THE WIRELESS PRIVACY ENHANCEMENT ACT OF 1999 AND THE WIRELESS COMMUNICATIONS AND PUBLIC SAFETY ENHANCEMENT ACT OF 1999

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION

OF THE

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THE WIRELESS PRIVACY ENHANCEMENT ACT OF 1999 AND THE WIRELESS COMMUNICATIONS AND PUBLIC SAFETY ENHANCEMENT ACT OF 1999

WEDNESDAY, FEBRUARY 3, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 2123 Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Stearns, Gillmor, Deal, Largent, Cubin, Shimkus, Wilson, Pickering, Fossella, Blunt, Ehrlich, Markey, Gordon, Eshoo, Engel, Wynn, Luther, Sawyer, Green, and McCarthy.

Staff present: Tricia Paoletta, majority counsel; Mike O'Reilly, majority professional staff; Cliff Riccio, legislative clerk, and Andy Levin, minority counsel.

Mr. TAUZIN. The subcommittee will please come to order. Good morning and welcome to the Subcommittee on Telecommunications, Trade, and Consumer Protection's first hearing of the 106th Congress. It is with great pleasure that I welcome back my colleagues and I wish now to extend a warm welcome, indeed, to our new members of the subcommittee, some of whom have arrived and others perhaps who have not arrived yet.

Let me, first of all, welcome—let us see who is here. I see Mr. Roy Blunt. Roy Blunt was born on—let us see—January 10, 1950. I don't know why I'm doing this. I am not going to do that. And was elected to the Congress in 1996 and is in his second term. What is interesting about Roy is that Roy was just selected, by the way, members, as the member to take the place of our new Speaker, Denny Hastert, as the Chief Deputy Majority Whip, and, as I read that position at the fast speed of events lately, he could well be our Speaker in the next few months. I want you to welcome our new member, Roy Blunt.

And I am going to yield to my friend, Mr. Markey, for an introduction as well.

Mr. MARKEY. Thank you, Mr. Chairman. We have one new member this year, who is Bill Luther from the State of Minnesota. The two big stories in Minnesota this year, of course, Jesse "The Body"

Ventura becoming Governor and Bill Luther becoming a member of this subcommittee.

And we only accept the very best Members of Congress on this subcommittee. This is a winnowing process which has ultimately identified you, Bill, as one of the superior Members of Congress, and we very much look forward to having you as part of this committee that does try to work as much as possible with the chairman in a bipartisan fashion to craft telecommunications legislation. We very much appreciate everything you have—I know it was a big effort for you to get on this committee and then to pick this subcommittee. We very much appreciate that.

Mr. TAUZIN. Welcome, Bill. You have much too much hair to make it in the wrestling ring.

I also want to welcome Mr. Chip Pickering of Mississippi, who is also in his second term and is a dear friend. And we are delighted. This is his second big attempt to get on the committee and he had to fight like a demon to get here. I want to welcome him and I assure you, Mr. Markey, he is a another bright star that is going to add a great deal to our committee. And, Chip, welcome to the subcommittee.

And also I want to welcome as new to the subcommittee Barbara Cubin, who has been on the full committee before, but who has just joined our subcommittee. We all know Barbara's wit and charm and great intelligence, and we welcome you, Barbara, to our committee.

Mr. MARKEY. Is it her birthday today?

Mr. TAUZIN. No, no birthdays.

And we also have two other members that I want to acknowledge: Vito Fossella of New York, who will be joining the subcommittee, and also Mr. Bob Ehrlich, who will be joining the subcommittee.

So we have now filled in our ranks and we will begin our work today. Our work today is to receive testimony on the Wireless Communications and Public Safety Act of 1999, as introduced by, indeed, my good friend and colleague Mr. Shimkus, and the Wireless Privacy Enhancement Act of 1999 as introduced by, indeed my good friend again, the gentlelady from New Mexico, Ms. Wilson.

The bills are based on two wireless bills introduced by myself and others and considered by the Commerce Committee last year: H.R. 3844, the E911 bill and H.R. 2369, the scanner bill. Just to give you a little bit of history on these bills, H.R. 2369 passed the House on March 5, 1998, with a bipartisan vote of 414 to 1. However, the Senate did not take the bill up last year. H.R. 3844 was voted out of the committee on August 5, 1998 with a unanimous voice vote. And although Senator McCain introduced a companion bill last summer, the bill was not marked up before the Senate recess sine die for the 105th Congress.

Over 60 million Americans carry wireless telephones. Many carry them for safety reasons. People count on their phones to be the lifeline in emergencies. A parent driving an interstate highway with babies in the back seat draws comfort from knowing that, if the car is involved in a crash, he or she can call 911 for help and an ambulance will be rolling in seconds. An older American driving alone on a long trip feels safer knowing that, if an accident occurs or sud-

den illness strikes, he or she can use a wireless phone to dial 911 for help and State police will be on the way. And hunters and fishermen in South Louisiana know that, even in their pirogues and their duck blinds and deer stands, if something goes wrong, they can dial 911 and there should be help if there is a problem.

In many parts of our country, when the frantic parent or the suddenly disabled older person or the hunter or fisherman punches 911 on the wireless phone, nothing happens. In those locations, 911 is not the emergency number. The ambulance and the police will not come; you may be facing a terrible emergency, but you are on your own because you don't know the local number to call for help in that emergency.

This bill will help fix that problem by making 911 the number to call in that emergency anytime, anywhere. The rule in America ought to be uniform and simple: If you have an emergency wherever you are, dial 911.

Regarding the Wireless Privacy Enhancement Act, last year's hearing was astonishing. We learned that off-the-shelf scanners are so easily modified to turn them into electronic stalking devices that we actually did it within a few seconds here in this committee room. And, as you remember, we all listened into that private call Mr. Markey made plotting to overturn and overthrow this committee. I want you to know that this bill will not only fix that problem with the scanners, but we have also reached an accord with Mr. Markey and we are now friends again.

Although the current law and the FCC rules prohibit such eavesdropping, the technology is readily available to intercept cellular phone calls. We learned at the hearing that some people believed that present law did not prohibit modifying these scanners to turn them into eavesdropping devices. In fact, a whole modification industry had developed that was openly advertising in print media and over the Internet, complete with easy-to-follow instructions. This is alarming, and we look forward to hearing from our witnesses today as we address these two issues.

As a side note, 1997 became the first year in American telecommunications history that Americans bought more cordless phones than wired phones. We have crossed a remarkable threshold in the way in which Americans communicate. Now cordless phones include those cordless phones used within the house, but, nevertheless, I don't have to tell you, intercepting conversations on those phones is even easier today than intercepting conversations on the wireless cellular phone in your automobile.

Today we hope to begin addressing those serious American concerns about privacy and about safety, when it comes to using this wonderful wireless technology.

I am pleased now to yield to my friend Mr. Markey for an opening statement.

Mr. MARKEY. Thank you, Mr. Chairman. I want to thank you for calling this hearing today.

As more and more Americans use wireless phones, wireless service becomes less and less perceived as an ancillary, discretionary service. There's no question that every day, as you have just pointed out, Mr. Chairman, that more consumers will increasingly be relying on this technology for both business and safety. A natural re-

sult of the proliferation of this wireless phone technology is that many consumers will use them to call for help and assistance in time of emergency. Indeed, many wireless carriers actively promote their service to consumers as safety devices. And this reemphasizes the need to make this promise a reality for wireless communications.

One piece of legislation that has been recently reintroduced is the wireless scanner legislation that the committee and the House of Representatives overwhelmingly approved last session. That legislation modifies wireless scanner prohibitions contained in the Communications Act and updates them to address digital wireless technologies. The legislation also clarifies our intention that legally protected frequencies should not be readily available to scanner enthusiasts who buy scanners for entertainment but not to eavesdrop on their neighbors.

The second piece of legislation before us this morning seeks to enhance public safety by making 911 the national public safety designated number. The bill also includes a provision that I added to last year's wireless 911 legislation to protect personal privacy. Information-rich location systems that do wonders to help save lives on our Nation's roadways also pose significant risks for compromising personal privacy as the ability to locate and track individual's movements throughout society become available.

The recent episode surrounding Intel's new Pentium III microprocessor highlights how technology designed and developed for one purpose, such as security, can significantly undermine personal privacy simultaneously. Fortunately, technology itself does not predetermine how other societal values are balanced in products and services, and Intel quickly reversed course, announcing it would redesign the chip to better balance between commercial security and personal privacy issues.

The privacy amendment I offered last year, which is contained in the bill again this morning, seeks to balance commercial public safety and personal privacy issues by ensuring that location information will not be used except for 911 emergency purposes or with the express prior approval of commercial for any ancillary services that wireless carriers may commercially offer utilizing the location technology. I am glad that the industry supports this legislative approach and I am hopeful that the committee can move quickly to approve both pieces of legislation.

On a final note, Mr. Chairman, the legislation this year does not contain provisions addressing tower siting on Federal property. I hope that we can continue to pursue issues related to this as the year proceeds. In particular, the utter lack of common sense, expedited process to place towers where there are currently pressing public safety concerns such as Rock Creek Park, is mystifying. It seems to me, Mr. Chairman, that the government ought to be able to figure out how to accommodate towers on park land where the Park Service itself has constructed buildings, has a gigantic parking lot, and a stadium tennis court in the middle of an urban area. These are not wilderness areas. They are multiple-use, urban green space whose essential character will not be compromised by an occasional tower.

Mr. Chairman, you and I have worked together on this issue, and I think that Rock Creek actually serves as a perfect example of what has to be done in order to change——

Mr. TAUZIN. Would the gentleman yield?

Mr. MARKEY. I would be glad to yield.

Mr. TAUZIN. I am confused. We had a hearing a year ago and I was told at that hearing—I think you were there and you got the same assurances—that that would be solved in 60 days. Have 60 days passed? Have I missed something?

Mr. MARKEY. I think we used the old budgetary counting on this, Okay? And I don't think they have upgraded at the Park Service to use the new, modern, accurate numbers that we are using in government today. And you know what I recommend to you, Mr. Chairman? Maybe you and I and any other members, especially those in the Bell Atlantic service like Mr. Wynn, maybe we could pay a visit out to this facility, so that we can see what the difficulty is in making sure that Rock Creek has, in fact, accommodated the needs of consumers.

Mr. TAUZIN. Well, I'd like to go with you, Mr. Markey, but what would happen if we got mugged? Who would we call? How would we get help?

Mr. MARKEY. It is a good question. I think Mr. Wynn would probably be able to help us out in that situation.

Mr. TAUZIN. Okay.

Mr. MARKEY. I have great confidence in his ability to protect us in this instance.

Mr. WYNN. If I may interject, I refer you to Delegate Norton.

Mr. MARKEY. So perhaps we could do that, Mr. Chairman? Take a little field trip some morning?

Mr. TAUZIN. I think that is a good idea.

Mr. MARKEY. Great.

Mr. TAUZIN. I thank you, Mr. Markey.

Next I would like to recognize the vice chairman of our subcommittee, the gentleman from Ohio, Mr. Oxley, for an opening statement.

Mr. OXLEY. Mr. Chairman, I waive my opening statement.

Mr. TAUZIN. All right. Let me do it this way: Are there any other members who wish to make an opening statement? The gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

When we worked on the emergency 911 bill during the last Congress, I think all of us here believed that it was a good work product to alleviate the disparities in the emergency system for wireless communication. Unfortunately, as often happens here in Congress, we didn't think through some of the localism issues in the bill, like granting wireless providers access to Federal sites to deploy necessary equipment for transmission of their networks. It is a necessary imperative to allow our local cities and counties to play a primary role in tower siting issues that affect their local communities. At the same time, by removing the Federal leasing provisions of the bill, we may have undercut the necessary funding to support a seamless 911 system for wireless throughout the Nation.

Now in the original bill, Mr. Chairman, in the last Congress, H.R. 3844, the funds for Federal leasing would have been used to

upgrade the existing public safety answering points so that emergency calls could be properly and effectively routed to police, fire, and health emergency response providers in order to avoid situations where a citizen faces a dire emergency and they cannot use their wireless device because of dead zones. The funding would also have been used for grant and research funding. Under this new version, we will only require the FCC to lend technical support to the States in the development of statewide PSAP upgrade plans through consultations with interested parties.

My fear is that a national seamless emergency 911 system will be delayed through difficulties establishing the necessary upgraded standards. I foresee that certain States will develop more efficient and orderly systems while others lag behind which, unfortunately, may lead to continued tragic situations where emergency personnel cannot reach those in distress. I hope, as we proceed to pass this legislation through our committee, more thought can be focused on resolving some of these possible inequities in deploying a 911 system.

I would also like to share the concern that my colleagues raised during the process last Congress regarding privacy standards. That is, any technology developed and put in place to locate the wireless user for emergency services is not used for commercial purposes. I believe such privacy protection for these situations must be required.

One provision that I think is greatly important in this new version is the extension of liability protection for those wireless providers who have to carry emergency calls on their systems and help provide emergency services. Wireless providers should have equal protection under the law as wireline providers do.

Finally, Mr. Chairman, I believe the second bill under discussion, the Wireless Privacy Enhancement Act, will be effective as it was in the last Congress, after making the necessary changes to protect the needs of the amateur radio community and the needs of news organizations and others who rely on scanners to perform their duties.

I look forward to both bills being marked up, out of our subcommittee and the full Commerce Committee, so they can reach the House floor very soon. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you very much. The gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman. It is nice to be back, and welcome to the new members of the committee. I think that, speaking from my own experience, that this is going to be an e-ticket for you. This is a great subcommittee that has really produced some very important pieces of legislation and I am proud to be a part of the subcommittee and work with you, Mr. Chairman, and all the members that are here.

I think that this is important legislation that we are having hearings on today, the two bills. Of course, we haven't had too much time to see them because we are just starting up but, nonetheless, they are important for many reasons for the people in our country.

We have been told that the Wireless Privacy Enhancement Act, which will protect the wireless telephone user, is essentially the

same bill this committee and the full House passed overwhelmingly in the last Congress. This being the case, then the bill should receive quick approval.

The second piece of legislation we are addressing today is the Wireless Communication and Public Safety Act of 1999. These titles get longer and longer, don't they? It is legislation that, simply put—I think in many people's views—this is going to save lives.

This safety legislation accomplishes two important public policy goals. First, it designates a national universal number of 911 and, second, it instructs the FCC to do more in making this critical issue a priority. While this legislation accomplishes these goals, I don't really think it goes far enough in addressing the E911 problem. I think that it is significantly less substantive than the bill we passed last year.

Mr. Chairman, last year you were a strong advocate for addressing this problem of improved emergency care and cash—crash prevention. I don't know if we want to get into "cash prevention."

That is a good slip of the tongue, whatever that means.

Through your own personal experiences as well as the knowledge you have gained in studying the issue, you became a champion for the cause. I know you are committed to providing real solutions to the problem. So I think that this safety legislation is important and it should be passed, but I also believe that we need to do more and I hope, as further legislation on this issue is introduced, that we can count on your support.

Mr. TAUZIN. I thank the gentlelady, especially for her warm words, again, of welcoming.

Indeed, I want to welcome you all again to this year's work. We have got a great subcommittee, great new members, and we are going to have a lot to do, so hang on tight.

Any other members wishing to make an opening statement? The author of the bill, Mr. Shimkus, for an opening statement.

Mr. SHIMKUS. Thank you, Mr. Chairman. I just want to thank you for allowing me to put my name on this bill. This bill is slightly changed. We have addressed the privacy concerns. We have addressed the tower sitings. There may be some shortcomings. I think those shortcomings come with the fact that, with the tower siting issue, there is a loss of revenue and our ability to do some others things that were addressed. But this is legislation that can move and it is legislation that everyone's name really could be on it since there was a bipartisan consensus that we really want it. I want to thank the chairman for allowing me to be the named individual.

Last Congress, we heard hearings about lives that were saved. And that is what this legislation is designed to do, is to save lives. I even recounted my story of late one night driving back from the district, making a call on my cell phone. I look forward to the trip to Rock Creek Park if and when there is a tower there.

There is another problem, Mr. Chairman. Unless we pass this legislation, we will not be sure what number to call. Will it be 911? Will it be *55? Will it be numerous other numbers that are across this country? And that will be addressed in this legislation establishing one number nationwide. I think we are going to hear testimony to that effect, and I thank you, Mr. Chairman.

Mr. TAUZIN. Will the gentleman yield for a second?

Mr. SHIMKUS. I will.

Mr. TAUZIN. Just to point out the other incredibly important safety aspect of the gentleman's legislation; that is that wireless phones should be locatable. It will do us little good to call 911 if, on a wireless phone, emergency help can't find you. This bill will provide that capability and will help make sure that, when someone dials 911 and emergency help is obtained, they know where to go. It, hopefully, will lead to the day when our automobiles will be smart enough to communicate directly when we have an accident with emergency help. So I want to thank the gentleman for agreeing to lead this effort this year and encourage him in the legislation.

Any additional opening statements on this side? How about this side? Any members? The gentlelady, Ms. Wilson, the author of the privacy bill, Ms. Wilson, for an opening statement.

Ms. WILSON. Thank you, Mr. Chairman. I also am very pleased to be the person who is trying to coordinate this effort this year and I am very pleased that there is such a large number of members of this subcommittee who are cosponsoring this again this year.

Sixty-eight million Americans have some form of cell phone or digital phone or those new personal communication services that give you everything from video to paging and messaging and caller ID, sometimes on something as small as a wristwatch. But the law has not kept up with the technology and that is what this bill is intended to do.

People expect cell phones to be private. They act as if they are. But they are not. And while Mr. Markey was here last year plotting the overthrow of the committee while everyone else tuned in, I was back in New Mexico learning the same lesson in a little bit different way when, after my second child was born, I heard voices coming from the baby's room, which happened to be my neighbor's phone being picked up on the baby monitor.

The modification of scanners to allow eavesdropping is not clearly prohibited by law and that is what this bill does. It updates the scanner manufacturing ban to new wireless frequencies. It prohibits the modification of scanners to intercept calls. It makes it illegal to intentionally intercept or divulge the contents of private radio communications. And it increases the penalties for violators and requires the FCC to investigate rather than the confusing system now where it is either the Department of Justice or the FBI.

In another place and another time, another context, it was once said that gentlemen shouldn't read each other's mail. Well, gentlemen shouldn't listen to each other's cell calls either. And that is what this bill is about.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Ms. Wilson.

Do you represent Roswell, New Mexico?

Ms. WILSON. No, sir, I do not.

Mr. TAUZIN. Okay. I wondered if maybe those voices you were hearing were coming from somewhere else, though. I thank the gentlelady for agreeing to lead this effort and we welcome our first panel.

[Additional statements submitted for the record follow:]

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

Thank you, Mr. Chairman, for holding the first of what I'm sure will be a series of insightful, helpful, and interesting hearings on telecommunications and technology issues. I am excited to be on the Subcommittee and look forward to working with you and the other members of the Subcommittee on these and other issues.

Wireless telephone service is the fastest growing segment of telecommunications services. Cellular telephones are so popular now that they are actually being sold in 7-11 and WalMart.

Wyoming, being one of the most rural states in the U.S., benefits greatly from wireless telephone service. Although much of the state is made up of "dead zones," much of the state has partial or full service, making it possible to at least make a phone call from your vehicle when you're traversing the vastness of the state.

Many people in rural areas have a wireless telephone out of necessity. People in the West may travel 50 miles or more without seeing a town with a pay phone. Wireless phones are useful for calling in traffic accidents and crime reports. The most important use, however, is for personal safety.

That is why I believe the Emergency 911 number must be universal. For those who travel from one state to the next, it would be virtually impossible to remember another state's emergency number if it weren't 911. Without the universal 911 number, response times for critical emergencies would be delayed; lives would be endangered.

I supported the Wireless Communications and Public Safety Act when it was introduced by Chairman Tauzin during the last Congress and I intend to support it again in the 106th Congress.

The privacy of wireless communications is extremely important and an issue I am very interested in. Although the airwaves are public, phone calls over those airwaves are and should continue to be private. If current laws do not clearly state that eavesdropping is a serious crime, we must act to ensure that the law is crystal clear in this regard.

