

November 14, 2002

Ex Parte – Via Electronic Filing

Ms. Marlene Dortch, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, DC 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:

With this letter, T-Mobile USA, Inc. ("T-Mobile," formerly VoiceStream Wireless Corporation), wishes to update its earlier comments in this proceeding. Pending before the Commission are several petitions for reconsideration of the Commission's decision in the *Richardson Order*.¹ T-Mobile supports the Petition for Reconsideration filed by Sprint Corporation ("Sprint"), as supplemented by subsequent *ex parte* filings,² because the Commission's rules and orders fail to account for the responsibilities of other critical parties in the successful implementation of E911, with the result that the rules can be read (arbitrarily and capriciously) to require wireless carriers to complete deployments within six months even when a PSAP will be unable to "receive and utilize" that information or has failed to provide necessary information to the wireless carrier. If the Commission wishes to facilitate deployment and to implement and enforce legally sustainable rules, it must (1) recognize that carriers cannot be held strictly liable for the action or inaction of other essential parties, and (2) incorporate some flexibility for carriers to respond to such situations. Based on its experiences in the year since *Richardson* was adopted, T-Mobile hereby requests that the Commission explicitly clarify that equitable tolling of the six month deadline will apply where implementation of a request is delayed due to matters beyond a carrier's control, such as PSAP-requested delays due to funding or customer premises equipment ("CPE") issues, and LEC-caused delays in the provision of trunks or upgrades to the ALI database.³

¹ *Review of the Carrier'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").

² See Letter of Luisa L. Lancetti, Sprint PCS (September 24, 2002); Letter of Luisa L. Lancetti, Sprint PCS (September 9, 2002); See Letter of John T. Scott, III, Verizon Wireless (August 19, 2002).

³ While T-Mobile supports the rule change advocated by Sprint in its September 24, 2002 letter filed in this docket, T-Mobile would not limit the relief afforded by the rule to those situations where a PSAP "has not completed all of the CPE and ALI database upgrades necessary to be capable of receiving and utilizing the [E911] data elements."

In *Richardson* the Commission amended its rules in an attempt to clarify what constitutes a “valid” Public Safety Answering Point (“PSAP”) request so as to trigger a wireless carrier’s obligation to provide E911 service to that PSAP. Previously the Commission held that a wireless carrier’s obligation to provide E911 service arises only if it “receives a request for such E911 services from the administrator of a PSAP that is capable of receiving and utilizing the data elements associated with the service.”⁴ In *Richardson*, the Commission held that a PSAP will be “deemed capable” if it 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 specified [in the rule], and can demonstrate that it has made a timely request to the appropriate local exchange carrier for the necessary trunking and other facilities.”⁵ If the PSAP makes this showing at the time of its request, the rule indicates that the wireless carrier must begin delivering the requested service to the PSAP within six months.⁶

This regulatory framework is incomplete because it fails to consider the many interdependent steps required to implement an E911 request.⁷ In his recent *Report on Technical and Operational Issues Impacting The Provision of Wireless Enhanced 911 Services*, Dale Hatfield observed that “the actual implementation of wireless E911 in a geographic area is a very challenging undertaking because of the number of entities involved and the complexity of both their technical and operational interrelationships.”⁸ Yet as amended by *Richardson*, Section 20.18(j) overlooks the dependence of the various entities upon each other for successful implementation. For example, the rule *presumes* that so long as a PSAP has made “a timely request to the appropriate local exchange carrier for the necessary trunking and other facilities,” those facilities will be timely provisioned and the PSAP accordingly will be “capable of receiving and utilizing” the data when the carrier’s obligation becomes due. Frequently, this is simply not the case because the Commission has not imposed timetables on the LECs for their provisioning of E911-related services and facilities. Similarly, although the rule requires a PSAP to demonstrate that it has a “commitment” from suppliers that CPE will be installed and operational within the six-month period, that commitment may not be fulfilled.

