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VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 94-102, FCC 01-293
*In the Matter of Revision of the Commission's Rules to Ensure Compatibility with
Enhanced 911 Emergency Calling Systems – Petition of City of Richardson, Texas*
Written Ex Parte Presentation

Dear Ms. Dortch:

By this letter, Verizon Wireless (“VZW”) recommends changes to Section 20.18(j) of the Commission’s rules, 47 C.F.R. § 20.18(j), to address issues raised in petitions for reconsideration of the *Richardson Order* and to fulfill the policy objectives underlying that decision.¹

VZW urges the Commission to amend Section 20.18(j) to define a CMRS licensee’s obligation when a PSAP is not capable of receiving and using Phase II data by the date of an FCC-imposed deadline for the licensee to complete Phase II service. Attached to this letter is a proposed rule amendment. Adopting this language will clarify that CMRS carriers will not be in violation of a deadline when as of that date, the PSAP cannot yet receive and use Phase II location data because the serving LEC and/or the PSAP have not completed necessary upgrades to their own facilities. The action is urgently needed given VZW’s impending December 31, 2002 deadline for completing certain valid E-911 Phase II requests.² Importantly, this clarification can be accomplished while preserving the *Richardson Order*’s goal of requiring licensees to begin Phase II deployment in advance of actual PSAP readiness.

¹ *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems -- Petition of City of Richardson, Texas, Order*, 16 FCC Rcd 18982 (2001), recon. pending (“*Richardson Order*” or “*Richardson*”).

² *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Verizon Wireless, Order*, CC Docket No. 94-102, 16 FCC Rcd. 18364, 18379 ¶ 42 (2001), recon. pending (“*VZW Order*”).

I. BACKGROUND

In its *Richardson Order*, the Commission amended Section 20.18(j) of its rules to eliminate the requirement that a PSAP be capable of receiving and utilizing the relevant E-911 data elements at the time it requests the applicable E-911 service.³ Section 20.18(j) now deems a PSAP Phase II request to be valid if the PSAP (1) “can demonstrate that it has ordered the necessary equipment and has commitments from suppliers to have it installed and operational within the six-month period . . . and can demonstrate that it has made a timely request to the appropriate LEC for the necessary trunking and other facilities;” or (2) “is Phase I-capable using an NCAS methodology, and . . . can demonstrate that it has made a timely request to the appropriate LEC for the ALI database upgrade necessary to receive the Phase II information.”

The Commission expected that these criteria would “substantiate that the PSAP will be ‘capable of receiving and utilizing’ that data *at the time the carrier’s obligation becomes due*” – *i.e.*, that a PSAP would actually become Phase II-capable within the six-month period.⁴ The Commission made this finding with respect to both the PSAP’s own CPE as well as those facilities provisioned by the LEC on the PSAP’s behalf.⁵

Sprint PCS and Cingular Wireless sought reconsideration of the *Richardson Order*, expressing concern that a PSAP’s ordering of upgrades for its LEC-provisioned facilities or its own CPE does not guarantee completion of such upgrades within the six month period of Section 20.18(g).⁶ They thus illustrate that the *Richardson Order* does not clarify the legal consequences

³ *Richardson Order* at 18983 ¶¶ 3-4 and 18992 ¶ 29 (“we do not require that the PSAP be fully capable of receiving and utilizing the E911 data on the date it makes the request”).

⁴ *Richardson Order* at 18986 ¶ 13 (emphasis added). As the Commission recently affirmed, PSAPs are responsible for their own CPE costs as well as the costs associated with LEC provisioned facilities beyond the input to the selective router. See Letter from Thomas J. Sugrue, Wireless Telecommunications Bureau Chief, dated May 7, 2001, to Marlys R. Davis, E911 Program Manager, King County, Washington (“PSAPs . . . must bear the costs of maintaining and/or upgrading the E911 components and functionalities beyond the input to the 911 Selective Router, including the 911 Selective Router itself, the trunks between the 911 Selective Router and the PSAP, the Automatic Location Identification (ALI) database, and the PSAP customer premises equipment (CPE)”), *aff’d on recon., Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Order on Reconsideration*, CC Docket No. 94-102, FCC 02-146, ¶ 1 (rel. July 24, 2002).

