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November 5, 2003

Via Electronic Mail Delivery

Mr. John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

***Re: Written Ex Parte Communication
E911 Obligations of Wireless Resellers
CC Docket No. 94-102***

Dear Mr. Muleta:

On December 20, 2002, the FCC issued a *Further Notice of Proposed Rule Making* in which it sought comment on various proposals to expand the existing E911 obligations of various entities.¹ Sprint Corporation submits this *ex parte* letter to address one issue pending in that *E911 Scope NPRM*: Should the E911 rules be extended to resold services and if so, who should be responsible for ensuring that the handsets a reseller uses in the provision of its services comply with the E911 rules – the underlying licensed carrier or the reseller?

Sprint, along with numerous other commenters, agreed that it was appropriate to extend the E911 requirements to resellers, *to the extent compliance is within their control*. Sprint acknowledges that the licensee must provide the underlying network infrastructure required to provide E911 service. Sprint has completed the installation of this equipment throughout its network. However, Sprint also demonstrated that the underlying licensee could *not* be held responsible for the independent business decisions of a reseller or control the types of handsets such a reseller provides its end users. The comments filed in response to the NPRM, including those of the national public safety representatives, are consistent with this conclusion. If the Commission determines that the E911 rules should be extended to resold services, it must make clear that the underlying carrier cannot be held responsible for the actions of resellers and that the obligation to purchase compatible handsets lies with these independent business entities.

I. RESELLERS, NOT THE UNDERLYING LICENSEE, SHOULD BE RESPONSIBLE FOR ENSURING THAT RESELLER HANDSETS COMPLY WITH THE E911 RULES

The Commission stated in its *E911 Scope NPRM* that resellers are not currently subject to any E911 requirements, and it asked whether the E911 rules should be extended to resellers, at

¹ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Further Notice of Proposed Rulemaking*, FCC 02-326, 17 FCC Rcd 25576 (Dec. 20, 2002) ("*E911 Scope NPRM*").

least as to activities under their control.² The Commission “alternatively” asked whether it should instead place the compliance obligation on the underlying facilities-based licensee.³ As a practical matter, this subject becomes an issue principally in the context of Phase II services where the licensee uses a handset solution.

The majority of the NPRM comments agreed that it is the reseller, not the licensee, who should be responsible for ensuring that its handsets comply with FCC rules.⁴ There are numerous reasons, both practical and legal, which lead to this conclusion:

- Resellers are independent entities that operate outside the control of licensees and in fact are direct competitors. There is no basis in law to require a licensee to ensure that one of its competitors complies with FCC rules, especially when the licensee maintains no effective control over the activities of an independently owned competitor (*e.g.*, ensure that reseller handset statements and deployment activity reports are accurate).
- Resellers are telecommunications carriers and commercial mobile radio service (“CMRS”) providers under the Act, and the Commission historically has imposed common carrier obligations on resellers for those activities under their control – including CALEA, numbering rules, USF contributions and other regulatory fees. The commission has full jurisdiction/authority to impose this obligation on resellers.
- Imposing a compliance obligation on licensees would also harm the reseller market. The only effective way a licensee could ensure that resellers comply with the E911 rules would be for the FCC to authorize licensees to preclude resellers from obtaining their handsets from independent sources and to require them to purchase handsets only through the licensee. This would be inconsistent with existing contracts and would require all resale relationships to be renegotiated. It would also present competitive issues of concern.
- Sprint is not attempting to avoid any current E911 obligation, including the obligation to install the necessary infrastructure to support E911 services. Sprint has in fact completed this infrastructure deployment and supports reseller handsets over its network to the extent they are E911 compatible. Sprint has no control, however, over the handsets purchased by resellers nor can Sprint legally dictate to its competitors what handsets they must purchase.
- Imposing this new obligation on licensees would disrupt and require changes to current timelines for E911 handset conversions. The existing rule requires a licensee to ensure that by “December 31, 2005, [the licensee must] achieve 95 percent penetration of location-capable handsets among *its* subscribers.”⁵

² See *E911 Expansion NPRM*, 17 FCC Rcd at 25609-11 ¶¶ 92-97.

³ *Id.* at 25610 ¶ 95.

