Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Facilitating the Deployment of Text-to-911 and	**)**	PS Docket No. 11-153
other Next Generation 911 Applications	**)**	
	)	
Framework for Next Generation 911 Deployment	**)**	PS Docket No. 10-255

ORDER ON RECONSIDERATION

Adopted: September 27, 2013   **Released: September 30, 2013**

By the Commission:

      1.   In this Order on Reconsideration, in response to a petition filed by CTIA – The Wireless Association (CTIA),[1] we amend the Commission's text-to-911 "bounce-back" requirement as it applies to Commercial Mobile Radio Service (CMRS) providers when consumers are roaming. In the May 2013 *Bounce-Back Order*, the Commission required all CMRS providers and providers of interconnected text messaging services to provide an automatic "bounce-back" text message in situations where a consumer attempts to send a text message to 911 in a location where text-to-911 is not available.[2] As discussed below, we amend the rule to specify that when a consumer attempts to send a text to 911 while roaming on a CMRS network, the CMRS provider offering roaming service (host provider) satisfies its bounce-back obligation provided that it does not impede the consumer's text to the consumer's home network provider (home provider) or impede any bounce-back message generated by the home provider back to the consumer.

I.   BACKGROUND

      2.   *Bounce-Back Order*. In the *Bounce-Back Order*, the Commission required "all CMRS providers to provide an automatic bounce-back message when a consumer roaming on a network initiates a text-to-911 in an area where text-to-911 service is not available."[3] Given the important public safety implications of the bounce-back requirement, the Commission stated that "carriers should make automatic bounce-back messages available to consumers roaming on their network to the same extent they provide such messages to their own subscribers."[4] Accordingly, the bounce-back rule in Section 20.18(n) of the Commission's rules contains a specific subsection relating to roaming. Section 20.18(n)(7) currently provides that: "A CMRS provider subject to § 20.12 shall provide an automatic bounce-back message to any consumer roaming on its network who sends a text message to 911 when (i) the consumer is located

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[1] Petition for Reconsideration, or in the Alternative, for Clarification of CTIA – The Wireless Association®, PS Docket Nos. 11-153 and 10-255 (filed June 28, 2013) (Petition).

[2] Facilitating the Development of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment, PS Docket Nos. 11-153 and 10-255, *Report and Order,* 28 FCC Rcd 7556 (rel. May 17, 2013) (*Bounce-Back Order*). We also required covered providers to provide automatic bounce-backs when the consumer is located in an area where the covered text provider does not support text-to-911 service at the time.

[3] *Bounce-Back Order*, 28 FCC Rcd at 7582 ¶ 72.

[4] *Id*.

in an area where text-to-911 service is unavailable, or (ii) the CMRS provider does not support text-to-911 service at the time."[5]

3.   *CTIA Petition*. On June 28, 2013, CTIA filed a petition for reconsideration, or in the alternative, for clarification, of the roaming provision of the *Bounce-Back Order*. CTIA's core concern is that in a situation where a wireless consumer attempts to send a text to 911 while roaming on a CMRS provider's network, Section 20.18(n)(7) could be read to impose an obligation on the host provider to originate a bounce-back message, which CTIA contends is technically infeasible for the host provider. CTIA claims that in current network architecture for Short Message Service (SMS) texting, only the consumer's home provider has the technical ability to initiate a bounce-back message when the consumer is roaming on another network.[6] CTIA also contends that Section 20.18(n)(7) was adopted "with minimal discussion of the rule's practicality or technical feasibility."[7] CTIA therefore requests that the Commission either eliminate Section 20.18(n)(7) or, in the alternative, clarify that Section 20.18(n)(7) "applies only to home network operators."[8] CTIA further suggests that the clarification could be accomplished by deleting Section 20.18(n)(7) and adding language to Section 20.18(n)(3), which specifies the circumstances under which a covered text provider must provide an automatic bounce-back message, to state that the bounce-back requirement applies where the consumer is roaming on the network of another CMRS provider.[9] CTIA states that "the relief it requests will not prevent wireless subscribers who are roaming from receiving a bounce-back message" but merely seeks to "allocate carrier responsibilities in a way that aligns with technical realities."[10]

4.   *Responsive Pleadings*. On July 11, 2013, the Commission released a Public Notice seeking comment on the Petition.[11] Several parties filed in support of the CTIA petition. AT&T supports the Commission "clarifying that, while covered text providers must send a bounce-back message alerting end users that text-to-911 is unavailable, it is the Home Carrier (and not the Host Carrier) that is responsible for sending that bounce-back message when the end user is texting while roaming on another carrier's network."[12] T-Mobile similarly contends that, in a roaming scenario, the host provider will automatically pass an attempted text to 911 to the consumer's home provider, which will then generate a bounce-back message that will be delivered, via the roaming network, to the consumer.[13] Changes to this architecture, T-Mobile argues, are "simply not feasible."[14] T-Mobile opines that "the Commission did not intend to create a mandate for serving carriers in Section 20.18(n)(7) but rather intended to ensure that serving carriers do not *prevent* home carriers from generating bounce-back messages for their roaming

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[5] 47 C.F.R. § 20.18(n)(7).

