

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

In the Matter of)	
)	
Revision of the Commission's Rules)	
To Ensure Compatibility with Enhanced)	
911 Emergency Calling Systems)	CC Docket No. 94-102
)	
T-Mobile USA, Inc. Amended Request)	
For Limited Modification of E911 Phase II)	
Implementation Plan)	

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Pursuant to section 1.115(d) of the Commission's rules,¹ T-Mobile USA, Inc. ("T-Mobile," formerly VoiceStream Wireless Corporation) submits this Reply to the Opposition to the Application for Review filed by the Association of Public Safety Communications Officials-International, Inc. ("APCO"), regarding the Wireless Telecommunications Bureau's summary dismissal of T-Mobile's *Amended Request for Limited Modification of E911 Phase II Implementation Plan*.²

APCO's *Opposition* ignores the legal issue squarely presented by the *Application for Review* – that the Bureau's dismissal of two of the three requested modifications, without addressing them, is prejudicial error requiring reversal by the Commission. Indeed, APCO concedes that T-Mobile's requests did not receive a substantive review.

¹ 47 C.F.R. § 1.115(d).

² *T-Mobile USA, Inc. Amended Request for Limited Modification of E911 Phase II Implementation Plan*, Order, CC Docket No. 94-102, DA 02-3451 (Wireless Telecommunications Bureau, rel. Dec. 13, 2002) ("*Order*"); *VoiceStream Wireless Corporation Amended Request for Limited Modification of E911 Phase II Implementation Plan*, CC Docket No. 94-102 (filed Feb. 28, 2002) ("*Amended Request*").

Rather, APCO suggests that the Commission may be excused from review when warranted to save time.³

Of course there is no “time-saving” exception to *WAIT Radio*’s requirement that waiver requests are “not subject to perfunctory treatment, but must be given a ‘hard look.’”⁴ Any such exception would eviscerate the principle “that an agency or commission must articulate with clarity and precision its findings and the reasons for its decisions.”⁵ At this point, T-Mobile is not arguing about refinements of clarity or precision in the Bureau’s reasoning -- *because it still does not know what that reasoning is.*

APCO further argues review is not warranted now because T-Mobile’s *Application for Review* is “intended only to further delay deployment of E911.”⁶ Setting aside the legally reversible error, this certainly is not the case. In fact, the portions of the *Amended Request* that were ignored and dismissed by the Bureau establish significant deployment benchmarks -- deployment of a network-based NSS solution nationwide, and approval of an E-OTD handset for commercial distribution by September 1, 2002 -- that T-Mobile *has subsequently satisfied in full.*

The Bureau’s dismissal is tantamount to a denial of T-Mobile’s request without review because the Bureau simultaneously referred the issue of T-Mobile’s compliance with its Phase II obligations “under its existing compliance plan” to the Enforcement

³ APCO supports dismissal of the Application for Review because granting the review would “divert[] significant resources to a discussion of the merits of T-Mobile’s waiver requests.” *Opposition* at 1-2.

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁵ *WAIT Radio*, 418 F.2d at 1156.

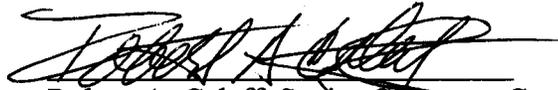
⁶ *Opposition* at 1.

Bureau “for possible enforcement action.”⁷ APCO suggests that T-Mobile’s actions pursuant to its *Amended Request* might be considered by the Enforcement Bureau “when it makes its penalty assessment for T-Mobile’s failure to comply.”⁸ Review at that stage still deprives T-Mobile of its right to a reasoned decision because it would be predicated upon an unspoken assumption that the *Amended Request* would have been denied, had it been reviewed.

T-Mobile is entitled to meaningful consideration of the modifications proposed, and a decision on the merits of the request.

Respectfully submitted,

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⁷ Order at ¶ 4.

⁸ Opposition at 4.

CERTIFICATE OF SERVICE

I, Karen R. Stephens, do hereby certify that a copy of the foregoing Reply to Opposition to Application for Review was served this 12th day of February 2003, via electronic transmission, upon the following parties:

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