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

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	CC Docket 94-102
to Ensure Compatibility with Enhanced	)	WT Docket 02-377
911 Emergency Calling Systems	)	

COMMENTS OF NENA, APCO AND NASNA
ON RURAL CARRIER WAIVER REQUESTS

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 several petitions for waiver of the FCC's Phase II enhanced 9-1-1 rules filed by smaller carriers serving predominantly rural areas. We have selected for discussion the following petitions because they appear to encompass the views of established trade associations or highly visible ad hoc groups that have been advocating Phase II relief for some time and in multiple forums:[1]

- Southern Illinois RSA Partnership, dba First Cellular of Southern Illinois, "Petition for Extension of the Implementation Schedule . . .", 8/26/03.
- Rural Telecommunications Group, "Petition for Waiver and Request for Temporary Limited Stay," 8/29/03.
- Tier III Coalition, "Petition for Forbearance from E9-1-1 Accuracy Standards Imposed on Tier III Carriers," 11/20/02.[2]

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[1] Two established trade associations or groups are the Rural Cellular Association ("RCA") and the Rural Telecommunications Group ("RTG"). Another combination is the "Tier III Coalition." Statements laying out their respective programs will be cited in the further discussion.

[2] Comment requested by Public Notice, DA 02-3470, December 17, 2002.

Background

Each of these associations or groups advocates relief from the Phase II implementation schedules established in the Commission's Stay Order of some 15 months ago.[3] For "Tier III" wireless carriers of 500,000 or fewer subscribers choosing a network-based location solution, the stay of the Phase II rules would apply for 13 to 25 months -- the first deadline to cover 50% of a requesting PSAP's coverage area or population, the second being the date to extend coverage to the entire area or population. For Tier III carriers choosing handset solutions, the benchmarks for handset penetration ranging from 25 to 95% were adjusted to fall between 2003 and 2005, but in no case to exceed the 12/31/05 completion date imposed on larger carriers.

Thus the Stay Order was a matter of schedule adjustment. It left in place the same accuracy standards applicable to Tier I and Tier II carriers. However, several months after the Stay Order, the Tier III Coalition submitted a specific request for indefinite relief from the Phase II accuracy standards.[4]

The multiple grounds on which NENA, APCO and NASNA opposed the request are on the record of WT Docket 02-377 and need not be repeated here.[5] Among them were the failure to distinguish and define the carriers in the Tier III class serving truly rural environments and the false premise that location accuracy is less important in rural than in urban or suburban areas.

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[3] Order to Stay, FCC 02-212, released July 26, 2002, ¶1 ("In this Order, we reluctantly and temporarily stay . . . the application of certain specific E911 Phase II deadlines set forth in section 20.18(f) and (g) of the Commission's rules . . .")

[4] The Coalition and its supporters insist that the relief is not indefinite but would terminate December 31, 2005. Letter of Caressa D. Bennett to FCC Secretary, July 11, 2003. We will take that as clarification of the original Petition, which implies (2, 42) that the period of forbearance should conclude with a "lower" and more "economically attainable" rural accuracy standard.

[5] Opposition of NENA, APCO and NASNA, January 24, 2003.

The Waiver Applications

With the arrival of the Tier III September 1, 2003 initial deadline for implementing Phase II in 50% of a requesting PSAP's area or population (network solution) or beginning the sale of handsets, waiver petitions have appeared on the FCC's doorstep like autumn leaves.[6] The theme of these requests, however, is not relief from accuracy standards but more time to implement Phase II's present requirements.

First Cellular. First Cellular is a member of RCA and is represented on RCA's Board of Directors. Although a Tier III carrier at this time, First Cellular could grow seven-fold into other markets and remain a Tier II member of RCA.[7] The carrier claims to be seeking a network solution which has been complicated by its current reliance on Motorola network equipment for its CDMA and analog offerings. First Cellular is looking to add GSM capability as well. (Petition, 3) It seeks an extension of up to 24 months to comply with Phase II requirements. (Petition, 8)

First Cellular's difficulties with Motorola network equipment belong to a waiver category advocated by RCA in recent ex parte communications with the FCC for Dockets 02-377 and 94-102, the principal E9-1-1 forum. According to RCA:

> We have been informed that Motorola has not yet delivered a switch software upgrade that allows its switch to support Phase II network solutions. Carriers in this category need an

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[6] It is disrespectful, in our view, for waiver petitions to be filed mere days away from the Phase II compliance deadline, and all the more so for the requests that won't be submitted until long after that date.

