

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

In the Matter of)	
)	CC Docket No. 94-102
Revision of the Commission's Rules to)	
Ensure Compatibility With Enhanced 911)	
Emergency Calling Systems)	
)	
Amendment of Parts 2 and 25 to Implement the)	IB Docket No. 99-67
Global Mobile Personal Communications by)	
Satellite (GMPCS) Memorandum of)	
Understanding and Arrangements; Petition of the)	
National Telecommunications and Information)	
Administration to Amend Part 25 of the)	
Commission's Rules to Establish Emissions)	
Limits for Mobile and Portable Earth Stations)	
Operating in the 1610-1660.5 MHz Band)	

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Lawrence R. Krevor
Laura L. Holloway
James Paull IV

Laura H. Phillips
Jason E. Friedrich

NEXTEL COMMUNICATIONS, INC.
2001 Edmund Halley Drive
Reston, Virginia 20191

DRINKER BIDDLE & REATH LLP
1500 K Street, N.W., Suite 1100
Washington, D.C. 20005-1209
(202) 842-8800

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Its Attorneys

SUMMARY

Before imposing E-911 obligations on emerging services and service providers, the Federal Communications Commission (“Commission” or “FCC”) must be mindful of and acknowledge the real costs and technical challenges associated with E-911 deployment. Indeed, extending E-911 obligations to additional types of services when the majority of Public Safety Answering Points (“PSAPs”) are not currently equipped to receive Phase II data associated with voice calls delivered from commercial mobile radio service (“CMRS”) carriers fails to advance the public interest in widespread E-911 availability. On the contrary, such a decision will create additional confusion, complexity and expense to an already overly expensive and inefficient deployment process.

Experience in CMRS Phase I and Phase II deployment demonstrates that many unrelated parties must work together to deliver even a single E-911 call – in addition to CMRS carriers and PSAPs, local exchange carriers (“LECs”), software and systems integrators, third party vendors, and equipment manufacturers are necessary predicates to achieving E-911 compliance. After extensive research and analysis, including interviews with all E-911 stakeholders, Dale Hatfield came to just this conclusion in his recent report commissioned by the FCC. Because achieving E-911 service is complex and can be highly nuanced, before considering extending the scope of its E-911 rules to additional services the Commission must first address the current problems plaguing CMRS E-911 implementation problems that often extend far beyond the reach of a wireless carrier. It can then take these lessons into account in requiring new entities and services to become E-911 compliant on a reasonable timetable.

One obvious area for improvement would be to require or at the very least to encourage the standardization of E-911 technical interfaces. Such efforts commonly are undertaken by

standards bodies, and standardization would create greater consistency in linking the disparate pieces of E-911 technology as well as lowering the cost of equipment and implementation for all parties. Another area for exploration is use of existing Commission statutory authority over wireless equipment manufacturers to make them full partners in the E-911 implementation process. Without question, wireless equipment manufacturers are critical to achieving E-911 implementation. Yet the Commission has not articulated any requirement that they provide E-911 compliant equipment.

Once these existing E-911 deployment issues are resolved, and it is reasonable to consider expanding E-911 obligations to other services, the Commission should use the set of criteria it proposed in the Further Notice of Proposed Rulemaking for determining whether an E-911 service obligation should be imposed on a service or service provider. While providing real time, voice services in connection with CMRS offerings is a strong indicator that E-911 service should be available, reasonable customer expectations should also play a role in the Commission's decision-making. However, the Commission should recognize its own role in setting customer expectations by carefully considering the implications of its proposal to expand the scope of E-911, and ensuring that its rules, and, thus, customer expectations, do not outpace the availability of technology.