⁵ With regard to the PSAP’s own equipment, the Commission stated that PSAPs’ orders for new equipment “must contain a requirement that the vendor perform under the agreement *within the six-month period* or the PSAP must present other substantiating evidence of a commitment by the vendor to perform within the six-month period.” *Richardson Order* at 18986 ¶ 15 (emphasis added). With regard to PSAPs’ “timely” ordering of facilities from the LEC, the Commission relied on information in certain LEC tariffs in determining that PSAPs would be able to obtain such facilities within the six-month period. Citing to Qwest’s tariff, the Commission stated that “[i]nteroffice trunking takes two days to install and customized routing in the E911 Selective Router takes 16 12-hour days to implement.” *Id.* at 18986 ¶ 16, n.29.

⁶ Sprint PCS expressly raised the problem of delays in LEC-provisioned facilities. Sprint PCS Petition for Reconsideration, CC Docket No. 94-102, at 5 (Nov. 30, 2001) (“The Commission did not, however, [] require the PSAP to demonstrate that the ALI database upgrades be completed within the same six months that the PSAP

for carriers and PSAPs if the PSAP does not timely complete its upgrades. VZW's experience since the *Richardson Order* confirms that these concerns are valid. Certain LECs' failures to timely upgrade their ALI databases to pass data to PSAPs has prevented VZW from providing Phase II service to many PSAPs in the six-month time frames set by the *VZW Order*.

Despite the best efforts of PSAPs and CMRS carriers, Phase II implementation cannot be completed without upgraded facilities and services provisioned by PSAPs from LECs and their own vendors. *Richardson's* silence regarding the status of PSAPs' requests when these facilities are unavailable in time to satisfy an implementation deadline leaves an incomplete regulatory framework. The resulting uncertainty has become particularly acute for VZW, as its efforts to comply with the impending December 31, 2002 deadline for completing certain "valid" PSAP requests have been blocked by some LECs' failures to complete their ALI database upgrades and provision service to the PSAPs.

To fulfill the twin objectives of the *Richardson Order* – promoting prompt Phase II deployment while avoiding wasted efforts by CMRS carriers – the Commission should amend Section 20.18(j) of its rules in the manner discussed below and clarify that, as a result of these rule changes, carriers will not be found non-compliant for failure to meet a deadline for completing a Phase II request if the PSAP is incapable of receiving or utilizing Phase II data by the deadline. In particular, no such violation would occur where such incapability is due to the LEC's inability or unwillingness to provision facilities/service for the PSAP or is due to delays in upgrading the PSAP's CPE. Wireless carriers will remain subject, however, to an express deadline for completing Phase II deployment. In this way, the FCC will help all parties move toward completing Phase II service to the public.

II. VZW HAS MADE SUBSTANTIAL PROGRESS TOWARD PHASE II AND HAS MET ALL DEADLINES SO FAR, BUT CANNOT GO FURTHER UNTIL LECs COMPLETE THEIR WORK.

VZW has made considerable progress toward completion of Phase II deployment. In its markets using switches manufactured by Lucent and Nortel subject to the December 31, 2002 Phase II implementation deadline (80 percent of VZW's footprint), VZW has completed all switch and cell site upgrades, and its network can support Phase II service requests in all of these markets. VZW continues to work with PSAPs and LECs to continue Phase II deployment where the PSAPs and LECs have upgraded their own facilities, and, where that has happened, VZW has been able to complete Phase II deployments.

completes upgrades to its call taker equipment – even though evidence in the record suggests that numerous incumbent LECs have no intent on upgrading their ALI databases in the near future.”). Other parties affirmed this in comments. VoiceStream Comments on Petitions for Reconsideration, CC Docket No. 94-102, at 2 (Jan. 18, 2002); RCA Comments on Petitions for Reconsideration, CC Docket No. 94-102, at 3 (Jan. 18, 2002). Cingular expressly raised the issue of PSAPs' CPE in its petition, arguing that reconsideration is appropriate because “despite the best intentions of PSAPs, merely ordering equipment does not guarantee that it will be delivered, let alone successfully deployed, in a timely fashion.” Cingular Wireless LLC Petition for Reconsideration, CC Docket No. 94-102, at 9 (Dec. 3, 2001).

Congress and the Commission have recognized that Phase II deployment is a complicated endeavor, requiring coordination between a number of different parties at the local level, including wireless carriers, state- and locally-administered PSAPs, LECs, and numerous equipment and services vendors.⁷ For a number of years, CMRS carriers have documented the “gatekeeper” role LECs play in E-911 deployment and the importance of timely availability to the PSAPs of LEC-provisioned facilities and services.⁸ As Sprint PCS most recently explained on reconsideration, both CPE and ALI database upgrades “must be installed within the same six-month window.”⁹ VZW’s experience since adoption of the *Richardson Order* confirms that these concerns as to timely LEC and PSAP provisioning of facilities are justified.

