

FCC MAIL SECTION

Federal Communications Commission

FCC 99-352

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of )  
)  
)  
Revision of the Commission's Rules )  
To Ensure Compatibility with )  
Enhanced 911 Emergency Calling Systems )

CC Docket No. 94-102  
RM-8143

**SECOND MEMORANDUM OPINION AND ORDER**

Adopted: November 18, 1999

Released: December 8, 1999

By the Commission: Commissioner Furchtgott-Roth concurring and issuing a statement.

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## I. INTRODUCTION AND SUMMARY

1. In this Second Memorandum Opinion and Order, the Commission takes steps to hasten the introduction and rollout of wireless Enhanced 911 (E911) services that were required by the Commission when it adopted E911 rules.<sup>1</sup> The Commission seeks to accelerate implementation of this important service in order to enable wireless callers to obtain emergency assistance more rapidly and efficiently through the transmission of certain enhanced information that assists in locating the caller. Wireless subscribership continues to grow rapidly and wireless phones are used increasingly to place 911 calls in emergency situations. The Commission adopted E911 rules in accordance with an agreement between the wireless industry and State and local 911 officials to promote wireless technologies and transmissions that provide important information to enable the 911 Public Safety Answering Point (PSAP) to promptly locate the 911 caller. The wireless E911 service was established to ensure that wireless phones automatically transmit the same vital data about a 911 caller's location as wireline phones.

2. The Commission reaffirmed its commitment to the goals for a wireless E911 service in the *E911 First Reconsideration Order*.<sup>2</sup> Accordingly, covered Commercial Mobile Radio Service (CMRS) carriers were expected to achieve transmission of the enhanced location information in two phases, with Phase I to begin April 1, 1998. The Commission subsequently received petitions from BellSouth and CTIA for further reconsideration and for clarification of the E911 rules that request the removal of ambiguities in the rules and the adoption of modifications to enhance Phase I implementation.<sup>3</sup> In this Second Memorandum Opinion and Order, we decide the various issues raised in the petitions for reconsideration and clarification. Resolution of these issues should address delays being experienced in implementation of Phase I service. In addition, we resolve such issues in order to ensure implementation of Phase II and avoid potential delays in the provision of vital Phase II services. We also take action to overcome obstacles in CMRS carriers' ability to comply with the schedule and requirements that apply to their implementation of E911, consistent with the Commission's goals in adopting the framework for E911.

3. First, the E911 rules are revised to remove the prerequisite that a cost recovery

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<sup>1</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996), adopting amendments to Section 20.3 and new Section 20.18 in the Commission's Rules, 47 C.F.R. §§ 20.3, 20.18 (*E911 First Report and Order* and *E911 Second NPRM*).

<sup>2</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997), amending 47 C.F.R. §§ 20.3, 20.18 (*E911 First Reconsideration Order*).

<sup>3</sup> The list of petitions and responsive pleadings is included in Appendix A. Abbreviations used in this Order in citing to the pleadings also are included in Appendix A.

mechanism for carriers be in place before the CMRS carrier is obligated to provide E911 service in response to a valid PSAP service request. We agree with CTIA that modification of the rule is necessary to remove ambiguities that are causing delays in Phase I implementation and that, more significantly, may delay implementation of Phase II. We decline to modify the rule, as suggested by commenters, by imposing certain requirements on the States to adopt formal mechanisms for the recovery of carrier costs and to adhere to certain definitions and procedures as the means to clarify the rule and facilitate implementation. Instead, we find that the disputes and delays that have arisen in the consideration and implementation of cost recovery mechanisms for carrier costs, in some instances, have become, and will continue to be, significant and unnecessary impediments to Phase I implementation. Moreover, we find that the disputes and delays also will be a problem in the implementation of Phase II.

4. Although a number of States have decided that separate E911 cost recovery mechanisms are the best way to recover carriers' costs of implementing E911, such mechanisms are not necessary to permit CMRS carriers, whose rates are not regulated, to recover their costs. As a result, we see no need to make the obligations of carriers to implement E911 service contingent on the resolution of carrier cost recovery issues. However, in removing the condition that a cost recovery mechanism for carriers' costs be in place before the carrier is obligated to provide E911 service, we do not intend to disturb the actions of States or localities that already have adopted such mechanisms or to discourage them from deciding that cost recovery or sharing mechanisms that cover carrier costs are an effective way of expediting wireless E911 for their citizens, especially in rural areas.

5. At the same time, adequate funding of PSAPs to enable them to deploy the upgrades to use wireless E911 location information remains essential to implementation. State and local authorities have to provide their local public safety officials with the means needed to request and use wireless E911 location information. Otherwise, PSAPs will be unable to dispatch emergency services to wireless 911 callers in life-threatening situations as quickly as possible. In these circumstances, we modify the rule to retain a cost recovery requirement for recovery of the PSAP's costs of E911 service. Thus, while we no longer condition a carrier's obligation on a cost recovery mechanism to be in place for the carrier's costs, the obligation continues to be conditioned upon the carrier receiving a valid request from the PSAP that is capable of receiving and utilizing the data elements associated with the service. Inasmuch as those capabilities often were achieved through mechanisms that included carrier costs, we modify that condition to ensure that States or localities continue to address the needs of the PSAPs to be upgraded for wireless E911.

6. Accordingly, before a carrier is required to provide E911 services pursuant to a PSAP request, the PSAP must have the means of covering its costs of receiving and utilizing the E911 information to ensure the request is valid. As modified, the carrier's E911 service obligation is triggered when the carrier receives a valid request from a PSAP that is capable of receiving and utilizing the data elements associated with the service, and a mechanism for

recovering the PSAP's cost of the E911 service is in place. We do not mandate any specific State action nor do we define the nature and extent of any funding mechanism or other approach that may achieve the necessary technology and service capabilities that enable the PSAP to make a valid service request.

7. Second, we agree with CTIA that disputes between CMRS carriers and PSAPs on the choice of the transmission means and related technologies also have caused delays in Phase I implementation. We decline, however, to establish in the E911 rules that the carriers, and not the PSAP, should have the final choice as the means to overcome the delays. Instead, given our elimination of a cost recovery mechanism for carriers as a prerequisite for E911 implementation, we conclude that negotiation between the parties, presumptively based on the alternative methods adopted in the official standard, is the best means in most instances to ensure an expeditious selection of transmission method that meets the individual requirements of the PSAP and carrier in each situation. However, in the event that an impasse arises, Commission staff will be available to help resolve these disagreements on an expedited basis, based on consideration of a number of specific factors. These include the additional costs of the two methodologies to the PSAP and the wireless carrier, whether the carrier is paying for its own E911 implementation costs or receiving funding from a State-sponsored cost recovery mechanism, the technical configuration of the PSAP's existing E911 system, and the ability of the transmission technology to accommodate Phase II of wireless E911 and other planned changes in the E911 system.

8. Third, we find that this Commission and the relevant State public service commissions can address the issues concerning local exchange carriers (LECs) that are identified as potential reasons for delay in the implementation of E911. LECs are important factors in achieving E911 implementation, inasmuch as State 911 systems are LEC-based. Although we have not, at this point, imposed special obligations on incumbent LECs in implementing E911, we note that incumbent LECs are already subject to obligations under the Telecommunications Act of 1996, as well as various Federal and State regulations, to ensure that interconnection agreements with CMRS carriers are fulfilled promptly and fairly. We intend to further monitor the role of LECs to determine whether we need to impose additional obligations on them to ensure implementation of our wireless E911 rules. We note that parties may request consideration under our rocket docket procedures of complaints filed under Section 208 of the Communications Act against LECs for violation of LECs' existing obligations.

9. Finally, we modify the Phase I rule to conform with the E911 Orders and clarify that carriers are required to provide service within six months of a PSAP's request for Phase I service when the request is received after the date established in the rules. In addition, we find the requests in CTIA's petition to protect carriers from liability for providing E911 service and to mandate nationwide usage of 911 as the number for emergency assistance are moot. The Wireless Communications and Public Safety Act of 1999 (911 Act) requires that States

provide CMRS carriers, users, and PSAPs involved in the transmission of wireless 911 and E911 calls with liability protection to the same extent the State provides protection with respect to wireline 911 services.<sup>4</sup> The 911 Act also provides for the Commission to designate 911 as the universal emergency telephone number for both wireline and wireless telephone service and includes provisions for transition periods and Commission action to encourage the development of State-wide E911 systems.<sup>5</sup> Insofar as the petition also requests the Commission encourage Federal agencies to make Federal property available for the siting of wireless facilities, we find the request to be beyond the scope of this proceeding. The United States Congress is the preferable forum for addressing this issue, as well.

10. Our goal is to maintain the framework the Commission established to achieve the E911 service intended to provide the customers of wireless carriers with improved emergency response services. This relies on the voluntary efforts of wireless and wireline providers, manufacturers, third-party providers, State and local governments, public safety authorities, and consumer interest groups to achieve the necessary transmissions and provide the emergency assistance required by the public. The Commission adopted the E911 rules to ensure that CMRS licensees developed the capabilities to achieve enhanced transmission of 911 calls and respond promptly when localities request service. We are concerned by delays in the implementation of Phase I of the E911 service and address obstacles to that implementation in order to take appropriate action for their removal. We also are concerned about the potential delays to Phase II implementation that are likely to result unless such obstacles are removed. Our actions in this Order are intended to build on the progress that has been made and to expedite E911 implementation. Any unnecessary delay in deployment and effective, universal operation of E911 is undesirable.

11. Our actions also are consistent with the Congressional goals reflected in the newly enacted 911 Act. The purpose of the 911 Act is "to encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs."<sup>6</sup> Among other things, the 911 Act requires this Commission, or its delegatee, to designate 9-1-1 as "the universal emergency telephone number within the United States."<sup>7</sup> The Commission also is specifically directed to encourage and support efforts by States to deploy comprehensive end-to-end emergency communications

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<sup>4</sup> Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, enacted Oct. 26, 1999, at Section 4 (911 Act).

<sup>5</sup> *Id.* at Section 3.

<sup>6</sup> *Id.* at Section 2(b).

<sup>7</sup> *Id.* at Section 3(a).

infrastructure and programs, based on coordinated statewide plans that include a ubiquitous wireless network and wireless E911 service.<sup>8</sup> We plan to move forward promptly to implement these Congressional goals, including through the initiation of a rulemaking proceeding.

## II. BACKGROUND

12. In the *E911 First Report and Order*, the Commission adopted E911 rules to promote an improved wireless 911 service based largely upon a framework developed by representatives of the wireless industry and public safety organizations in a Consensus Agreement.<sup>9</sup> Under the program's framework, the E911 rules impose general performance criteria on covered CMRS carriers in the transmission of 911 calls under a Basic 911 and an E911 service, as well as through the use of Text Telephone Devices (TTY). Implementation of the service was to occur according to the timetable reflected in the Consensus Agreement. The development of the detailed technical and operational standards necessary to achieve implementation and widespread access by wireless callers to emergency services was to be undertaken through the cooperative efforts of the interested parties.<sup>10</sup>

13. In the *E911 First Reconsideration Order*, the Commission denied petitions for reconsideration of the performance criteria and timetable established in the rules for E911 implementation in Phase I and Phase II, and reaffirmed its commitment to rapid implementation of E911 transmissions.<sup>11</sup> Subsequently, the Commission adopted additional rules and modified the Phase II criteria in two Orders to enhance implementation of wireless 911 and E911.<sup>12</sup>

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<sup>8</sup> *Id.* at Section 3(b).

<sup>9</sup> *E911 First Report and Order*, 11 FCC Rcd at 18687-89 (paras. 21-23), noting the Consensus Agreement filed by CTIA, APCO, NENA, and NASNA on February 12, 1996.

<sup>10</sup> *Id.* at 18712-14 (paras. 73-75).

