

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

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In the Matter of )  
)  
Cingular Wireless LLC, Nextel Communications )  
Inc. and Nextel Partners, and )  
Verizon Wireless )  
Petitions for Reconsideration )  
of Commission Orders on )  
E911 Phase II Waiver Requests )

CC Docket No. 94-102

To: The Commission

**COMMENTS OF RURAL CELLULAR ASSOCIATION ON  
PETITIONS FOR RECONSIDERATION**

The Rural Cellular Association ("RCA"),<sup>1</sup> hereby submits its Comments on petitions for reconsideration filed by Cingular Wireless, LLC, Nextel Communications, Inc. and Nextel Partners and Verizon Wireless (hereafter, jointly referred to as "large wireless carriers") of Federal Communications Commission's Orders granting their requests for waiver of the E-911 Phase II implementation schedule and granting their E-911 deployment plans with conditions. The large wireless carriers object to the Orders on the basis that they are too restrictive and hold the carriers "strictly liable" for compliance with the deployment schedules, regardless of whether the E-911 equipment is available or not. They also argue that the Orders impermissibly prejudice future waiver requests, and impose penalties without notice and opportunity to respond, as required by the Administrative Procedure Act.

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<sup>1</sup>RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing rural wireless service providers.

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Like the large wireless carriers, RCA member companies can only deploy E-911 technology that manufacturers make available to them. For that reason, compliance with the Commission's timetable for E-911 deployment or with a carrier's own estimated timetable, which is based on representations of E-911 equipment manufacturers, is subject to the equipment actually being available. RCA therefore agrees with the large wireless carriers that (1) they should not be deemed noncompliant with the FCC's E-911 implementation requirements if they fail to meet their deployment deadlines due to the unavailability of E-911 equipment and (2) the waiver process should continue to be available to all wireless carriers that are unable to comply with Commission's E-911 requirements due to the continued unavailability of equipment, a circumstance that is outside of the carriers' control, and solely within the control of equipment manufacturers.

RCA takes issue however, with Nextel's argument that "similarly situated," small wireless carriers have received preferential treatment in the E-911 waiver process because of the FCC's decision to allow smaller carriers to file new or updated requests for waiver of the Phase II, E-911 implementation schedule until November 30, 2001.<sup>2</sup> The circumstances surrounding the Commission's Order extending the filing deadline and the unique challenges faced by smaller wireless carriers belie Nextel's claim of discriminatory treatment.

**CARRIERS SHOULD NOT BE LIABLE FOR NONCOMPLIANCE WITH E-911  
DEPLOYMENT SCHEDULES WHERE E-911 COMPLIANT EQUIPMENT IS  
UNAVAILABLE**

The Commission has acknowledged that its timetable for E-911 implementation is

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<sup>2</sup>Nextel Petition at pp. 5-10.

dependent upon manufacturers making available E-911 compliant technology. Manufacturers, not carriers, drive implementation readiness.

Until E-911 compliant technology is available, it is impossible for carriers to implement E-911 in accordance with the FCC's schedule. On the basis of the unavailability of Phase II, E-911 technology, the Commission waived the October 1, 2001 deployment deadline for Phase II, E-911 for the large wireless carriers. It would be inconsistent and irrational for the Commission to arbitrarily refuse to consider future waiver requests based on those same grounds. Furthermore, imposing penalties on carriers for manufacturing delays will not hasten E-911 compliance. It would simply punish the carriers, who are not at fault.

Small, rural wireless systems have likewise been frustrated in their efforts to obtain E-911 technology that is compatible with their systems. Because they lack a large subscriber base or financial clout, small, rural carriers can do even less than large carriers to affect the availability of suitable equipment or cost support for E-911 implementation. For that reason, they too have been forced to seek waivers of the Phase II, E-911 implementation schedule.

As the large wireless carriers point out in their petitions, because the technology necessary to implement E-911 did not exist at the time the Commission's E-911 rules were adopted, the Commission acknowledged that waivers would be a necessary part of the process of E-911 implementation process.<sup>3</sup>

The FCC has acknowledged the critical role of manufacturers in compliance with E-911 requirements, and the Commissioners have expressed their frustration with the failure of manufacturers to meet the Commission's and even their own timetables for making compliant

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<sup>3</sup>Cingular Petition at 3.

equipment available.<sup>4</sup> Commissioner Abernathy in particular has taken the position that carriers should not be held in violation of the E-911 rules and subject to the monetary and other penalties for failure to comply with FCC regulations for the actions of the manufacturer. “[I]t is a mistake to equate manufacturer conduct with carrier conduct and to punish one for the acts and omissions of the other.”<sup>5</sup>

The Commission’s assumption that carriers have “significant control over their vendors” and therefore carriers should be liable if vendors fail to make equipment available on time, is particularly inaccurate with regard to small, rural wireless carriers. Rural carriers have unique service requirements that require unique E-911 technical solutions. Because their niche markets are not as lucrative for manufacturers, small rural carriers cannot bring the same pressure to bear on manufacturers as larger carriers. Therefore, small, rural wireless carriers rely on manufacturers for E-911 compliance to an even greater degree than the large wireless carriers.