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COMMENTS

Nextel Communications, Inc. (“Nextel”), by its attorneys, hereby submits comments on the E-911 Further Notice of Proposed Rulemaking (“FNPRM”) released by the Federal Communications Commission (“Commission” or “FCC”) that proposes criteria for expanding the scope of E-911 service obligations.¹ As one of six national wireless carriers with real world experience in providing both Phase I and Phase II E-911 service, Nextel is well positioned to provide perspective on the Commission’s proposals. Above all, Nextel requests that the

¹ Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911, Emergency Calling Systems; Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission’s Rules to Establish Emissions Limits for Mobile and Portable Earth Stations,

Commission refrain from injecting more regulation, more complexity and more cost into the E-911 equation until all necessary parties – both telecommunications and public safety – overcome the substantial hurdles they currently face in Phase II deployment.

I. INTRODUCTION.

The real world experience of E-911 development and implementation, both as experienced by mobile wireless carriers and as reflected in Dale Hatfield’s report to the Commission last fall,² provide an appropriate – and important – context for the issues framed in the FNPRM. The lesson of wireless carrier implementation of E-911 thus far is that regulatory requirements should not jump too far ahead of readily achievable technology. Ample time must be given to develop and implement cost effective E-911 solutions. As the Hatfield Report also noted, landline networks face modernization challenges to support and to keep up with the advances in location data delivery the Commission has dictated for commercial mobile radio services (“CMRS”) carriers. Similarly, Public Safety Answering Points (“PSAPs”) are typically unprepared for the technological advances of Phase II E-911.³ Further, standardized interfaces and flexible deployment timetables – not currently employed in Phase II – would translate into

(.continued)

Operating in the 1610-1660.5 MHz Band, *Further Notice of Proposed Rulemaking*, CC Docket 94-102, IB Docket 99-67, FCC 02-326 (rel. Dec. 20, 2002) (“FNPRM”).

² A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services, prepared for the Federal Communications Commission by Dale N. Hatfield (filed Oct. 15, 2002) (“Hatfield Report”).

³ *Id.* at 28-32.

more efficient deployment, as E-911 systems would become considerably less expensive to implement and to support.⁴

Nextel has been actively involved in E-911 issues for nearly a decade. Its experience and the experience of other wireless carriers, PSAPs, local exchange carriers (“LECs”) and vendors must be carefully reviewed and considered by the Commission in deciding how and when to move forward in this proceeding. For example, although originally included in the Commission’s rules, the Commission removed carriers’ right to explicit cost recovery for Phase II deployment due to its concern that explicit cost recovery might slow the roll out of Phase I and Phase II service.⁵ At about the same time the Commission specified the degree of location accuracy required for Phase II, although there was no technology available that could provide mobile call location to the degree of accuracy that the Commission specified.⁶ Despite this lack of available funding and the lack of available location technologies, the Commission stated its

⁴ As discussed herein, the Commission’s proposed criteria for evaluating whether and when to apply E-911 obligations to emerging communications services and applications are appropriate and necessary analytical tools. When services and applications become strong substitutes for real time voice communications, consumers may reasonably expect comparable E-911 service capabilities embedded in these offerings.

⁵ The Commission determined that the disputes and delays surrounding “the consideration and implementation of cost recovery mechanisms for carriers have become and will continue to be significant and unnecessary impediments to E911 implementation.” Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Second Memorandum Opinion and Order*, 14 FCC Rcd 20850, 20859 (1999).

⁶ Comments of Ericsson, Inc., CC Docket 94-102 (filed Sep. 25, 1996) (arguing that technology is not advancing fast enough to meet the Commission’s proposed location requirements); Comments of Motorola, Inc., CC Docket 94-102 (filed Mar. 4, 1996) (arguing that the proposed implementation schedule for automatic number identification is inconsistent with the current state of network technology); Comments of Nokia Telecommunications, Inc., CC Docket 94-102 (filed Sep. 25, 1996) (arguing that that automatic location information requirements are not realistic at this time).

belief that, over time, carriers and entrepreneurs could work together to achieve these ambitious benchmarks.⁷ Wireless carriers and manufacturers pursued a variety of promising technologies, including deployment of network-based, handset-based or hybrid technical solutions to achieve the Commission-established benchmarks for locating E-911 callers, but the Commission's deployment date ultimately had to be postponed on an industry-wide basis to accommodate the availability and deployment timelines of location technologies.⁸

