

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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)	
)	
E911 Requirements for IP-Enabled Service Providers)	WC Docket No. 05-196
)	
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)	

**VERIZON WIRELESS
REQUEST FOR STAY PENDING JUDICIAL REVIEW**

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**VERIZON WIRELESS
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Pursuant to 47 C.F.R. §§ 1.41 and 1.43, Verizon Wireless respectfully requests that the Federal Communications Commission (“Commission”) stay pending judicial review the effectiveness of the rule changes adopted in its *Wireless E911 Location Accuracy Requirements* Report and Order, which was adopted on September 11, 2007 and released on November 20, 2007 (“Order”).¹ Verizon Wireless also supports the requests for stay pending judicial review

¹ Report and Order, *Wireless E911 Location Accuracy Requirements, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling, 911 Requirements for IP-Enabled Service Providers*, PS Docket No. 07-114, CC Docket No. 94-102, WC Docket No. 05-196, FCC 07-166 (rel. Nov. 20, 2007) (“Order”).

filed in this matter by T-Mobile U.S.A., Inc. (“T-Mobile”), Sprint Nextel Corporation (“Sprint Nextel”) and Rural Cellular Association (“RCA”).²

INTRODUCTION AND SUMMARY

Verizon Wireless strongly supports the Commission’s commendable goal of ensuring that mobile phone users have reliable and accurate 911 emergency location service. In pursuit of this goal, however, the Commission has disregarded the notice and comment requirements of the Administrative Procedures Act (“APA”) and imposed technologically infeasible mandates on wireless carriers. Like T-Mobile, Sprint Nextel and RCA, Verizon Wireless is thus compelled to request that the Commission stay the Order pending judicial review. The reasons establishing that a stay is warranted have been ably presented by T-Mobile, Sprint Nextel and RCA in each party’s previously filed request for a stay pending judicial review. *See* T-Mobile Application; Sprint Nextel Petition; RCA Motion; *see also* Alltel Corp. Response In Support Of Motions For Stay (Feb. 4, 2008) (“Alltel Response”). Verizon Wireless therefore emphasizes only a few points below.

The Commission has required wireless carriers to provide information on the locations of wireless 911 callers to local public safety answering points (“PSAPs”) since 1996 (“E911 service”). Report and Order, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 11 FCC Rcd 18676 (1996). Although the Commission established accuracy standards at that time, it did not specify the manner in which carriers were to test the performance of their systems. *Id.* The Commission, however, routinely allowed carriers to measure compliance on broad geographic, rather than PSAP, levels. *See e.g.*,

² *See* T-Mobile, Application for Expedited Stay Pending Judicial Review (Jan. 28, 2008) (“T-Mobile Application”); Sprint Nextel, Petition For Stay Pending Judicial Review, (Jan. 28, 2008) (“Sprint Nextel Petition”); RCA, Motion For Stay Pendete Lite And Comments In Support Of Application For Stay (Jan. 28, 2008) (“RCA Motion”).

Order, *T-Mobile USA, Inc.*, 18 FCC Rcd 15123, 15128 n.11 (2003) (authorizing T-Mobile to measure compliance nationwide); Order, *Cingular Wireless LLC*, 18 FCC Rcd 11746, 11750 ¶ 2 n.9 (2003) (same).

On June 1, 2007, the Commission issued a notice of proposed rulemaking seeking comment on a number of issues relating to the accuracy and reliability of E911 service, including the appropriate geographic area for measuring carrier compliance with location accuracy rules. Notice of Proposed Rulemaking, *Wireless E911 Location Accuracy Requirements*, at ¶ 5, PS Docket No. 07-114, CC Docket No. 94-102, WC Docket No. 05-196, FCC 07-108 (rel. Jun. 1, 2007) (“*E911 NPRM*”). The Commission expressly, and controversially, bifurcated the rulemaking proceeding.³ During “Part A” of the proceedings, the Commission sought comments on what geographic unit should be used to measure the “location accuracy” of a carrier’s E911 services and whether to defer enforcement of this new requirement to allow carriers time to come into compliance. *E911 NPRM* ¶ 1 (requesting comments and reply comments on Part A by July 5 and July 11, 2007, respectively). The Commission expressly deferred until the later “Part B” proceeding, which is still ongoing, issues focused on the future of E911 service, and sought comments on issues such as how long carriers should have to come into compliance with the new requirements and whether to establish interim benchmark compliance deadlines. *E911 NPRM* ¶ 1 (requesting comments and reply comments on Part B by August 20 and September 18, 2007, respectively).

