

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of ) ) ) Petitions For Reconsideration Regarding ) Order to Stay E911 Phase II Rules ) For Small Carriers )	CC Docket No. 94-102
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**THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA), a non-profit corporation established in 1954 representing 545 rate-of-return regulated small rural telecommunications companies who provide local, wireless, cable, Internet, satellite and long distance services to their communities, hereby files its initial comments in the above captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

On July 11, 2002 the Commission adopted an Order staying certain wireless enhanced 911 (E911) Phase II deployment deadlines for Tier II and Tier III carriers, with conditions.<sup>2</sup> On August 26, 2002 ALLTEL Communications, Inc. (ALLTEL), and Dobson Cellular Systems, Inc. (Dobson) and American Cellular Corporation (American Cellular), filed Petitions for Reconsideration (Petitions), seeking limited reconsideration

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<sup>1</sup> *Wireless Telecommunications Bureau Seeks Comment on Petitions for Reconsideration Regarding Order to Stay E911 Phase II Rules For Small Carriers*, CC Docket No. 94-102, DA 02-2258 (rel. September 16, 2002).

<sup>2</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, (*Order to Stay*) (rel. July 26, 2002) (*E911 Small Carriers Order*).

of the Commission's *Order to Stay*.<sup>3</sup> Specifically, the Commission seeks comment regarding Petitioners' objections to the revised deployment deadlines and the implementation of enforcement for noncompliance.

## II. NTCA SUPPORTS PETITIONERS' OBJECTIONS

NTCA, acting on behalf of rural carriers, supports Petitioners' objections to revised deployment deadlines that impose strict enforcement for non-compliance. NTCA urges the Commission to consider revising the *Order to Stay* to address Petitioners' concerns. Specifically, NTCA concurs with Petitioners' belief that in the instance where carriers have missed the deployment deadline through no fault of their own, carriers deserve the opportunity to demonstrate why non-compliance with the E911 deployment deadline should be excused by the Commission and why they cannot be held liable.<sup>4</sup>

Petitioners' reasons for the necessity of allowing carriers to be heard directly apply to NTCA members. Petitioners assert that compliance from small and midsize carriers with Phase II implementation deadlines is not guaranteed due to their position in the market, *i.e.* they do not control the manufacturers and vendors on whom they depend.<sup>5</sup> Furthermore, small and midsize carriers lack the market power to affect manufacturers' and vendors' commitments to deliver compliant equipment and software because, as recognized by the Commission,<sup>6</sup> manufacturers and vendors favor larger nationwide carriers.<sup>7</sup> NTCA believes that its members that are small wireless carriers may not be able to meet the required deadlines due to the manufacturer and vendor

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<sup>3</sup> ALLTEL Communications, Inc. Petition for Reconsideration, CC Docket No. 94-102 (filed Aug. 26, 2002)(ALLTEL Petition); Dobson Cellular Systems, Inc. and American Cellular Corporation Joint Petition for Reconsideration, CC Docket No. 94-102 (filed Aug. 26, 2002)(Dobson/American Cellular Petition).

<sup>4</sup> ALLTEL ¶ 1; Dobson/American Cellular ¶ 2.

<sup>5</sup> ALLTEL ¶ 3; Dobson/American Cellular ¶ 3.

<sup>6</sup> *Order to Stay* ¶ 11.

failures to provide equipment and as a result will suffer the undue hardship of a strict liability standard in enforcement proceedings brought against them. Carriers should not be required to defend or suffer penalties for circumstances beyond their control.

Petitioners ask that the Commission offer small carriers an opportunity to explain non-compliance due to their market position. The Commission is legally required to offer carriers an opportunity to be heard based on Commission rules adopted pursuant to Section 503 of the Communications Act.<sup>8</sup> The effect of the policy announced in the *Order to Stay* is to gut the procedural requirements of 503(b)(4) by imposing a strict liability standard and depriving carriers of the right to assert a key mitigating factor, namely, the vendor or manufacturers' inability to supply equipment without which compliance is unachievable. The policy in the *Order to Stay* violates the Act.

NTCA believes that it is the best interest of the Commission to consider Petitioners' objections because of the undue hardships that rural carriers would experience as a result of strict liability enforcement. The Commission desires widespread and undelayed deployment of E911 services but this goal will only be frustrated by this misguided enforcement policy.<sup>9</sup> Rural carriers, represented by NTCA, have no guarantee that they will be able to receive the necessary equipment and materials prior to the Phase II implementation deadlines. Costly enforcement proceedings will only harm the carriers and their customers. NTCA believes that rural carriers should not be punished when they have put forth their best efforts to meet the demands of the Commission to further public safety measures for consumers.

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<sup>7</sup> ALLTEL ¶ 3; Dobson/American Cellular ¶ 3.

<sup>8</sup> 47 U.S.C. § 503(b)(4).

### III. CONCLUSION

For the above stated reasons, the Commission should reconsider the *Order to Stay*.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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<sup>9</sup> See *Order to Stay* ¶ 25.

## CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in CC Docket No. 94-102, DA 02-2285 was served on this 16<sup>th</sup> day of October 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

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