The Wireless Privacy Act, of which I am an original cosponsor, does just that. The bill makes it very clear that modifying a scanner to listen in on wireless communications is illegal and calls on the Federal Communications Commission (FCC) to strengthen its rules to prevent the modification of scanning receivers.

The two bills which we are here to discuss today are thoughtful ways in which to address the problems associated with wireless communications. I commend the Chairman and Congresswoman Wilson for their work on these bills and look forward to their passage.

Again, Mr. Chairman, thank you for holding what looks to be a very insightful hearing. I look forward to hearing from the witnesses.

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

I commend Chairman Tauzin for holding this hearing today. It is the first hearing of the 106th Congress in the Commerce Committee.

The hearing represents a direction that you are going to see early in this Congress. We are going to spend the early months moving bills that had wide support but didn't quite make it through last Congress.

Today, we are going to hear about two bills that the Subcommittee and the Full Committee considered in depth last Congress. They are important initiatives that deserve our attention.

It is noteworthy that as we approach the Third Anniversary of the Telecommunications Act of 1996, we deal with two bills that promote consumer welfare. The Telecom Act was about and is succeeding in bringing the benefits of competition to consumers. Consumers are benefitting from lower prices, better services, greater innovation and new technologies because of the Telecom Act.

The first bill before us deals with wireless communications privacy. The bill has two fundamental purposes: close some perceived loop-holes with current privacy protections and make it more difficult for consumers to alter scanners for illegal purposes.

The scanner bill is properly balanced to increase the privacy protections afforded wireless users while not infringing on reasonable use of scanners. For instance, we want cellular and P-C-S communications protected from interception. Being from Richmond, I know we have a few NASCAR fans in our nation. Scanners can be used to enhance the racing experience and we have taken care of that in the bill.

The Federal government can only do so much to protect privacy. But when we have an opportunity to promote privacy without infringing on other legitimate inter-

ests, we should move forward. We all have an interest in protecting personal privacy. If we do not act to protect privacy of personal communications, we all stand to lose. Recent reports indicate that Tom Cruise and Nicole Kidman may move to Australia because they want more privacy for their family than can be offered in Hollywood. This is not too surprising given the nature of Hollywood, but this decision comes just two months after a photographer *allegedly* intercepted a cellular communication between the two. Is this a coincidence?

The second bill—wireless E-9-1-1—is a slimmed down version of a bill we moved last year. We reluctantly removed the federal land siting provisions, since those proved controversial to land managers. While I don't mind a good fight, I don't want to hold up efforts on setting a national 911 number for emergency calls and encouraging the rapid deployment of wireless services. If necessary, we will revisit the removed portions at a later time.

The bill before us will do a number of things to help consumers and wireless companies promote public safety. For instance, promoting a universal emergency telephone number for consumers to use will reduce confusion and improve emergency care. As consumers become more untethered, we can ensure that they don't have to be unsure whether the proper number to summon someone to their rescue is "9-1-1" or "star-7-7" or "pound 5-5". Dialing one number will bring the desired response. The bill also properly retains the privacy protections and liability parity provisions from last year's bill, in order to provide the appropriate incentives to wireless carriers to aggressively build out these networks that can do so much to promote public safety and, convenience.

On a related point, I'd note that Virginia Governor Gilmore recently announced members to serve on the Wireless E-9-1-1 Service Board. The board is intended to address funding and safety issues for emergency calls made by wireless communications users in Virginia. I commend Governor Gilmore for his leadership on promoting wireless safety. I hope the witnesses will be able to provide a picture of what the status is in other States on deploying a communications emergency infrastructure.

I thank the Chairman.

PREPARED STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Thank you Mr. Chairman, I would like to commend you for bringing to national attention two very important pieces of legislation: the Wireless Communications and Public Safety Enhancement Act and the Wireless Privacy Enhancement Act.

The Wireless Communications and Public Safety Enhancement Act focuses on a vital public health issue that deserves national attention. Most Americans are not aware that 911 is not a universal emergency number, many states have designated other emergency numbers within their jurisdiction. Hence, wireless users who roam from city to city or state to state are sometimes required to learn each state's 911 surrogates.

In the age where technology is evolving and wireless telephones are prevalent in our society, it is important that in emergency situations wireless customers have access to enhanced 911 or E911. Having access to E911 allows wireless phone users to dial 911 and have the call routed to an attendant who has information on the caller's telephone number and location. Unfortunately, as we sit here today most wireless telecommunications services do not have E911 capabilities. On the other hand, emergency attendants that do have access to 911, usually lack the capability of determining a user's location. Therefore, in an emergency situation or a life threatening situation a wireless user who dials 911 may not receive proper medical attention because an operator cannot determine his exact location.

The Wireless Communications and Public Safety Enhancement Act addresses this problem by enacting 911 as a universal emergency number. This Act will save lives by reducing the response time for emergency assistance.

The timeliness of the Wireless Privacy Enhancement Act is important in the realm of today's technology because it makes illegal the interception or disclosure of certain radio communication. We are embarking on a technological revolution as we approach the millennium and the lines of technology and privacy have become blurred. The increasing availability of digital scanners allows the interception of cellular signals. Therefore, this Act is needed to address this matter.

PREPARED STATEMENT OF HON. THOMAS C. SAWYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Thank you Mr. Chairman for holding this hearing today on the Wireless Privacy Enhancement Act and the Wireless Communications and Public Safety Enhancement Act. I also want to thank our witnesses for coming to testify before us.

As has been highlighted these bills passed this subcommittee and the full Committee last year with overwhelming bipartisan support. Unfortunately, however, they were not enacted into law and that is why we are reconsidering them today. I plan to keep my remarks short so we can hear from our witnesses. However, I want to make a short statement regarding the Wireless Communications and Public Safety Enhancement Act, otherwise known as the E-911 bill.

Some studies have shown that many Americans buy cellular phones for peace of mind. On any given day, more than 80,000 emergency cellular calls are made. However, if cellular users are unable to make or complete cellular phone calls in emergency situations because of "dead zones" then the phone is of no use to them for that specific purpose. Similarly, if in an emergency situation an injured victim's location cannot be quickly and easily identified then the cell phone is of little use. In these instances, many accident victims' injuries were made much more serious by the delay.

The E-911 bill seeks to promote greater public safety by creating a national uniform wireless 911 emergency system that will allow for end-to-end cellular phone transmissions. Cellular companies are given liability protections from lawsuits in cases where emergency calls are not connected. I hope this protection encourages them to build out their networks to reduce the number of dead zones so emergency response units have the ability to respond to emergency calls in a timely manner. Also, the FCC is required to work with state and local governments to ensure that Public Safety Answering Points (PSAPs) develop effective statewide E-911 plans. Finally, cellular users will be given privacy assurances that their personal information will not be distributed without their prior consent.

Mr. Chairman, I cosponsored this legislation in the 105th Congress. I have agreed to cosponsor it again because I believe it helps to enhance public safety. I look forward to working with you, Mr. Shimkus and our other colleagues to pass this legislation through this Committee and the House, and I hope the President will have the opportunity to sign it into law.

Thank you.

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you Mr. Chairman for holding this hearing on wireless communications privacy and public safety. Today we are here to discuss two pieces of legislation the Wireless Privacy Enhancement Act and the Wireless Communication and Public Safety Act or E-911. I support each of these bills.

E-911 is of great interest to me, as a state legislator I helped to create the 911 emergency network in Harris County, and now as a Member of Congress working on enhanced 911 seems to be the next logical step.

While I support the Wireless Communication and Public Safety Act. However, I was disappointed to find out that the Wireless Communication and Public Safety Fund was pulled from this E-911 legislation. I believe this fund would have gone a long way in demonstrating the federal support and commitment to E-911. I just hope that we can find alternative funding sources to upgrade our PSAPs and for the continued research and development of automatic crash notification systems.

While the leasing provision and the trust fund have been pulled from the Wireless Communications and Public Safety Act it still has the essentials to start to implement a national end-to-end emergency wireless communications system. It still has the essential backbone provision to designate 911 as the universal emergency number for both wireline and wireless communications. It removes the barrier of the lack of liability parity between wireline and wireless communications, and it also attempts to address our privacy concerns with respect to the use and access to location information. Two weeks ago I drove from Houston to Washington DC and learned first hand the need for a uniform emergency number.

These are the building blocks upon which the states with their respective E-911 plans to upgrade their Public Safety Answering Points and emergency networks can build upon. Back in my home city of Houston, we have already taken many steps to implement E-911 services. I am proud of what the city and the Greater Harris County 9-1-1 Emergency Network has accomplished and hope that other cities and localities would use Houston as a good model for E-911 services.

I just want to reiterate to all of my colleagues the importance of this E-911 legislation. Let's remember that injury is the fourth leading cause of death for persons between the ages of one and forty-four. With enhanced 911 services, we will be instantly notified of when and where a crash has occurred, and to be able to provide accurate and up-to-date information on the severity of an accident. E-911 will save lives.

Again, thank you Mr. Chairman for holding this hearing.

Mr. TAUZIN. If the panel would please assemble, we will commence our work today.

Let me introduce them first en masse and then we will introduce them separately. Mr. Thomas Sugrue, Wireless Telecommunications Bureau Chief, Federal Communications Commission is here today. Captain Joe Hanna of the Richardson Texas Police Department is here on behalf of the Association of Public Safety Communications Officials; Ms. Maureen Finnerty, Associate Director of Parks Operations and Education, Department of the Interior, who will tell us what is really happening in Rock Creek Park; Mr. Thomas Wheeler, President and CEO, Cellular Telecommunications Industry Association, here in Washington, who has been a great help to this committee and in these hearings; Mr. James Dempsey, Senior Counsel, Center for Democracy and Technology, here in Washington, and Michael Amarosa, Vice President of Public Affairs for TruePosition, Incorporated, New York, New York.

Gentlemen and ladies, we are, indeed, pleased to have you here. Welcome. Thank you, again, for assisting us in this work. And we will begin by hearing from Mr. Thomas Sugrue, Wireless Telecommunications Bureau Chief for the FCC. Mr. Sugrue.

STATEMENTS OF THOMAS J. SUGRUE, WIRELESS TELECOMMUNICATIONS BUREAU CHIEF, FEDERAL COMMUNICATIONS COMMISSION; CAPTAIN JOSEPH L. HANNA, RICHARDSON TEXAS POLICE DEPARTMENT, ON BEHALF OF THE ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS INTERNATIONAL, INCORPORATED; MAUREEN FINNERTY, ASSOCIATE DIRECTOR, PARKS OPERATIONS AND EDUCATION, DEPARTMENT OF THE INTERIOR; THOMAS E. WHEELER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION; JAMES X. DEMPSEY, SENIOR STAFF COUNSEL, CENTER FOR DEMOCRACY AND TECHNOLOGY; AND MICHAEL AMAROSA, VICE PRESIDENT OF PUBLIC AFFAIRS, TRUEPOSITION, INCORPORATED

Mr. SUGRUE. Thank you, Mr. Chairman, and good morning, and good morning to the members of the subcommittee. I am Tom Sugrue, the new Chief of the Wireless Bureau at the FCC. I assumed this new position 2 weeks ago, and I am delighted to accept this invitation at the beginning of my tenure and to join this distinguished panel to address the issues that are raised by the legislation you are considering today.

I would like to begin by noting that, although I am new to the tasks facing me as Chief of the Wireless Bureau, the issues this legislation is addressing are very important to me in my longer-term job as the father of two daughters. My wife and I decided to join the ranks of wireless subscribers when our older daughter celebrated her 16th birthday, got her driver's license, and headed for

the Beltway. The Sugrue family doubled our cellular holdings when our second daughter turned 16 and also became a much more mobile member of the household.

Like many families, we became wireless subscribers in large part because of our concerns about our children's safety. As a dad worrying about my kids, I understand the importance of being able to get through to emergency help on your wireless phone. Our family has been fortunate in not having to face such emergencies, discounting the frequent occasions when daughter No. 2, who has no sense of direction, calls to report that she is lost on her way to her destination and is driving around aimlessly. But, other then that, I take great comfort that, if a serious emergency were to occur, my children would be able to reach help by using the cellular phone.

These concerns about safety underscore the fact that we need to have wireless emergency communication systems that work. We need to have 911 service available for everybody all the time and everywhere in the Nation.

With these issues in mind, I would like to make four brief points about the matters the subcommittee will be considering as you review the legislation before you. First, the use of wireless services in emergencies has grown dramatically and that growth is very likely to continue. According to industry estimates, wireless phones are used to make 98,000 emergency calls every day. Wireless systems, as well as equipment and facilities used by emergency service providers, must be designed to accommodate this growth and they must be engineered to deliver reliable, effective service.

Second, the Commission, the public safety community, consumer groups, the wireless industry, the Congress, and, in particular, members of this subcommittee, have all taken important steps toward the goal of ensuring that every wireless 911 call goes through. Our rules for enhancing the features of wireless 911 service have been adopted in large part based on the joint commitment of all these players to realizing the goal of ubiquitous, highly reliable wireless emergency communications. This is an area where I believe we are all pretty much on the same page as far as goals. That we really do agree on where we want to get to.

Third, having said that, as always, the devil is in the details and serious issues remain on details, on the means of getting to where we want to go. For example, to cite some of my concerns, the deployment of the first phase of wireless 911 enhancements has not progressed as rapidly as we would like. We also need to develop more effective ways to improve the reliability of wireless 911, especially in rural areas. Moreover, the Commission must ensure that our phase two location rules are applied in a competitively neutral fashion while, at the same time, ensuring that those location technologies are deployed as soon as possible so consumers start getting the benefits of those advanced services. The Commission is committed to responding to concerns about the implementation of E911 and we want to provide guidance and leadership to the industry and the public safety community in working to give consumers even better wireless 911 services.

Finally, and most importantly, the legislation currently before you presents an opportunity for the Congress to take actions that

will promote the development of higher quality, ubiquitous, end-to-end wireless communications infrastructure to meet safety needs.

In some of these areas, the Commission's authority to address all the issues may be open to question. Accordingly, it is appropriate in my view that if there is to be a national policy that prevails, the Congress should enact legislation. Among those areas are the establishment of 911 as a universal emergency telephone number throughout the Nation; addressing the concerns raised by wireless carriers that they should receive protection from liability under Federal and State laws in their provision of wireless services; clarifying both the protected treatment of location information under the Communications Act and the authority of wireless carriers to divulge such information to emergency service providers; and deciding on appropriate and effective ways to protect the privacy of wireless phones by broadening and strengthening prohibitions against certain uses of scanning receivers.

All of these issues have important impacts on the pace and the scope of 911 deployment and I commend the subcommittee for taking them up at this time. Again, I would like to thank the subcommittee for this opportunity to provide my comments. I look forward to working with you and with your excellent staffs as we go forward on this project and I will try to answer any questions you might have for me. Thank you.

[The prepared statement of Thomas J. Sugrue follows:]

PREPARED STATEMENT OF THOMAS J. SUGRUE, CHIEF, WIRELESS TELECOMMUNICATIONS BUREAU, FEDERAL COMMUNICATIONS COMMISSION

I. INTRODUCTION

Mr. Chairman and Members of the Subcommittee: Good morning. I am Thomas Sugrue, Chief of the Wireless Telecommunications Bureau at the Federal Communications Commission. I welcome this opportunity to comment on legislation designed to promote public safety by making improvements in wireless 911 service, and to report to you on the Commission's efforts to improve the quality and delivery of wireless 911 services throughout the Nation.[1] I am also pleased to comment on the legislation designed to enhance wireless privacy by expanding and strengthening the prohibitions against the manufacture and distribution of certain scanning receivers.

II. IMPORTANCE OF WIRELESS ENHANCED 911 SERVICE

Wireless telephones have evolved in a few years from a business tool or personal luxury installed primarily in cars to a familiar pocket-sized way to send and receive calls almost anywhere. More than 67 million cellular, PCS, and other wireless phones are now in use in the United States and their number continues to grow rapidly. One of the most compelling reasons why Americans purchase wireless phones is safety, especially in emergencies. Having a wireless phone at hand allows one to call for help, both for oneself and for others, when and where help is most needed.

The number most Americans dial in emergencies is 911. Since the 911 emergency number was introduced in 1968, it has become the most widely recognized and used emergency number, the number almost all Americans know to call when they need help fast. Moreover, in the case of wireline calls, most 911 systems and Public Safety Answering Points (PSAPs) have been upgraded to enhanced 911 (E911), which adds features that permit more efficient and speedy response by emergency personnel.

For example, an emergency 911 call made from a wireline phone is typically routed to an attendant at the most appropriate PSAP, along with the caller's telephone

[1] The comments and views expressed in this Statement are offered in my capacity as Chief of the Commission's Wireless Telecommunications Bureau and may not necessarily represent the views of individual FCC Commissioners.

number, which can be called back. In addition, E911 includes Automatic Location Identification (ALI) capability, which informs emergency services personnel of the location of the call. Over 89 percent of wireline phones in the United States are served by 911, and almost 85 percent of wireline 911 services include some form of E911.

Unfortunately, E911 has not been available for wireless calls. Even in locations where wireline E911 capability is in place, the attendant at a PSAP generally does not automatically receive information on the telephone number of a wireless phone or, most importantly, its location. This can be critical in emergencies, because the mobile phone user may not know his or her location. Even if the location is known, the caller may not be able to describe it adequately or accurately to the PSAP attendant. Providing information on the location of an emergency rapidly and accurately allows emergency organizations to respond more quickly and effectively.

III. WHAT THE COMMISSION HAS DONE TO PROMOTE WIRELESS E911

The Commission, of course, has set aside 911 as a national emergency number for wireline phones. In the E911 rulemaking docket (CC Docket No. 94-102), the Commission has acted, in response to requests by public safety organizations, consumer groups, and the wireless industry, to require wireless carriers to deliver 911 calls and to meet a schedule for introducing the features of enhanced 911. Effective April 1, 1998, wireless carriers were required to implement Phase I of this schedule, provided certain conditions were met. Under Phase I rules, carriers must provide automatic number identification (ANI) and cell site information for 911 calls to PSAP. Phase II, which requires the deployment of the capability to determine the location of callers (with accuracy to within about 400 feet), is scheduled for October 1, 2001. These Phase I and Phase II requirements apply only if the carrier receives a request for such services from a PSAP capable of receiving and using the enhanced services, and a mechanism for the recovery of costs relating to the provision of such services is in place.

Since those rules were adopted, we have seen substantial, rapid progress in E911 technology. Phase I technologies are commercially available. Many manufacturers are competing to provide innovative ways to satisfy the Phase II location requirements. Phase II trials have been successfully conducted in New Jersey, in Denver, Colorado, and elsewhere. Increasingly, automatic location capability has been recognized as a major new business opportunity, both here and in other countries around the world. There is a growing consensus that it is technologically possible and achievable to meet the Commission's Phase II ALI requirements by the 2001 deadline.

But there are still many issues and obstacles to be overcome. Actual E911 deployment has been slow for Phase I. According to a recent survey taken by the National Emergency Number Association (NENA), only 7 percent of PSAPs have upgraded to Phase I. According to the NENA survey, public safety entities point to several reasons for the slow implementation of Phase I. The need for PSAP equipment upgrades and the lack of funding to pay for those upgrades are the principal reasons given by PSAPs for the delayed implementation of Phase I services. We understand that, in some cases, there are negotiations taking place between the carriers and PSAPs as to the appropriate technology to deploy. In any case, wireless E911 is clearly not operating in most of the Nation, almost a year after the Commission's rules took effect.

What can be done next, to make universal E911 happen on schedule?

We intend to remain active in taking the steps necessary to ensure that the goals of the Commission's E911 rulemaking are realized. For example, we will continue to work with the wireless industry and consumer groups to develop more effective ways to improve the reliability of wireless 911, especially in rural areas. We also will be taking steps to help ensure that the Commission's Phase II rules are applied in a competitively and technologically neutral way that encourages use of the best automatic location methods, whether they are located in the carriers' networks or in handsets. If issues arise regarding implementation of Phase I and Phase II of the Commission's E911 rules, we will place a priority on our being responsive to these concerns because we believe that continuing guidance and leadership by the Commission will play an important role in providing consumers with even better wireless 911 services.