<sup>11</sup> *E911 First Reconsideration Order*, 12 FCC Rcd at 22668 (para. 6). Limited revisions to the rules were adopted to remedy certain technical problems. These included the removal of certain conditions on the carrier's obligation in Basic 911 service to transmit all the 911 calls it received. *Id.* at 22673-86 (paras. 13-41), amending Section 20.18(b) of the Commission's Rules, 47 C.F.R. § 20.18(b)

<sup>12</sup> The *E911 Second Report and Order* adopted an equipment requirement that analog cellular phones include a separate capability for improving 911 call completion. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Second Report and Order, 14 FCC Rcd 10954 (*E911 Second Report and Order*), adopting 47 C.F.R. § 22.921 of the Commission's Rules. The *E911 Third Report and Order* modified the performance criteria and timetable for Phase II in order to accommodate both handset-based and network-based solutions for transmission of a caller's Automatic Location Information (ALI) data, while continuing to provide for some service by the Phase II implementation date of

14. Accordingly, the E911 rules now provide that, for Phase I, carriers transmit a caller's Automatic Number Identification (ANI) and the location of the cell site or base station receiving a 911 call (Pseudo-ANI) to the designated 911 Public Safety Answering Point (PSAP) beginning April 1, 1998.<sup>13</sup> These capabilities allow the PSAP attendant to call back if the 911 call is disconnected and provide general location information. As for Phase II, carriers are to transmit more accurate Automatic Location Information (ALI) of a caller beginning October 1, 2001, according to phased-in timetables for handset-based and network-based technologies.<sup>14</sup> The two prerequisites in our current rules for a carrier's obligation to implement either Phase I or Phase II are that: (1) the carrier has received a request for such service from a PSAP that has the capabilities of receiving and using the data, and (2) a mechanism for recovering the costs of the service is in place.<sup>15</sup>

15. In response to the *E911 First Reconsideration Order*, the Commission received petitions for reconsideration and clarification of the Order and the E911 rules from BellSouth and CTIA.<sup>16</sup> Among other issues, CTIA requests the E911 rules be modified to define a specific cost recovery mechanism by mandating a State-adopted, neutral mechanism to recover the carrier's E911 costs and prohibiting a State from asking the carrier to recover its own costs through rate adjustments. CTIA also requests the rules designate that carriers have the right to decide the transmission means under the official transmission standard for Phase I. Several responsive pleadings were filed.<sup>17</sup>

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October 1, 2001. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Third Report and Order, FCC 99-245, released October 6, 1999 (*E911 Third Report and Order*), adopting and revising 47 C.F.R. §§20.18(e)-(k).

<sup>13</sup> 47 C.F.R. § 20.18(d).

<sup>14</sup> 47 C.F.R. §§ 20.18(e)-(i).

<sup>15</sup> 47 C.F.R. § 20.18(j). We note that those carriers that choose the handset-based solution for Phase II deployment are required to begin selling and activating Phase II-compliant handsets no later than March 1, 2001, without regard to the PSAP-related prerequisites identified in Section 20.18(j). *E911 Third Report and Order*, FCC 99-245, released Oct. 6, 1999, at 20 (para. 42), adopting revised 47 C.F.R. § 20.18(g)(1).

<sup>16</sup> BellSouth Petition for Reconsideration; CTIA Petition for Reconsideration. Insofar as CTIA requests the Commission modify the Phase II rule to accommodate handset-based location technologies, that request was addressed in the *E911 Third Report and Order*.

<sup>17</sup> WCA filed a Request for Acceptance of Late-Filed Pleading with its Comments in Opposition, in which it requests that we accept the comments four days after the due date. We grant the request, which does not delay the proceeding, and will consider its comments to ensure a complete record. We note that, since the time of the referenced pleading, the Ad Hoc Alliance for Public Access to 911 has reorganized and changed its name to the Wireless Consumers Alliance (WCA), which we will apply to all its pleadings in this proceeding.

16. On June 9, 1999, the Commission released a Public Notice seeking to augment the record on the pending petitions and on the factors that could be causing delays in the implementation of Phase I to ensure that the Commission may take whatever action may be necessary to facilitate implementation.<sup>18</sup> The Commission noted that the 1998 Joint Annual Status Report filed by the parties to the Consensus Agreement and WCA on the status of E911 implementation revealed that the pace was very slow for Phase I, even though the deadline for commencing implementation was set in the rules as April 1, 1998.<sup>19</sup> The Consensus Agreement parties were requested to submit a report indicating their positions on these issues and other factors that may be responsible for the delay in Phase I, and recommending alternatives for resolving the issues.

17. On August 16, 1999, the Commission requested comment on the Implementation Report filed August 9 in response to the June 9 Public Notice together with four individual comments.<sup>20</sup> The Implementation Report asserts that many implementation issues that present challenges to CMRS carriers and PSAPs cannot be resolved by the Commission. These include the complexity of addressing the differences among the thousands of different PSAPs and their jurisdictions by the many different carriers, both of which groups are striving to achieve E911 capabilities to implement the service. The Implementation Report, however, does ask the Commission to take action on certain issues that, if remedied properly, could facilitate the rollout of E911 implementation.<sup>21</sup>

18. Specifically, the Implementation Report states that the E911 cost recovery rule is an impediment to Phase I implementation in some cases because of significant issues in establishing and implementing State legislation for carriers and PSAPs. The Implementation Report requests clarification on whether State legislation is required before Phase I must be implemented and what should be some of the particulars of an adequate cost recovery

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<sup>18</sup> Public Notice, Commission Seeks to Facilitate Wireless E911 Implementation and Requests a Report, FCC 99-132, released June 9, 1999 (June 9 Public Notice).

<sup>19</sup> *Ex parte* filing, Feb. 1, 1999, "Report of CTIA, PCIA, APCO, NENA, NASNA, and Alliance," at 12 (1998 Joint Annual Status Report).

<sup>20</sup> Public Notice, Wireless Telecommunications Bureau Requests Comment on Wireless E911 Report Filed by CTIA, PCIA, APCO, NENA, and NASNA on August 9, 1999, DA 99-1627, released August 16, 1999, 64 Fed. Reg. 47811, September 1, 1999 (August 16 Public Notice).

<sup>21</sup> *Ex parte* filing, Aug. 9, 1999, Report of CTIA, PCIA, APCO, NENA, and NASNA, at 6-7; erratum *ex parte* filing, Aug. 10, 1999 (Implementation Report). The Report and four comments filed in response to the June 9 Public Notice are listed separately in Appendix A.

mechanism.<sup>22</sup> Delays in Phase I implementation also are attributed to the absence of federal or State provisions for protection of carriers from liability for their provision of E911 service and to the role of LECs that own and operate the wireline 911 system used by the PSAP. Several comments were filed in response to the August 16 Public Notice.<sup>23</sup>

### III. Discussion

#### A. Cost Recovery Mechanism

19. **Introduction.** We decide to remove from the E911 rules the requirement that a cost recovery mechanism for carriers be in place before a CMRS carrier is obligated to implement E911 services in response to a PSAP's valid request for such service. We find that it is not necessary for the Commission to mandate a cost recovery mechanism for carriers that are not subject to rate regulation and that, in fact, such a prerequisite often results in delays to Phase I implementation. We, therefore, deny the petition to clarify the rule with definitions that impose requirements on the States to implement specific mechanisms for carriers. We conclude that such modifications would not overcome the obstacles to the implementation of Phase I service under the current rule and would not be consistent with Commission practice or policy.

20. We find that the disputes and delays that have arisen in the consideration and implementation of cost recovery mechanisms for carriers have become and will continue to be significant and unnecessary impediments to E911 implementation. While a number of States have decided that separate E911 cost recovery mechanisms are the best way to recover carriers' costs of implementing E911, such mechanisms are not necessary to permit CMRS carriers, whose rates are not regulated, to recover their costs. As a result, we see no need to make implementation of E911 service contingent on the resolution of issues pertaining to such mechanisms.

21. Cost recovery, as interpreted by CTIA in its petition and by the carriers, requires a pooling mechanism adopted by State legislatures that includes funding for carriers. Deciding the necessary details of an adequate cost recovery mechanism under such an approach is a source of disputes because of the competing interests of CMRS carriers, PSAPs, and State or local governments. In some instances, disputes over the adequacy of a State-mandated cost recovery scheme for CMRS carriers have slowed down Phase I implementation. The cost recovery rule for carriers is likely to impede the timely implementation of Phase II as well, because of the ongoing nature of these disputes and the wide range of costs that may result to carriers from achieving Phase II capabilities through divergent solutions, either handset-based

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<sup>22</sup> Implementation Report at 4, 9-12.

<sup>23</sup> The comments filed in response to the August 16 Public Notice are listed separately in Appendix A.

or network-based. Although States remain free to implement mechanisms or other approaches for carrier cost recovery as the best and most expeditious method of providing for the initiation of wireless E911 service if they choose to do so, we decide that having such a federal prerequisite for a carrier's obligation to implement E911 service is unnecessary and, in some instances, counterproductive.

22. We find that, although eliminating the prerequisite for a mechanism for carriers should facilitate E911 implementation, many issues remain. The Implementation Report and comments reflect that achieving Phase I and Phase II service requires an extraordinary amount of coordination and cooperation among wireless and wireline carriers, the PSAPs, and the State or local 911 officials. The Commission recognized that the success of E911 depends upon the decisions of States and localities to invest in facilities or equipment upgrades and establish the necessary emergency services that enable PSAPs to receive the E911 data and respond to callers' needs.<sup>24</sup> We find that, by removing consideration of CMRS carriers' cost recovery as a factor in these decisions and by making clear that it is no longer a precondition to the carrier's obligation to provide E911 services, States and PSAPs have additional flexibility in balancing all of their considerations and in achieving successful agreements with carriers more promptly and efficiently.

23. Although we modify our rule to clarify that we do not require that a mechanism for carrier cost recovery be in place before a carrier's obligation to provide E911 services is triggered, our modified rule retains the requirement for PSAP cost recovery. Specifically, before a carrier is required to provide E911 services pursuant to a PSAP request, the PSAP must have a means of covering its costs of receiving and utilizing the data elements associated with those services. Adequate funding of PSAPs to enable them to deploy the upgrades to use wireless E911 location information remains essential to implementation. State and local authorities have to provide their local public safety officials with the means needed to request and use wireless E911 location information. Otherwise, PSAPs will be unable to dispatch emergency services to wireless 911 callers in life-threatening situations as quickly as possible. In these circumstances, we modify the rule to retain a cost recovery mechanism to recover the PSAP's costs of E911 service. We note here that we do not dictate the funding approach to be used. The key is that PSAPs have a source of funds sufficient to support E911, not that any particular funding approach is employed.

### **1. Background**

24. In the *E911 First Report and Order*, the Commission made a wireless carrier's obligation to implement E911 services contingent upon the adoption of a cost recovery

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<sup>24</sup> *E911 First Report and Order*, 11 FCC Rcd at 18681 (para. 9).

mechanism, but declined to prescribe any particular mechanism at that time.<sup>25</sup> It found there was no need to specify the particulars of an adequate cost recovery mechanism beyond the general requirement that a mechanism be in place. It concluded that an inflexible prescription would discourage carriers and government officials from developing cost recovery solutions tailored to local conditions and needs, and thereby undercut and delay E911 deployment. In the *E911 First Reconsideration Order*, the Commission summarily denied requests for reconsideration and found no basis to conclude that any particular State-adopted mechanism was unlawful.<sup>26</sup>

25. **CTIA's Petition for Clarification.** In its petition for clarification, CTIA requests that the Commission make clear that the cost recovery rule requires that a State or locality adopt specific provisions for carrier cost recovery prior to E911 implementation.<sup>27</sup> CTIA further requests confirmation that the Commission intended for States or localities to implement a uniform, neutral cost recovery mechanism, such as a tax or surcharge, that is similar to the wireline funding model. CTIA argues that States, therefore, are prohibited by the rule from asking a carrier instead to rely on its ability to recover costs through charges to its customers.

26. AirTouch, Ameritech, AT&T, BAM, and PrimeCo support the petition.<sup>28</sup> Ameritech also requests the rule be modified to make clear that a cost recovery mechanism is "in place" no sooner than when the State is ready to reimburse carriers for their E911 costs. BellSouth and GTE, filing jointly, request the Commission find that the State of Hawaii would be in violation of the rule and of the prohibition against State rate regulation in Section 332(c)(3) of the Act if the State asks carriers to rely on their own rates for E911 cost recovery.<sup>29</sup>

27. In opposition to CTIA's petition, WCA, the States of Hawaii and Washington, and

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<sup>25</sup> *Id.* at 18722 (paras. 89-90), adopting former 47 C.F.R. § 20.18(f) and revised as § 20.18(j) as follows:

(j) Conditions for Enhanced 911 Services. The requirements set forth in paragraphs (d) and (e) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the costs of the service is in place.

<sup>26</sup> *E911 First Reconsideration Order*, 12 FCC Rcd at 22735 (paras. 145-46).

<sup>27</sup> CTIA Petition at 17-18; CTIA Reply Comments at 13-15.

<sup>28</sup> AirTouch Reply Comments at 3-4; Ameritech Reply Comments at 5-6; AT&T Comments at 4-5; BAM Comments at 3-4; and PrimeCo Comments at 3-5.

<sup>29</sup> BellSouth and GTE *ex parte* filing, April 3, 1998.

