



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS FURTHER COMMENT ON THE
COMMISSION'S RULES CONCERNING PUBLIC SAFETY ANSWERING POINT REQUESTS
FOR PHASE II ENHANCED 911**

CC DOCKET NO. 94-102]

COMMENTS DUE: July 25, 2001

REPLIES DUE: August 1, 2001

By a Public Notice released on April 5, 2001,¹ the Wireless Telecommunications Bureau ("the Bureau") sought comment on a petition filed April 5, 2001, by the City of Richardson, Texas ("Richardson") seeking clarification and/or a declaratory ruling concerning the process by which a Public Safety Answering Point ("PSAP") makes a valid request for Phase II enhanced 911 ("E911") service from a wireless carrier as provided for in Section 20.18(j) of the Commission's rules, 47 C.F.R. §20.18(j). Specifically, Richardson seeks clarification or a declaratory ruling that a PSAP makes a valid request for Phase II E911 service by informing the carrier that the necessary equipment upgrades for Phase II service will be finalized prior to the delivery of the service by the carrier, and by having an adequate cost recovery mechanism in place to bring its equipment to the level necessary to receive Phase II data. Richardson asserts that a carrier receiving such a request 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.

Eleven comments and eight reply comments were filed in response to the April 5 Public Notice. Some parties argue that the rule requires PSAPs to be capable of receiving and utilizing the data elements associated with the service at the time they request service. In support of that position they contend that a PSAP may believe at the time of the request that it will be capable of implementing Phase II within the six-month period, but subsequent events outside its control may prevent the PSAP from implementing Phase II within that period, or for other reasons the PSAP's expectations concerning the timing of its eventual Phase II readiness may not be realized.² Other parties, in contrast, support Richardson's

¹ 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 (Apr. 5, 2001).

² See VoiceStream Comments at 10-11; Sprint Comments at 2; Qwest Comments at 4.

position, arguing that the rule only requires the PSAP to inform the carrier that the necessary equipment upgrades will be finalized prior to the delivery of service by the carrier, and to have an adequate cost recovery mechanism in place.³ Based on the language of the rule itself, the Commission's orders addressing the rule and the comments and reply comments of interested parties, it appears that the rule as written may be capable of more than one interpretation. Accordingly, the Bureau seeks additional comment on whether the rule should be amended to clarify its meaning and/or adopt some criteria between the two extremes mentioned here.

Specifically, WTB seeks comment on what objective criteria a PSAP could be required to meet to demonstrate at the time it makes a request that it has taken sufficient steps to assure that it will be able to receive and utilize the E911 data prior to the delivery of service by the carrier. For example, what kinds of identifiable, measurable criteria could be put in place that would reasonably predict for the Commission, carrier, and PSAP whether a PSAP will be ready to receive and utilize Phase II information within six months of a request? Would it be sufficient for the PSAP to show (1) that it has the necessary funding available; (2) that it has purchase orders with vendors that will install the necessary facilities with obligations that the vendors must perform within the 6 month period; and (3) that it has made arrangements with local exchange carriers to supply the necessary trunking, the ALI database, and any other necessary facilities or capabilities in a timely fashion? Would it be sufficient if the PSAP shows that it has implemented Phase I using a Non-Call Path Associated Signalling (NCAS) capability? Would it also be necessary for the PSAP to have a state-of-the-art mapping capability versus a less sophisticated plotting mechanism, or is that a matter of the efficiency of the PSAP's handling the information, not its capability to use it?

This matter is incorporated into the ongoing rulemaking proceeding in CC Docket No. 94-102 and the comments and reply comments filed in response to the April 5, 2001 are hereby incorporated by reference. Parties interested in filing comments in response to this Public Notice may do so on or before July 25, 2001. Reply comments are due on or before August 1, 2001. All comments shall reference the docket number of this proceeding. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the docket number of this proceeding. Parties who choose to file by paper must file an original and four copies of each filing with the Commission's Secretary (Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554) and a diskette copy to the Commission's copy contractor (International Transcription Service, Inc. (ITS)), CY-B400, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554). In addition, parties should submit one copy to Peter G. Wolfe, Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 3-A101, 445 12th Street, S.W., Washington, D.C. 20554. Filings and comments are also available for inspection and copying in the Reference Information Center, Federal Communications Commission, Room CY-A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from ITS.

As required by the Regulatory Flexibility Act, *see* 5 U.S.C. §603, WTB has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the policies and rules suggested in this Public Notice. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on this Public Notice, and they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this Public Notice, including the Initial Regulatory Flexibility

³ *See, e.g.*, APCO Comments at 3-5.

Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act. *See* 5 U.S.C. §603(a).

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. Section 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

For further information, contact Peter G. Wolfe, (202)418-1310.