[6] Petition at 7.

[7] *Id*. at 3.

[8] *Id.* at 6.

[9] *Id*. at 7.

[10] *Id.* at 3.

[11] Facilitating the Deployment of Text-to-911 and Other Next Generation 911Applications; Framework for Next Generation 911 Deployment, Petition for Reconsideration of Action in Rulemaking Proceeding, PS Docket 11-153, PS Docket 10-255, Report. No. 2985, 78 FR 46310 (rel. Jul. 11, 2013); *see also* Public Safety and Homeland Security Bureau Announces Opposition and Reply Dates for Petition for Reconsideration Filed by CTIA, *Public Notice*, DA 13-1680 (July 31, 2013).

[12] AT&T Comments at 2 (footnote omitted).

[13] T-Mobile USA Comments at 5.

[14] *Id*.

subscribers."[15] Therefore, T-Mobile urges the Commission to "either issue an erratum correcting the rule or clarify that Section 20.18(n)(7) does not apply to serving [*i.e.*, roaming] carriers."[16]

5. Two other commenting parties, Blooston Rural Carriers (Blooston) and NCTA, support not requiring host providers to provide a bounce-back message to a roaming consumer at this time, based on current technical considerations. Blooston agrees with CTIA that origination of a bounce-back message by a roaming provider is technically infeasible.[17] Blooston further argues that the Commission should not require home providers to originate a bounce-back message in this scenario because the home provider cannot determine the location of the consumer on the host provider's network, and therefore cannot determine whether the PSAP serving the consumer's location supports text-to-911.[18] Thus, Blooston argues that the bounce-back rule should not apply to consumers while roaming until a technological solution can be worked out by industry standard-setting bodies that would enable the home provider to determine the consumer's location on the host provider's network.[19] NCTA similarly argues that implementation of the roaming portion of the bounce-back rule should be delayed until a technical solution is developed by standards-setting bodies and implemented.[20]

6. APCO filed an opposition to the Petition, arguing that CTIA has failed to demonstrate that complying with the Commission's rule is not technically feasible.[21] APCO objects that CTIA's proposal would result in all roaming customers receiving a bounce-back message even in situations where the roaming consumer is located in an area where the local PSAP accepts text-to-911. APCO contends that if a roaming consumer is in an area where the PSAP supports text-to-911, the home and host providers should be required to deliver the consumer's text to the PSAP rather than sending a bounce-back message.[22] APCO argues that delivery of a text-to-911 from a roaming customer to the PSAP serving the customer's area is technically feasible under existing standards.[23] In reply, CTIA disputes APCO's contention that a technical solution exists to support routing of 911 texts from roaming customers to PSAPs.[24] CTIA also argues that the issues APCO raises regarding the feasibility of text-to-9-1-1 while roaming "are directed at the second part of the NPRM, which is still pending before the Commission."[25]

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[15] *Id*. at 7.

[16] *Id*.

[17] Blooston Comments at 2.

[18] Blooston Comments at 6.

[19] *Id*.

[20] NCTA Comments at 2.

[21] *See* Opposition of APCO International to Petition for Reconsideration, PS Docket Nos. 11-153 and 10-255 (filed Aug. 15, 2013) (APCO Opposition).

[22] APCO Opposition at 3.

[23] *Id.* at 3. APCO contends that if text-to-911 is implemented under the Joint ATIS/TIA Native SMS to 9-1-1 Standard, the Text Control Center (TCC) is capable of identifying the correct PSAP and sending that information to both the home and host providers. *Id.*

[24] *See* Reply of CTIA to APCO Opposition, PS Docket Nos. 11-153 and 10-255 (filed Aug. 27, 2013), at 5-6 (CTIA Reply).

[25] *Id.* at 3.

