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

In the Matter of	)	
	)	
Relief from the requirement that wireless licensees employing a handset-based Enhanced 911 (E911) Phase II location technology achieve ninety-five percent penetration of location-capable handsets among their subscribers by Dec. 31, 2005	)	
	)	
Request of Sprint Nextel	)	WT Docket 05-286
Request of Alltel	)	WT Docket 05-287
Request of CTIA/RCA	)	WT Docket 05-288

COMMENTS OF NENA

The National Emergency Number Association ("NENA") hereby responds to the FCC's invitation to comment on the captioned requests.[1] The variation of circumstance and argument in each of the three documents leads NENA to conclude that a blanket extension of the December 31st deadline is not justified. However, a framework to evaluate handset penetration waivers submitted by individual carriers, as suggested by CTIA/RCA, may serve the public interest so long as waiver grants are accompanied by new and firm deadlines. Moreover, during the extension periods, quarterly reports of progress toward the penetration goal must continue.

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[1] Public Notices DA 05-2675, 2677, 2678, released October 7, 2005. Related requests have been filed by Cellular South, 9/20/05; Carolina West Wireless, 10/5/05; and Verizon Wireless, 10/17/05. The invitation to comment does not include these requests and NENA reserves its right to respond later.

Background. When the Commission, more than five years ago, adopted the 95% penetration requirement for location-capable handsets, it recognized that consumers "may wish

to continue use of their non-ALI capable handsets, even if newer handsets provide location as well as other advanced features."[2] This recognition that customer desires might not match governmental imperatives for wireless caller location, despite the clear public safety benefit, was built into a schedule of penetration benchmarks extending from 2001 through 2005. At that time, however, the feasibility of the schedule remained speculative. The three largest handset manufacturers were engaged in a chicken-and-egg debate with carriers over which should come first, available products or firm customer orders. FCC 00-326 at ¶25.

The path forward from 2001 has been uneven. Sprint was an early implementer of handset-based location capability on its CDMA systems in part because it chose not to rely entirely on the three largest manufacturers.[3] Sprint's affiliate, Nextel, then an independent carrier, was faced with the dilemma of a sole supplier, Motorola, whose handsets, even when delivered late, betrayed in mid-2004 a software glitch disrupting Phase II location.[4] For smaller, often rural carriers, their allegedly low priority as customers for location-capable handsets became a factor in numerous earlier FCC waiver proceedings. Alltel, a Tier II "regional" carrier with a number of rural customers, exhibits characteristics of both larger and smaller service suppliers in its various territories.

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[2] Fourth Memorandum Opinion and Order, FCC 00-326, released September 8, 2000, ¶36.

[3] Sprint PCS First Quarterly Implementation Report, February 1, 2002, 13.

[4] Sprint Nextel Request, 9/29/05, 10-14.

CTIA/RCA. At page 4 of their Joint Petition, CTIA and RCA identify PSAP unreadiness for receipt and use of Phase II information as the "primary hurdle to handset exchanges" that result in location capability. NENA acknowledges this factor and is actively working with all relevant stakeholders to upgrade PSAPs, but wishes to update the assessment – apparently based on a then-current newspaper account – that only six states and the District of Columbia are substantially ready for Phase II, while 16 states "have upgraded less than ten percent of their counties." *Id.* Our latest tally reports 20 states as having 60% or more of counties whose PSAPs have implemented Phase II, while another 12 states fall into the range from 20 to 60% of counties prepared to receive and use Phase II data.[5]

Further, eight states have 100% of counties that are Phase II ready. It is also important to note that while the lack of PSAP readiness is an issue in many areas, it is not a valid reason to suggest that customers should not or would not upgrade their handsets. The mobile nature of wireless telephone service suggests that even when a PSAP serving a customer's home area is not Phase II ready, many areas in which that customer will use his/her phone will, in fact, be able to receive Phase II data.

However, the importance of these PSAP readiness statistics to the pace of handset exchange is called into question by pages 5-7 of the Joint Petition. There, the sheer force and variety of reasons customers don't want to change handsets appears to far outweigh the presence or absence of Phase II ALI in emergency

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[5] http://nena.ddti.net/Reports/report6.asp

calling. Consumer resistance ranges from the "hassle" of learning a new phone's features to satisfaction with old phones to preference for analog technology, especially in rural areas. To repeat, NENA acknowledges that Phase II capability in PSAPs may be one factor among many in the decision to replace or keep an older phone, but we doubt that this is the "primary hurdle" that Joint Petitioners make it out to be. We invite carriers to prove us wrong by showing that penetration rates are far lower in PSAP jurisdictions that are not Phase II-ready.

Whatever the merits of the Joint Petition as to the reasons for slow handset turnover, NENA is not inclined to support the requested general suspension of the 12/31/05 deadline for 95% location-capable handset penetration. Historically, we and other public safety organizations have preferred to evaluate the merits of individual carrier requests, recognizing that the FCC may have its own reasons for a blanket approach.[6] We believe the recommendations in the Joint Petition's alternative request for a "framework to analyze handset penetration waiver requests from individual carriers" are to be preferred over blanket suspension of the deadline. We note, however, that no date is mentioned as a substitute deadline for any given carrier or for carriers as a similarly situated class. NENA cannot support an indefinite or open-ended dispensation.

We also add that the simple presence of one of the factors cited in the CTIA Petition should not, in itself, necessarily be a reason to grant a waiver. The multiple

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[6] Comments of NENA, APCO and NASNA on Rural Carrier Waiver Requests, October 2, 2003.

issues at hand should be considered together in determining the merits of each individual carrier request.