[7] http://www.rca-usa.org/membership/membership.htm ("In order to qualify as a member, the applicant . . . must not operate or be licensed to serve any single market with more than 500,000 POPS. All markets combined cannot exceed 3.5 million POPS.")

> implementation schedule consistent with vendor release of a working product.[8]

Reading the First Cellular petition and attachments carefully, and with due respect for an effort that appears conscientious (if belated) in its communication with the Williamson County 9-1-1 Coordinator (Petition, Attachment A), we are unable to discern a clear path to full compliance. Instead, we see a forked trail of four different contingencies -- two involving a network solution, two a handset solution. *Id*., 2. It would be easier to accept the requested 24-month delay if the path forward were more certain. One of the contingent paths is "the most hopeful" and may deserve the focus of the carrier and its vendors. *Id.*

The previously mentioned RCA ex parte communication (note 8, *supra*) suggests the following about the CDMA and GSM network solutions that First Cellular claims to be pursuing jointly:

> Carriers planning network solutions using either CDMA or GSM should not be expected to meet a Phase II location accuracy standard that was devised for urban areas. . . . Some may also have implementation issues that warrant an extended implementation schedule in addition to relaxation of the accuracy standards.

First Cellular, in fact, is asking for a schedule extended by 24 months. Does it expect to obtain an accuracy waiver as well, based on the RCA statement? The silence of the First Cellular request on the accuracy issue leads us to believe it intends to meet the accuracy requirements. If it does not, the request should say so.

First Cellular states that it has decided to proceed with Phase II implementation in at least some of the requesting counties despite its general assertion that none can give the requisite

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[8] Letter of August 8, 2003 to FCC Secretary from David L. Nace.

assurance of funding for the necessary PSAP upgrades.[9] Since First Cellular does not appear to have followed the requirements of the *Richardson* Order[10] in justifying its claim that the Phase II requests are invalid, we believe the carrier is making the right choice in attempting to fulfill the Phase II requests. In any event, there are a number of 9-1-1 local authorities in Illinois whose implementation of Phase II has not depended on state reimbursement. Accordingly, we believe First Cellular must support more fully its claim that Williamson and the other counties cannot pay for PSAP upgrades.[11]

Rural Telecommunications Group. RTG's waiver request proposes a "temporary limited stay" of Phase II deployment deadlines for a "Tier IV" category of rural carriers having 100,000 or fewer subscribers. The stays would range from 24 months (network solutions) to 6-12 months (handset solutions), but seem to be predicated on compliance with existing accuracy standards. In support of the new Tier IV classification, RTG states: "Carriers with more than 100,000 subscribers should generally have sufficient resources to meet Phase II implementation requirements." (Petition, 4)

This is a significant departure from the Tier III Coalition's earlier claims that (1) many if not most rural carriers of 500,000 or fewer customers cannot meet the existing accuracy standards without (2) unaffordably expensive changes to their networks or their customers'

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[9] Petition, Attachment A, 1. In Exhibit 1 to the Petition, the Randolph and Jefferson County requests are said to have other defects and it is not clear if they are being answered in the same way as the Saline and Williamson requests.

[10] Order on Reconsideration, CC Docket 94-102, FCC 02-318, released November 26, 2002, Appendix B, new Section 20.18(j)(4).

[11] Attachment A hereto is the Williamson County 9-1-1 authority's explanation of the situation. The statement tends to support First Cellular's position with respect to that county, but does not speak to the situation in the other counties that have requested Phase II. If the facts are similar, they should be put on the record in a waiver supplement.

handset-purchasing behavior. Since RTG has been a supporter of the Tier III petition in the past, the Commission should look into this apparent divergence of opinion. Plainly, RTG is persuaded that even small rural carriers need only a bit more time, not generalized forbearance from the accuracy standards.