IV. IMPORTANT ROLE OF E911 LEGISLATION

These and other efforts by the Commission are to support the overarching goal of improving public safety by helping to make 911 work effectively for all wireless callers and to make 911 the universal emergency number across the United States.

But moving forward to making universal, enhanced 911 a reality for people using wireless phones everywhere in the Nation requires efforts by many businesses, agencies, and individuals, including State and local governments, local wireline carriers, and equipment manufacturers, not just wireless carriers. And achieving the necessary coordination among all of these necessary partners in the E911 program raises a range of questions about whether the Commission has the authority or the tools to address all of these issues.

It is in the areas where the Congress believes a national policy should prevail, but where the Commission's authority may be limited or uncertain, that we think legislation may be helpful in establishing nationwide policies and programs. We believe it is appropriate for the Congress to make these judgments and take steps at the national level to move toward the goal of a more ubiquitous emergency wireless system.

The pending legislation has played a valuable role in focussing attention on several key issues that may require action in order to advance policy goals we all share regarding the effective provision of wireless 911 services.

Universal Emergency Telephone Number.

The Commission has set aside 911 as a national emergency number and required wireless carriers to forward all 911 calls to PSAPs. But wireless industry groups have expressed concern that some State and local jurisdictions use other three-digit or seven-digit numbers to route wireless emergency calls to central answering points. Moreover, other local authorities have not established any centralized means of handling emergency calls, relying instead on different numbers to route calls to the police, fire departments, and emergency medical personnel.

These are matters that have historically been left to State and local authorities. The Commission, to date, has not asserted the right to impose such obligations on the thousands of such authorities across the Nation. Instead, we have chosen to limit our 911 rules to wireless carriers.

The proposed legislation recognizes the importance of examining the best means to ensure that wireless callers are not thwarted in their efforts to receive assistance in emergency situations. I believe the legislation takes a positive step in giving the Commission responsibility for designating 911 as the universal emergency number. We would welcome the opportunity to work with the staff of the Subcommittee in order to gain a better sense of the role the Commission would be expected to play, following the designation of 911 as the universal emergency number, in achieving the congressional goal of implementing the use of 911 by State and local jurisdictions across the Nation.

Parity of Protection for Provision or Use of Wireless Service.

The Commission has also been asked by the wireless industry to preempt State tort laws governing wireless carrier liability for delivery of 911 and other calls. This is, again, an area that historically has been left to State legislators, public utility commissions, and courts. Emergency calls are almost always local in nature, not interstate communication.

On the other hand, wireless carriers have frequently identified the lack of liability protection as an impediment to their implementation of E911 service. While we believe there is a reasonable case to be made in favor of harmonizing the rights and responsibilities of wireless and wireline carriers in this area, the Commission has been properly cautious about exerting its policy judgments over those of State and local authorities.

Here, too, legislation to set national policies could help resolve liability issues in ways that meet the legitimate needs of wireless carriers, local and State governments, and—more importantly—wireless users.

Authority To Provide Location Information.

The proposed legislation clarifies that location information concerning the user of a commercial mobile service is to be treated as Customer Proprietary Network Information (CPNI) requirements of the Communications Act. The proposed legislation also clarifies that carriers will not be in violation of those requirements if they provide location information in an emergency situation to public safety and similar organizations and certain family members.

I recognize that wireless carriers have raised concerns regarding possible conflicts between the CPNI and ALI requirements, and I thus believe it will be helpful to clarify that the statute protects location information as CPNI, but that this information may be released in emergency situations to certain designated persons.

The Subcommittee is to be complimented for its efforts to address these critical issues to help ensure a universal 911 emergency service infrastructure. We stand

ready to provide further comments and assistance as the Congress moves forward in considering these issues.

V. WIRELESS PRIVACY ENHANCEMENT ACT

On February 5, 1997, William Kennard, who was then the Commission's General Counsel, testified before this Subcommittee at an oversight hearing on cellular privacy. At that time he reported that, consistent with the Telephone Disclosure and Dispute Resolution Act (TDDRA), the Commission has established rules denying equipment authorization for any scanning receiver that is capable of:

- receiving transmissions in the frequencies allocated to the domestic cellular radio service;
- readily being altered by the user to receive transmissions in such frequencies; or
- being equipped with decoders that convert digital cellular transmissions to analog voice audio.

Further, the Commission's rules prohibit the manufacture and import of such scanning receivers as of April 26, 1994.

I am pleased to report that, subsequent to the oversight hearing, the Commission took a number of actions to increase awareness of these regulations and step up our enforcement efforts. For example, the Commission issued a notice advising the public that modification of scanners to receive cellular frequencies is illegal and took action against organizations that were offering services to modify scanners, ensuring that such activity ceased. The Commission has also worked with manufacturers to better assure that scanners are not capable of being readily altered to receive cellular signals.

In May 1998 the Commission adopted a Notice of Proposed Rulemaking (NPRM) in ET Docket 98-76 to propose amendments to its rules to further ensure that scanning receivers do not receive cellular signals. The NPRM proposes new requirements to ensure that scanning receivers do not pick up cellular signals when tuned to frequencies outside the cellular frequency bands. The NPRM also proposes to require scanning receivers to be "hardened" to prevent modifications to receive cellular frequencies, such as requiring scanning receivers to be designed so that the tuning and control circuitry is inaccessible and attempts to modify the device are likely to render it inoperable. The NPRM also proposes other changes to close perceived loopholes in current regulations, such as prohibiting the marketing of scanning receiver kits.

A wide range of comments on the NPRM were submitted by manufacturers, cellular service providers, and scanner enthusiasts. It is my understanding that the Commission plans to adopt a Report and Order implementing these proposed rules with appropriate revisions in the near future.

While the Commission is strengthening its rules for scanning receivers, there are limits to what can be done under the current law. For example, Section 302(d) of the Communications Act specifically authorizes the Commission to prohibit scanning receivers that tune the cellular radio service. The statute does not expressly authorize the Commission to prohibit scanning receivers that cover frequency bands used by other commercial mobile radio services, such as Personal Communications Service. Nor does it authorize the Commission to prohibit scanners that are capable of decoding digital signals used by paging services and specialized mobile radio services. I believe that new legislation may be advisable if the Congress finds that the Commission needs to take action to prohibit scanners that tune or decode services other than the cellular radio service.

We note that the Wireless Privacy Enhancement Act would make certain amendments to Section 705 of the Communications Act. In light of the close relationship of the wiretapping and related provisions of the criminal code, and at the request of the Department of Justice, it is the Commission's longstanding general practice to coordinate complaints regarding potential violations of Section 705 with the Department in order to make sure that our administrative actions do not interfere with any criminal investigations initiated by the Department. This approach is in accordance with a Memorandum of Understanding between the Commission and the Department (effective since 1953 and revised and re-executed in 1989).

The Wireless Privacy Enhancement Act would amend Section 705 to make it a violation to intercept or disclose (rather than the current intercept and disclose) certain radio communications. Further, the Commission would be required to investigate alleged violations and to determine whether to initiate proceedings to impose forfeitures.

I want to thank the Subcommittee for the opportunity to provide comments when this legislation was being drafted. I assure you that, if the Wireless Privacy En-

hancement Act should become law, the Commission will promptly amend its rules as required and will enforce them vigorously.

VI. CONCLUSION

I would like to thank the Subcommittee for this opportunity to provide my comments regarding the pending legislation. And I will look forward to assisting you in your efforts to address the important issues of public policy involved in the pending legislation.

Mr. TAUZIN. Thank you very much, Mr. Sugrue and, indeed, we all understand your dilemma on those 16-year-olds with the highways. We have all gone through that, and I appreciate your personal and professional interest in what we do here today.

Captain Joe Hanna from Texas. I think I met you on a Texas highway, Joe. I am not sure.

Somewhere on the Bayou maybe. But welcome, Captain Hanna, and your testimony is now welcome and we appreciate your being here, sir.

STATEMENT OF CAPTAIN JOSEPH L. HANNA

Mr. HANNA. Mr. Chairman, members of the committee, today I have the honor of addressing you on one of the most significant issues facing the delivery of public safety services throughout the United States. My comments this morning are going to be based really from about three different perspectives. First of all, I am here representing the Association of Public-Safety Communications Officials Inc.—we will call it APCO—which represents about 13,000 members around the United States, people who manage and operate public safety communication-related facilities, including the delivery of 911 service.

In another capacity, I have the pleasure today of joining Tom Wheeler from CTIA, representing the ComCARE Alliance. For those of you who followed this bill this last year, you may recall the ComCARE Alliance is an affiliation of 30 plus members who represent a broad spectrum of emergency services, including public safety, the wireless carriers, local exchange carriers, trucking industry, motor assistance programs, and other similar services. The Alliance has certainly worked diligently with the committee staff to work to craft the bill that you are looking at today.

Third, I want to bring to you a perspective of my daytime job. And that is I serve the commander of a communications center for the city of Richardson, Texas. And, in that capacity, I think I am probably the one person here on the panel today who has to deal with these issues on a frontline basis.

Over the last several decades this Nation has spent considerable time dealing with the issue of criminal justice and public safety. We have helped a great deal with putting cops on streets. We have enhanced penalties for different offenses. We have looked at a number of technological improvements that help us in detection and apprehension of criminals. But one of the issues that we have seemed to misplaced is the first step of people dealing with those public safety agencies and that is how they contact 911, in this case.

We have all heard numbers today. The numbers are overwhelming and it is interesting how they grow by millions as we speak here. But we know that, each year, that 911 centers handle more than 100 million 911 calls. These are handled by 5,500 autonomous

public safety answer points or PSAPs. We are currently dealing with the wireless subscriber base now, someplace in the range of 60 to 65 million users. These people place someplace in the neighborhood of 30 million wireless calls into 911 centers. These calls now account for anywhere from 20 to 40 percent of all the calls that were received in the PSAPs. Again, in my city, we did our last statistical line and 29.9 percent of all calls received to 911 were coming from wireless subscribers.

In response to these issues, the FCC released docket 94-102 back in 1994. The underlying goal of this docket was to provide emergency services to callers with wireless instruments equivalent to that for traditional wireline customers. Many if not most wireless customers were surprised and have been surprised to learn that today public safety answer points have no information on who that caller is and no idea where they are calling from. And that is a surprise, believe it or not, to most of these people. And we have already discussed the fact this morning that people are buying these for safety.

In 1996, four groups, including APCO, NENA, NASNA, the State administrators and CTIA reached a consensus agreement on how we could come to the table to bring location and traveler information to our customers. Nothing in that agreement, however, addressed the recognition of 911 as the universal number to be dialed for emergency calls. It has already been mentioned again this morning that you have a variety. If you are in Florida, you call *FHP. In some places, it is *55.

While we have made some progress in meeting the goals of docket 94-102, there is much left to do. It is critical that this committee, in considering the current legislation, review its mandate to the FCC to ensure the timely implementation of the consensus agreement reached by public safety in the wireless industry. I am pleased to see Tom Sugrue here today. We look forward to his leadership in expediting this process, which has dragged out far too long.

As you consider this bill, you should recognize that this legislation is not just a communications bill. It is a lifesaving issue. It is a transportation issue. It is a safety issue. Members of this committee have been bombarded with these issues over the past year. Unfortunately the general public has not. Any legislative action taken on this critical issue will help bring this message to the public officials at the State, county, and local level throughout this Nation.

One last comment I would make: As has been pointed out this morning, one of the concerns that we now have under this bill is that we are not addressing the issue of funding and funding is a critical issue. It is a critical issue in the ability of wireless carriers to facilitate a better quality of signal. It is a critical issue to the public safety answer point. You have to be able to increase volume of calls. It is a critical issue to the public safety community which has to develop the infrastructure internally to modify computer dispatch systems and mapping systems and other technology to bring this to the table.

On behalf of APCO and ComCARE, I urge you to act on this bill in the earliest possible time to provide the gift of life and safety to the citizens of this Nation. Thank you, Mr. Chairman.

[The prepared statement of Captain Joseph L. Hanna follows:]

PREPARED STATEMENT OF CAPTAIN JOSEPH L. HANNA, PRESIDENT ELECT, ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS-INTERNATIONAL, INC.

Chairman Tauzin, members of the Committee: Today I have the honor of speaking with you on one of the most significant issues confronting the delivery of public safety services throughout the United States. This presentation is offered from the perspective my role as President Elect of the Association of Public-Safety Communications Officials-International, Inc. (APCO). APCO is the nation's oldest and largest public safety communications organization with over 13,000 members involved in the management and operation of law enforcement, fire, emergency medical, and other vital public safety communications systems. APCO is a FCC certified coordinator for public safety radio frequencies. Additionally APCO was one of four (4) signers of the consensus agreement brokered between public safety and the wireless industry leading to the implementation of Phase I and Phase II of the FCC's wireless 9-1-1 rules (FCC Docket 94-102). In addition to the perspective I bring to you as an officer of APCO, I also bring the perspective of my daily role as the Commander of a public safety answer point (PSAP) for the City of Richardson, Texas. Located on the northern border of Dallas County, the City of Richardson has a population of 85,000, and is directly impacted by the issues addressed by the Wireless Communications and Public Safety Enhancement Act of 1999.

While considerable attention has been given to public safety over the past several decades, the overwhelming focus has been on putting cops on streets, enhancing penalties for a range of offenses, and dealing with technological improvements related to the detection and solution of crimes. Without question, each of these efforts is essential to the preservation of order in our society. Somewhat lost in the equation, however, has been attention on the first step taken by most members of our society when a problem has been encountered: the means of making the initial contact with the appropriate public safety responder.

It is estimated that the 271 million citizens of the United States are currently served by approximately 5,500 autonomous public safety answer points (PSAPs). These 5,500 PSAPs receive an estimated 110 million 9-1-1 calls each year. *Prior to the implementation of 9-1-1, these calls were routed to 5,500 different telephone numbers, as each jurisdiction had its own unique telephone number.* With the widespread implementation of 9-1-1 services, however, the majority of our citizens now need to know only one number. However, this 9-1-1 system as we know it today was built around an architecture of a wireline-based infrastructure.

In this same 10 year period, wireless telephones have expanded from a number in the thousands to an estimated 65 million users today. These wireless users placed an estimated 30 million 9-1-1 calls in 1997, or approximately 82,000 9-1-1 calls per day. These numbers account for anywhere from 20-40% of the total 9-1-1 calls received by PSAPS. In the City of Richardson, for example, the actual percentage of 9-1-1 calls originating from wireless telephones is almost 30%.

Industry experts predict that the number of wireless communications users may soon surpass wireline users. AT&T recently announced a plan that, if followed by other carriers, will potentially push many subscribers away from traditional wireline service. Similarly, a major wireless carrier is testing a "fixed wireless" solution in the Dallas metroplex.

In examining the expanding role of wireless service, industry research has consistently reported that safety is the overwhelming reason for the purchase of wireless telephones. In almost every study reported by the wireless industry, 50 to 60 percent of all subscribers have cited safety as the primary motivator for their decision to purchase a wireless telephone. As noted above, these figures are reflected in the percentage of emergency calls placed to public safety answer points throughout the nation.

Unfortunately, the wireless industry, in its zeal for expanded market shares, and public safety agencies, in their desire to see additional "eyes and ears" in the community, have done a poor job in managing expectations within the 65 million wireless subscriber pool. While the public is accustomed to dialing 9-1-1 for emergencies throughout the United States, there are significant areas in which 9-1-1 has been the wrong number to dial. Those driving through Florida, for example, may have noted signs that have advised motorists to dial *FHP. In other jurisdictions, other numbers such as *55 have been designated as the number to call for emergencies. While these unique numbers may have some meaning for local residents, they have little meaning for motorists or other visitors entering the jurisdiction. It has been estimated that Orlando, Florida, for example, attracts approximate 40 million visitors per year. Myrtle Beach, South Carolina draws an estimated 13 million visitors

per day during peak season. Las Vegas similarly brings 32 million non-residents to their city each year. What number is appropriate to call from a wireless instrument in each of these cities? Differing emergency numbers, coupled with the stress associated with a medical emergency, a life threatening injury, an automobile accident, or a lost child creates a prescription for a deadly outcome. The public has an expectation that in many cases is not met. There is a school of thought that the expectation of having something that one does not have may well be worse than not having it at all.

In response to wireless 9-1-1 concerns, the Federal Communications Commission released Docket 94-102 in 1994. The underlying goal of this docket was the provision of emergency services for callers from wireless instruments equivalent to that of the traditional wireline customer. Many, if not most, wireless customers have been surprised that public safety answer points have no information related to the identity of the caller or their location. In 1996, public safety and the wireless industry were able to craft a consensus agreement that would address these issues under a set timetable. Nothing in the resulting FCC rules however, addressed the recognition of 9-1-1 as the universal number to be used for emergency calls. While progress has been made in meeting the goals of Docket 94-102, much is left to do.

We must recognize that there are a multitude of components which must mesh together to ensure the same level of 9-1-1 service that has been developed on the wireline side. These components range from the initial wireless subscriber, to the instrument used to dial the call, to the wireless infrastructure, to the local exchange carrier, and to the public safety answer point's 9-1-1 equipment. The ability to uniformly dial 9-1-1 serves as one of the single greatest barriers to the implementation of this network. The Wireless Communications and Public Safety Enhancement Act of 1999 provide the essential first step in this process by establishing 9-1-1 as THE one number to know.

The Wireless Communications and Public Safety Enhancement Act of 1999 also recognizes future technologies under development that, coupled with current 9-1-1 technology, have the potential to save a significant number of lives each year. Research developed in conjunction with intelligent highway technology is leading to systems that would allow for automatic crash notification to the nearest public safety answer point. The ultimate integration of auto crash notification and other intelligent highway systems with 9-1-1 has dramatic potential for saving lives.

In addressing the myriad issues associated with the delivery of 9-1-1 services, the impact of wireless telephone users on public safety answer points remains one of the most visible omissions. While public safety answer points welcome the broadening of opportunities that wireless technology has brought to the table to enhance earlier notification, it has become a two edged-sword. Where a call on an urban/suburban freeway once resulted in two or three calls (pre-wireless), there are now 25-30 calls. Additionally, each wireless call may well take two to three the times as long to process by the public safety telecommunicator, as there is no caller or location information. Each call must be screened to ensure that each of the sudden volume of calls is related to the same incident. While considerable attention has been given to the issue of funding Phase I and Phase II systems on the hardware side of the equation, little consideration has been given to the staffing needs based on increased call volume and call processing time.

Additionally, the 9-1-1 workstations used throughout the overwhelming majority of public safety answering points is geared to handle a limited amount of text information traditionally associated with wireline calls. As public safety answering points migrate to workstations that can visibly display computer maps to display the location of wireless callers, this migration will require a massive upgrade/replacement of 9-1-1 equipment throughout the United States. Additionally, while the focus on location determination technology for Phase II has been on the wireless industry, there is an equally massive effort required for the public safety answer points. Without computer-based maps created and maintained with the greatest possible accuracy, information provided by wireless carriers will be useless. Again, there is a significant cost of these systems within the public safety answer points that has been overlooked by the public and the wireless industry.

To that end, it is critical that public safety, the wireless industry, and government at the local, state, and national level reevaluate the issue of funding for 9-1-1 services as an integrated, comprehensive, complex system.

On behalf of APCO, I want to again thank Chairman Tauzin and the Subcommittee for this opportunity to appear before you.

Mr. TAUZIN. Thank you very much, Joe.

And now we are pleased to welcome the Assistant Director of Park Operations and Education, Ms. Maureen Finnerty, for her statement to this committee.

STATEMENT OF MAUREEN FINNERTY

Ms. FINNERTY. Thank you, Mr. Chairman. It is my privilege to appear before the committee today to represent the Department of the Interior and to present the views of the National Park Service on its compliance with the Telecommunications Act of 1996.

Since the Executive Order was signed in 1995 and the passage of the act in 1996, the National Park Service has been actively engaged in preparing policy guidance and guidelines for our field areas to comply with both the executive order and the public law. In 1997, in consultation with the telecommunications industry, a group of folks met and prepared a policy statement that went out and was subject to public review. Ultimately comments were received and the policy was finalized late in 1997.

