

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Wireless E911 Location Accuracy Requirements)	PS Docket No. 07-114
)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems)	CC Docket No. 94-102
)	
Association of Public-Safety Communications Officials – International, Inc. Request for Declaratory Ruling)	
)	
911 Requirements for IP-Enabled Service Providers)	WC Docket No. 05-196
)	
To: The Commission		

COMMENTS OF AT&T INC.

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SUMMARY

The Commission has established a bifurcated proceeding regarding wireless E911 obligations. The first stage seeks comment on the Commission's tentative conclusion that Section 20.18(h) should be clarified to require carriers to meet Phase II accuracy requirements at the PSAP level and, if so, whether enforcement of the clarified rule should be stayed. In the second stage, the Commission seeks to "develop a full understanding of the capabilities and limitations of existing location technologies" and requests comment on a variety of related issues.

No one questions the importance of wireless E911 and the benefits associated with providing accurate information regarding the location of 911 callers to public safety answering points ("PSAPs"). AT&T certainly agrees with the objective of the proceeding — to improve the location accuracy of wireless E911 calls — and is committed to working with the Commission to further that goal. The core issue is what accuracy level is technically feasible and economically reasonable at a particular geographic level. The best approach for making this determination would be the establishment of a technology advisory group — the E911 Technical Advisory Group ("ETAG") — to evaluate this complex issue.

The ETAG should be modeled after the WARN Act advisory group and comprised of all relevant stakeholders. Given the importance of wireless E911, the advisory group should be required to complete its evaluation and provide recommendations to the Commission within 12 months of the initial meeting. In order to make these recommendations, the ETAG should be required to evaluate the capabilities of all handset and network-based technologies in test-beds established in a variety of environments. Field testing should take place in test beds that would be operated on behalf of the ETAG, not any particular party. These test beds should represent a partnership between the parties responsible for each part of the wireless E911 system - carriers, vendors, LECs, and the PSAP community — with all parties having access to the data produced.

While AT&T firmly believes that the ETAG proposal outlined herein offers the best and most constructive path towards improved E911 accuracy, it is imperative that, whichever process is used to review the technical and economic feasibility of wireless E911 solutions, the Commission complete that process before adopting new wireless E911 requirements. No evidence has surfaced to date demonstrating that it is technically possible to satisfy existing accuracy standards on a PSAP-level to the approximately 6,000 PSAPs, nor, of course, is there any record evidence as to how much that would cost even if it were feasible. AT&T's own analysis indicates that the costs would be staggering. Detailed information as to both cost and technical feasibility is critical to reasoned decisionmaking.

The Commission suggests that this new accuracy requirement could be established merely by "clarifying" the existing rule. The rule, however, never specified compliance at the PSAP level. Rather, the Commission opted against establishing a mandatory approach for measuring and verifying Phase II accuracy. Further, all parties — including APCO — that have analyzed Section 20.18(h) to date agree that it has never applied at the PSAP level. Thus, adoption of a new, mandatory standard involves a substantive change in the rule requiring an independent record basis.

Finally, if the Commission adopts its tentative conclusion and adopts a PSAP-level accuracy requirement before compiling a record, it should delay the effective date of the new rule until a determination is made in the follow-on proceeding that it is technically feasible to satisfy the requirement (assuming it is not modified). A realistic deployment schedule with

appropriate performance benchmarks should then be established for satisfying the requirements. A delay in the effective date is preferable to a stay of enforcement and may render the order establishing the new standard non-final.

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COMMENTS

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively “AT&T”), hereby submits comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* in the above-captioned docket.¹ AT&T has been a staunch supporter of public safety and certainly agrees with the objective of the proceeding — to improve the location accuracy of wireless E911 calls. AT&T is committed to continue working towards that end.