Network-based solutions. In another significant departure from the Tier III Coalition petition, RTG acknowledges the potential of adding sites for the purpose of enhancing network-based location determination. (Petition, 5-7)[12] While asking for 24 months overall for Tier IV carriers to meet the network accuracy standards, RTG differentiates somewhat between carriers having one or two sites for commercial coverage and those having three or more sites for that purpose. The latter would be required to deploy within 18 months "network-based E911 technology at 100% of their existing cell sites," using each site's "existing antenna configuration." The additional six months rounding out the 24-month period would be for the purpose of "additional upgrades necessary to bring their ALI accuracy up to current standards for full compliance." (Petition, 6-7)[13]

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[12] Tier III implies (Petition, 18, n.34) that no carrier should be required to add -- for reasons of location accuracy -- to the sites it has planned for adequate commercial coverage. Unlike RTG, which asserts that the smallest rural carriers ("Tier IV") simply need more time rather than more money, Tier III bases its Petition (*e.g.*, 14-20) on the unbearable expense of adding sites.

[13] We leave aside here any reference to-- or any support for -- RTG's proposed "Tower Density Factor" ("TDF"), which does not appear to account satisfactorily for the typical ability of sites to pick up the data signals required for triangulation at some farther remove from the signal's origin than would be true for voice signals.

Handset solutions. We are not able to judge the accuracy of the rural wireless carriers' claims that they are at the end of the line for supply of available handsets from manufacturers and are victimized by "exclusive" arrangements between manufacturers and national carriers.[14] We trust that the FCC will call in the manufacturers to attempt to separate truth from rhetoric in these matters. Meanwhile, we are struck by the extent to which certain Tier III carriers are reporting, as recently as August 1st, that handsets are available to them in sufficient numbers to allow compliance with FCC penetration and accuracy requirements. A summary of some of those August reports is Attachment B hereto.

In a lengthy footnote 13 to its Petition, RTG says that certain Tier IV carriers in sparsely-settled and sparsely-sited areas may have difficulty in meeting FCC accuracy standards if "network assistance" is required in aid of GPS ("assisted GPS"). We assume the answer here, or a partial answer anyway, is for the number of sites in the networks to be expanded as RTG has acknowledged for network-based solutions. We simply are troubled by the irresolution in the final sentence of the footnote:

> [T]echnical hurdles related to the inability to access satellite signals may require additional regulatory relief in the event technical solutions do not appear during the course of the requested phase-in period.

We are mystified by which solutions are not now available and whose emergence is so contingent. We know workable handsets are available. We know, by RTG's own admission, that networks can be augmented by additional sites for location determination. Thus, we cannot accept this kind of hedging when lives and property are at risk.

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[14] As to the repeated claim that no handset manufacturer is willing to support TDMA, is this so foregone a conclusion that even a mass promise to purchase by all the carriers still interested in a TDMA handset option could not induce one or more manufacturers to the task?

Conclusion

For the reasons discussed, NENA and APCO and NASNA would rather see deserving rural carriers given brief and justified extensions of time to comply with the Phase II obligations than even temporary "forbearance" -- which is not warranted in law, anyway[15] -- from the accuracy standards in the Phase II rules. Our preference remains for individual waivers in meritorious cases. But if the Commission chooses some limited number of "categorical" waivers, these should be narrowly-drawn responses to structural difficulties that do not vary from individual carrier to individual carrier.

Respectfully submitted,

NENA, APCO AND NASNA
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Certificate of Service

The foregoing "Comments of NENA, APCO and NASNA" have been served by e-mail attachment upon David L. Nace, Caressa D. Bennet and Michael K. Kurtis as counsel, respectively, for First Cellular of Southern Illinois, Rural Telecommunications Group and Tier III Coalition.

October 2, 2003

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James R. Hobson

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[15] Opposition (note 5, *supra*), at 3-4.

ATTACHMENT A

STATEMENT OF KEN SMITH[16]

The Governor signed last week a bill that allows for phase two recovery. However, First Cellular and other smaller rural carriers are concerned that if they implement now that the state will not pay them for costs incurred prior to January first when the bill takes effect. They argue that they would be penalized for moving forward and that those that waited until next year to proceed would get the phase two reimbursement money.

I have been patient with First Cellular and others on phase two because I am upgrading all of my 911 equipment this month and have not been ready for phase two. Once I am, I believe that they will proceed quickly.

