

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Revision of the Commission's)
Rules to Ensure Compatibility) CC Docket No. 94-102
with Enhanced 911 Emergency)
Calling Systems)
)
Petition of City of Richardson, Texas)

To: The Commission

OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) and the National Emergency Number Association (“NENA”) hereby submit the following Opposition to the Petitions for Reconsideration filed by Cingular Wireless LLC (“Cingular”), T-Mobile USA, Inc. (“T-Mobile”), and Nextel Communications, Inc. (“Nextel”), on February 21, 2003, regarding the Commission’s *Order on Reconsideration*, FCC 02-318 (released November 26, 2002)(“*Richardson IP*”), in the above-captioned proceeding.¹

The Commission’s most recent decision on this matter represents at least the third answer to a seemingly simple question: What triggers a wireless carrier’s obligation to provide accurate E911 Phase II location information to a Public Safety Answering Point (“PSAP”)? Carriers need only provide Phase II data if requested by a PSAP, and only if the PSAP is or will be prepared to receive and utilize that data. The latest ruling adds specificity and provides the necessary balance to that requirement to ensure that carriers and PSAPs move forward *together*

¹ T-Mobile’s Petition actually was received February 24, 2003, after failed efforts to file on February 21st. See, letter of February 25, 2003, from Karen Gulick, Counsel to T-Mobile.

to implement Phase II at the earliest possible date.

We are dismayed that some carriers have found it necessary to challenge this simple rule once again, delaying Phase II deployment and diverting critical resources to regulatory and legal wrangling that would be far better spent on implementing wireless E911. Rather than accepting the rules and moving on, some carriers appear to have adopted a strategy of challenging every minute detail and requesting clarification to address every conceivable circumstance. The public safety community has moved past FCC rulemaking disputes and is focusing on making E911 a reality.² The carriers should do the same.

The petitions for reconsideration reflect a misguided view that carrier and PSAP deployment responsibilities should be sequential, rather than simultaneous. They would have PSAPs do everything necessary to receive and process Phase II data, and only then would carriers be obligated to fulfill their responsibilities. However, the underlying premise of the so-called “Richardson rule” is that all stakeholders must proceed *simultaneously*, not sequentially, towards Phase II deployment. If both parties are waiting for the other to move, nothing will happen, at least not within a reasonable time frame. Of course, there are some specific tasks for which certain actions by others parties are prerequisites. Yet, those should be the exception not the rule.

If we have learned anything about Phase I and Phase II implementation thus far, it is that unanticipated issues and problems arise in fitting general solutions to specific wireless carrier/9-1-1 service supplier (LEC)/PSAP configurations of hardware and software. Thus, the sooner the parties actually begin the concrete work of installation and testing, and put aside disputes over abstract generalities of readiness, the faster E9-1-1 deployment will occur.

² Illustrations of the move from litigation to implementation include APCO's Project Locate, NENA's Strategic Wireless Action Teams (SWAT) and ATIS' Emergency Services Interconnections Forum (ESIF).

The following addresses some of the specific rule changes and/or clarifications sought in each of the petitions for reconsideration.

T-Mobile

The T-Mobile Petition raises a series of proposed changes and clarifications to the *Richardson II* decision that, with a few exceptions, should be summarily rejected by the Commission. Most of the changes sought by T-Mobile would cause further delay of Phase II deployment (an issue which should be of particular concern to T-Mobile).

The *Richardson II* decision allows a carrier to suspend E911 deployment if it certifies that the PSAP is not ready to receive and process Phase II data six months after a valid Phase II request. Thereafter, once the PSAP is ready, the carrier has 90 days to resume and complete delivery of Phase II data to that PSAP. The Commission apparently felt that the 90-day period is necessary to allow time for carriers to re-deploy resources if necessary and complete final tasks.³ Importantly, up until certification, carriers are expected to take all necessary steps to deliver Phase II data within the six-month time frame.

T-Mobile argues in its Petition that carriers should have 90 days after PSAP readiness to complete delivery of Phase II data in all cases, regardless of when “PSAP readiness” occurs. In other words, the six-month (180-day) period in the rules would be extended anytime PSAP readiness occurs more than midway (90 days) through the six-month period. T-Mobile is simply trying to win an extra 90 days to do its job.

The Commission has never suggested that carriers should get, or need, 90 days after PSAP readiness to deliver Phase II data. To the contrary, the Commission has been firm that a valid, appropriately documented PSAP request starts a six month clock for the carrier to deliver.

³ On the record of the prior reconsideration petitions, Verizon Wireless had suggested 90 days, Sprint PCS 120 days.