The events of the last few months have certainly heightened awareness of E-911 technology. Unfortunately, those events have not changed the reality that carriers can only implement E-911 services as quickly as compatible E-911 equipment is made available to them. Until that equipment is available, the waiver process should remain available to carriers.

**SMALLER CARRIERS HAVE NOT RECEIVED PREFERENTIAL TREATMENT**

Nextel makes the audacious and absurd argument that, despite the fact that its request for

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<sup>4</sup>Cingular Petition at p. 10.

<sup>5</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless, LLC, Sprint Spectrum L.P. d/b/a Spring PCS, Verizon Wireless, AT&T Wireless Services, Inc., Nextel Communications, Inc.*, Orders, FCC 01-293, 01-294, 01-295, 01-296, 01-297, 01-299 (adopted Oct. 2, 2001, rel. Oct. 5, 2001), Separate Statement of Commissioner Kathleen Abernathy at p.4.

waiver of the Phase II, October 2001 E-911 deadline was granted, it is being unfairly discriminated against in favor of “similarly situated” smaller wireless carriers, whose E-911 waiver requests have not yet been acted upon by the Commission.

### **The FCC Did Not Grant Smaller Carriers’ Waiver Requests**

First, the Commission did not grant smaller wireless carriers a waiver of the E-911 requirements, as Nextel contends. It simply extended the filing deadline for waiver requests by smaller carriers.<sup>6</sup> This is borne out by Nextel’s own allegation:

*By deciding the waiver requests of certain wireless carriers (including Nextel, whose waiver request had been pending for 11 months) but affording all other carriers nearly two additional months to file or update previously filed requests for relief from Phase II rules and forbearing from enforcement action during the pendency of such requests, the Commission established two classes of carriers (the six national carriers versus all other carriers), and substantially altered their legal obligations, particular with respect to compliance.<sup>7</sup>*

Perhaps never before has the Commission been accused of discriminatory treatment on the basis of its “decision to act”<sup>8</sup> *favorably on a party’s waiver request*. Even more bizarre is Nextel’s allegation that the parties whose waivers have not yet been granted are the parties receiving preferential or favorable treatment. If any carrier has received preferential treatment, it is Nextel.

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<sup>6</sup>*Wireless Telecommunications Bureau Provides Guidance on Filings by Small and Mid-Sized Carriers Seeking Relief from Wireless E911 Phase II Automatic Location Identification Rules*, Public Notice, DA01-2459 (rel. Oct. 19, 2001); *Commission Establishes Schedule for E911 Phase II Requests by Small and mid-Sized Wireless Carriers*, Public Notice, FCC 01-302 (rel. Oct. 12, 2001). The Commission’s order extending the deadline for small wireless carriers to file waiver requests was intended to update the record. Extending the deadline for all smaller carriers as a group served administrative convenience. There are hundreds of small and rural wireless carriers, as compared with six large wireless carriers.

<sup>7</sup>Nextel petition at p. 6-7 (emphasis supplied) .

<sup>8</sup>Id. at p.7, n. 17.

Its waiver request and those of other large, nationwide wireless carriers have been granted; whereas the requests filed by smaller carriers are still pending.

Second, all wireless carriers, large and small, are subject to the December 31, 2005 deadline for implementing Phase II, E-911. That is the “critical” compliance deadline.<sup>9</sup> The pending waivers of smaller carriers, like those of the large wireless carriers “only request modification of interim steps on the way to compliance.”<sup>10</sup> Further, the Commission was explicit in its admonition that the filing extension did not, in any way, relieve smaller carriers of their obligation to comply with E-911 requirements. “Carriers are also expected to undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance.”<sup>11</sup> Thus, all wireless carriers are expected to strive for compliance with established deployment deadlines and all are ultimately required to implement E-911 by December 2005.

Third, Nextel alleges that because smaller carrier were granted additional time to update their waiver requests, until November 30<sup>th</sup>, Nextel does not have the same opportunity to “refresh the record” as the smaller carriers, and on that basis Nextel is being discriminated against. Yet, all carriers are not only permitted to update filings before the Commission, they are obligated to do so.<sup>12</sup> Thus, in the eleven months that Nextel’s waiver request was pending before the

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<sup>9</sup>Abernathy Statement at p. 2.