Public Safety Associations argue that there is nothing in the record to indicate the choice of cost recovery methodologies is limited.<sup>30</sup> Furthermore, they contend that, because a CMRS carrier's rates are not regulated, reliance on direct cost recovery is an option consistent with the competitive marketplace. Public Safety Associations agree with CTIA and the carriers that, as reflected in the Consensus Agreement, the parties intended to pursue publicly-adopted surcharges similar to those often used for wireline 911, but disagree that the Commission should modify the rule to require a uniform State or local mechanism or to prohibit a carrier's own cost recovery through unregulated rates.<sup>31</sup>

**28. Implementation Report and Cost Recovery Issues.** In the June 9 Public Notice, the Commission stated that the flexibility given the interested parties under the very general terms of the current cost recovery rule had not produced the prompt implementation of cost recovery mechanisms and Phase I services that was envisioned.<sup>32</sup> Instead, the confusion and disagreement on the definition of an adequate funding mechanism were contributing to the delay of Phase I. In the Implementation Report, the parties to the Consensus Agreement agree that the issue of cost recovery has been an impediment to Phase I implementation in some cases.<sup>33</sup> According to the Report, the rule is ambiguous whether State legislation is required before Phase I can be implemented; some jurisdictions have requested and received Phase I without a separate funding law. The Report identifies several issues in establishing such a mechanism and notes the different perspectives of carriers and PSAPs in obtaining adequate public funding that best meets their view of the carriers' needs for such funds. The parties individually suggest alternative solutions to overcoming the impediments described in the Report.

29. Specifically, APCO requests that the rule be deleted and that a carrier's service obligation no longer be contingent upon there being an undefined, general cost recovery mechanism in place.<sup>34</sup> APCO argues that the current rule permits carriers to refuse to provide E911 service in response to a PSAP until they obtain the mechanism and funding level they want from a State, which is a time-consuming and complicated process. APCO contends that it is consistent with Commission practice to require CMRS carriers to comply with their

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<sup>30</sup> Hawaii Opposition at 1-7; Public Safety Associations Opposition and Comments at 5-7; Washington Comments at 4-5; and WCA Opposition at 1-4, 15.

<sup>31</sup> Public Safety Associations Opposition and Comments at 6-7. Public Safety Associations are the major groups representing the public safety community that filed jointly in response to CTIA's petition. These are APCO, NENA, and NASNA.

<sup>32</sup> June 9 Public Notice at 4.

<sup>33</sup> Implementation Report at 9-12.

<sup>34</sup> Implementation Report, APCO Addendum.

service obligations regardless of cost recovery provisions, inasmuch as they are able to adjust their rates to recover their own costs from their customers. In the absence of such provisions, carriers are able to recover their own costs either through a line-item on their bills, such as the "bill and keep" approach, or simply as a cost of doing business that is reflected in their overall pricing structure in the competitive marketplace. APCO argues that States are free to adopt cost recovery mechanisms that address any special requirements of carriers, but they should not be required to do so.

30. On the other hand, CTIA renews the various requests in its petition that the Commission clarify that cost recovery issues must be resolved at the State or local level and that cost recovery mechanisms must be competitively neutral, such as a uniform E911 fee.<sup>35</sup> CTIA argues that States should not be permitted to fulfill their cost recovery obligation by permitting carriers to recover their own costs, inasmuch as such an approach would be harmful to ongoing efforts to establish legislated mechanisms and risk undoing existing funding agreements. CTIA argues that this would be harmful to PSAPs, as well as carriers, because such formal mechanisms include costs incurred by PSAPs for their upgrades for wireless E911 services.

31. NENA agrees with CTIA that cost recovery primarily is a State or local matter, but disagrees that States should be required to adopt cost recovery legislation before Phase I can be deployed.<sup>36</sup> All that is required, NENA argues, is that the PSAP be able to pay for the carrier's service costs. NENA also is concerned that retroactively introducing carrier self-recovery approaches will jeopardize existing arrangements. NENA also argues that, in the absence of a cost recovery requirement, the existing collaboration between carriers and PSAPs in achieving cost recovery legislation and other solutions will be eliminated, leaving PSAPs alone in seeking funding legislation. If PSAPs are unsuccessful in these legislative efforts, they might not be able to implement E911. NENA requests that the Commission provide antitrust protection to allow the parties to explore the true costs of service to reach agreements and facilitate legislation. NENA also requests clarification of remedies available to PSAPs that are unable to obtain Phase I services from carriers when the two prerequisites for service are met. NASNA supports NENA and requests that the rule not be modified in order to ensure that PSAPs can continue to work with carriers, LECs, and third-party vendors in resolving cost recovery and technical issues.<sup>37</sup>

32. Four individual comments were filed by other parties in response to the June 9

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<sup>35</sup> Implementation Report, CTIA Addendum.

<sup>36</sup> Implementation Report, NENA Addendum.

<sup>37</sup> Implementation Report, NASNA Addendum.

Public Notice.<sup>38</sup> Several comments were filed in response to the request in the August 16 Public Notice that address the positions and solutions in the Implementation Report. Essentially, carriers, CTIA, RCA, and SCC identify significant difficulties in achieving State-adopted cost recovery mechanisms and request the rule be clarified and modified to provide various definitions and requirements to overcome the difficulties and the resulting delays in achieving such mechanisms and E911 implementation.<sup>39</sup> They oppose APCO's proposal. Comments also were filed by APCO, Indiana, the Attorney General of the State of Washington (Washington Attorney General), and WCA.<sup>40</sup> The Washington Attorney General seeks a declaratory ruling clarifying that the cost recovery rule does not permit carriers to demand payment from the State or locality for E911 services prior to being required to provide the service and, therefore, carriers may not refuse to comply with a State Phase I law that does not provide for payment from the local jurisdiction.

**33. Current Status of Phase I Implementation.** The Implementation Report and the comments describe extensive and complex efforts that carriers have undertaken in collaborating with PSAPs and State or local governments to establish legislated cost recovery mechanisms for wireless E911 that are similar to the State mechanisms for wireline 911 and E911.<sup>41</sup> They also uniformly demonstrate, however, that Phase I service is scarce and, in most parts of the country, nonexistent.

34. Indeed, although the Implementation Report indicates that CTIA's survey reveals that 27 States have enacted some form of cost recovery legislation related to Phase I funding, CTIA also reveals that only 284 PSAPs have implemented Phase I in some part of 15 States, despite a nationwide total of 10,000 PSAPs.<sup>42</sup> Similarly, the Implementation Report states that SCC's survey reveals that 33 States have wireless 911 surcharges, yet SCC asserts that Phase I service is only being provided to a small percentage of wireless subscribers that it estimates

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<sup>38</sup> AT&T Comments of Aug. 9; King County Comments of Aug. 3; Omnipoint Comments of Aug. 9; and SCC Comments of Aug. 9.

<sup>39</sup> AirTouch Comments of Sept. 14; Ameritech Comments of Sept. 14; AT&T Comments of Sept. 14; BellSouth Comments of Sept. 14; CenturyTel Comments of Sept. 14; CTIA Comments of Sept. 14 at 1-3; Nextel Comments of Sept. 14; Omnipoint Comments of Sept. 14; RCA Comments of Sept. 14; SCC Comments of Sept. 14; Sprint PCS Comments of Sept. 14; USC Comments of Sept. 15; US West Comments of Sept. 14; Western Comments of Sept. 14.

<sup>40</sup> APCO Comments of Sept. 14; Indiana Comments of Sept. 1; Washington Attorney General Comments of Sept. 15; and WCA Comments of Aug. 31.

<sup>41</sup> For example, CTIA and USC submit extensive summaries of the progress in each State in developing and establishing legislated cost recovery solutions and in profiling the status of E911 implementation. CTIA Comments of Sept. 14 at Exhibits A and B; USC Comments of Sept. 15 at Exhibits A-D.

<sup>42</sup> Implementation Report at 4-5; Nextel Comments of Sept. 14 at 12.

at less than three percent nationally.<sup>43</sup> SCC asserts that its 12 wireless carrier clients are seeking to deploy Phase I in response to requests from over 1,400 PSAPs, but barriers to deployment must be removed that include a number of conflicting interpretations of the cost recovery rule and the lack of means by the States to deploy service on a statewide basis despite their cost recovery mechanisms.

35. Carrier comments in response to the Implementation Report reflect the extent to which implementation of Phase I is a problem under the existing rule and unlikely to occur on a widespread basis anytime soon. Insofar as there are carriers that describe Phase I deployment in various parts of their operating areas, the service is sketchy, minimal, and characterized by numerous and varied disputes with the State or local authorities over the administration of the funding mechanism.<sup>44</sup> The remainder of the carriers appear to describe ongoing Basic 911 services and participation in existing State-adopted mechanisms that collect wireless 911 surcharges, while faulting the absence of E911 funding in these mechanisms for their not providing Phase I service.<sup>45</sup> Of the States that filed comments, Indiana indicates that it successfully enacted an E911 law and has been disbursing funds since February to at least one CMRS carrier providing Phase I in 31 counties.<sup>46</sup> However, Hawaii and Washington have no cost recovery legislation and apparently little or no Phase I service, while Texas has legislation but the extent of implementation is minimal at this time.<sup>47</sup>

36. Although the Implementation Report and carriers argue that the increasing establishment of State-adopted cost recovery mechanisms will result in an increase in Phase I deployment, APCO argues that they paint an overly optimistic view of their compliance with the Phase I rule, particularly because few subscribers now have Phase I service and there are

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<sup>43</sup> Implementation Report at 4, SCC Comments of Aug. 9 at 1-2 and 6, and of Sept. 14 at 1-3. SCC is the leading provider of 911 operations support systems to wireline and wireless carriers. SCC has over 81 million subscriber records under management and provides 911 products and services to over 170 million people throughout North America. SCC's 12 wireless customers have a subscriber base of approximately 25 million people. SCC Comments of Sept. 14 at 1 n. 1.

<sup>44</sup> AirTouch Comments of Sept. 14 at 11-13; AT&T Comments of Aug. 9 at 2-4, 7-8 and of Sept. 14 at 3-5 ns.10, 14; BellSouth Comments of Sept. 14 at 3-7, Attachments 1-3; Nextel Comments of Sept. 14 at 8-12; USC Comments of Sept. 15 at 4-17; and US West Comments of Sept. 14 at 3-4, 6-7.

<sup>45</sup> Ameritech Comments of Sept. 14 at 1-5; CenturyTel Comments of Sept. 14 at 4-7; OmniPoint Comments of Aug. 9 at 3-8; Sprint PCS Comments of Sept. 14 at 1-6; and Western Comments of Sept. 14 at 2-5.

<sup>46</sup> Indiana Comments of Sept. 1 at 1-4.

<sup>47</sup> CTIA Comments of Sept. 14 at Attachments, CTIA Wireless E911 Phase I Matrix and Wireless E911 Phase I Implementation State-By-State Profiles.

23 States with no Phase I cost recovery legislation.<sup>48</sup> Even in those States with legislation, the Implementation Report and comments demonstrate the frequency and difficulty of the disputes about the adequacy of the cost recovery mechanism and its administration. As indicated, a number of parties contend that the administrative processes under some State mechanisms contribute to implementation delays and that the amounts collected and disbursed are inadequate. State Boards are engaged in ongoing disputes with carriers that may not provide service until the amounts are adjusted to be adequate.<sup>49</sup>

37. Finally, the comments reflect the extent to which implementation of Phase II could be delayed, if not prevented, by the problems and issues that are causing the delays of Phase I. WCA is concerned by the lack of focus in the Report on Phase II implementation and the inadequacy of the surcharges under the existing mechanisms, which it asserts averages 72 cents per subscriber per month, to support the Phase II systems and their more advanced location technologies.<sup>50</sup> According to WCA, a carrier will need to rely even more on private investment and non-emergency uses of its service to generate sufficient income to offset the cost of ALI equipment. It would appear, therefore, that, because the amounts needed to cover Phase II ALI will be greater and Phase II capabilities potentially may have numerous commercial applications, the question of how much of the total cost of implementing ALI is to be paid for through these State-adopted cost recovery mechanisms undoubtedly will generate further disputes. APCO makes a similar point, asserting that few if any States with procedures or fees in place under an E911 cost recovery mechanism are addressing the substantial carrier expenses related to Phase II implementation.<sup>51</sup>

## 2. Discussion

38. **Introduction.** As discussed more fully below, we first delete from the E911 rules the condition that requires a cost recovery mechanism for carriers to be in place before a wireless carrier is obligated to implement E911. When the Commission made a carrier's obligation to provide E911 service contingent upon a cost recovery mechanism being in place, it sought to ensure that the term was sufficiently broad to encourage progress among the parties and permit the State or local funding mechanisms described in the Consensus Agreement.<sup>52</sup> It is apparent from the record based on CTIA's petition for clarification, as supplemented by the Implementation Report and the comments, that disputes about the

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<sup>48</sup> APCO Comments of Sept. 14 at 2-3.

<sup>49</sup> See, e.g., Indiana Comments of Sept. 1 at 4-6.

<sup>50</sup> WCA Comments of Aug. 31 at 3, 7.

<sup>51</sup> APCO Comments of Sept. 14 at 3.