As discussed in VZW’s August 1, 2002 quarterly Phase II Status Report and shown by the attached chart, much of the work VZW must complete involves loading the AGPS/AFLT software in the switches and cell sites in its own network and installing position-determining equipment. This work can be done independently of PSAPs or LECs. VZW has completed all of these steps in its Lucent and Nortel markets, in compliance with the *VZW Order*. (Box 1)

Once the software loading and other network upgrades are finished, however, the provision of Phase II service requires that the LEC first upgrade its ALI database. (Box 2) Only after the LEC upgrades its ALI database – including selecting the Phase II interface format and entering into agreements with the PSAP – can the CMRS carrier and PSAP undertake the steps necessary to complete Phase II service (Boxes 3, 4, 5 and 6). For example, the CMRS carrier or its database vendor (*i.e.*, TCS or Intrado) must test that interface with the LEC and conduct accuracy testing (Box 3), and the PSAP must (at minimum) modify its ALI data format and modify its CPE to ensure its ability to display and use the new Phase II location data being sent downstream by the ALI database (Box 4) – *none of which can be done until the LEC’s ALI database upgrades are completed*.¹⁰ Moreover, it is VZW’s experience that the LEC and PSAP

⁷ *Implementation of 911 Act, The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Fifth Report and Order in CC Docket No. 92-105, First Report and Order in WT Docket No. 00-110, Memorandum Opinion and Order on Reconsideration in CC Docket No. 92-105 and WT Docket No. 00-110*, 16 FCC Rcd 22264, ¶¶ 48-50 and n.119 (2001) (citing H.R. Rep No. 106-25, at 7 (1999)); *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Second Memorandum Opinion and Order*, CC Docket No. 94-102, 14 FCC Rcd. 20850, ¶ 22 (“achieving Phase I and Phase II service requires an extraordinary amount of coordination and cooperation among wireless and wireline carriers, the PSAPs, and the State or local 911 officials.”).

⁸ *See, e.g., E-911 Second MO&O*, 14 FCC Rcd. at 20883 ¶ 83, 20887 ¶¶ 94-95; *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, 18708-09 ¶ 63, 18711 ¶ 69 (1996), *aff’d in relevant part on recon.*, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, 22717 ¶ 107 (1997).

⁹ Sprint PCS Petition at 6.

¹⁰ While part of VZW’s remaining work in Box 3 (site surveys and calibration of cell site coordinates) can begin together with LEC/PSAP work, such remaining work must necessarily be undertaken toward the *end* of the Phase II deployment process to ensure that the information gathered and the calibration is as thorough and accurate as possible and to ensure reliable service for the PSAP. Moreover, VZW has found that where it begins such work and

must complete all their necessary upgrades for VZW to conduct end-to-end testing of the service (Box 7).

The difficulties PSAPs face in obtaining timely ALI database and other network upgrades from the LECs and in completing CPE upgrades are real. VZW has inquired with all the larger LECs in its service areas as to the status of their ALI database upgrades, and in many instances has learned that the necessary upgrades are either not complete or will not be provisioned for individual markets until regulatory approval of a tariff or PSAP acceptance of a contract – which may take months.

VZW based its work schedule for meeting the deadlines in the *VZW Order* on the *Richardson Order's* assumption that PSAPs would be ready within six months of the date of their request, and scheduled its work beginning in April 2002 so that it could complete service to successive PSAPs in an orderly, efficient way. That schedule has had to be discarded, however, because when VZW approached the PSAP to complete service, in most cases the LEC had not upgraded its own ALI database, had not provisioned Phase II service to the PSAP, and/or the PSAP had not made necessary changes to its own CPE equipment needed to use Phase II location data. At this point it is clear to VZW that, even if LEC upgrades for many pending PSAP requests are made today, there is no longer sufficient time to allow VZW to complete most requests by year's end. In fact, it will be months longer before LECs have finished their work – meaning that it will be well after that time that the PSAPs are capable of receiving and using the data.¹¹ For example:

- **SBC.** Although SBC has completed its ALI database upgrades in a few markets where VZW has PSAP Phase II requests, it has failed to do so in most markets, blocking VZW from further work to complete Phase II service.¹² SBC declined a request to meet with VZW in late July, notifying VZW instead that it intends to file wholesale tariffs or negotiate interconnection agreement amendments in all 13 in-region states and retail tariffs in 11 states. While SBC stated it intended to have Phase II functionality generally available for its ALI databases and selective router facilities by October 31, 2002 – just two months prior to VZW's December 31, 2002 deadline – it warned that even this date

then learns the LEC and/or PSAP have not completed their work, it must cease these efforts and return at an indeterminate later time, wasting scarce company and vendor resources.