As discussed herein, T-Mobile has encountered difficulty fully implementing requests for E911 service in a variety of situations. Accordingly, T-Mobile urges the Commission to clarify that a broader concept of equitable tolling applies where completion of the implementation of a request is delayed due to matters beyond the carrier’s control.

⁴ *Richardson*, 11 FCC Rcd at 18684; *See also* 47 C.F.R. § 20.18(j).

⁵ *Richardson* at Appendix B; 47 U.S.C. 20.18(j). In addition, a funding mechanism must be in place whereby the PSAP will recover its costs incurred in acquiring necessary facilities and equipment. That requirement is not at issue here.

⁶ *See* 47 C.F.R. §§ 20.18(d)(1), (f), (g)(2).

⁷ For example, after a PSAP makes an initial valid request within the meaning of *Richardson*, the PSAP and LEC must upgrade the facilities on the PSAP’s side of the demarcation point. In addition, the PSAP must provide all necessary information -- such as selective router location and routing instructions -- in a timely manner in order for deployments to be completed within the rule’s six-month implementation period. Additional implementation steps, such as testing, usually require the cooperation of the wireless carrier, PSAP and LEC, to facilitate scheduling.

⁸ Dale N. Hatfield, *Report on Technical and Operational Issues Impacting The Provision of Wireless Enhanced 911 Services*, WT Dkt. No. 02-46, filed October 15, 2002, at 23-24.

The Commission must recognize the reality of E911 implementation -- that the six-month implementation period is extremely tight and depends upon prompt action by all implementing parties (wireless carrier, PSAP and LEC) at all stages of the process, and not just the initial actions of the PSAP. If any of the implementing parties does not complete its responsibilities in a timely manner at the proper stage in the implementation, a request most likely cannot be completed within six months. The Commission's orders, however, have generally assumed that parties other than the wireless carriers carry out their responsibilities in a prompt and timely manner once the PSAP makes its initial request, and thus have not addressed what happens when the LEC or the PSAP fails to do so. Neither the Commission's current orders nor Section 20.18(j) considers how subsequent actions by a PSAP or developments on the PSAP's side of the demarcation point involving the LEC may affect the validity or feasibility of fulfilling an earlier request. As an example, in *Richardson*, the Commission specified certain information that the PSAP must provide to the wireless carrier to show that it had made a valid request. Yet it imposed no time deadline on the PSAP for supplying its documentation, and further failed to indicate the wireless carrier's responsibilities when the requested *Richardson* documentation is not supplied, or is only partly supplied, by the PSAP.

There is no evidence to support the assumption that LECs and PSAPs always act in a timely manner. Indeed, T-Mobile has found it extremely challenging to obtain sufficient information from PSAPs in response to *Richardson* requests. PSAPs are often reluctant to provide the documentation of CPE purchases or upgrade orders, or may be uncertain as to what should be provided. The result is that T-Mobile initiates implementation -- and incurs substantial costs such as for trunking facilities -- only to learn subsequently that there is an issue as to the validity of the request.

Even when T-Mobile does promptly receive information from a PSAP indicating compliance with *Richardson*, there are frequently subsequent delays attributable to the PSAP, which often are longer than the allotted six months for implementation. For example, T-Mobile has in several instances received an explicit request from a PSAP to delay or indefinitely place on hold an earlier request for service. More commonly, a PSAP might later inform a carrier of a problem with deployment on its end -- funding or CPE delays, for example -- that renders completion of the request impossible. PSAPs also do not always promptly return requests for selective router information or routing instructions, both of which are necessary to complete an E911 deployment. This does not mean that the original requests were made in bad faith. Rather, and quite understandably, many PSAPs simply do not anticipate the technical complexity or costs of implementing E911 when they request service. But simply making a request is straightforward enough, and for some PSAPs only after they initiate a request do technical or funding challenges become fully apparent.

