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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

King County, Washington Request)
Concerning E911 Phase I Issues)

CC Docket No. 94-102

To: Chief, Wireless Telecommunications Bureau

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby files reply comments with the Federal Communications Commission ("Commission or FCC") in the above-captioned proceeding.¹ As discussed herein, Nextel believes that there is continuing and substantial confusion in the public safety community regarding the scope of Public Safety Answering Points ("PSAP") obligations and responsibilities under Section 20.18(j) of the Commission's rules. It is obvious that the Wireless Telecommunications Bureau's ("Bureau's") procedurally inappropriate and substantively flawed Letter² has not assisted in clarifying Phase I implementation responsibilities. In fact, as stated in the *Petition for Reconsideration* ("*Petition*") jointly filed by Verizon

¹ Wireless Telecommunications Bureau Seeks Comment on Petition for Reconsideration Regarding Allocation of Costs of E911 Implementation, *Public Notice*, CC Docket No. 94-102 (rel. June 27, 2001).

² Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Maryls R. Davis E-911 Program Manager, King County E-911 Program Office, dated May 7, 2001 ("*Bureau Letter*").

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Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, and Nextel,³ the Bureau Letter constituted a new policy wholly outside the scope of previous Commission determinations without even the most basic explanation for its radical departure. Thus, on reconsideration, the Bureau must acknowledge previous precedent, and develop an appropriate delineation of PSAP, wireless carrier and landline carrier responsibility that is in keeping with this precedent.

I. THE BUREAU'S RULE INTERPRETATION CHANGED THE COMMISSION'S RULES AND MUST BE RECONSIDERED.

A. The Bureau Is Not Free to Change the Commission's Rules.

Under Section 20.18(j) of the Commission's rules, it is the responsibility of the PSAP to cover the costs of upgrading the Selective Router to accept E911 data.⁴ The Commission has previously determined that the wireless carrier is only responsible for providing to the PSAP Enhanced 911 information (ANI and Pseudo-ANI). Any network, hardware or software upgrades needed for the PSAP to use that information the Commission has deemed to be the responsibility of the PSAP.⁵

Quite plainly, the Commission's assignment of particular Phase I "make-ready" responsibilities to either the PSAPs or to wireless carriers directly relates to which party must pay for the particular feature, equipment or function. The Commission understood this when it determined that it was the PSAPs' obligation and financial responsibility to

³ *Petition for Reconsideration* filed by Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, and Nextel Communications, Inc., CC Docket No. 94-102 (filed June 6, 2001).

⁴ As noted in the Bureau Letter, a Selective Router typically is an access tandem provided to the PSAP under tariff by an incumbent Local Exchange Carrier ("ILEC").

⁵ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Further Notice of Proposed Rulemaking*, 9 FCC Rcd 6170, 6178-9 (1994); 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, 18681 (1996).

make the necessary system upgrades to make use of the ANI/ALI information they receive. In assigning this critical responsibility to PSAPs, the Commission further elaborated upon what it meant that PSAPs should do to make themselves ready to process the information wireless carriers would be sending to them: upgrade of ALI databases, 911 trunks and the PSAP's own equipment, so that the PSAP can handle the additional ANI and ALI information provided by wireless carriers.⁶

As the *Petition* points out, Section 20.18(d) - (j) of the rules require cellular, broadband PCS and certain SMR licensees to provide the telephone number of a 911 call and the location of the cell site or the base station receiving the call from any mobile phone accessing their systems to the designated PSAP through the use of ANI and Pseudo-ANI. No one disputes that this requirement only exists if the administrator of the designated PSAP has requested that service, is capable of receiving and utilizing the data and a mechanism is in place for the PSAP to recover the associated costs of the E911 service. The continuing area of confusion and dispute appears to be what, following the Bureau's interpretation of the rule, a PSAP is required to do to become capable of receiving and utilizing the data a wireless carrier transmits to the PSAP short of upgrading its Customer Premises Equipment. It is obvious that the Bureau's interpretation of the rule departs from Commission precedent and substantially relieves PSAPs of obligations and concomitant costs the Commission knowingly imposed.

In their Opposition to the *Petition*, filed by the Texas 911 Agencies, the Texas 911 Agencies claim that PSAPs still maintain some incentive to minimize their costs of Phase I deployment. The only responsibility and concomitant cost, however, that these

⁶ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Second Memorandum Opinion and Order*, 14 FCC Rcd 20850, 20877 (1999).

PSAPs acknowledge is merely the cost of upgrading their CPE.⁷ Plainly, CPE upgrades alone do not make ANI and ALI utilization possible. Thus, the PSAPs' view of their obligations is not what Section 20.18(j) contemplates, and the Bureau must modify its interpretation of the rule to be consistent with the language of the rule and the Commission's pronouncements.

Moreover, the public safety interests opposing the *Petition*, while supporting the result of the Bureau's reinterpretation of the rule, provide no satisfactory answer to the Petitioner's assertion that the Bureau bypassed the required notice and comment requirements of the Administrative Procedure Act ("APA").⁸ If the Bureau believes there is a need to change a rule, then the Bureau can recommend to the Commission that there is a need for a notice and comment rulemaking. The Bureau is not free to substitute its judgments for those of the full Commission.

