

**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)	
)	
Petition of City of Richardson, Texas)	

**OPPOSITION OF NENA, APCO, NASNA
AND TARRANT COUNTY 9-1-1 DISTRICT
TO PETITION FOR RECONSIDERATION
OF CINGULAR WIRELESS**

The National Emergency Number Association (“NENA”), Association of Public-Safety Communications Officials-International, Inc. (“APCO”), National Association of State Nine One One Administrators (“NASNA”) (collectively, “Public Safety Organizations”), joined by Tarrant County, Texas 9-1-1 District (“District”), hereby oppose the captioned Petition for Reconsideration (“Petition”) of Cingular Wireless (“Cingular”) of the Order, FCC 01-293, released October 17, 2001 (“Order”). The claim that rulemaking requirements of the Administrative Procedure Act (“APA”), 5 U.S.C. §553, have been neglected is without merit. Instead, Petitioner proposes its own misuse of the APA when it suggests that new documentation and dispute settlement obligations could be imposed on PSAPs without notice. Even if the new obligations could be imposed summarily, they are not necessary and will do more harm than good.

We need not expand here on the Commission’s own defense of the procedure used in the second Richardson call for comment (Order, §§ 22-27), except to say that *Stinson v. United*

States may be available in support of the order as an interpretive rule.¹ We are more concerned with Cingular’s proposal (Petition, 12-14) to require contemporaneous documentation of the readiness “demonstrations” posited by the Order and to establish a formal mechanism for resolving disputes about that documentation.

For the reasons stated in our Comments filed separately today on the Sprint PCS petition for reconsideration and clarification, we are willing that PSAPs supply, pursuant to the Order:

- “Citation to or a copy of relevant funding legislation” (¶14),
- “listing of the necessary facilities equipment and copies of the relevant vendor purchase orders” with evidence of the vendors’ six-month performance commitment (¶15), and
- “pertinent correspondence” with LECs in support of facilities or upgrades requested of LECs. (¶16).

But that is enough, and it should be immaterial whether the substantiation is delivered with the PSAP’s request of the wireless carrier for E9-1-1 service or thereafter – in answer to a carrier’s demand. We agree with the Commission (Order, ¶13) that no more “elaborate scheme” is needed. It should be possible for adults to persuade each other of readiness without mandated dispute resolution – which, in any event, would become a legislative rule of “substance” requiring new notice and comment, and not simply agency practice or procedure.²

Since we do not favor readiness dispute resolution as proposed by Cingular, we cannot agree that the six-month carrier performance period “be tolled during ‘readiness’ disputes.” (Petition, 14) We accept, however, as we state in our Comments on the Sprint petition, the

¹ 508 U.S. 36 (1993), discussed in Richard J. Pierce, Jr., I *Administrative Law Treatise* (Aspen Law and Business, 4th ed., 2002), 331. We think the better course is to treat the amended Section 20.18 as a validly adopted legislative rule.

² Pierce (note 1, *supra*), 350.

concept that, after some grace period for a PSAP to produce documentation on demand, further delay by the PSAP should suspend the running of the six-month clock.

As discussed above, the Commission should deny the Cingular Petition and its “elaborate scheme” which will produce more disputes than it will settle quickly.

Respectfully submitted,

NENA, APCO, NASNA and the DISTRICT

By _____

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January 18, 2002

Certificate of Service

The foregoing “Opposition of NENA, APCO, NASNA and Tarrant County 9-1-1 District” was mailed today to:

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January 18, 2002

James R. Hobson