In early 1998, again in consultation with the telecommunications industry, National Park Service individuals sat down and worked out a whole set of guidelines that further articulate and specified the procedures that were to be followed by National Park managers to comply with both the executive order and the public law. Those guidelines have recently been finalized, so we now have in place final and approved policy and guidelines, both of them done in consultation with the industry, both of them subjected to public review and comment. So we do have procedures in place.

We also, just last month, surveyed the parks within the National Park system to find out how many of them had dealt with this issue and we found out that there were 56 parks throughout the system that had had some activity as it pertains to the siting of telecommunications facilities. Of those 56 parks, 31 do have new or existing facilities that are located within the boundaries of the park. There are 16 applications pending and we found that only 2 applications had been denied as part of that review process.

Obviously, as has already come up, there has been a lot of interest in and discussion with the Rock Creek Park issue and the two pending applications from Bell Atlantic. There has been a great deal of frustration over the process and the timeliness or lack of timeliness of the process over the last year or so. It is my understanding that, late yesterday, the director of the National Park Service, in a meeting with the communications representatives from Bell Atlantic and the members of the national capital region which have oversight of Rock Creek Park that an agreement has been reached finally to complete the review process within 90 days at a significantly reduced scope and cost of the project.

Mr. TAUZIN. I don't normally do this, but I want you to repeat that for us. An agreement was reached last night to do what?

Ms. FINNERTY. We have an individual here who was at that meeting and I was not. But it is my understanding that, in meetings late yesterday with the director of the National Park Service and representatives of Bell Atlantic, an agreement was reached to process the application within 90 days at a significantly reduced cost and scope of the project.

Mr. TAUZIN. So, to sum it up——

Ms. FINNERTY. And we have someone here that can speak to——

Mr. TAUZIN. The application is not approved yet.

Ms. FINNERTY. No, it is not.

Mr. TAUZIN. They have simply agreed to a timetable on processing that?

Ms. FINNERTY. I believe that is the case. The application is approved. Okay. It is the environmental assessment process, I guess, that is the 90 days.

Mr. TAUZIN. To be able to be finalized. It is not finished yet. Okay.

Ms. FINNERTY. Application approved, but no NEPA compliance. That is the 90 days. Okay?

In conclusion, I'd like to say we have been in conversations with members of the committee and staffs and we would like to continue the dialog as we continue to improve our procedures and guidelines and certainly look forward to working with you and members of the committee to modify those as needed. Thank you.

[The prepared statement of Maureen Finnerty follows:]

PREPARED STATEMENT OF MAUREEN FINNERTY, ASSOCIATE DIRECTOR, PARK OPERATIONS AND EDUCATION, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to present the Department's views on the siting of telecommunication antennas in National Parks in compliance with the Telecommunications Act of 1996.

In 1994 and early 1995, the National Park Service experienced a growing number of contacts with multiple companies across the nation, inquiring about the possibility of siting wireless antenna facilities in National Parks. By that time there already were a few sites constructed and operating in some parks. At the same time, we were contacted by the Cellular Telecommunications Industry Association (CTIA), requesting knowledge of and input into our then-developing policy and guidance for this subject.

On August 10, 1995, a memorandum from the President directed the heads of all Departments and agencies to facilitate access to federal property for the purpose of siting mobile service antennas. While the memorandum directed agencies to "facilitate appropriate access" to their properties for the siting of these antennas, it also listed several qualifying provisions. Such siting should be in accordance with: 1. Federal, State, and local laws and regulations; 2. Environmental and aesthetic concerns; 3. Preservation of historic buildings and monuments; 4. Protection of natural and cultural resources; and 5. Protection of National Park and wilderness values.

We strongly believe that any legislation on this issue must recognize these standards for placement of mobile service antennae on federal lands. For example, I think we can agree that no one would want to see a cellular phone tower on the rim of the Grand Canyon or in sight of Old Faithful.

The National Park Service, in conjunction with the CTIA and other industry representatives, had been drafting policy and procedures specific to telecommunications and immediately included these precepts into their work in progress.

On February 8, 1996, the President signed the Telecommunications Act of 1996 (47 U.S.C. 332). Section 704(c) of the Act requires the President to develop procedures by which federal departments and agencies may make available federal properties, rights-of-way, and easements for wireless telecommunication services. On March 29, 1996, the GSA issued a notice in the *Federal Register* (61 FR 14100) of general procedures for implementing the provisions of Section 704(c) of the Act. The GSA issued an enhancement of these procedures in the summer of 1997 that clarified and emphasized the same points as they had previously stated. Congress provided additional guidance in the Conference Report it issued with the FY 1997 Interior Department appropriations act (P.L. 104-208). The report states the Service "should promulgate rules which ensure that the public has the opportunity to participate fully and comment on the issuing of permits, rights-of-way or easements for any telecommunications facility placed in any unit of the National Park System."

The National Park Service formed a task force whose members were drawn from the telecommunications industry, the CTIA, and personnel from every region of the Service. The purpose of this task force was to draft policy and procedures regarding processing applications for permitting telecommunications. This was a difficult task

since the Act directed federal agencies to implement siting these facilities and to avoid the derogation of park resources, values or purposes for which the parks had been established.

A draft policy statement was written and published in the *Federal Register* for comment in the fall of 1997. In addition, the Service held meetings with industry and the public to receive their input. On December 11, 1997, the Service published its final policy statement on Wireless Telecommunications as Director's Order #53A. This order points out that Congress and the President have established a compelling federal interest in promoting the efficient implementation of the new telecommunications technology. The Park Service will follow the requirements and intent of the Act, the President's memorandum, and the GSA procedures while also recognizing its responsibility for complying with provisions of the National Park Service Organic Act and other statutes applicable to the operation of units of the System.

Once the policy statement was approved and distributed, the Service undertook development of procedural guidance to assist park managers in implementation of the policy. Draft guidelines were published in the *Federal Register* in February 1998, for public comment. The 60-day comment period ended on April 24, 1998. The appropriate comments that we received during this period were incorporated into the body of the final procedures, which were subsequently approved and distributed throughout the national park system.

We surveyed the parks in the summer of 1997 concerning requests to site telecommunication antennas in the parks. Of the 21 parks indicating they had had some activity in this category, only 5 had actually received a combined total of 12 written applications, with the other 16 parks receiving approximately 50 phone or other verbal inquiries.

We surveyed the parks again in January 1999. Of the 56 parks indicating they had activity in this category, 16 indicate they are in the process of reviewing a permit application. Three of these permit applications have been denied.

The National Park Service is in the process of reviewing two applications submitted by Bell Atlantic Mobile for permits to site two wireless telecommunications facilities in Rock Creek Park. The processing of these applications has attracted a fair amount of attention, and we would like to address some of the issues that have been raised about this process.

We are sympathetic to the frustration experienced by Bell Atlantic Mobile in going through the permitting process. This frustration essentially relates to the length of time it has taken the National Park Service to process Bell Atlantic Mobile's permit applications. We are presently scrutinizing this process and are committed to taking care of this problem in an expeditious manner. For example, we have determined that we can prepare the Environmental Assessments required for these applications with National Park Service personnel, rather than through private contractors. This has resulted in a change of our cost estimate from approximately $300,000, to roughly $40,000, for the preparation of these Environmental Assessments, though this estimate is subject to further refinement.

We must note, however, that in processing an application for a permit to operate a wireless telecommunication facility in Rock Creek Park the National Park Service has an obligation to ensure that such a facility would comply with all applicable federal laws. We would strongly oppose any weakening of environmental review requirements. These laws were enacted to protect and preserve federal lands and should not be circumvented.

During the 105th Congress, legislation was introduced which, if enacted, would have made it difficult for land management agencies to fulfill their mission of protecting and preserving vital resource values. The bill, H.R. 3844, would have required federal land management agencies to make final determinations on applications for mobile service antennae within 60 days of receipt of an application. By letters dated July 22, 1998, and October 1, 1998, copies of which are attached to this testimony, the Department expressed the following concerns about such legislation:

1. The bill's failure to include in the policy statement significant protective language found in the Telecommunications Act whereby requests for use of federal property must not be in direct unavoidable conflict with the agency's mission.
2. The bill's failure to require specific information of an applicant seeking to use federal land as a telecommunications transmission site as required by 36 CFR Part 14.
3. The bill's failure to protect the interests of the United States in circumstances when an agency denies an application by shifting the burden of proof from an aggrieved party to the United States, and
4. The bill's failure to observe the protections afforded by compliance with laws such as the Federal Land Policy and Management Act, the National Historic Preservation Act, the Wilderness Act, the National Wildlife Refuge System Improve-

ment Act, and the Endangered Species Act, by restricting an applicant's compliance to the Federal Communications Commission's regulations pertaining to the National Environmental Policy Act.

The Department cannot forsake its stewardship responsibilities in the interest of expedited decision making which fails to take into account these important considerations.

In conclusion, I would like to say that the National Park Service has shown its willingness to work with both the telecommunication industry and the public on the question of siting telecommunication antennas in units of the park system. Our policy statement on this subject has been finalized and distributed. The procedural guidance implementing that policy was published in the Spring of 1998. We feel that we are fully complying with both the provisions and the intent of the Telecommunications Act of 1996.

We understand there is a possibility that a bill relating to the siting of wireless telecommunication facilities in National Parks may be introduced in this Congress. We would be happy to provide the committee with our views on such a bill after it has been introduced.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any of your questions.

Mr. TAUZIN. Thank you very much, Ms. Finnerty. We will, of course, want to know a lot more about why the process took so long in Rock Creek, but we will get to that in Q and A.

Mr. Wheeler, again, welcome, Tom, and this committee deeply appreciates your work in the past on these bills and welcomes your testimony today.

STATEMENT OF THOMAS E. WHEELER

Mr. WHEELER. Thank you very much, Mr. Chairman, and members of the subcommittee.

Wireless phones are the greatest safety tool since the development of 911. You have heard the numbers previously this morning: 98,000 times a day somebody uses their phone to call to save a life, to stop a crime, to render assistance. Let me put that in perspective. Since we have been here this morning, 4,100 calls have been made across the country using a wireless phone to save a life, to stop a crime, to help someone in an emergency.

The great gift the wireless phone is to the safety of Americans is time. You know, the trauma physicians talk about time being tissue. The closer you can get medical treatment to the injury, the better the chance of survival. Take a look at this chart that was just put up there to kind of put this in perspective.

In an urban area, the average period of notification about a car crash is 5.2 minutes. Now this is how long it takes before 911 gets a call. Why don't you put the chart back up again for a second, if you would please. If that can be reduced by 3 minutes—this is just the first call—if you can cut that time by 3 minutes, you can increase survivability by 16 percent.

Now let us look at the other chart about rural America.

This fact is even more important in rural America. Look at the disparity between the miles traveled and the fatalities in rural America. All of this is because, in rural America, the notification time—the time from an accident to the time that the 911 call gets placed—is almost double what it is in urban areas. So what we are talking about is time and how you can use wireless phones to cut the period of time and, therefore, save lives.

There is another important component as well and that has been referenced previously and that is that you have to know where that

incident occurred. Because on a wireline phone, you know the address of that telephone number. But on a wireless phone it could be anywhere. So we are proud of the fact that we worked with APCO and other public safety community representatives and the FCC to come up with the rule that developed the enhanced 911, latitude and longitude location capability for wireless phones when the victim uses it to call emergency services. It is clear: Wireless phones save lives.

Unfortunately, I am here to report today that the wireless safety net has all kinds of holes in it and that those holes don't need to exist. Wireless subscribers don't know what number to dial to summon help. You had in this hearing last year Representative Danner testifying about an experience in her district where someone called three different numbers, and they were all the wrong numbers, on the wireless phones trying to report an unsafe driver to the police. They couldn't get through because the numbers didn't work, and as they drove down the road they found that this person they had been trying to report had crashed into another car, killing a mother and her child. She talked about how there are six different numbers that you would have to use as you drive from Washington to her district in Kansas City. That is why we support making 911 a uniform national number.

But even if Good Samaritans do know the number to call, the call must go through. And that means there must be an antennae to hear the call. The Rock Creek Park situation would be silly if it weren't so shameful. And it is representative of other experiences across the country. Outside of Federal properties, the FCC has told us that they will not do for the placement of antennas to receive emergency what they have done for the placement of antennas to receive Jerry Springer reruns. There is something wrong in that process. There must be a solution here and it won't happen without a deadline.

We have talked how location technology can save lives, but location technology won't happen without some kind of State coordination. There are thousands of public safety answering points out there right now, each of them a god unto itself. There needs to be a common plan amongst them all.

Let me give you one example in the State of Virginia. In Virginia, the State police handle all 911 calls from wireless phones. That is an issue in and of itself; it shouldn't go to the State police. But the State police has refused to receive 911 from PCS phones, saying instead, "go to the PSAPs." Go to public safety answering points. So when the PCS carriers go to public safety answering points, they say, "no, we don't do it. Go to the State police." And they are getting ping-ponged back and forth and people can't call, simply because there isn't a State plan in place.

Last year's legislation created a State plan. It did it through the funding mechanism. There is no such mechanism this year. We hope that at the very least the FCC will move in this area and, hopefully, this bill will too.

Finally, we need to stop discouraging Good Samaritans, both corporate and individual as well as PSAPs from doing the right thing. If I place a call from my landline phone to 911 and something unto-

ward happens—an Act of God—I am not liable nor is the carrier. If I do that on my wireless phone, I can be liable as can the carrier.

This raises a couple of simple questions. No. 1: If consumers knew that being Good Samaritans exposed them to liability, how would they act? And, No. 2: If you are a carrier and you are being asked by this rule that we negotiated with public safety and the FCC to put new location technology—new, risky technology in place—would you do it if you knew that your liability was being expanded by this? And, finally, the biggest outrage: There are public safety answering points, 911 services, who are not answering the phones because of their fear of liability.

In suburban Chicago, they don't answer 911 calls from PSC phones because they interpreted the statute to say that this dealing with airwaves, which is a very fragile connection, could increase their liability. That is wrong. We have got to fix that.

I look forward to discussing these issues and to also supporting your efforts on the eavesdropping bill to stop the electronic stalkers.

[The prepared statement of Thomas E. Wheeler follows:]

PREPARED STATEMENT OF THOMAS E. WHEELER, PRESIDENT AND CEO, CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to appear before you today to present the wireless industry's views on legislation to promote and enhance public safety through the use of emergency 9-1-1 service. I am Thomas E. Wheeler, President and CEO of the Cellular Telecommunications Industry Association (CTIA) representing all categories of commercial wireless telecommunications carriers, including cellular and personal communications services (PCS).[1] The wireless industry is founded on innovation, competition and safety. Today, my testimony will focus on safety and discuss how Congress can be instrumental in delivering unprecedented safety benefits to consumers across America.

Pursuant to Rule 4(b)(2) of the Committee Rules, I have submitted a curriculum vitae together with my testimony. For the record, also pursuant to Rule 4(b)(2), CTIA has not received any federal grants or contracts during the current fiscal year or during either of the two preceding fiscal years.

At the Subcommittee's request, my comments today will begin by addressing the *Wireless Communications and Public Safety Act of 1999.* I would like to share with you not only our views on the bill, but also some of what we learned in the course of last year's legislative efforts to enact a wireless 9-1-1 bill. I will conclude my remarks with a discussion of the *Wireless Privacy Enhancement Act of 1999.*

Last year, this committee demonstrated its commitment to public safety by passing out of the subcommittee and full committee the *Wireless Communications and Public Safety Act of 1998* (H.R. 3844). It was a bipartisan bill that took into consideration the ranking member's concerns such as the need for privacy in respect to information provided through location technology. However, some concerns remain over whether or not the bill reached into state prerogatives. As a result, this committee, Republicans and Democrats, as well as the National Association of Counties (NACo) and the National League of Cities (NLC) have agreed to a less ambitious plan but one that will improve wireless emergency communications. I applaud the efforts of the Committee and staff for their work to put together the *Wireless Communications Public Safety Act of 1999.*

There are now nearly 68 million "safety sentinels" in the United States—68 million subscribers who speed the delivery of safety services by providing rapid reports of car crashes, aggressive and impaired driving, serious crimes, and other threats to our communities. There are literally thousands of Americans who credit their wireless phone with aiding a fellow citizen, preventing a crime or in the ultimate

[1] CTIA is the international organization which represents all elements of the Commercial Mobile Radio Service (CMRS) industry, including cellular, personal communications services, wireless data. CTIA has over 750 total members including domestic and international carriers, resellers, and manufacturers of wireless telecommunications equipment. CTIA's members provide services in all 734 cellular markets in the United States and personal communications services in all 50 major trading areas, which together cover 95% of the U.S. population.

form of public safety expression, saving a life—it is a distinction that the wireless industry is proud of and inspired by. CTIA will continue to work diligently to press for legislation that improves the safety role of wireless telecommunications.

Over 98,000 wireless emergency calls each day are delivered to emergency services—more than ten times the number of such daily calls made just a decade ago. A survey conducted one year ago showed that 35 percent of wireless phone owners had used their phones in an emergency or life-saving situation. Security was rated the most important reason for purchasing a wireless phone by 88 percent of people planning to buy one. The wireless industry is acutely aware of our customers' conviction that wireless phones provide an invaluable safety link to emergency medical care, law enforcement, and other public safety agencies.

In recognition of the enormous role our technology can play in these situations, CTIA began several years ago to seek out ways in which wireless could participate constructively in public safety efforts at all levels for the benefit of our communities and the public at large. Individual carriers and manufacturers are hard at work using wireless technology to improve and protect public health and safety. Service providers and manufacturers donate service and equipment both to help in sudden emergencies such as ice storms, tornadoes and other related weather disasters, as well as to help fight crime in communities nationwide. As part of the "Communities on Phone Patrol" (COPP) program, wireless phones and airtime have been donated to more than 8,000 watch patrols in communities across the country where more than 150 million Americans live. Through our ClassLink program, carriers donate wireless phones and airtime to teachers to increase their efficiency and to enhance their students' safety. And we sponsor an ongoing multimillion-dollar advertising campaign; recognizable by the slogan "Safety Is Your First Call".

In the last two years, we have expanded our safety efforts considerably by working with and learning from 9-1-1 directors, Emergency Medical Services experts, the American Automobile Association (AAA), the National Emergency Numbers Association (NENA) and the Associated Public Safety Communications Officials (APCO) on how to better serve the public. Last year, CTIA joined with state and local public safety officials, emergency and trauma care physicians, emergency nurses, other medical professionals, and health care groups like the Brain Injury Association and the American Burn Association to form the ComCARE Alliance—which stands for "Communications for Coordinated Assistance and Response to Emergencies"—a coalition with which many of you are familiar. We continue to work with these organizations to provide a system that reduces response times to emergencies, lessens the severity of injuries and saves lives.

Mr. Chairman, last June you stated that, "Although deaths from vehicle crashes have declined in recent years, death at the scene prior to emergency medical care have doubled in the past 20 years. They now exceed 20,000 per year. In forty percent of the crash fatalities today, response time was twenty minutes or more. In urban areas, the average EMS response time is 30 minutes, in rural areas it is 50 minutes or longer." It is incumbent on the wireless industry, the Congress, the Federal Communications Commission and other related agencies to reduce these numbers in what the medical community refers to as the "golden hour" where "time is tissue."

Designation of a Universal 9-1-1 Number

The first requirement in achieving the safety goals of the wireless industry, and previously mentioned safety advocates, is the designation of the number 9-1-1 as a uniform and universal telephone number within the United States for reporting an emergency to and requesting assistance from appropriate authorities, whether on wireless or wireline telephones. The same designation also would be required by any numbering agency or entity to which the FCC has delegated authority under section 251(e) of the *Communications Act of 1934.*

The lack of a uniform wireless emergency dialing code creates unnecessary confusion and impairs the ability of mobile customers to request emergency assistance quickly and easily. Even along an interstate highway within one state or even one community, a mobile customer may be required to know and dial several different numbers to reach the right emergency response agency. Wireless carriers can program their switches to route a 9-1-1 call to emergency services, but too often they are prevented from delivering that call. In suburban Chicago, for instance, because of liability concerns PSAPs are refusing to process wireless E 9-1-1 calls, requiring carriers to send E 9-1-1 calls to a third party that answers the call and then routes it to the appropriate safety agency.

