

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Revision of the Commission's Rules) CC Docket No. 94-102
To Ensure Compatibility with) RM-8143
Enhanced 911 Emergency)
Calling Systems)
)

Reply Comments of Aerial Communications, Inc.

Aerial Communications, Inc., on behalf of its subsidiaries APT Houston, Inc., APT Tampa/Orlando, Inc., APT Minneapolis, Inc., APT Columbus, Inc., APT Kansas City, Inc., and APT Pittsburgh Limited Partnership (collectively "Aerial"), all of which are licensees of broadband Personal Communications Service (PCS) in the corresponding metropolitan trading areas (MTA), pursuant to Public Notice, Report No. 2386, published in the Federal Register on February 7, 2000, Vol. 65, No 25, submit these Reply Comments in response to comments filed regarding the Petitions for Reconsideration (Petitions) filed in the above-captioned proceeding. Aerial filed a Petition for Reconsideration in this proceeding.

Comments were filed by Nextel, PCIA, AT&T Wireless Services, APCO and Aerial. Of the comments filed, only the comments filed by Nextel, PCIA and APCO addressed issues raised in the Aerial Petition for Reconsideration. Specifically, Nextel

and PCIA support Aerial's position that there is insufficient support in the record to increase the Phase II location accuracy requirements to the level of 50 meters for 67 percent of calls and 150 meters for 95 percent of calls made to 911.¹

APCO opposes Aerial's position regarding the lack of support in the record to increase the accuracy requirements by simply stating that "the Commission based its decision on a thorough record that included a public hearing, test data, and voluminous written submissions."² APCO, however, fails to cite any such support in the record. The fact that APCO does not cite any support in the record is testimony to Aerial's fundamental point that none exists. Accordingly, the Commission must reconsider its decision to increase the Phase II location accuracy levels and reinstate the accuracy standards established in the E911 Reconsideration Order until the public is given the opportunity to comment on higher levels of accuracy.

The Commission opened an inquiry into the methodology for determining ALI accuracy in a Public Notice dated June 1, 1999. Parties, including Aerial, filed comments in response to the specific issues raised the Public Notice. In the Third Report and Order, the Commission increased the accuracy levels without addressing measurement methodologies which was the stated purpose of the Public Notice inquiry. The Administrative Procedures Act (APA) requires the Commission to promulgate rules in response to a Notice of Proposed Rulemaking, not a Public Notice for targeted comment as was done in this proceeding.³ Here lies the procedural flaw in the Third Report and Order that calls for reconsideration of the Order.

¹ See PCIA Comments at pg. 4 and Nextel Comments at pg. 9.

² See APCO Comments at pg. 4.

For the foregoing reasons, Aerial urges the Commission to grant its Petition for Reconsideration.

Respectfully submitted,

Aerial Communications, Inc.

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³ See 5 U.S.C. §553(b).