Since the Commission waived its rules to provide Nextel, among other carriers, additional time to deploy, Nextel has achieved its first benchmark date of October 1, 2002, when it launched its first A-GPS capable handset, the i88s. In addition, Nextel, as detailed in its quarterly reports to the Commission, deployed and continues to deploy Phase II service to PSAPs throughout the country. The critical component of Nextel's most recent reports, however, is that complexities, costs and hurdles continue to plague efficient and orderly

⁷ Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Third Report and Order*, 14 FCC Rcd 17388 (1999).

⁸ Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by AT&T Wireless Services, Inc., *Order*, 16 FCC Rcd 18253 (2001); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless, LLC, *Order*, 16 FCC Rcd 18305 (2001); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Wireless E-911 Phase II Implementation Plan of Nextel Communications, Inc., *Order*, 16 FCC Rcd 18277 (2001); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS, *Order*, 16 FCC Rcd 18330 (2001); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Verizon Wireless, *Order*, 16 FCC Rcd 18364 (2001).

deployment of Phase II E-911.⁹ In considering expanded E-911 rules, the Commission must make every effort to not repeat the missteps of its Phase I and Phase II rules.

II. E-911 PRESENTS A DAUNTING TECHNICAL AND FINANCIAL CHALLENGE.

Before acting to expand the scope of its E-911 rules, the Commission should reflect on the lessons learned from CMRS carrier implementation of Phase I and Phase II E-911. No amount of pre-planning or preparation by a CMRS carrier can overcome an absence of the necessary technology or the implementation obstacles posed by an unready PSAP, by the inability of a LEC's network to support new trunking or data transmission demands, by a PSAP's or LEC's deployment of technology incompatible with the wireless carrier's, or by other issues such as the unavailability of necessary equipment. Nextel's initial Phase II deployment experiences, detailed in its quarterly reports, illustrate that unanticipated problems can surface and delay full implementation, even when all parties are working together to solve them.¹⁰ Establishing end-to-end connectivity raises myriad complexities as a number of network components, owned and operated by various parties, must be synchronized to hand off location data from network-to-network so it arrives at the PSAP in a manner that is usable by the PSAP. Any number of unexpected hurdles can rise, *e.g.*, incompatible trunking, other incompatible equipment, out-of-synch timers that do not hand off data properly, and software glitches. Laying all the onus and ultimate responsibility for E-911 success at the doorstep of the wireless carrier,

⁹ See Nextel Communications, Inc. Phase I and Phase II E-911 Quarterly Report, CC Docket No. 94-102, (filed Nov. 1, 2002); Nextel Communications, Inc. Phase I and Phase II E-911 Quarterly Report, CC Docket No. 94-102, (filed Feb. 1, 2003).

¹⁰ See, *e.g.*, Nextel Communications, Inc. Phase I and Phase II E-911 Quarterly Report, CC Docket No. 94-102, (filed Feb. 1, 2002; May 1, 2002; Aug. 1, 2002; Nov. 1, 2002; Feb. 1, 2003).

when the carrier is a critical, but not the only stakeholder in the overall equation, does not encourage a proper balance of incentives in the implementation process.

Another important lesson includes the rather obvious fact that, without uniform standards for basic interfaces, all parties are required to devote more time and resources to developing and testing several different E-911 solutions. Under present circumstances, each PSAP's infrastructure and technical solution may be different and require time and labor-intensive individual solutions to achieve the necessary data flow. Therefore, the Commission should encourage standardization of common network interfaces for E-911 service provision. The Hatfield Report, for example, noted the value of such standardization in the implementation process.¹¹

The current E-911 regime began as a consensus process with the public safety community.¹² Still, the implementation process turned out to be far more complex and costly than anyone could have foreseen at that time. The incredible technical disparities among PSAPs, and differing levels of interest and ability (*i.e.*, financial ability) to upgrade infrastructure, made and continue to make the task of E-911 Phase I implementation daunting. Phase II proved to be even more expensive for both PSAPs and carriers than originally forecasted.¹³ The lack of

¹¹ Hatfield Report at 34-37.

