

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

In the Matter of: )  
)  
Revision of the Commission's Rules to ) CC Docket No. 94-102  
Ensure Compatibility with Enhanced 911 )  
Emergency Calling Systems ) DA 01-886

To: Chief, Wireless Telecommunications Bureau

**COMMENTS OF VERIZON WIRELESS**

Verizon Wireless hereby submits comments in opposition to the "Petition for Clarification and/or Declaratory Ruling" ("Petition") submitted by the City of Richardson, Texas ("Richardson") in the above-captioned proceeding.<sup>1</sup>

**SUMMARY**

The rules and underlying decisions plainly require PSAPs to be capable of receiving and utilizing enhanced 911 ("E-911") data as a condition of a "valid" PSAP request. They could not be clearer, and Richardson presents no "uncertainty" or "controversy" necessary for the Bureau to resolve. The Petition attempts to misuse the declaratory ruling procedure to *change* a Commission rule, yet Richardson failed to seek reconsideration of that provision and does not seek a new rulemaking. The Bureau should expeditiously deny the Petition as both contrary to law and procedurally infirm.

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<sup>1</sup> City of Richardson, Texas, Petition for Clarification and/or Declaratory Ruling, CC Docket No. 94-102, filed April 4, 2001; Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Request for Clarification or Declaratory Ruling Concerning Public Safety Answering Point Requests for Phase II Enhanced 911*, CC Docket No. 94-102, DA 01-886 (rel. April 5, 2001) ("Public Notice").

## BACKGROUND

Section 20.18(j) of the Commission's rules sets forth the steps that a Public Safety Answering Point ("PSAP") must complete as a prerequisite to a carrier's E-911 obligations, including the requirement that a PSAP be "capable of receiving and utilizing the data elements associated with the service." The Commission adopted this "PSAP capability" prerequisite in a *Report and Order* released nearly five years ago, and reaffirmed the requirement in a subsequent *Second MO&O*.<sup>2</sup> The Commission, in adopting this rule, agreed with arguments jointly submitted by CTIA, NENA, APCO and NASNA, in which:

[T]he [parties] recognized that a precondition to a CMRS carrier's obligation to provide enhanced 911 service, was a *bona fide* request by a Public Safety Answering Point ("PSAP") willing *and able* to take advantage of such wireless compatibility. No carrier should be expected to provide basic or enhanced 911 service if the new services are not wanted *or cannot be used*.<sup>3</sup>

Thus, there was broad industry and PSAP support for the PSAP capability prerequisite. No party has since sought reconsideration or clarification of this aspect of the rule.

Since that time, carriers have received numerous requests and implemented (or begun implementing) Phase I service. To Verizon Wireless's knowledge, carriers, PSAPs and Commission staff have not seriously questioned or otherwise indicated confusion regarding the applicability of the PSAP capability prerequisite throughout the Phase I deployment process. In fact, where disputes between carriers and PSAPs have arisen involving Phase I deployment in Texas, Verizon Wireless understands that Commission staff have expressly inquired with the Texas Commission on State Emergency Communications as to when exactly the applicable PSAPs *became capable* of receiving and utilizing Phase I E911 data elements. This further

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<sup>2</sup> *Report and Order*, 11 FCC Rcd. 18676, 18708-709, 18711 ¶¶ 63, 69 (1996) ("*Report and Order*").

<sup>3</sup> *See Report and Order*, 11 FCC Rcd. at 18709 ¶ 64 (citing Joint Reply Comments of CTIA, NENA, APCO and NASNA in CC Docket No. 94-102, filed March 11, 1996, at 4-5, emphasis added).

confirms carriers' understanding, as discussed *infra*, that a PSAP must actually be Phase I- or Phase II-capable for its request to be "valid" and trigger the applicable compliance deadlines.

On April 4, 2001, nearly one and one-half years after release of the *Second MO&O*, Richardson filed its Petition requesting that the Commission declare that:

[A PSAP] makes a valid request to a wireless carrier for Phase II enhanced 911 . . . service by *informing the carrier* that its equipment upgrades for Phase II service *will be finalized* prior to delivery of the service by the carrier, that the PSAP has an adequate cost recovery mechanism in place to bring its equipment to the level necessary to receive Phase II data, and that the carrier is required to deliver Phase II service within six months after receiving such a request or by October 1, 2001, whichever is later, so that the service is available to the PSAP when its equipment upgrades are completed.<sup>4</sup>

While couched as a dispute with VoiceStream, Richardson's argument is not with carriers but with the Commission's rules.<sup>5</sup> The Bureau should deny the Petition.

