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FEDERAL COMMUNICATIONS COMMISSION
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's)	CC Docket No. 94-102
Rules to Ensure Compatibility)	
with Enhanced 911 Emergency)	
Calling Systems)	

To: Chief, Wireless Telecommunications Bureau

REPLY COMMENTS OF TRUEPOSITION, INC.

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Executive Summary

Waiver proponents have now had numerous opportunities to demonstrate that granting waivers of the existing Phase II automatic location information ("ALI") rules is justified. It is now more than five years since the Commission initiated this proceeding and handset-based ALI vendors began trying to develop their technologies. Most recently the Bureau has opened two additional comment periods and conducted a forum permitting vendors to showcase their technologies. Yet, when stripped of the unsupported rhetoric and predictions, there is no real evidence that carriers hoping to use handset-based ALI solutions can satisfy the requirements set forth in the December 1 Waiver Notice by providing for *early* E911 implementation, *improved* ALI accuracy, and universal ALI coverage for *all* wireless users, including roamers.

Every carrier responding to the June 1 Public Notice opposes the APCO and SnapTrack proposals to allow phased-in implementation of handset-based ALI solutions. First, every carrier emphatically opposes any strict implementation schedule, including commitments to unconditional early implementation. Indeed, the wireless carriers uniformly contend that they cannot be held to any handset deployment schedules or accuracy standards because the commercial availability and performance levels of handset-based technologies are very much unknown. In fact, at the June 28 technology forum the handset-based ALI vendors expressly refused to (or simply could not) answer a simple question posed by the representative of U.S. Wireless: when will your technology really be ready for commercial deployment?

Second, the requesting carriers also refuse to commit to meeting higher accuracy standards, but instead propose only to *attempt* to meet alternative standards that would not provide for greater accuracy than the existing rules require. More importantly, their proposed accuracy performance is less than that which existing network-based technologies already offer. Finally, while some handset proponents continue to recite exaggerated churn rates and unrealistic hopes for standardization of GPS handset interoperability, the carriers finally concede that even with such developments they would never be able to locate all wireless 911 callers.

Nonetheless, handset proponents still urge further Commission and public safety indulgence while handset vendors struggle to produce workable products. Yet, if and when these products become viable, they will be able to locate only those emergency victims fortunate enough to have purchased a new ALI-enabled phone from their carrier or another retail outlet.

It is time for this charade to come to an end. The waiver requests do not meet the standards set forth in the December 24 Waiver Notice and do not demonstrate any technical or economic infeasibility that would justify a waiver of the Phase II ALI requirements under the Commission's general waiver standards. The requests should and must be denied so that the benefits of E911 will be available as soon as possible to wireless users and the American public.

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TruePosition, Inc. ("TruePosition"), by its attorneys, hereby submits its reply to the comments filed in response to the June 1, 1999 Public Notice released by the Wireless Telecommunications Bureau ("Bureau") in the above-captioned proceeding.¹ Those comments were intended to supplement the information placed on the record in response to the Bureau's December 1 Waiver Notice.²

¹ Wireless Telecommunications Bureau Requests Targeted Comment on Wireless E911 Phase II Automatic Location Identification Requirements, DA 99-1049, Public Notice, released June 1, 1999 (hereafter "June 1 Public Notice").

² See Wireless Telecommunications Bureau Outlines Guidelines for Wireless E911 Rule Waivers for Handset-Based Approaches to Phase II Automatic Location Identification Requirements, Public Notice, CC Docket No. 94-102, DA 98-2631 (Dec. 24, 1998) (hereafter "December 24 Waiver Notice").

I. Introduction and Summary of the June 28 Technology Forum

Waiver proponents have repeatedly placed in the record conclusory and uncorroborated remarks about the accuracy of GPS handsets, the likely availability of fully integrated handsets and the rate of phone churn (and in many cases have later cited their own or others' unsupported statements as "evidence" in the record). Unfortunately, neither waiver proponents' most recent comments nor the Commission's June 28 technology forum have provided new data on handset-based ALI technologies that would justify granting waivers.

