

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED

1650 TYSONS BOULEVARD, SUITE 1500
MCLEAN, VIRGINIA 22102
703 584 8678 • 703 584 8696 FAX

WWW.FCCLAW.COM

RUSSELL O LUKAS
DAVID L NACE
THOMAS GUTIERREZ*
ELIZABETH R SACHS*
GEORGE L LION, JR
PAMELA L GIST
DAVID A LAFURIA
B LYNN F RATNAVALE*
TODD SLAMOWITZ*
STEVEN M CHERNOFF*

CONSULTING ENGINEERS
ALI KUZEHKANANI
LEILA REZANAVAZ
OF COUNSEL
JOHN J MCAVOY*
J K HADE III*
LEONARD S KOLSKY*
HON GERALD S MCGOWAN*
TAMARA DAVIS-BROWN*

*OR ADMITTED IN VA

Writer's Direct Dial
(703) 584-8661
dnace@fccflaw.com

May 11, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Communication:

CC Docket No. 94-102 – Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems

Dear Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. Section 1.1206, we hereby provide you with notice of an oral *ex parte* presentation on behalf of the Rural Cellular Association ("RCA") in connection with the above-referenced proceeding. The presentation occurred on May 11, 2007 in a meeting with:

Derek Poarch, Chief, Public Safety and Homeland Security Bureau ("Bureau");
Dana Shaffer, Deputy Chief of the Bureau;
Jeffrey Scott Cohen, Senior Legal Counsel of the Bureau; and
Carol Simpson, Legal Counsel of the Bureau.

Attending the meeting on behalf of RCA, in addition to the undersigned, was Arthur L. Prest of Arthur L Prest & Associates.

RCA is an association of approximately 100 wireless carriers that serve rural and small markets in the United States. About half of RCA's carrier members use GSM technology for which no handset-based E-911 Phase II solution is commercially available. As service providers in rural areas RCA's GSM members must rely upon network-based solutions that often do not produce nearly the same level of accuracy as can be obtained in more densely populated areas that are served by carriers with more cell sites. In any action that the Commission may take

May 11, 2007

Page 2

concerning E911 Phase II rules RCA requests that the Commission recognize the inherent problems faced by rural area operators and provide flexibility and possibly exceptions to the rules where there is not a commercially reasonable means for carriers to achieve compliance

Recent trade press reports indicate that the Commission is considering issuing a declaratory ruling that would establish accuracy requirements for E911 Phase II compliance by wireless carriers at the Public Safety Answering Point level. RCA believes that a ruling of this nature would violate that Administrative Procedure Act ("APA") even if the Commission were to forbear from enforcement of the rule. The rule that the Commission would "clarify" – Section 20.18(h) – is specific in stating the permissible tolerance for accuracy and reliability according to whether a carrier employs a network-based or a handset-based technology, but the rule contains absolutely no language that addresses geographic the area over which the Phase II accuracy results are to be measured. The Commission should not and, respectfully, is without authority to supplement the rule by means of a declaratory ruling so as to introduce a new measurement area requirement upon carriers.

Rather than pursuing a declaratory ruling that puts the Commission and the wireless industry at odds and is likely to spur litigation, RCA urges the Commission to follow a productive course to promote safety of life through location accuracy reporting. In 2004, the Commission directed the Network Reliability and Interoperability Council – VII ("NRIC") to recommend accuracy requirements for location information and how to verify that accuracy requirements are met. NRIC submitted recommendations to the Commission but the Commission did not invite public comments on the NRIC report. It is not too late for the Commission to take such action or to establish a forum of interested public safety and wireless carrier representatives to review and comment on the NRIC recommendations. Actions of that nature could form the basis for a well reasoned proposed rule on which public comment could be requested, consistent with the APA.

Sincerely,



David L. Nace

cc: Derek Poarcli (by email)
Dana Shaffer (by email)
Jeffrey Scott Colien (by email)
Carol Simpson (by email)
Best Copy and Printing, Inc (by email)