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APPENDIX A

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),¹ the Wireless Telecommunications Bureau (WTB) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the rule amendments suggested in this Public Notice (PN) in CC Docket No. 94-102. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the PN as provided above. The Commission's Consumer Information Bureau, Reference Information Center will send a copy of the PN, including the IRFA to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the PN and IRFA (or summaries thereof) will be published in the Federal Register.³

Need for, and Objectives of, the Proposed Rules

The PN is needed to ascertain whether and to what extent the Commission should amend 47 C.F.R. § 20.18(j) to clarify the process by which a Public Safety Answering Point (PSAP) makes a valid request for Phase II E911 service. The suggested rule amendment is meant to ensure that all parties involved in providing critical E911 services are aware of their responsibilities in this regard. If the Commission adopts a requirement that PSAPs demonstrate compliance with specified criteria, the purpose will be to enable affected carriers to verify a PSAP's capability to receive and act on Phase II data, thus avoiding costly delays in response time.

B. Legal Basis for Proposed Rules

The suggested action is authorized under Sections 1, 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, 47 U.S.C. §§ 151, 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² 5 U.S.C. § 603(a)

³ *See id.*

⁴ 5 U.S.C. § 603(b)(3).

appropriate for its activities.⁵ Under the Small Business Act, a “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁶ A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁷ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁸

The definition of “small governmental entity” is one with populations of fewer than 50,000.⁹ There are 85,006 governmental entities in the nation.¹⁰ This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000.¹¹ The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

Nationwide, there are 4.44 million small business firms, according to SBA reporting data.¹² The applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹³ According to the a report issued by the Federal Communications Commission’s Common Carrier Bureau in December 2000, of the 1,495 current wireless service providers, 989 employ 1,500 or fewer workers, and 506 employ more than 1,500 workers.¹⁴

The Commission is unable at this time to precisely quantify the specific impact of the suggested actions on these entities at this early point in the proceeding, but invites comment on this issue. The impact will depend on what type of demonstration and criteria (if any) the Commission ultimately adopts. If a demonstration and criteria are adopted, small carriers would find it less

⁵ *Id.* § 601(3).

⁶ *Id.* § 632.

⁷ *Id.* § 601(4).

⁸ Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁹ 5 U.S.C. § 601(5).

¹⁰ 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

¹¹ *Id.*

¹² See 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹³ 13 C.F.R. 121.201, SIC code 4812.

¹⁴ FCC Common Carrier Bureau, Industry Analysis Division, *Statistical Trends in Telephony*, Table 5.3 (December 2000).

burdensome to confirm that a PSAP is indeed capable of participating in E911 service provision. The Commission is acutely aware of its responsibility to balance the needs of the PSAPs, who presumably would need to comply with any demonstration requirement adopted. Therefore, the Commission will carefully consider the affects in time and money on PSAPs of any demonstration requirement or inherent criteria before adopting final rule amendments.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The reporting, recordkeeping, or other compliance requirements will depend on what format the demonstration requirement, if adopted, ultimately takes and on what criteria, if any, are adopted. The PN is inviting public comment on this issue and is open to any suggestions submitted in this regard. All comments will be carefully considered before final rules are adopted.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The Commission is severely limited in this proceeding as to minimizing the burden on small entities. The proceeding originates in Congressional mandate with the intention of ultimately offering the most reliable, responsive emergency services technologically possible. The critical nature of this goal demands that all entities involved, regardless of size, bear the same responsibility for complying with requirements adopted to expedite reaching this goal. A delay in response caused by a small entity could result in the same fatal consequences as a delay caused by a large entity. However, if the rule is amended as suggested in the PN is adopted, all entities will benefit as indicated in criteria 2 cited above, the clarification of compliance or reporting requirements under the rule. The alternatives at this early point in the proceeding seem to be to leave the rule as it stands, to amend the rule without placing a demonstration burden and criteria on PSAPs, or, if the Commission finds after reviewing the comments filed in response to the PN that the benefits of amending the rule and adopting criteria and a demonstration requirement outweigh the additional onus placed on PSAPs, whether a detailed demonstration of compliance or a more general demonstration will suffice to verify PSAP capability to participate in Phase II of the Commission's E911 program. For example, if the rule is amended and PSAPs are asked to demonstrate their compliance with certain criteria, the Commission could allow PSAPs the flexibility to comply with this requirement in whatever manner they believe best demonstrates their capability. This alternative would place a minimal additional reporting burden on PSAPs, but small carriers may find this an inadequate means for determining capability. On the other hand, the Commission could adopt a requirement that clearly states what a satisfactory demonstration must include, thus increasing the reporting burden on PSAPs but allowing no room for confusion over when a PSAP may be considered E911 capable. These are issues on which the PN invites comment from all sources.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules
None.

The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the PN including the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this PN, including the IRFA (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. § 604(b).