¹¹ Detailed information as to the status of PSAP requests and LEC readiness is set forth in VZW's August 1, 2002 Report, pages 1-3 and Attachment D. Sprint PCS's August 1 Report supplies additional information documenting how delays in ALI database upgrades have delayed its ability to complete Phase II service to many PSAPs.

¹² SBC has agreed to move forward in Texas by using enhanced PAM as the ALI database interface. However, in other areas where E2 Plus may be used, VZW must await commercial availability in late October and /or tariff approvals, which may extend well beyond then. VZW has pending Phase II requests in many SBC markets, including in Illinois, Indiana and Missouri. Even if SBC were to upgrade all its ALI databases today, given the limited time left by year-end and the need for PSAP work as well, VZW cannot complete these deployments by year end.

would be contingent on the approval of such tariffs. Moreover, it is unclear when these tariffs will become effective. In Michigan, SBC took the position that it would not proceed until even later – informing PSAPs that it would file a new tariff on January 6, 2003, and asserting that it “cannot provide Phase II service without a tariff addressing [E-911 Phase II-related] costs.”¹³

- **BellSouth.** To date, BellSouth has thus far offered merely to test its Phase II upgrades and only in South Carolina. BellSouth has asserted that it will make Phase II service available only after PSAPs and wireless carriers agree to unilaterally imposed tariff and contract terms. For example, BellSouth notified wireless carriers that it will require them to enter into “Wireless E-911 Phase 2 Interface Agreements” as a condition precedent with respect to the provision of necessary ALI database upgrades. BellSouth would recover these ALI database costs via a contract for “consulting and professional services” assessed through “0.63 per-update of wireless location information in the BellSouth ALI database using the E2 Connectivity interface” imposed on the wireless carrier – in violation of the Commission’s *King County* requirements. In the meantime, VZW has not been able to move forward to test Phase II service with BellSouth, delaying Phase II service in many large markets served by BellSouth, including Orlando, Miami, Jacksonville, Birmingham, Atlanta and New Orleans.¹⁴
- **Qwest.** Qwest informed VZW that VZW “should be able to deploy in Qwest territory in September *as long as tariffs, where needed, are accepted.*” (Emphasis added.) While Qwest is making limited efforts to accommodate some PSAPs in the interim, in several Qwest states a tariff will not be filed until September 2002. Individual PSAPs will subsequently need to enter into either individual contracts with Qwest or obtain tariffed services. In the meantime, VZW has been unable to deploy Phase II service to the requesting PSAPs in several Qwest states including Oregon, North Dakota, South Dakota and Wyoming. (Qwest has also advised VZW, however, that it *never received requests* for Phase II service from the PSAPs that sent Phase II request letters to VZW, placing in question the validity of these PSAP requests.)
- **PSAP CPE Problems.** In some markets where the LEC did complete ALI database upgrades, VZW has faced substantial delays due to PSAP readiness problems. One PSAP in Virginia, for example, requested Phase II service in early 2001. After Verizon, the serving LEC, upgraded the ALI database serving that PSAP, VZW notified the PSAP in April 2002 that final calibration work would be performed in its area beginning the week of April 15 and stressed the need for the PSAP to complete all CPE work by May 1. The PSAP said it was ready, and VZW thus invested substantial resources to test Phase II

¹³ Sprint PCS has placed on the record of this proceeding a similar letter received by a Michigan PSAP. Letter from Luisa L. Lancetti, Sprint PCS, to Magalie Salas, August 13, 2002.

¹⁴ Sprint PCS has placed on the record of this proceeding correspondence between it and BellSouth, including the interface agreement BellSouth has demanded that CMRS carriers sign. Letter from Luisa L. Lancetti, Sprint PCS, to Magalie Salas, August 13, 2002. VZW received the same improper demand from BellSouth.

service. In fact, however, the PSAP's CPE was not capable of reading the Phase II data. Four months later, the PSAP has not yet upgraded its CPE and cannot receive Phase II data. In another instance, a Nevada PSAP was recently forced to pull its request in the middle of VZW's Phase I and Phase II deployment due to a lack of staffing. Aside from issues as to this PSAP's compliance with the cost recovery requirement of Section 20.18, this situation again wasted significant VZW resources that could have been spent elsewhere.

Clearly, when VZW has upgraded its network in full compliance with the milestones in the *VZW Order*, but cannot complete Phase II service due to causes beyond its control, it cannot be held to the *VZW Order's* deadlines. Even if LECs were to complete their work on the time frames they have suggested, there would still need to be substantial PSAP work as well. In this situation, the *VZW Order's* deadlines are simply untenable. Amending the *Richardson Order* to toll the deadlines is the simplest way to address this situation. VZW asks that the Commission do so promptly.

