

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's)	
Rules to Ensure Compatibility)	CC Docket No. 94-102
with Enhanced 911 Emergency)	
Calling Systems)	
)	
Request for Waiver)	
by Verizon Wireless)	

OPPOSITION OF NENA, APCO AND NASNA

The National Emergency Number Association (“NENA”), the Association of Public-Safety Communications Officials-International, Inc. (“APCO”) and the National Association of State Nine One One Administrators (“NASNA”) (collectively, “Public Safety Organizations”) oppose the petition of Verizon Wireless (“Verizon”) for reconsideration of the Commission’s waiver order in the captioned matter, FCC 01-299, released October 12, 2001. As with the two other petitioners, Nextel and Cingular, Verizon objects to what it calls a “strict liability” standard of waiver compliance. Alone among the challengers, it disputes the waiver order’s conclusion that the reporting requirements need not be approved under the Paperwork Reduction Act.¹

1. Verizon has not been subjected to strict liability for waiver compliance.

According to Verizon, “the record in this proceeding shows that wireless carriers have only a limited impact and control on vendors’ ability to provide Phase II-compliant equipment.” (Petition, 2) The record is not quite so clear. The Commission recently opened an

¹ Petition for Reconsideration, November 13, 2001. The Public Safety Organizations are also filing today Oppositions to the Nextel and Cingular petitions for reconsideration.

investigation, to be headed by a former Chief of the Office of Engineering and Technology, Dale Hatfield, in order to

evaluate information from technology vendors, network equipment and handset manufacturers, carriers and the public safety community concerning technology standards issues, development of hardware and software, and supply conditions. This inquiry also will address the provisioning by incumbent local exchange carriers of the facilities and equipment necessary to receive and utilize E911 data elements.²

We believe the record shows -- and certainly we have heard anecdotally more times than we care to remember -- carriers blaming manufacturers and vendors for not producing location-enabled equipment and services, while manufacturers and vendors blame carriers for not placing firm orders. The Hatfield inquiry presumably will test, in general, Verizon's statement that carriers have little control. Meanwhile, waiver enforcement will deal with specific cases.

Verizon complains (Petition, 4) that its waiver order "appears to establish a *per se* finding of future liability." In fact, the Commission did no more than warn Verizon and similarly situated carriers that it would treat a failure to satisfy waiver conditions in the same manner as a rule violation, and that such violation would be subject to possible enforcement action. The firm language of the waiver order was obviously intended as a warning that the time has come for carriers to comply, and that, absent extraordinary circumstances, further extensions and waiver would not be granted.

The waiver granted to Verizon is expressly conditioned on its meeting certain alternative benchmarks for deployment of Phase II technology. The Commission made clear that these conditions "have the same force and effect as a Commission rule itself." Waiver order at ¶34. Therefore, as is the case with any potential rule violation, if "Verizon fails to satisfy any

condition or Commission rule, it will be subject to *possible* enforcement action, including but not limited to revocation of the relief, a requirement to deploy an alternative ALI technology, letters of admonishment or forfeitures.” *Id.* (emphasis added). The Commission did not state that there *would* be such enforcement action, but rather that enforcement action was “*possible*.” Perhaps the Commission has authority to impose automatic penalties for prospective noncompliance, but that is not what it did in this proceeding, despite Verizon’s claims to the contrary.

Verizon points, however, to Commission’s statement that if “Verizon does not have compliant Phase II service on the dates set forth herein, it will be deemed noncompliant and referred to the Commission Enforcement Bureau for possible action.” Waiver order at ¶35. Here again, however, the Commission was simply restating its standard authority to address noncompliance through enforcement procedures with the *possibility* of sanction. The Commission clearly left the door open that noncompliance would not result in any sanction.

Verizon seems particularly concerned, nevertheless, by the Commission’s additional comment that “an assertion that a vendor, manufacturer or other entity was unable to supply compliant products will not excuse noncompliance.” *Id.* Yet, that is always the case with Commission rule enforcement. Regulated entities are not excused from rule compliance merely because a piece of equipment necessary for compliance is unavailable from a vendor.³ Rather, that is the grounds for a possible waiver (as Verizon and others have been granted) or as a mitigating factor in determining whether a sanction for noncompliance is necessary. It does not however eliminate the noncompliance. That is exactly what the Commission did in this case,

² News release, November 20, 2001.