On September 11, 2007, the Commission adopted the Order, which resolved the issue presented in Part A of the Commission’s *E911 NPRM*. The Order mandates that carriers

³ See e.g., Reply Comments of Verizon Wireless (July 11, 2007); RCA & Verizon Wireless Ex Parte Letter at 8-9 (August 31, 2007).

measure the location accuracy of their E911 services at the level of each PSAP to which they provide information. Order ¶ 18. But the Commission did not stop there. Instead, the Commission went on to decide the timetable for compliance with the Order's new location accuracy requirements—an issue expressly reserved for Part B of the rulemaking—even though the Part B comment period had not yet ended. Specifically, the Commission decided that carriers would be permitted five years to achieve full PSAP-level compliance, but would also be required to meet interim compliance benchmarks after one and three years. *Id.* Although the Commission measured all of the Order's compliance deadlines from September 11, 2007, the Commission did not even release the text of the Order or its new rules until more than two months later on November 20, 2007. And to date, almost five months after adopting the Order, the Commission has yet to publish it in the Federal Register.

Like T-Mobile, Sprint Nextel and RCA, Verizon Wireless requests that the Commission stay its Order pending judicial review. Verizon Wireless and other carriers will likely succeed in having the Order vacated on appeal because the Order's location accuracy requirements are technologically infeasible and were enacted in violation of the APA's notice and comment procedures. The Order is thus arbitrary and capricious. Like other carriers, Verizon Wireless will suffer irreparable harm if a stay is not granted, including the potential of reputational injury for noncompliance with requirements that are technologically infeasible. Staying the Order will not harm the public because carriers will continue to provide the most accurate location information currently available as required by existing Commission rules. In contrast, absent a stay the Order will harm the public by creating false impressions that current E911 emergency location service is unreliable and that PSAP-level compliance is technologically feasible on the Order's timetable, if at all. The Order will also divert carriers' resources away from actions that

will actually benefit PSAPs and the E911 system. For these reasons, staying the Order is in the public interest.

ARGUMENT

The Commission should stay its Order because, as T-Mobile, Sprint Nextel and RCA have similarly demonstrated, (1) Verizon Wireless is likely to prevail on the merits of its appeal; (2) Verizon Wireless will be irreparable harmed absent a stay; and (3) granting a stay will not harm other parties and is in the public interest. *See, e.g., Washington Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Assoc. v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

I. VERIZON WIRELESS IS LIKELY TO SUCCEED ON THE MERITS OF ITS APPEAL.

As T-Mobile, Sprint Nextel and RCA have persuasively demonstrated, the Order is likely to be overturned by the Court of Appeals as arbitrary and capricious. The overwhelming record evidence establishes that the Order's mandates are technologically infeasible. Moreover, the Commission adopted those mandates without affording interested parties the notice and opportunity to comment mandated by the APA. *See* 5 U.S.C. § 553(c).

A. The Order Is Arbitrary and Capricious Because the Evidence Before the Commission Demonstrates That the Geographic-Level Compliance Mandates Are Technologically Infeasible.

As Verizon Wireless and other carriers have already explained, the Order is arbitrary and capricious because the uncontradicted evidence before the Commission establishes that the Order's geographic-level mandates are technologically infeasible using any existing or reasonably foreseeable technology. *See Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 940 (D.C. Cir. 1991) ("Impossible requirements imposed by an agency are perforce unreasonable[.]"); *AT&T Corp. v. FCC*, 323 F.3d 1081, 1087 (D.C. Cir. 2003) (agency may not

impose an impossible goal); *see also* Verizon Wireless Comments at 21-22 (filed July 5, 2007); RCA & Verizon Wireless Ex Parte Letter at 6 (August 31, 2007); Verizon Wireless Notice of Written Ex Parte Presentation, Declarations of Richard A. Craig and Jeff M. McDougall (August 31, 2007); T-Mobile Application at 7-21; Sprint Nextel Petition at 11-14; RCA Motion at 11-14; Alltel Response at 6-7. The record evidence flatly contradicts the Commission's bare assertions that the Order's PSAP compliance mandate is feasible in five years. Moreover, even though the Commission addressed Part B issues before the Part B comment period had even closed, the record also demonstrates that the Order's interim compliance benchmarks are not feasible.