While the handset ALI technology developers tout their eventual success, only two have publicly released data regarding testing of their technologies. The data from both companies relate only to a single wireless air interface (CDMA) and apparently only to "trials" with external antennas. Although one of these vendors, SnapTrack, Inc. ("SnapTrack"), claims to have tested an "alpha prototype" phone with internal antenna integration, the other vendor, Integrated Data Corp. ("IDC"), does not. SnapTrack displayed what it claimed was such an integrated device at the June 28 technology forum, but the company provided no demonstration of the device, no discussion of that device's specific performance, and no explanation of the further research and development still needed before the device could be commercially deployed.³ In addition, even though these same vendors continuously

³ Moreover, the narrative SnapTrack submitted to the Commission on June 1, 1999 describes only the results of test phones with external antennas. Yet the accompanying test results reveal, but do not discuss, many extremely low
(continued...)

claim that handset-based ALI solutions will cost less than network solutions, they did not respond to the questions regarding retail costs to the consumer and cost recovery posed by the representative of SigmaOne Corporation at the technology forum.

In contrast, the four network-based ALI vendors at the June 28 technology forum represented four different, existing technologies and spent most of the two-hour question and answer session explaining how they indeed *can* and have resolved technically difficult scenarios – such as different wireless system antenna arrays and one- and two-cell environments -- to ensure they can locate all wireless callers. The technology forum confirmed the evidence already in the record demonstrating that network-based technologies available today meet, and in most cases far exceed, the existing Phase II accuracy and performance standards.⁴

At the June 28 forum, representatives of the National Emergency Number Association ("NENA"), carriers and Commission staff emphasized that the E911 rules cannot sacrifice public safety by lowering the threshold percentage of calls that must be located. The forum also reaffirmed that the current debate is not about

³ (...continued)
yield rates and poor accuracy levels that can perhaps be ascribed to SnapTrack's testing of the handset that it displayed at the June 28 forum. See TruePosition Ex Parte, filed July 2, 1999.

⁴ *See, e.g.*, TruePosition Comments at 13; IDC Comments at 10-11; US Wireless Comments at 6; Cambridge Positioning Systems Comments at 1-2; Radix Technologies Comments at 1. (Unless otherwise noted, all comments cited in this reply were filed on June 17, 1999.)

technological neutrality, but rather technological favoritism.⁵ As the June 17 carrier comments reflect, the only way that handset-based ALI technologies can catch up with network-based solutions is for the Commission to stall carrier deployment of Phase II E911 *indefinitely*. In short, the June 28 forum simply confirmed what has long been obvious to any objective reviewer of the record: the waiver requests do not meet the standards set forth in the December 24 Waiver Notice, and do not demonstrate any technical or economic infeasibility that would justify a waiver of the Phase II ALI requirements under the Commission's general waiver standards.⁶

⁵ Setting a firm date for implementation is technology-neutral. The Commission has refused to push back its five-year implementation just because of technical uncertainty. The Commission instead encouraged equipment manufacturers to develop technologies for digital systems in spite of technical challenges. In re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Memorandum Opinion and Order, CC Docket No. 94-102, (rel. December 23, 1997), at ¶122 (hereafter "E911 MO&O"). TruePosition and others have and continue to overcome these challenges while handset-based technology vendors seek further delay. As Mr. Dennis Kahan of SigmaOne noted at the June 28 technology forum, his company only entered the race in 1997, yet it has a commercially viable solution. As several commenters pointed out at the technology forum, there will be a role for handset-based location technologies that cannot be ready by October 1, 2001. They could have commercial applications (such as providing shopping or restaurant information), be part of a more accurate "Phase III" ALI standard, or be deployed in those areas where PSAPs do not request E911 or provide for E911 cost recovery for several years.

⁶ 47 C.F.R. § 1.3.

II. None of the Waiver Requests Meet the Waiver Notice Criteria

In the December 24 Waiver Notice, the Bureau listed three critical factors that must be met to justify any waiver of the existing rules. Specifically, it stated that

1. Carriers must commit to providing a significantly higher level of accuracy than would otherwise be available without the waiver.
 2. Carriers must begin implementation of ALI capabilities before the October 1, 2001 deadline.
 3. Carriers must demonstrate how they can overcome the roamer and legacy handset problems inherent in handset-based solutions.
- A. No Waiver Requester Has Committed to a Higher, Much Less to a Significantly Higher, Level of Accuracy Than the Present Standard