Mr. Chairman, you recall the story of eight-year old David Duplantis from Louisiana. David was fishing with his uncle and 12-year old cousin when his uncle noticed the fuel pump on the boat wasn't working properly. As he began pumping fuel

manually, a sudden leak in the hydraulic steering system caused the boat to veer sharply and crash into the bank of a canal. The force of the crash smashed the boat and damaged all the electrical equipment, including the radio. David was shaken in the crash, and his cousin was thrown to the front of the boat, where he lay unconscious. Fading in and out of consciousness from serious injuries sustained during the accident, David's uncle managed to tell David where his wireless phone was and instructed him to dial 9-1-1. Deeply embedded in a bank of a canal and covered by trees, David stayed on the phone with emergency operators for 45 minutes as rescue workers searched for the boat. David finally flagged down a helicopter and directed it to the boat. The injuries David's uncle sustained kept him on life support for two weeks and in intensive care for a full month. Can you imagine if the emergency number had not been 9-1-1? Picture this heroic eight-year-old frantically trying to track down a non 9-1-1 number to call for help.

9-1-1 was not the emergency number in Carthage, Missouri in the fall of 1997 and the consequences were tragic as reported in the *St. Louis Post-Dispatch.*

> When a Kansas couple noticed a van bobbing and weaving in traffic south of Carthage, Mo., on Thanksgiving Day, they tried repeatedly to alert authorities by cellular phone.
>
> But by the time they got through it was too late—the van had crashed into another vehicle in an accident that claimed three lives.

The article described how Ms. Luann Bertaux called three different numbers from her wireless phone, none of which worked. The first number she dialed was 9-1-1 where she got a recording. Then she dialed information and asked the number of the police department for an upcoming town, that didn't work. Finally, she called information again and asked to be connected to the police department directly. The police responded—but it was too late, Ms. Bertaux watched as the driver whom she had been trying to report for15 minutes crashed head-on into a van killing a two-year old and his mother. In Missouri, the wireless number to reach the highway patrol is *55, if it had been 9-1-1 there might have been another Thanksgiving for a two year-old boy and his mother.

As stated by Representative Pat Danner (MO-6th) in a December 8, 1997 editorial to the Kansas City Star, "If a motorist were to travel from Kansas City to Washington D.C. on Interstate 70, the traveler would have to know to dial *55 in Missouri, *999 in Illinois, 9-1-1 in Indiana, *DUI in Ohio, 9-1-1 in Pennsylvania and *77 in Maryland . . . Further, in the United States as a whole, there are as many as 15 different cellular assistance numbers. The system should not be so convoluted."

Congressional action to designate 9-1-1 as the universal wireline and *wireless emergency* number in the U.S. would provide protection to all Americans against these types of senseless tragedies. A uniform national primary emergency telephone number is increasingly important because so many Americans use wirelesses telephones to report emergencies, and, increasingly these same Americans are using their wireless phones outside of their local service area (in areas where they are less likely to know the local primary emergency number if that number is not 9-1-1.)

Implementation of Statewide Plans

The Wireless Communications and Public Safety Act of 1999 requires statewide coordination of the efforts of local public safety, fire service and law enforcement officials. The emergency communications needs of the United States are currently served by 15,000 Public Safety Answering Points (PSAPs). These PSAPs are generally housed within local government organizations, such as local police or fire department. Each of the PSAPs are autonomous units. Some states have adopted uniform statewide 9-1-1 implementation plans, and designated a single official in charge of 9-1-1 for the entire state in order to have better emergency communications services. Other states send 9-1-1 calls to a state police office, even if it is located miles away from the emergency. Comprehensive and coordinated state plans are needed so that calls get routed to the appropriate place in a timely manner.

A significant barrier to implementing location and other wireless safety advancements in a timely manner is that public safety centers and PSAPs in many states are coordinated by a variety of local, county, and state government and regulatory authorities. This creates a difficult environment for private sector carriers to readily implement networks when they must work out individual technology and funding arrangements on a county by county, or worse yet, a city-by-city basis.

A wireless carrier in Virginia is a case study into why statewide plans are needed. Triton PCS, Inc. has been licensed by the FCC to provide wireless communications (PCS) service throughout the Commonwealth of Virginia (other than Northern Virginia). In Virginia, the State police receive all wireless 9-1-1 calls. If the call is not one for which the State Police is the appropriate public safety agency, the call is routed to the local PSAP. In connection with establishing its service in Virginia, Tri-

ton telephoned and wrote to the State Police, requesting the State Police provide Triton the applicable State Police 9-1-1 routing numbers. On each occasion, Triton was informed that the State police would not accept 9-1-1 calls from new wireless providers in Virginia, and that Triton should contact each PSAP in Virginia for its routing information.

For months Triton contacted literally dozens of PSAPs in Virginia. PSAP Administrators repeatedly told Triton that wireless 9-1-1 calls in Virginia are routed to the State Police. In light of the contrary information, Triton subsequently sent faxes, and then certified letters to sixty-six PSAPs, requesting their respective 9-1-1 routing information. Many of the written responses repeat that the State Police handle wireless 9-1-1 calls in Virginia and should be contacted instead of the State Police. Clearly, statewide planning and cooperation needs to be encouraged.

Liability Coverage

Another critical issue that adversely impacts the full realization of wireless's safety potential is the legal liability triggered by offering safety-enhancing services. *The Wireless Communications Public Safety Act of 1999* resolves this problem by conferring on wireless carriers precisely the same liability protections that wireline carriers have long enjoyed, and by conferring on wireless Good Samaritans the same legal protections that their wireline brethren have as well.

The fact that traditional wireline 9-1-1 service can occasionally engender problems or unintended consequences has been long recognized in telecommunications law. The physics of radio communications prevents perfection, either in call completion or in location. Wireline carriers file tariffs that contain a limitation on liability when things don't work as intended. Because we are a competitive industry policy makers have determined that wireless carriers do not file tariffs. Moreover, even if they did, because we are required to deliver 9-1-1 calls from non-subscribers, no tariff would bind those individuals anyway. There is no valid public policy reason that wireless carriers in this respect should suffer legal consequences different in any jurisdiction than those attaching to wireline carriers in the same jurisdiction.

The threat here is real. Consider, for example, the FCC's E9-1-1 rule that in Phase II requires a 67 percent success expectation. The rule recognizes that 100 percent accuracy is impossible.

This bill strikes a rational approach to the liability differences between wireleine and wireless. The proposed bill establishes, among other things, a principle of parity between wireless and wireline in protection for: (1) the provision of telephone services, including 9-1-1 service, and (2) the use of 9-1-1 service. The bill provides for wireless providers of telephone service to receive at least as much protection from liability as local exchange companies receive in providing telephone services (subject for a two-year period to enactment of State opt-out legislation as to non 9-1-1 services.)

The limitation on liability for wireline carriers encouraged the widespread adoption of wireline 9-1-1 and E9-1-1 services. The same encouragement should and must be given to wireless carriers.

Advancement Towards a Seamless, Ubiquitous System

I realize that federal siting has been removed from this year's bill, but I would be remiss if I did not touch upon it and use an example of how siting remains a problem. Even with a universal wireless emergency number, liability protection and statewide plans, all are useless if a call is placed in an area without coverage. Protecting the public's health and safety through the use of our telecommunications infrastructure is not simply a matter of telling everyone to dial 9-1-1. The call has got to go through. In the absence of government action, there remain locations where the call cannot be delivered—"dead zones" in wireless coverage where it is not possible to complete a wireless 9-1-1 call. One part of the solution to this problem is to improve on the use of thousands of Federal buildings and other structures, as well as millions of acres of Federal land, to help fill those dead zones.

As this Committee noted in its Report on H.R. 3844 last year, neither the President's 1995 Memorandum to Federal agencies urging them to facilitate the placement of wireless antennas on Federal property, nor section 704(c) of the Telecommunications Act of 1996, which directed them to do so, has resulted in a change of attitude on the part of most Federal agencies with respect to this subject. With a few welcome and notable exceptions—including the Postal Service, General Services Administration, Bureau of Land Management, and the Forest Service—most Federal agencies continue to ignore this imperative completely, or to erect uneconomic, if not insurmountable, barriers to siting.

Nearly one year ago, on March 24th, I sat before this Subcommittee and participated in a dialogue with Ranking Member Markey and the Deputy Director of the

National Park Service about the need for antennas in Rock Creek Park. It's worth recalling the following exchange between Representative Markey and the Park Service's witness:

Mr. MARKEY. ... Well, let me ask you this, Mr. Galvin: If they apply within the next week, how long do you think it would take to get something approved?

Mr. GALVIN. Less than 60 days.

Mr. MARKEY. Less than 60 days. Okay. You've got a—the starter's gun has gone off...

Well, Congressman Markey and Members of the Subcommittee, the application was filed on April 3rd, 1998. It took the Park Service until July 10th to find the application complete (requiring copies of FCC licenses, copies of bank certifications, and other minor documents). Three months later, once the application was deemed complete, the Park Service requested $25,000 to begin the study. It is now approximately nine months later, and you still can't use your wireless phone in Rock Creek Park. That's because contrary to Mr. Galvin's promise, the application still has not been approved. In fact, the Park Service demanded that the carriers pay over three hundred thousand of dollars for an environmental study designed to show why antennas should not be permitted on a tennis stadium's existing light towers and in the Park's maintenance yard.

As you suggested during that hearing last year, Chairman Tauzin, if you multiply the Rock Creek Park situation over and over again, you will begin to understand what we face on a regular basis from the Park Service and other Federal agencies across the country. If together we are to create the seamless end-to-end public safety communications system that we all envision, this kind of bureaucratic obstinacy must cease.

I am pleased to report that in the closing days of the 105th Congress, we began a very constructive dialogue with Assistant Secretary of the Interior for Policy, Management, and Budget, John Berry, aimed at helping the Department better understand the intentions underlying the legislation and addressing the legitimate concerns and questions the Department raised. Although those discussions were suspended when Congress adjourned, we look forward to continuing our discussions with the Department of Interior in the months ahead.

The discussion with the Interior Department was gratifying in part because we found that once we were in the same room as people who thought we were their adversaries, many of their concerns reservations about the legislation were allayed when they better understood the bill's purposes. I would like to extend the same hand of friendship to the representatives of local government, primarily the National League of Cities (NLC) and the National Association of Counties (NACO), who objected to the wireless public safety bill as written last year.

This legislation is about saving lives, reducing the severity of injuries, and extending those benefits to all Americans, no matter where they live, work, or drive. This is not a matter on which mayors, city councils, zoning boards, and county governments should be at odds with us or with doctors, nurses, public safety agencies, and health care groups.

I would like to address the privacy aspects of the proposed bill. Protecting location data is of extreme importance to Ranking Member Markey and I assure the committee it is of equal importance to the wireless industry. I applaud Mr. Markey's commitment to making sure that sensitive location data does not fall into the wrong hands or is not abused by government or commercial entities.

Finally, Mr. Chairman, I would like to offer some comments on the FCC's role in the safety issues that I have touched upon today. I do not doubt the Commission's sincerity or interest in improving the Nation's public safety communications infrastructure. Issuing rules to expand wireless emergency services by allowing, for example, non-subscribed phones to access emergency services, simply isn't a coherent public safety policy. The FCC could and should have acted already on a universal wireless emergency number, limited liability protection for wireless, statewide planning of emergency services and mechanisms for cost recovery. However, I am genuinely encouraged by the new leadership recently placed in the Wireless Telecommunications Bureau. In the past several weeks, CTIA has participated in productive discussions on a variety of topics and there appears to be a willingness to resolve outstanding issues.

Relative to E 9-1-1, the FCC's E9-1-1 rule has been misused as a revenue-generating device, forcing consumers to pay so-called "9-1-1 taxes" while the money is diverted to purposes other than achieving wireless E9-1-1. We hope that the FCC would act quickly to clarify the cost recovery rules so that funds intended for safety purposes are not diverted to other unrelated concerns.

Furthermore, the FCC has indicated that it will not act to preempt local siting decisions even when they endanger public safety. The FCC does not want to grant

liability protection I raised earlier. And there are many other issues relating to cost recovery, interface with the PSAPs' systems, decisions favoring one technology over another, and reliance on local exchange carriers' switching and routing, to name a few, that remain to be addressed. We have endeavored to work cooperatively with the FCC on these matters and, as I mentioned earlier we will once again work on these issues with the new management at the FCC's Wireless Telecommunications Bureau.

We are pleased, Mr. Chairman, that you and the Members of this Committee and Subcommittee, on a broad and bipartisan basis, have recognized the importance of this safety agenda. CTIA encourages you and the Subcommittee to move forward once again to weave the next generation of wireless technology together with the sophisticated medical and emergency response capabilities now in place or under development, in order to create the seamless, ubiquitous, end-to-end communications infrastructure for public health and safety envisioned by Wireless Communications and Public Safety Act of 1999.

Thank you for your consideration of our views.

Mr. TAUZIN. Thank you very much, Mr. Wheeler.

And now we turn to Mr. Dempsey. Jim Dempsey, the Senior Staff Counsel for the Center for Democracy and Technology. Thank you for your testimony, Mr. Dempsey.

STATEMENT OF JAMES X. DEMPSEY

Mr. DEMPSEY. Mr. Chairman, members of the subcommittee, good morning.

The Center for Democracy and Technology is pleased to appear before the subcommittee today on one of the critical civil liberties issues of our time, the protection of privacy in the new communications media. These new technologies which so greatly enhance our lives, which hold such potential for promoting democracy and freedom, but, at the same time, which pose an obvious risk to privacy.

We are an independent, non-profit organization. We work to protect and advance civil liberties in the new communications media. We believe that the privacy challenge presented by these new technologies can best be addressed through a combination of technology tools, sound industry practices, and enforceable legal baselines. Today the subcommittee has before it two bills that advance the protection of privacy in important ways. These bills also highlight some of the broader privacy issues that this subcommittee should address as the term progresses.

The essence of our message is that privacy must be protected from the outset in the design of any telecommunications or information system and must be a component of public policy affecting telecommunications and electronic commerce. We have seen recently examples of what happens when privacy is not taken into account from the outset. Recently the Intel Corporation, which Mr. Markey in his opening statement made reference to, proudly announced the introduction of its powerful new Pentium III processor, only to face a firestorm of public opposition because the processor included an ID number that could be used to track browsing, reading, or purchasing and other activities on the Internet.

At the same time, while we are worried about the Pentium III, we are seeing at the Federal Communications Commission, a proceeding under legislation which this committee and the House Judiciary Committee passed in 1994, the so-called digital telephony law, the Communications Assistance to the Law Enforcement Act, where the Federal Government is trying to impose design mandates on telecommunications carriers that really make some of the

privacy issues we are talking about today pale by comparison. And this is something that this subcommittee will have to take a look at as it moves forward in this Congress.

Our main focus today is the 911 bill and its crucial privacy protections. We are seeing 911 really is a perfect example of the challenge presented by new technology. The ability to use wireless phones, as has been said several times already, to contact police and fire and other emergency services, is a critical attraction of those phones and is a tremendous benefit brought by this technology. And it is appropriate for this committee to promote the development of a ubiquitous 911 system and a nationwide access to that through wireless phones.

Locating wireless callers is part of such a system, and appropriately so. Obviously 911 callers want to be found. They want to be found quickly. Yet the tens of millions of wireless phone users do not want their phones to become tracking devices that they do not control. And the key concept here is the concept of user control. So we need to have a privacy principle built into the system from the outset.

Last Congress, Mr. Markey and the chairman included such an amendment and Mr. Shimkus has appropriately included that into the bill as section 5 that was introduced this year. That is a critical part of this. It builds on existing legislation, the so-called CPNI or customer proprietary network rules, which limit the commercial use of this information, that this cannot go to direct marketers. The whole question of where you are as you travel about as this information is generated; this should not be used for purposes other than those connected with the provision of the service and, obviously, part of that is the 911 location.

We note, however, that the FCC in its digital telephony proceeding is right now proposing to impose upon carriers a separate mandate, in essence, a double mandate, to require wireless location to be built in for criminal investigative purposes, a wireless location capability that is not controlled by the user, that is not fully privacy-protected. And that is not what Congress intended at the time it passed that legislation. The purpose of the legislation—Congressman Oxley was very interested in it at the time and I am sure is still interested in it—was to preserve law enforcement wiretap capabilities and that was an appropriate objective. But that was balanced against the interests of privacy and the question of cost. And I am afraid this report that the concept of balance is being lost in the implementation of that law.

The scanner bill represents another important improvement. It closes some of the ambiguities and gaps in current legislation that govern scanning devices. There are people out there who think that it is amusing to eavesdrop on wireless calls. There are other people out there who do so for criminal purposes. And tightening the law to prohibit the manufacture of those scanning devices where they are intended to or have the ability to intercept the cellular and PCS parts of the spectrum is an appropriate step. I would urge the committee to make sure that that law is properly and narrowly defined. There is obviously a significant scanner community that has a legitimate function.

I would also note in the bill, in the amendment to section 7.05, you have appropriately eliminated the word "and." The law for many, many years, since 1934, had said intercept and divulge and a lot of people said, well we are intercepting it, but we are not divulging it, therefore not violating the law.

I think there may be a problem with the way it was reported and enacted last year in terms of the divulge and publish to make it disjunctive and to make it a crime does get into some First Amendment questions and I think that the goal there is to get at the interception and eliminating the "and" and making it a crime to intercept plain and simple, I think, is the way that that should go. I would urge you to take a look at that.

Mr. Chairman and members of the subcommittee, we urge you to make the 106th Congress the privacy Congress. The American public is more sensitive to privacy than ever before. Just as you have made in the 911 bill privacy protection a central component of that to give the consumer confidence, to give the trust in how this information is being used, which is a necessary baseline for this technology to be widely accepted as we want it to be, privacy should be a component of everything you do this year as you move forward on electronic commerce, digital signatures, and other legislation. The Center for Democracy and Technology looks forward to working with you. I would be happy to answer any of your questions now and to work with you to support these bills as they move forward.

Thank you.

[The prepared statement of James X. Dempsey follows:]

PREPARED STATEMENT OF JAMES X. DEMPSEY, SENIOR STAFF COUNSEL, CENTER FOR DEMOCRACY AND TECHNOLOGY

Mr. Chairman and Members of the Subcommittee, my name is Jim Dempsey. I am senior staff counsel at the Center for Democracy and Technology. The Center is pleased to have this opportunity to testify before the Subcommittee on one of the critical civil liberties issues of our time: the protection of privacy in the new communications media, which enhance our lives in so many ways and hold such potential for promoting freedom, but at the same time pose obvious risks to privacy.

The Center for Democracy and Technology is an independent, non-profit public interest policy organization in Washington, DC. The Center's mission is to develop and implement public policies that protect and advance individual liberty and democratic values in the new digital media. We believe that the privacy challenges presented by these new technologies can best be addressed through a combination of technology tools, sound industry practices, and enforceable legal baselines.

Today, the Subcommittee has before it two bills that advance the protection of privacy in modest ways. These bills also highlight some of the broader privacy issues that the Subcommittee should address as the term progresses.

The essence of our message is that privacy must be protected from the outset of the design of any communications or information system and must be a component of any legislation setting policy for telecommunications and electronic commerce. Unfortunately, this lesson has still not been learned. We have recently seen the Intel Corporation proudly announce its powerful new Pentium III processor only to face a firestorm of public criticism, including threats of a consumer boycott, because the processor included an ID number that could be used to track browsing, reading, purchasing and other activities on the Internet. Meanwhile, under the 1994 Communications Assistance for Law Enforcement Act ("CALEA"), the FBI is seeking to impose on the telecommunications industry surveillance features, including wireless phone tracking, that would do for the telephone system what we and others fear the Pentium III would do for the Internet. So far, in violation of CALEA, the Federal Communications Commission has tentatively agreed with the location surveillance demand and others.

