

Date of Hearing: May 9, 2011

ASSEMBLY COMMITTEE ON UTILITIES AND COMMERCE

Steven Bradford, Chair

AB 1074 (Fuentes) – As Introduced: February 18, 2011

SUBJECT: Telecommunication service providers: personal liability immunity.

SUMMARY: Extends certain immunities to specified companies in the provision of 9-1-1 emergency assistance services. Specifically, this bill:

- 1) Provides that a retail or wholesale service provider of telecommunications service, or other service, involved in providing 9-1-1 service, shall not be liable for any claim, damage, or loss caused by an action or omission of the company, business, or individual in the design, development, installation, maintenance, or provision of 9-1-1 service, unless the act or omission that proximately caused the claim, damage, or loss constituted gross negligence, recklessness, or intentional misconduct.

EXISTING LAW:

- 1) Provides pursuant to the California Public Utilities Commission (PUC) tariff that a utility shall not be liable for civil damages, whether in contract, tort, or otherwise, to any person, corporation, or other entity for any loss or damage caused by any Utility act or omission in the design, development, installation, maintenance, or provision of 9-1-1 service other than an act or omission constituting gross negligence or wanton or willful misconduct. The Utility shall not be liable or responsible for any indirect, incidental, or consequential damages associated with the provision of 9-1-1 service, including, for example and without limitation, when a call originates from a system or line which makes the provision of specific location information impossible to provide for technical reasons, and when a failure or interruption in 9-1-1 service is due to the attachment of any equipment by a customer to Utility facilities.
- 2) Provides pursuant to federal law that a wireless carrier, Internet Protocol (IP)-enabled voice service provider, or other emergency communications provider, and their officers, directors, employees, vendors, and agents, shall have immunity or other protection from liability in a State of a scope and extent that is not less than the scope and extent of immunity or other protection from liability that any local exchange company, and its officers, directors, employees, vendors, or agents, have under Federal and State law (whether through statute, judicial decision, tariffs filed by such local exchange company, or otherwise) applicable in such State, including in connection with an act or omission involving the release to a Public Service Access Point (PSAP), emergency medical service provider or emergency dispatch provider, public safety, fire service or law enforcement official, or hospital emergency or trauma care facility of subscriber information related to emergency calls, emergency services, or other emergency communications services.
- 3) Provides pursuant to federal law that a person using wireless 9-1-1 service, or making 9-1-1 communications via IP-enabled voice service or other emergency communications service, shall have immunity or other protection from liability of a scope and extent that is not less than the scope and extent of immunity or other protection from liability under applicable law

in similar circumstances of a person using 9-1-1 service that is not via wireless 9-1-1 service, IP-enabled voice service, or other emergency communications service.

- 4) Provides pursuant to federal law that in matters related to 9-1-1 communications via wireless 9-1-1 service, IP-enabled voice service, or other emergency communications services, a PSAP, and its employees, vendors, agents, and authorizing government entity (if any) shall have immunity or other protection from liability of a scope and extent that is not less than the scope and extent of immunity or other protection from liability under applicable law accorded to such PSAP, employees, vendors, agents, and authorizing government entity, respectively, in matters related to 9-1-1 communications that are not via wireless 9-1-1 service, IP-enabled voice service, or other emergency communications service.

FISCAL EFFECT: Unknown.

COMMENTS: According to the author, all entities associated with responding to emergencies, including providers of 9-1-1 service, have immunity from ordinary negligence. Without this protection, no entity, whether a public agency or a private company could assume the risk of liability associated with responding to an emergency. Emergency responders have immunity through statute, while telephone corporations have immunity through tariffs filed with the PUC. Next Generation 911 (NG 911), however, will involve third-party providers that are neither emergency responders nor telephone corporations, and these third-parties will be deterred from providing emergency-related services if they cannot also have immunity from ordinary negligence. The leading examples are companies that maintain mapping databases and specialize in converting X/Y map coordinates into an address, which is a vital function in locating wireless callers who cannot give their location.

1) Issue: Public expectations for the 9-1-1 emergency telephone system are increasing as IP – based communications technology becomes increasingly available on both wireline and wireless devices. The existing system, however, was designed for the analog or digital circuit-switched telephone system, or landline system, which cannot accommodate IP-based applications that are common today. To accommodate growing expectations that the 9-1-1 system will meet these technological advancements, the 9-1-1 system will need to migrate to an IP-based system, which is also referred to as NG 911.

This bill seeks to address issues regarding liability that arise from the fact that an IP-based system may encompass service providers other than traditional telephone corporations.

2) Next Gen 911: Under NG 911, it is envisioned that all connections to a PSAP will be made via the Internet, whether from traditional landlines, wireless cellular telephones, email or text messaging. This Internet based system will also allow for additional services as well, most notably converting location data from a GPS-enabled cell phone into a street address that can be provided to the 9-1-1- operator. In support of the bill, Verizon states that a private company called Intrado has the best location-based address database in the U.S., and Verizon wants to partner with this company to provide the address of a cell phone user calling 9-1-1 who cannot give an address.

Regulated telecommunications companies are protected from certain civil liability by PUC tariff and pursuant to federal law. Supporters wish to extend protection from liability to businesses like Intrado, when involved in providing 9-1-1 service – that is, actually performing a function

that connects a caller to a 9-1-1 operator – through a company like Verizon that is under contract with the state. It would not be appropriate for these businesses to be subject to the PUC tariff as their business model does not fall within the purview of the PUCs authority unlike the telecommunications companies. According to supporters, no single company can provide all the services needed for NG 911, and the needed technology companies will be reluctant to risk the potentially unlimited liability associated with 911 services without the immunity from ordinary negligence that Verizon has. The regulated telecommunications companies like Verizon, however, will continue to be the entities that contract with the state and remain responsible for the quality of the 9-1-1 service provided regardless of who they contract with.

3) Suggested amendments: This bill was heard in Assembly Judiciary Committee on May 3, 2011, and the author agreed to amend the bill in Assembly Utilities and Commerce Committee to better clarify the intent of the bill and respond to concerns raised by the opposition. As such, the author and this committee may wish to add legislative intent language regarding the value of NG 911. Additionally, the author and this committee may wish to add Section 1714.55 to the Civil Code as follows:

1714.55 (a) A retail or wholesale service provider of telecommunications service or other service involved in providing 9-1-1 service, shall not be liable for any civil damage or loss caused by an act or omission in the design, development, installation, maintenance, or provision of 9-1-1 service unless the act or omission that proximately caused the damage or loss constituted gross negligence, wanton or willful misconduct or intentional misconduct.

(b) For purposes of this section:

- (1) "Public safety agency" means a public safety agency defined by the Warren 911 Emergency Assistance Act (Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code).
- (2) "9-1-1 service" means a telecommunications service or other wireline or wireless service that provides to the user of the public telephone system the ability to reach a public safety agency by dialing the digits 9-1-1 or facilitates the provision thereof. This definition includes 9-1-1 service that utilizes in whole or in part Internet Protocol for emergency services pursuant to the Warren-911 Emergency Assistance Act.

(c) This section shall not apply to services provided under tariff.

REGISTERED SUPPORT / OPPOSITION:

Support

Verizon

Opposition

California Chapter of the National Emergency Number Association (CalNENA)

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