It is critical, however, that any new wireless E911 requirements the Commission adopts are technically feasible and economically reasonable. The best way to ensure that result and, in particular, to determine the capabilities of location technologies over different geographic areas

¹ *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, *Notice of Proposed Rulemaking*, FCC 07-108 (rel. Jun. 1, 2007) (“*NPRM*”).

would be to establish a Technology Advisory Group — the E911 Technical Advisory Group (“ETAG”) — modeled after the WARN Act advisory group. The ETAG should be comprised of all relevant stakeholders and should be directed to establish test-beds for measuring the real-world capabilities of various location technologies in different operating environments. The ETAG should be required to provide periodic progress reports to the Commission and deliver final accuracy recommendations based on the test-bed data within 12 months, with these recommendations forming the basis for any new wireless E911 Phase II accuracy requirements.

DISCUSSION

I. AT&T SHARES THE COMMISSION’S GOAL OF IMPROVING THE LOCATION INFORMATION AVAILABLE TO PUBLIC SAFETY

AT&T strongly supports public safety organizations and the need for location information to accompany wireless 911 calls. The company has spent in excess of \$1.8 billion to date in an effort to deliver information regarding the location of wireless 911 callers to public safety. Moreover, AT&T is an active participant in a variety of organizations established to improve public safety communications, such as the National Security Telecommunications Advisory Committee’s Emergency Communications and Interoperability Task Force, which was formed to analyze potential interoperability approaches and provide solutions to address public safety needs. It also has worked extensively with a variety of vendors to develop a suite of broadband services targeted for public safety use² and provides Wireless Priority Service to

² On May 2, 2006, at Rash Field in the Inner Harbor of Baltimore, Maryland, AT&T participated in a demonstration of the wide variety of public safety/national security applications possible over commercial UMTS/HSDPA networks via a commercial IP multimedia subsystem (“IMS”). A similar demonstration was conducted late last year in Washington, DC. IMS permits the sharing of different media during a single transmission — *i.e.*, numerous applications such as voice communications, video feeds, and file transfers can be utilized simultaneously.

numerous public safety entities. Additionally, AT&T recently donated \$1 million to support public safety programs.³

No one questions the importance of wireless E911 and the benefits associated with providing accurate location information to PSAPs. It is critical, however, that any new requirements in this regard be technically feasible and economically reasonable. The evidence to date demonstrates that the Commission's existing Phase II accuracy requirements cannot be satisfied at the PSAP level. Before mandating PSAP-level compliance, or any other new set of requirements, the Commission should obtain record evidence regarding the technical feasibility and relative costs and benefits of various alternatives. Below, AT&T recommends a process to that end.

II. AN ADVISORY COMMITTEE OF ALL STAKEHOLDERS SHOULD BE ESTABLISHED TO DETERMINE TECHNICALLY FEASIBLE AND ECONOMICALLY REASONABLE WAYS TO IMPROVE E911 ACCURACY AND TO CONSIDER PSAP-LEVEL COMPLIANCE

The best approach for improving location accuracy would be to convene an advisory committee modeled after the WARN Act Advisory Committee.⁴ This committee, the ETAG, should be comprised of key representatives from the public safety community, the wireless industry, local exchange carriers, technology vendors, and government officials.⁵ It should be

³ See Press Release, AT&T Inc., "AT&T Extends Commitment to Public Safety Organizations with \$1 Million in Contributions" (Feb. 1, 2007).

⁴ See *NPRM*, Separate Statement of Commissioner Jonathan S. Adelstein at 28-29.

⁵ The E911 proceedings have been largely the product of consensus building by interested stakeholders. For example, the initial proposals were based on an Emergency Access Position Paper prepared by APCO, NENA, NASNA, and PCIA. *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Notice of Proposed Rulemaking*, 9 F.C.C.R. 6170, 6176 (1994). CTIA, NENA, NASNA, and APCO later entered into a consensus agreement that formed the basis for adopting E911 rules that applied in two Phases. See Letter from Thomas E. Wheeler, CTIA, to Reed E. Hundt, Chairman, FCC, CC Docket No. 94-102 (Feb. 12, 1996) ("Wheeler Letter"); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling* (continued on next page)

chaired by Chairman Martin and assigned the responsibility for determining both the appropriate geographic area for measuring accuracy and the technically feasible accuracy level to be achieved within that area. Given the importance of wireless E911, this advisory group should be required to complete its evaluation and provide recommendations to the Commission within 12 months of the initial meeting.⁶