¹² Joint Filing by the Cellular Telecommunications and Internet Association, National Emergency Number Association, Association of Public-Safety Communications Officials, and National Association of State Nine One One Administrators, "Public Safety-Wireless Industry Consensus: Wireless Compatibility Issues," CC Docket 94-102 (filed Feb. 13, 1996).

¹³ Implementation of E-911 Service: Hearing Before the Senate Committee on Commerce, Science and Transportation, 107th Cong., (Oct. 16, 2001) (testimony of Thomas E. Wheeler, President and Chief Executive Officer for the Cellular Telecommunications and Internet Association) (citing the cost estimates to deploy Phase II technology to be approximately \$7.5 billion).

funding to support public safety, LEC and wireless carrier upgrades is a critical roadblock to further deployment. All of this, moreover, is the result of FCC rules that ignored these very realities and instead mandated technology decisions on carriers. This is most clearly evident in the FCC's requirement that carriers *force* new handsets into the hands of their users by December 31, 2005 – whether or not those customers want the new handsets. The potential cost of displacing millions of handsets with A-GPS handsets at a time when subscriber growth is flattening may prove cost prohibitive for carriers, including Nextel.¹⁴ Exacerbating the unreasonableness of these enormous costs is the fact that a large portion of the U.S. is unlikely to have the ability to make use of the Phase II data transmitted from these handsets, even at the end of 2005. Therefore, prematurely imposing these costs on carriers (and their customers), as the Commission already has done with its earlier Phase II deadlines, is not in the public interest and must be revisited.

Nextel is not alone in recognizing the complexities and unexpected problems associated with the deployment of E-911 services. 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”) recently observed in a letter to the Commission that “no rule can overcome the inherent uncertainties in the implementation process.”¹⁵

¹⁴While wireless subscriber was once as high as 50 percent annually, growth has slowed to 8.4 percent and is forecast to stay near that level through 2005. See Olga Kharif, *Waiting for Wireless Mergers*, BUS. WK. ONLINE, Oct. 11, 2002. See also Hatfield Report at 19.

¹⁵ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Letter from John R. Melcher, Thera Bradshaw and Evelyn Bailey to Marlene H. Dortch, CC Docket No. 94-102 (September 20, 2002).

Mr. Hatfield put it best when he observed:

deployment of wireless E-911 in the U.S. is an extremely complex undertaking and that a variety of critical technical and operational choices – including critical decisions relating to network architectures – must be made to ensure the reliable and seamless E-911 system contemplated by Congress when it passed the 911 Act. Because of the total number of stakeholders involved, the complexity of the inter-relationships among the stakeholders, and the incentives and constraints placed on those stakeholders, I conclude that an unusually high degree of coordination and cooperation among public and private entities will be required is that vision is to be realized.¹⁶

When considering whether to expand the scope of its current E-911 rules, the Commission should do what it can to facilitate better coordination among all stakeholders and, at the same time, avoid the adversarial process it created for Phase I and Phase II deployment. Indeed, it would be ill advised for the Commission to go blindly forward and extend its E-911 rules without coming to terms with the reality of the difficulties of Phase II deployment. It is incontrovertible that there are unique aspects surrounding the deployment of E-911 Phase II in each PSAP's area that are beyond the control of any wireless carrier; yet wireless carriers, are the only parties held responsible under the Commission's rules for meeting E-911 deadlines. It therefore typically falls to the wireless carrier to coordinate all of the stakeholders and ensure timely deployment of E-911 in each market implementation.¹⁷

¹⁶ Hatfield Report at 20-21.