1. The five-year deadline for PSAP-level compliance is technologically infeasible.

As T-Mobile, Sprint Nextel and RCA have forcefully explained, the record contains no evidence to support the feasibility of PSAP-level compliance within five years. To the contrary, the record reflects "overwhelming concern regarding technical feasibility and compliance deadlines." Order at 32 (Statement of Commissioner Adelstein). Specifically, the comments submitted to the Commission establish that the Order's accuracy standards cannot be achieved by September 11, 2012 using *any* currently available or reasonably foreseeable technology.⁴

Verizon Wireless, like other carriers, explained in detail why PSAP-level accuracy is not technically feasible. Specifically, Verizon Wireless showed that even its handset-based Assisted GPS ("AGPS") solution, the most accurate wireless location technology currently available, cannot currently yield accuracy readings that comply with the Commission's accuracy standards

⁴ *See e.g.*, Verizon Wireless Comments at 21-22 (filed July 5, 2007); RCA & Verizon Wireless Ex Parte Letter at 6 (August 31, 2007); Verizon Wireless Notice of Written Ex Parte Presentation, Declarations of Richard A. Craig and Jeff M. McDougall (August 31, 2007); Sprint Nextel Comments at 11 (filed Jul. 5, 2007); Polaris Wireless Comments at 10 (filed July 5, 2007); AT&T Comments at 7 (filed July 5, 2007); QUALCOMM Comments at 4, 6-7 (filed July 5, 2007).

at every PSAP. *See* Verizon Wireless Comments at 16-22; Verizon Wireless Notice of Written Ex Parte Presentation, Attachment 1 ¶ 2 (Declaration of Richard A. Craig) (“Verizon Wireless selected and deployed the most accurate solution system commercially available, Assisted GPS (‘AGPS’).”). When three or more satellites are visible to the caller’s handset through line of sight, the GPS satellite component of Verizon Wireless’s system provides highly accurate location information. *Id.* at 17. When fewer than three satellites are visible, however, the system may combine GPS satellite signals with Advanced Forward Link Trilateration (“AFLT”), which uses Time Difference of Arrival (“TDOA”) ranging measurements, based on the triangulation of signals among the handset and multiple cell sites, to provide a location fix. *Id.* at 16-17. If no GPS signals are available to the handset, the system employs AFLT or other network-based default solutions to provide a location. *Id.* at 17. With each “step down” from pure GPS to Hybrid GPS and AFLT to pure AFLT to other network-based default solutions, the accuracy of the location fixes decrease. Only pure GPS location technology can yield accuracy readings that comply with the Commission’s stringent standard. *Id.*

Current technology, however, does not permit the use of pure GPS location technology in every case. “Some PSAPs present challenged terrain and environments where the technology, through no fault of the carrier, will not be able to perform to the desired accuracy.” Verizon Wireless Notice of Written Ex Parte Presentation, Attachment 1 ¶ 4 (Declaration of Richard A. Craig); *see also id.* Attachment 2 ¶ 7 (Declaration of Jeff M. McDougall). Buildings, dense forest areas and other obstructions currently delay or block completely GPS satellite transmission signals. Verizon Comments at 17-18. It is thus not surprising that even the Commission’s own federal advisory committee concluded that PSAP-level compliance is not technologically feasible. NRIC VII Focus Group 1A: Near Term Issues For Emergency/E9-1-1 Services, Final

Report at 21, 51 (Dec. 16, 2005). After nearly two years of investigation, deliberation, and participation from a wide range of stakeholders—including the National Emergency Number Association (“NENA”) and the National Association of State 9-1-1 Administrators (“NASNA”)—the Network Reliability and Interoperability Council VII (“NRIC VII”) concluded that “[g]iven the current state of technology, it is understood that the FCC accuracy rules will not be met at every PSAP.” *Id.* at 21; *see also id.* at 51 (“All parties agree that it is not technically possible today for every carrier to meet the FCC location accuracy requirement at every PSAP.”). Remarkably, the Commission failed even to mention NRIC VII or its report in the Order.