7.	In an *ex parte* filing, NENA states that it does not oppose CTIA's petition.[26]	While NENA supports implementation of a "ubiquitous" text-to-911 solution that works "regardless of whether the subscriber is attached to a home or a roaming network," it agrees that CTIA's position with respect to the "limited question of which party should be responsible for delivering a bounce-back message" in a roaming scenario is consistent with current technology and the understanding reached by NENA, APCO, and the four major wireless carriers in their December 2012 voluntary text-to-911 agreement.[27]	CTIA also provides further clarification in an *ex parte* filing, noting the technical infeasibility of a host network provider to "'transmit' the text-to-911 of a consumer roaming on the host network to the covered text provider home network and the home network's responding 'bounce[-]back' message due to the store-and-forward nature of CMRS provided SMS services."[28]	CTIA also notes that "a covered home network text provider's obligation to provide any bounce back message should account for whether the home network operates 'in the area' that a consumer initiates the text-to-911, and not only whether the covered home network text provider supports text-to-911 services at that time."[29]

## II.	DISCUSSION

8.	In the *Bounce-Back Order*, the Commission sought to ensure that the carrier with direct control of a consumer's attempted text message to 911 would be responsible for delivering the bounce-back message in circumstances where text-to-911 is unavailable.[30]	We are persuaded by the technical representations made in the record that under the current technical standard developed for SMS-based texting to 911, the home provider alone has control over sending a consumer a required bounce-back message.[31]	Current network architecture is such that, when a roaming consumer sends an SMS message, that message is routed first to the home provider, which has control over the further routing of that SMS message to its intended recipient.	It is therefore the home provider that has direct control over the delivery of the SMS message to its intended recipient.	Thus, we agree with CTIA that based on current network architecture, it would be technically challenging for a host provider to originate a bounce-back message to a roaming consumer.

9.	Accordingly, we amend Section 20.18(n)(7) to reflect that the host provider must not impede the consumer's text message to 911 to the consumer's home provider and/or any bounce-back

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[26] *See* Letter from Telford E. Forgety, III, Director of Government Affairs and Regulatory Counsel, NENA, to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket Nos. 10-255 and 11-153 (filed Aug. 21, 2013).

[27] *Id.* at 1 (stating that "the roaming limitations of existing SMS systems were understood by the parties to the agreement NENA negotiated with the four largest wireless carriers and APCO," as well as by other stakeholders who are in the process of developing text-to-911 capabilities.).

[28] *See* Letter from Brian M. Josef, III, Assistant Vice President – Regulatory, CTIA – The Wireless Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket Nos. 10-255 and 11-153 (filed Sept. 26, 2013) (citing Emergency Access Advisory Committee, Report of Emergency Access Advisory Committee (EAAC) Subcommittee 1 on Interim Text Messaging to 9-1-1 (March 1, 2013)).

[29] *Id.*

[30] *See Bounce-Back Order*, 28 FCC Rcd at 7573 ¶ 52; *see also* Facilitating the Deployment of Text-to-911 & Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment, *Further Notice of Proposed Rulemaking*, 27 FCC Rcd 15659, 15670 at ¶ 32 (2012) (*FNPRM*) (clarifying that the "proposed requirement for automatic notification to consumers would only apply to situations where the provider (or the provider's text-to-911 vendor) has direct control over the transmission of the text message and is unable to transmit the text message to the PSAP serving the texting party's location…").

[31] *See, e.g.,* AT&T Comments at 3, 5 at n. 7; Blooston Comments at 3, *citing* CTIA Petition at 5; CCA Comments at 2; CTIA Reply at 3-4; and T-Mobile Comments at 4.	The Joint ATIS/TIA Standard specifically refrains from discussing roaming.	*See* Joint ATIS/TIA Native SMS to 9-1-1 Requirements and Architecture Specification, § 4 (working document) ("Roaming is not addressed in this version of this Standard.").

message generated by the home provider back to the consumer. The host provider is not under any obligation to originate a bounce-back message to the consumer or otherwise ensure that the home provider generates a bounce-back message in response to the consumer's text to 911. As amended, Section 20.18(n)(7) provides:

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

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

11. We deny CTIA's petition to the extent it seeks elimination of Section 20.18(n)(7) of the bounce-back rule. In light of our amendment of the rule, we find that compliance with the rule is technically feasible and does not raise the concerns referenced in CTIA's petition. We find that there was adequate notice to adopt the rule and that, as amended, the rule is consistent with the record in the underlying proceeding.[32] We do not agree with Blooston that we should eliminate the roaming portion of the bounce-back rule in its entirety or otherwise defer implementation of the rule. The bounce-back requirement addresses an important public safety interest in providing consumers immediate notification of non-delivery of their text to the PSAP. To eliminate bounce-back messaging in roaming situations would risk leaving roaming consumers without information as to whether their text reached the appropriate PSAP, potentially endangering them by preventing or delaying their attempt to reach 911 through another means. Our amendment of the rule provides for a technically and economically feasible apportionment of responsibilities for roaming and home providers, while preserving the important public safety interests of the original rule.

12. With respect to APCO's argument that host providers should be able to route consumer texts to 911 to the appropriate PSAP,[33] we note that the questions APCO raises about the technical feasibility of requiring host providers to route texts to 911 are part of the broader and still-pending portion of the Commission's rulemaking proceeding.[34] Therefore, we do not address these issues in this order, but reserve them for consideration in the next phase of the proceeding. Today's order is limited in scope to the limited issue of how responsibility is apportioned for delivering bounce-back messages to consumers when those consumers are roaming.[35]

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[32] *See, e.g. Bounce-Back Order*, 28 FCC Rcd at 7567 ¶ 32 (discussing support in record that it is technically feasible for CMRS providers to provide automatic bounce-back notifications).

