

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Revision of the Commission's Rules) CC Docket No. 94-102
to Ensure Compatibility with Enhanced)
911 Emergency Calling Systems)
)
Wireless Telecommunications Bureau) DA 01-886
Seeks Comment on Request for)
Clarification or Declaratory Ruling)
Concerning Public Safety Answering)
Point Requests for Phase II Enhanced 911)

To: Wireless Telecommunications Bureau

REPLY COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC ("Cingular") hereby responds to comments filed in response to the *Public Notice* of April 5, 2001 in the above-referenced proceeding.¹ The record reflects overwhelming opposition to the petition filed by the City of Richardson, Texas ("Richardson") because Section 20.18(j) of the Commission's rules is clear — a request is not valid unless the public safety answering point ("PSAP") is currently able to receive and utilize E911 data.² The few comments in support of the petition attempt to interject ambiguity into the rule where there is none. Moreover, any notion of economic hardship to PSAPs as a result of Section 20.18(j) is

¹ *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, *Public Notice*, DA 01-886 (rel. April 5, 2001).

² 47 C.F.R. 20.18(j); see Blooston, Mordkofsky, Dickens, Duffy & Prendergast Comments at 3; Cingular Comments at 2-3; Cellular Telecommunications & Internet Association ("CTIA") Comments at 3-4; Qwest Wireless LLC ("Qwest") Comments at 2-5; Sprint PCS Comments at 3-5; U.S. Cellular Corporation ("U.S. Cellular") Comments at 2-4; Verizon Wireless ("Verizon") Comments at 3-6; VoiceStream Wireless Corporation ("VoiceStream") Comments at 5-8; Western Wireless Corporation ("Western Wireless") Comments at 2-4.

counterfactual considering that the Commission has retained the cost recovery mechanism for PSAPs. Accordingly, Cingular reiterates that Richardson’s petition for clarification should be dismissed as procedurally defective or simply denied by the Commission.

DISCUSSION

I. THE RULE IS CLEAR

The vast majority of the commenters, including Cingular, correctly point out that the requirements for a valid PSAP request for E911 under Section 20.18(j) are clear, *i.e.*, a PSAP request is not valid unless the PSAP is currently able to receive and utilize E911 data.³ Some public safety entities, however, attempt to create ambiguity in the rule where none exists to somehow justify a clarification.⁴

For example, NCW suggests that Section 20.18(j) is ambiguous, because it “mixes grammatical tenses.”⁵ That is, a carrier’s E911 obligations are not triggered until a PSAP “has requested” (past tense) such service and “is capable” (present tense) of using the service. Similarly, APCO states that requiring a PSAP to be capable of receiving and utilizing the data elements at the time of the request “ignores the plain meaning of the rule” and “would be entirely inconsistent with the Commission’s efforts to accelerate wireless 911 service.”⁶ While the National Emergency Number Association (“NENA”) states that the debate on the “temporal

³ *See supra* note 2.

⁴ Association of Public-Safety Communications Officials-International, Inc. (“APCO”) Comments at 4-5; North Carolina Wireless 911 Board (“NCW”) Comments at 2-3.

⁵ NCW Comments at 2.

⁶ APCO Comments at 3.

meanings of “is” is a “waste of time,” it claims that the spirit of the rule favors Richardson’s interpretation.⁷

A plain reading of Section 20.18(j) clearly requires that the PSAP “is capable” of receiving and utilizing Phase II E911 data at the time of the request, and *not* that the PSAP “will be capable” of receiving the data at some unspecified point in the future. Further, as highlighted by the majority of the commenters, including Cingular, the Commission has previously declined to reconsider the rule in the manner requested by Richardson, thereby obviating any possible ambiguity.⁸ In addressing this issue, the Commission reaffirmed that “[c]arriers should not be forced to make investments in their networks to provide E911 services that cannot be used by the PSAP.”⁹ Moreover, the Commission clearly stated more than once that PSAPs must be capable of receiving and utilizing the data elements for a request to be valid.¹⁰

It comes as no surprise that the supporting commenters fail to acknowledge the Commission’s prior treatment of this issue, but instead cling to the notion that the Commission could not have intended such an interpretation if the goal is to expedite the implementation of

⁷ NENA Comments at 2.