## DISCUSSION

### I. CARRIERS' OBLIGATIONS ARE NOT APPLICABLE IF THE PSAP IS NOT CAPABLE OF RECEIVING AND UTILIZING E-911 DATA ELEMENTS

Richardson takes issue with VoiceStream's response to the city's letter requesting Phase II service, in which VoiceStream states "it appears that the Phase II portion of [Richardson's] request does not satisfy the FCC prerequisites" and "that the [PSAP's customer premises] equipment is not currently capable of receiving and using the Phase II data."<sup>6</sup> The Commission's rules and underlying decisions unambiguously provide that the latter's interpretation is correct.

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<sup>4</sup> Petition at 1, 6 (emphasis added).

<sup>5</sup>The issue also appears to have made its way into APCO's Project 38 initiative. In materials provided to members for Phase II guidance, APCO asserts that "[t]he projected deadline for carriers to provide Phase II-ready solutions to PSAPs is expected to be six months, although at this time it is unclear whether the six months begins when PSAPs first request the technology or when PSAPs and carriers actually reach a signed contractual agreement."

<sup>6</sup> See Petition, Exhibit B (Letter from James A. Nixon, VoiceStream Wireless Corporation, to Joe Hanna, Richardson Police Department, dated April 18, 2000).

**A. Richardson's Interpretation Conflicts with Section 20.18(j)**

Richardson argues that a PSAP request is "valid" for purposes of the Commission's rules and deadlines when it merely "inform[s] the carrier that its equipment upgrades for Phase II service will be finalized prior to delivery of the service by the carrier and that it has an adequate cost recovery mechanism in place to bring its equipment to the level necessary to receive Phase II data . . . ." This interpretation flatly contravenes the express language of the rule. Section 20.18(j) provides that:

The[se] requirements . . . 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 Public Safety Answering Point's costs of the enhanced 911 service is in place.<sup>7</sup>

The term "is capable," by any reasonable construction, can only mean that the PSAP must have the necessary capability *at the time of the request*.

The rule thus expressly provides that the October 1, 2001/6-month deadlines of Sections 20.18(e), (f) and (g) (as applicable) are *not* triggered until the PSAP capability and cost recovery prerequisites are satisfied. Richardson's interpretation of the rule would subject a carrier to E-911 obligations *prior to* the time the PSAP "is capable of receiving and utilizing" Phase II data, rendering the provisions of Sections 20.18(e)-(h) "applicable" *notwithstanding* whether the PSAP has met its capability and cost recovery requirements. Such an outcome is expressly contrary to Section 20.18(j) and, for this reason alone, the Bureau should deny the Petition.

**B. Richardson's Interpretation Directly Contravenes the Commission's Orders Underlying the Rule**

The Commission's underlying decisions make expressly clear the intent and the policy objectives of the rule. Richardson asserts that "the Commission did not specifically address

whether a PSAP request is valid when a PSAP represents to a wireless carrier that it will have its equipment upgrades finalized by the time Phase II service is delivered to the PSAP."<sup>8</sup> In fact, the Commission *throughout* this proceeding has consistently held to the contrary, and the very language from the *Second MO&O* that Richardson cites directly contravenes its interpretation.<sup>9</sup>

As Richardson's interpretation so plainly contravenes the rules and orders, it was simply unnecessary for the Commission to "specifically address" it. In its original decision adopting E-911 requirements, the Commission stated that:

[T]he requirements imposed upon carriers by our actions in establishing the schedule shall apply *only if* a carrier receives a request for E911 service from the administrator of a PSAP that has made the investment which is necessary to allow it to receive and utilize the data elements associated with the service.<sup>10</sup>

The Commission affirmed this interpretation when it modified the cost recovery prerequisites in the *Second MO&O*, reiterating that a request from a PSAP which has not met the capability prerequisite is not valid:

[B]efore 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*. . . . Carriers cannot fulfill their obligations . . . 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.<sup>11</sup>

The Commission described the capability prerequisite as "originally conditioning the carrier's obligation on the receipt of a request from a PSAP with the capability to receive and utilize the information."<sup>12</sup> The PSAP capability prerequisite was retained in part because "[c]arriers . . .

<sup>7</sup> 47 C.F.R. § 20.18(j) (emphasis added).

<sup>8</sup> Petition at 4.

<sup>9</sup> *See id.* (quoting 14 FCC Rcd. at 20853, stating "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 . . .").

<sup>10</sup> *Report and Order*, 11 FCC Rcd. at 18709 ¶ 63 (emphasis added).

<sup>11</sup> *Second Memorandum Opinion and Order*, 14 FCC Rcd. 20850, 20853 ¶ 6, 20878 ¶ 67 (1999) ("*Second MO&O*") (emphasis added).

