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T-MOBILE USA, INC. • SPRINT NEXTEL CORPORATION
RURAL CELLULAR ASSOCIATION

October 4, 2005

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***CC Docket 94-102***

Dear Mr. Chairman:

On September 14, 2005, Mr. Greg Ballentine, on behalf of the Association of Public Safety Communications Officials International, Inc. ("APCO"), filed a letter in this docket questioning the public safety commitment of the wireless industry, mischaracterizing the work of the Network Reliability and Interoperability Council ("NRIC") and misstating the positions of those that participated. Sprint Nextel Corporation, T-Mobile, Cingular, the Rural Cellular Association and CTIA submit this response to clarify the record and respond to the statements submitted by Mr. Ballentine.

Contrary to the suggestion of Mr. Ballentine, the NRIC process *has* produced a consensus that addresses the needs of public safety. In response to Mr. Ballentine's letter the President of the National Emergency Number Association ("NENA") stated: "The proposal ensures that both carriers and PSAPs are making the best efforts possible to achieve PSAP level accuracy."[1] The National Association of State 9-1-1 Administrators ("NASNA") has likewise endorsed the NRIC proposal, noting in their recent letter to you that "the consensus represents a reasonable and rational approach to accuracy compliance."[2] Mr. Marzolf goes on to observe: "Th[e] characterization that the disagreement is simply between APCO and the carriers is simply not accurate. APCO's position was opposed by all of the other organizations participating in the discussion, including NASNA, NENA, LECs and many others."

In an unprecedented display of cooperation, wireless carriers, public safety organizations, vendors of location technology and vendors of location accuracy testing systems met under the

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[1] Communications Daily, *APCO, Wireless Industry Fall Short on E911 Agreement*, at 5 (Sept. 16, 2005). *See also* May 26, 2005, Letter to Chairman Martin, from Bill McMurray, President, National Emergency Number Association, Docket 94-102, filed June 13, 2005 ("we are unwavering in our support of the consensus" [reached at NRIC]).

[2] Letter to Chairman Martin, from Steve Marzolf, President, National Association of State 9-1-1 Administrators, docket 94-102 (September 19, 2005).

auspices of NRIC to resolve questions concerning the manner in which the accuracy of wireless E911 systems should be measured and evaluated, including the frequency of testing and the appropriate geographic standard to be applied when testing. Although wireless carriers believe their systems comply with existing FCC rules, the carriers understood the desire of public safety to have access to more granular information as these systems are more widely deployed.[3] Contrary to Mr. Ballentine's statements, NRIC was successful in addressing these concerns. Major compromises, including agreement to be bound by additional obligations under the FCC's rules, were made by the commercial carriers.

After months of long and sometimes frustrating discussions, the parties reached agreement on a set of recommendations to be adopted by the NRIC Council and submitted to the FCC. These recommendations reflected the input of all parties, including input received from APCO prior to leaving the discussions, and were adopted by the NRIC Council in March of this year. Thus, Mr. Ballentine's statement that the NRIC "negotiations" were not successful is simply incorrect. With the exception of APCO, *every* participant in the NRIC process agreed upon the final recommendation, including major representatives from the public safety community such as NENA and NASNA.

The NRIC recommendation consisted of multiple parts and imposed several new obligations on wireless carriers which were above and beyond the existing FCC 911 rules. Specifically, the NRIC recommendation requires carriers to:

1) Provide confidence and uncertainty factors on all E911 calls in conformance with standards to be established by the Emergency Services Interconnection Forum ("ESIF");[4]

2) Conduct Office of Engineering and Technology Bulletin No. 71 ("OET 71")/ESIF compliant tests in every state once deployment reaches 50% of a carrier's network, and again when deployment reaches 90%. OET-71/ESIF testing requires, and carriers have agreed, that test points be drawn from all areas of a carrier's coverage;[5]

3) Conduct ongoing maintenance testing of existing systems and provide data regarding this testing pursuant to appropriate non-disclosure agreements; and,

4) Provide representative performance data for various topologies to be used in educational efforts with the public and PSAPs.[6]

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[3] Unfortunately, deployment of Phase II systems by the public safety community has been slower than expected. Fewer than half of all Public Safety Answering Points ("PSAPs") have deployed Phase II service. *See* www.nena.org/911_facts/911fastfacts.htm (NENA 911 Fast Facts).

[4] Because these factors provide estimated accuracy levels on a call-by-call basis, they are arguably even more valuable for public safety emergency response purposes than the accuracy standards in the Commission rules, which apply on an aggregate basis.

[5] APCO's suggestion that large areas of the country or of a state could be ignored during carrier testing is incorrect.

[6] For greater detail regarding the NRIC recommendation, see Sprint Ex Parte Presentation, CC Docket 94-102 (June 9, 2004).

Again, all of the NRIC participants, including some of those representing APCO – before APCO formally left the process – indicated their view that these recommendations addressed the fundamental needs of public safety while recognizing the inherent limitations of current technology.

