.7 for development costs in addition to the over \$1M originally quoted as purchase and deployment costs. A total of \$5.3 to \$7.1M for a network based solution from TruePosition.

First Cellular has an annual budget of approximately \$7M each year, give or take, depending on the projects and their scope and size. If the same was true of Grayson, it was clear we had no choice but to pursue a handset solution. While acceptable to meet the specific requirements of the mandate, we remained concerned about falling short of the true intent, real enhancements to public safety **to all our customers, including roamers.**

In the last few weeks, Grayson has stepped up and are telling us they have found a way to work around the Motorola shortfall and for a much more modest development fee, can deliver a solution in about 6 months. Their solution would provide one solution for our CDMA network and our soon to be installed GSM network and

would serve our analog subscribers and all First Cellular roaming customers as well. We hope to be online by 4/1/04 or preferably before.

I believe there must be more accountability for all parties involved. I have heard many anecdotes about the failure of the wireless carriers to implement this mandate. I have heard the PSAPs are to blame. In my case, the PSAPs have been a joy to work with, and, I feel, we have expended tremendous amounts of time, energy and management resources in a sincere and almost desperate effort to not only meet this mandate, but also meet its true intent and truly work to save lives. In my case, the roadblock was from the vendor community. Where was their accountability during this process? As for Motorola, why are they allowed to not support a standard that is required for a mandate we must deliver? Their response was to tell me to adopt a handset solution. It would work, but was it the right solution for my customer. Unequivocally, no!

I would hope, with this legislation, and the creation of an office to oversee the deployment of this life saving service, accountability for all, rather than some, would result. Misinformation could be challenged, performance claims could be verified and success stories could be shared. I do not regularly support the creation of new bureaucracies, but after my experience, I can only conclude, somebody needs to manage the multiple facets of meeting the mandate and provide leadership and accountability to the process.

#### *Diversion of E-911 Funds*

The availability of cost recovery is a major incentive to deploy advanced E-911 services. I truly believe government, both at the state and federal level, does not completely comprehend the viciousness of competition and the impact it has on the abilities of carriers, especially the small carrier, to provide a consistent return to shareholders. Risk is inherent in this industry because of the capital-intensive nature of the business and the competitive environment we perform in. If economic uncertainty is added into the mix, as is currently the case, risk multiplies. Risk rises and competition is threatened when costly government mandates enter into the mix.

Some mandates make great sense, like Wireless E-911, because it saves lives. Others, like Wireless Local Number Portability (WLNP), simply cost money and drain resources. A typical new cell site costs First Cellular in the neighborhood of \$250,000 to deploy. To implement CALEA with a Motorola solution costs \$605,000, and I have never, in 13 years of operations, had even one request for a wiretap.

So far, WLNP has cost me \$790,600 with an estimated \$210,000 of annual operating costs. E-911 phase II will cost me \$2M. That is 14 cell sites I will not be able to build. While I fully support E-911, the diversion of capital, including human capital, is significant. All this comes at a time when competitive pressures are causing cash flows and profitability to decrease; all this at a time of economic uncertainty and difficult capital markets.

In 2004, First Cellular will experience our first decline of cash flows in our history at approximately 19%. At the same time, 20% of my debt is coming due. Since shareholder value will decline, capital expenditures will have to be cut. No new cell sites will be scheduled for construction in 2004. If the impact of WLNP is significantly higher churn as some project, then this model I've just described becomes much worse. Un-funded mandates truly impact the business model, for all carriers, but probably more dramatically for the small rural carriers. We have less access to capital and much lower buying power for phones, network equipment and enhanced service platforms and, something people never consider, we have far fewer human resources and expertise to develop, test, and support any new service, mandate or not. The quest for an acceptable E-911 solution has taken many thousands of man-hours of time over the last couple of years, time we could've spent bringing other services and higher quality to my customer.

This legislation calls for an amendment to the Communications Act of 1935 to include a provision that requires states to certify they are not diverting E-911 funds. I support this wholeheartedly. Cost recovery on E-911 is an incentive to overcome all the obstacles and devote the resources necessary to get the job done. With cost recovery, I can rest assured my capex will be protected and that money can go to the deployment of additional cell sites for better coverage, and that is what customers ask for everyday, better coverage. With cost recovery, I can recoup my operating expenses and offset further declines in company value and negate any risk I might have with lenders and shareholders.

I am thankful that as of August 11, 2003 the Governor of the State of Illinois signed a law that provided for the recovery of costs for phase II of E-911. Unfortunately, rumors are already rampant that prior to its effective date of 1/1/04, the E-911 fund will be raided to provide funds for the state general fund. This must not

happen! The funds were collected, at a rate of \$.75 per month from every wireless subscriber in the state since August of 2000 under the premise that these funds were destined to enhance their safety by funding the deployment of wireless enhanced E-911 and nothing else. In my opinion, the use of these funds for anything other than for what it is intended would constitute a fraud upon the wireless customers of the State of Illinois.

