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

REPLY COMMENTS

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively "AT&T"), hereby replies to comments submitted in response to the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned docket.[1]

The *NPRM* established a two-stage process for evaluating wireless E911 accuracy requirements. The first stage sought comment on the Commission's tentative conclusion that carriers should be required to satisfy the Section 20.18(h) accuracy requirements at the PSAP-level and, if so, whether enforcement of the rule should be stayed.[2] These reply comments are being submitted in the second stage, which, among other things, was designed to gather evidence

[1] *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, *Notice of Proposed Rulemaking*, FCC 07-108 (rel. Jun. 1, 2007) ("*NPRM*").
[2] *Id.* at ¶¶ 5-6.

regarding the capabilities and limitations of location technologies and the proper deployment schedules for new E911 requirements.

I. THE COMMISSION HAS IMPERMISSIBLY PREJUDGED ISSUES SET FOR COMMENT IN STAGE TWO OF THIS PROCEEDING

On September 11, 2007, the Commission adopted its Order in Stage One and concluded that Section 20.18(h) should be modified to apply at the PSAP-level.[3] Important for this proceeding, the FCC also established deployment benchmarks designed to "measure the Commission's accuracy requirements on progressively smaller geographic levels until the PSAP-level is met"[4] even though the *NPRM* specifically reserved the following issues for Stage Two of the proceeding:

> [W]hat reasonable amount of time should we permit carriers to achieve compliance at the PSAP level? What specific tasks will be necessary for carriers to come into compliance with current accuracy requirements on a PSAP-level basis? Should the amount of time vary based on certain factors? What factors should be considered? Should benchmarks be established?[5]

Although the text of the Stage One Order has not yet been released, it is clear that the aforementioned Stage Two issues have already been resolved.[6] Accordingly, those issues are not addressed herein.

Nevertheless, the FCC's prejudgment of crucial issues reserved for the Stage Two proceeding was legal error. The FCC is obligated to "adhere to its own rules and regulations."[7]

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[3] "FCC Clarifies Geographic Area Over Which Wireless Carriers Must Meet Enhanced 911 Location Accuracy Requirements," FCC News Release (Sept. 11, 2007) ("News Release").
[4] *Id.*
[5] *NPRM* at ¶ 8.
[6] News Release at 1.
[7] *E.g.*, *Riverkeeper, Inc. v. EPA*, 475 F.3d 83 (2d Cir. 2007) (quoting *Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986)); *see also Vitarelli v. Seaton*, 359 U.S. 535 (1959) (an agency is "bound by the regulations which [it has] promulgated for dealing with [a class of] cases"); *McElroy Elec. Corp. v. FCC*, 990 F.2d 1351 (D.C. Cir. 1993).

Rulemakings are governed by Sections 1.411 *et seq*. of the Commission's rules.[8] Sections 1.412, 1.413, and 1.415 set out the process for notice and comment. The Commission's decision to address in its Stage One Order issues specifically designated for comment in Stage Two is contrary to these rules and thus is unlawful. For example, although Section 1.415(c) states that "a reasonable time will be provided for filing comments in reply to the original comments, and the time provided will be specified in the notice of proposed rulemaking," the Commission resolved Stage Two issues before completion of the comment cycle.

Moreover, "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.'"[9] This analysis requires the Commission to take into account the comment record and address significant issues that are raised.[10] This principle has been violated here. The Commission has adopted PSAP-level compliance benchmarks before the conclusion of the comment cycle specifically created to address this issue. Thus, there can be no relationship between the facts found and the choice made, because the Commission's benchmark decision was made *before* gathering the relevant facts.[11]

II. THE ETAG IS THE BEST VEHICLE FOR IDENTIFYING AND EVALUATING LOCATION TECHNOLOGIES

Although the Commission appears to have resolved the Stage Two issues relating to the appropriate benchmarks for satisfying the existing Section 20.18(h) accuracy requirements on a

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[8] *See* 47 C.F.R. §§ 1.411 *et seq*.