In light of this overwhelming record evidence that PSAP-level compliance is technologically infeasible, the Commission could not—and did not—find that all wireless carriers are capable of meeting its September 11, 2012 PSAP-level compliance deadline. Nor did the Commission identify a technological solution that would allow carriers to meet the PSAP-level compliance mandate by September 11, 2012. The Commission instead based its decision on two conclusory assertions, neither of which withstands scrutiny. *See, e.g., W. Mich. Telecasters, Inc. v. FCC*, 396 F.2d 688, 691 (D.C. Cir. 1968) (remanding for the Commission to state with particularity the basis for its action where the Commission’s order was “merely a collection of conclusory comments”).

First, the Commission asserted that allowing carriers five years to achieve compliance at the PSAP level “substantially mitigates” concerns that compliance at the PSAP level is technologically infeasible. Order ¶ 14. As T-Mobile, Sprint and Nextel have explained, however, the record contains, and the Commission identified, no improved or new technology that will make compliance feasible within the next five years. *See* T-Mobile Application at 7-21;

Sprint Nextel Petition at 11-14; RCA Motion at 11-14; *see also* Verizon Wireless Notice of Written Ex Parte Presentation, Declarations of Richard A. Craig and Jeff M. McDougall (August 31, 2007). Absent any such evidence, the Commission’s contrary conclusion—with no facts to support it—is arbitrary and capricious. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 56 (1983) (an agency action is arbitrary and capricious absent a “rational connection between facts and judgment”).

Second, the Commission asserted that “in many cases, PSAP-level compliance is technologically feasible today and would require only the investment of additional financial resources.” Order ¶ 14; *see also id.* ¶ 16 (“PSAP-level compliance is possible in many instances.”). But the Commission’s Report and Order requires that by September 11, 2012 each carrier “must be in *full* compliance with Section 20.18(h) at the PSAP service area level.” *Id.* ¶ 18. Thus, even if compliance were possible “in many cases,” carriers would still run afoul of the Commission’s Order. *Id.*

2. The impending interim benchmarks are technologically infeasible.

There is similarly no support in the record for the technological feasibility of the Commission’s one and three year compliance benchmarks, which require compliance at the Economic Area (“EA”) level and at the Metropolitan Statistical Area (“MSA”) or Rural Service Area (“RSA”) level, and which also require compliance in at least 75% of PSAPs the carrier serves. The only written comment on the interim benchmarks in the Part A record is T-Mobile’s letter of September 10, 2007, which strongly opposed the benchmarks as technologically *infeasible* and as an impediment to carriers’ efforts to implement a long-term solution. Moreover, because carriers may serve only limited areas within each EA, MSA or RSA, these interim benchmarks in reality accelerate the PSAP-level compliance mandate to one and three

years in limited areas. Of course, absent any support in the record that PSAP-level compliance is technologically feasible in five years, there is no reason to believe that carriers can achieve PSAP-level compliance in these areas in only one or three years.

B. The Commission Violated the APA's Notice and Comment Requirements.

Verizon Wireless is also likely to succeed in its challenge to the Order because the Commission blatantly violated the APA's notice and comment requirements. The APA mandates that before an agency may adopt legislative or substantive rules, the agency must "give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments." 5 U.S.C. § 553(c); *see also* 47 C.F.R. § 1.415(c) ("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 rule making."); *Fed. Express Corp. v. Mineta*, 373 F.3d 112, 120 (D.C. Cir. 2004). As T-Mobile, Sprint Nextel, and RCA have explained in detail, the Commission's ostensible notice and comment procedure in this case was "doubly flawed." Sprint Nextel Petition at 15; *see also id.* at 14-15; T-Mobile Application at 23-32; RCA Motion at 17-21; Alltel Response at 2-6. "Not only did the Commission adopt a timetable without notice or opportunity to comment, it did so despite the fact that the period within which compliance with the new rule should be achieved was explicitly reserved for the second half of this proceeding, a proceeding in which the comment period had not even closed." Sprint Nextel Petition at 15.

The Association of Public-Safety Communications-International, Inc. ("APCO") proposed the benchmarks adopted by the Commission on Friday, September 7, 2007, the same day the Sunshine period for submitting *ex parte* comments related to this Order began. *See* Order at 32-33 (Statement of Commissioner Adelstein). A mere two business days later on

Tuesday, September 11, 2007, the Commission announced its Order adopting APCO's proposal verbatim. *Id.* ("Instead of working with all stakeholders, the Commission today simply adopts on a Tuesday a proposal filed on Friday. Offering no opportunity for deliberation or participation by so many stakeholders does not befit an expert agency."). It is thus unlikely that most parties were even aware of the proposed benchmarks, and they certainly had no meaningful "opportunity to participate in the rulemaking through submission of written data, views, or arguments." 5 U.S.C. § 553(c); *see also* 47 C.F.R. § 1.1203 (prohibiting presentations to decisionmakers regarding matters listed on the Sunshine Agenda).