III. THE CURRENT SITUATION IS UNDERMINING *RICHARDSON'S* GOALS.

In *Richardson*, the FCC intended to "ensure both that PSAPs receive timely . . . Phase II service and that wireless carriers are not asked to commit resources needlessly" and to "promot[e] cooperation and good faith negotiations between all of the parties."¹⁵ VZW's experience since adoption of the *Richardson Order* shows that Section 20.18(j), as currently worded, actually undercuts rather than furthers these goals. Accordingly, Section 20.18(j) should be amended.

First, VZW is forced to spend scarce resources working on PSAP requests even though it cannot complete the work, forcing the very wasted effort that *Richardson* sought to avoid. Those PSAPs that may be capable cannot be scheduled efficiently because VZW is forced to work on all requests that it receives that assert capability under *Richardson*, despite known LEC delays. The real costs and the opportunity costs of expending resources with PSAPs that are not capable, for whatever reason, delay rollout of Phase II service to PSAPs that truly are ready.

Second, because *Richardson* and Section 20.18(j) did not address the situation that exists with most pending PSAP requests – the PSAP is not capable of receiving and using Phase II data within six months after the date of its request – they will provoke disputes over the "validity" of a PSAP's request. As shown by VZW's August Report, many of the Phase II requests it received are more than six months old – but many of those PSAPs are presently incapable of receiving and using Phase II data because (at a minimum) the necessary LEC upgrades have not been made. *The central premise of Richardson – that, by sending a request, the PSAP was confirming that it would be ready within six months – has proven incorrect.* Unless the rule is changed, VZW will be forced to do precisely what *Richardson* sought to avoid – challenge the

¹⁵ *Richardson Order* ¶¶ 11, 13.

validity of certain PSAP requests. In fact, Sprint PCS, in its August 1 Phase II Status Report, has taken the position that many of its pending PSAP requests are *now invalid*.¹⁶

As Sprint PCS and Cingular noted in their reconsideration petitions, the regulatory framework adopted in *Richardson* does not contemplate circumstances in which the PSAP is not, in fact, Phase II-capable by the end of the six month periods. Under the rules' plain language, however, the six-month periods of Sections 20.18(f) and (g) apply "only if" the PSAP can make the necessary demonstration.¹⁷ In many instances, VZW discovers months after the request that LEC or CPE upgrades have been delayed. Thus, despite a PSAP's best efforts, it may be unable to continue to "demonstrate" that its suppliers will have equipment "installed and operational" within the six-month period or that a "request to the appropriate LEC" was "timely." The PSAP request then would be deemed invalid if challenged and a carrier would have no implementation deadline. In short, if a PSAP is unable to receive or utilize Phase II data by the end of the six-month period for these reasons, carriers have no Phase II obligations to that PSAP. The objectives of the *Richardson Order* would be better served by adopting the rule amendment discussed below.

IV. ACTION IS URGENTLY NEEDED BECAUSE OF UPCOMING DEADLINES.

The need to resolve the issues raised by the void left in the *Richardson Order* is particularly acute in light of the deadlines imposed on VZW. The *Order* granting VZW's E-911 Phase II waiver request requires as follows:

*[O]n or before December 31, 2002, Verizon must complete all valid PSAP requests received on or before June 30, 2002, except in markets served by Motorola switches. In Motorola markets, on or before March 31, 2003, Verizon must complete all valid PSAP requests received on or before September 30, 2002. In markets served by Lucent and Nortel switches, Verizon must complete valid PSAP requests received on or after July 1, 2002 within six months of the request, as provided in the Commission's rules. In markets served by Motorola switches, Verizon must complete valid PSAP requests received on or after October 1, 2002 within six months of the request, as provided in the Commission's rules.*¹⁸

As noted above, many PSAPs in VZW's Lucent and Nortel markets who submitted requests to VZW prior to June 30, 2002, will not be Phase II capable until well after December

¹⁶ See Sprint Quarterly E911 Implementation Report, CC Docket No. 94-102, filed August 1, 2002, at 11.

¹⁷ 47 C.F.R. § 20.18(j).