³ For example, an owner of a radio transmitting tower is not excused from compliance with the Part 17 tower painting and lighting requirements merely because its vendor could not deliver the necessary parts or services in a timely fashion. That might, however, lead to mitigation of the sanction.

stating that Verizon's "'concrete and timely' actions taken with a vendor, manufacturer, or other entity may be considered as possible mitigation factors in such an enforcement context." *Id.*

Verizon also argues incorrectly that the Commission is depriving it of an opportunity to respond to a claim of noncompliance prior to the imposition of a sanction.⁴ First, a finding of noncompliance in this instance will be based on Verizon's own Quarterly Reports (supported by affidavit) which will indicate whether it has or has not met the objective benchmarks adopted as conditions to its waiver. Verizon will thus have ample opportunity to demonstrate whether or not it is in compliance. Second, if the Quarterly Reports do not demonstrate compliance, Verizon will still have an opportunity to address mitigating factors that may affect the imposition of a sanction. The Commission made clear that noncompliance will result in referral to the Enforcement Bureau for *possible* action. The Enforcement Bureau in turn will conduct any necessary investigation and recommend sanctions, if any, based upon relevant Commission rules with appropriate notices and opportunities for Verizon's participation. In particular, Verizon will be free to provide evidence that it took "concrete and timely action with its vendors" and, as the Commission made clear in the waiver order, such evidence may be considered as possible mitigation factors.

APCO, NENA, and NASNA have repeatedly expressed concerns in all the waiver proceedings that the seemingly endless stream of extensions of time and waiver requests could lead to complacency among some carriers. Rather than an all out effort to comply, some carriers may give priority to economic and business planning concerns, confident that any Phase

⁴ Verizon finds the waiver order unclear whether "the Commission does intend to allow Verizon Wireless (and other carriers) to challenge the noncompliance finding" and adds "it appears that the initial finding of noncompliance would be un rebuttable." (Petition, 6) The implication is that the noncompliance finding, standing alone, is a black mark or penalty even if closer examination clears the carrier of any responsibility and leads to no sanction. We disagree.

If implementation requirements are “soft deadlines,” and that noncompliance will be without serious consequences. Now, the Commission has wisely made clear that further waivers will not be granted “absent extraordinary circumstances” and that noncompliance will not be excused by a vendor’s or manufacturer’s failure to deliver. However, contrary to Verizon’s claims, the Commission has not heartlessly closed off Verizon’s ability to provide a reasonable explanation for its noncompliance. Assuming that Verizon takes “concrete and timely” action with regard to a vendor or manufacturer, those actions will be considered in mitigating any actual sanction.

2. *Whatever the need for OMB approval, the quarterly reporting requirement is critical to tracking wireless E9-1-1 implementation.*

Verizon (Petition, 14) disputes the Commission’s conclusion that advance approval by the Office of Management and Budget (“OMB”) of the information collection in the quarterly reports is not required under the Paperwork Reduction Act, 44 U.S.C. §3501 *et seq.*, because Section 3503(3)(A)(ii) exempts collections applicable to fewer than 10 entities. Instead, Verizon states its separately incorporated subsidiaries or affiliates number more than 10. *Id.* This argument is better settled by the FCC and Verizon, with guidance from OMB.

We note in passing, however, that Section 3518(c)(1)(B)(ii) also exempts “an administrative action or investigation involving an agency against specific individuals or entities.” Whether the waiver orders represent targeted administrative actions within the meaning of the statute – rather than mass collections of uniform information – is for the FCC and OMB to resolve. Surely it does not make sense to spill too much ink on this point. It is better to be sure of the FCC’s quarterly reporting authority than to leave it in limbo, even if some reports are delayed.

In the final analysis, the quarterly reports are important enough to be done correctly, not merely as a record of technical implementation but for the status of PSAP requests and carrier responses. As we stated earlier in this process:

The Public Safety Organizations also urge that all carriers must provide the Commission with quarterly reports regarding their progress toward Phase II implementation. Those reports should not, however, be limited to a description of the roll-out of the technical apparatus necessary to identify caller location. Reports must also include the status of actual delivery of Phase II information to PSAPs. In particular, the Commission should require carriers to report on the number and identity of Phase II requests that they have received, and the current status of their response. If more than six months has passed (or is expected to pass) from the date of the Phase II request, the carrier must explain why it will not be able to deploy, and supply a firm alternative schedule for doing so. To the extent that a carrier claims that a public safety request is not valid, it must identify that request and the reasons for its position.⁵

Conclusion. For the reasons discussed above, Verizon's claim of "strict liability" for future waiver violations is without merit. The contention that the waiver order's information

⁵ Additional Ex Parte Comments of APCO, NENA and NASNA, September 21, 2001, 3-4.

collection requirements must be approved by OMB is for the FCC and OMB to straighten out, but the quarterly reporting is critical and must be maintained.

Respectfully submitted,

NENA, APCO and NASNA

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