

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

In the Matter of)
)
Cingular, Nextel, and Verizon) CC Docket No. 94-102
Petitions for Reconsideration of)
Commission Orders on Wireless)
E911 Phase II Waiver Requests)

To: The Commission

**Comments of the Rural Telecommunications Group and the Organization for the
Promotion and Advancement of Small Telecommunications Companies**

The Rural Telecommunications Group (“RTG”) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”),¹ hereby respectfully submit their joint comments in the above-captioned proceeding in response to the Federal Communications Commission (“FCC” or “Commission”) *Public Notice* released November 20, 2001 (DA 01-2722). RTG and OPASTCO support, to the extent discussed *infra*, the respective petitions of Cingular Wireless LLC (“Cingular”),

¹ Many RTG and OPASTCO members applied for waivers of the Commission’s Phase II implementation deadlines due to the lack of availability of ALI-capable handsets. RTG and OPASTCO are concerned that the Commission’s application of a strict liability standard will have a deleterious impact on the status of any future waivers based on handset unavailability. RTG is a group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services, such as cellular telephone service, Personal Communications Services (“PCS”), Multichannel Multipoint Distribution Service (“MMDS”), and Local Multipoint Distribution Service (“LMDS”) to their subscribers. RTG’s members are all affiliated with rural telephone companies or are small businesses. OPASTCO is a national association of over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, collectively serve over 2.5 million consumers. Nearly one half of OPASTCO’s members provide some type of wireless service. All are “rural telephone companies” as defined in 47 U.S.C. §153(37).

Nextel Communications, Inc. and Nextel Partners, Inc. (“Nextel”), and Verizon Wireless (Verizon) as they relate to the Commission’s adoption of a “strict liability” standard for the carriers’ compliance with Phase II implementation deadlines.

I. Discussion

RTG and OPASTCO members are committed to the implementation of Phase II E911. However, as many RTG and OPASTCO members reported in their individual requests for waiver, their implementation plans hinge upon the availability of automatic location identification (“ALI”)-capable handsets. As their petitions for reconsideration make clear, Cingular, Nextel, and Verizon, large carriers with substantial purchasing clout with vendors, “have only a limited impact and control on vendors’ ability to provide Phase II-compliant equipment.”² Small carriers have significantly less control.

Carriers have developed implementation schedules based upon vendor promises of delivery dates. These schedules represent carriers’ “best efforts” to implement the infrastructure upgrades necessary to implement Phase II based, in large part, upon the uncertainties of manufacturer development and delivery of ALI-capable handsets. In other words, limited waivers may be necessary in the future if vendors’ promises are not met.

The Commission’s waiver *Orders* have effectively prejudged any future waiver requests based upon handset unavailability, setting a harsh precedent for the remainder of the wireless carrier industry. For example, if Cingular, Nextel, and Verizon cannot meet their implementation deadlines, the Commission will have already decided that noncompliance will not be excused by “an assertion that a vendor, manufacturer or other

² Verizon Petition for Reconsideration at 2.

entity was unable to supply compliant products.”³ Therefore, if small carriers with negligible clout with manufacturers find themselves unable to purchase ALI-capable handsets in time to meet their “best effort” implementation deadlines outlined in their respective waiver requests, they may be subject to enforcement action and possible forfeitures based upon the Commission’s new predetermined waiver standard imposed upon the larger carriers.

Small wireless carriers are forced, due to their lack of influence with vendors, to base their handset plans on second-hand information on product delivery dates and details of what products will be available for purchase. This process makes it difficult for small carriers to accurately predict the date when they can begin selling ALI-capable handsets to their customers. Application of the Commission’s new policy of prejudging any waivers based upon the unavailability of equipment will effectively impose a strict liability standard on small carriers and preclude them from utilizing the procedural protection traditionally afforded under the waiver process.

II. Conclusion

RTG and OPASTCO respectfully request that the Commission reconsider its adoption of a strict, if not absolute, liability standard for future Phase II compliance. RTG and OPASTCO members, who have negligible influence with vendors, could be subject to burdensome Commission enforcement proceedings based upon a Commission predetermination of noncompliance due to the unavailability of ALI-capable handsets.

³ See, e.g., *Nextel Waiver Order* at ¶ 36.

Respectfully submitted,

**THE RURAL
TELECOMMUNICATIONS
GROUP**

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