

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

In the Matter of )  
 )  
Revision of the Commission’s Rules to ) WT Docket No. 05-286  
Ensure Compatibility with Enhanced )  
911 Emergency Calling Systems )

**COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®  
ON SPRINT NEXTEL CORPORATION REQUEST FOR LIMITED WAIVER**

CTIA – The Wireless Association® (“CTIA”)<sup>1</sup> submits these comments in support of Sprint Nextel Corporation’s (“Sprint Nextel”) Request for Limited Waiver of the December 31, 2005 Enhanced 911 (“E911”) implementation deadline.<sup>2</sup> For the reasons set forth by CTIA and the Rural Cellular Association (“RCA”) in their Joint Petition,<sup>3</sup> the Commission should suspend the December 31, 2005 deadline for 95 percent penetration of location-capable handsets, and provide Sprint Nextel additional time to meet the penetration threshold.<sup>4</sup>

**I. GRANTING LIMITED RELIEF TO SPRINT NEXTEL SERVES THE PUBLIC INTEREST**

CTIA supports the Commission’s wireless E911 goals, including the ubiquitous deployment of Phase II location capabilities. Sprint Nextel has been vigilant in its efforts to

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<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> Sprint Nextel Corporation Request for Limited Waiver, CC Dkt. No. 94-102 (Sept. 29, 2005) (“Sprint Nextel Request”). See Section 20.18(g)(1)(v) of the Commission’s Rules (requiring Sprint Nextel to achieve 95 percent penetration of location-capable handsets by December 31, 2005).

<sup>3</sup> Joint Petition of CTIA-The Wireless Association and the Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, CC. Dkt. 94-102 (June 30, 2005) (“CTIA/RCA Petition”).

<sup>4</sup> Sprint Nextel requests an additional 24 months to achieve 95 percent penetration of location capable handsets. Sprint Nextel Request at 6.

comply with the Commission's rules, has invested significant resources to meet the Commission's interim benchmarks for deployment of handsets with location capabilities, and has instituted aggressive marketing campaigns to encourage handset replacement.<sup>5</sup> Sprint Nextel has made enormous progress in achieving the interim benchmarks laid out in section 20.18(g), but despite this progress Sprint Nextel has faced tremendous obstacles beyond its control which will prevent it from meeting the requirement that it achieve 95 percent penetration of location-capable handsets by December 31 of this year.<sup>6</sup>

Sprint Nextel seeks an extension of the December 31, 2005 deadline as a result of the unique difficulties it has encountered converting customers to GPS-enabled devices that work on its integrated Digital Enhanced Network ("iDEN") network.<sup>7</sup> Sprint Nextel anticipates it will achieve the 95 percent benchmark by December 31, 2007 and seeks to defer its obligation to comply with the penetration rule until that date.<sup>8</sup>

In support of its request, Sprint Nextel has identified the following roadblocks to meeting the Commission's 95 percent penetration rule: delay in the initial availability of GPS-enabled handsets for its iDEN network;<sup>9</sup> the occurrence of a latent software defect that disabled GPS

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<sup>5</sup> See, Sprint Corporation Fifteenth Quarterly E911 Implementation Report, CC Dkt. 94-102, at 6-8 (Aug. 1, 2005) ("Sprint Quarterly Report"); Nextel Communications Inc. Phase I and Phase II E911 Quarterly Report, CC Dkt. 94-102, at 7-10 (Aug. 1, 2005) ("Nextel Quarterly Report"). The Commission itself has "recognized that the E911 deployment schedule was aggressive in light of the need for further technological advancement . . ." *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14842 ¶ 5 (2002) ("*Non-Nationwide Stay Order*") (citing *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FOURTH MEMORANDUM OPINION AND ORDER, 15 FCC Rcd 17442, 17457-58 (2000)).

<sup>6</sup> 47 C.F.R. § 20.18(g). See Sprint Nextel Request at 6-18.

<sup>7</sup> See Sprint Nextel Request at 2.

<sup>8</sup> See *id.* at 6, 37.

<sup>9</sup> See *id.* at 8-10.

functionality in a number of iDEN devices already on its network;<sup>10</sup> the low churn rate of its iDEN customer base (including government, business and commercial entities);<sup>11</sup> the lack of Public Safety Answering Point (PSAP) Phase II readiness;<sup>12</sup> and customer resistance to upgrade to new location-capable handsets.<sup>13</sup>

Sprint Nextel has been diligent in its compliance efforts, and is fully compliant with the interim requirement that all new digital handsets activated on its network are location capable.<sup>14</sup> Despite these efforts, the latent software defect in the iDEN handsets, and consumer behavior will prevent it from meeting the December 31 deadline for compliance with the 95 percent location capable handset penetration requirement. Contrary to the Commission's assumptions regarding churn and handset replacement, it has become clear that the majority of carriers will be unable to satisfy the 95 percent penetration threshold by the end of this year.<sup>15</sup> Notwithstanding promotional campaigns and other carrier efforts, a greater than anticipated percentage of wireless consumers have demonstrated their reluctance to exchange their non-location capable handsets for GPS-equipped phones.

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<sup>10</sup> *See id.* at 11-14.

<sup>11</sup> *See id.* at 14-21.

<sup>12</sup> *See id.* at 29-32.

<sup>13</sup> *See id.* at 32-35.

<sup>14</sup> *See*, Sprint Quarterly Report at 5; Nextel Quarterly Report at 5.