<sup>10</sup>Id.

<sup>11</sup>*Wireless Telecommunications Bureau Provides Guidance on Filings by Small and Mid-Sized Carriers Seeking Relief from Wireless E911 Phase II Automatic Location Identification Rules*, CC Docket No. 94-102, *Public notice*, DA-01-2459 (rel. Oct. 19, 2001).

<sup>12</sup>See, 47 C.F.R. Sec. 1.65.

Commission, Nextel could have, and indeed should have, updated its information if that information was outdated.

**Smaller carriers and Nextel are not similarly situated**

Even assuming, arguendo, that Nextel and other nationwide, wireless carriers were held to a different timetable for compliance than small, rural wireless carriers, such disparate treatment would not necessarily be discriminatory, because such carriers are not “similarly situated,” as Nextel contends.<sup>13</sup>

Nextel reports that it served almost 6.7 million subscribers at year-end 2000, whereas, RCA members with established systems serve as few as two thousand subscribers. Moreover, RCA members serve vast land areas with challenging terrain and low population density, as compared with Nextel and other nationwide carriers, which serve high density, urban areas. Notably, the Commission extended the filing deadline for smaller carriers “in recognition of the challenges faced by many smaller and rural carriers.”<sup>14</sup> As one Commissioner noted, “many small and rural carriers have unique situations and the Commission must carefully consider how to address these situations.”<sup>15</sup>

Nextel and large wireless companies enjoy certain advantages over small rural wireless

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<sup>13</sup>Under Nextel’s reasoning, the Commission’s consideration of the impact of its regulations on small carriers, pursuant to the Regulatory Flexibility Act, is discriminatory because it treats carriers differently based on their size.

<sup>14</sup>*Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless, LLC, Sprint Spectrum L.P. d/b/a Spring PCS, Verizon Wireless, AT&T Wireless Services, Inc., Nextel Communications, Inc.*, Orders, CC Docket No. 94-102, FCC 01-293, 01-294, 01-295, 01-296, 01-297, 01-299 (adopted Oct. 2, 2001, rel. Oct. 5, 2001) at p. 2.

<sup>15</sup>*Id.*, Statement of Commissioner Michael Copps at p. 6.

carriers, such as economies of scale, and comparatively greater financial resources. Given the differences between the classes of small, local carriers and large national carriers, the Commission is not only within its authority to consider such factors in assigning implementation schedules for E-911, it would be remiss if it did not consider them.

It is particularly appropriate for the FCC to take into consideration the unique characteristics of smaller carriers, as the Commission has done in this instance, in the context of a waiver proceeding, which is concerned with the unique circumstances that prevent compliance with a Commission rule. It is not discriminatory to take into consideration the unique characteristics of smaller carriers in extending a filing deadline. Contrary to Nextel's assertion extending the deadline for smaller carriers to update or file E-911 waivers is both legally permissible and equitable.

### **CONCLUSION**

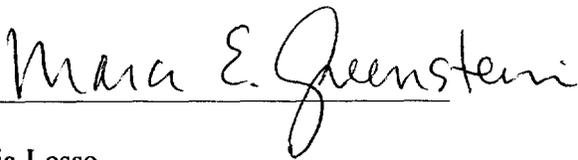
The Commission should reconsider its Orders granting the waiver requests of large wireless carriers and reverse those portions of the Orders that expressly or impliedly prohibit future waiver requests based on the availability of compatible E-911 equipment. Furthermore, the Commission should reconsider any enforcement action against carriers, who have little or no control over the manufacturers of E-911 equipment, for failure to meet E-911 deployment deadlines because it is not rationally related to action or inaction on the part of the carriers.

Regarding Nextel's claim that smaller carriers have received preferential treatment, it is not clear how Nextel has been harmed by an extension of a waiver filing deadline for smaller carriers, when Nextel's waiver request has already been granted, whereas, no favorable action has been taken on the smaller carriers' waiver requests. Furthermore, small, rural wireless carriers

are not similarly situated with Nextel based on their difference in size, revenue, and service area characteristics. These differences are especially relevant in the context of waiver of the E-911 deployment schedule. Therefore, the Commission is correct to consider the unique characteristics of and the challenges faced by small, rural wireless carriers as part of the waiver process.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

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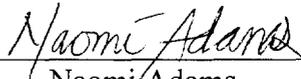
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**CERTIFICATE OF SERVICE**

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