Another common scenario involves delays in PSAP readiness caused by the LEC. The Commission is well aware of LEC delays in updating the ALI database to the E2 interface, which is necessary for Phase II deployment.⁹ A recent ruling by the Wireless Telecommunications Bureau¹⁰ -- clarifying that costs incurred for the E2 upgrade to the ALI database are the responsibility of the PSAP -

⁹ The E2 interface is part of the J-STD-036 specification for Phase II.

¹⁰ Letter from Thomas J. Sugrue to Katherine B. Levitz, Luisa Lancetti and John T. Scott, III, CC Docket 94-102, October 28, 2002.

- should mitigate some of these delays but will not resolve them entirely. In fact, many PSAPs may decide to withdraw their requests or delay making a request until the financial impact of these necessary upgrades are determined and funded in their operating budgets. In other cases, LECs have refused to turn up service until the PSAP enters into a service agreement with the LEC or until the state regulatory commission approves a new tariff for E911 service. One major LEC has imposed its own requirements as to what it believes constitutes a “valid request” from the PSAP. In T-Mobile's experience, Qwest, SBC's Ameritech region and BellSouth are not yet routinely activating upgraded E2 services on the PSAP side of the demarcation point to support the ALI database.¹¹

Technically these requests are “invalid” within the meaning of section 20.18(j) because the PSAP is not “capable of receiving and utilizing the data elements associated with the service.” Clearly, however, it would not in every case serve the purpose of the rules or the public interest to put the wireless carrier in the position of declaring these requests to be invalid, and require the PSAP to re-file once the problem has been resolved. Declaring a PSAP's request to be invalid harms the relationship between the wireless carrier and the PSAP, especially when inability to receive and utilize the data is attributable to the actions of the LEC rather than the PSAP. But it is also not equitable to hold the wireless carrier liable for failure to deliver service within six months in these instances. The solution is to give the wireless carrier the option of declaring the request to be invalid (in which case there would need to be a new request), or having the six-month implementation period tolled until the condition causing the request to be invalid is cured. Of course, the wireless carrier will need a reasonable period within which to complete the deployment once it has been informed that the condition has been cured.

Thus a major failing of the rule as written is that it could be read to impose strict liability on the wireless carrier to deliver service within the six month timeframe, with no acknowledgment of the reality that even after the request and the initial validity showings are made, at least three separate parties – the carrier, the PSAP, and the serving LEC – all have interrelated responsibilities that must be met before service can be delivered. It would be wholly arbitrary and capricious to interpret the Commission's rules to hold a wireless carrier liable for essential preconditions beyond its control.

Accordingly, T-Mobile requests that the Commission clarify that where a carrier's ability to fulfill a PSAP request is impeded by the PSAP or a LEC or other party acting on behalf of a PSAP, equitable tolling will apply, and the wireless carrier will be allowed a sufficient amount of time to complete its implementation once the condition impeding the carrier's ability to implement the PSAP's request is removed. Within the context of delays attributable to CPE and ALI database upgrades, Sprint has proposed that the wireless carrier would be allowed a minimum of 120 days after the PSAP is “capable of receiving and utilizing the data elements” in order to provide the E911 service. Where equitable tolling occurs, T-Mobile believes that a 120-day period to complete a request will often, but not always, be sufficient. Any clarification of the rule should acknowledge that some implementations may require additional time, especially those implementations which require the development, testing and deployment of unique solutions to accommodate legacy LEC and PSAP equipment. In addition, the Commission should acknowledge that a request may be affected by multiple or sequential delays that are

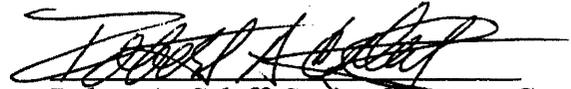
¹¹ Although there are some pilot or trial activations, these limited activations do not mean that ALI database service has been upgraded for all PSAPs served by a particular LEC.

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not attributable to the carrier. Finally, equitable tolling must be recognized for both Phase I and Phase II requests.

In accordance with Section 1.1206(b)(1) of the Commission's rules, a copy of this letter is being filed in the above-captioned docket.

Respectfully submitted,



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