The Commission's present Phase II accuracy standard requires that a carrier be able to locate *all* wireless E911 calls to an accuracy of 125 meters using the RMS methodology.⁷ No carriers or handset manufacturers – not even those with financial interests in handset-based technology developers – have committed to the availability *at any time in the future* of ALI-enabled handsets, let alone handsets that will significantly improve on either the present Phase II location accuracy standards or the existing technologies that already exceed those requirements.⁸ Perhaps the

⁷ 47 C.F.R. § 20.18(e)

⁸ Since neither SnapTrack nor IDC designs, manufactures or distributes handsets, their exaggerated claims about the availability, volume or additional costs of ALI-enabled handsets can be accorded no weight.

most telling statement on this issue comes from Motorola, which, despite being an investor in GPS technology developer SnapTrack, is either unable or unwilling to say anything more than that it "believes that handset-based solutions can be as accurate or more accurate than network-based solutions."⁹

Obviously, when one of the key vendors on which any handset-based ALI hopes must hinge can offer no more than a "belief" about potential GPS improvements, and those "improvements" (if they ever came to be) would fail even to exceed the present capabilities of network-based, Phase II-compliant technologies, the proponents have not met the Waiver Notice's requirement of providing significantly greater accuracy for locating wireless 911 calls. This is particularly true because for years after they are finally marketed, those systems would locate only a privileged minority of wireless phone users.

In addition, *none* of the carrier comments submitted in response to the June 1 Public Notice makes a firm commitment to any ALI accuracy standard, let alone one that would be significantly higher than that required by the current rules.¹⁰

⁹ Motorola Comments at 4. Further, in connection with SnapTrack's recent trials in Tampa, Motorola emphasized that SnapTrack's "small handset-sized antennas' performance was comparable to the larger GPS reference antenna ONLY under 'Open Sky' conditions" and " 'will not be able to match larger sized GPS antennas' for in building" coverage. SnapTrack Ex Parte, filed June 1, 1999, at Exhibit E, page 17, slide 33 (emphasis in original).

¹⁰ Moreover, as NENA has stated, one hundred more feet of accuracy will not save lives, but early, widespread ALI implementation will. NENA Comments, filed June 10, 1999, at 6.

As the comments and technology forum statements of the network-based ALI vendors demonstrate, the newly proposed standards (*e.g.*, 90 meters CEP) are below those at which network-based systems already perform. CEP does not make location accuracy better, it just makes carrier compliance easier. Unlike the RMS method, a CEP method does not average in those location attempts for which no location is found or for which the accuracy is beyond the stated threshold (*i.e.*, 90 meters). More important, however, is that although carriers give lip service to higher standards, because of the uncertainties still surrounding handset-based technology development, most will not commit to much more than a "good faith" attempt to develop and comply with a new accuracy standard.¹¹ Therefore, granting a waiver would not be in the public interest because there is little likelihood that the lives lost and injuries suffered due to the delay in implementation will ever be offset by any benefit of increased accuracy.¹²

This is true even for those rural carriers who have sought waivers in the mistaken belief that their widely spaced cell sites might preclude the cost effective use of network-based technologies in providing Phase II ALI. As several commenters

¹¹ Aerial Comments at 4; BellSouth Comments at 7; GTE Comments at 4; PrimeCo Comments at 6.

¹² The pending waiver requests are also premature, particularly since "it is not evident that there will be widespread implementation of Phase II ALI on October 1, 2001." BellSouth Comments at 4. Thus, the existing rule does not necessarily preclude handset solutions. For example, a carrier that did not have a request from PSAPs and therefore was not required to implement Phase II could begin implementing a handset solution on its own if and when ALI-enabled handsets are available, and then request a waiver once it received a request from a PSAP.

have demonstrated, and as the discussion at the June 28 technology forum confirmed, existing network systems can work with one or two cell sites or by placing location equipment on alternative structures. If rural carriers can demonstrate, at the time in the future when they receive a PSAP request accompanied by implementation of cost recovery, that such solutions are not technically feasible or economically reasonable, then a waiver could be considered. To do so now without even attempting to determine the suitability of available solutions is premature.

B. No Waiver Requester Has Committed To Beginning ALI Implementation to Any Significant Extent Before the October 1, 2001 Deadline.