<sup>52</sup> *E911 First Report and Order*, 11 FCC Rcd at 18722 (paras. 89-90).

meaning of the cost recovery mechanism have become a significant impediment to implementation of Phase I.

39. Essentially, the Implementation Report and the responsive comments propose two solutions in response. On the one hand, CTIA, carriers, RCA, SCC, NENA, and NASNA request that the rule require a State or local government-funded cost recovery mechanism that provides for carrier funding be in place before a carrier is required to provide E911 service and that the rule prohibit a carrier's self-recovery.<sup>53</sup> On the other hand, APCO, Hawaii, Washington, and WCA oppose any requirement for a specific mechanism that prevents a carrier from implementing service promptly. In order to move E911 implementation forward, it appears that we must either adopt a much more detailed definition of a cost recovery mechanism or delete that condition from the rule. We have decided upon the latter course, in part, but retain the cost recovery mechanism for PSAPs as a condition to a CMRS carrier's obligation to provide E911 service, as explained more fully below.

40. Our amendment of the rule does not mean that wireless carriers may not recover their costs in implementing E911. Because their rates are deregulated, CMRS carriers may recover their service costs through those rates without waiting for a State-adopted mechanism. The carriers also are free to work with the State legislatures or officials to adopt specific mechanisms for carriers' cost recovery, which may well result in the most expeditious delivery of E911 service in certain circumstances. We note here, moreover, that the revised rule does not disturb current State or local cost recovery schemes that include the carriers' costs. Nevertheless, we do not condition a carrier's obligation upon the availability of such State-mandated mechanisms for the recovery of the carrier's costs.

**41. Difficulties in Implementing the Rule Within Phase I Timetable.** The Commission intended that its rule would provide parties with the necessary flexibility to define a cost recovery mechanism that met local and individual needs, and thus speed implementation of E911. The cost recovery condition was understood to be consistent with the timetable for Phase I implementation, which was scheduled to begin by April 1, 1998, or within six months of a PSAP's service request, whichever is later. Although the E911 rules provide carriers the flexibility to resolve implementation issues and establish cost recovery mechanisms, the Commission imposed a schedule to ensure that the issues were resolved and to promote the deployment of the Phase I and Phase II technologies.<sup>54</sup>

42. Instead, based on the record before us, a prerequisite that there be a carrier cost recovery mechanism has not expedited the delivery of E911 service and, if anything, has

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<sup>53</sup> NENA and NASNA, however, would not require that the mechanism necessarily be one adopted by the State legislature and could be any form of State or local payment for the carriers' E911 service.

<sup>54</sup> *E911 First Report and Order*, 11 FCC Rcd at 18707-08 (para. 61).

become and will continue to be an impediment to the implementation of E911 service. We agree with APCO that satisfying the cost recovery requirement for carriers has been an impediment to Phase I service in some instances and poses a greater roadblock for Phase II.<sup>55</sup> It appears that few States or localities have made the effort to identify funding or procedures for carriers for Phase II. Carriers' costs for implementing Phase II may well require greater investments than Phase I and may vary widely, depending upon the Phase II solution adopted by a particular carrier. We find that, unless we take action now to overcome impediments evident in this record and to encourage the implementation of Phase I service, our goal for the launch of Phase II service by October 1, 2001, will be impaired.

43. CTIA and carriers argue that the cost recovery rule does not hinder E911 deployment, inasmuch as their efforts with State legislatures to establish State-adopted mechanisms have been successful in a majority of the States.<sup>56</sup> Yet the record demonstrates that carriers are not implementing Phase I now except in very few cases and that, as explained below, disputes about carrier cost recovery issues remain an impediment. The Commission did not anticipate delays of this nature when it adopted the Phase I schedule, but expected prompt deployment when a PSAP with the necessary capabilities requested service, either by April 1, 1998, or within six months of the request, whichever was later.<sup>57</sup> We are concerned that implementation could be delayed indefinitely so long as the existence of an "adequate" cost recovery mechanism for carriers is a precondition of a carrier's E911 service obligation.

44. State legislative and implementation disputes often arise in deployment of formal cost recovery mechanisms for carriers. The Implementation Report and the comments uniformly agree that the legislative processes necessary to achieve cost recovery mechanisms that are similar to those used for wireline 911 and E911, which some carriers and PSAPs prefer, are complicated and time-consuming. As the Report states, progress in establishing legislation is correlated to the level of differing interests of PSAPs and carriers on these issues.<sup>58</sup> Thus, the different parties oppose legislation themselves at different times because of competing interests. As the Implementation Report notes, there are competing perspectives on what constitutes an adequate mechanism for the carrier's recovery and on such significant issues as determining the carrier's eligible costs, calculating the money to be collected, defining the collection and disbursement methodologies, and specifying how PSAPs and carriers

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<sup>55</sup> Implementation Report, APCO Addendum at 1-2; APCO Comments of Sept. 114 at 3.

<sup>56</sup> BellSouth Comments of Sept. 14 at 8; CTIA Comments of Sept. 14 at 3; and Omnipoint Comments of Aug. 9 at 6-7.

<sup>57</sup> *E911 First Report and Order*, 11 FCC Rcd at 18709-10 (paras. 64-66).

<sup>58</sup> Implementation Report at 4.

spend the E911 funds.<sup>59</sup> The Report concludes that cost recovery issues have been an impediment to the implementation of Phase I in some cases.

45. We find that the record also does not support reliance on the arguments of CTIA and carriers that the Commission should stay the course and that the difficulties are over.<sup>60</sup> Even granting that some progress has been made and assuming the pace picks up, there are some States that may never adopt legislative solutions that include carrier cost recovery. Hawaii opposes any mandate by this Commission or its State legislature on how CMRS carriers should recover their own costs in the State, and even a cost recovery law that was passed was vetoed by the governor.<sup>61</sup> Similarly, AirTouch asserts that other State legislatures, such as Idaho, refuse to consider such legislation.<sup>62</sup>

46. Moreover, the mere passage of a cost recovery law for carriers does not ensure a successful outcome and prompt implementation, inasmuch as problems remain in States that have adopted specific cost recovery mechanisms. For instance, AirTouch contends that States such as Colorado and Georgia have enacted faulty and fragmented mechanisms for carrier recovery that result in disputes that slow Phase I implementation.<sup>63</sup> Other carriers, such as AT&T and USC, also contend that the legislation that has passed to date is problematic, asserting that many State laws do not allow adequate or, in some cases, any reimbursement of carrier costs and that State and local governments often use the funds collected for purposes other than E911 carrier cost recovery.<sup>64</sup> In these and other cases, carriers are involved in legislative efforts seeking modifications to State cost recovery laws for carrier recovery that may never be resolved, which could stall E911 indefinitely.

47. Another ongoing problem that could continue to delay implementation is the need to establish the carriers' costs to be reimbursed and the difficulties in resolving the naturally competing interests of carriers and the States or PSAPs in determining the adequacy of the funding for carriers. Indiana, which considers itself successful in enacting and implementing a mutually-acceptable Statewide cost recovery law within two years, is in disputes with AirTouch and USC over the caps on cost recovery, which appear to have delayed Phase I

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<sup>59</sup> *Id.* at 9-10.

<sup>60</sup> AirTouch Comments of Sept. 14 at 5; BellSouth Comments of Sept. 14 at 6-7; CTIA Comments of Sept. 14 at 3; and Omnipoint Comments of Aug. 9 at 6-7.

<sup>61</sup> Hawaii Opposition at 5-6; CTIA Comments of Sept. 14 at Attachment, State-by-State Profiles.

<sup>62</sup> AirTouch Comments of Sept. 14 at 7 n. 15.

<sup>63</sup> *Id.* at 11-12.

<sup>64</sup> AT&T Comments of Aug. 9 at 7-8; USC Comments of Sept. 15 at 4-8.

implementation by these carriers.<sup>65</sup> It appears that Washington has been unable to enact any mechanism because of carriers' reluctance to provide data sought by the legislature to establish true costs, so that there are delays in AirTouch, AT&T, USC, and US West providing Phase I service there.<sup>66</sup>

48. AT&T, among other carriers, acknowledges that disputes over an adequate cost recovery mechanism are continuing to slow Phase I implementation and does not expect the delays to be overcome until the Commission provides additional guidance on what constitutes an adequate mechanism for carriers.<sup>67</sup> Ameritech asserts that the issue of cost recovery mechanisms for carriers has been the subject of endless debate and uncertainty, and that it is very likely that this confusion will intensify and further delay the implementation of both Phase I and Phase II. It also seeks numerous modifications to our rule in order to achieve implementation, including provisions establishing what carrier costs are eligible and how funds may be collected and disbursed.<sup>68</sup> They, and other carriers with similar proposals, do not demonstrate how such additional procedures and requirements would help ensure a speedier implementation of E911 service.

**49. Rule Modification and Commission Practice and Policy.** Based on the record, our choice in addressing the problems that result in delays to E911 implementation under the cost recovery rule is either to adopt many more specific federal requirements or to eliminate the precondition for a carrier cost recovery mechanism. We find that CMRS carriers are not subject to rate regulation, and may adjust their rates to reflect the cost of providing E911 services without our intervention. Moreover, the additional rules and requirements requested by CTIA and others present complications in interpretation, application, and enforcement that could lead to additional disputes requiring clarifications, thereby resulting in even further delays in E911 implementation. We decide that eliminating the precondition for carriers is the better course. Otherwise, the rule will continue to be the basis for delay in E911 implementation, given the nature of the legislative process and the competing interests of the parties in establishing an adequate funding mechanism for carriers.

50. We find that APCO's proposal, in part, to eliminate the requirement for a cost recovery mechanism as a precondition of E911 implementation is the most reasonable and rational approach to addressing those problems that have developed from the ambiguities in

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<sup>65</sup> Indiana Comments of Sept. 1 at 4-6; AirTouch Comments of Sept. 14 at 12-13; and USC Comments of Sept. 15 at 15-17.

<sup>66</sup> King County Comments of Aug. 3 at 3-6; Airtouch Comments of Sept. 14 at 17; AT&T Comments of Sept. 14 at 5 n. 14; USC Comments of Sept. 15 at 9-13; and US West Comments of Sept. 14 at 4.

<sup>67</sup> AT&T Comments of Aug. 9 at 7-8.

<sup>68</sup> Ameritech Comments of Sept. 14 at 4.

the current rule with respect to carrier cost recovery. We disagree with carriers' views that, unless a mechanism for carrier recovery remains as a precondition to a carrier's service obligation and is more specifically defined, E911 implementation will be further delayed.<sup>69</sup> Instead, we find that its elimination will result in speedier implementation of E911 by avoiding the delays inherent in regulating the details of a mechanism. As WCA asserts, the record reflects little agreement among carriers and States on what to spend, where to obtain the money, and how to ensure that the funds are spent for the intended purpose in order to achieve a workable definition to fit within the E911 timetable.<sup>70</sup> SCC requests that we act unequivocally to overcome delays caused by the number of conflicting interpretations and disputes over recoverable costs under the rule.<sup>71</sup> We believe that eliminating the rule for carrier cost recovery best achieves that goal.

51. The numerous and varied definitions and procedures that CTIA and the carriers request be included in the rule demonstrate the difficulties in adopting much more specific cost recovery requirements, as they advocate.<sup>72</sup> For example, Nextel requests that we adopt complex definitions of recoverable or non-recoverable costs in order to eliminate the need for carriers to fight the same battle over and over again with every PSAP or State legislature over adequacy of the costs and thereby facilitate contract negotiations.<sup>73</sup> USC requests that we adopt numerous procedures concerning the auditing, collecting, disbursing, and other aspects of administering cost recovery mechanisms to oversee the State's procedures.<sup>74</sup> Sprint PCS would have the Commission permit E911 tariff filings in order to reestablish the complex and

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<sup>69</sup> AirTouch Comments of Sept. 14 at 15-16; Ameritech Comments of Sept. 14 at 4-5; AT&T Comments of Sept. 14 at 3-5; BellSouth Comments of 8-9; CenturyTel Comments of Sept. 14 at 3-6; Nextel Comments of Sept. 14 at 6 n. 14; Omnipoint Comments of Sept. 14, 3-7; RCA Comments of Sept. 14 at 5-6; SCC Comments of Sept. 14 at 2-4; Sprint PCS Comments of Sept. 14 at 14-16; USC Comments of Sept. 15 at 17-18; US West Comments of Sept. 14 at 4-5; and Western Comments of Sept. 14 at 9.

<sup>70</sup> WCA Comments of Aug. 31 at 2.

<sup>71</sup> SCC Comments of Aug. 9 at 6.