In order to make these recommendations, the ETAG should be required to evaluate the capabilities of all handset and network-based technologies in test-beds established in a variety of

Systems, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 F.C.C.R. 18676, 18687-89 (1996) (“*First Report*”). Similarly, the Commission directed its Office of Engineering Technology (“OET”) and Wireless Bureau (“Bureau”) to work with interested stakeholders to adopt the initial accuracy compliance guidelines. There was expansive participation by all interested stakeholders in that proceeding. The same incentives that prompted participation there are present in the current proceeding. Thus, the Commission should expect broad participation by all stakeholders — manufacturers, carriers, public safety — in the ETAG.

⁶ The data compiled by the ETAG, as well as any data relied on by the Commission in support of a new accuracy standard, must comply with the Data Quality Act (“DQA”) and the related OMB implementation rules and guidelines. See Pub. L. 106-554, § 1(a)(3) [Title V, § 515], 114 Stat. 2763, 2763A-153 (2000), *codified at* 44 U.S.C. § 3516 note (entitled “Policy and Procedural Guidelines”); OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 67 Fed. Reg. 8452 (2002) (“*Information Quality Guidelines*”); OMB, Final Information Quality Bulletin for Peer Review, 70 Fed. Reg. 2664 (2005) (“*Peer Review Guidelines*”). See in particular *Peer Review Guidelines* at 2667, 2675 § II(1). Merely providing an opportunity for comment in a rulemaking proceeding is not an adequate substitute for peer-reviewed evidence as a basis for rules. See *Peer Review Guidelines* at 2665. The Commission has recognized its obligation to conduct peer reviews of evidence on which it relies, or intends to rely, in rulemakings, and Commissioners have testified regarding the importance of peer review of scientific evidence on which the agency relies in adopting rules. See *Maritime Automatic Identification Systems*, WT Docket 04-344, *Report and Order and Further Notice of Proposed Rulemaking and Fourth Memorandum Opinion and Order*, 21 F.C.C.R. 8892, 8940 (2006); *Public Notice*, “FCC Names Economic Studies to be Conducted As Part of Media Ownership Rules Review,” at 1 (Nov. 22, 2006) (announcing that the FCC would conduct ten economic studies, and that “[e]ach of these studies will be peer reviewed”); Response of Jonathan S. Adelstein, Commissioner, FCC to Questions for FCC Members from the Hon. John D. Dingell, Chairman, House Committee on Energy and Commerce et al., at 21 (Feb. 7, 2007); Response of Robert M. McDowell, Commissioner, FCC to Questions for FCC Members from the Hon. John D. Dingell, Chairman, House Committee on Energy and Commerce et al., at 13 (Feb. 7, 2007).

environments — rural, suburban, urban, dense urban, in-building, *etc.* Moreover, unlike past approaches to this issue, public safety representatives should be active participants in all tests with access to the data produced.

In order to meet the 12 month timetable, the following procedures and schedule should be adopted:

- A Public Notice should be issued seeking candidates for the ETAG and directing interested parties to apply for membership within 10 days;
- ETAG members will be selected by Chairman Martin and his staff and will be required to execute non-disclosure agreements within 10 days of selection;
- The first ETAG meeting should be held no later than 30 calendar days following the announcement of selected participants;
- The ETAG should be directed to hold full membership meetings at least once every 45 calendar days thereafter. A written progress report from the ETAG will be prepared for public distribution following each ETAG meeting;
- E911 stakeholders not selected for ETAG participation will be permitted to submit written materials in support of their concerns, which will be evaluated by the appropriate subcommittee(s). At the discretion of each subcommittee chair, presentations by non-participants will also be permitted; and
- Within 90 days of the first ETAG meeting, lab tests of E911 technology improvements should be commenced per the guidelines below, with field tests to follow as soon as practicable.