As the Subcommittee advances the two bills before it today, it should also address what is happening at the FCC under CALEA. The tens of millions of Americans who use wireless phones do not want them turned into tracking devices that can be turned on and off by the government. In CALEA, Congress made it clear that wireless phones should not be turned into location devices for surveillance purposes. The FCC is ignoring that clear Congressional directive, and is basically proposing to rewrite CALEA. The objectives of E911 service can be achieved fully without creating a tracking capability outside the control of the users.

Mr. Chairman, we urge you to make the 106th Congress the "Privacy Congress." We believe it has the potential to become just that. The American public is more sensitive to privacy than ever before. Just as the Subcommittee last Congress made privacy a component of the E911 bill, privacy should be a component of every e-commerce and telecommunications bill you take up in the coming months, ranging from digital signatures to CALEA. The challenge is not an either/or choice between government regulation versus "self-regulation," but rather to develop enforceable solutions that combine a spectrum of measures ranging from privacy-enhancing technologies, to industry codes of practice, private remedies, government enforcement of baseline protections that incorporate fair information practices and address abuses, and a balanced approach to governmental surveillance premised on a narrowly-focused surveillance capability and strict limits for governmental access.

I. ONGOING DEVELOPMENTS IN TELECOMMUNICATIONS INCREASE THE URGENCY OF ENSURING THE PRIVACY AND SECURITY OF WIRELESS COMMUNICATIONS

Advancements in telecommunications technology have conferred tremendous benefits on the American public and on individuals worldwide. The number of subscribers of wireless services continues to rise, as wireless technologies have become woven into peoples' lives. At the same time, the American public is deeply concerned that such advancements threaten to overwhelm the cherished right of privacy. The threats arise from both governmental and private surveillance.

For the past thirty years, Congress has recognized that it must ensure that the laws protecting privacy keep pace with the changing uses of technology. From 1968, when it first enacted the wiretap law known as Title III, through enactment of the Electronic Communications Privacy Act ("ECPA") in 1986, to the Communications Assistance for Law Enforcement Act of 1994 ("CALEA"), Congress has sought to balance three goals: (1) to provide strong legal protections for electronic communications, (2) to afford law enforcement a narrowly-focused and carefully limited authority to carry out electronic surveillance in serious cases, and (3) to encourage the development and widespread availability of new technologies.

ECPA was based on the principle that privacy is good for both consumers and business. People will not use communications technologies they do not trust. By extending clear privacy protections to e-mail and cellular telephone conversations, ECPA boosted user confidence in those communications technologies when they were in their infancy, contributing to the dramatic success they have both experienced.

When it enacted ECPA in 1986, Congress knew that it would have to return to the law of communications privacy periodically, as technology continued changing. Some small privacy enhancements were made in CALEA in 1994. Now, given ongoing developments in the realm of wireless communications and the Internet, we are at another juncture that requires another careful examination of the adequacy of privacy protection legislation: Cellular and other wireless telephones have become commonplace and are now widely used by ordinary citizens. Moreover, wireless transmission is no longer important only for voice communications. Wireless modems, wireless faxes, and wireless local area networks are linking computers and transferring data of a highly sensitive nature, including proprietary information, medical records, and financial data. Wireless links are becoming more and more important as gateways to the global information network. The Internet itself has blossomed since 1986 in ways that the drafters of ECPA never imagined.

The ongoing development of telecommunications networks that are increasingly integrated, global, decentralized and wireless heightens the urgency of ensuring the privacy and security of wireless communications. Some of the needed changes fall outside the jurisdiction of this Committee, but we would like to mention them briefly to give a sense of the context. First, ECPA should be clarified to make it clear that wireless transfers of data are protected to the same extent as wireless voice communications. Second, the legal scheme of the wiretap laws, as amended by ECPA, should be expanded so that the US government has to obtain a court order when engaging abroad in surveillance of US citizens for criminal investigative purposes. Currently, the protections of the US Constitution offer little privacy assur-

ance to US citizens whose communications cross international borders, and the protections of the wiretapping laws do not apply to eavesdropping from points abroad. Third, as networking expands and more and more records are kept outside the home, the protections rooted in the Fourth Amendment need to be extended so that records stored on networks receive the same protection as records held inside the home or office. Fourth, and this is a matter within this Committee's jurisdiction, individuals must be assured control over their personal data, through a combination of technology tools, industry best practices and enforceable legal standards incorporating fair information practices.

II. WIRELESS COMMUNICATIONS AND PUBLIC SAFETY ENHANCEMENT ACT: LOCATION INFORMATION REQUIRES PRIVACY PROTECTION

As a result of the new technology, more and more sensitive personal information is being transmitted over the airways and online. At the same time, the new technology generates an increasingly rich store of transactional data. Each time you log onto the Internet, each time you use the telephone, you leave behind digital fingerprints—the transactional records which, in real-time or stored and aggregated, provide a profile of your whereabouts, your activities, your interests, and your associations. Consumers and other users of the new communications technologies want control over this information. Limits on its use are essential if consumers are to have confidence in electronic commerce and digital communications. A central principle of fair information practices is that information generated in the course of one transaction should not be used for other purposes without the clear consent of the person to whom the information pertains.

E911 is a perfect example. The ability to use wireless phones to contact police, fire or ambulance services in the case of an emergency is an obvious attraction of wireless phones, and it is appropriate for the Congress and the FCC to promote development of a nationwide wireless 911 system. Locating wireless phone users calling in emergency cases is appropriately part of such a system. Obviously, 911 callers want to be found by the emergency services, and quickly. Yet the tens of millions of wireless phone users do not want their phones to become tracking devices that they do not control. People carry these phones with them as they go about their daily lives. More than the wireline phone, the wireless phone tends to be directly associated with one individual. When a call is made on a wireline phone, it means that somebody is at the location, but it is not apparent who. When a call is made on a wireless phone, it is almost always the individual subscriber. In this way, wireless phone location information is far more revealing than the fact that a street address is associated with a wireline phone number. So we need to have strict rules governing use of this information.

Wisely, Mr. Markey and the Chairman have included privacy protection in the Wireless Communications and Public Safety Enhancement Act (H.R. 3844 in the 105th Congress). The provision builds on the CPNI (Customer Proprietary Network Information) protections of section 222 of the Communications Act, 47 U.S.C. 222, which are strong and consistent with fair information practices. Any effort to move forward with E911 should have these privacy standards built in. Strict coverage of location information is essential to public confidence in the wireless 911 system.

We note that this bill does not address the question of governmental access for investigative purposes. The standard for law enforcement access has to be strict as well. Because location information is so sensitive, and because people carry their wireless phones with them as they go abut their daily lives and go places where they have a reasonable expectation of privacy, we believe the standard should be a full probable cause standard of the Fourth Amendment. This is probably not an issue within the jurisdiction of this Committee, but it would be a missed opportunity to let this bill get enacted without addressing the question of government access. (We note that Senator Leahy has proposed legislation making law enforcement access to wireless location data subject to a full probable cause standard.)

With grave concern, we urge the Committee to take note that the FCC in its CALEA proceeding has tentatively concluded, incorrectly, that wireless location information is a CALEA mandate, in essence placing on carriers a double mandate and in the process probably unfairly tilting towards a network solution to the 911 location requirements. Wireless location under CALEA should be treated completely separately from location information for E911 purposes. Congress made it clear in CALEA that it did not intend to require location information for surveillance purposes. The Commission's tentative decision in the CALEA proceeding to require location information be built into wireless systems for surveillance purposes, not subject to user control, finds no support in the plain meaning of CALEA and is flatly contrary to the legislative history. In this and other ways, the Commission has ten-

tatively sided with the FBI's expansive reading of the CALEA mandates, jeopardizing the privacy balance that Congress intended to achieve in that Act and imposing unnecessary costs on the carriers and ultimately on the public who will pay the bill, either as taxpayers or as ratepayers. This is something the Subcommittee should address as the 911 bill moves forward, or on another vehicle that addresses CALEA questions. It may require an amendment to CALEA to reemphasize Congress' intent that location information for surveillance purposes is not a CALEA mandate.

III. THE WIRELESS PRIVACY ENHANCEMENT ACT—THE PRIVACY OF WIRELESS COMMUNICATIONS IS ENTITLED TO STRONG LEGAL PROTECTION

In the current environment of global communications networks increasingly dependent on wireless links, it is a serious invasion of privacy to eavesdrop on cellular and other wireless telephone conversations. Cellular eavesdroppers are invading the privacy not only of the person who is using a cellular phone, but also of anybody else who is on the conversation using an ordinary landline telephone.

Given the growth of wireless services, it is clear that Congress made the right decision in 1986 when it determined that intentionally intercepting cellular phone conversations should be a federal crime. Congress clearly has the authority to protect communications transmitted over the airwaves, and it did so with respect to cellular telephone conversations in ECPA, extending to the then-fledgling cellular telephone industry the same privacy protections that had applied to traditional wireline services.

However, ever since wireless phones first appeared, there has been an electronic cat and mouse game between wireless phone users and those who find it amusing to eavesdrop, or find criminal opportunity in eavesdropping, on wireless phone conversations. ECPA made it a crime to manufacture, sell, assemble, possess or advertise any device that is "primarily useful" for the interception of wireless telephone conversations, 18 U.S.C. 2512, and Section 302 of the Communications Act prohibited the manufacture, sale or use of nonconforming scanning devices, 47 U.S.C. 302a. Nonetheless, manufacturers, retailers and individuals have taken a very narrow view of this law, and consequently scanners are widely available still that intercept cellular telephones. The PCS spectrum isn't even covered by Section 302(d) of the Communications Act. For these reason, we believe that Congress should close the ambiguities and gaps in the scanner law.

The Wireless Privacy Enhancement Act (H.R. 2369 in the 105th Congress), was passed by the House last Congress, and deserves to be reenacted this year. We believe that the main purpose of the bill is to clarify and further restrict the ability of private citizens to obtain equipment that can be used for eavesdropping on wireless phones. We urge the Subcommittee to ensure that the language is appropriately narrow, and does not cover legitimate equipment and conduct. On one specific point, it is not clear that the language concerning "divulgence, publication, or utilization" is necessary in the amendment to Section 705(e)(3) and (4) of the Communications Act. We also hope that the Judiciary Committee eliminates the "primarily useful" ambiguity from 18 U.S.C. 2512.

IV. WHILE LEGAL PROTECTIONS ARE IMPORTANT, THEY ARE NOT ENOUGH TO ENSURE PRIVACY—PRIVACY AND SECURITY MUST BE ENSURED THROUGH TECHNICAL MEANS

The criminal law, however, is a limited remedy. Practically speaking, law enforcement agencies will never devote substantial resources to the investigation of eavesdropping cases. Even with H.R. 2369 on the books, there will still be people who obtain or manufacture devices to eavesdrop on wireless phones. Therefore, the focus needs to be on manufacture and design of equipment to be less readily subject to being intercepted. This is, of course, mainly not a matter for legislation. The onus falls on industry to deploy strong encryption throughout the networks. I would note that in 1997, after the Subcommittee's last hearing on this issue, independent cryptographers broke the proprietary encryption technology used in millions of GSM (Global System for Mobile communications) phones nationwide, illustrating the dangers of insufficiently robust, proprietary encryption.

The integrated, global, decentralized communications network is vulnerable to threats that infringe on individual privacy and also threaten the critical infrastructures that are dependent on communications. The vulnerabilities of encrypted computer files and electronic communications are well-documented. Unencrypted communications are open to criminal exploitation, and the losses to date from inadequate system security are enormous. The National Research Council concluded several years ago: "Of all the information vulnerabilities facing US companies internationally, electronic vulnerabilities appear to be the most significant."

Wireless communications should not be—and need not be—the weak link in the integrated communications infrastructure. Strong encryption offers opportunities for enhanced security in the digital age. Widespread use of encryption to protect communications will prevent fraud and other extremely dangerous forms of crime. At the same time, encryption poses challenges to law enforcement agencies.

Unfortunately, the policies of the US government have served to inhibit the deployment of robust encryption. The Subcommittee and the Congress will have to revisit the encryption issue this year. It has become clear that the current Administration policy is not viable, from either a privacy perspective or a law enforcement/national security perspective. As a recent study issued by the Center for Strategic and International Studies concluded, "Continued reliance on limited availability of strong encryption without the development of alternative sources and means will seriously harm law enforcement and national security." It has become clear that there is no answer to the encryption issue that will guarantee the government access in all cases. The current policy of government controls on encryption will not work in the decentralized, competitive, global environment where criminals will always be able to obtain strong encryption to shield their communications. The sooner strong encryption is widely deployed in wireless systems for the rest of the population, the sooner privacy will be protected and fraudulent theft of services will be curtailed.

V. CONGRESS SHOULD HOLD THE FCC TO THE FULFILLMENT OF ITS RESPONSIBILITIES TO PROTECT NETWORK SECURITY AND PRIVACY

It would accomplish little to outlaw handheld scanners if the wireless (and wireline) switches themselves were vulnerable to hacking and unauthorized interception. Therefore, Congress should make sure that network security is properly addressed. There is in fact a pending proceeding at the FCC on network security, under CALEA. CALEA requires carriers to design their systems to be readily tappable by law enforcement. However, the same backdoors that give law enforcement access create new vulnerabilities for hackers to exploit. Congress was concerned to ensure that the changes made to accommodate law enforcement interception in compliance with CALEA did not increase system vulnerability. Therefore, CALEA included several important security provisions. One is section 105, entitled "Systems Security and Integrity." In this provision, for the first time ever, Congress mandated that telecommunications companies "shall ensure" that interceptions within their switching systems can occur only upon the affirmative intervention of an individual officer of or employee of the carrier. Section 301 of CALEA requires the Federal Communications Commission to issue regulations governing system security. Unfortunately, the FBI has used the proceeding under Section 301 to urge the Commission to establish rules for non-technological aspects of surveillance operations, ranging from the personnel practices of carriers to their processing of surveillance orders. Meanwhile, the security concerns about the vulnerability of computerized surveillance functions that prompted Congress to enact Section 105 of CALEA are not receiving adequate attention.

Concerns with network security go beyond CALEA. The FCC has both the authority and the responsibility under section 1 of the Communications Act, 47 U.S.C. 151, to ensure the security and reliability of the nation's communications networks. In the past, this Subcommittee has paid particular attention to reliability concerns in the public switched telephone network. In an increasingly decentralized and complex system, full attention to network security issues requires a broad look at the network security features available to users, including flexible and robust encryption. We urge the Subcommittee to work with the Commission on this pressing concern.

CONCLUSION

Congress should assure that current laws adequately protect privacy in light of ongoing developments in telecommunications technology. The two bills before the Subcommittee are modest steps towards that goal. The privacy protections in the Wireless Communications and Public Safety Act are critical to user confidence. In addition, we urge an amendment at an appropriate time to that bill to make it clear that government agencies can access location information for investigative purposes only pursuant to a probable cause court order. We also urge the Committee to address the question of the design mandates that are being imposed by the Commission on carriers under CALEA, especially the mandate to turn wireless phones into location devices controlled by the government. Finally, we note the failure of the FCC so far to address the network security and privacy implications of the surveillance features that are being designed into switches to comply with CALEA, and urge the Subcommittee to hold the Commission to its responsibilities.

Thank you again for the invitation to testify today. We would be happy to answer any questions, and we look forward to working with the Subcommittee to realize across the board the privacy principles reflected in these bills.

Mr. TAUZIN. Yes, thank you very much, Mr. Dempsey.

The chairman would like to remind members at this time that there is a very important demonstration today on Capitol Hill in room B-339 of the Rayburn building in the basement. The Business Software Alliance is putting on a demonstration entitled, "Talking Technologies." It is a Members-only personal demonstration of cutting-edge software and Internet technologies related to, indeed, these very issues. So you may want to drop in to B-339 and catch up on some of the latest software technologies in this area, because these privacy issues are going to arise. And I know Mr. Oxley and other subcommittees of our committee will be working on e-commerce issues and will have a great deal of interest in these areas. It starts at 12:30 today. 12:30 until 1:30. So please stop by.

I thank you again, Mr. Dempsey.

And one final witness, Mr. Amarosa, the Vice President of Public Affairs of TruePosition, Incorporated.

STATEMENT OF MICHAEL AMAROSA

Mr. AMAROSA. Good morning. Good morning, Mr. Chairman. Good morning, members of the committee. My name is Michael Amarosa, and I am the Vice President for Public Affairs of TruePosition, which is a leading provider of wireless-enhanced location technology. I would like to summarize my testimony and ask your permission to submit the entire statement into the committee record.

Mr. TAUZIN. It is so ordered.

Mr. AMAROSA. Mr. Chairman, I would like to commend you and other members of the subcommittee for your support of the Wireless Communications and Public Safety Act, which was unanimously approved by the committee last year. TruePosition supports the passage of this important legislation because of its critical nature to the safety and welfare of the millions of wireless subscribers.

I would like to talk about two issues this morning. First, the designation of 911 as a nationwide, universal emergency number. And, second, the need for liability parity for cellular, PCS, and other commercial mobile radio service carriers that provide enhanced 911 services. By this I mean wireless parity with wireline.

E-911 refers to the ability of a wireless carrier to determine the actual location of a caller within a carrier's system. The caller's location and the call itself simultaneously are routed to the appropriate public safety answering point, the so-called PSAP. TruePosition and several other location technology companies have worked diligently to develop a workable technology to achieve this important goal. Our system is a network-based solution that is placed on the existing cellular and PCS networks. Thus it can easily be deployed, integrated, and managed with existing wireless 911 networks and can be used by the 68 million wireless handsets in use today.

Let me emphasize: This is not tomorrow's technology. This is today's technology. TruePosition is installing such a system in Great-

er Harris County in Houston, Texas, following successful tests in many cities, including a 350-square-mile test in southern New Jersey. Wireless location technology is commercially available today and can be quickly extended to every single wireless subscriber in the United States without any modification to the existing phones.

To achieve our mutual goal, designating 911 as the universal number is critical. Studies have indicated that the number of wireless users is increasing at a rate of 10 million per year, and by the year 2001, there will be more than 100 million wireless users in the United States alone. Contrary to what most Americans believe, 911 is not the universally used number across the country for calling emergency law enforcement, fire, and medical personnel. For example, various jurisdictions using phone numbers such as *77, *MSP, *99, *55 just to name a few. Americans who are accustomed to dialing 911 as the universal may be less than able to elicit timely emergency responses when traveling in these jurisdictions.

As you know, wireless users are inherently transient. They routinely travel into different service areas, including other States. These users are not only less likely to know or be able to identify their location, they are even less likely to know the designated emergency number in that particular area. The universal number will enable the dispatchers to communicate and to locate the wireless phone subscribers in an emergency situations that are far beyond the reach of a wireline phone.

My second point, Mr. Chairman: Last year the FCC required wireless carriers to identify the location of emergency wireless callers using automatic location technology. It is not enough, however, to create potential for this remarkable lifesaving tool without also protecting those who use it and implement it. Unfortunately, this is a situation we face today. Wireless carriers do not have the same liability protections as traditional wireline carriers. This results in unnecessary and unfair exposure to tort liability for the wireless carriers. TruePosition believes one of the primary obstacles to the deployment of location technology services is the carrier's potential exposure to lawsuits. This is an issue to be addressed by the Congress and we commend you for your efforts to do so.

Mr. Chairman, let me share one startling fact with you. One out of every two phones, wireless phones, will call 911 sometime this year. And the emergency dispatcher may not know where they are to be located. It is important to remember that E911 is about ordinary citizens who purchase wireless phones for personal safety and for emergency use. Policymakers need to make E911 a reality and to ensure that the emergency caller can be found.

I thank you very much for this opportunity.

[The prepared statement of Michael Amarosa follows:]

PREPARED STATEMENT OF MICHAEL AMAROSA, VICE PRESIDENT FOR PUBLIC AFFAIRS, TRUEPOSITION, INC.