<sup>72</sup> AirTouch Reply Comments at 3-4; Ameritech Reply Comments at 5-6; AT&T Comments at 4-5; BAM Comments at 3-4; PrimeCo Comments at 3-5; BellSouth and GTE *ex parte* filing, April 3, 1998; AT&T Comments of Aug 9 at 8; Omnipoint Comments of Aug. 9 at 10; SCC Comments of Aug. 9 at 1-2, 6; AirTouch Comments of Sept. 14 at 20-21; Ameritech Comments of Sept. 14 at 6; AT&T Comments of Sept. 14 at 4; BellSouth Comments of Sept. 14 at 8; CenturyTel Comments of Sept. 14 at 9; Nextel Comments of Sept. 14 at 9-10; Omnipoint Comments of Sept. 14 at 8; Sprint PCS Comments of Sept. 14 at 7-9; USC Comments of Sept. 15 at 18-19; US West Comments of Sept. 14 at 2 and 7; Western Comments of Sept. 14 at 6; RCA Comments of Sept. 14 at 5-6; and SCC Comments of Sept. 14 at 1-2.

<sup>73</sup> Nextel Comments of Sept. 14 at 9-10.

<sup>74</sup> USC Comments of Sept. 15 at 18-19.

necessary procedures for the implementation of such mechanisms and reopen the separate proceeding in which forbearance from formal rate regulation and the affiliated tariff filings was granted CMRS carriers.<sup>75</sup>

52. Rather than speed up E911 implementation, we find that these and the other requirements that carriers seek to ensure their funding in the cost recovery rule would only increase the delays already experienced at the State regulatory level, while the Commission becomes involved in resolving disputes and enforcing such federal regulations. We also do not find that it would be in the public interest for the Commission to establish such regulatory approaches to administering a cost recovery mechanism for an industry that is not currently rate regulated. Unlike carriers whose rates we regulate, there is no question that wireless carriers can increase their rates, if they wish, to recover any additional costs incurred in implementing E911. By excluding CMRS carriers from formal rate regulation, Congress and the Commission have determined that the public inherently benefits from the promotion of competition among the carriers that results from market-based pricing for their services, and carriers have been supportive of such deregulation.<sup>76</sup>

53. Nevertheless, we agree with APCO that States may consider adopting cost recovery procedures that include carriers' expenses. States have the option of considering that or other procedures that address carriers' interest in such mechanisms at any time, but should not be required to do so. As the Commission noted, any particular State law would be subject to a case-by-case review in order to determine if federal preemption were warranted to ensure that a particular law is consistent with federal E911 goals.<sup>77</sup>

54. Thus, carriers may still recover all their costs regardless of the rule, either through their own rates or through an explicit State-adopted mechanism. The rule is modified only to remove the availability of a cost recovery mechanism for carriers as a precondition for a carrier's E911 deployment. We are not here limiting or prohibiting the States in the creation of cost recovery procedures that include carriers' expenses, or preempting any existing cost recovery legislation. We reaffirm that carriers and PSAPs may continue to work together to pursue with the States the cost recovery mechanisms that are most effective for them. As APCO notes, there are factors that may justify the need for carrier cost recovery procedures. However, whether a mutually agreeable mechanism is in place will no longer be a factor in

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<sup>75</sup> Sprint PCS Comments of Sept. 14 at 7-9, *citing* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*).

<sup>76</sup> *CMRS Second Report and Order*, 9 FCC Rcd at 1478-1481, 1504, 1510-1511 (paras. 173-182, 250, 272). The general requirements of Sections 201 and 202 of the Communications Act, however, require that carriers maintain rates that are just and reasonable. 47 U.S.C. §§ 201, 202.

<sup>77</sup> *E911 First Report and Order*, 11 FCC Rcd at 18722 (para. 90), 18729-30 (paras. 104-105).

the timing of E911 implementation, inasmuch as the carrier has the option of self recovery unless and until any alternative mechanism is available. By eliminating the rule for carrier cost recovery, we clarify that States or localities are not required to adopt any particular mechanism at any particular time. It is important for E911 implementation, as APCO argues, that a State or locality can make its own determination as to the need for a formal government-sponsored program for carrier cost recovery.

55. Importantly, we find it easier to ensure compliance with our E911 mandates if we eliminate the rule as for carriers. The policing of compliance with valid requests by PSAPs for service would be simplified, inasmuch as disputes between PSAPs and carriers on funding issues would no longer be relevant. In these circumstances, we conclude that NENA's request to clarify the remedies available to PSAPs when they are unable to obtain service may be unnecessary, inasmuch as a significant source of disputes and delays is removed by no longer making a carrier's response contingent on a cost recovery mechanism for carriers being in place. We note, however, that PSAPs may file complaints against carriers under Section 208 for violation of the Commission's E911 rules, and may request accelerated docket procedures.<sup>78</sup> For the same reasons, we find that NENA's request for antitrust protection to facilitate carriers and PSAP agreements is unnecessary. The need to explore the carrier's true costs of providing Phase I service and to pass such legislation are not factors in PSAPs obtaining the service they have requested within the timetable.<sup>79</sup> We seek to ensure the prompt compliance of carriers with valid requests for service from PSAPs as a result of the actions undertaken in this Order. We intend to address any complaints expeditiously to ensure that implementation of important E911 services will not be delayed.

**56. Rule Modification and Related Concerns.** We do not find that eliminating the precondition for a cost recovery mechanism for carriers unfairly discriminates against small and rural wireless carriers. CenturyTel, RCA, and USC argue that APCO's proposal is harmful to, and discriminates against, small rural carriers and that we should not permit the

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<sup>78</sup> The creation of the Enforcement Bureau eliminated distinctions between the handling of formal Section 208 complaints against wireline and wireless carriers. Accordingly, the accelerated docket procedures are no longer limited to formal complaints against wireline carriers. See Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers, CC Docket No. 96-238, Second Report and Order, 13 FCC Rcd 17018, 17022 (para. 5 n.9) (1998).

<sup>79</sup> Implementation Report, NENA Addendum at 2-3. The Implementation Report also raises the potential need for antitrust protection for wireless carriers seeking uniform implementation solutions. The Report asserts that if the Commission is sufficiently involved in these matters, it can provide immunity by virtue of its exclusive jurisdiction over mobile service spectrum to promote the safety of life and property. Implementation Report at 14-15. The Implementation Report, however, does not specify what antitrust laws would be violated in the absence of immunity, nor does it provide any analysis for the Commission's authority to grant immunity from antitrust laws. Therefore, we decline to address these issues at this time.

substitution of self-recovery approaches for a State-legislated cost recovery mechanism.<sup>80</sup> They argue that it is inequitable to smaller carriers and their customers because the carriers' typically higher cost of providing service is spread over a smaller customer base. They argue that several States have implemented a pooling of funds in cost recovery mechanisms to ensure that carrier costs are spread equitably among all State wireless subscribers, which would be adversely affected if the Commission mandates a self-recovery approach by carriers. They argue that self-recovery harms new entrants.

57. We do not think these arguments require that we retain the cost recovery rule for carriers. First, it is not clear from this record that the carrier's cost of implementing E911 in rural areas would be significantly higher. While some costs will likely be higher in such areas, other costs may actually be lower, such as construction costs or other infrastructure needs. The extent to which a pooling mechanism is necessary or desirable in these circumstances, given the administrative complexities and economic inefficiencies of such approaches, is far from established in the record before us. The carrier's costs of operating in rural areas generally may be higher, but it is not clear that such costs should be pooled for recovery in this competitive, deregulated industry.<sup>81</sup>

58. Second, no carrier or State is prohibited from pursuing a cost recovery mechanism that addresses special requirements, such as any disparity between urban and rural carriers. As APCO notes, the extent to which existing State-adopted mechanisms include pooling mechanisms varies and is a matter properly left for States to decide.<sup>82</sup> By eliminating the rule for carriers, we neither mandate self-recovery as the only cost recovery option nor prohibit any other mechanism, but rely on all carriers to implement E911 within the timetable regardless of any cost recovery mechanism. By removing obstacles to implementation of E911, rural areas would benefit from more prompt service from carriers and from the carrier's improved efficiencies through avoiding costly and time-consuming resolution of issues on carrier funding.

59. We want to make clear that our decision does not necessarily require any changes in existing State-adopted E911 cost recovery mechanisms or prevent the adoption of E911 cost recovery mechanisms that include carrier funding. Although CTIA, SCC, and carriers argue that existing mechanisms and the ongoing efforts to establish mechanisms will be

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<sup>80</sup> CenturyTel Comments of Sept. 14 at 4-5; RCA Comments of Sept. 14 at 5-6; and USC Comments of Sept. 15 at 3-6.

<sup>81</sup> In any event, with respect to Phase II E911 service, rural carriers now have flexibility to employ solutions that may meet their needs at a lower cost. *E911 Third Report and Order*, FCC 99-245, released Oct. 6, 1999, at 12-13 (paras. 23-24).

<sup>82</sup> Implementation Report, APCO Addendum at 4-5.

jeopardized, we do not find that reflected in the record.<sup>83</sup> Instead, carriers, PSAPs, and the State legislatures cooperate and coordinate in implementing 911 and E911 services, including the establishment of mechanisms for reimbursing the services of both carriers and PSAPs. By eliminating the cost recovery rule for carriers, we remove the obstacle to E911 implementation attributed to the delays in that process, while declining to limit such mechanisms or affect ongoing relationships in any way. Indeed, in those States that have, or are close to implementing, a workable cost recovery mechanism that includes carrier funding for Phase I, the most efficient course to ensure the provision of service may well be to keep the present approach in place.

60. Next, we disagree with CTIA, SCC, and carriers that a separate rulemaking proceeding is needed in order to remove the requirement in the E911 rule for a cost recovery mechanism for carriers.<sup>84</sup> It is not correct, as they argue, that our action is a radical restructuring of the existing rule that cannot properly be addressed at this time. We find that the issue of modifying the rule on behalf of carriers is raised in CTIA's petition for reconsideration and clarification of the *E911 First Reconsideration Order* and that CTIA's proposed definitions and requirements for amending the rule have been the subject of comments, which are fully considered in this Order.<sup>85</sup> It is well established that the Commission may revise a rule under these circumstances, particularly where the record on such a petition was supplemented and the modification to be adopted addresses the issues raised in the petition and the responsive comments.<sup>86</sup>

61. We also disagree with AT&T, BellSouth, and GTE that Section 332(c)(3) of the Act prohibits States or localities from stating that, if carriers wish to recover E911 costs, carriers may do so by raising their rates in lieu of the State adopting a specific mechanism.<sup>87</sup>

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<sup>83</sup> Implementation Report, CTIA Addendum at 1-2; SCC Comments of Sept. 14 at 2-3; *see, e.g.*, BellSouth Comments of Sept. 14 at 8-9.

<sup>84</sup> Implementation Report, CTIA Addendum at 1-2 n. 2; SCC Comments of Sept. 14 at 2-4; *see, e.g.*, Omnipoint Comments of Sept. 14 at 6 and US West Comments of Sept. 14 at 4-5.

<sup>85</sup> CTIA Petition at 17-18.

<sup>86</sup> Courts have repeatedly held that the notice requirement of the Administrative Procedure Act (APA) is satisfied where the final rule is a "logical outgrowth" of the rulemaking proceeding. *See, e.g.*, *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547-549 (D.C. Cir. 1983); *International Harvester v. Ruckelshaus*, 478 F.2d 615 n. 51 (D.C. Cir. 1973). Moreover, notice is sufficient where the description of the subjects and issues involved affords interested parties a reasonable opportunity to participate in the proceeding. *See, e.g.*, *Reeder v. FCC*, 865 F.2d 1298, 1305 (D.C. Cir. 1989); *Transpacific Freight Conference of Japan/Korea v. Federal Maritime Commission*, 650 F.2d 1235, 1248 (D.C. Cir. 1980).

<sup>87</sup> AT&T Comments of Aug. 9 at 8 n. 12; BellSouth and GTE *ex parte* filing, April 3, 1998, *citing* 47 U.S.C. § 332(c)(3).

It is not correct that States would be dictating carriers' recovery of E911 costs through unregulated rates in these circumstances and would thereby be engaged in impermissible State rate regulation. Under such conditions, the State is not controlling the rates charged by a carrier to recover the costs of E911 or any other part of its network or business operation. If a State purported to prohibit carriers from recovering E911 costs in their rates, it could be engaging in rate regulation. Here, to the extent they are doing anything with respect to rates, States are permitting carriers to recover their costs in their charges to customers. This is the normal way that costs of doing business, including the costs of complying with government-imposed requirements, are recovered in an industry free of rate regulation.