<sup>15</sup> *See* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, THIRD REPORT AND ORDER, CC Dkt. No. 94-102, at ¶ 51 (1999) ("Third Report and Order"). *See also* Verizon Wireless asked the FCC to waive until June 30, COMMUNICATIONS DAILY (Oct. 18, 2005) (reporting that the carrier requested waiver until June 30 and expects to reach at least 93% GPS handset penetration by Dec. 31); Alltel Corporation, Alltel Corporation Petition for Limited Waiver, CC Dkt. No. 94-102 (Sept. 30, 2005); SouthernLINC Wireless, Request for Waiver by SouthernLINC Wireless, CC Dkt. 94-102 (July 26, 2005); Cellular South Licenses, Inc., Request for Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Dkt. 94-102 (Sept. 20, 2005).

High satisfaction levels and the nature of the Sprint Nextel's customer base which serves many government, business and commercial entities, have resulted in considerably lower churn than expected by Sprint Nextel or the Commission.<sup>16</sup> Due to their constant need to limit operating costs, Sprint Nextel's customer base is very sensitive to the costs associated with upgrading their handsets.<sup>17</sup> Sprint Nextel has enhanced its network performance and customer satisfaction consistent with the Commission's goal of harnessing competition to ensure wireless carriers provide quality service. Yet, with increased customer satisfaction came reduced churn rate and thus the unanticipated consequence of Sprint Nextel's inability to meet the December 31 deadline.<sup>18</sup> Moreover, based on the behavior of its customers to date, Sprint Nextel anticipates that the handset replacement rate of its installed base will decelerate even further despite the carrier's diligent efforts.<sup>19</sup>

As the National Association of Regulatory Utility Commissioners ("NARUC") has observed in its comments in support of the CTIA/RCA Petition, there are legitimate reasons why the Commission should not enforce its rules in a manner that forces consumers to give up their handsets unwillingly.<sup>20</sup> Accordingly, the public interest will be served by the grant of limited relief to ensure that wireless customers who do not want to replace their non-location capable handsets are not needlessly burdened. CTIA urges the Commission to extend the December 31,

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<sup>16</sup> See Sprint Nextel Request at 15.

<sup>17</sup> See *id.* at 18-19.

<sup>18</sup> See *id.* at 16-18.

<sup>19</sup> See *id.* at 20.

<sup>20</sup> In its comments, NARUC maintains that strict adherence to current E911 rules would mean "[m]any wireless customers in rural America will not immediately benefit" when required to "involuntarily surrender their otherwise safe, reliable and usable wireless handsets" and the level and availability of wireless E911 service to certain rural wireless customers might in fact decrease. See NARUC, Initial Comments of the National Association of Regulatory Utility Commissioners Supporting the Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, WT Dkt. 05-288 at 5 (Oct. 17, 2005) ("NARUC E911 Waiver Comments").

2005 E911 implementation deadline for Sprint Nextel. For the reasons set forth in the CTIA/RCA Petition, CTIA also requests that the Commission to extend the penetration deadline for all wireless carriers that have shown a good faith effort to comply with the rules by satisfying the 100 percent digital activation requirement.<sup>21</sup>

## **II. SPRINT NEXTEL HAS DEMONSTRATED GOOD CAUSE TO GRANT LIMITED RELIEF OF THE HANDSET PENETRATION DEADLINE**

Wireless carriers that have made a good faith effort to comply with the Commission's rules should not be penalized for factors the Commission and carriers could not have anticipated when the handset penetration deadline was established. As Sprint Nextel describes in its request, a latent software defect disabled GPS functionality in millions of iDEN devices already on its network and despite its diligence and the diligence of its vendor, consumers have not responded to repeated requests to correct the defect.<sup>22</sup> Accordingly, Sprint Nextel's inability to meet the penetration deadline is not a result of its failure to work conscientiously to roll out Phase II service but rather overwhelming technology challenges and consumers' satisfaction with their service and handsets which makes them resistant to change.

CTIA respectfully requests that the Commission grant Sprint Nextel's limited waiver as the carrier has demonstrated good cause. Sprint Nextel's requested relief is specific, limited and narrow in scope, in that it only addresses the upcoming December 31 deadline, and seeks no other extensions or waivers of the FCC's rules.<sup>23</sup> Sprint Nextel is on track to satisfying the 95 percent penetration benchmark,<sup>24</sup> and asks for an additional twenty four months to come into full

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<sup>21</sup> See CTIA/RCA Petition at 1. 47 C.F.R. § 20.18(g)(iv). See also NARUC E911 Waiver Comments.

<sup>22</sup> See *id.* at 11-14.

<sup>23</sup> See Sprint Nextel Request at 4.

<sup>24</sup> See *id.* at 22-23. See Nextel Quarterly Report at 10 ("On a merged basis, Sprint and Nextel would likely achieve 80-85% handset penetration by the end of [2005].").

compliance with the Commission's rules. During the period, Sprint Nextel has pledged to continue to deploy Phase I and II services and to participate in development of E911 technology while conducting aggressive marketing campaigns to increase handset upgrades as well as extensively working with the public safety community on E911 issues.<sup>25</sup>

### CONCLUSION

For the foregoing reasons, CTIA supports Sprint Nextel's request for limited waiver seeking relief of the Commission's 95 percent penetration rule. CTIA also advocates suspension of the ALI-capable handset penetration deadline for all similarly situated wireless carriers whose digital wireless activations are 100 percent location-capable as of December 31, 2005.

Respectfully submitted,

**CTIA - The Wireless Association™**

*/s/ Marlo Go* \_\_\_\_\_

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<sup>25</sup> See *id.* at 35-37. See also Sprint Quarterly Report at ii, Nextel Quarterly Report at 9.

**CERTIFICATE OF SERVICE**

I, Marlea Leary, do hereby certify that on this 21<sup>st</sup> day of October 2005, I caused copies of the foregoing **COMMENTS** to be delivered to the following by electronic mail:

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