I. INTRODUCTION

Mr. Chairman and distinguished members of this Subcommittee, my name is Michael Amarosa and I am the Vice President for Public Affairs of TruePosition, Inc., a leading provider of cellular telephone-based Enhanced 9-1-1 location technology based in Vienna, Virginia. Thank you for providing me with the opportunity to testify before you today on behalf of TruePosition.

We would like to take this opportunity to talk briefly about two important and timely issues. First, we support the Wireless Communications and Public Safety Act of 1999 introduced by Rep. Tauzin. This bill proposes to designate "9-1-1" as a nationwide universal emergency number. We support the passage of this bill because it is critical to the safety and welfare of millions of wireless subscribers. Second, we would like to discuss briefly the need for legislation that limits liability for cellular, PCS, and other commercial mobile radio service ("CMRS") carriers that provide Enhanced 9-1-1 services. Enhanced 9-1-1 ("E9-1-1") refers to the ability of a CMRS carrier to determine the actual location of a caller within the carrier's system and relaying that location to the appropriate public safety answering point ("PSAP") along with the emergency call itself. Without such legislation, CMRS carriers will be exposed to unlimited and unintended tort liability from mobile wireless users. This will permit parity with wireline E9-1-1 on the liability issue.

TruePosition, like several other companies, has worked diligently to develop a workable technology that enables emergency rescue personnel to reach and treat trauma victims. The TruePosition Wireless Location system is an overlay that is placed on top of existing cellular/PCS phone networks. Thus, it can be easily deployed, integrated and managed with existing CMRS and 9-1-1 networks. TruePosition's system can pinpoint an emergency wireless caller's location and immediately forward that information to a PSAP closest to the caller. The Federal Communications Commission ("FCC") refers to this as Automatic Location Identification ("ALI") technology. ALI enables emergency rescue personnel to reach and administer care to crash and other trauma victims during the crucial "golden hour" immediately following an accident, even if the victim is unable to indicate her or his location. Moreover, TruePosition's ALI technology is now capable of performing ALI for all existing types of analog and digital CMRS networks. In fact, TruePosition is installing such a system in Houston today, and has already concluded successful tests in New Jersey. In short, ALI technology is workable and available now, and can quickly be extended to each of the more than 60 million current CMRS subscribers.

I should emphasize that the inability to indicate one's location is not uncommon. This is also still the case in some areas for wireline E9-1-1. For instance, with emergency calls made from traditional landline phones the signaling information associated with the call passes the caller's phone number on to the phone company and then to the PSAP. The phone number of course denotes the caller's exact address, including one's apartment number if applicable, or even the specific location of a payphone. Thus, the little boy or girl who knows enough—and perhaps only enough—to call 9-1-1, or the sick or injured adult that is not sufficiently coherent or otherwise hangs up in distress or is disconnected before providing her or his actual address, can still have emergency care immediately sent their way. The emergency operator, examples of which we have all seen on television news shows and docu-dramas, already knows exactly where the caller is.

This is not the case, however, with emergency calls made from cellular, PCS, and other CMRS phones. CMRS carriers have not yet deployed equipment to enable themselves to locate users who dial 9-1-1 or other emergency numbers, even though such equipment has been readily available from TruePosition and others. Ironically, a recent poll indicates that two out of every three CMRS users believe that their phones are ALI-capable. In other words, most CMRS users are currently under a false sense of security because of their belief that, if they dial 9-1-1, the PSAP will automatically know the user's exact location. This poll also clearly shows that people want the added security that E9-1-1 provides and are willing to pay for protection. Thus, the issue is not consumer demand, but rather availability and carrier implementation. Recently initiated FCC proceedings, however, could invite delays of ALI deployment. Any FCC waiver of its rules or other action that relinquishes a carrier's responsibility to locate all users in a market by 2001 will have dramatic consequences . . . lives lost or seriously impaired.

First, depending on the technology used by the particular CMRS carrier the phone number is not always passed on to the PSAP. Second, even if it is that phone number does nothing to indicate where the caller is located; the caller can be anywhere within the PSAP's jurisdiction (or even outside that jurisdiction), and ANY delay in locating the caller can very well be the difference between life and death.

Indeed, in my 24 years in the public safety , I have learned that reduction in response times to emergency callers is the most crucial factor in saving lives in emergency situations. Further, I have worked closely with both public safety officials and emergency dispatchers and each have expressed increasing concerns about the need for technology and information systems to locate wireless emergency calls. In essence, although medical technology and procedures have advanced light years, the ability to locate citizens in need of those technologies and procedures on the nation's

roadways has not. Unfortunately, despite the FCC's remarkable efforts to facilitate the development of technology to ensure the safety of wireless users, its recent regulations regarding wireless E9-1-1 leave unintended holes in the process and essentially do not adequately address the two very compelling issues I highlighted earlier. Fortunately, your proposed legislation can. The overall effectiveness of E9-1-1 technology would be forestalled without the adoption of a universal emergency number and the balanced resolution of wireless carrier liability.

Mr. Chairman, we commend you and your co-sponsors for introducing the Wireless Communications and Public Safety Act of 1999. We hope that this legislation will address these concerns and it is our hope that it will help overcome the major roadblocks preventing the effective and immediate implementation of wireless E9-1-1.

II. SUPPORT UNIVERSAL E9-1-1 LEGISLATION

The universal E9-1-1 legislation is particularly crucial for wireless users for several reasons. First, studies indicate that the number of CMRS users is increasing at a rate of 10 million per year and that by the end of 2001 there will be over 100 million CMRS users in the United States. Contrary to what most Americans perceive, 9-1-1 is not universally used across the country for direct access to emergency law enforcement and medical personnel. For example, throughout the country jurisdictions utilize phone numbers such as *77,*MSP, and*99 in lieu of 9-1-1. Thus, Americans trained on the use of 9-1-1 as the universal emergency beacon may be left unable to elicit timely emergency care when traveling in these jurisdictions.

Second, wireless users are inherently transient. In fact, wireless users routinely "roam" into other service areas, including areas in distant states. As such they are not only less likely to know or to be able to identify their location in an emergency, they are even less likely to know the designated "emergency" number in a particular area if it is not 9-1-1. A universal emergency number will enable emergency dispatchers to communicate with and locate these CMRS phone users—whom the industry refers to as "roamers"—in emergency situations that are far beyond the reach of a wireline phone.

I should emphasize that it is not our goal to preempt a state's right to designate an emergency number for use by its residents. Our goal simply is to promote safety. And we can demonstrate that a nationwide emergency number will promote safety and save lives. And that is and should be a principle goal of every legislature—state and federal. This goal is challenged, however, each year as the popularity and convenience of wireless phones increases. In 1998 alone, approximately 98,000 daily calls to emergency numbers were made nationwide, and at least 30 percent of those emergency calls were made by wireless users. That translates into more than 36 million calls for CMRS subscribers alone in 1998, and that number will increase exponentially as the number of wireless phones increases. In fact, studies show that a high percentage of consumers that subscribe to CMRS service at least in part for safety reasons is such that 9-1-1 has become synonymous with emergency assistance. It is, to the majority of telephone users, a lifeline to emergency services. Young children recognize it as such and the number has been and continues to be a vital lifeline to expedient and essential emergency care services to wireline users. Wireless users warrant and require the same provision of care nationwide.

III. LIABILITY LIMITATION FOR CMRS CARRIERS

In 1998, the FCC released the second in a series of orders establishing key components to the rapid and efficient deployment of emergency wireless telecommunications services. As you know the 1998 Order required CMRS carriers to identify the location of emergency wireless callers via Automatic Location Identification technology. ALI technology is the most effective resource that public safety organizations have to access trauma victims and reduce the loss and impairment of human life in connection with 9-1-1 calls made from CMRS phones. TruePosition and other E9-1-1 providers commend Congress and the FCC for their unflagging efforts to work with the CMRS and public safety industries to ensure the safety and welfare of wireless communications users. It is not enough, however, to create the potential for such a remarkable lifesaving tool without also protecting those who are required to implement it. Unfortunately, that is exactly what the FCC has done.

CMRS carriers do not have the same liability protections as traditional landline carriers. Existing state tariffs allows landline carriers to insulate themselves from tort liability in connection with the provision of 9-1-1 service, including the relaying of number and address information of the caller. In contrast, pursuant to Section 332 of the Communications Act and orders of the FCC, CMRS carriers are not subject to filing tariffs relating to the services they offer, thus they cannot receive com-

parable liability protection at the state level. Although the CMRS industry has petitioned for the authority to resolve carrier liability issues by filing federal tariffs, the FCC has declined to provide wireless carriers with such authority. Accordingly, CMRS carriers willing to provide E9-1-1 services that necessitate significant modifications to their wireless networks lack the opportunity to attain the same protections as landline telephone carriers that provide 9-1-1 service without having to modify their networks. The FCC's reticence not only unnecessarily exposes CMRS carriers to unlimited tort liability from CMRS users, it undermines its statutory goals and contravenes its policy on regulatory parity for like services.

This is too harsh a consequence to impose on carriers, especially after they will have invested both time and money to locate wireless callers more quickly. More important, however, it is delaying the implementation of E9-1-1 for tens of millions of CMRS users. The FCC's rules do not require CMRS carriers to fully implement E9-1-1 ALI technologies until October 2001, and even then only if certain pre-conditions are met. TruePosition believes that one of the primary impediments for CMRS carriers to implement ALI capability immediately is their exposure to liability—including the defense of a potentially never-ending stream of unwarranted lawsuits—that could result from their provision of ALI services. In short, the FCC's reluctance to authorize CMRS carriers to file federal tariffs or otherwise provide immunity for the offering of wireless E9-1-1 service that parallels that enjoyed by landline 9-1-1 service providers is delaying CMRS carriers' provision of this life-saving service. The FCC's failure to perceive this cause and effect impedes public safety.

In addition, the FCC's over dependence on state regulation of carrier liability contravenes stated national E9-1-1 goals and minimizes the central role that liability protection has played in the effective administration of wireline E9-1-1. Since 9-1-1's inception in 1968, wireline carriers have been afforded the protections of state tariffs. Thus, the FCC's claim that a carrier exemption from liability "is not necessary to the inauguration of E9-1-1 service" is contrary to the uniform practice by all carriers in all states.

Safety and emergency services are an imperative concern for the men, women, and children of this country. In fact, studies indicate that a large percentage of all wireless users purchase their phones, in part, to protect their safety. Yet, the FCC's most recent regulations have the unintended effect of hindering the rapid and efficient deployment of advanced emergency telecommunications services. Notwithstanding, TruePosition commends Congress for taking steps to bring about the legislative reform that will ultimately guarantee the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for wireless E9-1-1 communications. Any delays in the implementation of Wireless E-9-1-1 location technology will result in serious consequences for our citizens and thwart the efforts to provide more effective and efficient public safety services.

IV. CONCLUSION

I look forward to the successful passage of in its present form, offer any further help TruePosition can provide the Subcommittee in its deliberations, and would like to thank you again, Mr. Chairman, for giving me this opportunity to testify before you. I would be delighted to answer any questions you may have.

Mr. TAUZIN. Thank you, Mr. Amarosa.

The Chair now recognizes himself and other members for 5 minutes for questioning. And I will begin.

First of all, Mr. Wheeler, I want to get to the issue of siting. The ranking member, Mr. Markey, pointed out that this year's bill does not contain the language of last year's effort dealing with siting on Federal properties. And, obviously, we are going to get to that issue in Rock Creek Park.

There are three elements to this problem. One is having enough cells out there so that people can use their mobile phones or equipment in an emergency. The second is having a common number. And the third is having a locatable capability so that, in fact, we can take the search out of search and rescue. All three are critical to saving lives. And the bill contains, indeed as you all outlined and as Mr. Shimkus has filed, excellent provisions on the last two, on the common calling number and provisions for liability protec-

tion, privacy protections, and yet, at the same time, locatable technology so that when someone calls on a wireless phone Mr. Hanna, your office can know where he is just as readily as you can when he calls or she calls on a wired phone. Critical elements.

But let us turn to the first element. Now I am told that much of the problems of 600 communities or 500 communities having "just say no" policies to new siting have been, in some ways, ameliorated over the last year. That there has been much more cooperation and cell sites are now much more available, although there are still problems and holes in the safety net. Would you give us an update on the cell siting issues and the problems for this country?

Mr. WHEELER. Thank you, Mr. Chairman. I think that you have probably characterized it correctly. It is the old 80-20 rule. You know, I am not worried about the 80 percent that are really out there promoting safety for their citizens, but what about the 20 percent?

Mr. TAUZIN. Yes.

Mr. WHEELER. You know, I tried to suggest in my comments that maybe there is a role for the FCC in this, different from the role, perhaps, we have asked them to do before. And perhaps there is a role for this committee and the Congress in helping the FCC get there because obviously, if I were sitting in Tom Sugrue's shoes, I hear differing reports from Members of Congress too. Some say do it; some say don't. And maybe there is a way we can work our way through it.

For instance, let me just suggest that a policy statement from the FCC intended for the use of local zoning authorities, for judges that have to review those decisions of the law saying, hey, this is different. This is not siting a McDonald's. This is talking about public safety. This is talking also about building a competitive national pathway. And some kind of a serious message, not some "on one hand and on the other" kind of comment, but a serious message saying, Mr. County Commissioner, look at this differently. There are serious issues here that you need to look at.

Mr. TAUZIN. What you are saying is to the communities that makes zoning laws, a strong message that, look, we don't want to interfere with your zoning laws. You have a right to make those decisions. But, for heaven's sake, look at this; take this seriously. Look at it as a different application than the siting of a McDonald's or some other zoning issue you might have.

Mr. WHEELER. Yes, sir.

Mr. TAUZIN. What about public agencies? Because we are going to turn to Ms. Finnerty in a second and the Park Service. What is the message here? We have left out the provision in the bill again, spelling out the leasing policy for the Federal Government, so that we would get more Federal sites available for tower siting, so that Rock Creek does not have to wait, even I think it is 75 days, if I might make a point, Ms. Finnerty, my understanding is that by March 3, 30 days have run on the assessment, public comment completed April 3, then by April 16, 2 weeks, final decision will be made on Rock Creek. That is 75 days. Is that correct?

Ms. FINNERTY. That is correct.

Mr. TAUZIN. I am told that is correct. So we are talking about another 75 days after a year of bureaucratic and company discussions and applications and back-and-forth. What is the message to public agencies like the Park Service? Is this process too slow? Is this Rock Creek Park, and the problems of people having access to cellular emergency services in that area, is that a problem still endemic around the country? What is the message to public agencies here? If you want to give that message to localities.

Mr. WHEELER. The answer, Mr. Chairman, is it depends on the agency. The Bureau of Land Management has done a superb job.

Mr. TAUZIN. Okay.

Mr. WHEELER. They have got an expedited process. They have got a good fee schedule. It works. For some reason, the Park Service hasn't ever—it was June 1994, by the way, 1994 that Bell Atlantic first approached the Park Service.

Mr. TAUZIN. We have some charts. I want to take you through this. I want to show what you are talking about and I want to ask Ms. Finnerty why it is so hard to get this approved.

Here is a physical look at the current light poles at the tennis center which would be used to put up the cellular service. On that same tower, is my understanding.

Show us a view next of what the tower would look like when you add the cellular antenna. Have them next door to each other. Hold them up where we can see.

It is very little difference, as I can see. Is that correct?

Let us look at the next pictures, which are the pictures of the current building configuration at the tennis center and what would be added in order to have the equipment building to service that tower site.

No, that is the last one. That is the maintenance yard. But in the maintenance yard, we are talking about the addition of a small building and a pole, right? That is the only difference. And if you go back to the two center pictures, if you have them there, it is simply the addition of a small add-on to the building as I am looking at it here. If you don't have them I have them here.

Yes. The before and after, the before is here and after is here. A very small addition to the building.

Why on earth, Ms. Finnerty, does it take us from 1994 until today, where we finally got an agreement coincidentally the night before this hearing again to complete it in 75 days?

Why does it take so long when there is a clear public need and those changes are so minor to the look, the feel, the taste of Rock Creek Park?

Ms. FINNERTY. Yes, Mr. Chairman, with your permission, I have an expert here with me who can answer questions.

Mr. TAUZIN. Well, you surely can have my permission. And my time is up, but I want someone to respond before I finish. So if you will introduce and have someone respond.

Ms. FINNERTY. All right. I will introduce John Parsons who is the associate regional director in the national capital region.

Mr. TAUZIN. All right. The question specifically is: Recognizing that those are the only changes that I am aware of that require physical alterations to the park—a piece of equipment on a light pole, the addition of a small building and a pole, and the addition

of an add-on to the current building at the tennis center—if that is all it takes for us to give some modicum of safety and coverage to all the folks who use that wonderful park and who put their lives at risk sometimes because they don't have emergency access to wireless services there, why does it take so long for our government to say, okay, do it?

Mr. PARSONS. Mr. Chairman, if I may, I would like to go through what we have gone through.

Mr. TAUZIN. Yes. Well, do it quickly because my time has expired and I have other members and I want to let them ask questions. If you will just give me a quick answer, why did it take so long?

Mr. PARSONS. We received the application last May. Mr. Galvin's commitment to this committee was that we would come to the point in 60 days as to whether we would say yes, no, or maybe.

Mr. TAUZIN. You said maybe.

Mr. PARSONS. We said maybe. We said maybe. What we learned, which was no surprise to us, is managing parks in this city is like managing in a fishbowl. We had plenty of advice on both sides of this issue. And it became, very quickly, controversial. And the reason it did is people presumed that we would not be able to serve the entire park with these one or two antennas. And they were right. We were able to serve only 30 percent of the park with these two antennas, as submitted to us by the applicant.

So we decided, and we erred, that we would hire a consultant to help us with this issue. Because, as we have heard here this morning——

Mr. TAUZIN. You don't have enough people at the Park Service to do it, you have to hire consultants?

Mr. PARSONS. This is a total new industry to us. What we were trying to do was to assure ourselves and the citizens who use the park that they indeed would be safe in the park and they wouldn't be dropping 70 percent of the calls.

So we hired a consultant who had expertise in this matter to assist us in determining how many antennas we would need to guarantee the public their safety. Unfortunately, the cost of that reached $300,000. And when we submitted the proposed bill to the applicant, they had concern, which I presume has been brought to your attention.

We have now concluded that we are not going to do that. We are going to do an environmental assessment on the matter that you just showed on those two exhibits. We are not going to deal with the cumulative impacts of antennas in our park. We are not going to deal with how we will serve the rest of the visitors in the park. We are going to deal with these two applications. It is a much more simple process, one we can certainly complete in 75 days.

Mr. TAUZIN. And which could have been completed in 75 days last year.

Mr. PARSONS. Yes, it could have if we did not try to respond to the public concern that was expressed about the potential for many, many antennas in this park.

Mr. TAUZIN. I promise all of you this is the last question. Thank you. But here is the frustrating thing: I mean, here is a company that wants to start the process. You say it covers 10 percent, 20 percent, 30 percent. They want to start the process of providing

protection. And you hold it up for a year with arguments over whether or not you wanted to put up more towers and cover more areas.

That is not the message I got. The message I got was that it was constantly being held up over environmentalist assessment reports and records and reviews and the agency was slow to approve this request which would serve a large portion of the park, if not all of it. And I just want you to know the frustration Mr. Markey and I felt with this when we thought we had an agreement that, in fact, in 60 days the application pending would be addressed and approved on its merits, yes or no. And, instead, we are now a year later—well, almost. It was 1994 when the Park Service was first approached. And now you tell us, yes, we could have done it in 60 days last year had we agreed simply to look at this application and approve it or dismiss it.

Just know how frustrating that is. Know how frustrated our entire committee is, that all of us are watching, as Mr. Wheeler said, these safety net holes and people dying and people not getting emergency services and how many people who are walking around with serious debilitations that could have been addressed properly had someone gotten to them in time?

This new assessment is going to cost $40,000. That's going to be added to somebody's phone bill, I suppose, people using the park, to approve those changes that could have been approved last year. When this is all said and done, my committee, we are going to look at the total cost of this delay, not just in dollars, but in incidents in that park. And we will all be ashamed that we didn't do a better job, all of us, that we didn't get it done sooner. And I am finished.

