

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

In the Matter of)
)
Revision of the Commission's Rules) CC Docket 94-102
To Ensure Compatibility with Enhanced)
911 Emergency Calling Systems)

Digital wireless TTY compatibility

**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”) hereby oppose the Joint Petition for Reconsideration¹ of the Wireless Telecommunications Bureau’s Order in the captioned proceeding, DA 02-1540, released June 28, 2002. We believe the Commission was correct in refusing to extend beyond December 31, 2003 Joint Petitioners’ waiver of the digital TTY compatibility rule:

Complete waivers for their TDMA networks would allow the carriers deploying a separate digital network to continue to operate the TDMA network indefinitely without providing a TTY solution for their TDMA subscribers. This is inconsistent with the intent of the TTY rule.

DA 02-1540, ¶21.

¹ Filed July 29, 2002 by Illinois Valley Cellular RSA 2 Partnerships I, II and III, together with Mid-Missouri Cellular and Public Service Cellular.

Although not mentioned in the Order, we believe that Section 255 of the Communications Act may preclude the Commission from effectively rewriting the statute through grant of the open-ended waiver sought by Petitioners. Section 255(c) requires that:

A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.²

The Commission, in its order implementing the statute, said it would evaluate the “readily achievable” requirement in terms of “(1) the cost of the action; (2) the nature of the action; and (3) the overall resources available to the entity.”³ With respect to cost, the FCC considered but rejected a “net” approach that would take into account “market factors” such as likelihood of recovery of the expense through increased sales. Instead, the agency chose to stick with the context developed under the Americans with Disabilities Act (“ADA”). The order concluded that costs “means incremental costs to design, develop or fabricate accessible products or services.” 16 FCC Rcd at 6442.

Unfortunately, Petitioners have supplied no cost information, apparently in the conviction that any expense would be “wasted capital.” (Petition, 2) We understand that both AT&T Wireless and Cingular have at least overall cost data from their conversions of TDMA networks to TTY compatibility, and that this might be reducible to expense per switch. While we were unable to obtain such comparisons prior to the deadline for these comments, the Commission should be able to do so and to invite Petitioners to make their own showings.

² Section 251(a)(2) obliges telecommunications carriers “not to install network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.”

³ *Implementation of Sections 255 and 251(a)(2)*, 16 FCC Rcd 6417 (1999), ¶12.

Independently of Section 255 considerations, we are puzzled by the following seemingly contradictory statements in the Petition:

- ◆ That TDMA networks are close to “phasing out,” yet Petitioners’ major roaming partners “have not announced any date by which they intend to cease the sale of TDMA phones or the operation of their TDMA networks.” (Petition, 5)⁴
- ◆ That TTY digital compatibility is impossible for Petitioners despite apparent compliance by Cingular Wireless⁵ and anticipated AT&T fulfillment (Order, ¶7) in their respective TDMA systems.

Until Petitioners supply cost data documenting the size of their burdens and some resolution of the above contradictions, the Commission is in no position to extend their waivers beyond December 31, 2003.

Respectfully submitted,

NENA, APCO AND NASNA

By _____
 James R. Hobson
 Miller & Van Eaton, P.L.L.C.
 1155 Connecticut Ave. N.W., Suite 1000
 Washington, D.C. 20036 (202) 785-0600
 Counsel for NENA and NASNA

Robert M. Gurs
 Shook Hardy & Bacon, L.L.P.
 600 14th Street N.W., Suite 800
 Washington, D.C. 20005 (202) 662-4856
 Counsel for APCO

September 26, 2002

⁴ The absence of any certain date for cessation of TDMA operation was one reason the Commission ordered AT&T and Cingular to implement network-based location solutions at a large number of sites. AT&T Order, June 12, 2002 (FCC 02-174); Cingular Order, May 2, 2002 (FCC 02-132).

⁵ We infer this from Cingular’s not having sought a waiver.

CERTIFICATE OF SERVICE

The foregoing "Opposition of NENA, APCO and NASNA" was served by regular and electronic mail today upon counsel for Petitioners:

Michael K. Kurtis
Anna E. Ward
Kurtis & Associates, P.C.
1000 Potomac Street N.W.
Suite 200
Washington, D.C. 20007

September 26, 2002

James R. Hobson