[33] APCO Opposition at 3.

[34] *See FNPRM*, 27 FCC Rcd at 5707-08 (¶¶ 124-126).

[35] We note that although the Commission has proposed to require the transmission of texts to PSAPs that request them, this proposal is still under consideration. Further, the specific mechanism by which a carrier would transmit

(continued….)

13. Finally, in order to effectuate the modifications described herein, we waive Section 20.18(n)(7) on our own motion, pending the effective date of the amended rule. In light of the potential technical difficulties associated with complying with Section 20.18(n)(7) as originally drafted, we conclude there is good cause to waive application of this portion of the bounce-back rule until the effective date of the amendments adopted in this order.[36] The remainder of Section 20.18(n), which was published in the Federal Register and took effect on June 28, 2013, remains in full force and effect.[37] Accordingly, except as provided in this order, covered text providers must begin providing bounce-back messages in accordance with the rule no later than September 30, 2013. In addition, as discussed below, we determine that amended version of Section 20.18(n)(7) will take effect on publication in the Federal Register. Therefore, covered text providers must begin complying with Section 20.18(n)(7) as of that date.

III. PROCEDURAL MATTERS

A. Effective Date

14. We conclude that good cause exists to make the effective date of the modifications adopted in this Order on Reconsideration effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.[38] Agencies determining whether there is good cause to make a rule revision take effect less than 30 days after Federal Register publication must balance the necessity for immediate implementation against principles of fundamental fairness that require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule.[39] Given the public safety need for bounce-back messaging and the relative lack of any additional burden imposed by this Order on Reconsideration, there is good cause to make these amendments effective immediately upon Federal Register publication. Indeed, given that covered text providers must begin generating automatic bounce-back messages outside of the roaming context beginning no later than September 30, 2013, and given that no party has argued that the modifications to the 20.18(n)(7) requirement raised by the CTIA Petition would require additional time to comply with, we find that good cause exists to make the modifications to 20.18(n)(7) effective immediately upon their publication in the Federal Register.

B. Paperwork Reduction Act

15. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[40] Therefore the Order on Reconsideration does not contain any new or modified information collection burdens for small businesses with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.[41]

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texts to 911 is not yet established. Whether to adopt text-to-911 requirements, and whether such requirements should apply to roaming, are issues under consideration in the text-to-911 rulemaking proceeding.

[36] *See* 47 CFR § 1.3 (authorizing the Commission to waive the rules on its own motion if good cause is shown).

[37] Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Final Rule, 78 FR 32169 (May 29, 2013).

[38] 5 U.S.C. § 553(d)(3).

[39] *Omnipoint Corporation v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996), *citing United States v. Gavrilovic*, 551 F.2d 1099, 1105 (8th Cir. 1977).

[40] Pub. L. No. 104-13; 44 U.S.C. Part 35.

[41] Pub. L. No. 107-198; *see* 44 U.S.C. § 3506(c)(4).

C. **Final Regulatory Flexibility Analysis**

16. The Regulatory Flexibility Act (RFA)[42] requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[43] The RFA defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[44] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[45] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[46]

17. We hereby certify that this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Order on Reconsideration, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.[47] In addition, the Order on Reconsideration (or a summary thereof) and certification will be published in the Federal Register.[48]

D. **Congressional Review Act**

18. The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[49]

E. **Accessible Formats**

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

IV. **ORDERING CLAUSE**

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

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[42] *See* 5 U.S.C. § 601 *et seq*. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857.

[43] 5 U.S.C. § 605(b).

[44] 5 U.S.C. § 601(6)

[45] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(1), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[46] Small Business Act, 15 U.S.C. § 632.

[47] *Id*.

[48] *Id*.

[49] *See* 5 U.S.C. § 801 (a)(1)(A).

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

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

23.	IT IS FURTHER ORDERED that, pursuant to Sections 1.3, 1.4, 1.103, and 1.427 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.4, 1.103, and 1.427, the waiver of 47 CFR § 20.18(n)(7) specified herein is EFFECTIVE IMMEDIATELY UPON RELEASE of this Order on Reconsideration.

24.	IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of the Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[50]

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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[50] *See* 5 U.S.C. § 801 (a)(1)(A).

APPENDIX

Final Rules

Part 20 of the Code of Federal Regulations is amended as follows:

PART 20 – COMMERCIAL MOBILE SERVICES

Section 20.18(n)(7) is amended to read:

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(n) *Text-to-911 Requirements*.

* * * * *

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

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