Curiously, another anomaly arises that makes one wonder what is truly driving this process. As soon as the State of Illinois reimbursement legislation was passed and we were finally offered an acceptable solution from our new vendor of choice, Andrew Corporation, we began the process of issuing a purchase order to move forward on deployment. We began paving the way for cost recovery on costs already incurred for phase II (mainly legal costs) and were told by an administrator with the State Central Management Services (the agency that administers the fund) that since the law was not effective until 1/1/04, any expenses incurred before 1/1/04 were not cost recoverable. So, the federal government tells me I must deploy and that I must deploy soon and if you fail you could be fined, while the state government gives me a clear signal that if you want to be paid you need to wait. This makes no sense to me and is a clear disincentive to deployment.

This aspect of the legislation is critical. As an industry, we need cost recovery. In states where cost recovery exists I would suspect deployment would be expedited. In states that have funds already in place it is crucial they are not diverted for uses other than what they are intended for. Wireless carriers will meet the mandates, funds or not, but the damage to a competitive business will be less and the customer will benefit sooner from enhanced E-911, as well as more and improved coverage if the funds are not diverted.

#### *FCC Review of Accuracy Requirements In Rural Areas*

For rural carriers, this is a critical provision of this legislation. Next to cost recovery, this is probably the most critical element of the legislation because it could be the difference between reasonable investment and an investment that makes no sense at all.

Rural networks are different than networks in urban areas. In urban areas you have a density that requires many cell sites in a grouped configuration to be mutually supportive. They overlap and are densely packed. As such, they provide a superior backbone to overlay technology on. The ability of multiple cell sites to "see" the subscriber and thus be able to locate them by triangulation is high.

Rural markets are different in that population centers usually follow freeways or major highways. As such, it is not unusual to see a network that is strung out along a road, hence the phrase "a string of pearls". The network of First Cellular is somewhat different in that early on we decided to overbuild the network so even rural roads and many of the smaller towns have coverage. In our small coverage area of 24 counties and approximately 10,000 square miles we deploy over 80 sites today. A more typical build for this area would normally be around 50 to 60 sites. Even with our large build and dense rural coverage we still have at least one area that will be a significant challenge to meet the current accuracy standards. In the county where we have this significant technical challenge, First Cellular has only has one main site, supplemented with peripheral service from two others. Therefore, it is conceivable, under the current guidelines, one or two additional sites may have to be built to meet the accuracy standards. Customers have simply not demanded additional coverage or quality in this area. However, if the accuracy standards are to be met, then towers may have to be built, at a significant cost solely to meet the 911 mandate.

It is very likely, even with reduced accuracy standards, a customer needing their location to be identified could be located. The rural nature of the area does not require the customer to be pinpointed with an accuracy that is needed in a densely populated area. I would argue it is necessary to locate someone in an office building at a particular address in the City of St. Louis, but getting within a few hundred feet of someone in need on a rural road would be more than enough to locate that person. Many rural carriers have this problem in an exaggerated fashion. They cover very remote areas that only have highways running through them with very low population densities. The need and ability to meet the accuracy standards in these areas do not balance against the cost, especially without cost recovery. The "cookie cutter" approach of a "one-size fits all" solution does not make sense for rural America. It is not good business and I am not sure if public safety will be enhanced. I would ask for your support of this provision of the legislation. It is a critical issue for all providers of service to rural America, small and large.

*Other Issues of Concern*

I sincerely applaud this legislation; I support it and ask for your endorsement. Do I think legislation could and should address other issues? I think it could, but let me emphasize how grateful I am to its sponsors and supporters for listening to us and giving us legislation that really does help the wireless community and public safety.

I would recommend these additional measures be considered:

- Cost recovery is the most critical issue. I don't understand why federal legislation cannot be enacted, similar in nature to USF fees, which mandate the collection of E-911 fees from all wireless customers, superceding the states, thereby insuring funds for all critical entities and no diversion of funds by the states.
- Many rural carriers have networks with obsolete technology. In the early days of digital deployment many small and rural carriers deployed the TDMA standard. This standard was cheaper and easier to deploy over legacy analog networks. With no future migration path this technology is now obsolete. Changing out a complete network from one technology to another is a massive and expensive undertaking. Delaying the E-911 deployment requirements until the new network technology is installed will ultimately aid the implementation of E-911. It will insure the correct E-911 solution is deployed for the right network and that it will work the way it is intended to work the first time.
- Finally, I would ask that the waiver process currently in place today with the FCC which is, at least to this date, working effectively, continue. I applaud the FCC in this effort. They have given carriers, like First Cellular, a venue to explain their circumstances and ask for relief from deadlines. So far, at least from my perspective, the FCC has been sensitive to our issues, granting extensions where warranted. We truly appreciate this.