[9] *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)).

[10] *See* 5 U.S.C. §553(c); *Telocator Network of America v. FCC*, 691 F.2d 525, 537 (D.C. Cir. 1982).

[11] *See USTA*, 227 F.3d at 461.

PSAP-level, unresolved issues remain such as whether a more stringent accuracy requirement should be adopted and, if so, what benchmarks should be adopted for satisfaction of this new requirement.[12] The record demonstrates overwhelming support for the establishment of an E911 Technical Advisory Committee ("ETAG") to evaluate the capabilities of location technologies and compile evidence that could be used to determine whether new accuracy requirements are technically and economically feasible.[13] For example, NENA has called on the Commission to "establish a forum to assist [it] in providing recommendations moving forward on how to best optimize location accuracy capabilities."[14] Likewise, industry organizations such as the Rural Cellular Association, Telecommunications Industry Association, CTIA – the Wireless Association, and the Wireless Communications Association, International, all support the establishment of an advisory group or forum.[15] As the Telecommunications Industry Association rightly concluded, "[t]his type of forum, with all stakeholders working together to accomplish a common goal, can best ensure that wireless E911 location accuracy improves as

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[12] *See NPRM* at ¶¶ 9-18.

[13] *See e.g.*, *See* Comments of AT&T, Inc, PS Docket 07-114 (filed July 5, 2007) ("AT&T Step One Comments"); Reply Comments of AT&T, Inc., PS Docket No. 07-114 (filed July 11, 2007) ("AT&T Step One Reply Comments"); Comments of AT&T, Inc., PS Docket No. 07-114 (filed Aug. 20, 2007) ("AT&T Step Two Comments"); CTIA Comments at 3-4; Motorola Comments at 3; Comments of the National Emergency Number Ass'n, PS Docket No. 07-113 at 3 (filed Aug. 20, 2007)("NENA Comments"); Nokia Comments at 1-2; Rural Cellular Ass'n Comments at 7; Comments of Rural Telecomm. Group, Inc., PS Docket No. 07-114 at 10 (filed Aug. 20, 2007); Sprint Nextel Comments at 3; Comments of Telecomm. Indus. Ass'n, PS Docket No. 07-114 at 9 (filed Aug. 20, 2007)("TIA Comments"); Comments of Texas 911 Alliance and Texas Comm. on State Emergency Commun'cns, PS Docket No. 07-114 at 2 (filed Aug. 20, 2007); Comments of Texas Instruments, Inc. PS Docket No. 07-114 at 6 (filed Aug. 20, 2007); T-Mobile Comments at 2-3; Verizon Comments at 4; Comments of Wireless Communc'ns Ass'n, PS Docket No. 07-114 at 14-15 (filed Aug. 20, 2007).

[14] NENA Comments at 3.

[15] *See infra*, note 13.

expeditiously as possible."[16] Even location technology vendors support the establishment of a technical advisory group to validate the accuracy of their technologies.[17]

The ETAG or a similar advisory group must compile neutral test data based on real-world conditions. Given the importance of location accuracy and the immense costs associated with changing E911 location technologies, it is imperative that any new E911 accuracy requirement be based on hard data.[18] Field testing should take place in realistic test beds (including urban, suburban, rural, and in-building trials) that are operated by the neutral ETAG and not any particular party. The findings and recommendations of the ETAG would offer the best data available, and would provide the Commission with a basis for determining whether improved E911 location accuracy is technically feasible.

Until the evaluation of location technology capabilities is completed, however, it would be premature for the Commission to resolve most of the issues set for comment in Stage Two.[19] For example, the Commission seeks comment on whether a uniform accuracy standard should be

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[16] *See* TIA Comments at 9.