62. We also do not agree with CTIA, NENA, NASNA, and carriers that we need to maintain the cost recovery rule for carriers and prohibit carrier self-recovery in order to ensure that PSAPs obtain the public funding they need from State legislatures.<sup>88</sup> NENA argues that, if PSAPs are placed alone in seeking funding legislation for Phase I and Phase II funds, they will not be as successful as when they work together with CMRS carriers for a mechanism that funds both entities.<sup>89</sup> The record, however, does not reflect that the current collaboration between the entities would be eliminated. No carrier has indicated that, in the absence of the precondition for carrier recovery, it would no longer work together with PSAPs to seek to obtain State legislation that provides for both PSAP and carrier recovery to the same extent provided by current State-adopted mechanisms for funding the State's 911 and E911 wireline and wireless services. Moreover, the record does not reflect any unwillingness by the States, which include Hawaii, Indiana, and Washington, to provide for the funding of their own PSAPs. Rather, it appears that disputes with CMRS carriers over an adequate cost recovery mechanism for carrier costs are what hampers or complicates the States' implementation of Phase I service.

63. Rather than reduce the ability of PSAPs to obtain special State cost recovery mechanisms for E911 implementation, eliminating the rule for a cost recovery mechanism for carriers may well enhance the likelihood of such action. According to APCO, E911 implementation would benefit if the Commission assures States and PSAPs that they have the option of not adopting a specific cost recovery mechanism for carriers' expenses.<sup>90</sup> States and PSAPs would not be hindered by the costs and difficulties of achieving legislated mechanisms that include carriers' costs unless they choose such an approach. We agree with APCO, in part, that, in some cases, it may be a better approach for carriers simply to recover their own costs instead of seeking legislated solutions for the recovery of their costs, which they may

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<sup>88</sup> CTIA Comments of Sept. 14 at 2-3; Implementation Report, NENA Addendum at 2; AirTouch Comments of Sept. 14 at 16.

<sup>89</sup> Implementation Report, NENA Addendum at 2.

<sup>90</sup> APCO Comments of Sept. 14 at 2-3.

choose to pursue at a later date. According to Hawaii, many jurisdictions, including Hawaii, already fund emergency and safety services through State or local taxes, and PSAP requests for a carrier's service would decrease if the PSAP were required to pay for the carrier's costs out of these funds, as well as its own costs.<sup>91</sup>

64. We also agree with APCO that, by ensuring carriers and PSAPs the additional flexibility in resolving cost recovery issues, we facilitate the resolution of other issues in the negotiation of service agreements and promote implementation. CTIA and NENA argue that the greatest impediments to Phase I implementation are not necessarily cost recovery issues, but numerous interrelated issues that confuse the relationship between carriers and PSAPs and make it difficult to achieve service agreements.<sup>92</sup> We find that States or localities may be more willing to reach agreement on other issues that may be delaying E911 implementation if they do not have to cover or consider carrier costs in a funding mechanism, inasmuch as the total amount to be recovered from a State E911 fee or surcharge would be less.

**65. PSAP Cost Recovery.** Although we modify our rule to remove the condition that a mechanism for carrier cost recovery be in place before a carrier's obligation to provide E911 services is triggered, our modified rule retains the requirement for PSAP cost recovery. Specifically, we have determined that, before a carrier is required to provide E911 services pursuant to a PSAP request, the PSAP must have a means of covering its costs of receiving and utilizing the data elements associated with those services. The basis of our determination is several-fold.

66. First, we find that the adequate funding of PSAPs is a critical element in ensuring timely E911 implementation. Without adequate funding, PSAPs may not be able to finance expenditures required to upgrade their hardware or software capabilities to receive and use Phase I and Phase II information, as well to finance recurring costs that may be associated with the additional network services.<sup>93</sup> In originally conditioning the carrier's obligation on the receipt of a request from a PSAP with the capability to receive and utilize the information, the Commission recognized that implementation will require investment in facility and equipment upgrades to be able to request the service.<sup>94</sup> We reaffirm the finding that implementation of our E911 schedule generally depends on the action of State and local authorities, and such actions, we find, would include adequately funding their PSAPs.<sup>95</sup> As

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<sup>91</sup> Hawaii Opposition at 4-5.

<sup>92</sup> CTIA Comments of Sept. 14 at 2; Implementation Report, NENA Addendum at 2-3.

<sup>93</sup> CTIA Comments of Sept. 14 at 2.

<sup>94</sup> *E911 First Report and Order*, 11 FCC Rcd at 18681 (para. 9).

<sup>95</sup> *Id.*, at 18749 (para. 153).

CTIA acknowledges, even if the Commission deletes the rule for a cost recovery mechanism as a condition of the carrier's service obligation, the cost recovery issue will not go away until the PSAPs can finance their own additional requirements.<sup>96</sup> We agree that the funding of PSAPs is crucial to a ubiquitous wireless E911 service and our rule provision is intended to further that objective.

67. Second, we find that retaining the provision for PSAP cost recovery is consistent with our obligations under the recently enacted 911 Act to support and encourage the States' involvement in the success of wireless E911 services.<sup>97</sup> The transmission of vital, life-saving location information with wireless 911 calls is an obligation imposed on wireless carriers as a matter of public safety and public interest. Carriers cannot fulfill their obligations, however, unless and until the States' 911 systems are capable of receiving and utilizing the E911 information so that PSAPs can make a valid request for the service. By modifying our rule, we seek to encourage prompt action to implement E911. As NENA and NASNA request in a joint filing with Greater Harris County and TX-ACSEC, we state clearly and strongly that State or local governments, as well as carriers, should use their best cooperative efforts in funding public 911 systems.<sup>98</sup>

68. Third, we are concerned about the possible impact of deleting the cost recovery rule altogether and seek to avoid suggesting that adequate funding of PSAP E911 expenditures is not essential for the implementation of E911. As the Implementation Report and NENA state, PSAPs do not have subscribers, as do CMRS carriers, from whom they can recover their E911 costs.<sup>99</sup> The record reflects that, in the absence of separate State and local funding mechanisms, PSAPs generally recover their E911 costs through a carrier's subscriber surcharges.<sup>100</sup> If a State chooses not to provide for carrier cost recovery, however, PSAPs are concerned that the State may overlook the need to provide the necessary funds to enable the PSAP to be capable of receiving and utilizing E911 services. We share that concern and we agree that E911 implementation could be significantly delayed if States viewed a modification of the cost recovery rule as a signal that the Commission objects to State-adopted funding mechanisms or State funding of E911 in any manner. We seek to avoid any such perception. We reiterate that the actions we take today are not intended to eliminate or interfere with the States' funding of their PSAPs. On the contrary, as NENA, NASNA, Greater Harris County,

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<sup>96</sup> CTIA Comments of Sept. 14 at 2.

<sup>97</sup> 911 Act, at Section 3(b).

<sup>98</sup> NENA, NASNA, Greater Harris County, and TX-ACSEC joint *ex parte* filing, Nov. 8, 1999, at 3.

<sup>99</sup> Implementation Report at 11, NENA Addendum at 2.

<sup>100</sup> Implementation Report at 11, CTIA Addendum at 2; *Ex parte* filing of NENA, NASNA, Greater Harris County, and TX-ACSEC, Nov. 8, 1999, at 3. .

and TX-ACSEC suggest in their joint filing, our actions are intended to encourage and support local and State authorities in the funding of 9-1-1 emergency services to protect their citizens, and to give those authorities deference in determining how best to do so.

69. Fourth, we retain the provision to ensure that carriers are not required to make unnecessary expenditures in response to a PSAP that is not ready to use the E911 information.<sup>101</sup> Carriers should not be forced to make investments in their networks to provide E911 services that cannot be used by the PSAP. Apart from the significant costs involved, because location technologies are evolving and improving in the short term and the costs of those technologies are decreasing, the public, the PSAP and the carrier benefit from a requirement that is not triggered until the actual time at which the PSAP can take advantage of the E911 service. We view our PSAP cost recovery provision as a component of the PSAP's capability of receiving and utilizing the data elements of the E911 services. Nonetheless, by maintaining the provision as a prerequisite to a carrier's obligation to provide the services, we ensure that PSAP funding is addressed as an overall part of a PSAP request.

70. We emphasize here that, by retaining the PSAP cost recovery provision in our rule, we do not intend to interfere with the States' authority over their 911 systems and how those systems are managed and maintained. In particular, we do not dictate the funding approach to be used by the States. Some States may choose a legislative approach by adopting a new formal, funding mechanism for wireless E911, while other States may use existing or different funding mechanisms to ensure that PSAPs can recover their own costs. PSAPs also may turn to other sources of funding, as appropriate. The key is that PSAPs have a source of funds sufficient to support their implementation of E911, not that any particular funding approach is employed.

71. For example, USC requests clarification as to whether a private PSAP, such as a third party vendor that acts as a PSAP to the extent it is used to receive the E911 information, qualifies as an appropriate PSAP under the E911 rules.<sup>102</sup> USC notes that such third party vendors are acting as Answering Points in Illinois. As the Commission stated, the responsible local or State 911 entity has the authority and responsibility to designate the PSAPs that are appropriate to receive wireless 911 calls.<sup>103</sup> Thus, to the extent a State or locality will permit a private PSAP to undertake many of the functions of the State's PSAPs, that option is

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<sup>101</sup> We note that those carriers that choose the handset-based solution for Phase II deployment are required to begin selling and activating Phase II-compliant handsets no later than March 1, 2001, without regard to the PSAP-related prerequisites identified in Section 20.18(j) of our rules. *E911 Third Report and Order*, FCC 99-245, released Oct. 6, 1999, at 20 (para. 42), adopting revised 47 C.F.R. § 20.18(g)(1)..

<sup>102</sup> USC Comments of Sept. 15 at 21.

<sup>103</sup> *E911 First Reconsideration Order*, 12 FCC Rcd at 22712-14 (paras. 98-99).

available to reduce a State's costs and possibly promote E911 implementation. We encourage States to pursue alternative arrangements or other approaches necessary to ensure that E911 is implemented promptly as a result of the actions we take in this Order with respect to wireless carriers.

72. In sum, we view PSAP funding as a vital component of the ability of PSAPs to achieve the necessary technological and system capabilities to receive and use E911 location information. By retaining the PSAP cost recovery requirement, we seek to encourage the States to address the needs of their respective PSAPs to accommodate the enhanced features of wireless 911, which we believe provide the vital emergency response services expected by wireless callers.

73. **Washington Attorney General.** The Washington Attorney General requests clarification that our E911 cost recovery rule does not place the burden of establishing a cost recovery mechanism for carriers on the State and does not require the CMRS carrier to wait to provide Phase I or Phase II service until the carrier is funded by the State or locality.<sup>104</sup> The Washington Attorney General argues that CMRS carriers may not refuse to comply with a State law that requires the transmission of ANI similar to our Phase I E911 rule solely on the grounds that our E911 rules require the State or locality to put a funding mechanism for carriers in place before Phase I be implemented. The Washington Attorney General requests a ruling that the State ANI law is not prohibited by Section 332(c)(3)(A) of the Communications Act and properly regulates terms and conditions of CMRS carriers operating in the State.

74. Inasmuch as the rule for a carrier cost recovery mechanism is deleted, the request for clarification of our rule is moot and need not be addressed further. States are free to adopt a mechanism that provides for the recovery of costs incurred by CMRS carriers in the implementation of E911 services under our E911 rules, but that is not a requirement. The request for a ruling on the lawfulness of the State ANI law also is moot, inasmuch as the request is based on the refusal of CMRS carriers to comply with the State law in reliance on the requirement in our E911 rules for a cost recovery mechanism for carriers. If specific State actions are incompatible with the Commission's E911 policies and rules, such actions may be subject to examination and possible preemption, but there is no basis for such examination under the narrow circumstances here. For the same reasons, we need not address the disputes over implementation of the State law described by King County and AT&T, AirTouch, USC, and US West.<sup>105</sup>

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<sup>104</sup> Washington Attorney General *ex parte* filing, Aug. 31, 1999, at 1-2.

<sup>105</sup> AT&T Comments of Sept. 14 at 5 n. 14; AirTouch Comments of Sept. 14 at 17; King County Comments of Aug. 3 at 2-3; USC Comments of Sept. 14 at 9-13; and US West Comments of Sept. 14 at 6-7 n. 5.

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**B. Choice of Transmission Methods and Related Technologies****1. Background**

75. In the *E911 First Report and Order*, the Commission determined that the development of the detailed technical and operational standards and the resolution of the numerous technical decisions necessary to implement E911 were matters for carriers, PSAPs, and other interested parties to address.<sup>106</sup> The Commission relied on the continued cooperation of wireless and wireline carriers, PSAPs, and other interested parties to resolve such issues through mutual agreement or by submission to standards bodies. There were no significant differences on implementation issues and the parties were expected to proceed with this task in good faith. The Commission requested an annual report from the parties to the Consensus Agreement in order to keep informed on the status of implementation and, if the parties were not maintaining their efforts to resolve issues, to be able to take such actions as necessary to promote implementation without undue delay.