Thank you for allowing me to air my views and to submit to you my story. Again, I would ask for your support.

Mr. UPTON. Well, thank you all for your testimony. At this point we will be asking questions from the panel. We will limit the questions to 5 minutes from here.

And I just want to say, Mr. Addington, I completely agree with your assessment with regard to the charge that you pass on to the users. And one of the provisions, of course, in this bill—and I have to say that when I first started in Congress, I began to serve on the Public Works and Transportation Committee, began to work on the highway bill, and I found and believed that my constituents, as we pay our taxes at the pump, we don't mind those taxes, knowing that, in fact, those—all of those dollars are to go into the trust fund to be used for bridges and roads and highways. And we had a big battle, I guess it was in the 1980's, as to whether we should have all of the funds collected. We finally won on that provision.

And, Mr. Berry, I am very disturbed to hear, and I wish my colleague Mr. Burr were here, though he is not a member of the subcommittee, from North Carolina, that they have now diverted \$58 million being collected for something else.

I have to say, I think about my State legislators, knowing that it was done in their State capital, mine, of course, being Lansing. But I will tell you this. If any of my State legislators would support raiding those trust funds and diverting those dollars for something else, I think there would be hell to pay, and they would have a very tough time. As you look at my district in southwest Michigan, you can tell I am from Michigan, and Mr. Stupak would add the upper part, and down here. But, you know, my district is very diverse. We have got rural and urban needs. We have got Kalamazoo, a city of 100,000. We have got another county without a four-lane road, very much the rural side, as Mr. Addington described to Carbondale, I guess.

But as all of us have cell phones, and we pay that fee, we want it to enhance our 911 service. And I will tell you—\$58 million goes a long way. As we look—we are having some very tough budget constraints here. We are talking about, particularly with Iraq and the economy the way that it has dropped, we are looking at a new program to help State and local folks.

And I guess it is very much along the lines of the highway bill, when we look at bridges and roads, that the State has to make a commitment, too, if you are going to benefit from the Federal dollars that are going to be added. In the House bill we have \$100 million each year for the next 5 years. The Senate bill is a little bit higher. As we move this, we are going to have to agree to that. But I guess our sense is that if we are going to embark on that program, the States have to make it a priority, too. And I can't comment probably for North Carolina folks, but if they divert those dollars for something else, then they must decide that maybe it is not the priority that other States have, and that is the reason why—why every one of us up here is a cosponsor of the bill as well look at this particular section, section 4 of the bill; that if, in fact, they divert it, we have got other areas that can benefit.

North Carolina is going to take that money and use it for something else. Michigan, California, and Illinois will be—will take those dollars. And so what we are trying to do is tell the States, forget it. It is a priority. Constituents are going to believe that, too. If we are going to have a new Federal program, then the States need to be partners in this, too.

And I have to say, at least from my point, that I will work very hard to stop efforts to take that section out, because we want to keep their feet to the fire so that we can avoid precisely what has happened in Illinois with Governor Blagojevich in terms of what he has had to do.

I don't know if Indiana is planning to—has diverted dollars, but I know that as we have had some other hearings on oversight on this, we have been pretty tough on those States that have used it for projects that are not related to E-911, where, you know, again, as we had our very first hearing on this issue, I will bet that just about every member of this subcommittee has made a 911 call from a cell phone, and we might not have been in our district, and we didn't know necessarily where we were. I remember Mr. Terry, who just left to catch his plane to go to Nebraska, I think he described his call in Colorado, a State adjacent to his. And, you know, we just assume often that those calls, they know where we are. And, boy, if—you know, if helping the PSAPs is so important, we have got to have that.

I know my time is about ready to expire, but maybe I will let you comment in terms of where you are maybe from your heart on this. But relating to where things might be in your State capital, Mr. Haynes as well, and then I will yield.

Mr. BERRY. I certainly am proud that in Indiana we have not diverted our funds.

Mr. UPTON. So you would benefit from North Carolina's problem?

Mr. BERRY. So we have not. But I think what is also important is that when we create legislation, we create legislation and make those sticks, and mean those sticks for the appropriate individuals.

And certainly those sticks need to be faced directly at the States, not at our PSAPs. It is the PSAPs that need to make the commitment of dollars, it is the PSAPs that need to improve and upgrade their systems, and they should not be held accountable for decisions that the State legislators and Governors have made in many States across the country. And, as a result, I think we need to encourage our PSAPs to make those investments in capital investments, in upgrading of equipment, so that they can respond to their local citizens' desires to have wireless enhanced 911. And we should then make other reprehensible sticks toward those States then that would not utilize the funds appropriately.

Mr. UPTON. Mr. Haynes, do you want to comment?

