

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

In the Matter of)	
)	
Petition for Forbearance from E911)	WT Docket 02-377
Accuracy Standards Imposed on)	
Tier III Carriers)	

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”) hereby comment on the captioned petition, filed November 20, 2002 by a “Tier III Coalition” of wireless carriers (“TierIII Co”).¹ The petition asks the FCC to forbear from applying the wireless E9-1-1 Phase II accuracy requirements of Sections 20.18(h)(1) and (2) of the Rules to Tier III wireless carriers until after December 31, 2005, the present end date for full compliance. The petition (at 2) specifies that if granted:

Tier III carriers will continue their efforts to implement Phase II E911 service and comply with the deadlines set forth in Section 20.18(f) and (g) . . . Forbearance from application of Section 20.18(h) means only that Tier III carriers will be insulated from enforcement action if . . . they are unable to achieve the precise accuracy levels now dictated by Section 20.18(h).

The form and extent of the relief sought are not justified by the petition as submitted and it should not be granted.

¹ Public Notice, DA 02-3470, December 17, 2002.

Background

From the adoption of the wireless E9-1-1 rules more than six years ago, the FCC has recognized that special circumstances might justify waiver of the regulations -- including the accuracy and reliability standards.² Waivers recently granted have incorporated temporarily relaxed standards.³ Where the public interest in permanent alteration could be demonstrated, these standards have been revised.⁴ Most recently, Tier II and Tier III carriers were granted essentially blanket extensions of time to comply with the Phase II requirements.⁵ To the extent the Commission determines that meeting accuracy requirements may pose special challenges for some Tier III carriers, we believe that those situations should be addressed on a case-by-case waiver approach.

I. The relief sought is vastly overstated.

The petition asks forbearance for all Tier III carriers without regard to the urban, suburban, rural or mixed nature of their service areas. Piling on excess, TierIII Co invites Tier I national providers and Tier II carriers to seek the same relief. (Petition, note 2) Plainly, the evidence of rural difficulties does not support the broad forbearance requested. For that matter,

² Report and Order, 11 FCC Rcd 18676, 18718 (1996) (“We agree that there may be exceptional circumstances where deployment of E911 may not be technically or economically feasible within the five-year general deadline. We believe that these cases can be dealt with through individual waivers.”)

³ The accepted tradeoff of accuracy for speed in the “NSS” deployment by VoiceStream (now T-Mobile), Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17462 (2000), was followed in other national carrier waivers that permitted an intermediate location accuracy falling between Phase I and Phase II requirements.

⁴ Fourth Memorandum Opinion and Order, note 3, *supra*.

⁵ Order to Stay, FCC 02-210, released July 26, 2002. Tier II carriers are larger regional providers with at least 500,001 subscribers on 12/31/01. Tier III carriers likewise are classified by number of subscribers (500,000 or fewer). As discussed below, the categories are not based on the urban or rural characteristics of the Tier II and Tier III service areas.

there is no attempt to define “rural.” Altogether, these gaps and ambiguities threaten to open floodgates that would wash away the Phase II regulations.

Reserving the objections detailed below, if forbearance or any similar form of blanket relief were to be contemplated, it should only apply to a class of beneficiaries matched to the record. That class surely is much smaller than all Tier III carriers, and there is no evidence it should extend to Tier I and Tier II providers.

II. Forbearance was not meant for and is not suited to the problem described.

The petition (at 11) is remarkably frank about its choice of a forbearance remedy: “The legal hurdle faced by the forbearance petitioner under Section 10 is, therefore, considerably lower than that faced by the waiver petitioner under Section 1.925.” Without accepting that characterization,⁶ we are not persuaded that the road to accurate caller location should be the path of least resistance.

The first prong of the forbearance test is largely irrelevant. The personal wireless services at issue here are not subject to rate regulation and the terms of service are regulated only lightly, if at all. Similarly, there seems to be little connection, and TierIII Co makes no effort to demonstrate a link, to competitive conditions in commercial radio with or without the accuracy requirements. If anything, Section 20.18(h) provides a useful comparison of carriers’ delivery of a lifesaving service. The suspension of the regulation would seem to detract from competition. The third prong, we believe, militates against forbearance. It would be difficult for the Commission to conclude, on this record, that “enforcement of such regulation or provision is not necessary for the protection of consumers.” 47 U.S.C. §160(a)(2).

⁶ The fundamental legal question in both forms of relief is whether the rule, or some substitute for the rule, better serves the public interest.

TierIII Co submits the sheer speculation that “cost is as important as accuracy in evaluating the contributions that wireless E911, in general, and Phase II E911, in particular, make to public safety.” (Petition, 16) The petition raises the specter that Phase II deployment to meet the Section 20.18(h) requirements will become so expensive as to make personal wireless service unaffordable to rural consumers. That would not be a desirable outcome, but neither is it acceptable for public safety to consume hours or days of search time looking for callers lost in snowstorms, hidden in snowbanks, stranded on thickly-forested mountains or flung into ravines or canyons. And these prospects, of course, are even less acceptable to the victims and their families.

