

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

In the Matter of	)	
	)	
Revision of the Commission’s Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Request for Waiver by Dobson Cellular	)	DA 02-2285
Systems, Inc. Petition for Waiver of Sections	)	
20.18(e), (f), and (h) of the Commission’s	)	
Rules	)	
	)	
Request for Waiver by American Cellular	)	
Corporation Petition for Waiver of Sections	)	
20.18(e), (f), and (h) of the Commission’s	)	
Rules	)	
	)	
To: The Commission		

**REPLY OF**  
**DOBSON CELLULAR SYSTEMS, INC. AND**  
**AMERICAN CELLULAR CORPORATION**

Dobson Cellular Systems, Inc. and American Cellular Corporation (collectively “Dobson”) hereby jointly submit their reply in the above-captioned proceeding. By this filing, Dobson addresses comments filed in response to their petition requesting reconsideration of aspects of the Commission’s *Order*.<sup>1</sup>

The commenters participating in this proceeding overwhelmingly support the petitions filed by Dobson and ALLTEL requesting that the Commission reconsider the imposition of a strict liability standard applicable to non-nationwide carriers’ compliance with the interim Phase

II deployment benchmarks adopted in the *Order*.<sup>2</sup> These commenters, as well as petitioners, underscore that the Commission may not establish a regulatory regime that punishes carriers for the occurrence of contingencies that are beyond their control. Under the Commission’s E911 rules, it is carriers who are subject to potential enforcement liability – not PSAPs, LECs, or vendors. Particularly if it was not the Commission’s intent to impose such a harsh standard, Dobson and others submit that the Commission must modify the liability language in the *Order* to bring its enforcement approach in accordance with the APA and the Communications Act, in order to provide carriers with certainty going forward.

Indeed, it appears that the public safety entities, NENA, APCO, and NASNA, (“PSEs”), *agree* that the Commission should not impose a strict liability standard that altogether denies non-nationwide carriers an opportunity to be heard prior to the imposition of sanctions by the Enforcement Bureau. The PSEs assert that “[t]he Commission did not state that there *would* be such enforcement action, but rather that enforcement action was *possible*.”<sup>3</sup> Accordingly, it appears that the PSEs concur with petitioners’ view that the Commission should provide carriers

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<sup>1</sup> See *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order To Stay, CC Docket No. 94-102, FCC 02-210 (rel. July 26, 2002) (“*Order*”).

<sup>2</sup> See *generally* Comments by Sprint PCS, Nextel, United States Cellular Corporation (“USCC”); Rural Cellular Association (“RCA”); Cellular Telecommunications & Internet Association (“CTIA”); National Telecommunications Cooperative Association (“NTCA”); Triton PCS License Company, LLC (“Triton”); Comments of South Central Utah Telephone Association, Inc. (“South Central”); and 3 Rivers, et al. (“Tier III Joint Commenters”). In the context of the interim guidelines applicable to the nationwide carriers’ deployment of Phase II services, a significant number of entities have also urged the Commission not to impose a similar strict liability standard. See *generally* Verizon Wireless Petition for Reconsideration (filed Nov. 13, 2001); Cingular Wireless Petition for Reconsideration (filed Nov. 13, 2001); Nextel Petition for Reconsideration (filed Nov. 13, 2001); Comments by Nokia and Motorola, RTG and OPASTCO, RCA, Cellular Mobile of St. Cloud, LLC, Wireless Communications Venture, South No. 5 RSA LP, Copper Valley Wireless, Inc., Southern Illinois RSA Partnership, and CTIA.

<sup>3</sup> Comments of PSEs at 3 (emphasis in the original).

some meaningful opportunity to justify a failure to meet deployment benchmarks or other waiver conditions where such failure is the result of the inability of third-party vendors to timely deliver the necessary equipment. Indeed, the PSEs recognize that nonavailability of equipment “is one ground for a possible waiver. . . .”<sup>4</sup> Because the language of the *Order* appears to preclude any further waiver consideration,<sup>5</sup> Dobson’s concern for clarity is clearly valid.