Mr. HAYNES. Mr. Chairman, I am also pleased to announce that for the last 2 years under that threat, we have not had any funds diverted either. In the State of Tennessee, it is against the law to use 911 moneys. But simply the legislator passes a law to break the law, to be able to raid the fund. It is very easy. As you know, it can be done with legislation. Fortunately, that has not happened yet.

It is probably fair to the Governors of this State to recognize at least in our State we have got a balanced budget constitution. On June 30 if the bills are not paid, we are illegal. If you don't—like here in the Congress, if you don't honor your Constitution, you are nothing. Nothing is worth anything. So our Governors take very serious that role.

I am pleased at the leadership our Governor Phil Bredesen has taken on this issue. Early coming into his administration, he said there are no sacred cows. That was highway funds, you name it. And the road builders are a very powerful lobby in our State. In doing that, they all came out in the end—the Governor said, at the end of the day, if we are about to turn out the lights on the State, so to speak, then I will look at using those 911 moneys. And the commitment that he gave a senator was, we will only do it then, or I will only take the 2 million in reserves that your board is not allowed to touch by law. So I would just like to commend our Governor for the leadership that he has shown on this issue. It is a problem.

But from what we have seen in Tennessee politically, if you are going to touch those very politically powerful sacred cows, I am afraid that the language in this bill will do little to deter, because we have cut back on departmental efforts across State government that generate revenues for the State of Tennessee. That just goes counter to your revenue crisis.

So I would say if Congress is looking for that disincentive for States to do that, you may have to look to areas that are not within the jurisdiction of this committee, such as Federal highway matching funds, EPA pollution abatement control moneys, for point source and nonpoint source.

I am not advocating that, but what I am trying to get the message across is a sincere attempt in this bill, as Tim mentioned, will only hurt those that need it the most. We have got to figure out some other creative way that serves as a disincentive to stop this practice.

Mr. UPTON. Well, I only dare to say that \$100 million is not enough in terms of what is needed. We recognize that. It is a start. We have competing priorities for sure in lots—in different areas, whether it be prescription drugs or highways or national defense, you name it. And what, in essence, we are trying to say is that we are going to help those States who also make it a priority, knowing that much of their funds is collected from us on our own bills.

And as we try to pick and choose, we will reward those States that, in fact, do make it a priority, and make it a big disincentive for other States not to drop it.

At this point I will yield for questions to our colleague Ms. Eshoo. Again, and she missed my statement at the beginning, but a very able member of this committee and very grateful for her leadership on this particular issue as a sponsor with Mr. Shimkus.

Ms. ESHOO. Thank you, Mr. Chairman, for your generous words. I appreciate it very much.

I want to start with Mr. Muleta and then open it up to the rest of the panel.

As you know, section 5 of the bill asks the FCC to review the accuracy requirements for rural carriers. I have always been a proponent of, you know, the carrot-and-the-stick approach, and I think that when it comes to getting this done, you know, that that—I think I would characterize that that is part of it.

Do you have any suggestions about the whole issue that somehow we are weakening the accuracy requirements for rural carriers, and that that is a nonstarter? And I wanted the rest of the panel to weigh in on this as well. Would you comment on that?

Mr. MULETA. I think that the first thing to note is that in order for something like E-911 to work, and to work seamlessly, the standards are going to have to be national, and they have to be uniform. So that is the starting premise.

Now, stepping back from that, I think that the next set of questions that we have to address are, are there geographical, technical parameters or conditions that make it difficult to implement to a set standard.

The answer is that, apparently, there are.

However, should we depart from 100 percent compliance at some point is a separate question from addressing the technical issues that come up in between. So I think, you know, as I mentioned in my testimony, the FCC is already engaged in a dialog with both vendors, carriers, the PSAP community to identify, A, what are the issues, under what circumstances do these issues come into play, and then, you know, sort of what is the basis on which we need to depart from them while still getting to 100 percent compliance on the national standards. So, I mean, I think the bill is asking those sets of questions.

We are already engaged in that discussion, as I mentioned. We are also doing it in a much broader context, the National Network Reliability and Interoperability Council, because we need to understand how does this all fit in with all the other public safety issues and homeland security issues that are in play.

Ms. ESHOO. I appreciate what you are saying. Would an additional study help you in what you are describing or not?

Mr. MULETA. I think that is what we are already engaged in. I think the chairman announced we are going to do the NRIC analysis. We are going to have this presented to the technical advisory community in January that the FCC has to advise it. So we are already engaged in that discussion.

However, I think the commissioners and the staff working on this matter believe that this is part of a uniform national standard. We need to get 100 percent compliance, and we need to have a dialog between all the various stakeholders to make sure that to the extent that there are hurdles that we limit them to the extent, you know, the scope of these hurdles and then, as we implement them, make sure that we get to 100 percent uniform compliance at some point.