The 90-day period added in *Richardson II* is solely for the situation where the PSAP is not in fact ready at the end of the six months, and reflects the difficulty of suspending and restarting deployment. That should not be the case when both parties are proceeding simultaneously to deploy E911, as the rules contemplate.

T-Mobile also suggests that a PSAP's failure to provide necessary information (such as selective routing information) to the carrier should constitute non-readiness. While we strongly encourage PSAPs to provide such information to carriers, T-Mobile's solution would complicate the rule and promote a "blame game" between the parties. The more appropriate solution is for a carrier's inability to deliver Phase II data because of a lack of cooperation from the PSAP to be treated in the same manner as any other impediment that may be beyond the carrier's control.

Similarly, T-Mobile's suggestion that certification not require completion "of implementation steps that would have to be redone after a PSAP is ready" adds unnecessary complications. The rule is clear that certification is contingent upon the carrier having "completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness." Absent an explicit statement from the PSAP that it will not be ready, a carrier should proceed with *all* such necessary steps and assume that it will indeed need to deliver Phase II data at the end of the six month period.

One of T-Mobile's suggested clarifications does have a degree of validity. T-Mobile requests that a carrier be permitted to serve notice of its intention to certify that the PSAP is not ready on the entity that made the original Phase II request on behalf of the relevant PSAP. As T-Mobile notes, in some cases a 911 district or state-wide 911 administrator may submit a single Phase II request on behalf of multiple PSAPs within its jurisdiction. Serving the notice on that

entity seems reasonable, assuming that the requesting entity is clearly acting on behalf of and with the concurrence of the underlying PSAPs.

The same reasonableness does not apply, however, to T-Mobile's complaint about there being opportunities for both a pre-filing and a post-filing objections to a carrier's proposed certification. The rules provide that a carrier intending to seek certification must notify the PSAP at least 21 days prior to the filing of a certification. The PSAP can then either concur with the carrier's assessment, or object and demonstrate that it is in fact "Phase II ready." The "post-filing objection" is different, insofar as any party (not just the PSAP) has an opportunity to challenge the validity of the certification.

In the same context, T-Mobile notes a discrepancy between the text of *Richardson II* order and the text of the rule adopted therein. Specifically, the text of the order, at ¶16, indicates that the notification to a PSAP of a carrier's intention to certify the PSAP's non-readiness must include "the text of the certification to be filed with the Commission." Unfortunately, the text of Section 20.18(j)(4)(i), does not include that requirement. Carriers should be required to include in the notice the text of their proposed certification, especially that portion which documents "the basis for the carrier's determination that the PSAP will not be ready."⁴ We are aware of at least one major carrier that appears to be sending blanket notices to all PSAPs without any specific documentation to support the carrier's assertion of non-readiness.

T-Mobile then shifts its concerns back to the initial part of the rule, governing the documentation PSAPs can be required to submit shortly after making a Phase II request. The rule adopted by the Commission allows for a tolling of the six-month period if the carrier asks

⁴ In the absence of such a clarification, the ability to submit post-filing objections will be especially important.

for documentation to support the validity of a PSAP's request within 15 days of the receipt of the request, and no response is received within 15 days

First, T-Mobile wants that tolling provision to apply to pending PSAP requests, not just to new requests. The Commission did make clear that the certification process applies to all PSAP requests, but did not make a similar statement with regard to the initial documentation and tolling provision. We have no objection applying the documentation and tolling rules to pending PSAP requests, but only if there is a specific guideline, *i.e.*, the ESIF "checklist", as to what constitutes sufficient documentation to support a valid PSAP Phase II request.⁵ The documentation requirement cannot become an arbitrary tool for carriers to delay Phase II deployment.

Second, T-Mobile requests that carriers be permitted to seek documentation at any time and that such a request, regardless of its timing, should toll the six-month period. Yet, T-Mobile provides no rational basis for such a rule change. Carriers have ample opportunity upon receipt of a Phase II request to seek documentation (which the FCC properly encourages that PSAPs provide as a matter of course with their requests). If such a request for documentation is timely (*i.e.*, within 15 days), then it is reasonable to toll the period. Thereafter, carriers should not be given the ability to tack additional time onto the six months merely by seeking documentation. If documentation is important to the carrier, then it should seek information at the outset and avoid delay.

T-Mobile also argues that it should have the unilateral ability to determine that PSAP documentation is "partial" or "insufficient" and toll the six-month period. That would be an invitation for abuse and, for some carriers, create an incentive to reject requests that fail to meet

⁵ www.atis.org/ESIF/Documents.

a self-interested definition of “complete” documentation. There do need to be guidelines for what constitutes adequate documentation, but it must not be up to carriers alone to establish those guidelines. Instead, as the Commission suggests, the parties should look to the ESIF “checklist” developed by representatives of both PSAPs and the wireless industry.