There is no evidence to suggest that the vast majority of carriers are not working diligently to comply with the Commission’s rules. As petitioners and commenters have demonstrated, however – and the PSEs do not dispute – factors beyond carriers’ control, such as vendors’, LECs’, and PSAPs’ delays, may undermine the success of those efforts. Indeed, just as the record in this proceeding has indicated that PSAPs hold limited sway over whether LECs will timely complete necessary facilities upgrades, Dobson simply asks that the Commission’s approach to enforcement of the existing interim deadlines recognize that carriers are also unable to dictate the availability of vendor-supplied equipment, software, and services.

This is not a matter of mere semantics, but rather a serious concern for Dobson. Section 503 of the Communications Act and established principles of due process and administrative law require that a carrier be afforded an opportunity to avoid a finding of non-compliance *prior to* such a determination becoming a matter of law.<sup>6</sup> Indeed, a Commission *per se* finding of

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<sup>4</sup> Comments of PSEs at 3.

<sup>5</sup> Paragraph 37 of the *Order* provides that “[i]f any carrier does not have compliant Phase II services available on the dates set forth herein, *it will be deemed noncompliant* and referred to the Commission’s Enforcement Bureau for *possible* action.” The Commission’s language also states that assertions concerning the non-availability of equipment “will not excuse noncompliance” and will only be considered as “possible mitigation factors” in the enforcement context. *Order* at ¶ 37.

<sup>6</sup> See Dobson Petition for Reconsideration at 4-8; ALLTEL Petition for Reconsideration at 3-6; Comments of Triton at 5; Comments of Tier III Commenters at 2-5; Comments of NTCA at 3; (continued on next page)

noncompliance, irrespective of other factors, is directly contrary to Commission precedent.<sup>7</sup> In this and other proceedings the Commission has routinely considered factors such as the non-availability of equipment and services supplied by third-parties to be valid bases for a waiver of the rules,<sup>8</sup> the granting of which *by definition* excuses non-compliance, and precludes a matter from moving to the enforcement context in the first instance.<sup>9</sup> The PSEs, while recognizing that relief from sanctions may be appropriate, would place the carriers in non-compliance, a matter which is of significance to those who take full compliance with all Commission rules to be a serious obligation of an FCC licensee. Accordingly, the Commission must clarify the language of its *Order* to ensure that non-nationwide carriers are provided an opportunity to seek waiver and to respond to an apparent non-compliance finding prior to such a determination becoming final or facing sanctions at the Enforcement Bureau.

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Comments of CTIA at 4-6; Comments of South Central at 2-5; Comments of Nextel at 6-8; Comments of USCC at 4-5.

<sup>7</sup> To the extent Sprint PCS's suggestion – that the Commission has not intended to impose a strict liability standard – is correct, Dobson requests that the Commission clarify as such its *Order*. See Comments of Sprint PCS at 2-4.

<sup>8</sup> See Dobson Petition for Reconsideration at 6-7 (citing recent waivers granted in the context of deployment of TTY-digital compatible networks); see also Dobson Petition for Reconsideration at 6, n. 17; Verizon Petition for Reconsideration at 8, n.18 (filed Nov. 13, 2001). Comments of Sprint PCS at 2-4; Comments of CTIA at 6; Comments of RCA at 3-4; Comments of Triton at 5;

<sup>9</sup> See generally 47 C.F.R. §1.925; *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, CC Docket No. 94-102, 15 FCC Rcd 17442 (2000). The PSEs are wrong in suggesting otherwise. See Comments of PSEs at 3-4.

**CONCLUSION**

For the foregoing reasons, the Commission should grant Dobson's petition for reconsideration in this proceeding.

Respectfully submitted,

**DOBSON CELLULAR SYSTEMS, INC.  
AMERICAN CELLULAR CORPORATION**

By: \_\_\_\_\_/s/\_\_\_\_\_

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