

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

CC Docket No. 94-102

COMMENTS OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("USCC"), by its undersigned counsel, hereby submits these comments in response to the Public Notice issued by the Federal Communications Commission on April 5, 2001 in the above referenced proceeding.¹ In the Public Notice, the Commission seeks comment on a request from the City of Richardson, Texas ("Richardson") for clarification or a declaratory ruling concerning the validity of a Public Safety Answering Point ("PSAP") request for phase II E911 service.

In its filing, Richardson asserts that a PSAP makes a valid request for phase II service when it declares that an adequate PSAP cost recovery mechanism exists and that the PSAP upgrades necessary to utilize the phase II information will be completed when the carrier begins to deliver phase II service.² As demonstrated below, USCC submits that the Commission's rules regarding valid PSAP requests for phase II E911 service are clear and unambiguous, and plainly inconsistent with Richardson's request for clarification. Richardson's request actually seeks an amendment to the Commission's rules, one that cannot be adopted

¹ See 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 (released April 5, 2001).

² See City of Richardson Petition for Clarification and/or Declaratory Ruling, p. 1 ("Richardson Petition").

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absent a notice and comment rulemaking proceeding. USCC urges the FCC not to consider such a change in its rules at this stage in the E911 proceeding.

I. The Commission's E911 rules are entirely clear and unambiguous, and thus do not require clarification.

Section 20.18(j) of the Commission's rules provides that a carrier's obligation regarding deployment of phase II location information is triggered by a request from a PSAP that has a cost recovery mechanism in place and is capable of utilizing the location information it has requested from the carrier.³ Thus, it is clear from the plain language of the rule that a PSAP request is not valid until such time as that PSAP is actually prepared to use the phase II location information.

In its petition, Richardson suggests that the Commission has not addressed whether a PSAP request for phase II service is valid if the PSAP itself is still in the process of upgrading its system in order to receive and utilize the phase II information.⁴ To the contrary, however, throughout the history of this proceeding the Commission has repeatedly addressed the question of the prerequisites to a valid PSAP phase II request that triggers the obligations of carriers and has consistently held that the PSAP must be prepared to utilize the phase II information at the time its request is made in order for that request to be valid.

For example, in the First Report & Order in this proceeding, the FCC provided that both phase I and phase II requirements will be imposed on carriers only if (1) a carrier receives a request for such service from a PSAP that *is capable* of receiving and utilizing the information, and (2) a mechanism for the recovery of the costs of providing the service *is in*

³ See 47 C.F.R. § 20.18(j).

⁴ See Richardson Petition, p. 4.

place.⁵ It is clear from the plain language of this rule that whether the PSAP will be able to utilize the data some time in the future is irrelevant to the determination of what constitutes a valid PSAP request. Instead, the Commission clearly indicated that a PSAP makes a valid request for service only when it is presently capable of using the information requested.

Similarly, in Second Memorandum Opinion & Order, the Commission reaffirmed the same basic principle, stating that a carrier's obligation is triggered upon receipt of a request from a PSAP that *is capable* of utilizing the requested information and a PSAP cost recovery mechanism *is in place*.⁶ The Commission expressly retained these prerequisites to ensure that carriers would not be required to incur expenditures to provide services to a PSAP that is not prepared to utilize that information.⁷ Thus, the Commission explicitly considered and rejected Richardson's suggestion here that a carrier's duty can be created at any time prior to the completion of the PSAP's preparation.

In the Third Report & Order, the Commission permitted carriers to adopt a phase II handset solution and eliminated the prerequisite that PSAPs be prepared to utilize phase II information.⁸ However, even with this change, the Commission expressly retained the condition that any corresponding upgrades to the carrier's network were required only following receipt of

⁵ See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 18676, 18684 (1996) (emphasis added).

⁶ See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Second Memorandum Opinion and Order, 14 FCC Rcd. 20850, 20853 (1999) (emphasis added).

⁷ See *id.* at 20879.