B. The Bureau Improperly Imposed An Inconsistent Allocation of E911 Responsibilities for PSAPs vis-à-vis Wireless and Wireline Carriers.

As the *Petition* stated, the Bureau Letter created new and unnecessary hurdles by making the wireless carriers responsible for transporting E911 Phase I information from their switches to the 911 Selective Router and making the wireless carrier the party responsible for all translation of data incompatible with the PSAPs current E911 Network capabilities. In the landline 911 Network, the incumbent wireline carrier's transport of 911 calls between its switches and the 911 Selective Router is the responsibility of the

⁷ See *Opposition of Texas 911 Agencies to the Petition*, at 13 (July 30, 2001).

⁸ As argued in the *Petition*, any interpretations of the Commission's regulation by the Bureau must be reasonable, sensibly conform to the purpose and wording of the regulations and have a basis in the plain language of the rule or other indications of the agency's intent to pass APA muster. See *Petition* at 8.

PSAP and is paid for by the PSAP, typically under an ILEC tariff service arrangement.⁹ There is nothing fundamentally different in the functions that wireless and wireline carriers provide to the PSAPs that would justify the disparity in treatment. Thus, this blatant discrimination cannot be casually dismissed by glib assertions that wireless carriers are free to recover these additional costs from their customers.

This conclusion is underscored by the Commission's consistent approach to this issue. The Commission has stated that wireless carriers' E911 capabilities are commensurate with those of wireline carriers.¹⁰ The Commission has offered no indication that a PSAP's E911 implementation or service responsibilities would be different for the calls they receive from wireless or from landline phones. In interpreting the Commission's precedent and rules on this issue, the Bureau is obligated to treat wireless carriers in the same way that it treats wireline carriers with respect to E911 deployment. From Nextel's perspective, this means that wireless carriers should not shoulder the responsibility of upgrading the Selective Router or placing intermediate trunks to ALI databases (which are part of the "911 Network") that may be necessary depending upon the state of a particular PSAP's E911 technology. These responsibilities are uniquely the responsibilities of a PSAP, as their technology choices and their service relationship with the ILEC to implement trunking to ILEC databases is uniquely within their control.

The public safety opponents of the Petition for Reconsideration seize on irrelevant case law in *United States Cellular Corporation v. Federal Communications Commission*

⁹ *Id.* at 6.

¹⁰ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Notice of Proposed Rulemaking*, 9 FCC Rcd 6170, 6177 (1994).

(“*U.S. Cellular*”) ¹¹ to bolster their claim that the Bureau can casually disregard inconsistent treatment of landline and wireless carrier responsibilities in the deployment of E911. ¹² The *U. S. Cellular* case, however, provides no justification for the Bureau’s decision.

U.S. Cellular appealed the Commission’s order revoking a portion of the Commission’s E911 rules that had required states or local public safety agencies to have cost recovery mechanisms in effect to recover the wireless carriers’ costs of E911 implementation as well as the PSAPs’ costs. ¹³ The D.C. Circuit upheld the Commission’s order as a reasonable exercise of its administrative discretion. A critical distinction between that case and the King County matter is that U.S. Cellular was appealing the Commission’s alteration of the cost recovery scheme. It was not appealing the Commission’s judgment in imposing any particular E911 responsibilities on it or on the wireless industry generally. This is the crux of the Petitioners’ concern regarding the Bureau Letter in King County: that the Bureau made a substantive change in wireless carrier responsibilities inconsistent with the rule and Commission precedent.

As discussed above, the Commission previously established that a fundamental PSAP Phase I implementation responsibility was to upgrade its own equipment, ALI databases and 911 trunks so that the PSAPs could accept the information provided by wireless carriers. The Bureau’s Public Notice soliciting comment on the King County Request for Rule Clarification made plain that the subject of dispute was the appropriate

¹¹ *United States Cellular Corporation v. Federal Communications Commission*, No. 00-1072 (D.C. Cir. June 29, 2001).

¹² Texas 911 Agencies Opposition at 13.

¹³ Specifically, RCA and Corr Wireless Communications argued that the Commission’s Second Reconsideration Order improperly disregarded rural carriers’ concern about cost recovery.

demarcation point for wireless carrier, ILEC and PSAP network responsibilities.¹⁴

Because the *U.S. Cellular* case deals only with the elimination of wireless carrier cost recovery, it sheds no light on the appropriate resolution of network demarcation/network responsibility disputes.

II. NEXTEL'S POSITION ON THE ALLOCATION OF PSAP-WIRELESS CARRIER RESPONSIBILITIES IS PLAIN AND CONSISTENT.

Since the FCC released its *First Report and Order* in its E911 proceeding in 1996, Nextel has vigorously pursued implementation of Phase I E911 service. Nextel's goal has always been to expedite the deployment of E911, a goal that all parties to this proceeding presumably support. Nextel is willing and able to work with PSAPs to achieve full implementation of Phase I. Nextel has worked with King County to do everything within its control to deliver Phase I location data to King County on King County's timetable. Whatever accommodations Nextel chooses to make for a particular PSAP's Phase I implementation, however, should not be misconstrued as Nextel's agreement with the broad changes in Phase I implementation rules as interpreted by the Bureau.