That is what we are striving for. I don't think we want to depart from those principles. I am not sure from my review of the bill that there is actually any debate about this broader goal, so—

Ms. ESHOO. Anyone else like to comment?

Mr. ADDINGTON. Sure. I think it is real appropriate for me to comment on that. You know, I think what we are talking about is—

Ms. ESHOO. I love your energy.

Mr. ADDINGTON. Thank you. It is an energizing topic.

This is an exciting topic because of all the things that we have to do that the government is telling us to do right now this one does save lives, and we appreciate that. The flexibility—we are asking for flexibility, and I think the FCC in the waiver process has shown a real ability to work with us and understand our issues, and I applaud the FCC.

I told Chairman Powell Tuesday morning at a meeting of the CTI executive committee specifically that it has been so helpful for small and rural carriers to be able to state our case.

We all have different cases, and that is the weird thing about this. There has always been this—you know, it is not the same issue across the board. So I think the waiver process—you know, thank you, it has been working well. Flexibility is what we are asking for.

Because I have built networks in urban areas and rural areas. I am not necessarily in a position where I am going to be—have difficulty to meeting the accuracy standards. However, a lot of my counterparts who have remote areas that they have a highway traveling through their territory and there are truck stops and towns down the highway and basically their cell sites are just placed every 20 miles or so and digital every 8 miles or so. The difficulty in trying to triangulate off of that is high and what we are fearful of is having to build all of these sites that are not customer driven for quality coverage and capacity and things like that. And many of the small rural carriers are very capital strapped.

So, you know, I think, really what we are looking for is, and maybe on a case-by-case basis, is the understanding, the flexibility that they have shown so far anyway with the waiver process. And I believe that would work.

Ms. ESHOO. Thank you, Mr. Chairman. I think my time is up. Is it?

Mr. UPTON. Mr. Haynes wanted to say something.

Ms. ESHOO. Oh, all right.

Mr. HAYNES. I was just going to add that your question was, are we weakening the accuracy standard with some of the measures in the legislation? Truthfully, no. Potentially, we are putting it at one heck of a risk.

The way that the language is written it kind of puts the gun to the head of the FCC, and it pretty much says in so many words—I worked in Washington for 11 years. I read that as a lobbyist. I read that as a former agency deputy director. It tells me what I need to be doing, and it tells me what your desires are in that language, and that may not necessarily be what you are trying to convey with this overall scope and intent of this bill.

I would just note that the process is working, and it is working very well. If we had exhausted all the opportunities all throughout the process, that would be one thing. But we have just begun. The carrier discussions have been productive with the FCC. I have been engaged in some of those, and I just appreciate the opportunity that the Congress potentially is looking to give by letting the FCC do its job.

Ms. ESHOO. Well, this is valuable testimony. That is why these hearings are so important. I think that some of the language that is in the bill may be actually redundant, that the FCC, given what Mr. Muleta has said, that they are moving along.

So thank you very much for your cooperation and your enthusiasm and your constructive comments and thank you again, Mr. Chairman.

Mr. UPTON. Thank you.

Recognize Mr. Shimkus from Illinois.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Just—first, just a comment to our elected treasurer. I used to be a county treasurer, and I know you probably know our State treasurer, Judy Barr Topinka, who is quite fun.

But as an elected treasurer you understand that I took a little bit of exception at your opening statement when you said you can't penalize people for what the legislature does because they have no control. Well, this is—here we have a constitutional republic, people do vote; and I would always take exception that the public has no way of enforcing any discipline on elected officials because they do so in our case every 2 years at the ballot box. That is why we have associations and that is why we have organizations to let elected representatives know the needs.

So I would hope that when funds are being robbed for purposes and the people really get upset that they make that point known. We are held accountable with that on a lot of our budgetary antics all the time here. I have to answer tough questions every election cycle on why we are doing this to the highway trust fund or why we are doing this to the Social Security trust fund or this—and so I just want to put that on the table.

Mr. Muleta, my good friend Terry suggests in his testimony that vendors of E-911 location technology should be held accountable for performance and follow through. How responsible are vendors for delay in E-911 deployment?

Mr. MULETA. Thank you for that difficult question.

Mr. SHIMKUS. I have got great staff.

Mr. MULETA. How responsible are they? I think what I would like to start out with is, first, that you know our approach in the United States has been to let competition work in the wireless sector in terms of the evolution of the services so that over time as technologies improve that we are getting better and better services. The kind of standards that we are setting are the benchmark, the floor, as opposed to the ceiling of what we expect people to be able to do. As such, our approach has never been to specify a particular technology choice or solution.

So, for example, in wireless E-911 there are two approaches, basic approaches. There is a handset approach, and then there is also the network-based approach. Both have tradeoffs in terms of cost-benefit, in terms of timing of deployment as well as the cost to deploy.