¹⁷ As part of its reconsideration of its "Tier I" Phase II waiver orders, the FCC should make plain that it does not intend to impose strict liability standards on wireless carriers when they act in good faith to implement E-911 service. At this stage of E-911 deployment, it is obvious that E-911 is a collaborative process and that wireless carriers alone cannot reasonably be held solely responsible for E-911 compliance. *See* Joint Petition for Clarification and Partial Reconsideration of Nextel Communications, Inc. and Nextel Partners, Inc., 94-102 (filed Nov. 12, 2001).

There is a further under-appreciated aspect of E-911 implementation – that of managing customer expectations for E-911 service coverage and availability. Fundamentally, the FCC decision to impose location reporting responsibilities on CMRS carriers did not mean that consumers experienced any tangible, immediate benefits. Not only is a substantial amount of lead time required for even fast-tracked location technology to develop, but even when a CMRS network is upgraded and Phase II capable handsets are commercially available, consumers do not benefit from these enormously expensive investments if the PSAP or the LEC cannot transmit and receive the location information. For CMRS carriers that ultimately must recover the cost of deployment from their customers, this had led to customer dissatisfaction; consumers paying for E-911 deployment via their wireless bills do not necessarily have wireless E-911 available to them.¹⁸ Because E-911 capability is so tied to the individual PSAP’s readiness to use location data, the mismatch between the costs of the service and its availability creates a problem the Commission should carefully consider before it moves forward in this proceeding.

III. THE COMMISSION SHOULD FACILITATE EFFICIENT AND TIMELY DEPLOYMENT.

As recognized by the Commission and CMRS carriers, the readiness and capability of PSAP infrastructure plays a pivotal role in successfully deploying E-911. Without certain upgrades being made to the infrastructure of PSAPs, the goal of ubiquitous deployment of E-911 service will remain elusive. The Hatfield Report also recognized this critical hurdle.¹⁹ Hatfield

¹⁸ In some cases, carriers have collected funds from subscribers earmarked for PSAP E-911 needs that have been diverted elsewhere. In California, for example, \$53 million of the \$70 million earmarked for wireless emergency services was redirected to the general emergency fund. Paul Davidson, *Enhanced 911 Calls Still Far From Wide Coverage*, USA TODAY, OCT. 25, 2002, 1B.

¹⁹ Hatfield Report at 29.

noted that in many cases a PSAP may not have the funding or the technical wherewithal to deploy Phase II service. End-to-end standards for all stakeholders should be adopted to expedite the deployment of current CMRS Phase II deployment, while also assisting with future E-911 deployment on other network or service application platforms. Without pre-established end-to-end feature set standards for each of the various wireless technologies (*i.e.*, GSM, TDMA, CDMA, iDEN) coordination of technical and operational issues, review of LEC and PSAP readiness issues, and accommodation of new requirements and future technologies, the goal of ubiquitous E-911 deployment is virtually impossible. **Indeed, extending E-911 obligations to additional types of services when PSAPs are still not currently equipped to receive Phase II data associated with voice calls delivered from CMRS carriers fails to advance the public interest in widespread E-911 availability. On the contrary, such a decision will create additional confusion, complexity and expense to an already overly expensive and inefficient deployment process.**

The lack of end-to-end standards has added exponentially to both the expense and the difficulty of CMRS carrier deployment of E-911 Phase II. As the Hatfield Report explained, every unstable or non-standard element in this process adds to the potential for cost and delay.²⁰ This not only makes E-911 more expensive for CMRS carriers, but also prolongs the unavailability of E-911 services to the public. PSAPs, wireless carriers and ultimately the public would benefit if a greater degree of consistency and standardization were introduced to the end-to-end implementation process. Such standardization also would assist in any future E-911 deployment on other networks or service platforms. Thus, if the Commission decides to extend

²⁰ Hatfield Report at 26-28.

the reach of its E-911 rules, it should first carefully consider the technical capabilities (and upgrade potential) of **all** involved parties and then encourages within appropriate and reasonable necessary deployment timeframes, standardization and availability of common interfaces to assist the deployment of E-911 for new technologies and new applications.²¹