76. Among other issues, the Commission recognized it was necessary for the parties to establish the exact interface between the several components of the total network, including the switching and signalling capabilities necessary for the Phase I data to be passed from the wireless carrier through the wireline system of the LEC to the PSAP.<sup>107</sup> In establishing the deployment schedule for Phase I, it found that standards would be established to enable the transmission of the additional ANI digits in Phase I on the two network capabilities currently used in wireless 911 transmissions. Feature Group D (FGD) standards provide a Call Associated Signalling (CAS) transmission method that requires a LEC upgrade. Signalling System 7 (SS7) standards provide a Non-Call Associated Signalling (NCAS) transmission method that does not rely entirely on the LEC to transmit the additional ANI digits.<sup>108</sup>

77. The Commission provided that the CMRS carrier's Phase I service obligation, however, was contingent upon the PSAP making whatever investments are necessary to achieve the capability of receiving and using the Phase I data in order to make a valid request for Phase I service.<sup>109</sup> The carrier could request a temporary waiver from the Phase I schedule if, upon receiving a valid request, the carrier did not have the capability either because the LEC used by the carrier had not upgraded to support FGD or because the carrier's own network had not yet been upgraded.

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<sup>106</sup> *E911 First Report and Order*, 11 FCC Rcd at 18712-14 (paras. 73-76).

<sup>107</sup> *Id.* at 18713 (para. 73 n. 134).

<sup>108</sup> *Id.* at 18708-10 (paras. 63 ns. 119, 120 - 65 n. 125).

<sup>109</sup> *Id.* at 18710 (para. 66).

78. In the *E911 First Reconsideration Order*, the Commission denied requests to delay the Phase I timetable based on claims that LECs were not upgrading the selective routers in order to pass the 10-digit ANI.<sup>110</sup> The Commission noted that carriers had alternative methods available that were being established by the standards bodies and also could request a waiver if the carrier's compliance depended on an uncompleted LEC upgrade to CAS. Carriers, however, were encouraged to explore the non-LEC-based solutions before filing a waiver application in order to comply with the Phase I requirements.

79. **Petition for Clarification and Comments.** In its petition, CTIA indicates that the wireless industry and PSAPs agreed upon the standardized means of presenting Phase I data that provides for the CAS and NCAS options as expected by the Commission.<sup>111</sup> CTIA requests that the Commission designate the carrier as the party authorized to make the final selection between the two options in the rare event that carriers and PSAPs cannot mutually agree. CTIA argues that some carriers, in particular AT&T, prefer to use only the NCAS means on a systemwide basis as more effective and efficient.<sup>112</sup> CTIA argues that, in these situations, the Commission should not allow the PSAP to dictate the alternative CAS option, which relies on technologies the carrier does not prefer.

80. Comments in support were filed by AirTouch, Ameritech, AT&T, BAM, PrimeCo, and XYPOINT.<sup>113</sup> They endorse continued cooperation between carriers and PSAPs to resolve numerous implementation issues, but argue it is necessary to authorize the carrier ultimately to choose the transmission standard in order to prevent disputes and promote implementation. According to AT&T, the State of Minnesota approved a type of CAS solution for its PSAPs in a Phase I trial that was unacceptable to AT&T and that was the subject of negotiations to enable AT&T to participate using its preferred NCAS nationwide solution.<sup>114</sup>

81. Opposing comments were filed by Public Safety Associations, TX-ACSEC, Washington, and WCA.<sup>115</sup> They also agree that these issues should be left to negotiations.

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<sup>110</sup> *E911 First Reconsideration Order*, 12 FCC Rcd at 22715-17 (paras. 104-107).

<sup>111</sup> CTIA Petition at 18-22; CTIA Reply at 10 n. 18, Attachment.

<sup>112</sup> CTIA Petition at 19-20.

<sup>113</sup> AirTouch Reply Comments at 4-6; Ameritech Reply Comments at 8-9; AT&T Comments at 2-3; BAM Comments at 4; PrimeCo Comments at 5-6; and XYPOINT Reply Comments at 1-4.

<sup>114</sup> AT&T *ex parte* filings, Oct 2, 1998, March 11, 1999, March 18, 1999, with attachments.

<sup>115</sup> Public Safety Associations Opposition and Comments at 2-5, TX-ACSEC Opposition at 2-3, Washington Comments at 6-7; and WCA Opposition at 15-16.

They argue that, if the Commission must make a choice, the PSAP should be given the ultimate authority in selecting between the transmission technologies. They note that the PSAP is accountable for the public funding of the total 911 system. A carrier's choice may not be integrated with the PSAP's system and could require new equipment that will not be funded. For these reasons, Public Safety Associations argue that under no circumstances should PSAPs be ousted from decisions that must take into account each PSAP's system and abilities in order to achieve successful E911 transmissions. TX-ACSEC suggests that, in the case of a dispute over the transmission technology that cannot be worked out between a particular carrier and a particular PSAP, the parties should be able to petition the Commission for resolution.

**82. Implementation Report and Comments.** In the June 9 Public Notice, the Commission found that the availability of multiple transmission options and technologies for Phase I data had resulted in disputes between carriers and PSAPs. The parties to the Consensus Agreement were asked to address the ambiguities in their original agreement on the choice of Phase I transmission technologies and recommend alternative solutions in the Implementation Report based on their discussions.<sup>116</sup>

**83.** The Implementation Report indicates only that technology choice is an issue when carriers and PSAPs seek to reconcile competing technical and financial issues in their service discussions.<sup>117</sup> No solutions are proposed, apart from the solutions to the cost recovery issues. The Report, however, contends that the role of LECs in the operational readiness of the PSAP under the CAS and NCAS standards is important and should be examined as a factor in Phase I delays. LECs could be responsible for failing to achieve the compatibility of the router, ALI database, and PSAP customer premises equipment (CPE) to receive ten plus-digit data information streams.<sup>118</sup>

**84.** In response, AirTouch, AT&T, BellSouth, Sprint PCS, USC, and US West argue that the Commission should clarify that PSAPs may not impose their technology choice on carriers and that carriers may implement whichever of the standards-compliant technical solutions that best enables the carriers to meet the Commission's requirements.<sup>119</sup> AT&T is concerned about the failure of the Implementation Report to address the need for the Commission to confirm that wireless carriers have the ultimate authority to choose the Phase I

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<sup>116</sup> June 9 Public Notice at 1-2, 5-7.

<sup>117</sup> Implementation Report at 11.

<sup>118</sup> *Id.* at 17-18.

<sup>119</sup> AirTouch Comments of Sept. 14 at 13-15, 18-20; AT&T Comments of Aug. 9 at 4-7, 11; AT&T Comments of Sept. 14 at 2-3; BellSouth Comments of Sept. 14 at 11-12; Sprint PCS Comments of Sept. 14 at 9-14; USC Comments of Sept. 15 at 19-20; US West Comments of Sept. 14 at 2-5.

transmission technology.<sup>120</sup> AirTouch, AT&T, and US West base their request on their experience in Minnesota.<sup>121</sup> They argue that, although the dispute is resolved, the State's reliance on a non-standard CAS solution resulted in an impasse because the carriers found the method inefficient, not a platform for Phase II deployment, and ineffective compared to the NCAS option that they prefer.

85. SCC agrees that there is a need to resolve these confrontations and requests the Commission provide guidance.<sup>122</sup> Omnipoint and Western argue that transmission decisions are matters to be resolved in the service contract and take time.<sup>123</sup> Omnipoint asserts that the CAS and NCAS standards provide carriers with appropriate alternatives to address each situation and that it is time to concentrate on implementation.

86. AT&T, USC, and Sprint PCS also argue that LECs do play a role in Phase I delays, as the Implementation Report suggests, because LECs influence PSAPs and may refuse to agree to an NCAS solution in order to meet a PSAP's service request. According to AT&T, a substantial number of PSAPs have not requested Phase I because they are waiting for the LECs to develop CAS-based solutions.<sup>124</sup> USC argues that LECs and PSAPs insist USC use a landline technology with which the PSAP is familiar, even though USC has spent considerable time and money establishing the technology best for its own system.<sup>125</sup> Sprint PCS argues that, when LECs upgrade to the CAS option that carriers do not want, it is unreasonable for the LECs to include the costs of the upgrade in the charges that carriers must pay under a State-adopted cost recovery mechanism.<sup>126</sup>

87. WCA argues that the Commission's reliance on the CMRS carriers and the other parties to reach agreement on 911 system enhancements and choice of technologies is misplaced, because industry is using the opportunity to resist choices not to its liking through

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<sup>120</sup> AT&T Comments of Sept. 14 at 2.

<sup>121</sup> AirTouch Comments of Sept. 14 at 14; AT&T Comments of Aug. 9 at 6-7; US West Comments of Sept. 14 at 8.

<sup>122</sup> SCC Comments of Sept. 9 at 4-5

<sup>123</sup> Omnipoint Comments of Aug. 9 at 9 and Sept. 14 at 7; Western Comments of Sept. 14 at 1-2.

<sup>124</sup> AT&T Comments of August 9 at 10.

<sup>125</sup> USC Comments of Sept. 15 at 9.

<sup>126</sup> Sprint PCS Comments of Sept. 14 at 14.

delay and avoidance.<sup>127</sup> Indiana and King County assert that technology issues are not an impediment in their States. Indiana states that the State legislation promulgating E911 service permits CMRS carriers to select whichever technology they desire without challenge from PSAPs or the E911 Board.<sup>128</sup> King County states that all of the PSAPs in Washington are equipped with E911 equipment capable of receiving Phase I data, although it does require CMRS carriers to interface to the existing E911 systems at the E911 selective routers.<sup>129</sup>

## 2. Discussion

88. As the Implementation Report states, issues associated with technology choices often become entwined in discussions between PSAPs and CMRS carriers seeking to resolve their differences on the adequacy of the cost recovery mechanism for carriers before the carrier is obligated to provide E911 service.<sup>130</sup> This is to be expected, because a mandate that public funds be used to underwrite carrier costs leads naturally to the view espoused by some parties that the funding agency have some influence over carrier technology and other implementation choices that affect the level of those costs. For example, Hawaii argues that, if the PSAP or other State agency were required to adopt cost recovery mechanisms and provide all the funding for a carrier's costs of providing E911 service, it seems reasonable that the PSAP or State should have the final say in a choice between CAS and NCAS transmission methods.<sup>131</sup>

89. We believe that our deletion of the rule for a cost recovery mechanism for carriers should change the dynamics of such discussions and should greatly reduce, if not eliminate, unresolvable disputes between PSAPs and carriers on technology choices. States and PSAPs no longer are required to have a mechanism in place to reimburse carriers for their costs of implementing E911 services. Presumably, PSAPs and States should be significantly less concerned now with the costs associated with the CAS or NCAS transmission methods when an E911 charge need only recover the PSAP's costs and not the carrier's costs. Where States choose to adopt such funding mechanisms, the State or PSAP can weigh that factor together with the other factors that require resolution in a service contract in order to facilitate E911 implementation. As APCO notes, States and PSAPs are assured of the additional flexibility in

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<sup>127</sup> WCA Comments of Sept. 1 at 2. WCA also requests that the Commission require a single technology for Phase II, but that was addressed in the *E911 Third Report and Order* in which WCA also raised the matter and was rejected. *E911 Third Report and Order*, FCC 99-245, released Oct. 9, 1999, at 36 (para. 79).

<sup>128</sup> Indiana Comments of Sept. 1 at 4.

<sup>129</sup> King County Comments of Aug. 3 at 5.

<sup>130</sup> Implementation Report at 10-11.

<sup>131</sup> Hawaii Opposition at 6-7.

addressing the other problems facing E911 deployment.<sup>132</sup> Thus, there should be improved opportunities for carriers and PSAPs to agree upon transmission capabilities and accelerate E911 implementation.

90. As a result, we continue to encourage PSAPs and carriers to reach agreement on an appropriate method for transmitting E911 information to the PSAP, given the circumstances of each situation. As Omnipoint states, while disputes over technology choice can occur if the parties to the negotiations insist on using disparate approaches, these impasse situations are rare.<sup>133</sup> The agreed-upon standards should provide carriers with the flexibility to address any such situation and proceed with implementation without delay, as the Commission anticipated when it adopted the E911 schedule and waiver provision. As the record reflects, both CAS and NCAS technologies are standards-compliant and are technically achievable without undue difficulty or excessive cost.

91. While we anticipate that disputes about technology choice will be less frequent in the future, we recognize that the potential for disputes and, ultimately, delay in E911 implementation remains. We agree with TX-ACSEC that, rather than adopt the approach requested by the carriers, we should instead have the parties petition the Commission if a particular issue on selecting the transmission technology cannot be worked out.<sup>134</sup> This would occur if there is a serious dispute between a particular carrier and a PSAP over the choice between the CAS or NCAS method, or another standards-compliant method for the transmission of E911 data, that results in an impasse that cannot be resolved by negotiation within the timeframe for Phase I or Phase II implementation after a PSAP service request.