Despite repeated inquiries from carriers, apparently no manufacturer has committed to production of an ALI-enabled handset, much less to production by a date certain.¹³ Nor has any manufacturer placed in the record any data regarding its schedule or capacity to produce ALI-enabled handsets for 2000, 2001 or any year in the future. And in response to a direct question at the June 28 technology forum as to when ALI-enabled handsets would truly be commercially available, the representatives of the four handset-based ALI vendors (as well as the carriers and handset manufacturers) uniformly sat in silence and made no response, never mind any commitments.

¹³ Alltel, for example, "has not yet been able to secure a commitment from its [handset] vendors, which would permit it to comply with either the SNAP-TRACK or APCO deployment schedules." Alltel Comments at 3 n.3.

Given this state of affairs, it is not surprising that no waiver requester has made a firm commitment to begin ALI implementation to any significant extent before the October 1, 2001 deadline. Rather, carriers are simply willing to offer that they will make a "good faith efforts" to "begin" such implementation prior to October 1, 2001, subject of course to the availability of adequate numbers of ALI-enabled handsets from manufacturers.¹⁴ This would be a giant leap backwards from, not an improvement over, the current availability of network-based solutions. As U.S. Wireless noted, the waiver requesters' proposal for "*partial* early deployment is little more than a symbolic gesture of apology for failure to provide the public with *universal* ALI coverage."¹⁵ Carriers understandably do not want to be responsible for failing to deploy technology that might never become available, but this uncertainty should not deprive wireless users and the beneficiaries of their "Good Samaritan" calls of the opportunity to make use of technology that is *already* available thanks to the Commission's foresight in promulgating E911 rules.¹⁶

¹⁴ See, e.g., Ameritech Comments at 4; PrimeCo Comments at 3-4; US West Wireless Comments at 4-7; AirTouch Comments at 12-13; Sprint PCS Comments at 3-4, 6-7.

¹⁵ US Wireless Comments at 7 (emphasis in original).

¹⁶ If the Commission were to grant waivers or change the rules to permit carriers to defer deploying available ALI solutions in reliance on a good faith belief that handset-based ALI solutions were perpetually "around the corner," then carriers could defer ALI indefinitely.

C. No Waiver Requester Has Demonstrated a Way To Ensure ALI Protection for Handset-Based Roamers and Pre-existing CMRS Users

Both the December 24 Waiver Notice and the June 1 Public Notice solicited information on how to resolve the roaming and embedded handset problems that are inherent in handset-based technologies. Those problems arise from the fact that handset technologies can locate only ALI-enabled handsets with compatible ALI circuitry. They will be unable to locate any of the now estimated 105 million non-ALI handsets in use by 2001 or any of the tens of millions of non-ALI enabled handsets sold after 2001, whether the user is a network subscriber or a roamer.¹⁷

Despite yet another opportunity, none of the waiver proponents has proposed a realistic solution to the roaming and embedded handset problems. Rather, most just repeat what has become the handset proponents' mantra – that if the Commission just ignores the problem long enough it will go away because of handset churn. TruePosition demonstrated the factual inaccuracies and incorrect assumptions underpinning this argument in its June 17 comments.¹⁸ We will not repeat the analysis here, but we note that none of the other June 17 comments provided new empirical data on handset churn. IDC is the only waiver proponent actually offering a

¹⁷ Although waiver proponents have assumed that interoperability standards will be adopted to solve the "roamer problem," no commenter but AirTouch estimates when standards will be developed, and even AirTouch estimates that standards are more than two years away. AirTouch Comments at 14 n.26.

¹⁸ See TruePosition Comments at 8-11 and Exhibit A.

detailed numerical analysis to support the claim that handset churn and standardization processes will resolve the roaming and legacy handset problems, but even other waiver proponents admit that IDC's assumptions are totally unrealistic.¹⁹

To the contrary, some waiver proponents now concede that handset churn will not make the problem disappear. They admit that past experience shows that the problem will never entirely resolve itself, or at least will not do so in the foreseeable future, because there will always be non-ALI enabled phones in use.²⁰ It is now also clear that the existing CMRS phone base will be supplemented by new, non-ALI-enabled handsets that will be sold long after the October 1, 2001 deadline. As discussed in our June 17 comments (at 8-9), there will be a substantial market for non-ALI phones among the subscribers of carriers, such as Omnipoint,²¹ that adopt a network-based solution. That is why no manufacturer has committed, or is likely to commit, to making its entire handset production ALI-enabled, much less to do so by a date certain. Indeed, even carriers seeking waivers now indicate that they will