IV. EQUIPMENT MANUFACTURERS SHOULD BECOME FULL PARTNERS IN ACHIEVING E-911 GOALS.

The critical role manufacturers play in E-911 development and deployment requires that the Commission impose its E-911 obligations equally on manufacturers and carriers, both wireline and wireless. The Commission has ample legal authority to assert such jurisdiction over wireless equipment manufacturers through both specific and general grants of authority from Congress. As the Commission recognizes, Section 255 of the Communications Act requires that customer premises equipment (“CPE”) be accessible and usable by persons with disabilities.²² Specifically, Section 255(b) holds manufacturers of telecommunications equipment or CPE accountable for ensuring that equipment is designed, developed and fabricated to be accessible and usable by individuals with disabilities, if that is readily achievable. This specific congressional direction to the Commission for the benefit of persons with disabilities provides the Commission with the authority to ensure that all users of telecommunications services should receive the benefits of accessibility, including accessibility of E-911 location services.

²¹ Internationally, the European Telecommunications Standards Institute is developing specifications to support location services compatible with the Global System for Mobile Communications. See Ashton Applewhite, *What Knows Where You Are*, available at http://dsonline.computer.org/0212/d/b4news_print.htm (last visited Feb. 3, 2003).

²² 47 U.S.C. § 255(b).

In addition, Congress granted the Commission the authority to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”²³ The Commission already has used this authority to require handset manufacturers to incorporate procedures into the handset to recognize when a 911 call is made and not prevent that call from being transmitted by another carrier.²⁴ The Commission, therefore, should ensure that wireless equipment manufacturers are under a specific obligation to produce and make available sufficient supplies of E-911 Phase II compliant equipment on a timetable consonant with Commission requirements.

In the event that the Commission applies its E-911 rules to additional services, service providers and even service applications where there is no traditional “carrier” on whom the Commission can impose an E-911 service obligation, equipment manufacturers will play an even more critical role in E-911 deployment than they do today. Indeed, it is conceivable that some applications will execute over unregulated networks such as the Internet. In that instance, the Commission would have to impose an obligation for E-911 accessibility on the manufacturer if it wants users to have any E-911 capability.

Establishing a responsibility for wireless equipment manufacturers to provide E-911 compliant equipment also will assist in ensuring that resellers and providers of other services that ride on CMRS networks, *e.g.*, telematics, can meet their own E-911 obligations. Individually, smaller service providers argue that they lack sufficient influence over their equipment

²³ 47 U.S.C. § 154(i).

²⁴ Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Second Report and Order*, 14 FCC Rcd 10954 (1999).

manufacturers to require them to supply compliant phones.²⁵ Putting an independent obligation on manufacturers should assist in solving this dilemma.

V. SERVICES THAT DIRECTLY COMPETE WITH CMRS SHOULD HAVE E-911 SERVICE CAPABILITY.

The Commission queries in this proceeding what criteria should be used to judge the ripeness of a service or service application for similar E-911 obligations. It suggests several criteria for determining whether it should impose E-911 obligations on additional service providers – (i) whether the service offers a real-time, two way voice service and (ii) whether the customers using the service have a reasonable expectation of access to E-911 services.²⁶ By and large these appear to be appropriate factors for the Commission to use in developing triggers for E-911 service obligations, although consumer expectations are, in many cases, influenced by actions of the Commission. Therefore, the Commission must take great care in setting customer expectations about the capabilities of carriers and the availability of E-911 service or non-traditional services.

The implementation of E-911 requires devoting significant amounts of financial resources as well as technical expertise.²⁷ In the case of CMRS carriers, the regulatory requirement for deploying E-911 location-based technology and the PSAP-by-PSAP implementation approach adopted by the Commission was only one form of E-911 location

²⁵ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Order to Stay*, 17 FCC Rcd 14841 (2002).

²⁶ FNPRM at ¶13.