I just want to lay it heavily upon all of us that we can't waste another day while people out there dying and not getting help and not getting assistance because we foolishly put up all these bureaucratic barriers to getting assistance out there for them. Americans would be ashamed of us to know that it took a year for us to get approved something that could have been approved in 60 days. You have to do better. The Chair yields now to the gentleman from Tennessee, Mr. Gordon, for questioning.

Mr. GORDON. Ms. Finnerty, you don't need me pounding on you right now, but let me just make a quick statement. I recognize that you are going through reorganization. I recognize that the Park Service doesn't have adequate funds to meet the needs that you have. And I also recognize that you have a special charge of maintaining our national heritage in so many ways and that you don't just cavalierly make changes, because, once you do, you can't get many of these things back.

I have had similar situations where the Park Service—not only on this Rock Creek matter, but just on trying to get through the bureaucracy, trying to get something done, and I hope that maybe whatever comes from here can be an exercise that might be learned in other areas too. The Park Service has an important charge in our country but, goodness, you have got to be able to do a better job and be able to get answers and be responsive or you are going to lose—well, I won't go in to this now—but you are lose credibility and when you lose credibility it is going to make it harder for us

to get your funds to get things to help this very important job that you do.

Mr. Wheeler, in your testimony, I think the thrust of it was that wireless saves lives. And with that in mind, I understand that many or some of your members anyway or companies are applying to the FCC for waivers to postpone the implementation of phase two of the emergency 911 rule so that that they can explore the possibility of using handset-based technology which may not be available in time. And we have heard this morning that in phase two the rules require the automatic location information to be available the beginning of October 2001.

And my question would be—the start of my question is: How long of a delay do you think would be required? And you gave a statement earlier today about the 41,000 calls that were being made earlier, how many lives will be lost or threatened during this delay?

Mr. WHEELER. Let us start with the E911 rule. The E911 rules were rules that we at public safety developed so let us start with the fact that those rules were ones that we literally went to the FCC and said, will you please impose these. Because I don't think there's any question as to where we are on the implementation of location capabilities.

What we found, however, is that it is one thing to say there should be location and then there is something else to implement it. One of the implementational problems that I reference in my testimony is the fact that you have got so many different agencies out there that you have to deal with at the local level to develop the relationship so that the E911 call goes through. And each of them—it is the old 80-20 rule again. There are 20 percent of those who say, look, now we are going to do it different in my little corner of Tennessee or whatever.

Mr. GORDON. I don't mean to cut you short, but I have a limited amount of time here. What, approximately, percent of your members are going to ask for delays?

Mr. WHEELER. I don't know the answer to that.

Mr. GORDON. What would you guess?

Mr. WHEELER. I really don't know to be honest.

Mr. GORDON. Would it be less than half?

Mr. WHEELER. I am not trying to avoid your question, but what I am trying to point is that the determination of where are you on implementation is first a determination of where are you with the localities who can use the information once it is given to them. They are not ready for it. We have to have that relationship before we can build it.

Mr. GORDON. I don't mean to be discourteous. I just have a limited amount of time.

Mr. WHEELER. I am sorry.

Mr. GORDON. When do you think you could get to us that information?

Mr. WHEELER. I will try to do it with all dispatch, Mr. Gordon.

Mr. GORDON. Okay. And let me go to the FCC here. I assume that, as these waivers come to you, are you going to provide some—what is going to be your criteria? Are you going to do some kind of cost-benefit analysis? What do you see happening?

Mr. SUGRUE. Absolutely, in the public interest. As I understand this, rather than characterize this as necessarily postponing the deadline, it is to shape the implementation requirements so that a different technology isn't sort of ruled out just because the rules were written with one particular type of technological solution in mind.

When the Commission wrote these rules, it assumed that the only approach to provide this service was a network-based solution. You build it into the cell sites around the network. Since then, some folks have proposed what they call a handset-based solution that would work in conjunction with the global positioning system, the satellite system that provides very precise location information. If our rules were applied literally, no one, no carrier, no system using a handset-based approach could satisfy our requirements. Not because we wanted to rule it out, because we wrote the rules in a way without that in mind.

I think it is sort of that the various reasons why, procedurally, this is being styled as a waiver. I would almost prefer to think of it as a rule modification or update so we have an approach that doesn't inadvertently rule out one technology that may be very promising. So we are going to look at things like if you do the handset-based approach, which would involve a ramp-up, you might be required to start earlier so that the deadline may, in some sense, be stricter.

Mr. GORDON. Will you looking at, I mean, maybe the difference in accuracy? I mean, whether it is a, you know, minimal amount or—and also cost?

Mr. SUGRUE. One of the tradeoffs will be whether the current rule provides for location information with 125 meters on a measured average basis. Now that's about 400 feet. One thing we are going to ask is if you are going to ask for a waiver, will you be able to do better then that if you get the waiver? So can you get inside 125 meters as a standard? And one of the things we might do is say you get the waiver if you commit to high accuracy levels.

Mr. GORDON. So are you going to present to us some type of what these criterion are going to be? Are you going to be more specific about it?

Mr. SUGRUE. Sure. We could present that. Yes.

Mr. GORDON. Thank you.

Mr. TAUZIN. Thank you, Mr. Gordon. Mr. Oxley for a round of questions.

Mr. OXLEY. Thank you, Mr. Chairman.

Mr. Sugrue, welcome back.

Mr. SUGRUE. Thank you.

Mr. OXLEY. Phase I, as you know, was for carriers to provide cell site and sector and call-back numbers. That was to be implemented last April. As I understand it, it is only about two, 3 percent of the country that has complied with Phase I today. Is that about correct?

Mr. SUGRUE. The last figure I saw was 7 percent, but small, yes.

Mr. OXLEY. Okay. And, as you know, with Phase II is relocation and the end date is October 1, 2001. What has the FCC proposed in terms of the implementation of Phase II and is there any reason

to think it would be analogous to Phase I or is there some hope that it might accelerate?

Mr. SUGRUE. Well, NENA did a survey as to what were the problems with Phase I. By far the largest problem—among PSAPs, public safety answering points, by far the largest problem identified was lack of funding. Those funding issues are being addressed at the localities with the industry. I personally consider it unfortunate that the provision in the last year's legislation that would have assisted that process was taken out. I understand why. But I would urge the subcommittee there is a way to sort of address that issue, because that has been sort of the major problem.

The hope is over the next couple of years that those funding issues one way or another get addressed because we can require the carriers to implement all we want if on the public safety side, there isn't the wherewithal to make those investments and the network upgrades. It won't work.

Mr. OXLEY. Well, it is pretty obvious that the technological obstacles have pretty much been overcome, so now all of a sudden—well, not all of a sudden, but essentially the barriers now are financial, political, and legal. Is that a safe assumption?

Mr. SUGRUE. I would say those are major barriers, yes. I wouldn't quite rule out all the technological things, but there has been more progress on the technology than on all those other fronts, yes.

Mr. OXLEY. I was struck by the discussion about Rock Creek Park and my experience in my home when I am here as to how quickly Bell Atlantic was able to get a monopole erected in our neighborhood, working hand-in-glove with VDOT. And, I mean, that thing came out of the ground so fast it would make your head swim. And it brought to mind and it brought home very starkly how quickly these folks can act if they really have a desire to do that.

Now, admittedly, we are near the Beltway and that has a major component to it. But there is, obviously, a difference in the agencies and how they cooperate in this area. It is most interesting. Of the three, in your experience—that is, financial, political, and legal—what is going to be the major obstacle? Is there one of the three that is more important or more of an obstacle than the others?

Mr. SUGRUE. Well, since my hands-on experience has been literally 2 weeks, I would have to say all three, in the course of that experience. The tower siting issue is absolutely critical and we have talked about why. It is not just quality of service. It is safety. It is competition so that new competitors can get out there. I would like to work with Tom Wheeler and CTIA to address that. However, the law seems pretty clear that the folks who have the lead are the State and local governments and so we will have to work cooperatively and maybe providing guidance but I don't see a lot of way clear to do some of the preemptive things CTIA would like us to do sometime.

If Congress would have provided us with more authority, at least on behalf of the wireless bureau, we wouldn't hesitate to exercise it. But Congress in its wisdom has drawn the line differently, as far as I see it, on that issue.

Mr. OXLEY. Well, and as you know, it was a balancing act that we were attempting, you know—understanding the real needs of local communities——

Mr. SUGRUE. Absolutely.

Mr. OXLEY. [continuing] and local leaders. I wouldn't say it was necessarily a bad experience that I went through, but clearly there were folks in our neighborhood that would not share that view. I had an experience in my district of erecting a monopole in a neighborhood, right smack-dab in the middle of a residential neighborhood. So I think we do have to be sensitive to local concerns and local zoning and local leaders and, obviously, that is what the law tried to reconcile, and it is obviously not all black and white.

Mr. WHEELER. Mr. Oxley, I think the point that you just made, the point that Tom Sugrue just made are right on target. We understand what this committee has said. We understand what the Commission has said, in terms of no, we will not preempt. And I guess what I was suggesting earlier and hoping that maybe we can open a new course. There is enough brain power here that we ought to be able to solve this.

Mr. OXLEY. Well, if I could just add this: We had a situation in our neighborhood where there was an offer to move that site to the other side of the Beltway on a commercial piece of property. And because of, in my estimation, the rush to get this thing done, it was essentially ignored. And we were, frankly, never given any real reason why the other location would have not made more sense. And I was never totally satisfied that it wasn't other than this rush to get this thing done under enormous pressure. And, to that extent, I think some of the local concerns were ignored.

Mr. WHEELER. I hope you get to the point where there is some kind of a statement that says to localities, as I said, this isn't the McDonald's. This isn't your average thing. This is about safety. Let us see how we can respect that while respecting local rights.

Mr. OXLEY. Thank you.

Mr. TAUZIN. Thank you, Mr. Oxley. Then for the final questions, then we will break for this vote, and I think we will wrap up. The gentleman from New York, Mr. Engel.

Mr. ENGEL. Okay. Thank you. Thank you, Mr. Chairman. I will try to hurry it up.

Essentially, we were frustrated in that we want to see this implemented by 2001 and frustrated at the waivers because everything seems to be delay and delay.

I want to ask Mr. Amarosa, since I am from New York and so is he, and I want to hear his accent.

I would like you, if you could explain, now I understand the network technology is there now. And going to the headset technology supposedly makes it more accurate. If we are talking about the difference between 100 feet and 400 feet, then what is the big deal? Why should we delay for accuracy that, to me, is inconsequential if we can implement this now onto the network solution? So could you comment on that?

Mr. AMAROSA. Sure, and I would happy to expose my accent to you as well, sir. I am from the Bronx.

Mr. ENGEL. I know where you are from, sir. We sound alike.

Mr. AMAROSA. I don't think we can hide that. I think what you have to look at, though, is two things. No. 1, I think that the network technology that is available today is in compliance with the FCC rules. And I think what you have seen through many of the companies that have utilized that network technology is that it is there. It is working. And it can come within the 410 feet at this given point in time. And I think that accuracy will be improved as time goes on.

The proposals on the other types of solutions that exist have not been fully proven in commercial applications or in field tests to date. Right now it is a hypothesis that it can do better and it will do better is what the intention is. And that we haven't seen. So that when you are dealing with the level of accuracy issue, I think you have to look at as well what can be done now and how well it can be done today. Tomorrow or the next day, a year from now, if there is something better that comes along I think that is part of the competition issue and the marketplace issue as to what can better improve that accuracy at that given point once that is proven.

Mr. ENGEL. Yes, Mr. Sugrue, why wait? Why impose all these other costs to consumers that may need to have to buy new phones as a result? I just don't understand why the delay? Everything is a tradeoff. And it seems to me if we are going to push it back, further back to 2001, is it really worth the delay to do all these waivers just to go from network to headset? I am not convinced. I can be convinced, but I am not convinced yet.

Mr. SUGRUE. Okay. I have just got to admit that I am from Queens. I may have lost my accent, but——

Mr. ENGEL. Okay.

Mr. SUGRUE. But I went to——

Mr. ENGEL. Shame on you.

Mr. SUGRUE. But I went to high school in the Bronx.

Mr. TAUZIN. You all sound kind of funny to me.

Mr. SUGRUE. We established this deadline of October 2001. We are not backing off that. What we are looking at is whether the way one measures compliance needs to be modified in light of competing technology that has emerged on the scene. That is pretty much it. We want that out there as soon as possible.

The carrier community has asked us to look at this issue and I am not in the position—I don't want to—I am not the technology proponent and they are not here to debate which one is better. We are going to be gathering comments on that. It seemed a legitimate request to come in because, again, at least as I understand it, just the way the measurements were defined preclude this other technology from satisfying this requirement.

Mr. TAUZIN. We thank you.

Mr. SUGRUE. Yes.

Mr. TAUZIN. Mr. Sugrue, we have to go make this vote. The Chair thanks you all for your attendance and your cooperation and your help. These bills will move fast, maybe as early as next week, if we have time pending the coming retreat. So if you have any additional comments or additional suggestions, get them to us quick. We thank you very much and we look forward to seeing you as we move these bills along.

The committee stands adjourned.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF JACKIE N. DUKES, PRESIDENT, RURAL CELLULAR ASSOCIATION

On behalf of the members of the Rural Cellular Association (RCA), I want to take this opportunity to thank the Subcommittee on Telecommunications, Trade, and Consumer Protection for this opportunity to submit comments on pending legislation: the Wireless Communications and Public Safety Enhancement Act of 1999 and the Wireless Privacy Enhancement Act of 1999. We applaud the subcommittee for moving expeditiously to consider these bills in the 106th Congress.

RCA is an association representing the interests of small and rural wireless companies providing commercial services to subscribers throughout the nation. RCA member companies provide wireless services to predominantly rural areas that have an aggregate population of more than six million people. Among our members' subscribers are entities and individuals who are involved in a range of community activities, including community and regional health care and safety operations. Many RCA members serve military installations. The association was formed in 1993 as a way to begin to address the very distinctive needs of rural cellular providers. RCA is a gathering place for companies to share problems and solutions covering a wide spectrum of industry concerns, such as marketing, roaming, fraud, billing, operations, customer service, and legislative and regulatory issues. We also serve as a clearinghouse to help rural carriers stay current with issues and actions impacting the industry.

More importantly, RCA member companies are distinguished not only by the size of their markets and customer base, but also by the relationship that we have with our customers. By virtue of our size and our valued role within the community, our customers are our neighbors and our friends. In some cases, RCA member companies that operate as cooperatives are owned by their customers. RCA members are integral parts of the communities in which we operate. We also are a critical part of the local economy, and we help to fund a variety of charitable interests within our community. RCA is more than another trade association; we represent the needs of rural America.

Precisely because issues covered in the two pieces of legislation before the subcommittee today have generated significant discussion and debate in recent years, RCA will confine its comments at this time to liability issues associated with the proposed Wireless Communications and Public Safety Enhancement Act of 1999.

RCA member companies have a great deal of information about the unique circumstances in which small and rural carriers now find themselves, and we stand willing to share this information on an ongoing basis with this subcommittee. We also are prepared to help our member companies understand how decisions made by this Congress and the Federal Communications Commission (FCC) impact service delivery and how our member companies can best implement the policy decisions made by this body and its regulatory arm.

As this Congress knows, the current state of the telecommunications marketplace is in flux as the legislative and regulatory branches of government and the industry work to make the transition to a more competitive marketplace. Together, we are exploring this grand experiment that has its roots in the Telecommunications Act of 1996. Many in Congress, many industry observers, and many of us in the industry recognize that the time is nearing for a reexamination of how the Act is being implemented, including an assessment of whether we are making progress in realizing Congress' legislative goal to make the industry more competitive. As small and rural carriers, we will be able to bring a very unique perspective to this issue by virtue of our size, customer base, and the nature of the communities that we serve.

By enacting the Telecommunications Act of 1996, the U.S. Congress committed the nation to a telecommunications policy intended to foster competition in the marketplace to improve consumer service. As small and rural wireless companies, we, too, are strongly committed to working with the Congress and the FCC to ensure a truly competitive marketplace. We take very seriously Congress' intent in the passage of the 1996 law that competition will ensure quality service delivery. As small and rural operators, we stand strongly on the side of delivering quality services to our customers. Over the long run, the survival of our companies and the well-being of our communities depend on a marketplace that enables us to compete effectively through the delivery of quality services. From a service delivery and marketing per-

spective, that is our competitive advantage! Ultimately, the consumer will be the beneficiary; but, first and foremost, we must be able to compete.

Our primary interest at this point is to ensure that the FCC does not misinterpret the will of the Congress and so overburden small and rural companies with unnecessary regulations as to make it more difficult, if not impossible, for us to compete effectively. Any governmental action that makes it more difficult for us to meet our customers' needs or unfairly tips the fragile scales of the competitive marketplace makes it more difficult for us to do business in the way our customers want and demand.

Like many in this nation, we are very supportive of actions taken by government at all levels to improve the ability of the nation's infrastructure to meet the needs of all Americans, especially at times in which people require emergency services. The Wireless Communications and Public Safety Act of 1999 would designate 911 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and to request assistance. Although this legislation applies both to wireline and wireless telephone service, the membership of RCA recognizes that the goal of the legislation poses some challenges for consumers in small and rural areas.

As companies serving small and rural areas, we know from experience that 911 services save lives in rural America. Yet, we must recognize other fundamental realities as well. First, it is critical that legislation enacted in this Congress to designate 911 as the universal emergency telephone number for both wireline and wireless telephone service includes a provision to provide immunity from liability for providers of wireless 911 service to the same extent as provided to local telephone exchange companies. And second, this immunity from liability should be a uniform standard provided by the federal government.

The need for immunity from liability has been stated many times and on many occasions before the subcommittee. Local telephone exchange companies already enjoy this immunity; so, too, should wireless carriers. This Congress has demonstrated time and again a sensitivity to the fact that we live in a highly litigious society. Moreover, as much as we would like to acknowledge and recognize the sophistication of current day technology, the practical reality is that technology—through no fault of the carrier—has not always kept pace with the public's ever burgeoning expectations in the telecommunications arena, especially as it relates to emergency services. Newspapers nationwide often carry stories about people unable to access 911 emergency services. In fact, just this past week, newspapers were filled with stories about the failure of 911 services in New York City, one of the largest population centers in the world. For those of us providing services in rural areas, we can provide anecdotal information about incidents in which emergency services—again, through no fault of the carrier—might not have functioned optimally.

Ultimately, it is important for the national public interest that universal 911 services are available. But, it is equally important to recognize that this means we will be providing 911 services for those who are *not* subscribers to our systems or, perhaps, to any wireless system. Without some protection, there is no universal methodology to limit a carrier's liability for this activity. Since small and rural carriers will be required by the federal government to provide this service, it is important that we have immunity from liability for events, circumstances, and technologies that are beyond our control. Rational risk management is crucial for small and rural carriers. We are asking Congress, also, to take a rational approach to this issue by providing the same type of immunity from liability as provided to local telephone exchange companies.

RCA recognizes that it is most appropriate for the federal government to take responsibility for providing this immunity from liability. We believe this immunity should be uniform throughout the country. Although it would make sense for carriers operating in states that have such immunity to fall under state statutes, it would not be prudent to penalize the majority of small and rural carriers who operate in states without this immunity from liability. Additionally, the burden for securing legislation at the state level should not fall on small and rural carriers (or any carriers), since it is the federal government that is seeking the universal 911 service. This responsibility should not be shifted to our shoulders. Nor should small and rural carriers be required to divert even more resources which would only exacerbate the cumulative impact of complying with overly burdensome regulations. We ask only for a universal federal standard for immunity from liability.

In conclusion, we support the establishment of universal 911 emergency services. We believe the most effective approach for Congress to realize this objective in a way that is consistent with the goals of the Telecommunications Act of 1996 is to provide immunity from liability for wireless carriers. This is especially critical for

small and rural wireless carriers. This type of effective and common sense approach to legislation will ensure that public safety requirements are met without unnecessarily draining the limited resources of small and rural carriers. This also will help to ensure that small and rural carriers can continue to provide the quality of service that our communities demand.