Field testing should take place in test beds that would be operated on behalf of the ETAG, not any particular party. These test beds should represent a partnership between the parties responsible for each part of the wireless E911 system - carriers, vendors, LECs, and the PSAP community. The test bed process must include:

- objectivity/rigor/transparency of testing methodologies;
- vehicles for addressing vendor proprietary/confidentiality concerns;
- evaluations of the utility of each vendor's solution with all CMRS air interfaces;

- performance testing in terms of accuracy, latency, and yield for specific environments, including rural/suburban/urban/dense urban/indoor contexts and mobile/stationary conditions;
- assessments of scalability regarding deployment and operational issues;
- utilization of existing handset and network capabilities wherever possible so as to prevent stranded capital and potentially accelerate improved E911 solutions; and
- consideration of a “greenfield” approach to E911 location solutions, including the use of an E911 caller location aggregator to provide industry-wide E911 shared services.

III. A NEW ACCURACY RULE SHOULD NOT BE ADOPTED BEFORE FIRST EVALUATING TECHNICAL AND COMMERCIAL FEASIBILITY

The process outlined above offers the twin benefits of identifying and testing new technologies for improving wireless E911 accuracy and providing the Commission with critical evidence regarding the technical and economic feasibility of various wireless E911 requirements. That is the only reasonable way to proceed. The Commission’s proposal — to establish a new wireless E911 accuracy requirement and then *afterwards* obtain evidence on what is technically and commercially feasible — puts the cart before the horse.⁷ There can be no relationship between the facts found and the choice made, because the Commission is making its decision

⁷ The FCC's authority under 47 U.S.C. § 154(j) to “order its own proceeding as it reasonably sees fit . . . does not extend to dispensing with a reasoned explanation for its decisions.” See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). It is a fundamental principle of administrative law that: “agency action [must] be ‘based on a consideration of the relevant factors,’ . . .and rest on reasoned decisionmaking in which ‘the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.’” *United States Telecom Ass’n v. FCC*, 227 F.3d 450, 461 (D.C. Cir. 2000) (“*USTA*”) (citations omitted) (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971); *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). This analysis requires the Commission to take into account the comment record and address significant issues that are raised. See 5 U.S.C. §553(c); *Telocator Network of America v. FCC*, 691 F.2d 525, 537 (D.C. Cir. 1982). The Commission also must conduct a cost-benefit analysis. *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 570 (D.C. Cir. 2004).

before gathering the relevant facts.⁸ This proposal is particularly problematic because the evidence to date makes clear that it is not possible to satisfy the existing wireless E911 requirements on a PSAP-level basis.⁹

It is not just carriers that will be placed in an untenable situation if the Commission adopts impossible-to-meet E-911 accuracy standards. As the National Association of State 9-1-1 Administrators recently noted, states also will be adversely affected:

If the Commission adopts Phase II accuracy testing requirements that currently available location technologies cannot meet (such as a requirement for PSAP level testing), states with carrier cost

⁸ See *USTA*, 227 F.3d at 461. Courts have determined that “impossible requirements imposed by an agency are perforce unreasonable” and that the “law does not compel the doing of impossibilities.” *Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 940 (D.C. Cir. 1991); *Hughey v. JMS Development Corp.*, 78 F.3d 1523, 1530 (11th Cir. 1996) (quoting Black’s Law Dictionary 912 (6th ed. 1990) (“*Lex non cogit ad impossibilia*: The law does not compel the doing of impossibilities”). Once technological impossibility or infeasibility is raised, the Commission must address such claims. *Bunker Hill Co. v. EPA*, 572 F.2d 1286, 1294 (9th Cir. 1977) (citing *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 402 (D.C. Cir. 1973)), *cert. denied*, 417 U.S. 921 (1974). To establish that its rules are “based on a consideration of the relevant factors” and not “a clear error of judgment,” the “record must establish that the required technology is feasible, not merely *possibly* feasible.” *Overton Park*, 401 U.S. at 416; *Bunker Hill Co.*, 572 F.2d at 1301 (emphasis in original); see *Essex Chemical Corp. v. Ruckelshaus*, 486 F.2d 427, 433 (D.C. Cir. 1973), *cert. denied*, 416 U.S. 969 (1974).