[17] *See* Comments of Texas Instruments, Inc., PS Docket No. 07-114 at 6 (filed Aug. 20, 2007); Nokia Comments at 1-2; Comments of Polaris Wireless, Inc., PS Docket No. 07-114 at 24 (filed Aug. 20, 2007) Comments of Andrew Corp., PS Docket No. 07-114 at 3 (filed Aug. 20, 2007); Comments of TruePosition, Inc., PS Docket No. 07-114 at 5, n.4 (filed Aug. 20, 2007). Comments of Rosum Corp., PS Docket No. 07-114 at 10 (filed Aug. 20, 2007).

[18] As AT&T previously noted, any new or revised E911 rules must be based on data compiled in accordance with the Data Quality Act and related rules and peer review guidelines. *See* AT&T Step One Comments at 4, n6. *See e.g.*, Commissioner Michael J. Copps, Testimony Before the U.S. Senate Committee on Commerce, Science and Transportation on the "Present and Future of the Universal Service Fund" (Mar. 1, 2007)("gathering hard data … is absolutely essential to sound policymaking.").

[19] *See NPRM* at ¶¶ 9-13, 17-18. The record fails to demonstrate that location accuracy is feasible at the PSAP level for either wireless or VoIP, let alone a more stringent accuracy requirement. Vonage, however, attempts to shift the burden of providing E911 location information to "network end-points." Comments of Vonage, PS Docket No. 07-114 at 17-22 (filed Aug. 20, 2007). This transparent attempt to avoid E911 obligations was previously raised in a related docket and rebuffed by SBC Communications, Inc. *See* Reply Comments of SBC Communc'ns, Inc., WC Docket No. 05-196 (filed Sept. 12, 2005). SBC's Reply Comments are hereby incorporated by reference.

adopted and whether that standard should be more stringent than the current handset-based accuracy requirement. Yet, no verifiable technical data has been provided to demonstrate that E911 accuracy improvements can be achieved (or that the existing accuracy requirements can be satisfied at the PSAP-level).[20] As Sprint Nextel indicated, it "cannot supply the Commission with a reasoned opinion on how long it would take it to develop an unknown technology."[21]

A few manufacturers make the unsubstantiated claim that their proprietary technologies may be able to improve upon the existing accuracy requirements.[22] No verifiable technical data

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[20] *See* Comments of CTIA-The Wireless Ass'n, PS Docket No. 07-114 (filed Aug. 20, 2007)("CTIA Comments"); Comments of MetroPCS Communc'ns, Inc., PS Docket No. 07-114 (filed Aug. 20, 2007); Comments of Rural Cellular Ass'n, PS Docket No. 07-114 (filed Aug. 20, 2007)("Rural Cellular Ass'n Comments"); Comments of Sprint Nextel Corp., PS Docket No. 07-114 (filed Aug. 20, 2007)("Sprint Nextel Comments"); Comments of T-Mobile USA, Inc., PS Docket No. 07-114 (filed Aug. 20, 2007)("T-Mobile Comments"); Comments of Verizon, PS Docket No. 07-114 (filed Aug. 20, 2007)("Verizon Comments").

[21] Sprint Nextel Comments at 4. *See also* Rural Cellular Ass'n Comments at 5 (stating that "uniform requirements [are] financially infeasible given current technology"); RTG Comments at 3-5 (noting that it was technically infeasible to meet the current requirements at a PSAP level, let alone satisfy a more stringent accuracy requirement as proposed in paragraphs 9-13 of the *NPRM*).