¹⁹ See IDC Comments at 8 and Attachment B, Exhibit 1. IDC posits that in the first quarter of 2001, 18 months from now, 20 million ALI-enabled handsets will be sold. *Id.* In contrast, SnapTrack admits that it will be 12 to 18 months after a prototype is developed (i.e., well after January 1, 2001) before handsets are produced for sale. SnapTrack Comments at 8. BellSouth, another waiver proponent, notes that "there is *no* evidence that such handsets will be available in large quantities on January 1, 2001." BellSouth Comments at 6 (emphasis added).

²⁰ See, e.g., AT&T Wireless Comments at 2; AirTouch Comments at 10-12; Sprint Comments at 6-7.

²¹ See Omnipoint Comments at 2.

implement handset-based solutions only in those parts of a CMRS network where a PSAP requests Phase II capability. Therefore, at a minimum subscribers outside those PSAP areas will continue to purchase non-ALI enabled phones.²²

Moreover, it is now clear that there is no basis for the Commission to assume that handset sales by carriers, even if they were limited to ALI-enabled phones, could or would create sufficient handset churn to turn over the embedded handset base within a reasonable time. The carriers' own trade association, CTIA, has placed evidence in the record showing that carriers control only 24 percent of the handset market.²³ Similarly, the Wireless Consumers Alliance concedes that "carriers have disaffirmed any control over the handset market and no rational reason exists for them to exercise such control."²⁴ With three quarters of the market outside of carriers' control, carriers simply cannot commit to any market-wide level of penetration by ALI-capable phones, even within their own networks, without also committing to bear the cost of swapping out large numbers of existing phones. That

²² See, e.g., BellSouth Comments at 4-6. These purchasing decisions may be made knowingly, but also will tend to be based on cost, product availability, and continued consumer confusion as to ALI coverage. Moreover, the CMRS user is not the only one affected by his or her choice to purchase a non-ALI phone because, as the Commission has found, that decision will eventually affect others when the user dials 911 as a "Good Samaritan." E911 MO&O at ¶34; In re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Second Report and Order, June 9, 1999, at ¶86.

²³ CTIA Ex Parte, filed April 20, 1999.

²⁴ Wireless Consumers Alliance Comments at 3.

is why the latest phase-in proposals offered by carriers anticipate far more delay than their original pie-in-the-sky estimates.

AirTouch, for example, now claims that it would need *42 months* from the date of a Commission waiver order to achieve even a 30% penetration rate for ALI-enabled digital phones on its systems.²⁵ In other words, if the Commission were to issue an order this October, AirTouch now believes it would be *the second quarter of 2003* before it could locate even 30% of its own digital subscribers, much less roamers. Moreover, AirTouch proposes to apply this penetration requirement only to its digital service subscribers *and says that the Commission's rules should ignore analog users altogether.*²⁶ For these E911 "have-nots," AirTouch argues that the safety net of "Phase I-level location information" should be considered "sufficient for compliance purposes."²⁷ Equally ludicrous is AirTouch's suggestion that digital and analog roamers alike could "rent[] an ALI-capable phone in any handset-based

²⁵ AirTouch Comments at 10.

²⁶ Meanwhile, there were 9.5 million analog phones sold in the U.S. in 1998, see The Global Wireless Communications Industry, Donaldson, Lufkin & Jenrette, at 63 (Summer 1999), and manufacturers and wireless carriers maintain programs to redistribute used analog phones to neighborhood patrols, victims of spousal abuse and others specifically for use in making emergency calls. See, e.g., "Cellular One Donates Phones to Join Forces with Lincolnshire Police Department," (visited June 16, 1999) <<http://www.sbc.com>>; "Pacific Bell Wireless and Motorola Team Up to Donate Wireless Services and Mobile Phones to Fresno Shelter," (visited June 16, 1999) <<http://www.sbc.com>>.

²⁷ AirTouch Comments at 17.

market where they roam."²⁸ There is no reason to assume that a roamer will have any idea whether a system through which he or she is, or will be, roaming will use network or handset-based ALI. In any event, wireline users do not have to choose whether or not they want to have E911 location protection when they leave home. There is no good reason why carriers should be able to force wireless users to make that choice.