It is this later point that is critical to an understanding of the dispute between the NRIC participants and Mr. Ballentine. As the NRIC discussions proceeded, one fact became readily apparent. While current technology meets the existing FCC rules this technology simply cannot provide accuracy within the FCC's guidelines if they are revised to require measurement at *every* PSAP. Every technology, whether handset based GPS or network based triangulation, has certain performance limitations.[7] Thus, one important element of the NRIC recommendation is the acknowledgement that: "Given the current state of location technology, it is understood that the FCC accuracy rules will not be met at every PSAP."[8]

Although APCO's representatives have acknowledged repeatedly that current technology will not permit carriers to comply with current accuracy standards if measured at the PSAP level,[9] they continue to insist that this is the rule that should be adopted by the FCC. To state the issue differently, APCO insists that the FCC establish a new legal standard that will immediately place all carriers in non-compliance with the FCC's rules, *a standard that is simply not achievable with current technology*.

The FCC cannot hold carriers to a standard which is impossible to meet.[10] Nor is it appropriate public policy for the FCC to establish a rule which it must then choose not to enforce, as suggested by Mr. Ballentine. From the perspective of the undersigned, the goal of the NRIC document should be to maximize the benefits of Phase II technology for each PSAP, not to divert resources into endless enforcement proceedings, appeals and challenges to the FCC's rules.

Indeed, if APCO's argument is taken to its logical extreme, the net result would require carriers to abandon the most accurate location technologies currently available as simply non-compliant. Billions of dollars and ten years of joint public safety and wireless carrier efforts – which provide meaningful public safety benefits to consumers – would simply be discarded.

In an attempt to understand APCO's concerns, various members of the NRIC 1A Focus Group reconvened a meeting with APCO's representatives in the hopes of establishing a

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[7] A fact the FCC has previously recognized. *See, e.g.,* In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Third Report and Order,* 14 FCC Rcd 17388, 17391 (September 15, 1999), ¶ 6 ("While it does not appear that any single network-based or handset based location technology is perfect in all situations or for all wireless transmission technologies, both network and handset-based solutions *may* provide location information by 2001 that meets or exceeds our accuracy requirements. *Each type of solution has its advantages and limitations*.") (emphasis added).

[8] NRIC IV, Focus Group 1A, Near Term Issues for Emergency/E911 Services, Report #1 – Revised, Section 6.1.

[9] Even in his most recent letter, Mr. Ballentine acknowledged that "a PSAP-level accuracy requirement will be difficult to meet in some areas by some carriers at the present time."

[10] *See, e.g.,* Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 926, 940 (D.C. Cir. 1991)(impossible requirements imposed by an agency are perforce unreasonable).

unanimous NRIC recommendation. Based upon those initial discussions, the participants were led to believe that APCO would be willing to revisit its insistence that current systems be defined as non-compliant – so long as carriers could make assurances that their technologies were performing to the best of their technical capability in any specific PSAP. Based upon these discussions, all of the parties – again including representatives of APCO, NENA, NASNA and the wireless carriers – agreed upon a document which directly addressed APCO's stated concerns. Although that document included a number of additional concessions on the part of wireless carriers, the core agreement would have provided that:

> "Compliance with the FCC accuracy standards should require:
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> 1) Certification through OET 71/ESIF testing at the statewide level and
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> 2) Best efforts to meet the accuracy levels specified in the FCC rules at the PSAP level to the extent technologically feasible and commercially reasonable. Such best efforts shall include adherence to trouble resolution, mitigation, and if necessary, mediation procedures as specified in the Performance Trouble Reporting and Resolution Process defined below."

Thus, the wireless carriers agreed to accept an obligation to provide the best location accuracy possible at the PSAP level so long as these efforts were technologically feasible and commercially reasonable. Again, Mr. Ballentine's statement that carriers were "unwilling to accept an accuracy requirement other than state-level" is incorrect. The participants to this meeting were led to believe that they had finally reached unanimous agreement and that the document could be finalized for submission to the FCC.

After this proposal was submitted to Mr. Ballentine for review, however, the participants were summarily informed that APCO would not accept this proposal and that it would accept nothing short of a PSAP level compliance obligation, an obligation that all parties, including APCO, knew was impossible to meet. Mr. Ballentine's suggestion that APCO made "significant concessions" by suggesting that the Enforcement Bureau could recognize carrier best practices during enforcement proceedings is of little moment. APCO has refused to agree to any standards definition that would not place carriers in non-compliance. Understandably, wireless carriers cannot accept such a "compromise."

Over the past few weeks, wireless carriers and public safety have worked together to overcome tremendous odds as they fight the aftermath of hurricanes Katrina and Rita. Wireless carriers have donated thousands of phones to public safety, provided priority access services, deployed temporary communications networks using Cells on Wheels ("COWs"), Cells on Light Trucks ("COLTs") and Satellite COLTs, faced security challenges and significant personal risk to their own employees deploying emergency communications, donated millions of dollars to disaster relief agencies, provided tens of millions of dollars of free service to customers, dispatched thousands of employees and created entire tent cities in the affected regions to restore service.

Rather than generating arguments regarding the manner in which accuracy standards are measured, the recent experience in the Gulf Coast region suggest that the rapid deployment of commercial based Phase II services should be the focus of the FCC and the public safety community.

The undersigned respectfully suggest that the FCC should focus its efforts on deploying the best 911 location technologies available, not on crafting rules designed to generate disagreements.

Respectfully submitted,

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cc: Marlene H. Dortch, Secretary
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