So I think what I am encouraged by is that we are constantly hearing from vendors about new and improved technologies, both from existing vendors and new potential vendors coming into the marketplace. So it is very difficult for me to say that vendors are responsible for some sort of this.

I do think it is important to note that all of us have a role in doing this, making this roll out. What probably needs to happen is a dialog between people that are aware of technology, such as the vendors, the carriers, the PSAP community, to determine what is possible in terms of deployment. So I don't think it would be a fair representation to say that the carriers are responsible for the delay. I think it is important to say that we—

Mr. SHIMKUS. No, I am trying to say the vendors are responsible for the delay.

Mr. MULETA. Are or are not?

Mr. SHIMKUS. Are, in cases. And what are you doing about acknowledging that fact? The carrier can do all they want, but if the vendor is not following through and there is a possible date certain, then how is the FCC trying to reconcile that problem with what the carrier has to deal with?

Mr. MULETA. I think it is important. What we are doing is we are having the stakeholders communicate so the vendors are communicating with us, also with the carrier and also with the PSAPs so that we are trying to match the timing and implementation deadlines with what is possible with the available technology. There are multiple choices for technologies and what we are encouraging all of the stakeholders to do is to communicate so that the community's expectations about the availability of this technology matches the availability of the technology in the marketplace.

Mr. SHIMKUS. So the FCC does not plan to take any action against vendors that are clearly causing delays in E-911 implementation.

Mr. MULETA. I think our authority right now is primarily with the carriers. But we are engaged in discussions on a daily basis with technology providers to make sure that they understand—

Mr. SHIMKUS. Terry, can you tell us the problem?

Mr. ADDINGTON. Certainly, Congressman. My issue has been with vendors.

Mr. SHIMKUS. I am not surprised.

Mr. ADDINGTON. I am not alone. But, you know, it is not a prevalent problem certainly with the large carriers because that is who the vendors courted first. As a small carrier, early on in 2001 when I wanted to get hot and heavy on this project we couldn't even get certain vendors—quote, unquote—certain vendors to return our phone calls. It took months and months to get certain vendors to even return our phone calls just to get a presentation to see whether their product could deliver. It has been an ongoing problem with certain vendors.

I am gratified that I finally found a vendor that will work for me. I choose a network solution, because it is right for my customer. I could have chosen a handset solution. It wouldn't have been right for my customer. I would have left 15,000 analog subscribers uncovered that want analog service that have chosen not to go digital, and I would not have served 100,000 roamers that I service every single month on a handset solution. Network solution, I service all of those. So I focused particularly on a network solution that would serve my customers.

The issue with the vendors is that they need accountability as much as I need accountability, and that is where I hope the office of E-911 coordination will help.

Mr. SHIMKUS. Thank you.

Mr. Chairman, I am not sure of the rules you are operating under. Are you going to allow us to ask another question or can we—

Mr. UPTON. You can.

Mr. SHIMKUS. [continuing] just extend our question time for a minute?

Mr. UPTON. Keep going.

Mr. SHIMKUS. Thank you Mr. Chairman.

Mr. Haynes, what technological solutions have Tennessee's 2 or 3 carriers employed to successfully meet the FCC accuracy requirements?

Mr. HAYNES. Most of those are using network solutions. We may have carriers—we still have one carrier I think is undecided on what technology they want to use. As we have mentioned in our written testimony, regardless of your solution, whether it is handset, whether it is network, you are going to have challenges. You are going to have issues.

I would just like to add to what Mr. Addington had commented on. He is absolutely right. A carrier can easily be at the mercy of the technology vendor. We ran into that on our phase II trial.

Other carriers have run into it in our State. They have asked us on behalf of their carriers they represent for 6-month, 12-month extensions to our own State requests for service. We wouldn't give it to them. We would give them 30 days at a time because we knew that they would take every inch to the goalpost, so to speak, in running out the clock.

So what we did was address things on a case-by-case basis with the carriers as long as they were acting in good faith, and that has worked. It has served us well.

I think it is also imperative to point out in this discussion that there is this umbrella called rural carriers in this country. Then you have got good guys like this fellow right here that is just

knocking the sky out trying to do the right thing. Then you have got some people in that group, in all honesty—and I have talked with some of them in my State—that have said oh, yeah, we are just like him. We are just like him. It is like, well, what have you done? I don't know—you know, the FCC has given us an extension on this so far. We are Tier 3, so we will get back with you.

There are people taking advantage of the situation and the work of people like Mr. Addington here, and that is where I am saying we need to separate these folks out, look at them on a case-by-case basis and then decide who is acting in good faith and who is not.

Mr. SHIMKUS. Mr. Chairman, if I can finish up. My last question is really for Terry again and Mr. Muleta. Why can't the success of Tier 3 carriers in Tennessee be duplicated across the United States?

Mr. HAYNES. I would argue that it can. It just takes commitment. It does take money. But it—first and foremost, it takes the commitment of that carrier. I will give you an example.