[22] Comments of S5 Wireless, Inc., WC Docket No. 05-196 at 2 (filed Aug. 20, 2007). S5 Wireless claims to have achieved accuracy levels better than the FCC requirements. *Id*. Yet, S5 admits that its results were derived from a "suburban environment." Such environments are hardly indicative of all PSAPs and certainly not the rural and urban areas marked by man-made structures and natural topography that will prove challenging in achieving compliance with any new standard. TruePosition alleges improvements in accuracy that could be achieved by the deployment of a U-TDOA + A-GPS hybrid solution, but provides ***no*** test data. Comments of TruePosition, Inc., PS Docket No. 07-114 at 9 (filed Aug. 20, 2007). TruePosition's conjecture is only supported by a "belief [that accuracy thresholds would be met] assuming testing was performed with sound engineering practices." *Id*. at 10. Indeed, TruePosition states that the software necessary for this type of solution is 18 months from deployment and that it may take years for significant handset penetration levels to be reached, assuming that such a hybrid solution works in the first instance. *Id*. at 10-11. T-Mobile correctly points out that TruePosition's performance claims are without basis because "[n]o such system has been built fielded, or tested." *See* T-Mobile Ex Parte Letter, PS Docket No. 07-114 at 2-4 (filed Sept. 6, 2007). Even assuming that such a system can be deployed, it will neither be able to achieve compliance in all PSAPs nor be able to satisfy TruePosition's aggressive timeline. *See id.;* T-Mobile Ex Parte Letter, PS Docket No. 07-114 (filed Sept. 10, 2007); Joint Ex Parte Letter filed by Rural Cellular and Verizon Wireless, PS Docket No. 07-114 (filed Sept. 10, 2007).

was provided, however, in support of these claims.[23] In fact, some of the largest chipset and handset developers have recognized that "today and for the foreseeable future" technology will not enable the carriers to improve upon the current accuracy requirements.[24] Meanwhile, those vendors claiming to have achieved improved location accuracy solutions offer only illusory promises without evidentiary foundation.[25]

CONCLUSION

Given the sanctity of emergency communications and the billions of dollars at stake, it is essential that only proven, not speculative, technologies drive regulatory action. No party has set forth data based on the type of rigorous multi-environment tests that are needed for the Commission to impose new E911 location accuracy requirements. A coalition group with

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[23] It would be legal error to adopt a rule requiring carriers to deploy millions of dollars to satisfy an accuracy standard that lacks a technical foundation. *See United States Telecom Ass'n v. FCC*, 227 F.3d 450, 461 (D.C. Cir. 2000) ("*USTA*"); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co*., 463 U.S. 29, 43 (1983)). 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." *Bunker Hill Co. v. EPA*, 572 F.2d 1286, 1301 (9th Cir. 1977); *see also Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971); *Essex Chemical Corp. v. Ruckelshaus*, 486 F.2d 427, 433 (D.C. Cir. 1973), *cert. denied*, 416 U.S. 969 (1974).

[24] Comments of Qualcomm Inc., PS Docket No. 07-114 at 2 (filed Aug. 20, 2007); *see* Comments of Motorola, Inc., PS Docket No. 07-114 at 3 (filed Aug. 20, 2007)("Currently available location technologies have significant limitations that inhibit their ability to provide more accurate location information in certain environments…. [T]here is insufficient information available today to determine what higher level of location accuracy is achievable, and when.")("Motorola Comments"); Comments of Nokia, Inc. and Nokia Siemens Networks, PS Docket No. 07-114 at 2 (filed Aug. 20, 2007)("There is no "silver bullet" that will resolve all the problems associated with providing accurate location information…. [t]oday's current location technologies have several limitations…." Likewise no new technology has been "adopted by the industry as the ultimate solution… in all environments.")("Nokia Comments").

[25] Basing a rule on these unsubstantiated claims certainly does not comply with the requirements of the Data Quality Act ("DQA"), 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"), and the related OMB implementation rules and guidelines. *See* AT&T Step One Comments at 4, n.6; AT&T Step Two Comments at 4, n.8.

diverse perspectives and technical expertise, such as the ETAG, must be formed to evaluate the capabilities of location technologies before adopting more stringent requirements. Until location technologies are identified that can satisfy a more stringent accuracy requirement, it is premature to seek comment on how long it would take to satisfy such a requirement.

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