⁴ See, *e.g.*, AT&T Wireless Comments at 5; CTIA Comments at 3-5; Nextel Comments at 13-15; Sprint Comments at 4-8; Verizon Wireless Reply Comments at 10-12; Virgin Mobile USA Comments at 7-11; Virgin Mobile USA Reply Comments at 1-6.

⁵ 47 C.F.R. § 20.18(g)(1)(v)(emphasis added).

This is a challenging requirement already. Changing this rule to now extend the obligation to resale subscribers would require a corresponding rule change providing additional time to comply with this deadline. Waiver filings would be required, again because the licensee cannot effectively control reseller actions in this area.

- Virgin Mobile's decision voluntarily to provide AGPS-capable handsets on a more aggressive schedule than that imposed by the Commission on Tier III carriers demonstrates that resellers can reasonably and feasibly obtain compliant handsets and provide them to their customers. The obligation properly must rest with the resellers.

The national public safety organization comments are not inconsistent with this conclusion. APCO supported extension of the E911 to resellers, but its comments did not specifically address the reseller handset responsibility issue.⁶ The Texas 9-1-1 Agencies encouraged the Commission to expeditiously decide the issue, but they did not take a position on the issue.⁷ NENA and NASNA stated that "pending careful review of the comments in this proceeding, we are inclined to rely on the regulation of facilities-based providers to assure access to 9-1-1 by consumers using resold services."⁸ However, in their reply comments, NENA and NASNA stated they were now "rethinking" their position based on the filed comments, adding that it is "fair to say that someone must take responsibility, but we are not sure which business entity should do so."⁹ Sprint agrees that 911 services should be provided and that at least one business entity should be responsible. With respect to handsets, however, only the reseller can be directly responsible for compliance.

Only two resellers submitted comments. Virgin Mobile emphasized that resellers "are competitors of their underlying carriers" and that imposing the compliance obligation on licensees would permit licensees to "effectively control the business model and operations of the non-licensee . . . which would be detrimental to competition in the wireless market and restrict customer choice."¹⁰ As discussed herein, Sprint agrees with Virgin Mobile's concern.

For its part, TracFone Wireless asserted that the Commission does "not have the authority to require wireless resellers to comply with E911 rules."¹¹ However, TracFone's argument, in addition to ignoring the Commission's 20-year history of exercising regulatory authority over resellers, does not support its point. TracFone argued that under Section 2(b) of the Act, the Commission lacks authority to impose E911 requirements on any carrier. If TracFone's argument was correct, the Commission's E911 rules would be void *ob initio* and could not be en-

⁶ See Association of Public-Safety Communications Officials Comments at 10 (Feb. 19, 2003).

⁷ See Texas 9-1-1 Agencies Reply Comments at 3.

⁸ National Emergency Number Association and National Association of State Nine One One Administrators Joint Comments at 13 (Feb. 19, 2003).

⁹ NENA and NASNA Joint Reply Comments at 13 (March 25, 2003).

¹⁰ Virgin Mobile USA Comments at 10-11.

¹¹ TracFone Wireless Comments at 5-8.

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forced even against licensee service providers.¹² In fact, TracFone's comments provide further reasons why it is *inappropriate* to impose E911 handset obligations on licensees. According to TracFone, it uses in the provision of its resold services "specially modified handsets" that licensees do not use.¹³ Again, resellers are separate competitive entities, and the underlying licensee does not – and should not – control its activities in this area.

In summary, the record convincingly demonstrates that it would be inappropriate, both in law and in policy, to impose E911 handset compliance obligations on licensees. Sprint respectfully submits that no valid argument has been advanced in the record as to why licensees should be responsible for ensuring FCC rule compliance of their reseller competitors.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, one copy of this letter is being filed electronically with the Secretary's office for filing in CC Docket No. 94-102.

Respectfully submitted,



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¹² TruePosition also supported imposing a compliance obligation on the licensee, although its interest in this issue as a vendor of a network solution is not apparent. *See* TruePosition Comments at 4-5. However, TruePosition's argument is flawed. Rule 22.927 is a roaming rule and has nothing to do with resale. The rule addresses RF operability issues rather than handset sale and distribution. *See* Virgin Mobile Reply Comments at 2-3. TruePosition also recognized that the FCC possesses the authority to impose the compliance obligation directly on resellers. *See* TruePosition Comments at 6-7.

¹³ *See* TracFone Comments at 13.