²⁷ In fact, one research firm concluded although the market for location-based technology would be significant, the actual financial potential of that market will be quite small. They predicted that wireless carriers were unlikely to reach break-even on their investment in location-based technology for E-911 before the end of this decade. *Communications Daily*, Nov. 19, 2002.

applied technology. As the FNPRM observes, there are other more rudimentary forms of E-911 service provided today by Mobile Satellite operators and telematics providers, for example. As a general matter, any wireless service that competes directly with voice-only CMRS services will likely satisfy the Commission's proposed criteria for implementing E-911 and rightly should deliver to users the same E-911 capabilities. Permitting discriminatory treatment among providers of competing services – as the Commission has already done improperly by dividing the CMRS industry into three classes or tiers of service providers – is a violation of Congress' regulatory parity requirements and, thus, cannot be upheld.²⁸ Commission rules regarding E-911 should not afford any competitor financial or other competitive advantages over others without a reasonable, specific justification for that disparate treatment.²⁹ In other words, Nextel recognizes that carriers may justifiably need relief from certain E-911 benchmarks and such relief should be granted where warranted. However, a Commission decision to treat an entire block of competitors, whether resellers, telematics providers or rural CMRS carriers, differently promotes insupportable and unjustified regulatory disparity.

A. As Carriers, Wireless Resellers Should Have Independent E-911 Obligations.

The Commission seeks comment on extending its E-911 rules to explicitly cover wireless resellers.³⁰ Given the structure of the resale market, resellers of CMRS service that provide CMRS service themselves should not have an independent obligation to provide E-911 services.

²⁸ See Comments of Nextel Communications, Inc., CC Docket 94-102 (filed Oct. 16, 2002); See also Joint Petition for Clarification and Partial Reconsideration of Nextel Communications, Inc. and Nextel Partners, Inc, CC Docket 94-102 (filed Nov. 13, 2001).

²⁹ With the passage of revised section 332, Congress sought to achieve regulatory parity among services that were substantially similar. H.R. Rep. No. 103-111, at 548.

³⁰ FNPRM at ¶92-97.

While they may have no control over the underlying network of the CMRS carriers from whom they resell, many resellers sell their own handsets and activate their own customers. It would promote the widespread availability of Phase II E-911 if these resellers actually had an independent obligation to provide these services. For example, if the underlying carrier is deploying a handset-based solution with FCC benchmarks and timetables associated with it, then a reseller's compliance or non-compliance with applicable deadlines should be its own and not count for or against that of the underlying carrier.³¹

B. The Commission Should Establish Reasonable Timeframes Within Which Telematics Should Comply With E-911 Rules.

The market for telematics services exists because callers want, among other things, *direct* access to emergency service personnel. Generally, emergency calls from telematics device are first routed to a national call center where, in the case of OnStar, for example, a General Motors operator at the call center contacts local emergency personnel.³² The centralized nature of today's telematics processing of emergency calls may adversely affect the time it takes to get help to the scene of an emergency. This time could easily be saved if such calls were routed directly to local PSAP personnel, as is the case with both Phase I and Phase II E-911 today.³³

³¹ Any commercial issues regarding the provision of E-911 service support between the network provider and the reseller could be addressed as part of a resale services contract.

³² See Ex Parte Submission of OnStar Corporation at 2, 94-102 (filed Dec. 3, 2002) ("OnStar Petition"); FNPRM at ¶¶61-62.

³³ Nextel reiterates that the Commission must carefully consider, prior to imposing any specific obligations, whether there are any unique technological issues raised in transmitting calls from a telematics device directly to a PSAP.

Moreover, telematics service such as that offered by OnStar, include a prepaid wireless offering that transmits CMRS voice calls like any other CMRS service.³⁴ Because the telematics operator is transmitting the call on the network of a CMRS carrier that has E-911 capability, there is no reason that the telematics provider should be under any less of an E-911 service provision obligation than is a CMRS reseller. OnStar appears to concede this point in recent comments to the Commission where it stated that some of its services are currently Phase I compliant and that it plans to launch Phase II capability in 2006.³⁵ As in the resale situation, the underlying CMRS carrier and the telematics provider can negotiate a commercial contract that provides the telematics service with the benefits of the CMRS provider's local access to individual PSAPs. Therefore, the Commission should consider expanding its E-911 rules to encompass telematics, and given that at least one telematics provider, OnStar, has suggested a reasonable date for compliance, the Commission should be careful not to inject uneconomic, inefficient obligations on these providers, given the lessons learned in CMRS Phase I and Phase II.