<sup>12</sup> *Id.* at 20877-78 ¶ 66 (emphasis added).

benefit from receiving requests from PSAPs *that are ready to receive the carriers' transmissions*, thereby avoiding unnecessary expenditures or investments in their networks.”<sup>13</sup>

Richardson selectively cites to Commission admonitions that E-911 services be deployed as expeditiously as possible and without unnecessary delay.<sup>14</sup> Richardson fails to acknowledge, however, that the Commission balanced the objective of rapid E-911 deployment with that of mitigating carriers' costs and ensuring that PSAPs timely upgrade their own networks:

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.<sup>15</sup>

The Commission reaffirmed this approach in the Phase II context.<sup>16</sup> Thus, the Commission understood that delayed PSAP requests would result in a later carrier compliance deadline. The Bureau should not countenance Richardson's strained interpretation.<sup>17</sup>

## **II. RICHARDSON MISCHARACTERIZES CARRIERS' E-911 DEPLOYMENT PROCESSES AND UNDERSTATES PSAPs' RESPONSIBILITIES**

Richardson asserts that “[t]he whole idea behind the Commission's orders has been to speed the deployment of Phase II service.”<sup>18</sup> The Commission, however, has always been cognizant that its rules should also “adequately encourage PSAPs to take the necessary steps to

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<sup>13</sup> *Id.* at 20909.

<sup>14</sup> Petition at 2-3.

<sup>15</sup> *Second MO&O* at ¶ 69.

<sup>16</sup> *Third Report and Order*, 14 FCC Rcd. 17388, ¶ 53 (1999) (holding that for handset-based Phase II solutions, “[w]here a PSAP request is delayed beyond December 31, 2002, the carrier will have additional time to comply.”).

<sup>17</sup> *See Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Memorandum Opinion and Order*, 15 FCC Rcd 3896, ¶ 21 (2000) (rejecting party's interpretation of earlier Commission order, noting the party's “selective discussion [that] omits the Commission's statement two paragraphs later”)

<sup>18</sup> Petition at 5.

upgrade their own facilities"<sup>19</sup> and has never absolved state and local governments of their own responsibilities in this regard.<sup>20</sup> Richardson's proposed rule change would undermine this important Commission objective and subject carriers to regulatory uncertainty -- while addressing a nonexistent problem of carrier intransigence.

As the Commission has acknowledged, Phase II deployment costs for PSAPs are not trivial.<sup>21</sup> APCO itself has advised members that CPE software and hardware upgrades alone can cost as much as several hundred thousand dollars. Carriers are justified in obtaining reasonable assurances, in the form of a binding service agreement or otherwise, that the PSAPs are E-911 capable. Moreover, the Commission has expressly determined that a PSAP has a burden of formally notifying the carrier that it has met the E-911 prerequisites.<sup>22</sup> Richardson's proposed approach is plainly insufficient under the Commission's rules.

In addition, the rules subject carriers, not PSAPs, to Commission-imposed deadlines and the attendant risks of Commission-imposed sanctions. Thus, to the extent that carriers contribute to delays in E-911 deployment, the rules already hold them accountable by establishing a fixed compliance deadline. Whatever the flaws of the Commission's E-911 rules, as currently written they at least provide carriers with a degree of certainty as to when their regulatory obligations are triggered. PSAPs, in contrast, may implement their own Phase II capabilities in accordance with their own state- or locally-authorized timetables -- an approach which makes sense, as PSAPs are

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<sup>19</sup> *Third Report and Order* at ¶ 46.

<sup>20</sup> *See Implementation of 911 Act*, WT Docket No. 00-110, FCC 00-327, ¶ 24 (rel. Aug. 29, 2000) ("section 3(b) reflects a careful balance between the need for federal and state leadership and the responsibilities of local jurisdictions and others to provide 911 emergency services", citing H.R. Rep. No. 106-25, at 8 (1999)).

<sup>21</sup> *Third Report and Order* at ¶ 48.

<sup>22</sup> Public Safety Answering Points (PSAP) who are willing to participate in Phase I and Phase II of E911 service must notify the covered carrier that they are capable of receiving and utilizing the data elements associated with the service and request the service. *Memorandum Opinion and Order*, 12 FCC Rcd. 22665, 22755 (1997); *see also Report and Order*, 11 FCC Rcd. at 18709 ¶ 64 ("Should a PSAP first inform a wireless service provider less than 6

typically state or local agencies subject to the vagaries of the appropriations processes and regulations of their governing jurisdictions. The Commission clearly understood that PSAP-originated delays may hinder E-911 deployment.

Richardson's interpretation would jeopardize the certainty currently afforded to carriers and risks pitting different jurisdictions against each other for limited carrier resources. For example, where PSAP #1 requesting Phase II service has merely provided assurances that it will make (and obtain cost recovery for) the necessary upgrades, while PSAP #2 in an adjacent jurisdiction has already done so but submits its request one or two months later, the carrier might be forced to give priority to PSAP #1 due to finite resources and a more urgent regulatory deadline. This is fair to neither the carrier, which faces the risk that PSAP #1 will not receive its funding or not otherwise be able to timely upgrade its facilities, nor to PSAP #2, which has expended the necessary resources and perhaps even undertaken some political risk to do so.