Throughout the petition runs the assumption that refined location determinations are less important in rural areas than in urban or suburban locales. The assumption is unfounded. Each urban, suburban or rural environment presents a set of location challenges unique to the time and circumstances of the single call.⁷ Better to have a single accuracy standard that approximates reasonable search times for all environments than to delude ourselves that a single variable of, say, population density can be a realistic basis for separate urban, suburban and rural standards.

TierIII Co implies (Petition, 40) that the Third Report and Order, in its revision of accuracy and reliability standards, set rural areas apart by establishing an “outer ring” of 300-meter (95%) network solution accuracy. That is not so. The standard remains unitary. The 95% solution is a complement to, not separate from, the 67% solution. It allows for the probability in all areas, but especially rural locales, “that network-based solutions may not always be able to provide the higher [100-meter] level of accuracy.” 14 FCC Rcd 17388, 17421 (1999).

⁷ For example, rural areas encompass both open prairies and dense woods. Furthermore, even in wide open spaces, night hours (when most emergencies occur) create unique challenges in locating callers, especially in remote, rural areas.

III. TierIII Co's plan lacks incentives for improved accuracy.

The simple proposition in the petition goes something like this: Let the Tier III carriers (and any others with rural environments) obtain whatever level of accuracy they can based on their existing sites; and let that self-generated requirement continue for the next three years; and after 2005, let's see whether the state of technology allows some stricter requirement. It is not clear what would be expected between the end of 2005 and the later point of decision on some new accuracy standard. We don't see much incentive for improvement in that scenario.

Addition of sites might or might not occur. But even if systems were to expand in this way, there are no associated benchmarks of improved accuracy that would accompany the growth.

Another theme of the petition is that wireless E9-1-1 should not compel the addition of sites or improvement of antennas beyond the carrier's commercial needs. TierIII Co attempts to enlist the vendor, TruePosition, and Dale Hatfield in support of this claim. We understand and can appreciate the vendor's comments -- dating from two and a half years ago -- about the speed and economy of rolling out quasi-Phase II systems on a "1-to-1 overlay scenario."⁸ TruePosition in the year 2000 hardly wanted to scare away purchasers by proposing massive system expansions at the start. But the vendor also said this:

In the future, the natural development of CMRS networks will lead to improvements in location accuracy. For example, the number of cell sites nationwide continues to grow dramatically. This increases cell site density which directly affects location processing. Moreover, cell sites are gradually being converted from omnidirectional antennas to sectored antennas. This increases the gain of the antennas in rural areas and can increase the number of cell sites available for location processing. *Id.*

⁸ Petition, Exhibit B, 3. In the same ex parte communication, TruePosition expresses confidence that the one-to-one overlay scenario can yield system accuracy of 250 meters 67 per cent of the time. TierIII Co does not, however, propose this standard as a substitute for the current 50-meter (handset)/100-meter (network) requirement.

This is a dynamic picture of location determination. We are disturbed by the static character of the TierIII Co proposal and its seeming lack of incentives for improvement.

The quotation from the Hatfield Report (Petition, 14) does not reflect its context. The author's preference "in some cases" for "additional flexibility rather than rigid rules" was preceded by the following:

I believe that recommendations regarding such a wholesale departure from the existing regulations are beyond the scope of my charter. I have focused my attention on technical and operational issues that have arisen -- or may arise -- within the current regulatory framework.⁹

Plainly, Dale Hatfield did not intend his report to be used to justify a wholesale retreat from Phase II accuracy requirements.

Of a piece with the static quality of the petition is a pronounced lack of imagination. TierIII Co cannot escape the fear that its members will spend millions of dollars on an unworkable solution, then be forced to come back for a waiver causing yet more expense. These numbers are not documented except in the special case of Ray County. (Petition, 21-22, and Appendix C) We strongly suspect that adding necessary cell sites or outboard antennas for improved E9-1-1 location accuracy would not approach, on average, the magnitude of the Ray County numbers. And we submit that there is nothing in the rules at Section 20.18 to suggest that a "1-to1 overlay scenario" is the limit of cost a carrier should assume to implement Phase II.

That said, we are not without sympathy for the plight of rural carriers whose subscriber base cannot support substantial and immediate system expansion. We wonder, however, whether there are not clusters of small systems throughout rural America where the costs of

⁹ Hatfield Report, 45, emphasis in original.

adding location-enhancing sites could be shared. We also suspect that, by comparison with two or three years ago, the numbers of successful rural deployments have grown to the point where Tier III Co can take advantage of that experience. No longer should any carrier be faced with rolling out Phase II “in the dark,” only to wake up at cut-over to find it does not work.

CONCLUSION

For the reasons discussed above, a blanket relaxation of accuracy standards for Tier III carriers is not justified, nor is forbearance the proper means of considering such relief. In meritorious individual cases, NENA, APCO and NASNA continue to support waivers of wireless E9-1-1 rules.

Respectfully submitted,

NENA, APCO AND NASNA

By _____

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Certificate of Service

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