III. Commenters Universally Reject the APCO and SnapTrack Proposals

There was little support among commenters for either the APCO or SnapTrack proposals as written. In particular, carriers unanimously opposed the imposition of *any* firm and enforceable deadlines for penetration of ALI-enabled phones on their networks. Instead, they claimed that "good faith efforts to comply" with an initial deployment date or penetration benchmarks ought to suffice.²⁹ The APCO and SnapTrack proposals cannot be so modified without fatally compromising E911's fundamental public safety purpose. Even APCO recognized this fact when it stated that "granting of waivers without firm conditions could delay Phase II indefinitely, especially since some carriers appear to view waivers as an excuse for doing nothing. . . . Therefore, there must be a 'guaranteed rate' of turnover with the goal of

²⁸ Id.

²⁹ Ameritech Comments at 4; PrimeCo Comments at 3-4; US West Wireless Comments at 4-7; AirTouch Comments at 12-13; Sprint PCS Comments at 3-4, 6-7.

quickly reaching a point at which nearly 100% of subscribers have location capable phones."³⁰

Every single carrier that filed comments in response to the June 1 Public Notice rejected the essence of these proposals. Since the waiver requesters have rejected the APCO and SnapTrack proposals, the Commission must do the same.

IV. Whether or Not the Commission Changes the Level of Accuracy with Which Wireless Carriers Must Locate 911 Callers, It Must Not Deviate From the Requirement That Carriers Locate All 911 Callers

Public safety entities, network-based ALI vendors and certain handset-based ALI vendors oppose any relaxation of the Commission's rules regarding the level of accuracy required for Phase II compliance.³¹ Not surprisingly, those ALI vendors whose technology cannot meet the Phase II requirements, as well as many carriers, support a change in the rules.

Although TruePosition continues to support the retention of the existing RMS standard, we recognize the fairly broad support for WEIAD's proposal that Phase II ALI "be attempted on all calls routed toward a PSAP and . . . be accurate to within 125 meters in 67% of those cases." With one clarification, TruePosition

³⁰ APCO Comments at 4-5. In addition, no commenter suggested how the deadlines could be enforced.

³¹ *See, e.g.*, NENA Comments at 6; TruePosition Comments at 13; Cambridge Positioning Systems Comments at 3, Cell-Loc Comments at 2-6.

could also support WEIAD's proposed standard. Specifically, the obligation to "attempt" ALI on all 911 calls would need to be modified to make clear that WEIAD intended to incorporate the Commission's requirement that all wireless 911 calls be located. As the Commission has held several times, carriers should not be able simply to ignore locating 911 calls that come from analog phones, from roamers or from handsets purchased before the carrier began deploying its ALI capability.³²

Various carriers agreed with this position at the June 28 forum, stating that wherever a CMRS user can establish a voice connection, a carrier should be able to establish the caller's location, even in such locales as mines, tunnels and buildings.³³ NENA took the same position, emphasizing that the Commission must not sacrifice public safety by lowering the threshold percentage of calls that must be located.

Both Cell-Loc and Cambridge Positioning Systems have demonstrated why SnapTrack's CEP proposal is unacceptable, jeopardizes public safety and should be rejected.³⁴ For example, a carrier could be in compliance with SnapTrack's

³² See, e.g., Cambridge Positioning Systems Comments at 3 ("Therefore it is suggested that no measurements should be rejected in the computation of accuracy . . .").

³³ The SiRF representative's contrary assertion at the forum – that the Commission should expect that all indoor 911 calls must be made on wireline phones – is unacceptable. Nevertheless, it is indicative of the inherent problems weak GPS signal levels pose for GPS-based handset ALI vendors.

³⁴ Cambridge Positioning Systems Comments at 2-3, Cell-Loc Comments at 2-6.