⁸ Cingular Comments at 2-3; CTIA Comments at 3-4; Qwest Comments at 3-4; Sprint PCS Comments at 3-5; U.S. Cellular Comments at 2-4; Verizon Comments at 5-6; VoiceStream Comments at 6-8; Western Wireless Comments at 3-4.

⁹ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Second Memorandum Opinion and Order*, 14 F.C.C.R. 20850, 20879 (1999), *appeal pending sub nom. U.S. Cellular v. FCC*, No. 00-1072 (D.C. Cir., filed Feb. 28, 2000) (“*Second MO&O*”); *see also* VoiceStream Comments at 7.

¹⁰ *Second MO&O*, 14 F.C.C.R. at 20853, 20877-79, 20909.

E911.¹¹ Cingular agrees with other commenters, however, that the Commission has balanced the competing interests to expedite the E911 implementation process and correctly decided to condition a valid request on a PSAP being “capable” to ensure that carriers do not waste finite resources on PSAPs that are not ready.¹² Accordingly, Richardson’s petition for clarification is tantamount to an amendment of the rule and should be dismissed or denied as either (i) an untimely petition for reconsideration pursuant to Section 405 of the Communications Act, or (ii) an improper request to change established rules without following the procedures set forth in Section 553 of the Administrative Procedure Act.¹³

II. PSAPS WILL NOT INCUR ECONOMIC HARDSHIP

In the *Second MO&O*, the Commission removed the *carrier* cost recovery mechanism as a condition of a valid PSAP request but retained the *PSAP* cost recovery requirement.¹⁴ The

¹¹ See, e.g., APCO Comments at 3-4 (stating that the Commission intended to accelerate the implementation of E911 and therefore “it is common sense to read Section 20.18(j) as allowing PSAPs to request Phase II service while the necessary upgrades are being completed”); NENA Comments at 2 (stating that the Commission is concerned with the slow pace of E911 and therefore the prerequisites should be interpreted in favor of Richardson). NCW does not even mention the *Second MO&O* and thus fails to interpret the rule in the context of the Commission’s earlier proceedings.

¹² CTIA Comments at 2-3; Qwest Comments at 3-4; Sprint PCS Comments at 5-7; Verizon Comments at 6; VoiceStream Comments at 10-15.

¹³ 5 U.S.C. § 553; 47 U.S.C. § 405; see also Cingular Comments at 4-5; Qwest Comments at 6; U.S. Cellular Comments at 4-5; Verizon Comments at 9-10; VoiceStream Comments at 8-10; Western Wireless Comments at 4-5.

¹⁴ *Second MO&O*, 14 F.C.C.R. at 20877.

Commission thus ensured that the costs associated with Phase II equipment upgrades and maintenance of the system during the six month waiting period will be recovered by the PSAP.¹⁵ In support of the petition for clarification, APCO argues that “[r]equiring a PSAP to complete all equipment upgrades before it can even make a request for Phase II E911, and then wait for as much as six months before actually getting service, *would impose an economic hardship* on public safety entities and would constitute a waste of public funds.”¹⁶ APCO further states that “[i]t is for this reason that the Commission retained the cost recovery requirement for recovery of the PSAP’s costs of E911 service.”¹⁷

This argument is circular and illogical. A PSAP will not incur economic hardship during the six month waiting period if it has a cost recovery mechanism in place, which is a prerequisite for a valid request. The PSAP will thus be reimbursed for the costs associated with the E911 service during the waiting period. To the contrary, carriers -- which do not have the benefit of a cost recovery mechanism -- will incur an economic hardship if premature requests are allowed. Cingular thus agrees with Sprint PCS and VoiceStream that premature requests will result in carriers wasting resources on PSAPs that are not ready.¹⁸ Such waste will necessarily divert finite resources away from PSAPs that are “capable” of receiving and utilizing Phase II E911 data, contrary to the public interest.

¹⁵ *Id.* (“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.”).

¹⁶ APCO Comments at 4.

¹⁷ *Id.*

¹⁸ Sprint PCS Comments at 5-6; VoiceStream Comments at 10-13.

CONCLUSION

As stated above, the Commission's rules clearly define the prerequisites for a valid PSAP request for E911 services. Accordingly, clarification is unnecessary and Richardson's petition should be denied.

Respectfully submitted,

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May 3, 2001