⁹ See, e.g., Wheeler Letter at 3; Wireless Networks Issue Committee, E9-1-1 Institute, Committee Report (Sept. 21, 2004) (“E9-1-1 Institute Report”) (The E9-1-1 Institute has approximately 1,000 members devoted to the promotion and advancement of E911); Cingular Wireless LLC, Petition for Limited Waiver of Section 20.18(e)-(h), CC Docket No. 94-102 at 3 (July 6, 2001) (citing numerous instances where AT&T’s predecessor wireless companies notified the FCC that the accuracy requirements were technologically infeasible); Congressional Research Service Report for Congress, *An Emergency Communications Safety Net: Integrating 911 and Other Services* at 9 (updated Jan. 30, 2006) (“CRS Report”). This conclusion was reached by the independent expert hired by the Commission to evaluate E911 implementation issues, as well as the formal advisory committee established by the Commission — NRIC VII — to address the issue of accuracy verification. Dale N. Hatfield, “A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services” at 36 (“Hatfield Report”); NRIC VII, Focus Group 1A, *Near Term Issues for Emergency/E911 Services*, Final Report at 21 (Dec. 2005) (All NRIC VII participants except APCO supported state-level accuracy. Although APCO refused to join in the final report, the majority of public safety NRIC members — NASNA and NENA — supported the recommendation.).

recovery will be responsible for the cost of new technologies that have not yet been developed to meet those requirements. ...

It is important to remember that the current accuracy requirement (distance measurement) was based on the promise of the location technology BEFORE it was actually developed as a solution. To hold a new technology solution to this same requirement would be highly inappropriate. We must instead determine the optimal accuracy to save lives and focus our efforts to achieving that goal.

...

To adopt an accuracy testing process that cannot be achieved at this time not only puts the carrier in a compliance limbo, but also puts many states in a budgetary limbo until someone can figure out how to achieve the requirement.¹⁰

The Commission's current proposal to adopt a new, interim Phase II accuracy standard while seeking evidence that presumably would lead to the development of a different standard is similar to the approach originally proposed and rejected by the Commission in the wireless E911 docket. The Commission initially proposed to adopt rules that would have required carriers to satisfy accuracy requirements in three phases. All interested stakeholders — including public safety organizations and the wireless industry — opposed the adoption of an interim accuracy requirement because it would effectively require the development and deployment of a costly “orphan technology.”¹¹ The Commission agreed and concluded that an interim “stage of E911 deployment would not be a bridge but instead could be a costly detour that could delay full

¹⁰ *Ex Parte* Comments of the National Association of State 9-1-1 Administrators, CC Docket No. 94-102 (filed May 23, 2007) (emphasis in original); *accord* Comments of the State of Montana, PS Docket No. 07-114 at 1 (filed Jun. 29, 2007) (stating that “[i]f the Commission adopts Phase II accuracy testing requirements that currently available location technologies cannot meet (such as a requirement for PSAP level testing), states like Montana with carrier cost recovery will be responsible for the cost of new technologies that have not yet been developed to meet those requirements. . . . The State of Montana supports the *Ex Parte* Comments filed by the National Association of State 9-1-1 Administrators (NASNA) [which] recommend[] the Commission accept Phase II as it is, test it to the NRIC VII 1A report recommendation and create a new phase (call it Phase III) that identifies the public safety need for accuracy and develops a plan to achieve that goal”).

¹¹ *See* Wheeler Letter at 3.

implementation of ALI capability.”¹² The bifurcated approach now proposed by the Commission raises the same concerns.

Even if the wireless E911 accuracy requirement technically could be satisfied at a PSAP-level, however, mandating the measurement of Phase II accuracy at that level is currently unworkable. APCO estimates that there are currently 6,000 PSAPs,¹³ and the number of, and areas served by, PSAPs is constantly changing. Craig Reiner, Director of the State of New Jersey’s Office of Emergency Telecommunications Services, summarized the problem with measuring accuracy at the PSAP level as follows:

In New Jersey, there are situations where accuracy certification at the PSAP level may pose a unique challenge to the wireless carrier. We have PSAPs that serve many municipalities that are not contiguous, essentially creating multiple geographic islands within the PSAP’s responsibility, not the traditional PSAP boundary we commonly think of. Another factor we see is that it is not uncommon for municipalities to revise PSAP contracts at the beginning of the year, contracting with a different PSAP creating a moving target for the carriers. We also have College Universities that operate PSAPs with boundaries that are difficult to define geographically. I would also suspect that with the network based location technology that is deployed by the wireless carriers in New Jersey today in our heavily populated resort towns may have a difficult time meeting the accuracy requirement since many of those PSAPs are serving a small geographic area, many less than 5 square miles, unless the carriers install cell sites out in the ocean.¹⁴

Further complicating matters, in some areas there are organizations that make competing claims as PSAPs. For example, AT&T has received Phase II requests from cities acting as a PSAP, as well as competing requests from the counties (acting as a PSAP) within which the

¹² *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 F.C.C.R. 18714, 18710-11 (1996) (“*First Report*”).

¹³ APCO Request for Declaratory Ruling, CC Docket No. 94-102 at 5 (filed Oct. 6, 2004).

¹⁴ Email from Craig Reiner, Director, OETS, New Jersey to John Garner, Program Director, Public Safety Relations, AT&T (Jun. 14, 2007) (attached).

cities are located, with each party demanding the delivery of all calls within the city limits. Similarly, conflicts have arisen between county/city call centers and state police, with each asserting PSAP responsibility. This further complicates the “moving target” referenced by Director Reiner. Even APCO has acknowledged the difficulty associated with measuring Phase II accuracy at the PSAP level. APCO initially suggested that accuracy be measured based on the combined service areas of PSAPs in the same geographic area and later proposed that accuracy be measured on an MSA/RSA basis.¹⁵

IV. ADOPTION OF A PSAP-LEVEL ACCURACY REQUIREMENT IS A SUBSTANTIVE RULE CHANGE, NOT A MERE CLARIFICATION AND MUST BE JUSTIFIED BY THE RECORD

The Commission seeks comment on its tentative conclusion that “consistent with APCO’s proposal . . . Section 20.18(h) should be *clarified* to require carriers to meet Phase II accuracy requirements at the PSAP service area level.”¹⁶ Although the Commission seeks comment on this issue, it notes that “the avenue of clarification” rather than rulemaking is not precluded.¹⁷ AT&T respectfully submits that the proposed “clarification” would be a substantive rule change, not a mere interpretation of an existing rule. As such, it must be based on the record evidence.

Section 553(b) of the APA generally requires compilation of a record through notice and comment before the promulgation or amendment of a substantive rule.¹⁸ There is a limited

¹⁵ APCO Declaratory Ruling Request at 5; APCO Supplement to Request for Declaratory Ruling, CC Docket No. 94-102 at 3 (Feb. 4, 2005).

¹⁶ *NPRM* at ¶ 5 (emphasis added). Moreover, the Commission’s tentative conclusion is *not* consistent with APCO’s proposal. As discussed above, APCO changed its proposal from requiring measurements at the PSAP-level to the MSA/RSA level.

¹⁷ *Id* at ¶ 6.

¹⁸ 5 U.S.C. §553(b). This “improves the quality of agency rulemaking by exposing regulations to diverse public comment, ensures fairness to affected parties, and provides a well-
(continued on next page)

exemption for clarifications/interpretive rules which does not apply here. The Commission cannot simply clarify that the existing Phase II accuracy requirements must be satisfied at the PSAP level. The FCC admits that the rule “does not expressly state that accuracy must be measured and tested at the PSAP level.”¹⁹ From the beginning, the accuracy requirements set forth in Section 20.18 were aspirational only and the record demonstrated that the requirements could not be satisfied on a PSAP level. In fact, the Commission expressly declined to adopt an accuracy compliance standard and delegated the issue to OET to evaluate and adopt “guidelines”:

The Commission concluded in the *E911 First Report and Order*, the best way to ensure implementation of E911 services is to determine what capabilities must be achieved, rather than micromanaging the process by prescribing detailed technical and operational standards. *As a result, the Commission declined to adopt specific methods for measuring compliance with the E911 rules, relying instead upon the parties to resolve technical issues in good faith.*

developed record that enhances the quality of judicial review.” *Sprint v. FCC*, 315 F.3d 369, 373 (D.C. Cir. 2003) (internal quotations omitted).