⁸ See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Third Report and Order, 14 FCC Rcd. 17388, 17408 (1999); see also 47 C.F.R. § 20.18(g)(1).

a valid PSAP request.⁹ The Commission found it “appropriate to link PSAP requests to the completion by the carrier of any other steps needed to provide acceptable Phase II ALI.”¹⁰

This principle was reiterated yet again in the Fourth Memorandum Opinion and Order, where the Commission declined to change the prerequisites for carriers’ phase II obligations. In that Order, the Commission eliminated the separate phase-in schedule for handset deployment and penetration triggered by a PSAP request, but maintained PSAP readiness as a prerequisite for the requirement that carriers upgrade the hardware and software in their networks.¹¹

II. The Commission cannot grant the City of Richardson’s request without adopting a rulemaking proceeding.

Based on the record in this proceeding, the City of Richardson clearly does not seek clarification of the Commission’s rules regarding the validity of a PSAP request as it represents in its petition. Rather, Richardson seeks an amendment to the current rule – namely, that a PSAP makes a valid request for phase II service merely by asserting that it will be prepared to utilize the phase II information at some time in the future when the carrier is ready to provide it. Because Richardson in actuality is seeking the adoption of a new rule, the Commission is required to follow the notice and comment rulemaking procedures of the Administrative Procedure Act (“APA”) prior to making such a change.

Section 553 of the APA provides that an agency must issue a notice of proposed rulemaking and provide an opportunity for interested parties to submit comments in response to

⁹ See *id.* at 17411; see also 47 C.F.R. § 20.18(g)(2).

¹⁰ See *id.* at 17411.

¹¹ See Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442, 17453-6 (2000); see also 47 C.F.R. § 20.18(g)(2)(i).

that notice prior to the adoption of a new agency rule.¹² This includes attempts by an agency to amend or repeal a rule, which also requires adherence to the notice and comment rulemaking procedures.¹³ Here, Richardson has effectively requested that the Commission change the language in section 20.18(j) of its rules from “is capable” of utilizing the phase II location information to “will be capable” of using such information at some point in the future. As demonstrated above, this request represents a clear change to the Commission’s rules and thus requires a full notice and comment rulemaking proceeding. One of the primary purposes behind requiring agencies to engage in this type of rulemaking procedure is to provide those individuals or entities potentially affected with the opportunity to receive notice of and to influence the rules that will impact them.¹⁴

Finally, as the Commission well understands, the roll-out of nationwide E911 is and continues to be a complicated process. Carriers will be required to expend significant resources to comply with the Commission’s rules. Because the resources of these carriers are limited, the carriers should be able to rely on the clear, plain language of the rules as promulgated by the Commission when allocating resources to facilitate the E911 roll-out. The change requested here by Richardson will only upset the roll-out process by introducing further uncertainty and Commission interference in the process - - a process that has been in place for five years.

¹² See 5 U.S.C. § 553.

¹³ See National Wildlife Federation v. Clark, 577 F.Supp. 825, 828 (D.C. Dist. 1984).

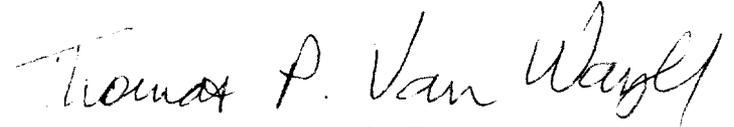
¹⁴ See Ohio Department of Human Services v. HHS, 862 F.2d 1228, 1233 (6th Cir. 1988) (“[t]he purpose of these provisions is to give those affected by the change an opportunity to participate in the rulemaking process”); see also Pickus v. Board of Parole, 507 F.2d 1107, 1112 (D.C. Cir. 1974) (“the interested public should have an opportunity to participate... before rules ... are promulgated”).

III. Conclusion

Based on the foregoing, USCC respectfully requests that the City of Richardson's Petition for Clarification and/or Declaratory Ruling be dismissed.

Respectfully submitted,

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Dated: April 23, 2001

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