¹⁸ *VZW Order* at 18379 ¶ 42 (emphasis added). Sprint PCS faces a similar deadline, and all other carriers will face similar issues as their respective deadlines approach. See *Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS*, *Order*, CC Docket No. 94-102, 16 FCC Rcd. 18330, 18342 ¶ 38 (2001); *Cingular Wireless LLC*, File No. EB-02-TS-003, *Order*, ¶ 8 (rel. May 9, 2002) (imposing April 1, 2003 deadline for "provi[sion] of Phase II compliant service" for certain "valid PSAP requests"); *Order to Stay*, CC Docket No. 94-102, FCC 02-210, ¶¶ 27, 33 (rel. July 26, 2002) (deadlines for completing "valid" PSAP requests for Tier II and Tier III carriers).

31, 2002.¹⁹ VZW will therefore be unable to “complete” such requests – *i.e.*, provide Phase II data to the PSAP – by December 31, 2002 because the PSAP will not be “capable of receiving and utilizing the data elements associated with the service.” Even if such upgrades were to be installed now, there would not be enough time for VZW to resume its work in all of these PSAPs’ areas in time to meet the December 31 deadline.

It should be evident that VZW cannot “complete” Phase II requests by the December 31 deadline until the relevant PSAP actually is Phase II-capable. Indeed, nothing in the text of the *Richardson Order* compels VZW to somehow “complete” Phase II requests for PSAPs that are incapable of receiving and utilizing the data.²⁰ Section 20.18(j), however, supplies no mechanism for handling PSAP requests that are not Phase II-capable at the end of the six-month period other than outright invalidation. This problem undermines the FCC’s goal (which VZW shares) of an orderly, cooperative prioritization of Phase II deployment.

V. THE FCC SHOULD MODIFY SECTION 20.18(J).

As discussed above, Section 20.18(j) and the Commission’s Phase II decisions create uncertainty for carriers regarding the timing of their obligations and create the real possibility that a PSAP request may be invalidated, and a new six-month implementation period triggered, due to factors beyond the PSAP’s control (*i.e.*, the availability of required LEC services and facilities). Neither result furthers the Commission’s objectives in the *Richardson Order*. The FCC should issue an order on reconsideration forthwith that (1) clarifies carriers’ obligations at the end of the six-month period and amends Section 20.18(j) of its rules accordingly, and (2) clarifies that all deadlines to complete Phase II requests set forth in either the rules or Commission decisions will be subject to Section 20.18(j) as amended. This will address the reality that wireless carriers cannot finish Phase II deployment absent LEC and PSAP upgrades, while promoting the objectives of *Richardson*, including compelling wireless carriers to commence Phase II work in advance of the PSAP’s actual readiness.²¹ Any *Order* and accompanying amendment of Section 20.18(j) should have two key elements:

¹⁹ See VZW August Report at 7.

²⁰ The Commission itself acknowledged that “PSAPs have not always had the capability to receive and utilize Phase I data despite the existence of funding and their good faith efforts to implement their system upgrades within the prescribed six-month period.” *Richardson Order* at 18988-89 ¶ 21.

²¹ The Commission may modify a rule in response to a petition for reconsideration “as long as the modification was a ‘logical outgrowth’ of the earlier version of the rule.” See *AT&T Corp. v. FCC*, 113 F.3d 225, 229 (D.C. Cir. 1997). The changes proposed herein are plainly within the scope of the *Richardson Order* and the issues raised on reconsideration and are, in essence, a compromise between the rules in effect prior and subsequent to the *Richardson Order* that accommodate petitioners’ and commenters’ concerns. See *Omnipoint Corp. v. FCC*, 78 F.3d 620, 631 (D.C. Cir. 1996); *Public Service Comm’n of the Dist. of Columbia v. FCC*, 906 F.2d 713 (D.C. Cir. 1990). Moreover, the Commission has ample authority to amend its rules based on the entire record in a proceeding, including *ex parte* presentations that merely supplement timely-filed petitions for reconsideration – particularly where, as here, the information submitted “relate[s] to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission.” See 47 C.F.R. § 1.429(b); *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network*