¹⁹ *NPRM* at ¶ 6. Stakeholders, including APCO, agree that the existing rules do not require accuracy calculations at the PSAP level. *See* APCO, Project LOCATE, Final Report: An Assessment of the Value of Location Data Delivered to PSAPs with Enhanced Wireless 911 Calls at 4, 11, 15, 27 (Apr. 2007) (“Project Locate Report”). Contrary to the Commission’s statement that it “never suggested that it is appropriate to average accuracy results over an entire state, much less over a multi-state carrier’s entire service area,” virtually every party that has analyzed the E911 accuracy requirements has reached the opposite conclusion. *See, e.g.*, Project Locate Report at 15 (“the FCC parameters for accuracy and consistency are not measured at the PSAP, but rather the entire [wireless] network with weighting allowed”); E9-1-1 Institute Report at 21 (noting that carriers use “network-wide location accuracy measurements” to satisfy the Commission’s accuracy rules); CRS Report at 9 (concluding that “[t]he FCC rules permit a wireless carrier to meet location-accuracy requirements by averaging location performance systemwide”); Hatfield Report at 36. In fact, the Commission expressly authorized Cingular Wireless LLC and AT&T Wireless Services, Inc. to calculate “network-wide” accuracy which is greater than at a PSAP level. *See Cingular Wireless LLC*, 17 F.C.C.R. 8529, n.7 (2002) (“*TDMA Consent Decree*”); *Cingular Wireless LLC*, 18 F.C.C.R. 11746, n.9 (2003) (“*GSM Consent Decree*”); *AT&T Wireless Services, Inc.*, 17 F.C.C.R. 19938, n.10 (2002) (“*AWS GSM Consent Decree*”); *AT&T Wireless Services, Inc.*, 17 F.C.C.R. 11510, n.19 (2002) (“*AWS TDMA Consent Decree*”).

We recognize that the entities subject to our rules need guidance on appropriate methods for determining compliance with the location accuracy requirements. Accordingly, we are tasking the Office of Engineering and Technology (OET) and the Bureau to expeditiously develop and publish methods that may be used for verifying compliance with our rules governing Phase II. In developing appropriate compliance verification methods, OET and the Bureau should work along with all interested parties, including equipment manufacturers, system operators, public safety organizations, standards groups, and organizations with relevant expertise in performing such measurements. In developing these methodologies, OET and the Bureau are expected to take into account the practical and technical realities.²⁰

OET worked with industry groups to develop non-binding policies that provided carriers broad discretion as to how to determine compliance with the Phase II accuracy requirements. These guidelines indicated that the carriers could measure compliance with the Phase II accuracy requirements by aggregating data across “a wireless service provider’s entire advertised coverage area within a metropolitan area or similar region” or any other procedure that was “based on sound engineering and statistical practice.”²¹ This flexibility provided the only basis for many carriers to satisfy the accuracy requirements in rural areas. For example, network-based solutions could satisfy the accuracy requirements in many rural areas only by aggregating accuracy data. Handset-based solutions faced similar problems in urban areas. If the FCC changes this paradigm to a specific PSAP-level only test, the agency will have dramatically “change[d] the rules of the game [and] . . . more than a clarification has occurred.”²²

²⁰ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Third Report and Order*, 14 F.C.C.R. 17388, 17426 (1999) (“*Third Report*”) (emphasis added).

²¹ OET Bulletin 71, *Guidelines for Testing and Verifying the Accuracy of Wireless E911 Location Systems* at 4, 2 (Apr. 12, 2000).

²² *Sprint*, 315 F.3d at 374 (striking down a clarification that was in reality a substantive rule change).

Thus, a PSAP-level accuracy requirement is not a mere clarification of the Commission's existing rules. The Commission's tentative conclusion represents a substantial change in existing E911 requirements and would impose substantial, new obligations on wireless carriers.²³ The FCC must recognize it is changing course substantially²⁴ and provide a reasoned basis — grounded in the record — for the change.