92. In these circumstances, which we anticipate will be relatively rare, carriers and PSAPs are free to bring these issues to the Commission's staff for resolution. We delegate to staff the authority to resolve such disputes. We find that there are certain factors, among others, that Commission staff should consider in addressing these issues. These include the additional costs of the two methodologies to the PSAP and the wireless carrier; whether the carrier is paying for its own E911 implementation costs or receiving funding from a State-sponsored cost recovery mechanism; the technical configuration of the PSAP's existing E911 system; and the ability of the transmission technology to accommodate Phase II of wireless E911 and other planned changes in the E911 system.

### **C. Role of the LECs in Implementation**

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<sup>132</sup> APCO Comments of Sept. 14 at 2.

<sup>133</sup> Omnipoint Comments of Aug. 9 at 9.

<sup>134</sup> TX-ACSEC Opposition and Comments at 3.

## 1. Background

93. As discussed above, the Commission left the resolution of the numerous technical and operational decisions and issues necessary for implementing E911 for the interested parties, including wireless and wireline carriers, as well as PSAPs, State and local governments, equipment manufacturers, and standard-setting groups.<sup>135</sup> It was recognized that many issues involved the incumbent LEC, on which the CMRS carrier relies for transmission to the PSAP, but those issues were expected to be resolved through their ongoing processes for consultation, negotiation, and standards-setting.

94. The Implementation Report requests that the Commission and States address issues associated with the role that incumbent LECs play in the implementation of Phase I.<sup>136</sup> The Report does not identify any particular delays that have occurred as the result of LECs, but contends that delays occur because of the PSAPs' dependence on their LEC-based 911 systems. The Report explains that LECs own and operate most of the 911 selective routers, ALI databases, the trunks to carry 911 calls, and sometimes the Customer Premises Equipment (CPE) upon which the PSAP's 911 system is based. The service between the LEC and PSAP is contractual in nature and paid by the PSAP typically through a special tariff filed with the State public utility commission. Because most LEC-based systems are designed to support 8-digit dialing patterns utilizing CAMA (Centralized Automatic Message Accounting) signalling, the Report contends that LECs need to be accountable for the operational readiness of their 911 systems. The Report suggests that an investigation into the LEC's role would prompt a speedier resolution of issues in which LECs are involved.

95. The request is supported by AT&T, Indiana, SCC, Sprint PCS, USC, and Western. SCC agrees generally that E911 implementation can be delayed indefinitely unless there is cooperation among LECs, PSAPs, and carriers on numerous issues such as switching, interconnection, and related charges.<sup>137</sup> AT&T, Indiana, Sprint PCS, USC, and Western argue that LECs have made it difficult for carriers to achieve interconnection with the LECs' systems and access their ALI databases, thereby delaying or preventing Phase I service.<sup>138</sup> AT&T, Sprint PCS, and USC also argue that LECs are not properly addressing the upgrading of PSAPs' systems and the need for PSAP compatibility with the carriers to achieve Phase I

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<sup>135</sup> *E911 First Report and Order*, 11 FCC Rcd at 18712-14 (paras. 73-75).

<sup>136</sup> Implementation Report at 15-18. Previously, XYPOINT filed comments to CTIA's petition for clarification that also requested the Commission consider the role of the LECs, among other implementation issues. XYPOINT Comments at 2-3 n. 4, XYPOINT *ex parte* filing, March 3, 1999.

<sup>137</sup> SCC Comments of Aug. 9 at 6-7.

<sup>138</sup> AT&T Comments of Aug. 9 at 9-11; Indiana Comments of Sept. 1 at 5; Sprint PCS Comments of Sept. 14 at 12-14; USC Comments of Sept. 15 at 8; and Western Comments of Sept. 14 at 5-6.

transmissions. WCA opposes the request and argues that the need for LEC upgrades is not causing delays to Phase I implementation, because FGD is easily accomplished and available to most carriers.<sup>139</sup>

## 2. Discussion

96. Although the increasing presence of competitive LECs is likely to change 911 systems implementation to increase the options available, under present network approaches wireless carriers cannot provide E911 without interconnecting with the incumbent LEC. Access to 911 emergency service is an integral part of any local telecommunications system, and interconnection is a critical ingredient to successful E911 service. Throughout the years, wireless and wireline carriers have resolved interconnection issues at the local level through negotiations with the public safety agencies, public utility commissions, or the LECs involved. We agree that CMRS carriers must also be able to provide the additional E911 service in a cost-effective, efficient, and timely manner and that interconnection problems pose a risk to successful implementation.

97. Some parties argue that there is an incumbent LEC bottleneck hampering the provision of wireless E911 service and that the Commission should address this aspect of E911 implementation, providing the CMRS carrier with additional forms of recourse if interconnection cannot be reached.<sup>140</sup> They contend that LECs fail to provide accurate cost information and charge excessive prices for the service.<sup>141</sup> Specifically, Western argues that negotiating a service contract with the LEC can take months or years, noting that in Colorado it has attempted for months to include language concerning its tariff that it argues is reasonable but that the LEC refuses.<sup>142</sup> Indiana asserts that carriers also inform Indiana that they have been effectively prevented from implementing Phase I in one area because a LEC has denied connectivity requests that are more than 12 months old and, in another area, LECs are not providing the circuits or lines promptly. AT&T asserts that a request for access to one LEC's ALI database a year ago continues to be refused, despite its efforts to address the issues in multiple meetings.<sup>143</sup>

98. In addition, Sprint PCS and USC argue that interconnection prices are excessive

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<sup>139</sup> WCA Comments of Sept. 1 at 6-7.

<sup>140</sup> Sprint PCS Comments of Sept. 14 at 12-13; Western Comments of Sept. 14 at 5-6.

<sup>141</sup> Indiana Comments of Sept. 1 at 5; Sprint Comments of Sept. 14 at 12-13; and USC Comments of Sept. 15 at 8.

<sup>142</sup> Western Comments of Sept. 14 at 5-6.

<sup>143</sup> AT&T Comments of Aug. 9 at 9-10.

because LECs bundle the services and charge CMRS carriers for equipment they do not need.<sup>144</sup> Indiana also indicates that carriers attribute their delays in Phase I implementation to excessive LEC fees that stem, in part, from the LEC's refusal to unbundle its services.<sup>145</sup> Together, they explain that carriers should not have to fund the upgrade of the LEC-based E911 networks so that the network supports the CAS transmission solution, when CMRS providers have no use for this feature and many already employ the NCAS solution. They argue that this refusal to unbundle the costs of the CAS upgrade from the charges assessed CMRS carriers for E911 interconnection violates provisions of the Telecommunications Act of 1996.

99. First, we encourage incumbent LECs to join wireless carriers and PSAPs in working cooperatively and in good faith to resolve implementation issues through negotiation. It is not surprising that disputes arise regarding wireless E911 interconnection, particularly when certain of the parties are competitors in the same market. To the extent CMRS carriers seek lower prices or different equipment, such issues should be pursued along with the other terms of the contract for resolution as expeditiously as possible. We find that it would only confuse or delay the proper resolution of such matters if we were to undertake an examination of the reasonableness of the terms of the contracts for wireless E911 interconnection in this proceeding, as the Implementation Report and some carriers suggest.

100. Next, we find that such contract disputes described by the carriers also may be resolved under existing State and federal rules if mutual agreement is not achieved. For example, according to the *UNE Remand Order*, incumbent LECs, upon request, must provide nondiscriminatory access to their call-related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network.<sup>146</sup> The *UNE Remand Order* clarifies that the definition of call-related databases includes the 911 and E911 databases. The *UNE Remand Order* also clarifies that incumbent LECs must make network elements available to any requesting telecommunications carrier, which includes CMRS licensees subject to the wireless E911 rules.<sup>147</sup> The Commission's rules require:<sup>148</sup>

An incumbent LEC shall provide, to a requesting telecommunications carrier

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<sup>144</sup> Sprint PCS Comments of Sept. 14 at 14; USC Comments of Sept. 15 at 9.

<sup>145</sup> Indiana Comments of Sept. 1 at 5.

<sup>146</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, released Nov. 5, 1999 (*UNE Remand Order*).

<sup>147</sup> 47 C.F.R. § 51.5.

<sup>148</sup> 47 C.F.R. § 51.307; 47 U.S.C. §§ 251, 252.

for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreements, the requirements of sections 251 and 252 of the Act, and the Commission's rules.

The Commission also has adopted rules for the rate structures of network elements,<sup>149</sup> including rules that specify call-related database service charges shall be usage-sensitive, based on either the number of queries or the number of messages.<sup>150</sup> The Commission's rules also require that such prices be based on forward-looking economic costs.<sup>151</sup>

101. Incumbent LECs thus are obligated under the 1996 Act and existing Commission rules to provide CMRS carriers with access to 911 and E911 databases pursuant to these terms, and CMRS carriers, at a minimum, have access to the procedural remedies thereunder. The Commission has acted in numerous proceedings to ensure that the interconnection duties of all carriers under Section 251 and the State procedures for achieving such agreements under Section 252 are fulfilled, and that competitive markets are developed. In addition to seeking remedies available from State public service commissions, parties also may file complaints under Section 208 of the Act for violations of Section 251.<sup>152</sup> Parties may request treatment of such complaints under the procedural rules for accelerated treatment.<sup>153</sup> An additional basis for Commission jurisdiction over LEC-CMRS interconnection that may be raised in complaints is Section 332(c)(1)(B) of the Act, in tandem with Section 201.<sup>154</sup>

102. Moreover, we find that States are taking appropriate action to ensure non-discriminatory access for wireless and wireline carriers in accordance with our mandates and provide CMRS carriers with access to non-discriminatory interconnection with LECs. For example, Texas public safety officials filed a petition requesting the Commission establish a general investigation to identify interoperability issues that might arise in the implementation

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<sup>149</sup> 47 C.F.R. § 51.507.

<sup>150</sup> 47 C.F.R. § 51.509(f).

<sup>151</sup> 47 C.F.R. § 51.503(b).

<sup>152</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, 15563-65 (paras. 124-28) (1996) (*Local Competition First Report and Order*); 47 U.S.C. § 208. For complaint procedures, see 47 C.F.R. §§ 1.720-1.735.

<sup>153</sup> See, e.g., 47 C.F.R. § 1.730.

<sup>154</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 16005 (para. 1023).

of wireless E911 and require Commission action.<sup>155</sup> Petitioners, however, subsequently addressed these matters with the Public Utility Commission of Texas through such appropriate means as compliance actions or proposed rules that implement the Commission's mandate that States facilitate non-discriminatory interconnection of all telecommunications carriers to both incumbent and competitive local providers.<sup>156</sup>

103. In these circumstances, we do not find that initiating an inquiry into the role of LECs to ensure non-discriminatory access and interconnection agreements with CMRS carriers is the best course of action at this time. While we believe it is clear in the Commission's other Orders, we state again that LECs have an obligation to provide CMRS carriers with nondiscriminatory access and interconnection to LEC networks for the provision of 911 and E911 services to wireless callers. We recognize that SCC and USC argue that pursuing arbitration or other legal avenues to address an incumbent LEC's delay or refusal to interconnect may be time consuming and impractical.<sup>157</sup> We do not find at this time, however, that an administrative proceeding, as requested by the Implementation Report, would facilitate resolution of these issues, but rather would confuse the established and ongoing processes that resolve interconnection issues and create opportunities for further delay of Phase I and Phase II implementation. We see no reason why such matters cannot be resolved within the timetable adopted by the Commission for the implementation of Phase I and Phase II. Nevertheless, we intend to monitor the role of LECs to determine whether we need to impose additional obligations on them to ensure implementation of the wireless E911 rules.

#### **D. Other Issues**

##### **1. Six-Month Deadline for Deployment of Phase I Service**

###### **a. Petition for Clarification**

104. In its petition for clarification, CTIA requests the Commission clarify the E911 rules to indicate when a carrier's obligation to provide Phase I service arises.<sup>158</sup> CTIA asserts that the Commission's E911 Orders require a carrier at this time to comply with a PSAP's request for Phase I service within six months of the request since that request occurs after

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<sup>155</sup> Public Notice, Joint Petition to Ensure Interoperability of 911 Emergency Calling Systems, RM-9343, DA 98-1652, (released August 18, 1998).

<sup>156</sup> SCC *ex parte* filing, March 4, 1999, with attachment of Motion to Intervene and Brief filed with Public Utility Commission of Texas in PUC Docket NO. 20334 on Feb. 12, 1999; Communications Daily, July 14, 1999.

<sup>157</sup> SCC Comments of Aug. 9 at 6-7; USC Comments of Sept. 15 at 20.

<sup>158</sup> CTIA Petition at 22.