One of the two first Tier 3 carriers, a co-op that deployed in our State, did not want to do it at first. They wanted to wait. And their response was—and I know these people personally. They are old friends of mine. They said, well, our counsel—come to find out their counsel in Washington was telling them that, you know, they are probably not going to have to do this because of the unique circumstances. This was a year or more ago.

I said, I will tell you what. If you will deploy, I will make sure that you do—we do the best to give you 100 percent cost recovery, like we do all carriers. Consequently, our State board passed a policy saying that member-owned cooperatives should receive first priority, not last priority to cost recovery from the State of Tennessee with the PSAPs.

So it takes a commitment. It can be done. But in all fairness to Mr. Addington, just like we found in Tennessee, there are going to be places in this country you will never meet that standard. Physics will not allow you. But it has got to start with the commitment from the guys and women out there exploring the opportunities to see can we do this. We are going to try to do this, and if we fail then we will go and try to request assistance.

Mr. SHIMKUS. Does Mr. Muleta or Mr. Addington want to add to that?

Mr. ADDINGTON. Yeah, I do.

It can happen. Two or three carriers are every bit as committed as anybody else. We have a little bit different issues than the big guys. You know, we are not as wealthy and powerful. We don't have the buying power. We don't have the resources, the human resources.

Right now, I have got two people in my office that focus on government mandates. Right now, they are fully focused on local number portability. E-911 is something else they all do.

I have become the champion of the E-911 cause. We have—Verizon's Washington office has more people as lobbyists than I do as employees, I suspect; and that is a big issue. We are committed. I am committed as the kind of unofficial leader of Tier 3 carriers in the country. I am committed to this project. We will deploy E-

911 phase II. I wish it was 6 months ago or a year ago. We will do it.

Mr. SHIMKUS. Mr. Muleta, do you want to add?

Mr. MULETA. Yes, I think it is possible. I think we need to make sure that it is approached on a case by case and not provide a blanket statement. What we are trying to do right now is to ascertain in the sort of individual circumstances what are the timelines that achievable, how do we get to 100 percent compliance and how do we get the information that is necessary both to the PSAP community which has to implement it as well as to the carrier community that has to purchase and deploy the technology.

So we are working very hard on that. I think it is possible and I encourage all of us not to depart from trying to achieve that sort of full compliance of E-911 deployment in all parts of the U.S. .

Mr. SHIMKUS. Thank you.

Mr. Chairman, if I may, I notice my friend, Mr. Markey, has arrived. We want to welcome him to the hearing. But I do want to—he is my partner when I did my kids.us advertisement at the beginning—he is my partner in crime on that. And I just want to let him know that I did my advertising sequel, so you can skip it. It has already been done.

Mr. Chairman, I yield back.

Mr. UPTON. Thank you, Mr. Shimkus.

Recognize Mr. Markey, the ranking member.

Mr. MARKEY. Thank you so much.

We only have, on our dot kids site, though, kind of caped crime crusaders. It is all cartoons. It is all, you know, pretend. It is not real.

So my question to you, Mr. Muleta, is we are focusing on the so-called phase II E-911 implementation, where the public safety answering points can obtain the location information of an emergency caller. My question to you is, where are we on implementation of phase I, the first phase? What percentage of the country is covered by phase I and are some of the carriers just going to skip phase I and go right to phase II, or should we amend the pending bill to make grants available for both phase I and phase II?

Mr. MULETA. I would defer on the sort of percentage information. I am not prepared to provide that information right now.

Mr. MARKEY. Have you got some ball park estimate? I mean, it doesn't even have to be Fenway Park. It can be Yellowstone Park. I mean, just some number that is broad enough to give us a range of an idea of how much of phase I was ever completed.

Mr. MULETA. Okay. I believe based on—it is around 65 percent of the communities are phase I compliant. I think to address the issue all of the underlying premises of all the discussion that we have been having is—really applies to both phase I and phase II. You know, to the extent—you know, what drives this process is the readiness of the stakeholders. If the PSAPs are not ready to implement phase I, then we never get to phase II. If they are not ready to implement phase II, they are not ready to implement phase II.

So in terms of funding and those type of issues I think it is right on track. In terms of trying to address the issues, I defer to the Congress as to how to craft the language. But I think all the issues that we are talking about apply equally to both phase I and phase

II. It is obviously necessary to have phase I before stepping up to phase II.

Mr. MARKEY. So you would fund phase I as well.

Mr. MULETA. I think as part of this sort of national broad goals, yes, I think it would be necessary—it would be, I think, helpful to provide funding for those communities that can't get even to phase I to provide them with funds. I defer to the folks from the States to also provide guidance on that issue because they are much more—

Mr. MARKEY. I could go with a show of hands here. How many believe that phase I should also be funded? Mr. Addington. And Mr. Haynes. Mr. Berry.