V. IF THE COMMISSION ADOPTS ITS TENTATIVE CONCLUSIONS, THE NEW ACCURACY REQUIREMENTS SHOULD NOT BECOME EFFECTIVE BEFORE THE COMMISSION HAS HAD THE OPPORTUNITY TO CONSIDER FEASIBILITY ISSUES IN THE SECOND STAGE OF THIS PROCEEDING

If the Commission were to adopt its proposed PSAP-level accuracy requirement, AT&T agrees that the rule should not and could not be immediately enforced. In fact, given the substantial legal questions that exist about the basis for adopting the requirement and the lack of any certainty that compliance can be achieved at all, the Commission should not merely stay enforcement, but should stay the effective date of its decision pending the conclusion of the later phase of the proceeding. The Administrative Procedure Act does not permit the Commission to promulgate a rule and give it legal effect, while developing the record concerning its feasibility in a later proceeding.²⁵ On the other hand, deferring the effectiveness of the rule itself until after

²³ See *Sprint*, 315 F.3d at 374.

²⁴ See *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), cert. denied 403 U.S. 923 (1971); *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413, 1425 (D.C. Cir. 1983).

²⁵ See 5 U.S.C. §553(c); *Competitive Telecommunications Ass'n v. FCC*, 87 F.3d 522, 531 (D.C. Cir. 1996) (“[T]he Commission also invited further comments regarding the proper level of a permanent TST-S charge, but it has yet to release its analysis of those comments and now urges us not to consider an issue that it has not finally decided. This course would permanently immunize the FCC from review of the ‘interim’ TST-S rate and the RIC. The Commission can not expect to avoid judicial scrutiny so easily — especially when the ‘interim’ is measured in years and follows almost a decade of ‘transition.’”).

completion of the later phase of the proceeding may render the rule non-final and insulate it from review.

CONCLUSION

For the foregoing reasons, the Commission should not adopt a PSAP-level accuracy requirement until first determining what is technically and commercially feasible. AT&T recommends that the Commission create a WARN Act-like advisory group comprised of all interested stakeholders to evaluate this issue. Nevertheless, if the Commission were to adopt its tentative conclusion to apply the existing accuracy requirements at the PSAP level, the new rule should be made effective only after the second stage of this proceeding has been resolved and becomes final.

Respectfully submitted,

AT&T INC.

By: /s/ Michael P. Goggin

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July 5, 2007

ATTACHMENT

-----Original Message-----

From: Craig Reiner <craig.reiner@oit.state.nj.us>

To: Garner, John

Sent: Thu Jun 14 15:20:33 2007

Subject: Re: PSAP reorg

<<craig.reiner.vcf>>

<<craig.reiner.vcf>>

John,

Actually I think it was Mike that brought it up but I think this summarize our conversation:

"In New Jersey there are situations where accuracy certification at the PSAP level may pose a unique challenge to the wireless carrier. We have PSAPs that serve many municipalities that are not contiguous, essentially creating multiple geographic islands within the PSAP's responsibility, not the traditional PSAP boundary we commonly think of. Another factor we see is that it is not uncommon for municipalities to revise PSAP contracts at the beginning of the year, contracting with a different PSAP creating a moving target for the carriers. We also have College Universities that operate PSAPs with boundaries that are difficult to define geographically. I would also suspect that with the network based location technology that is deployed by the wireless carriers in New Jersey today in our heavily populated resort towns may have a difficult time meeting the accuracy requirement since many of those PSAPs are serving a small geographic area, many less than 5 square miles, unless the carriers install cell sites out in the ocean".

Feel free to quote me and edit it down if you want. The statements are accurate.

Craig

Garner, John wrote:

Craig:

We would like to quote you about the communities that contract out the PSAP function and how the selected PSAP changes periodically. If you are comfortable with that, would you reply with what you told me at lunch yesterday, please.

Regards,
John Garner
Program Director, Public Safety Relations
Cingular Wireless, the New AT&T!
601-209-8201
NEW! john.garner@att.com

Sent from my BlackBerry Wireless Handheld