Finally, T-Mobile seeks clarification that tolling is permitted if the carrier cannot implement Phase II due to “third party implementation issues.” In particular, T-Mobile points to delays caused by a LEC or an ALI database provider. However, separate rules for these circumstances are unnecessary. First, to the extent that a delay caused by a LEC or database provider prevents a PSAP from being “Phase II ready”, the wireless carrier will be able to file a certification to that effect. Second, to the extent that other “third party” delays are present, the Commission has already indicated that it would consider such factors in accessing a carrier’s inability to meet the six-month deadline. That has been the Commission’s consistent approach to E911 deployment delays, and there is no reason to alter that approach here

Cingular

Cingular broadly attacks the *Richardson II* decision,⁶ but appears to rest much of its argument on a false assumption. Cingular claims that under *Richardson II*, “wireless carriers must deploy Phase II service even if it is clear that the PSAP *will not be capable* of receiving the information.” However, Cingular virtually ignores the first part of the rule, which requires PSAPs to document at the outset the steps they have taken to be ready within six months. Thus, a wireless carrier need not proceed if a PSAP has not ordered necessary CPE upgrades, has not ordered trunks and other facilities from the LEC, or has not established some form of cost recovery. Upon request, the PSAP must also document those steps.

⁶ Cingular’s redundant raising of the “notice” issue under the Administrative Procedure Act, 5 U.S.C. §553(b), makes this portion of its petition properly subject to dismissal as “repetitive” under Section 1.106(b)(3) of the Rules.

Cingular appears to be concerned that despite a valid, documented PSAP request, it may be “clear” that a PSAP will not in fact be ready within six months. The purpose of the certification process adopted in *Richardson II* is to excuse carriers from deploying in those circumstances, but not merely because of the carrier’s unchallenged assertions about PSAP readiness. The intent of the rule should be to ensure that all parties proceed simultaneously towards deployment as rapidly as possible, without waiting to see who moves first.

That being said, we have no objection to a PSAP acknowledging at any point that it will not be ready at the end of six months due to factors unanticipated at the time of its otherwise valid request (*e.g.*, delays caused by the LEC). The certification of PSAP non-readiness in those instances could be made well before 21 days prior to the end of the six month period. In essence, the PSAP would be consenting to being placed on hold in the carrier’s deployment schedule. However, under no circumstances should carriers be permitted to take unilateral steps to postpone deployment merely because of their perception of a PSAP’s non-readiness.

Cingular appears to be concerned that some PSAPs will refuse to acknowledge their inability to be “ready.” That may be due to a lack clarity as to what constitutes readiness, or to a lack of trust between some carriers and PSAPs. The need for clarity is being addressed by the ESIF readiness checklist and other standards, as noted by the Commission in its Order. However, the lack of trust can only be addressed through better communication and cooperation between carriers and PSAPs. Only by working together, and proceeding simultaneously, will E911 deployment become a reality. Efforts such as APCO’s Project Locate and NENA’s “SWAT” program can play a key role in educating PSAPs and encourage the building of trust and constructive working relationships between PSAPs and carriers.

Nextel

Nextel does not address specific issues related to the Richardson II decision. Instead, Nextel suggests that the Commission scrap the six-month rule altogether, and simply require carriers and PSAPs to work together in good faith to complete deployment as soon as possible. That might work in a perfect world, where all parties have common goals and incentives, unlimited access to resources, and no prior history of delay and seemingly endless regulatory debate.⁷ Unfortunately, despite the best efforts of many in the carrier and public safety community, such is not the case. For better or worse, specific Commission rules and firm enforcement are necessary for E911 to become a reality.

⁷ We prefer not to deal piecemeal with Nextel's proposals for scrapping deadlines, given that the company now has taken to the press to urge removal of the December, 2005 overall Phase II compliance end date. *Communications Daily*, March 18, 2003, 4-5.

CONCLUSION

The Commission needs to put the “Richardson issues” to rest and, with the minor exceptions noted above, reject the latest petitions for reconsideration from Cingular, T-Mobile and Nextel. The carriers, the PSAPs, the LECs and others need to move forward *together* to deploy E911.

Respectfully submitted,

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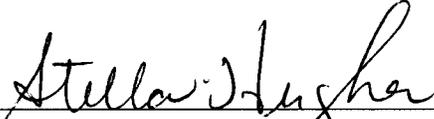
CERTIFICATE OF SERVICE

I, Stella Hughes, hereby certify that the foregoing "Opposition to Petitions for Reconsideration" was served this 24th day of March 2003, by first class mail, postage pre-paid, to the following at the addresses listed below:

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