Not only did most parties have no notice or opportunity to comment on the specific benchmarks proposed on September 7, 2007, but they had no notice that the Commission was even considering "benchmarks" during *Part A* of this rulemaking *at all*. The Commission's bifurcated comment schedule reserved for the second ("*Part B*") comment cycle the issues of "what reasonable amount of time should we permit carriers to achieve compliance at the PSAP level" and whether "benchmarks [should] be established." NPRM ¶ 8. The Commission thus violated the APA by deciding issues on September 11, 2007, that were reserved for the *Part B* comment cycle, which did not even close until September 18, 2007.

II. VERIZON WILL SUFFER IRREPARABLE HARM IF A STAY IS NOT GRANTED.

Like T-Mobile and Sprint Nextel, Verizon Wireless will suffer irreparable financial and reputational harm if a stay is not granted. *See* T-Mobile Application at 35-37; Sprint Nextel Petition at 17-20. Verizon Wireless and other carriers are exposed to possible Commission enforcement action and other harmful litigation under the Communications Act for the failure to comply with Commission regulations. *See* 47 U.S.C. §§ 206-09, 401, 404, 407, 408, 501-04. If the Commission allows the rule changes to go into effect, even though compliance with the

Order's mandates is technologically infeasible, Verizon Wireless and other carriers may be unfairly branded as violators of public safety laws. It is well-established that such reputational harm is irreparable injury supporting a stay. *See, e.g., Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994) (irreparable injury prong satisfied where failure to grant a stay "creates the possibility of permanent loss of customers to a competitor or the loss of goodwill"); *Mich. Bell Tel. Co. v. Engler*, 257 F.3d 587, 598 (6th Cir. 2001) (company may be irreparably harmed by the loss of customer goodwill).

III. A STAY WILL NOT HARM OTHER INTERESTED PARTIES AND IS IN THE PUBLIC INTEREST.

As both T-Mobile and Sprint Nextel have explained in detail, a stay of the Order pending appeal will not harm any other party, nor will it result in any diminution of public safety. *See* T-Mobile Application at 38-39; Sprint Nextel Petition at 20-21. The public simply cannot be harmed by staying new rules with which carriers cannot comply in the first place. And as Verizon Wireless and others have demonstrated, the Commission's new rules are technologically infeasible. *See id.*; Verizon Wireless Comments at 16-22. As Sprint Nextel has explained, moreover, publication of the Order may actually harm customers by creating the false impression that current 911 service is unreliable and by creating the expectation that a technologically infeasible accuracy standard will be met within the next five years. *See* Sprint Nextel Petition at 21. By demanding that carriers meet unattainable goals for one feature of 911 service, the Order will also divert carrier resources from improving other aspects of 911 service that will actually assist PSAPs.

Staying the Order will not reduce public safety because carriers will continue to provide the most accurate location information currently available. Significantly, carriers will also continue to provide an "uncertainty factor" along with the location of each 911 caller. The

uncertainty factor indicates how accurate a location fix is (expressed in terms of a number of meters) with respect to each individual call. In many instances, that individualized information on a call-by-call basis is more important for responders than a higher average accuracy level. It permits dispatchers to tailor emergency response efforts by establishing a level of uncertainty regarding the location information associated with each call. *See* Verizon Wireless Notice of Written Ex Parte Presentation at 10-11; T-Mobile Application at 38; *see also* NENA Comments at 6 (July 5, 2007) (“Uncertainty value” is “important information in the hands of a 9-1-1 telecommunicator and should be provided with every call.”). Staying the Order thus will not harm any other party and is in the public interest because the adoption of technologically infeasible mandates will serve only to create customer confusion and undermine public confidence in the existing E911 system. Absent the Order’s rule changes, carriers will continue to provide reliable E911 location service and to assist dispatchers in targeting their response efforts by providing the most accurate caller location information available.

CONCLUSION

For the foregoing reasons, the Commission should stay the Order pending judicial review.

Respectfully submitted,



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