Finally, Richardson's assertion that the current rule results in a "wasteful two-step process" that will "permit the carrier to sit back and do nothing" is nonsense.<sup>23</sup> As the Commission has acknowledged, "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."<sup>24</sup> Verizon Wireless, like all carriers, treats an initial Phase I or Phase II letter as a request to begin negotiations for a long-term service agreement and to begin coordinating efforts with the PSAPs and sharing technical and, if necessary, financial

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months before the required implementation date *that it is capable of accepting the ANI and "pseudo-ANI" information, . . .*").

<sup>23</sup> See Petition at 2, 5.

<sup>24</sup> *Second Memorandum Opinion and Order* 14 FCC Rcd. at 20860 ¶ 22. Indeed, in the Phase I Implementation Report submitted jointly by carrier and PSAP organizations, all parties (including PSAPs) agreed that "engineering, development and deployment efforts required to upgrade the infrastructure for wireless E9-1-1 Phase I service *could take well over a year*, even if the financial impacts were understood, and funding or cost recovery were not an

information needed for such an agreement. (Indeed, this appears to be the approach VoiceStream took in its response to Richardson's Phase II letter.) Thus, as a practical matter, carriers already must "work[] on the delivery of Phase II service at the same time that the PSAP is completing the upgrades of its equipment."<sup>25</sup>

### III. RICHARDSON'S REQUEST IS PROCEDURALLY INFIRM

Section 1.2 of the Commission's rules authorizes the Commission to, "in accordance with Section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty."<sup>26</sup> As demonstrated *supra*, there is no "controversy" or "uncertainty" regarding the applicability of the Commission's rules. Richardson does not allege any ambiguity in the Commission's rules or orders. Richardson does not identify any supporting language in the rules, and the general, high-level policy objectives it cites from the Commission's underlying orders are inapposite. Rather, it simply disputes the appropriateness of the burdens imposed on PSAPs as a condition of carriers' E-911 obligations. In circumstances such as this, where Richardson "urges [the Commission] to read into the rules policies and procedures that were simply not contemplated when the rules were drafted" and "substantive modifications such as those posed [in the Petition] require a rulemaking," denial of a petition for declaratory ruling is particularly appropriate.<sup>27</sup>

As the Commission has stated, "[a]n interested person who believes an unambiguous Commission decision is incorrect . . . should either file a timely petition for reconsideration with this Commission or petition for review with an appropriate Court of Appeals. Such persons

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issue." Implementation Report, submitted in CC Docket No. 94-102, Aug. 10, 1999, at 16, 18 (jointly signed by representatives of CTIA, PCIA, APCO, NENA and NASNA (emphasis added)).

<sup>25</sup> See Petition at 5.

<sup>26</sup> 47 C.F.R. § 1.2.

should not attempt to use a petition for declaratory ruling as a substitute for a petition for reconsideration.<sup>28</sup> Neither Richardson, nor any PSAP organizations such as APCO or NENA, petitioned the Commission to reconsider this rule, and grant of the Petition would contravene carriers' interests in finality of the Commission's decisions in the *Report and Order* and *Second MO&O*.<sup>29</sup> Nor did Richardson file a petition for rulemaking. There is thus no procedural basis on which the Bureau could lawfully grant Richardson's Petition. Finally, and in any event, grant of Richardson's request would require amendment of the Commission's rules, which the Bureau may not do.<sup>30</sup> For these reasons also, the Bureau should deny Richardson's Petition.

## CONCLUSION

For the foregoing reasons, the Bureau should summarily deny the Petition.

Respectfully submitted,

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<sup>27</sup> See *GVNW Inc.*, Order, 11 FCC Rcd. 13915, ¶ 10 (1996); *Competition in the Interstate Interexchange Marketplace, Petitions for Modification of Fresh Look Policy, Memorandum Opinion and Order*, 8 FCC Rcd. 5046, ¶ 20 (1993).

<sup>28</sup> See *Public Service Commission of Maryland, Memorandum Opinion and Order*, 4 FCC Rcd. 4000, ¶ 30 (1989).

<sup>29</sup> See *National Black Media Coalition v. FCC*, 760 F.2d 1297, 1300 (D.C. Cir. 1985) ("private parties . . . must be able to rely upon, and make substantial expenditures on the basis of, the finality of Commission action determined through the application of some objective and publicly knowable criteria"); *Southern California Pay Phone Co., Complainant v. Pacific Bell Tel. Co.*, 15 FCC Rcd 7877 (2000) (denying petition for reconsideration submitted 18 mos. after deadline).

<sup>30</sup> 47 C.F.R. § 0.331(d) (Chief, Wireless Telecommunications Bureau has no authority to "act on . . . final orders in rulemaking proceedings and inquiry proceedings").