(continued...)

proposed 90-meter CEP standard if it simply located 67% percent of calls and ignored the remaining 33%. This would simply not be acceptable, as the Commission has emphasized.³⁵

V. The Statutorily Required Analysis of the Effect of Any Change on Public Safety Precludes Granting Waivers or Modifying the Rules

As recently reemphasized by NENA,³⁶ the nation's leading 911 public safety agency, the overarching issue in this proceeding is and always has been public safety. For that reason, "any fundamental change to the [1996 E911] Order requires a public safety analysis and justification. If the Commission desires to change the Enhanced 9-1-1 Rule, it should first and fundamentally ask what impact any changes will have on the overall social benefits and costs that motivated the initial Order."³⁷ As the Texas Alliance noted, and as the case law requires, "the Commission should

³⁴ (...continued)

³⁵ E911 MO&O at n.325 (stating that the "value of E911 ALI for emergency service providers would be quite different if the accuracy of 25 percent or 33 percent of all calls was ignored").

³⁶ See NENA Comments. NENA's objective view of this debate stands in stark contrast to the astounding (and self-serving) assertion by the SiRF representative at the June 28 forum that the issue in this proceeding is not public safety.

³⁷ NENA Comments at 4.

hold firm on the current deadlines . . . unless any change is well supported by compelling public safety benefits."³⁸

There is no evidence in this record of any such public safety benefits.³⁹

There is no evidence that the waivers will save lives through greater accuracy or earlier implementation than can be expected with available technologies. And while PSAPs and wireless users wait for carriers to deploy a life-saving technology that many users assume they already have,⁴⁰ wireless users' calls to 911 will continue to

³⁸ Texas Advisory Commission et al Comments at 2.

³⁹ There was a question raised at the technology forum about whether it makes sense to pay for five or six network systems in a market when you can just use one interoperable handset standard. There are two answers. First, as TruePosition has demonstrated, the costs of network-based technologies are equivalent to or lower than the costs of handset solutions on a per-subscriber basis. This is true no matter how many networks are in a market. Perhaps the question should be, why deploy 100 million new handsets if you can obtain the same coverage with a few network-based systems? Second, carriers could lower the per-subscriber costs of network-based systems even further by purchasing ALI coverage from a "service bureau" (see AirTouch Comments at 6 and n.13) or jointly purchase one network-based system that could cover multiple networks and multiple air interfaces in a single geographic market. TruePosition, for example, is designing such a system today. Moreover, such a multi-network location system could ensure greater reliability and accuracy because of the larger number of cell sites with location capability (i.e., even in rural networks there would be fewer areas where locatability was dependent on one or two cell sites).

⁴⁰ In re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Notice of Proposed Rulemaking, October 19, 1994, at 37 ("Wireless customers clearly expect access to 911 services, and may be unaware that their mobile radio services do not provide the kind of location information that emergency services personnel receive from stations on the wireline network.").

increase exponentially. Eventually, a carrier – or perhaps even the Commission – will be asked to explain why a wireless carrier could not locate someone who died after dialing 911 from their wireless phone even though companies such as KSI, SigmaOne, U.S. Wireless and TruePosition offer wireless location services.

As NENA emphasized at the June 28 technology forum, the Commission must also consider the impact on the quality of wireline 911 service when PSAPS, police and emergency agencies must expend their precious, but limited, resources to locate wireless callers in need of emergency help.⁴¹ That is why "the emergency response community would tell the Commission that the safety benefits of implementing the current rule soon, instead of much later, would overwhelm those improvements [alleged by waiver requesters]."⁴²

This analysis applies both to individual waivers and to the wholesale grant of waivers, which would amount to a *de facto* amendment to the E911 rules and would require the Commission to examine the relevant data and articulate a satisfactory explanation for its decision based on substantial evidence in the record.⁴³ Any

⁴¹ NENA Comments at 6-7.

⁴² Id. at 6.

⁴³ Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962).

such decision would be contrary to the evidence before the Commission, and would therefore be arbitrary and capricious.⁴⁴

Conclusion

The June 17 comments only reinforce the fact that there is no basis in the record to grant any of the pending waiver requests or to justify adoption of the APCO or SnapTrack proposals. Swift denial of these requests is compelled by the evidence and will best spur ALI deployment and promote the very public safety interests that the Commission has sought to protect throughout this proceeding.

Respectfully submitted,

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Dated: July 2, 1999

⁴⁴ Motor Vehicle Mfrs. Assoc. of the United States v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

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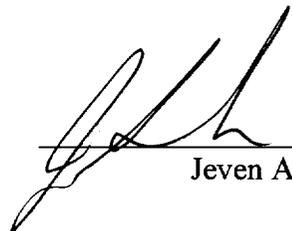
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