- *Clarify Carriers' Service Provision Obligations at the End of the Six-Month Period.* The rule should expressly acknowledge the possibility that PSAPs may be unable to complete the upgrades necessary to be capable of receiving and utilizing Phase II data at the end of six months, and address how the requirements of Section 20.18(g) apply to such PSAP requests. VZW submits that tying the carrier's obligations at the *end* of the six-month period to *actual* PSAP readiness is consistent with the Commission's long-standing objective of minimizing carriers' wasteful expenditures. Moreover, this approach preserves the principal objective of the *Richardson Order* by compelling wireless carriers to begin Phase II deployment in advance of actual PSAP readiness.
- *Establish a Date Certain for Completion of PSAP Request.* If a PSAP is not capable of receiving and using Phase II data by the deadline because of LEC, vendor or PSAP delays, the carrier should have a designated period of time to conduct interoperability testing and complete any other steps necessary to go live once a PSAP is actually Phase II-capable. Carriers and PSAPs alike will benefit from a time certain to complete deployment – significantly less than the full six-month period in effect prior to the *Richardson Order*, but sufficient to ensure that the carrier, PSAP and LEC have sufficient time to complete the necessary end-to-end testing. This will also better enable the carrier to prioritize its deployment efforts. The Commission's rules must reflect the need for carriers to conduct end-to-end testing. Based on VZW's experience, a period of 90 days after the PSAP has completed upgrades (including LEC-provisioned facilities) is necessary for a wireless carrier and PSAP to complete the final testing and begin providing reliable Phase II service to PSAPs. The PSAP community itself acknowledged the need for a testing period in earlier stages of the *Richardson Order* proceeding, and the Commission should add this to the rule.²²

Consistent with these objectives, VZW recommends two changes to Section 20.18(j), the full text of which is attached hereto. First, the rule should state that a PSAP is "deemed capable of receiving and utilizing the data elements associated with the [E-911] service" if it can make the demonstration set forth in the current rule, but *solely for purposes of commencing the six-month period for the carrier to complete the Phase II request*. This suggested language does not change the effect of *Richardson* – *i.e.*, carriers are still compelled to begin Phase II work in advance of PSAP Phase II readiness. It does make express, however, that a PSAP's mere documentation of its Phase II requests to vendors to provide it with Phase II capability is not

Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, ¶ 121 (1999) (amending CPNI rules on reconsideration based in part on information provided in ex parte presentations, stating "it does not appear that all of the relevant facts were before the Commission at that time").

²² "[T]he carrier is also entitled to enough time to test delivery without penalty for lateness." NENA/APCO/Tarrant County Reply Comments in CC Docket No. 94-102, filed August 1, 2001, at 2.

sufficient to trigger the carrier's obligation to provide Phase II service to the PSAP at the end of the six-month period.

The second change is added language stating that, if the PSAP is not in fact capable of receiving and utilizing the data elements associated with Phase II service by the end of the six-month period specified in the rules, the carrier must complete service no later than 90 days after the PSAP becomes capable of receiving and utilizing the data elements associated with such service. This change addresses both of the key elements discussed above. It is necessary because all parties are now aware of the importance of interoperability testing to ensure reliable service – but also the reality that this testing cannot begin until after LEC and PSAP upgrades are completed.

These proposed changes to Section 20.18(j) facilitate expeditious Phase II deployment more consistently with the Commission's stated intent in the *Richardson Order* by tolling the carrier's obligation to provide Phase II service to the PSAP for a short period of time after the PSAP itself is Phase II-capable. First, the wireless carrier remains compelled to begin Phase II deployment in advance of the PSAP's actual Phase II readiness. Thus, where a PSAP is able to timely obtain upgrades from the LEC and achieve its own Phase II readiness, the parties will still be able to commence service expeditiously. Second, the PSAP would not risk going to the "back of the line" if it is not actually Phase II-capable at the end of the six-month period. Instead, VZW would be compelled to finish work promptly after the PSAP completes its work. Given the number of markets across the country where VZW has completed Phase II service, and the cooperative relationships VZW has had with those PSAPs that are now using that service, VZW believes that this course properly reflects the parties' mutual obligations and will help lead to faster deployment of Phase II.

VI. THE FCC SHOULD CLARIFY THAT ALL DEADLINES TO COMPLETE PHASE II REQUESTS WILL BE SUBJECT TO REVISED SECTION 20.18(j).

VZW's obligation to complete Phase II deployment by December 31, 2002, apply to "valid" PSAP requests, and the validity of such requests, in turn, is governed by the requirements of Section 20.18(j) and the *Richardson Order*, as demonstrated in paragraph 31 of the *VZW Order*.²³ Nevertheless, to ensure that there is no uncertainty concerning VZW's obligations under the *VZW Order*, the Commission should also clarify that all deadlines to complete Phase II requests set forth in either the rules or Commission decisions will be subject to the tolling provisions of Section 20.18(j) as amended.