[16] Williamson County, Illinois 9-1-1, also Vice President, Region 7, Illinois NENA chapter. The statement was contained in an e-mail to James Hobson dated September 9, 2003.

ATTACHMENT B

ALI-Capable Handset Availability for Tier 3 Carriers

Carrier	Comment
Montana Wireless/Blackfoot	Currently selling Kyocera, Motorola, Nokia ALI-Capable handsets
South Central Utah	Current selling Kyocera (2 models)
Brookings Municipal/Swiftel	Currently selling handsets via Sprint outlets "to take advantage of volume buying
WUE	Currently selling handsets via Verizon outlets
North Dakota Network	Currently selling 4 ALI-compliant handsets
NTELOS	"NETLOS has not had problems in negotiating agreements or acquiring ALI-capable handsets, nor do we have problems in marketing these handsets."
3 Rivers PCS	"We have ordered ALI-capable handsets from Kyocera, models 7135 and 3245; and these will be available to use in time to meet the September 1,2003 deadline."
NewComm/Movistar	"Since July, 2003, NewComm Wireless Services started to sell ALI-capable handsets (Motorola T720) and is in the process of getting additional handsets with ALI capability."
Horizon PCS	Location capable handsets are available through Sprint. "(gives Horizon) benefits of Sprint's volume discounts."
SpectraCom/PYXIS	"…has ordered and obtained Kyocera CDMA ALI-capable handsets…"
West Coast PCS	"ALI-capable handsets are now generally becoming available to West Coast PCS."
Uintah/UBET	"The filer is marketing ALI-capable handsets…by Motorola, Kyocera, and Nokia."
Farmers Mutual	"ALI-capable handsets are available….we currently have Kyocera models 2325 and 7135 and Motorola models T720, 120e and V.60i."

Cellular South	Cellular South is currently selling E911 Phase II compliant handsets in all its markets where the CDMA technology is operational. At the current time, the carrier is experiencing no problems obtaining ALI-capable handsets, nor any pricing problems with the handset cost. Furthermore, the carrier is not currently experiencing any problems in marketing ALI-capable handsets to customers…"
Carolina West	"Handset suppliers to Carolina West indicate that location-capable handsets are available…"
Virginia Cellular	Currently selling Motorola V120EW and anticipates Motorola T720 and V60.i, and Nokia 3586 models by the September 1, 2003 deadline. "Finally, both Nokia and Motorola have indicated that there should not be a problem in the future obtaining phones that are ALI-capable."
PVT	"PVT is currently selling a variety of location capable handsets in retail stores. PVT currently has agreements in place to obtain location-capable handsets through Sprint PCS and Alamosa PCS."
NSPLC RSA 11	"CDMA ALI-capable handsets are generally available and RSA 11 has obtained a limited quantity of these handsets. RSA 11 has agreements in place to obtain more of these handsets…"
Cleveland PCS	Started selling ALI-capable handsets in February, 2003. Carrier already has 16% penetration of these handsets using Motorola 120e and Kyocera 2325 and 3225 models.
Trico Wireless	"ALI-capable handsets are currently available in the stores for customers who wish to purchase them…"
Eagle Telephone/Snake River	"Eagle, via Farmers, currently offers for sale the following ALI-capable handsets: Kyocera models 2325 and 7135 and Motorola T720, 120e, and V.60i. Eagle has not encountered any issues with obtaining these handset models."
San Isabel Telecom	"San Isabel is not aware of any difficulties obtaining CDMA ALI-capable handsets. The company is in the process of ordering ALI-capable phones so that it can meet the September 1, 2003 deadline…"

Pine Belt Cellular	"Pine Belt is not aware of any difficulties obtaining CDMA ALI-capable handsets. The company is in the process of ordering ALI-capable phones so that it can meet the September 1, 2003 deadline…"
Northern New Mexico Telecom	Northern New Mexico is not aware of any difficulties in obtaining CDMA ALII-capable handsets."
Metro PCS	Metro PCS has met the initial milestones for selling and activating location capable handsets. Handsets were initially offered in August, 2002. By June, 2003, 38% of all new activations were ALI-capable. Current projection is that 50% of activations in August, 2003 will be ALI-capable. Metro PCS reports use of Sony Ericsson, Nokia, and Kyocera ALI-capable handsets.