Nextel has had a consistent position on wireless carrier and PSAP implementation responsibility that comports with its understanding of the Commission's rules and precedent. Although Nextel recognized that its willingness to pay for the trunks to the Selective Router would impose a relatively greater burden on wireless carriers than on wireline carriers, Nextel believed – and still believes – that this accommodation would

¹⁴ Specifically, the Commission asked whether there is a clearly defined demarcation point in the E911 network that separates PSAP and carrier responsibilities, whether the appropriate demarcation point varies depending on the technology and whether there is a wireline precedent for the appropriate division of costs. Wireless Telecommunications Bureau Seeks Comment on Phase I E911 Implementation Issues, *Public Notice*, CC Docket No. 94-102 (rel. August 16, 2000).

significantly expedite Phase I deployment. It also has the benefit of imposing costs on wireless carriers only for those network components over which they have some control and it fairly distributes costs between PSAPs and wireless carriers. Thus, while some public safety interests may criticize Nextel for joining in the *Petition*, they misunderstand Nextel's position. The responsibility for delivering the required 20 digits to the Selective Router is far different from being responsible to order the necessary network components, including ancillary trunks, for upgrading the Selective Router to accept E911 data. Those costs are directly associated with the PSAP's responsibility under the Commission's rules to upgrade its network and should, therefore, be borne by the PSAP. As Nextel observed in its initial comments on the King County Request, Nextel "is not prepared to fund the costs of upgrading the PSAP's and/or the Local Exchange Carrier's ("LECs") systems to enable the transmission of ANI and ALI."¹⁵ Yet, that is just the result of the Bureau's decision.

What the Bureau either overlooked or ignored in reaching its conclusion that the input to the Selective Router is the point of wireless carrier "network" responsibility is the fact the "add-ons" for which the Bureau shifted responsibility to wireless carriers are necessary only because a PSAP has not ensured that its equipment can accept and use the 20 digits that provide the call back number and location of the caller. From Nextel's perspective, the Bureau essentially is providing a windfall to PSAPs that fail to upgrade their networks by assuring them that wireless carriers will assume this responsibility should they fail to.

¹⁵ Comments of Nextel at 2 (filed Aug. 16, 2000).

The Bureau Letter outlined the three currently available technologies that permit a PSAP to use the capabilities embedded in the ILEC network to process and make use of the location information a wireless carrier provides. In discussing the configuration and functions of each of these three technology cases, the Bureau effectively redefined what had been a PSAP responsibility to undertake necessary upgrades to accept and use information delivered from wireless carriers to instead be a wireless carrier responsibility.

The Bureau's shifting of responsibility is most obvious in its discussion of the technology known as Hybrid Call Path Associated Signaling ("HCAS"). HCAS requires the installation of a Wireless Integration Device ("WID") at the Selective Router for the sole reason that the Selective Router and other portions of the E911 Network, i.e, the trunks on the PSAP side of the Selective Router, have not been upgraded to accept and use the 20 digits that are necessary to transmit ANI and pseudo-ANI location information. Under the Commission's rules, which require that a PSAP be capable of accepting and using 20 digits, the WID is, and should remain, the PSAP's responsibility, both in implementation planning and in financial responsibility. The Bureau cannot reach the result that it did without a change in the Commission's rules.

Nextel has never stated that it is the wireless carrier's responsibility to pay for Selective Router upgrades or equipment add-ons that under the rules are the PSAP's responsibility. Nor has Nextel ever agreed that wireless carriers should pay these costs. As the Bureau noted in the King County letter, these equipment upgrades are "add-ons" to the Wireline Network, maintained by the ILEC and paid for by PSAPs through tariffs.¹⁶ Thus, it is the PSAP's responsibility to ensure that its equipment is capable of

¹⁶ *Bureau Letter* at 3.

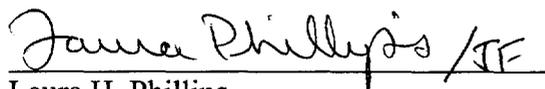
accepting and using the information being delivered by wireless carriers and the Bureau's letter incorrectly eliminated that responsibility.

III. CONCLUSION.

For E911 to be timely deployed both PSAPs and wireless carriers have to move expeditiously. Nextel previously agreed to go beyond what the rules require and pay for the trunking from its MSCs to PSAP Selective Routers. Nextel has consistently maintained that it is the PSAP's responsibility, however, to make sure their own equipment is able to receive E911 data and the Bureau has impermissibly shifted this responsibility to wireless carriers. For the reasons discussed in this reply, the Bureau must reconsider its reinterpretation of the Commission's rules.

Respectfully submitted,

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