Mr. BERRY. In Indiana, we are 100 percent phase I compliant or 99 percent phase I compliant.

Mr. MARKEY. So you are saying, why should the good States be punished?

Mr. BERRY. We are already there.

Mr. MARKEY. You are already there so you can't support—so let me—Mr. Haynes, you would like to comment.

Mr. HAYNES. Mr. Markey, I would just say that in Tennessee we have been getting the cake with the icing. The two have come together. Our State has insisted on both. Because, technically, as you know, phase I is the default if something goes wrong and phase II does not work. So we have approached it with our carriers that, hey, it is a—E-911 is a package. It is just for your convenience from a regulatory standpoint that you get to implement it in one of two phases.

Mr. MARKEY. Okay. So let me just follow up; and then I will come back to you, Mr. Addington.

Mr. Haynes, I have a question again about the public safety answering points where these 911 emergency calls will come in. Perhaps you can't speak to this, but my question is about redundancy and power backup. What is typical for the public safety answering points in urban and rural areas with respect to contingency plans for these public safety answering points in the case of a blackout or if the public safety answering point itself is the target of an attack, God forbid? What is the capacity to keep going through that kind of a situation where it is not operable?

Mr. HAYNES. My experience in Tennessee is that urban and rural PSAPs alike are all on backup emergency generation, ready to kick in at any given point in time.

In terms of losing a PSAP—and I will give you an example. Earlier this year, Jackson, Tennessee, close to where I grew up, a tornado took out two of the three PSAPs serving that entire county; and it is one of the more heavily populated counties in the State. Luckily, they had a backup PSAP that they just established. They took a lot of criticism over it because you have to make the investment, and all of a sudden this volunteer fire department that served as a backup PSAP was serving a pretty sizable urban/rural area in Tennessee.

So I would say in terms of the electricity generation is there in most cases, I would think, across the Nation; and then it is most of the practice, too, that there are backup PSAPs that you can shift to.

I would just add to that that the board that I work for is the State's authority that approves the increase of local 911 rates that are collected by the local 911 districts. They do not approve a single increase unless that facility has not only backup generation and means to deal with the issues you are talking about but that it is adequate of handling the call load that can potentially happen in that area.

Mr. MARKEY. Okay.

And, Mr. Addington, the good news for you is that Verizon has fewer and fewer lobbyists the more successful they become in driving their competitors out of business.

Mr. ADDINGTON. They are successful, aren't they?

Mr. MARKEY. They have needed fewer people here in town. So perhaps only by them coming down to the level of your employees you don't have to go up to them.

So can you give us your comment on the issues which Mr. Haynes was just commenting upon?

Mr. ADDINGTON. On the emergency backup plan.

Mr. MARKEY. The backup plan.

Mr. ADDINGTON. Yeah, it is very important. All of our cells that we invest in a backup infrastructure, all of our cell sites have I believe it is 4 hours of automatic battery backup. Then we deploy mobile generators. We have a limited number of mobile generators to provide ongoing backup for individual cell sites to go back beyond their battery backup.

Our cell site—I mean, our switch is in a huge old AT&T bomb shelter—that is the best way I can describe it—that I think could withstand a nuclear blast. And it has a huge diesel backup that—you know, I am really not sure. I guess as long as we have diesel it will run. So—I mean, it is quite extensive.

Mr. MARKEY. Okay. Great.

And a final word, Mr. Muleta. What would you like us to take out of this hearing?

Mr. MULETA. I think, first of all, that—to thank you and your colleagues for the leadership that you have demonstrated in this area and the initiative that you are taking with the legislation and that, you know, we need to encourage all the stakeholders to work together. This is a very complicated set of issues. It is not something that can be easily divined. So I ask for that level of support.

Mr. MARKEY. Thank you.

Well, I can tell you without any question that Chairman Upton and I are committed to working with Congresswoman Eshoo and Congressman Shimkus and all of the members of the committee along with the community that all of you represent to make sure that we put in place something that will be there when the American people need it. We thank you so much for all of the work that you have committed to try to create something that can help to protect the public safety in our country.

I thank you, Mr. Chairman, for having this hearing, especially on this momentous day, anniversary. I think if we could do something with 911 to commemorate 9/11 we would have done something quite important. Thank you, Mr. Chairman.

Mr. UPTON. Thank you, Mr. Markey.

Again, I want to thank all of you for being here this morning and the work of our colleagues.

I would like to say though we are not prepared to announce a markup date, but we fully intend to do it as early as next week and work with Mr. Markey and others to make sure we have a good day and time. We appreciate your enthusiasm, your input; and we look forward to getting this bill out of the subcommittee and to the House floor as quick as we can.

Thank you very much. We are now adjourned.

[Whereupon, at 11 a.m., the subcommittee was adjourned.]