The amended rule thus would apply equally in circumstances where the Commission has established an alternative deadline for completion of Phase II requests in a carrier-specific order,

²³ *VZW Order* at 18379 ¶ 42 (obligations apply to "valid PSAP requests"); *id.* at 18375 ¶ 31 ("If Verizon believes there are questions concerning a PSAP's compliance with the conditions necessary for a valid Phase I or II request, such as its readiness to receive and utilize Phase I or Phase II information . . ."); *see also Order to Stay*, CC Docket No. 94-102, FCC 02-210, ¶¶ 11 n.23, 15 n.30 (rel. July 26, 2002).

such as the December 31, 2002 deadline applicable to VZW. This approach treats, for example, the July 1-December 31, 2002 six month period for VZW's completion of pre-June 30, 2002 Phase II requests as equivalent to the "six month period" set forth in Section 20.18(g). Thus, if VZW is unable to complete a pre-June 30, 2002 Phase II request by December 31, 2002 because the PSAP is not capable of receiving and utilizing Phase II data elements, VZW will not be deemed noncompliant with Section 20.18 *or* Paragraph 42 of the *VZW Order*. Similarly, for requests received after June 30, 2002, the six-month period for providing Phase II service would be tolled if the requesting PSAP is not in fact capable of receiving and using Phase II location data by that six-month date.

The amended rule would also resolve the unfair situation that the current rule and the *VZW Order* create. The premise of the *VZW Order*'s December 31 deadline was that VZW could complete individual requests on a "rolling" basis throughout much of 2002. Because, however, few PSAPs are capable of receiving and using data, and many will not be capable for months more, the December 31 deadline is infeasible. The 90-day provision would allow VZW time to schedule testing with PSAPs once they complete their LEC and PSAP upgrades in a way that will allow VZW to work with each PSAP as it becomes capable so that deployment is accomplished efficiently.

VII. CONCLUSION

For the foregoing reasons, the Commission should amend Section 20.18(j) of its rules as discussed herein as part of its reconsideration decision on the *Richardson Order*. This will preserve the underlying intent of *Richardson* and also avoid the need for the Commission to adjudicate challenges to the validity of Phase II requests. It will also provide wireless carriers with necessary certainty as to completing Phase II deployment obligations and enable carriers and the PSAP community to prioritize PSAP requests an orderly, cooperative manner. These benefits depend, however, on immediate action, and VZW urges the Commission to take such action forthwith.

Marlene Dortch, Secretary
CC Docket No. 94-102
August 19, 2002
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Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), an original and two copies of the instant correspondence are submitted to the office of the Secretary.

Respectfully submitted,

/s/ John T. Scott, III

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ATTACHMENT

RECOMMENDED CHANGES TO 47 C.F.R. § 20.18(J)

(j) Conditions for enhanced 911 services. The requirements set forth in paragraphs (d) through (h) of this section shall be applicable only if the administrator of the designated PSAP has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the PSAP's costs of the enhanced 911 service is in place. ~~A [PSAP] will be deemed capable of receiving and utilizing the data elements associated with the service requested if it~~ For purposes of commencing the six-month period specified in paragraphs (f) and (g) of this section, the PSAP will be deemed capable of receiving and utilizing the data elements associated with the service if ~~it~~ it can demonstrate that it has ordered the necessary equipment and has commitments from suppliers to have it installed and operational within ~~such~~ such the six-month period ~~specified in paragraphs (f) and (g) of this section,~~ and can demonstrate that it has made a timely request to the appropriate LEC for the necessary trunking and other facilities. In the alternative, a PSAP will be deemed capable of receiving and utilizing the data elements associated with Phase II service if it is Phase I-capable using an NCAS methodology, and if it can demonstrate that it has made a timely request to the appropriate LEC for the ALI database upgrade necessary to receive the Phase II information. If the PSAP is not in fact capable of receiving and utilizing the data elements associated with Phase II service by the end of the six-month period specified in paragraphs (f) and (g) of this section, then the licensee shall begin delivering Phase II enhanced 911 service to the PSAP not later than ninety (90) days after the PSAP becomes capable of receiving and utilizing the data elements associated with such service.

E911 PHASE II TIMELINE

VZW Work

Box 1
VZW network upgrades:
Load AGPS/AFLT software in
switches and cell sites. Completed
in all Lucent and Nortel switched
markets (80% of footprint).

Box 3
Test Phase II interface with LEC,
calibration of tower site coordinates,
accuracy testing.

LEC/PSAP Work

Box 2
LEC ALI Database Upgrades: Select Phase
II format (e.g., E2+, enhanced PAM)
contract with PSAP, and perform upgrades.

Box 4
Modify ALI data format for delivery of data
to PSAP and display.

Box 5
Modify PSAP CPE for PSAP to be able to
rebid ALI database.

Box 6
Modify PSAP CPE screen display to show
Phase II data, modify mapping capability.

Box 7
Interoperability
testing (VZW,
LEC, PSAP)

**All parties must be
ready to participate
in interoperability
testing at this point
in order to go live.**