C. The Commission Must Clarify Its Definition of Disposable Phones.

The Commission also seeks comment on whether disposable phones should have E-911 obligations.³⁶ The Commission defines disposable phones as “low cost and either recyclable,

³⁴ Onstar Petition at 4.

³⁵ OnStar stated that it, along with its vendors and service suppliers, is “continuing to work towards a fully compliant Phase II solution and are planning to phase-in such a solution beginning no later than 2006.” See Reply Comments of OnStar Corporation, CC Docket 94-102 (filed Feb. 2, 2002) at 4.

³⁶ FNPRM at ¶103-106.

rechargeable or disposable once the allotted air time is used.”³⁷ This rather loose definition could encompass a wide number of phones provided by an array of potential parties. There may well be a market for single-use non-rechargeable cheap phones, and regulations should not artificially prevent their deployment. However, before it can determine whether its rules would preclude the sale of such phones, the Commission must clarify and narrow its definition of disposable phones. Such a clarification is critical because without it, a potentially large loophole in E-911 obligations would be created. The Commission ought to avoid creating perverse incentives for parties to meet the definition of a disposable phone simply to avoid costly E-911 obligations. While this plainly is not what the Commission intends, any mobile phone exception should be tightly drawn so that the public is not deprived of E-911 service on the preponderance of mobile phones.³⁸

D. There is No Urgent Need for E-911 Obligations on Pure Wireless Data Provision.

As the Commission appears to recognize, there is no immediate need to reformulate the way all services are currently provided if they do not directly compete with voice-only CMRS service. Today, pure wireless data providers generally do not compete with wireless carriers; rather, their services are complementary. Moreover, there is no evidence that PSAPs, LECs or other necessary third parties have the ability to transmit, receive and use E-911 information on pure data networks. Because these parties are today still bringing their networks into Phase II

³⁷ *Id.* at Para. ¶104.

³⁸ Indeed, such an exception for “disposable” phones might allow resellers or others not currently subject to E-911 service obligations to activate phones on CMRS carrier networks that count against the CMRS carrier’s handset compliance quota. Thus, the Commission should be extremely cautious in its service definitions and exclusions.

compliance, it would be premature to consider raising the bar even higher by extending the obligation to wireless data services. Thus, specific E-911 obligations need not be imposed on data services at this time. Nextel believes that all the stakeholders, as well as the Commission, would more profitably address current efforts towards improving the prospects for successful Phase II deployment on CMRS networks.

VI. CONCLUSION

Nextel has worked diligently to implement E-911 services in response to the FCC's mandates and to individual PSAP service requests. The Commission should not take the next step in E-911 availability in a vacuum; it must consider whether changes in its approach could assist carriers in meeting the challenges faced in implementing E-911. There are obvious modifications in the rules that would provide assistance to CMRS carriers struggling to implement E-911 that should be adopted before the Commission extends the reach of its rules to

new services and service applications. Once these issues are resolved, however, the Commission should apply its proposed criteria for determining the scope of E-911 service obligations, and carefully consider the technological implications of any new expanded service rules it proposes to adopt.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

/s/ Laura H. Phillips

Laura H. Phillips
Jason E. Friedrich

DRINKER BIDDLE & REATH LLP

1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005-1209
(202) 842-8800

Its Attorneys

Lawrence R. Krevor
Vice President, Government Affairs
Laura L. Holloway
Senior Director of Government Affairs
Jay Paull IV
Manager, Corporate Strategy

NEXTEL COMMUNICATIONS, INC.

2001 Edmund Halley Drive
Reston, VA 20191

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