We note that Alltel and Sprint Nextel propose to achieve 95% penetration by June 30th and December 31st, 2007, respectively.[7] In the latter case, Sprint itself expects to meet the existing 2005 deadline, but seeks the extension for the former Nextel. We note that the FCC has granted certain Tier III carriers extensions of the penetration deadline to mid-2006, while explicitly declining to make the waivers permanent. To the best of our information, no carrier was extended beyond January 31, 2007.[8]

NENA is reluctant for any individual waiver grant to exceed the allowances provided by the recent Tier III order (note 9, *supra*). We recommend that any extension granted after individual carrier evaluation be for no more than one year, up to December 31, 2006, while not foreclosing a further six-month or 12-month compliance interval upon a proper showing. Critical to these limited grants would be a continuation of reporting, preferably quarterly, that would measure the progress toward the 95% penetration goal.

ALLTEL. We believe that Alltel has made a respectable showing in its Petition for Limited Waiver. On the basis of the information in the request, and reserving our right to object if adverse information comes to light, NENA would not

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[7] In contrast Verizon, whose request is not at issue here, asks for six months, to 6/30/06.

[8] E911 Phase II Compliance Deadlines for Tier III Carriers, FCC 05-79, released April 1, 2005, ¶¶58, 71-72.

object to a suspension of the 95% penetration deadline for Alltel until December 31, 2006, provided it has met all the conditions in the 2002 Order to Stay except the 2005 penetration condition.[9].

SPRINT NEXTEL. NENA is pleased to see Sprint's projection that it will be "the first wireless carrier . . . to convert 95% of its embedded handset base to GPS-enabled devices by

December 31, 2005 . . . on its CDMA network." Achievement of that goal would require a growth of more than two percentage points between the end of August and the end of December, 2005.[10] This would tend to vindicate our non-objection to Sprint's earlier and successful request for a waiver of an interim handset capability deadline.[11]

We are somewhat conflicted about the request that the deadline for 95% penetration of location-capable handsets operating on Nextel's iDEN networks be extended for two full years, until December 31, 2007. Both NENA and APCO offered qualified support to the original Nextel waiver request.[12] Two of the conditions imposed in the Commission's waiver grant bear close analysis here. First, the FCC highlighted the importance of Nextel's aggressive rollout of Phase I in its service areas:

> 29. We also direct that Nextel aggressively pursue deployment of Phase I implementation, including both full completion of any work remaining on currently

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[9] FCC 02-210, released July 26, 2002.

[10] Request for Limited Waiver, 2 and n.8.

[11] Sprint Request for a Limited and Temporary Rule Waiver, December 20, 2002, 7.

[12] Order, FCC 01-295, released October 12, 2001, ¶12.

> pending PSAP requests and timely completion of all future PSAP requests. Phase I implementation provides useful information to PSAPs in the form of callback numbers and a rough indication of the caller's location. In addition, the interconnection of CMRS carriers and PSAPs under Phase I is a necessary component of Phase II implementation. Delays in complying with PSAP requests for Phase I thus both impair public safety in the short term and Phase II implementation in the future.

According to Nextel's latest quarterly report, pending were 517 Phase I requests and 621 Phase II requests. A cursory look at Phase I request dates and implementation dates for those PSAPs which have Phase I suggested extremely few completed within a six-month window. The delays may not be attributable to Nextel, and they may be mutually agreed. We will try to look more closely in preparation for reply comments.

Second, a special burden was placed on Nextel to meet its commitments even if market conditions prove less than favorable.

> 23. Nextel's projected roll-out of location-capable handsets may well develop as it forecasts. But such projections are necessarily uncertain and may prove optimistic – changes in the economy or technology, among other factors, could affect actual roll-out. Under the rules and the conditions of the implementation plan, we require Nextel to do more than simply rely on normal handset churn and market trends. Rather, we require Nextel to take steps to ensure that these conditions are met. For example, Nextel may need to undertake special measures, such as incentive programs (rebate offers or discounts) or handset recalls. The burden is on Nextel to achieve the penetration levels it has committed to in its alternative implementation plan, even if handset churn or other market forces are not sufficient to meet these commitments.

At 24-25, the Sprint Nextel Request outlines the effort to encourage handset exchange. NENA is not in the best position to know whether they meet the special burden placed on Nextel by the original waiver grant. However the FCC has the opportunity to compare the Nextel effort with that of other carriers who have applied or will apply for waivers of the penetration deadline. At first blush, it

appears that much of Nextel's effort is to come in the future, in contrast to other applicants who are able to report past and present achievements in handset exchange marketing.

NENA is not much inclined to credit the "extraordinary steps to re-flash units affected by the software glitch." (Request, 25-28) Without wishing to be unfair, Motorola (and Nextel, by its necessary reliance on Motorola) brought on itself the related problems of a late start in handset manufacture and the software glitch. These problems may not amount to fault or blame, but neither is the response to them worthy of any particular praise.

For the reasons already discussed, any grant of waiver to Sprint Nextel should be no more than one year, to December 31, 2006, and with preferably quarterly reports to document progress in handset exchanges.

CONCLUSION

For the reasons discussed above, the Commission should reject the CTIA/RCA request for a general suspension of the handset penetration deadline, but should make use of the kind of individual carrier analysis laid out alternatively in the Joint Petition. The analysis should also measure the carrier's fulfillment of Phase I and other obligations contained in original waiver grants or stay orders. In no case should a waiver of the deadline be for more than one year, to December 31, 2006.

Respectfully submitted,

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Certificate of Service

The foregoing "Comments of NENA" have been served via e-mail upon counsel for the respective petitioners.

October 21, 2005 **James R. Hobson**